

# The Registration of Land Ownership Transfer Due to Inheritance for Foreigners in West Sumatera

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## The Registration of Land Ownership Transfer Due to Inheritance for Foreigners in West Sumatera

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### **Abstract**

The transfer of land ownership as an inheritance is a legal process causing land ownership transfer from the testator to his heirs. To achieve legal certainty in every transfer of land ownership because of inheritance, land ownership transfer should be registered at National Land Agency. Based on Indonesia laws, it is forbidden for foreigners to own land since only Indonesian citizens can have full land ownership rights. The aim of this research is to find out the legal protection and certainty related to the registration of land ownership transfer due to inheritance for foreign heirs in West Sumatera and also the control of the National Land Agency on the length of land ownership rights of foreign heirs which is estimated to only one year. The theories used are legal protection theory by Philipus Hadjon and legal certainty theory by Utrecht. In conducting this study, the method used is qualitative descriptive with normative law study approach. The primary data involved in this study is composed of interviews with staff from several offices of the West Sumatran National Land Agency and notaries. While secondary data consists of legal literature. This study focuses on identifying, determining, and analyzing the inheritance rights, the regulations of land ownership registration, and the control of the National Land Agency on land ownership for foreign heirs. The results show that: 1) the different of nationality between the testator and the foreign heirs does not prevent them from inheriting land ownership rights; 2) foreign heirs are only entitled to have land rights for a period of one year after which the land ownership rights must be transferred to Indonesians; 3) the control of the National Land Agency on foreign heirs' land ownership rights is only related to the formal condition of the land ownership transfer as the inheritance.

**Keywords:** Foreign Nasionality; Heritance; Transfer of Land Rights; Heirs

### **Introduction**

Different nationality between parties carrying out a law relationship will produce a problem on International Civil Code, such as a problem relating to inheritance. The inheritance is a process of wealthy transfer or property continuity from one generation to another next generation.<sup>1</sup> The inheritance law regulation is regulated in the second Civil Code concerning the material law. Basically, everyone can be an heir and has the right over equal inheritance without distinguishing nationality and sex (whether a man or a woman).

<sup>1</sup> Hilman Hadikusuma, *Customary Law of Inheritance*, Citra Aditya Bhakti, Bandung, 2015, page 8.

The process of inheriting continuity in International Civil Code can occur without the law act of the testator or through the act of law conducted by the testator when she/ he lives through making a testament or will.<sup>2</sup>

In Article 830 of Civil Code, it is stated that inheritance only occurs because of death. Everyone has the right to inherit each other. In this case, the elements of inheriting are the existence of testator, heir, and estate.<sup>3</sup> Relating to the heir, it is called heir when she/ he has a right to obtain estate whether because of sibling relationship or will. In term of estate in a form of land, a foreigner can inherit the rights of land in Indonesia because she/ he was born from mix marriage and because she/ he does naturalization. In this case, naturalization is known as the change of Indonesian nationality status into foreign nationality and vice versa.

Then, different nationality between testator and heir does not revoke, lose, or inhibit someone to get the inheritance right as the heir of the testator. It has been regulated in Article 852 of Civil Code stating:

“Children or all of their offspring, even if they are born from other marriages, inherit from their parents, grandparents, or all their next family in a straight up line, with no difference between men or women and no difference based on birth first.”

In International Civil Code, land has its own status. The law on land is unchanged if the land is owned by people who commonly follow other laws.<sup>4</sup> Similarly, the national law in Indonesia adheres to Civil Code relating to Law of Materials or known as the principles of *droit de suite* which means that following the materials (*droit de suite*), that the right of materials follows the materials on the hand of everyone wherever the materials exist.<sup>5</sup>

In this case, land is classified into immovable goods. The process of ownership or transfer of land ownership obtained through the inheritance frequently causes a complicated problem in the society. If it is correlated with the land inheritance obtained from generation to generation.<sup>6</sup> Generally, land as the object of inheritance is the allotment of rights over the land classified based on the types of its utilization and the law subject that will be the owner. The classifications are as follow:

- 1) Ownership right is the rights on land which is fulfilled and strong, from generation to generation which can be given to individual Indonesian citizens with particular law institutions as the exception which utilization can be adjusted with the allotment of land in the area where the land is located;
- 2) Right of exploitation is the right to use land which is directly controlled by the state for a particular time and can be given to individual Indonesian as well as Law Agency of Indonesia (established based on the law of Indonesia and placed in Indonesia);
- 3) Right of building is the right to build and own a building on the land which is not owned by himself or herself for a particular period and it can be owned by individual Indonesian citizens or Law Agency of Indonesia (established based on the law of Indonesia and placed in Indonesia);
- 4) Right of use is the right to use and or take the sources and land owned by other people which is controlled directly by the state and not in a form of rent or land processing, can be given for a particular period to individual Indonesian or Law Agency of Indonesia (established based on the

<sup>2</sup> Purnadi Purbacaraka, *Fundamentals of Private International Law*, Rajawali, Jakarta, 1983, page 57.

<sup>3</sup> Zainuddin Ali, *Implementation of Inheritance Law in Indonesia*, First Print, Sinar Grafika, Jakarta, 2008, page 81.

<sup>4</sup> Sudargo Gautama (Gouw Giok Siong), *Inter-Group Law: An Introduction*, PT Ichtar Baru Van Hoeve, Jakarta, 1993, page 88.

<sup>5</sup> Sri Soedewi Maschoen Sofwan, *Civil Law: The Law of Objects*, Liberty, Yogyakarta, 2000, page 26

<sup>6</sup> Irma Devita Purnamasari, *Smart, Easy and Wise Tips in Understanding Inheritance Legal Issues*, Mizan Pustaka, Bandung, 2014, page 157.

law of Indonesia and placed in Indonesia), foreigners living in Indonesia, and foreign law agency having a representative in Indonesia.<sup>7</sup>

Everyone as the subject of law basically has a right to transfer his/ her land ownership to other people. The transfer of land ownership is a law problem and/or a behavior of law causing the transfer of land ownership from one party to another party. The transfer of land ownership mentioned in this case is a transfer caused by a law case, such as death. Therefore, in the society, customary law is also well-known as the process of land ownership transfer from testator to the heir. The transfer is a law case causing the transfer of rights and obligations to someone which can be permanent or temporary.

However, the transfer of land ownership from testator to the heir who has different nationality has some limitation, such as the limitation of rights which is in this case is the nationality based on Article 9 Paragraph 1 of Law No. 5 of 1960 concerning Agrarian Principles. It is stated that only Indonesian citizens who can have the right on earth, water, and space. Besides, the statement is supported by Article 21 Paragraph 1 of Law No. 5 of 1960 concerning Agrarian Principles stating that only Indonesian citizens can get the ownership.

In this study, different nationality occurred because of naturalization from Indonesian to foreign citizenship. If the heir decides to be a foreigner, different nationality between parents and children occurs. However, it does not cause any revocation of the children's the right of inheritance who has different nationality. Reviewed from the inheritance in Indonesian Civil Code, every heir has a right to what has been inherited to him/ her without concerning the nationality. The statement is also supported by Article 852 of Civil Code.

The Government Regulation No. 24 of 1997 concerning Land Registration is the implementing regulation of the Basic Agrarian Law stipulating that to realize a legal certainty in every transfer of land rights due to inheritance, Article 42 of Government Regulation No. 24 of 1997 states that for registration of the transfer of rights due to inheritance on the land plots that have been registered, must be submitted by those who receive land rights or ownership rights to the apartment unit concerned as inheritance to the Land Office, certificate of right concerned, death certificate of the person whose name is registered and a letter of proof as an heir which is a letter of a proof as an heir proven by a deed made by and before a notary.

On the other hand, it shows that Government Regulation No. 24 of 1997 concerning Land Registration regulates them to register the transfer of right due to inheritance in order to provide legal protection for heirs and for the orderliness of the land registration procedure so that the data stored and presented always show the latest condition.<sup>8</sup> Related to the transfer of rights due to inheritance, the land that has been registered by foreigners should be preceded by descending inheritance which is then registered to National Land Agency.

Based on the law of land applied in Indonesia as stated in Article 21 Paragraph 3 of Law No. 5 of 1960 concerning Principles of Agrarian on heirs, the heirs who have a status as foreign citizens are not allowed to have land ownership in the territory of Indonesia after a period of a year since the right was obtained.

Because the case is interested to be studied, the case that will be the focus of this study is the registration of land ownership transfer due to inheritance for foreigners in West Sumatera. The case on inheritance problem becomes a matter of International Civil Code because it involves foreign elements, i.e. foreign citizens as heirs which ultimately raise issues about the law regarding whether or not foreign citizens can get their rights to obtain certificates of inheritance and how the inheritance disappears or cancelled for foreign citizen heirs. On the other hand, there is a difference between the rules made with the reality in the field relating to the registration of land ownership transfer to the inheritance land for the foreigners. Therefore, the researcher took this case to know the truth about how the practice in reality

<sup>7</sup> Kartini Muljadi and Gunawan Widjaja, *Series of Property Laws and Land Rights*. First Edition Fifth Print, Encana Prenada Media Group Jakarta, 2008, page 25-26.

<sup>8</sup> Boedi Harsono, *Indonesian Agrarian Law: History of Establishment of the Basic Agrarian Law, Content and Implementation*. Revised Edition. Eighth Print. Djambatan. Jakarta. 2008, page 519.



relates to land ownership transfer due to inheritance for foreigners in West Sumatera. Regarding the aforementioned background, the researcher then comes up with the research title named, “**The Registration of Land Ownership Transfer due to Inheritance for Foreigners in West Sumatera**”.

## **1** **Research Method**

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.<sup>9</sup> To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.<sup>10</sup> The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research.<sup>11</sup>

## **Research Findings And Discussion**

### *Inheritance Rights of Foreigners on Land in Indonesia*

Basically, every person as an heir who has a marital relationship or family with the testator has the right on the inheritance based on Article 864 of the Civil Code stating that the heir has the right to claim the rights on the testator’s inheritance. This is in line with the inheritance principles followed by the western civil inheritance called The Principles of *Le Mort Saist Levif*, that is, if a person dies, then immediately the rights and obligations of the testator are transferred to the heirs. The provision of inheritance rights of an heir is stated in Indonesia’s national civil rules in Article 852 of the Civil Code stating that:

“Children or all of their offspring even if they are born of other marriages, inherit from their parents, grandparents, or all their next family in a straight up line, with no difference between men or women and no difference based on birth first.”

From Article 852 of the Civil Code, it is stated that different nationality between the testator and the heirs will not be cancelled or lose or inhibit someone to obtain the rights as the heirs from the testator.

Furthermore, things that cause someone to be hindered or who are not entitled to inherit in the rules applied in civil law in Indonesia have been regulated in Article 838 of the Civil Code stating that:

1. The heirs who have been sentenced for killing or trying to kill the testator.
2. The heir who with the Judge’s decision has been blamed because with slander has filed an accusation against the testator, that the heir has committed a crime that is threatened with five-year prison sentence or a more severe sentence;

<sup>9</sup> Sri Mamudji et al, *Research Method and Legal Writing*, Publishing Board of the Faculty of Law, University of Indonesia, Jakarta, 2005), page 4-5.

<sup>10</sup> Adi Rianto, *Social and Legal Research Methodology*, Granit, Jakarta, 2004, page 31.

<sup>11</sup> Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, page 32

3. The heirs that have prevented the deceased person from taking violence or real action to make or withdraw his will;
4. Heirs who have embezzled or falsify the testator's will.

Another thing causing a person fails to be an heir is if she/ he as the heir rejects the inheritance as regulated in Article 1057 of the Civil Code, "*Heirs who reject inheritance are considered never to be heirs*". The rejection of inheritance should be made through giving a statement before the local District Court as stated in Article 1057 of the Civil Code.

In Islamic law, children have the right of inheritance from their parents, both their property and the rights of the property of the object. However, those who have the right to inherit it are only Muslim children. It has been stated in Article 171 letters (c) and (d) the Compilation of Islamic Law. The part for children based on Article 176 of the Compilation of Islamic Law is:

Girls, if only one person, will get a half of the share. If there are two or more girls together, they will get two-third of the share. If the girls are together with boys, then the share for the boys is two to one with girls.

If you see the rules in Islamic Law, different nationality between the testator and the heir is not included in the classification of a person who is obstructed or deceased to get the inheritance. The things causing a person to be hindered or who are not entitled to inheritance are stated in Article of the Compilation of Islamic Law:

Someone will be hindered from being an heir if the decision of a judge who has permanent legal force explaining that the heir is punished for:

1. being blamed for killing or trying to kill or persecute the heirs severely;
2. being blamed slanderously filed a complaint that the testator has committed a crime. It will be threatened with a sentence of five years imprisonment or a more severe sentence.

Other requirements that should be fulfilled as heirs in Islamic regulation law applied in Indonesia is based on Article 171 letter (c) of the Compilation of Islamic Law stating that blood relations or marital relations with heirs and also Muslim. It shows that even though there was a difference in citizenship between the testator and the heirs in West Sumatera, it was not included in the classification of being hindered from getting the inheritance. However, if the heirs are apostate, then they do not have rights to inherit in West Sumatera.

In Islamic Law applied in Indonesia, based on the applicable rules of Compilation of Islamic Law, it is stated in Article 171 letter (d) that children have inheritance rights from their parents, both properties belong to them and rights of the inheritance attached on the object. Then, it is obvious that all material rights whether they are moving or not, without distinguishing citizenship, as long as the heirs are Muslim, they will still receive the inheritance rights. In this case, the immovable inheritance is land. The heirs who have the same citizenship will still obtain land ownership of the parents who are Indonesian citizens. However, because the land law in Indonesia adheres to the principles of *droit de suite*, the material rights follow the object, in the hands or whoever the object is. So, the material regulation concerning land applied by Indonesia is the Agrarian Basic Law No. 5 of 1960.

With the death of the testator, all of his rights and obligations are inherited to the heirs. Based on customary law, the transfer which is then continued by the heirs based on the available customary law. Since people of West Sumatera follow the matrilineal kinship system in which children have a relationship and connect themselves with their mothers and mother's family through the lines of women. In a customary law, the biological children from a legal marriage have the right on the inheritance of his family.<sup>12</sup>

<sup>12</sup> Hilman Hadikusuma, *Customary Law of Inheritance*, Eight Print, PT Citra Aditya Bakti, Bandung, 2015 page 66-67

Hamka, in his book entitled *Minangkabau Customs Facing Resolution*, stated that the division of inheritance in Minangkabau is divided into two:

1. High inheritance assets are assets obtained in descending manner which are inherited based on local custom (customary law);
2. Livelihoods, according to local custom, are called low inheritance treasures which are revealed based on *syara* (Islamic Law).<sup>13</sup>

In this study, the property is still classified into low inheritance. Thus, the distribution of inheritance uses division according to *syara* or Islamic law. The distribution for two heirs consisting of 2 men will get equal portion because they are male. As stated in Article 176 of the Compilation of Islamic Law, the portion of 2 men will get the equal share. Each of them will get a half part. The Indonesian citizen heirs will get a half of the portion and the foreigner heirs will receive a half portion.

In terms of customary law, the difference in citizenship is not included in the classification of a person being hindered or the loss of the rights of foreign citizens to obtain their inheritance rights. According to Hilman Hadikusuma in his book entitled *Legal Wars Custom*, there are some actions violating the customary law can cause a person loses or revokes his/ her right as an heir:

1. killing or attempting to eliminate the lives of testator or members of the testator's family,
2. conducting prosecution or doing harm to life of the testator,
3. doing bad deeds, dropping the good name of the testator or the name of the testator's family for committing a disgraceful act,
4. apostasy from a particular religion or convert religion and belief and so on.

Based on the results of interviews with Notary and Conveyance named Muhammad Ishaq, SH, M.Kn, Notaries and Conveyance in Padang, a foreigner, based on the customary law in West Sumatera, will be hindered to get the inheritance if the foreign heirs change their belief from the same religion as their heirs or apostates.<sup>14</sup>

Regarding the aforementioned explanation, the loss of the right of foreigners to inherit is not caused by different citizenship between the testator and heirs, but when doing acts that threaten the safety of the testator and the apostasy of the heirs as the religion believed by the testator. Thus, different citizenship does not prevent a person from obtaining the right to inherit someone as the heir of the testator, and to have inheritance rights from the testator, whether it is a movable or an immovable object. A kind of immovable object inherited or becoming a heritage is land.

From the three applicable inheritance rules in Indonesia, such as the Civil Code, Islamic Law, Customary Law relating to the right to inherit foreigners with land in Indonesia, still giving inheritance rights by providing legal protection to heirs who have different citizenship between heirs and heirs who aims to protect the rights of foreign citizens as heirs do not exclude national regulations relating to land registration applied in Indonesia and do not exclude the rules in international civil law adopted or adopted by Indonesia. The legal protection provided is in line with the legal provisions adopted by Indonesian people, namely Article 28 D Paragraph (1) of the 1945 Constitution stating, "Every person has the right for recognition, guarantee, protection and fair legal certainty and equal treatment before the law".

However, in terms of land registration acquired due to inheritance, administratively, to be able to register, the inherited land should be registered first based on the inheritance portion. However, in reality, the land cannot be registered because of some regulations relating to the citizenship. By Islamic law, he received inheritance, but he is unable or obstructed because of the provision of land law in Indonesia. Based on the administrative provisions applied in Indonesia which is stated in Article 21 Paragraph 1 of Law No. 5 of 1960, only Indonesian citizens can have the ownership rights. The purpose of Article 21 Paragraph 3 of Law No. 5 of 1960 is not to eliminate the inheritance rights because the agrarian

<sup>13</sup> Hamka, *Minangkabau Customs in Facing Resolution*, Firma Tekad, Jakarta, 1963, page 7

<sup>14</sup> Interview with Notary Muhammad Ishaq S.H, M.Kn, Notary in Padang, on April 9, 2019



understands that inheritance is a civil problem. Therefore, Law No. 5 of 1960 explicitly suggests foreigners who obtain land ownership due to inheritance to transfer the land to other Indonesian citizens within a year so that the inheritance will not lose. Besides, because of the applied administrative provisions, only Indonesian citizens can have land ownership.

#### A. *The Regulation of Land Rights Registration Inherited by Foreigners in Indonesia*

The regulation of Land Right Registration inherited by foreigners in Indonesia has to be based on the provisions of Laws and the Regulation of Implementation relating to land. The relevant regulations are the 1945 Constitution in Article 33 Paragraph 3 concerning land in Indonesia controlled by the state, Law Agrarian Principal No. 5 of 1960 and Government Regulation No. 24 of 1997 concerning Land Registration.

The Article 33 Paragraph (3) of Constitution of 1945 clearly states that the role of the state as an organization of power in controlling land in order to regulate and manage both surface and natural resources contained therein to be controlled and used for the greatest prosperity of Indonesians.

In Article 19 of Law No. 5 of 1960 concerning Basic Agrarian Principles said that land registration was intended to provide legal certainty. According to Law No. 5 of 1960, legal certainty is to provide certainty of land rights.

The government regulation mentioned which is as stated in Article 19 Paragraph (1) of Agrarian Principle Law (UUPA) is the Government Regulation No. 24 of 1997 concerning Land Registration which is the rule of implementation of Agrarian Principle Law. In this case, the Government Regulation was made to provide legal certainty and protection for the right holders of a land area with evidence produced at the end of the land registration process in the form of land books and land certificates consisting of copies of land books and measuring letters. It is also stated in Article 3 Paragraph (1) of Government Regulation No. 24 of 1997.<sup>15</sup>

In Article 20 Paragraph (2) of the Agrarian Principle Law, it is stated that the land ownership can be transferred to other parties. Both have different meanings according to Urip Santoso in his book entitled Acquisition of Land Rights, such as:<sup>16</sup>

1. transferring means that the transfer of ownership rights due to a legal event, in this case the inheritance. Then, in juridical, the land ownership to the land are transferred to the heirs as long as the heirs fulfill the conditions of the subject matter of ownership;
2. being transferred means that the transfer of land ownership from the owner to other parties due to legal actions. The legal action is an act giving rise to legal consequences, such as buying and selling, exchanging, grants, income in company capital and auction.

The provisions of inheritance concerning land ownership should be based on the law of Basic Agrarian Law and Regulation of the Implementation. In Article 9 of Agrarian Principle Law, it is stated that the land ownership has to be Indonesian citizens without distinguishing sex to obtain land ownership and to obtain benefits and results, both for themselves and their families. Furthermore, the statement is strengthened in Article 21 Paragraph (1) of Agrarian Principle Law which is quite controversial. The land ownership is caused by the transfer allowing foreign citizens to register the land within a year.

Regarding the obligation of holders of property rights to register their land ownership as stipulated in Article 23 of the Agrarian Principle Law. It states that ownership, in every transfer, the write-offs as well as its impositions with other rights have to be registered according to the provisions referred to Article 19 of the Agrarian Principle Law. The provisions stated in Article 19 of Agrarian Principle Law are map measuring and accounting of land, registration of rights to land and the granting of proof of rights documents which apply as strong evidence. It shows that even though the heirs can still

<sup>15</sup> Aries S. Hutagalung, *The Spread of Thoughts Regarding the Legal Issues of Land*, Indonesian Legal Empowerment Institute, Jakarta, 2005, page 8

<sup>16</sup> Urip Santoso, *Acquisition of Land Rights*, Prenamedina Group, Jakarta, 2015, page 38



apply for registration of inheritance by transferring land ownership within a year to the Land Office where the inheritance is located.

The procedures of applying registration of inherited land that has been registered by means of the transfer of land rights stated in Article 42 of Government Regulation No. 24 of 1997 concerning Land Registration, namely:

1. Submit the certificate of ownership in question as an inheritance to the Land Office,
2. Give a death certificate to the person whose name is recorded as the holder of his/ her rights and proof of ownership letter as the heir.

In Government Regulation No. 24 of 1997 concerning Land Registration, the regulation only manages general procedures of registering land caused by inheriting. Unfortunately, the regulation provides little information about how a procedure can run in the reality well. In this case, the classification of making an inheritance letter of information is based on the classification of people in society, such as:

1. for the descendants of Europe certificate of inheritance is made by a Notary and Conveyance
2. for the natives, making a certificate of inheritance was made by sub-district head or *lurah*
3. for Chinese descendants, making a certificate of inheritance is made by a Notary and Conveyance
4. for the other foreigners, the certificate of inheritance is made by the Central Treasury Office.<sup>17</sup>

In Adrian Sutedi's book, the transfer of rights to land and its registration, according to the AP, the protection for the four groups can also be replaced by a District Court Decision and for the Islamic Bumiputra group with a decision from the Religious Court or the Sharia Court.

Furthermore, the National Land Agency through its official website provides information related to requirements, settlement and other information for inheritance right transfer without distinguishing subjects and object. The requirements are as follow:<sup>18</sup>

1. For the requirements for Inheritance Right Transfer,
2. application from filled in and signed by the applicant or the proxy is sufficiently stamped
3. power of attorney if authorized
4. a copy of the identity of the applicant/ heirs (ID Card, Family Card) and power of attorney if authorized, which has been matched to the original by the ticket window clerk
5. original certificate
6. certificate of inheritance in accordance with the laws and regulations
7. testament Deed of Notary
8. copy of Obligatory Tax Return and Property Tax for the current year that have been matched with the original by the ticket window clerk, the delivery of proof of Letter of Customs for Land and Building Rights and proof of payment of income money (at the time of registration of rights)

<sup>17</sup> Adrian Sutedi, *Transition of Rights to Land and Registration*, Jakarta, Sinar Grafika, 2014 page 102

<sup>18</sup> Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency, <https://www.atrbpn.go.id/Publikasi/StandarProsedur/moduleId/122856/itemName/Pewarisan/controlle r/Item/action/Detail> accessed on April 12, 2019 at 07.09

9. Submission of proof of Letter of Customs for Land and Building Rights, proof of Tax Payment Letter/ Income Tax for acquisition of land in excess of 60 million-rupiah, proof of payment of income (at the time of registration of rights)
  - a. For the completion of the Transfer of Inheritance Rights, it takes five working days.
  - b. Other information needed is the applicant's self-identity, size, location, and use of the land requested, statement of land not dispute and statement of land/ building physically controlled.

In this case, the making of a letter of inheritance for foreign citizens follows the group in the society of the testators. It is in line with one of the principles of International Civil Code in Article 18 *Algemeen Bepalingen van Wetgeving (Lex Loci Actus)*. To make an information letter for foreigners whose heirs are native, the letter making is made by sub-district or *lurah*. In the articles aforementioned, the rule of law that should be applied to carry out acts or legal relations (which contain foreign elements); therefore, the legal action is subjected to the law where the act is carried out, namely the law of the heir who is Indonesian.

#### *Monitoring of Land Ownership for Foreigners by the National Land Agency*

In running as a power organization for all people, the state is given a right to control the land in order to realize the prosperity of the people or better known as the right to control the state. Authorizing the land, in this case, it means that the state's position is as a ruling body having a power at the highest-level regarding land for the prosperity of the community. First, it is aimed to regulate and administer the use, supply, and maintenance of the earth, water, and space in Indonesia. Second, it is used to determine and regulate legal relations between people and earth, water and space. Third, it is aimed to determine and regulate legal relations actions between people and the acts of law relating to earth, water, and space.<sup>19</sup>

Based on its capacity as an agency in charge of the land sector to conduct supervision regarding the ownership of land rights in Indonesia, the National Land Agency as mandated by Article 3 letter (j) of the Presidential Regulation No. 10 of 2006 concerning the National Land Agency, namely supervision and control of the control of land ownership. In this case, it is responsible for carrying out supervision related to fulfilling the requirements of holders of land rights, both subjects of Indonesian citizens, foreign nationals and legal entities. Besides, to conduct supervision related to fulfilling the requirements related to the object, namely land and buildings to be registered with all forms of legal actions that will be carried out on the land and buildings. As well as legal certainty, openness and accountability of public services on the maintenance of land registration of the head of the national land agency of Indonesia Republic No.1 of 2010 concerning standards of service and land regulation.

The purpose of monitoring the ownership of land rights for foreigners by the National Land Agency is to protect the aspects of legal protection and certainty in the laws and regulations applied in Indonesia. The protection aspect for foreign citizenship to be able to have land rights as heirs; but on the other hand, it does not reduce the protection of land controlled by foreign citizens related to the transfer of rights to their land. Aspects of legal certainty to guarantee the registration of the transfer of land ownership due to inheritance of the object on its land which included the area and fields registered at the Land Agency Office and the ownership status of the land or the subject of the land.

In practice, Elvino Akbar as the head of rights-setting section at the National Land Agency of West Sumatera Province stated that supervision of ownership of land rights for foreigners by the National Land Agency in West Sumatera is carried out based on the laws and regulations, such as Article 21 paragraph (3) and (4) Agrarian Principle Law stating that foreign citizens after the enactment of this Law have to register within a year. If it has passed the period stipulated by the law, the National Land Agency

<sup>19</sup> Maria S.W. Sumardjono, Case Review of Several Agrarian Legal Problems (Yogyakarta: Faculty of Law, Gadjah Mada University, 1982), 13

of the West Sumatera Province will not process it because it falls directly into state land. And foreigners cannot own property rights.<sup>20</sup>

Furthermore, in the interview with Dito Syaferli, SH as one of the staffs at Padang National Land Agency, there was no authority of the National Land Agency to check or inform who has died because the National Land Agency was only a recording institution, not an institution that had to checking, investigating, processing right not the subject. The National Land Agency only checks the requirements formally.<sup>21</sup>

It is seen that the National Land Agency in practice only guarantees the legal certainty of registering the transfer of ownership rights to the land when the transfer of rights to the inheritance is registered by the foreign national heirs at the National Land Agency. Because according to the authority of the National Land Agency as an institution recording the rights to land. Supervision of registration of land rights due to inheritance for foreigners was only carried out by the National Land Agency of West Sumatera Province when the foreigners registered their inheritance, if it was still within a year of transition, the National Land Agency of West Sumatera Province will process it by transferring rights both to the state and to other people. However, if the inheritance period is over a year, the West Sumatera Province National Land Agency will transfer it directly to the State Land.

Based on the results of interviews with Dito Syaferli, SH as one of the staffs at Padang National Land Agency, the calculation of the period of a year of transfer of his inheritance administratively at the National Land Agency, starting from the registration / transfer of ownership rights to people's inheritance, the stranger. It is based on Article 21 Paragraph 3 of Law No. 5 of 1960 stating that foreigners obtain ownership rights over land due to inheritance, a period of a year from the acquisition of the right. The period of a year since the acquisition of the right has been interpreted by the National Land Agency since the registration/ transfer of the ownership rights to the inheritance of the foreigner has been registered.<sup>22</sup>

Based on the result of interviews with Notaries and Conveyance Muhammad Ishaq, SH, M.Kn, Notary and Conveyance in Padang, a lot of land data at Padang National Land Agency was blurred because many former Indonesians from West Sumatera outside the country moved to become foreign citizens. Thus, by shifting the citizenship to his customary inheritance he inherits. It causes foreigners not to inherit because they know that by not doing inheritance, they still have ownership rights to their inheritance even though the land/ mother/ grandmother/ grandfather's names are still listed in the land certificate. It occurred in West Sumatera, but no sanctions were imposed on this matter. The new inheritance of the foreigners will be taken if they as the heirs perform the resolution of his land rights or transact to their land rights through buying/ selling/ exchanging/ grants/ auctions/ income into the company's capital.

Based on the results of interviews with several parties above, the practice of controlling the land ownership for foreigners by the National Land Agency in West Sumatera was only carried out when the transfer of rights to the inheritance by the foreign citizen heirs were registered at the National Land Agency by checking the terms of the formal transfer of rights to the heir of the foreigner. If it is still within a year of transfer, the National Land Agency of the West Sumatera Province will process it by transferring rights both to the state and to other people. However, if the period is over a year while the heirs do not transfer the rights for their inheritance, the West Sumatera Province National Land Agency will drop the payment directly to the State Land.

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<sup>20</sup> Interview with Mr. Elvino Akbar, Head of Rights Determination Section at the National Land Agency, West Sumatra Province, on March 29, 2019, at the Regional Office of the West Sumatra National Land Agency, Padang

<sup>21</sup> Interview with Mr. Dito Syaferli, S.H Staff at the National Land Agency of Padang, on April 16, 2019, at the Office of the National Land Agency in Padang

<sup>22</sup> Interview with Mr. Dito Syaferli, S.H Staff at the National Land Agency of Padang, on April 16, 2019, at the Office of the National Land Agency in Padang



### **Conclusion**

Based on the various civil divisions (Civil Code, Islamic Law, and Customary), foreigners as an heir can get his/ her estate on the land owned by their parents in Indonesia. Despite the differences in citizenship with the testator who are Indonesian, there is no reason for foreigners not to get their inheritance as heirs. However, administratively, to be able to register for inheritance portion, but in reality, it is difficult to be registered because there are provisions related to citizenship.

The regulation of registration of land rights inherited by foreigners in Indonesia in this case Land ownership rights are contained in three legal rules which regulate them: Article 33 Paragraph 3 of Constitution of 1945, Article 23 *juncto* Article 21 Agrarian Basic Law No. 5 of 1960, and Article 42 Government Regulation No. 24 of 1997. Process of transferring ownership rights to land due to inheritance for foreigners is given to transfer within a period of a year from the acquisition of such rights.

Regarding the supervision of ownership of land rights for foreigners by the national Land Agency in West Sumatera, it is only done by checking the terms of the formal transfer of rights to the heir of the foreigner. If it is still within a year of transfer, the National Land Agency of the Province of West Sumatera will process it by transferring rights both to the state and to other people. However, if the period is over a year while the heirs do not transfer the rights to their inheritance yet, the West Sumatera Province National Land Agency will drop the payment directly to the State Land.

### **Suggestion**

Foreigners getting inheritance in the form of land should not lose their inheritance rights legally based on the applicable civil code law in Indonesia because the administrative provisions state that only Indonesian may own land over Indonesian. Then, when the inheritance is shared, they should sell the inherited land so that their inheritance rights exist.

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# The Registration of Land Ownership Transfer Due to Inheritance for Foreigners in West Sumatera

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