



NORMA

<https://journal.uwks.ac.id/index.php/norma>

Construction Of Heritage Rights and Citizenship Status Differences in Indonesia

Dwi Tatak Subagiyo

Universitas Wijaya Kusuma Surabaya

e-Mail: tataksubagiyo@gmail.com

Abstract:

The high mobility of the population from one country to another, contributes to citizenship transfer. Likewise, Indonesian Citizens (WNI) who, for reasons of education, employment, and other preferences, choose to become Foreign Citizens (foreigners). However, the transfer of citizenship does not necessarily eliminate the ties of blood with the family. For example, in Inheritance in the form of land, a Foreign Citizen, referred to as a WNA, can inherit land rights in Indonesia due to the first two things, a foreign citizen born because of a mixed marriage. And both foreign citizens as a result of naturalization can be understood as a change in the citizenship status of the Indonesian population. Therefore, Indonesia's current construction of inheritance rights within the framework of inheritance regulation (which is part of civil law) is still dualistic and pluralistic. This is inseparable from the legal history of the enactment of civil law in Indonesia.

Keywords: Construction; Inheritance; Citizenship.

Article's History:

Received:

February 25, 2021;

Peer-Reviewed:

June 21, 2021;

Accepted:

July 15, 2021;

Published:

July 30, 2021.

DOI:

10.30742/nlj.v18i2.1587

INTRODUCTION

The mobility of the population causes the transfer of citizenship from one country to another. Transfer of citizenship in Indonesia can occur for work, education, or other reasons that make Indonesian citizens (WNI) choose to become foreign citizens (WNI). This transfer of citizenship in practice will not eliminate blood ties to families in Indonesia.

Based on the concept in International Civil Law, the difference in nationality between the parties in a legal relationship will cause inheritance problems. Inheritance is the process of transferring or passing on assets from one generation to the next. The regulation of inheritance law is regulated in the second book *Burgelijk Wetboek* (BW), which is related to the law of objects.

Everyone can become heirs and have the right to Inheritance to get an equal share of Inheritance, regardless of nationality or gender (whether male or female). Based on this statement raises the following problems: the construction of inheritance rights due to nationality differences in Indonesia.

RESEARCH METHOD

This research is normative legal research with a statutory approach.

DISCUSSION

General principles of international civil law in inheritance arrangements. In regulating inheritance rights, it refers to the provisions of the principles of International Civil Law, in this case, the Indonesian National Civil Law, to determine which legal provisions apply, of course, requires status. As for the general principles in international civil law, which are the principles of General International Civil Law, namely:¹

- a. Article 16 Algemeen Bepalingen van Wetgeving. (Personalia Statute). This article regulates the status, and the national law of each individual regulates the legal authority of a person. Therefore, this provision applies the principle of national law of the citizen concerned (lex patriae principle).
- b. Article 17 Algemeen Bepalingen van Wetgeving. (Statute of Realia). This article regulates fixed objects. The applicable principle (lex resitae) applies to the country's legal provisions where the object is moving.
- c. Article 18 Algemeen Bepalingen van Wetgeving. (Lex Loci Actus). This article regulates how the law should be enforced when determining the status and legality of every act or every legal relationship (which contains foreign elements). In this article, the provisions stipulate that a legal act committed is subject to compliance in the law where the act is committed (Locus Loci Actum).

In Civil International Law, determining the process of Inheritance can occur automatically or automatically, without legal action of the heir. However, this can be done through legal actions on the part of the heir while he is still alive, that is, can use a legal act that the heir carried out while he was still alive, accompanied by writing a testament or will.²

Principles of Inheritance Law

Article 830 Burgelijk Wetboek (BW) also states something similar: that Inheritance can only occur because of death. Every human being has the right to inherit from each other, as for the elements of Inheritance, namely, the presence of an heir, the existence of an heir, and the existence of an inheritance.³ Heirs, who are said to be heirs, are parties or people entitled to receive the heir's Inheritance, either because of kinship or because of will. Inheritance in the form of land, a foreign citizen, referred to as a foreigner, can inherit rights to land in Indonesia due to the first two things, foreign citizens born due to mixed marriages. And the two foreign citizens, as a result of carrying out legal naturalization actions, naturalization can be understood as a legal

¹ Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional* (Bandung: Citra Aditya Bakti, 2006), 73–75.

² Purnadi Purbacaraka, *Sendi-Sendi Hukum Perdata Internasional* (Jakarta: Rajawali, 1983), 57.

³ Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Sinar Grafika, 2008), 81.

act in the form of changing the citizenship status of Indonesian citizens to become foreigners or vice versa. In the event of a difference in nationality between the heir and the heir, this does not cause death or loss or prevent a person from obtaining the right to inherit someone as the heir of the heir.⁴

This is in line with Article 852 *Burgelijk Wetboek (BW)*, which is as follows: "Children or all their descendants, even if they are born from other marriages, inherit from their parents, grandparents, or all their blood relatives. then in a straight line upward, with no difference between male or female and no difference based on first birth." In Private International Law, Inheritance is entirely regulated by the law of the person who leaves the property (heir), both movable and immovable property, which concerns parts of Inheritance (*erfportie*), regarding legitimacy, division and division and so on.⁵

There are several principles and theories in Civil International Law to determine how the applicable legal provisions in inheritance issues, for example:

1. The principle of *lex rei site* or *lex site*, namely explaining that if the object of Inheritance is permanent, the process of inheriting such fixed objects must be regulated based on legal provisions from the place where the object is located;
2. The principle of *lex patriae*, *lex domicile*, explains that: if the objects that are the object of Inheritance are movable, the legal process of inheriting those objects can be subject to the legal rules Inheritance from where the heir becomes a citizen. Country of permanent domicile at the time he passed away;
3. The law where the heir is domiciled or a citizen of the country at the time of the making of the testament;
4. The law of the place where the heir resides or becomes a citizen of the country when he dies.⁶

This means that land has its status in international civil law. The law on this land remains unchanged if the land is held by people who are generally subject to other laws.⁷ This is also in line with the Indonesian national law, the Civil Code, which is related to the provisions of the Material Law, known as the principle (*droit de suite*), which is always following the object (*droit de suite*), that material rights always follow the object, in the hands of any located object.

The land is an inheritance that is classified as immovable property. The process of ownership or transfer of acquired land rights can be a complex problem. This is, of course, related to the Inheritance of land obtained from generation to generation. In the case of land as an object of Inheritance, in general, the designation of land rights is

⁴ Amandeo Tito Sebastian, "Hak Ahli Waris Warga Negara Asing Atas Obyek Waris Berupa Saham Perseroan Terbatas Penanaman Modal Dalam Negeri," *Ad'Adl X* (2018): 150.

⁵ Sudargo Gautama (Gouw Giok Siong), *Hukum Antar Golongan Suatu Pengantar* (Jakarta: Ichtiar Baru Van Hoeve, 1993), 87–88.

⁶ Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional*, 285.

⁷ Sudargo Gautama (Gouw Giok Siong), *Hukum Antar Golongan Suatu Pengantar*, 88.

classified according to the type of utilization/use, as well as the legal subject that will become the owner, can be classified as follows:⁸

- a. Hak Milik, which is complete and robust right to land, is inherited, can only be granted to single Indonesian citizens, except for certain legal entities, whose utilization can be adjusted to the designation of land in the area where the land is located;
- b. Business Use Rights, which are land rights to seek the use of land that is given directly by the state, for a specific period / limited time, which can be granted either to Sole Indonesian Citizens or Indonesian Legal Entities (established according to law Indonesia and domiciled/domiciled in Indonesia);
- c. Building Use Rights, which are rights to land to establish and own / own buildings on land that is not his own, for a certain period, which can be owned either by single Indonesian citizens or Indonesian legal entities (which established according to Indonesian law and domiciled/domiciled in Indonesia);
- d. Hak Pakai is the right to land to use clan or collect the results and land owned by other people directly controlled by the state, which is not leasing or land processing, which can be granted for a certain period of time to a single person Indonesian citizen. Indonesian legal entities (which are established according to the provisions of Indonesian law and domiciled / domiciled in Indonesia), foreign citizens domiciled / domiciled in Indonesia, and foreign legal entities with a representative office in Indonesia.⁹

Construction of inheritance rights due to differences in nationality.

According to the fourth edition of the Big Indonesian Dictionary, construction is the arrangement and relationship of words in a sentence or group of words. Therefore, the meaning/meaning of a word is determined by the construction in the sentence or group of words.¹⁰ The word construction is a concept that is quite difficult to understand. It is agreed that the word construction has various interpretations/interpretations, cannot be defined singly, and is very dependent on the context. The definition of construction is as follows, namely as a meaning that is related/related to a sentence or group of words that is in a word in a language study/review. Construction can also be defined as the arrangement/series (model, layout) of a building. In inheritance rights, humans as legal subjects, in essence, have a right to transfer their rights over land to other humans. Thus, the transfer of land rights is a legal act.¹¹

⁸ Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah Dan Bijak Memahami Masalah Hukum Waris* (Bandung: Mizan Pustaka, 2014), 157.

⁹ Kartini Muljadi dan Gunawan Widjaja, *Seri Hukum Harta Kekayaan, Hak-Hak Atas Tanah* (Jakarta: Prenada Media Group, 2008), 25–26.

¹⁰ Hasan Alwi, *Kamus Besar Bahasa Indonesia Edisi Keempat* (Jakarta: Balai Pustaka, 2007).

¹¹ Ilyas Ismail dan Mahdi Syahbandir Nurlalila, "Kepemilikan Tanah Hak Milik Yang Dikuasai Bersama Warga Negara Indonesia (WNI) Dan Warga Negara Asing (WNA) Yang Diperoleh Berdasarkan Warisan Di Provinsi Aceh," *Syah Kuala Law Journal* 2, no. 2 (2018): 258–75.

Currently, the regulation of inheritance law (part of civil law) in Indonesia is still dualism and pluralistic. This is inseparable from the legal history of the enactment of civil law in Indonesia. Before Indonesia's independence, as a result of Dutch colonial rule, the legal politics of the Dutch East Indies government at that time, as outlined in Articles 131 and 163 *Indische Staatregeling* (IS), there were legal classifications and population classifications.

Based on these provisions, the European Civil Law (*Burgerlijk Wetboek*) was enacted in Indonesia based on *Staatblad* No.23 / 1847 for the *Eropa Group*, Customary Law for the *Bumiputra Group* (Indigenous Indonesians) and Customary Law for the *Foreign Eastern Group*, respectively. During its development, the *Burgelijk Wetboek* (Civil Code) was applied to the *Foreign East* and was given the possibility for the *Bumiputra Group* to submit voluntarily (*gelijkstelling*) to the *Burgelijk Wetboek* (BW) and Customary Law, including their inheritance law. Furthermore, in the development of Islam, Islamic law was enforced in certain areas, especially those used to distribute Inheritance. Thus there is a pluralism of inheritance law systems that apply: the *Western Inheritance Law System*, the *Customary Inheritance Law System* and the *Islamic Inheritance Law System*.

The transfer of land rights in this study is a transition due to legal events, namely death. Therefore, in customary law communities, the process of transferring rights to the land environment from the heir to the heir is also known. The transfer of rights over land is a legal event that results in the transfer of rights and obligations to someone, which can have a permanent nature or may also be temporary.

However, regarding the transfer of land rights from the heir to the heir who has a different nationality, there are restrictions related to the transfer of land rights, namely limiting the ability to have rights, in this case, namely citizenship, according to Article 9 paragraph (1) of Law Number 5 In 1960 regarding the Principles of Agrarianism, it was stated that only Indonesian citizens (WNI) could have an entire relationship with the earth, water and space. This is further reinforced in Article 21 paragraph 1 according to Law Number 5 of 1960 concerning Agrarian Principles; only Indonesian citizens can have property rights. But, on the other hand, this shows that foreigners who are domiciled in Indonesia can be granted Use Rights as stated in Article 42 of Law Number 5 of 1960 concerning Basic Agrarian Affairs.¹²

This difference in citizenship can occur because of naturalization or mixed marriages between Indonesian citizens (WNI) and foreign citizens (WNA). That causes children who are born to have different nationalities. Therefore, the day when the child reaches the age of 21, according to Article 6 paragraph 3 in conjunction with Article 21 of Law Number 12 of 2006 concerning Citizenship, must choose one of the

¹² Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah Dan Bijak Memahami Masalah Hukum Waris*, 183.

nationalities. In that case, there will be differences in citizenship between parents and children, but this does not result in the loss of the inheritance rights of children with different nationalities, following Article 852 BW.

When viewed in terms of Inheritance in Indonesian civil law, it is stated that: every heir has the right to what has been inherited to him regardless of his citizenship status. This is in line with Article 852 Burgelijk Wetboek (BW), which is as follows: "Children or all their descendants, even if they are born from other marriages, inherit from their parents, grandparents, or all their blood relatives. then in a straight line upward, with no difference between male or female and no difference based on birth".

Judging from other inheritance laws that apply in Indonesia, namely Islamic law, children have the right to inherit from their parents' Inheritance, whether they belong to them or their property rights attached to these objects. However, children who have the right to inherit here are only children who are Muslim. This is as simple as Article 171 letters (c) and (d) Compilation of Islamic Law (KHI).

Government Regulation Number 24 of 1997 concerning Land Registration is an implementing regulation of the Law of the Republic of Indonesia Number 5 of 1960 concerning Agrarian Principles, which stipulates that to realize legal certainty in any transfer of rights to land due to Inheritance, registration of transfer of rights is due to Inheritance regarding a land parcel that has been registered, must be submitted by the recipient of the right to land or ownership rights to the apartment unit concerned as Inheritance to the Land Office, as stated in Article 42 of Government Regulation Number 24 of 1997. Accompanied by a certificate of rights concerned, a death certificate of a person whose name is recorded as the right holder and a certificate of proof as an heir, in which a certificate of proof of being an heir is proven by a deed made by and in front of the sub-district head or notary or the Heritage Hall, based on population class

In case of registration of transfer of rights due to Inheritance regarding unregistered land parcels, it is carried out by sporadic land registration for the first time. But, on the other hand, this shows that Government Regulation Number 24 of 1997 concerning Land Registration requires registration of transfer of rights due to Inheritance to provide legal protection to the heirs and for the sake of orderliness in the administration of land registration so the data stored and presented is up to date.¹³

CLOSING

Conclusion

Inheritance in the form of land, a foreign citizen, referred to as a foreigner, can inherit rights to land in Indonesia due to the first two things, foreign citizens born because of a mixed marriage. And both foreign citizens as a result of naturalization can

¹³ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*, 10th ed. (Jakarta: Djambatan, 2008), 519.

be understood as a change in the citizenship status of Indonesian citizens to become foreigners or vice versa. In the event of a difference in nationality between the heir and the heir, this does not cause death or loss or prevent a person from obtaining the right to inherit. Currently, the construction of inheritance rights is still guided by the regulation of inheritance law (which is part of civil law) in Indonesia, which is still dualism and pluralistic. This is inseparable from the legal history of the enactment of civil law in Indonesia. Before Indonesia's independence, as a result of Dutch colonial rule, the legal politics of the Dutch East Indies government at that time, as outlined in Articles 131 and 163 IS, there were legal and population classifications.

Recommendation

It is aimed at the government to make regulations related to the many rules of inheritance rights for Indonesian citizens because they are still related to civil aspects that exist in the territory of the Republic of Indonesia. The plurality of inheritance rules that exist in Indonesia makes it difficult to find a golden thread between citizenship and the civil aspect of a person to obtain actual items from Inheritance.

REFERENCES

- Alwi, Hasan. *Kamus Besar Bahasa Indonesia Edisi Keempat*. Jakarta: Balai Pustaka, 2007.
- Amandeo Tito Sebastian. "Hak Ahli Waris Warga Negara Asing Atas Obyek Waris Berupa Saham Perseroan Terbatas Penanaman Modal Dalam Negeri." *Ad'Adl X* (2018).
- Bayu Seto Hardjowahono. *Dasar-Dasar Hukum Perdata Internasional*. Bandung: Citra Aditya Bakti, 2006.
- Boedi Harsono. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*. 10th ed. Jakarta: Djambatan, 2008.
- Hilman Hadikusuma. *Hukum Waris Adat*. Bandung, 2003.
- Irma Devita Purnamasari. *Kiat-Kiat Cerdas, Mudah Dan Bijak Memahami Masalah Hukum Waris*. Bandung: Mizan Pustaka, 2014.
- Kartini Muljadi dan Gunawan Widjaja. *Seri Hukum Harta Kekayaan, Hak-Hak Atas Tanah*. Jakarta: Prenada Media Group, 2008.
- Nurlalila, Ilyas Ismail dan Mahdi Syahbandir. "Kepemilikan Tanah Hak Milik Yang dikuasai Bersama Warga Negara Indonesia (WNI) Dan Warga Negara Asing (WNA) Yang Diperoleh Berdasarkan Warisan Di Provinsi Aceh." *Syah Kuala Law Journal 2*, no. 2 (2018): 258-75.
- Purnadi Purbacaraka. *Sendi-Sendi Hukum Perdata Internasional*. Jakarta: Rajawali, 1983.
- Sudargo Gautama (Gouw Giok Siong). *Hukum Antar Golongan Suatu Pengantar*. Jakarta: Ichtiar Baru Van Hoeve, 1993.
- Zainuddin Ali. *Pelaksanaan Hukum Waris Di Indonesia*. Jakarta: Sinar Grafika, 2008.