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The Status of Land Ownership Due To Marriage Between Indonesian Citizens And Foreign Citizens Is Reviewed According To Agrarian Law In Indonesia

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Abstract: Marriage that occurs between Indonesian citizens and foreigners has consequences for joint property, especially for land ownership which is joint property in marriage. For marriages that are carried out without making an agreement on the separation of property, the land becomes the joint ownership of the husband and wife. This means that both of them who are bound by marriage become the owners of the land. According to the provisions of agrarian law, foreigners are not allowed to own land in Indonesia, so the presence of foreigners who participate as land owners causes problems with the ownership of land. Consequently in this case, it is necessary to conduct research on the status of land ownership due to marriage carried out by Indonesian citizens and foreigners reviewed according to agrarian law in Indonesia. The type of research used is normative juridically, namely analyzing laws to answer problems in research. As for the results of the research on the status of land ownership due to the marriage of Indonesian citizens and foreigners without a separation agreement on marital property, both must transfer or release the rights to the land for a maximum of 1 year because the land ownership requirements are no longer in accordance with the provisions of the law.

Keywords: Agrarian Law, Land, Mixed Marriage

INTRODUCTION

The existence of land is something that is needed by humans, so that with the existence of land, humans can use and utilize land for their own purposes and to meet their life needs, such as building residential houses or carrying out business activities on the land. With the importance of the existence of this land, a clear rule is needed to regulate the use and ownership of land rights so that everyone who is the holder of land rights can use their land in accordance with the provisions of the law and do not abuse their land allocation for improper purposes (Supardy Marbun: 2005).

The main rules that govern land rights in Indonesia are contained in the Basic Agrarian Law. In this regulation, it is stated that every person with Indonesian citizenship, hereinafter abbreviated as Indonesian citizen, can submit an application for his right to land ownership,

whether it is to build a residential house or carry out business activities such as plantation, fisheries and agricultural business activities on the land, (M. Arba: 2005).

Submission of an application for land ownership rights can be submitted to the National Land Agency, because the authority to grant rights to land in Indonesia is the authority of the state. The granting of land rights means that every Indonesian citizen and Indonesian legal entity that has met the requirements to be granted land rights can use and utilize land that is already their right as long as it does not conflict with the provisions of existing rules.

Regarding land ownership in Indonesia, the Basic Agrarian Law states that those who can own and use land in the form of land ownership, land with business use rights and land with building use rights in Indonesia are only people with Indonesian citizenship and Indonesian legal entities who are recognized and meet the requirements as land rights holders. In other words, land rights are only given to native Indonesians while foreigners are not allowed to be given ownership of land.

However, currently with Indonesians who marry foreigners, it creates ambiguity regarding the ownership of land that becomes joint property in the marriage. The results of a report from the Jakarta Population and Civil Registration Office recorded marriages carried out by Indonesians and Foreigners with a total of 1,952 marriages from 2020 to August 2025 (Merdeka.com 2025).

The marriage that occurs is called a mixed marriage. This mixed marriage is defined as marriage with two nationalities, namely Indonesian citizens and foreigners, both in Indonesia and outside the territory of Indonesia. This means that the married party has different laws due to differences in nationality and differences in the place where the marriage takes place.

The occurrence of marriage between Indonesian citizens and foreigners has consequences for the life of the husband and wife, especially related to property during the marriage called joint property. The existence of joint property in marriage means that both parties, namely husband and wife, have the right to the existence of the property. This means that Indonesian citizens who are married to foreigners then have joint property, then both Indonesian citizens and foreigners are the owners of the property so that if one of the joint assets is transferred to another party, the transfer must also be with mutual agreement.

During the marriage, it is possible that the joint property obtained during the marriage can be in the form of land or buildings, such as the case of the marriage case of artist Kimberly Ryder who is a British citizen who married her husband Edward Akbar who is an Indonesian citizen and then decided to divorce, where during the marriage they have joint property in the form of cars, houses, and others. The agreement to distribute joint property in the form of a house is owned by Kimberly Ryder (Detik.com: 2025). However, if it is associated with land ownership in Indonesia by foreigners, this violates the rules of Article 21 in paragraph 3 of the Basic Agrarian Law, according to the provisions of this law, land rights in Indonesia are not allowed to be given to foreigners to become their rights. In other words, foreigners are not allowed to own land in Indonesia. This is what the author thinks is necessary to have a more in-depth discussion about land ownership by foreigners due to the marriage between Indonesian citizens and foreigners reviewed according to the provisions of Agrarian law in Indonesia.

METHODS

This research uses a type of normative juridical research, which is to conduct an assessment and analyze an existing regulation (Mukti Fajar ND and Yulianto Achmad, 2010). With the main focus of studying and analyzing the status of land ownership by foreigners due to marriage by Indonesian citizens and foreigners according to the provisions of agrarian law in Indonesia.

The data used to find answers to the problem is with secondary data, meaning that all information related to the topic of the problem in this study is obtained from laws and regulations, namely the Basic Agrarian Law, journals, books and official documents related to the topic of research regarding the status of land ownership by foreigners due to the marriage of foreigners and Indonesian citizens.

After the data is collected, a qualitative analysis is carried out by describing or describing the answer to the problem regarding the status of land ownership by foreigners due to the marriage of Indonesian citizens and foreigners according to the provisions of the legal rules that govern this matter, in order to obtain a comprehensive understanding of the status of land ownership due to the occurrence of marriage between Indonesian citizens and foreigners.

RESULTS AND DISCUSSION

Ownership Of Land By Indonesian Citizens According To The Basic Agrarian Law

People's lives can never be separated from the existence of land, because land is an important aspect in people's lives. With the existence of land, people can use and cultivate land to improve the economy and create welfare for life. The meaning of land is part of the earth's surface along with its natural resources that can be allocated for the benefit of the community.

As an agrarian country, Indonesia places land as a source of prosperity for the people and the welfare of the Indonesian people, this is stated in the 1945 Constitution in Article 33 paragraph 3. This means that the state gives the right to the Indonesian people to use and cultivate land so that the lives of the Indonesian people are prosperous and prosperous. As for using and cultivating land in Indonesia, a rule is needed that regulates it so that in using and cultivating the land in accordance with its proper and not interfering with the interests of others.

The rules that regulate the use and utilization of land are in the Basic Agrarian Law, the birth of this regulation is the main basis in regulating ownership rights over land and land allotment in Indonesian territory. This means that this law regulates who can and has the right to own and use land in areas in Indonesia.

Ownership of land rights in Indonesian territory is determined through the principle of nationality, meaning that ownership of land in Indonesian territory can only be given to every person with Indonesian citizenship. In other words, the right to ownership of land is only allowed to be given to Indonesian citizens while foreigners are not Indonesians so ownership of land rights is not allowed to be given to them.

The existence of this principle of nationality shows that those who have a legal relationship with the whole earth and its natural resources are the Native Indonesians. This means that agrarian law in Indonesia guarantees ownership and protects the right of every Indonesian citizen to own and benefit from what exists in Indonesian territory.

The land rights given to Indonesians include:

a. Proprietary

Ownership rights over land are only allowed to be owned by Indonesian citizens and legal entities recognized by Indonesia. The right to property is also called the strongest and most fulfilled right. This means that the holder of this right can use his land as widely as long as it is in accordance with his designation and in accordance with the provisions of the law that governs it. As the strongest and fullest right, this right can be owned throughout life without any time limitation, meaning that the ownership of land is inherent continuously as long as the right holder does not violate the existing legal provisions or as long as the right holder does not change the status of the land right. In addition, this property rights can also be passed on to the heirs of the rightholder (Soedharyo Soimin : 2004). However, not everyone can become a holder of this property right, as for those who can become property rights holders, namely Indonesian citizens and legal entities that are recognized and have qualified to become property rights holders. If foreigners obtain property rights either due to

inheritance or marriage or to Indonesian citizens who change their nationality due to marriage, they must transfer their ownership within 1 year, if there is no transfer or relinquishment of their rights, causing the land to become controlled by the state. This shows that the ownership rights on the land are only given to Indonesian citizens.

b. Right to Use Business

Rights that are only allowed to be given to Indonesian citizens and legal entities recognized in Indonesia, the purpose of granting this right is to do or use land for business activities, be it for plantation, fisheries or agricultural businesses. So that foreigners are not allowed to have rights to land with the right to use the business. For the application for business use rights, the application for the right is applied to the National Land Agency office by providing clear information about the business that will be carried out on the land so that the use of the land is in accordance with its designation. The granting of this business use right is restricted, which is for 25 years but if it takes a longer time, it is applied for 35 years, which in this case can also be extended again for 25 years.

c. Building Use Rights

Rights that are only allowed to be owned by Indonesian citizens and legal entities recognized in Indonesia. The purpose of granting this right is so that a person has the right to use land owned by others such as erecting buildings or to cultivate land owned by others according to their needs and designation. The granting of land rights with building use rights is limited, which is only for 30 years and if it takes a longer time, it can be extended.

d. Right to Use

It is the right to use or utilize land owned by the state or the property of others, such as using and utilizing land as a residence and so on in accordance with the provisions of granting the right of use. Regarding this right of use, the parties who can be allowed to have this right are Indonesian citizens, foreigners, Legal Entities recognized in Indonesia and Foreign Legal Entities located in Indonesia. This means that foreigners and foreign legal entities are allowed to enjoy rights on land with the right of use. In other words, the Agrarian Law only allows foreigners to enjoy and collect land products with the status of right of use.

e. Rental Rights

The right that is allowed to be used by Indonesian citizens, foreigners, legal entities recognized in Indonesia or foreign-owned legal entities to use land owned by others for the purpose of erecting buildings on land or cultivating land by paying a sum of money that is rent for the use of the land to the owner of the land or building.

f. Land Clearance Rights

The rights that are allowed are given to Indonesian citizens to open and cultivate land.

g. Forest Harvesting Rights

The right to utilize and take forest products given to Indonesian citizens.

Thus, every Indonesian citizen can enjoy the rights as mentioned above. Meanwhile, foreign citizens can only enjoy and utilize land for use rights and lease rights.

The Status Of Land Ownership Due To Marriage Between Indonesian Citizens And Foreigners Is Reviewed According To Agrarian Law In Indonesia.

Marriage between Indonesian citizens and foreigners is a marriage that according to the law can be carried out both in Indonesia and outside Indonesia, which is regulated in the Marriage Law precisely in Article 57, which according to this article is referred to as mixed marriage. As for determining the validity of marriage according to the rules in Indonesia based on the provisions contained in Article 2 in paragraph 1, that Indonesian law recognizes a valid marriage if the marriage is carried out according to the religion and beliefs of the couple who want to marry. Furthermore, paragraph 2 also states that every marriage must be recorded.

Looking at the provisions as mentioned in the article above, it shows that every marriage in Indonesia must be in accordance with the provisions in the article mentioned above. However, currently the implementation of marriage is not only carried out in Indonesian territory but can also be carried out outside Indonesian territory. Marriages that occur between Indonesian citizens and foreigners whose marriage is carried out in Indonesian territory, the provisions regarding the marriage refer to Article 2 of the Marriage Law mentioned above. Meanwhile, for marriages that are carried out outside the territory of Indonesia, the marriage will be considered valid if the marriage is carried out according to the provisions of the country where the marriage is carried out and the implementation of the marriage does not deviate from the marriage rules in the Indonesian Marriage Law, besides that the marriage is also registered at the Marriage Registration Office in Indonesia.

With the occurrence of marriage, it will present a common property. What is meant by joint property is joint property that is collected jointly by both of them throughout the marriage (Ahmad Rofi: 2013). With the existence of joint property in marriage, the ownership of the property is joint ownership as well, meaning that if the joint property wants to be transferred to another party, it must be based on the permission and mutual agreement of the husband and wife.

In general, joint property in marriage is usually a movable object or an immovable object (Abdul Manan: 2006). The common property referred to here is the common property of immovable objects, namely land. As for land in Indonesia, its ownership is based on the principle of nationality, which means that a person who can own land in Indonesian territory, namely an Indonesian citizen, this is stated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. So with the occurrence of marriage between an Indonesian citizen and a foreigner who in their marriage have land as joint property, both the Indonesian citizen and the foreigner are both owners of the common property in the form of the land. This means that both are holders of the right to own the land (Sonny Dewi Judiasih: 2015).

The land rights that are allowed to be owned and used by Indonesian citizens are the right to property rights, the right to cultivate land with business use rights, the right to use buildings on land, the right to use land, the right to lease land, the right to open new land and the right to take forest products and other rights provided by law. These rights are contained in Article 16 paragraph 1 of the Basic Agrarian Law.

Regarding the provisions on the ownership of the rights mentioned above, it is stated in Articles 20 to 40 that for land with the status of land ownership, the right to use the land and the right to use the building on the land can only be owned by Indonesian citizens. The rights to the land mentioned above must not be given to be owned or taken advantage of by foreigners. There is a marriage between an Indonesian citizen and a foreigner, in which in the implementation of the marriage there is no agreement on the separation of property, then the property collected during the marriage becomes property that is jointly owned. This means that the collected property, whether it is land ownership, business use rights or building use rights, the ownership of the land becomes joint ownership of the husband and wife who are Indonesian citizens and foreigners.

So that with the existence of Indonesian citizens who participate in land ownership in Indonesia, the status of the land drops to ownership with the status of land with the right to use which was previously the status of land with property rights, the status of land with business use rights and the status of land with building use rights. This is because foreign nationals cannot be legal subjects in land ownership with the status mentioned above. If the foreigner, either by inheritance or marriage, owns land with the status of land as mentioned above, then the ownership becomes invalid, the foreigner must transfer or release the ownership of the land to which he is entitled for a maximum of 1 year to another party.

Basically, land ownership due to the occurrence of marriage between Indonesian citizens and foreigners to the ownership of the land usually uses the name of the Indonesian citizen spouse, but it does not mean that the ownership of the land becomes fully owned by the Indonesian citizen, but remains the joint ownership of the two, as long as there is no marriage agreement or separation of property. So if it is associated with the example of the marriage of artist Kimberly Ryder who is a British citizen, Kimberly Ryder is not allowed to own land in Indonesian territory with the status of owned land because she is not an Indonesian citizen.

As for foreigners, they can still enjoy and use land in Indonesia, but there are restrictions, which are only allowed with limited use rights and rental rights, apart from these rights, foreigners are not allowed to own land in Indonesia. Foreigners who can be given ownership rights with the right to use and lease rights must meet the terms and conditions and if the Indonesian citizen has not fulfilled the provisions for the granting of the right to use and lease rights, the status of his rights will end.

In order for Indonesian citizens who have been married to foreigners to still be able to own and benefit from land ownership, building use rights and business use rights, then in the marriage it is better to make an agreement with the separation of property. With the separation of property in the marriage, Indonesian citizens are still allowed to enjoy and utilize the rights to the land to which they are entitled, because with the agreement on the separation of property, the property collected during the marriage is their respective property.

The property separation agreement is an effort that can be made to protect the rights of Indonesian citizens. This agreement regarding the separation of property is usually made before the marriage occurs or after the marriage is performed. This agreement is valid if it is made based on the agreement and agreement of each spouse because the content of this agreement is determined by the spouse himself and must be in accordance with the provisions as appropriate.

The creation of the property separation agreement is made before a Notary and recorded to the Marriage Registration Office. The existence of an agreement on the separation of property in marriage between Indonesian citizens and foreign citizens is a form of effort to protect the ownership of land rights for Indonesian citizens. So that Indonesian citizens do not lose their right to own and benefit from the land that is their right. Likewise, foreigners who can still own and benefit from land with use and lease rights.

CONCLUSION

Every person who is an Indonesian citizen is given the right to own or benefit from land in the territory of Indonesia. Indonesian citizens are allowed to own and utilize land in areas in Indonesia with property rights, business use rights, building use rights, use rights, lease rights, land clearing rights and the right to collect forest products and other rights. However, if there is a marriage between Indonesian citizens and foreigners that presents the formation of joint property, then it is related to common property which is land in Indonesian territory, both property rights, business use rights and building use rights become joint ownership, meaning that both are holders of land rights. This is contrary to land ownership based on nationality. So that Indonesian citizens lose their rights to the land. The protection effort for Indonesian citizens to continue to enjoy land rights in territories in Indonesia is by making agreements regarding the separation of property. With the separation of property, the ownership of the common property is the ownership of each other, meaning that Indonesian citizens can continue to own and benefit from the rights to the land to which they are entitled, and foreigners can also still use land in areas in Indonesia with the status of right to use and lease rights.

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