



Land Right Inheritance Obtained by the Children of Mixed Marriage

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<http://dx.doi.org/10.18415/ijmmu.v5i4.423>

Abstract

This study aimed at discovering the inheritance right over land held by a child of a mixed marriage. The technique of legal material collection in the present study was the statute approach to the relevant law and Governmental Regulation. The analysis technique of the legal material in this study was the syllogism deduction method using deductive thinking, started by proposing a major premise and then proposing a minor premise. Based on the result of the analysis, it could be concluded that a child born from a mixed marriage who hold inheritance right over a land shall wait until his/ her age reach 18 (eighteen years old) and he/ she chooses to be WNI so that he/ she could realize his/ her right in accordance with the regulation in force. The right of ownership is the strongest right and is not deleted in a short period of time. If the status reduction is not performed, such land may become the State' ownership. In transferring inheritance that the form is other than land, the limit of the adulthood is 18 years old or has been married, and in transferring inheritance in the form of land, the limit of the adulthood is 21 years old or has been married.

Keywords: Mixed Marriage; Inheritance Right; Land Right Ownership

Introduction

In living their life, Human depends on the other humans. Hence, human is created as an individual creature and social creature. As a social creature, an individual needs other people to interact, socialize, or exchange experience and preserve heredity. Human heredities will not continue without a marriage. Marriage results in creates a family which grows to be a society. A society is a space of everyday life which contains individuals and groups as its member who establish an interaction for their life sustainability.

Indonesia openness in the international activity brings certain effects on the human relationship who possess universal feelings, not to admit skin color, religion, ethnic, or race difference. So it makes sense if there is a marriage between an individual whose nationality is different, between Indonesia State Citizen (WNI) and Foreign State Citizen (WNA) or is known as mixed marriage. The advanced growth of technology makes a state seems to be borderless which possibly leads to international communication relationship without concerning skin color, religion, ethnic or race difference. So it is not impossible if people of different nationality perform a marriage, a marriage where the man and the woman hold

different nationality is called as mixed marriage. If marriage is performed between two WNI whose religion is different, it is not included as mixed marriage. Instead, it is called as interreligious marriage. By seeing various regulations in force, as well as the form of the implementation of Human right in article 28 B of 1945 Constitution, all types of marriage is legitimate as long as following the regulation, including mixed marriage.

Mixed marriage can be performed either in Indonesia or outside Indonesia (overseas). If it is performed in Indonesia, It is performed in accordance with Marriage Law. Mixedmarriage cannot be done before the requirement is satisfied from the authority recording such marriage under the law in force for the respective parties.¹ Article 56 paragraph (1) of Marriage Law states that a marriage performed outside Indonesia is a marriage between two Indonesian citizens or between an Indonesian citizen and foreign state citizen is legal if it is performed under the law that in force in the state where the marriage is performed and for Indonesian citizen, the marriage does not violate this regulatory legislation.

Article 2 paragraph (10) of Marriage Law states that the legality of marriage in Indonesia is based on each parties' religion, and beliefs, consequently, about the mixed marriage performed in Indonesia shall be based on the Indonesian Marriage Law, the legality of a marriage is based on the religious law and shall be recorded. As long as the parties have recorded their marriage in a foreign state in accordance with its local law, their marriage is legitimate along with its legal consequences. However, The legality of marriage performed overseas, according to Indonesian Marriage law, shall be recorded and reported to the Population and Civil Registration Agency within 1 (one) year.²

The mixed marriage will result in problems, one of them is related to their child' inheritance right. The process of ownership or transfer of land title obtained by inheritance often become a problem and is often discussed in society. Moreover, of course, if it is related to inheritance over land obtained hereditary.³ Although according to the law, every human is the right holder without exception, there are still limitations. In this case, Nationality becomes the limitation to hold a right, only Indonesia State Citizens who are allowed of holding ownership right (Article 21 paragraph (1) of UUPA).⁴

Based on the Citizenship Law, a child who was born from a marriage between an Indonesian Woman and Foreign man, or a child who was born from a marriage between a foreign woman and Indonesian citizen, are admitted as the Indonesian citizen. The child will hold dual-citizenship, and after the child reaches 18 years old or have been married, the child shall make his/ her choice. However, if the child chooses to have foreign citizenship, there will be a problem if he/ she inherits a land right ownership in the future since there is a restriction in Indonesian Law, accordingly, there will be an inheritance problem.

Based on the problem described above, the problem that will be discussed in this study can be formulated as follow "How is the land right inheritance obtained by the children of mixed marriage?" The aim of this study was to "discover the inheritance right over land held by a child from a mixed marriage".

Methodology

Based on the problem statement that becomes the aim of the present study, to make this study accountable, a proper method is needed as a guideline and direction in studying to object of the study. So that the present study could be conducted seamlessly under the plan have been determined. In general, a

¹ Abdulkadir Muhammad. (2014). *Hukum Perdata Indonesia*, Citra Aditya Bakti, Bandung, p. 114.

² Irma Devita Purnamasari. (2014). *Kiat-kiat Cerdas, Mudah dan Bijak Memahami Masalah Hukum Waris*, Mizan Pustaka, Bandung, p. 157.

³ *Ibid.*, p. 173.

⁴ Djaja S. Meiliala. (2013). *Hukum Perdata Dalam Perspektif BW*, Nuansa Aulia, Bandung, p. 21.

study is an activity utilizing knowledge and main sources which is aimed at determining general principles as well as establishing a generalized prediction on the sample being studied. By employing proper methodology, it is expected that an individual is capable of discovering, determining, analyzing a certain problem so that he/ she can uncover a truth since the methodology is able to provide a guideline and direction regarding how an individual study, analyze, as well as comprehend an issue being faced scientifically.

Research Type

This study employed normative legal study or is also called as a doctrinal legal study. A doctrinal legal study is a study conducted by studying works of literature or secondary data comprising the primary legal material, secondary legal material, and tertiary legal material. According to Peter Mahmud Marzuki, the nature of a study that is related to legal is clearly normative.⁵

Study Approach

In a legal study, there are several approaches. By these approaches, the researchers will obtain information from various aspects regarding the issues which the answer is being sought. The approaches used in the legal study are statute approach, case approach, history approach, comparative approach, and conceptual approach.⁶ The approach used in the present study was the statute approach. Statute Approach is a study that accentuates legal material in the form of regulatory legislation as the basic reference to conduct the study. This approach is made by analyzing all regulatory legislation that is relevant to the legal issue being studied.

The Source of Legal Material

There were 2 (two) legal material sources used in the present study namely:

a. Primary Legal Material

The legal material obtained from the relevant regulatory legislation namely:

- 1) The 1945 Constitution;
- 2) Law no. 1 of 1974 about Marriage;
- 3) Law no 5 of 1960 on Agrarian Basic Principle;
- 4) Governmental Regulation no 40 of 1996 on the Cultivation Right Title, Building Rights Title, and Right To Use Title.

⁵ Peter Mahmud Marzuki. (2014). *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p. 55-56.

⁶ *Ibid*, p. 133.

b. Secondary Legal Material

The legal material obtained from the relevant primary legal materials and are useful in analyzing and understanding the primary legal material in this case are in the form of the statement of legal scholars, literatures, electronic media (internet) regarding the news on an issue concerning the relevant things, printed media as the complementary which hold direct relationship with the issue of the study.

Legal Material Analysis Technique

The analysis technique of the present study was the deductive syllogism method. According to Philipus M. Hadjon, in syllogistic logics for legal reasoning, the major premise is the regulatory legislation while the minor premise is the legal fact. From these two premises, a conclusion is drawn.⁷

Results and Discussion

Land Inheritance Right in Mixed Marriage

According to BW, inheritance law is one of the civil law and is the part of family law. Inheritance law is closely related to the human life since every man must be experiencing a legal event named deceased.⁸ The legal consequence of someone's decease is an issue of how and what is the sustainability of the rights and obligations of the deceased. Inheritance law regulates the settlement of rights and obligations as a result of decease.

The authority in right land title is stated in article 4 paragraph (2) of Law no 5 of 1960 on Agrarian Basic Principle, read: The rights on land meant in paragraph (1) of this Article gives authority to utilize the land concerned, and similarly also the body of the earth and the water as well as the space above it which is deemed necessary for the interest directly connected with the use of land concerned seemed such in conformity with the restrictions laid down in this Act and in other legislative regulations of a higher level.” he authority in the land rights is in the form of the use of land to establish a building or non-building, exploiting the earth body, such as the use of underground space by taking its water spring, the use of the space above the land such as establishing a tower.

Djuhaendah Hasan in his book also cites the Sudargo Gautama's assertion which states that the provision that only provides the strongest land rights for Indonesian State citizen only is in line with International Law that does not admit a principle of allowing foreigner hold a land. Article 26 paragraph (2) contains a prohibition of transfer of land right title to a foreigner and legal body.⁹ Mixed marriage performed in Indonesia, the inheritance distribution is carried out based on BW, and the law prevails in Indonesia if the marriage is performed in the other country, the inheritance distribution is done based on the law and regulation prevails in such country. In addition to the law where marriage is performed, inheritance distribution in marriage is also related to whether or not such marriage possesses marriage agreement. If there is an agreement within a mixed marriage performed in Indonesia, it will ease everything regarding the distribution of inheritance particularly those related to the inheritance in the form of land or house. For movable property, the law where the holder of the object stands prevails, however for immovable property, The law where the immovable property stands prevail.

Inheritance here refers to the inheritance of land right title. In praxis, it is called as land inheritance. Juridically, what is inherited is the right on land, not the land itself. It is true that land right

⁷ Ibid, p. 89-90.

⁸ Eman Suparman. (2011). Hukum Waris Indonesia dalam Perspektif, Adat, dan BW, Refika Aditama, Bandung, p. 1.

⁹ Ibid, p.118 Mengutip Sudargo Gautama, Tafsiran Undang-Undang Pokok Agraria, Citra Aditya Bakti, Bandung, 1993, p. 104.

inheritance aims to make the inheritors are authorized and able to use the land. The land right acquisition can also occur because of inheritance from the holder to the inheritor in accordance with article 26 of Basic Agrarian Law (UUPA). Inheritance may occur because of the provision of law or because of the will of the person who makes a will.

Indonesia has had no regulatory legislation which nature is national, so inheritance still refers to the customary law, Islamic Law, and BW. Consequently, inheritance related to the mixed marriage is given up to the respective husband and wife¹⁰ depending on which system will be used, or can also ask for assistance from the court in the form of ruling. The transfer of the right on land from the rightsholder to another party may happen because of legal event namely the decease of land right holder. Here, the transfer of the right occurs through inheritance, or through a legal activity done by the right holder with the other parties in the form of sale and purchase, exchanges, grant, the capital inflow of a company, and auction. What is meant by right transfer is the move of right on land from the deceased. By the decease of the land right holder, the right on land is transferred to his/ her inheritor. A legal activity does not cause the inheritance of right on land to the inheritor, instead, it is caused by a legal event.

In Indonesia, land ownership right is restricted for foreigners namely land right title, building right title cannot be possessed by a foreigner based on UUPA and its implementing regulations. By the enactment of dual-citizenship for children as the result of mixed marriage, in which one of the citizenship is WNI, the problem is whether the children of a mixed marriage can realize their right in a land legal domain. In Indonesia, since the enactment of UUPA, article 21 paragraph 2 forbids WNA to possess right on land, even paragraph 3 prohibits a man whose citizenship is double to hold a right ownership title. While, about Building Rights Title, in accordance to article 36 of UUPA jo. Article 19 of Governmental regulation no. 40 of 1996, it is stated that building right title is only given to Indonesian citizen. The land rights the foreign citizen can possess is only right to use. If the dual citizenship children obtain an inheritance from one of their parents in the form of land ownership right title, the children' right, of course, will not be erased. However, the children shall wait until they reach 18 (eighteen) years old, then choose to be an Indonesian citizen in order to obtain their right in accordance with the regulation in force. Another alternative can be taken by the children whose citizenship is double is by inheritance reduction, for instance, from ownership title into a right to use title, however, in praxis, this alternative is barely used.

If the children who were born from mixed marriage obtain an inheritance from one of their parents in the form of land ownership right title, the children' right, of course, will not be erased. However, the children shall wait until they reach 18 (eighteen) years old, then choose to be an Indonesian citizen in order to obtain their right in accordance with the regulation in force. Another possible alternative for dual citizenship children who obtain the land inheritance with land ownership right is descending their land status from Ownership Right to the Right to Use title or by transferring such land to the rightful parties in one year. The right of ownership is the strongest right and is not deleted in a short period of time. Building Rights Title holds time limit, so the solution can be taken by degrading its status into the right to use title if necessary.

If the status reduction is not performed, such land may become the State' ownership. In transferring inheritance in the form of land, the limit of the adulthood is 21 years old or has been married. In transferring inheritance that the form is other than land, the limit of the adulthood is 18 years old or has been married.

¹⁰ Nawawi dan Widayiswara Madya, *Perkawinan Campuran (Problematika Dan Solusinya)*, Balai Diklat Keagamaan Palembang, p. 11.

Conclusion

Based on the result of the analysis, it could be concluded that a child born from a mixed marriage who hold inheritance right over a land shall wait until his/ her age reach 18 (eighteen years old) and he/ she chooses to be WNI so that he/she could realize his/ her right in accordance with the regulation in force. The right of ownership is the strongest right and is not deleted in a short period of time. Building Rights Title holds time limit, so the possible solution can be by degrading its status into the right to use title if necessary.

Suggestion

- a. For the children who were born from mixed marriage, in order to be able to obtain land ownership right in Indonesia, it is better for them to declare being an Indonesian Citizen if they have reached 18 (eighteen) years old or have been married to the official or the representative of the Republic of Indonesia whose working territory includes the domicile of such children. However, if they have declared to choose to be a foreign state citizen, the children shall take off that ownership right in 1 (one) year since the right is obtained.
- b. Because of the difficulties in realizing inheritance for underage children from mixed marriage in the form of land ownership right, it is necessary to formulate a Law in the International Civil Law domain which can be enacted in Indonesia so that there will be a legal certainty regarding International Civil legal issues in Indonesia, and can be a guideline for the legal enforcer by the unification of regulation in solving issues concerning International civil legal issues.

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Regulatory Legislation

The 1945 Constitution;

Law no. 1 of 1974 about Marriage;

Law no 5 of 1960 on Agrarian Basic Principle;

Governmental Regulation no 40 of 1996 on the Cultivation Right Title, Building Rights Title, and Right To use Title.

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