



DOI: <https://doi.org/10.38035/gijlss.v2i4>
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Rights of Foreign Citizen Heirs to Land in Indonesia: analysis of Supreme Court Decision Number 105/PK/TUN/2013

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Abstract: Foreigners' inheritance rights to land in Indonesia is a complex topic and is regulated by strict legal regulations. The method that I will use is the Library Research method. Secondary data such as primary legal materials, secondary legal materials and tertiary legal materials will be used as the main data source. You can carry out analysis directly on informants using analysis guidelines that have been prepared in advance. The following is a summary of the inheritance rights of foreigners and the implications of Supreme Court Decision Number 105/PK/TUN/2013. Principles of Inheritance According to the Civil Code (KUHPerdata), all heirs, including foreigners, have the same right to receive a share of inheritance without regard to gender or nationality (Article 852 of the Civil Code). Land and Buildings Foreigners have the right to receive inheritance in the form of land and buildings which are the property of the heir who is an Indonesian citizen. However, within one year, foreigners must transfer their rights to Indonesian citizens or change the land status to use rights (Article 21 Paragraph (1) & (3) Law No. 5 of 1960 concerning UUPA). Ownership restrictions only apply to Indonesian citizens who have ownership rights to land in Indonesia. Foreigners are not permitted to legally hold land ownership rights (Article 21 Paragraph (1) UUPA). Consequently, if a foreigner does not relinquish land ownership rights within one year after receiving the inheritance, these rights will be forfeited and the land will become state property (Article 21 Paragraph (3) UUPA). The heirs of foreign citizens have the right to inherit the house from the heirs of Indonesian citizens. However, they must waive it within one year to legally retain those rights. Even though these limits are strict, alternatives such as transferring rights to Indonesian citizens or changing status to use rights are still available to avoid ongoing legal consequences. Thus, Supreme Court Decision Number 105/PK/TUN/2013 emphasizes that although foreign heirs have the right to receive an inheritance, they must transfer their rights or change the status of the land within a short time to avoid losing these rights by law.

Keyword: Inheritance Rights, Heirs, Foreigners

INTRODUCTION

Regulation regarding the rights of foreign heirs to land in Indonesia is an important and complex topic, due to strict legal restrictions regarding land ownership by foreigners. In the context of agrarian law, Law Number 5 of 1960 concerning Basic Agrarian Regulations

(UUPA) states that ownership rights to land can only be owned by Indonesian citizens (WNI). However, this does not prevent foreign citizens from receiving an inheritance in the form of land from heirs who are Indonesian citizens. Provisions in the UUPA state that if an Indonesian citizen bequeaths land to a foreigner, the right must be transferred within one year after the inheritance. If this is not done then the land rights are declared null and void and become the property of the state.

This creates challenges for foreign heirs who receive an inheritance in the form of freehold land, because they must immediately comply with applicable laws and regulations. The aim of this research is to analyze regulations regarding the rights of foreign heirs to land in Indonesia and the impacts arising from these provisions.

This research will also explore legal decisions related to similar cases to provide a deeper understanding of the implementation of the law in these situations. This research aims to analyze the regulation of foreign inheritance rights to land according to Indonesian law and its implications. Apart from that, this research will also explore legal decisions related to the case.

Citizenship and Inheritance Rights According to Article 852 of the Civil Code (KUHPperdata), everyone, regardless of nationality, has the right to receive an inheritance. However, if the inheritance is in the form of land, then the provisions of the UUPA become relevant, because only Indonesian citizens can have ownership rights to land. Supreme Court Case Supreme Court Decision Number 105/PK/TUN/2013 confirms that even though foreigners can receive an inheritance in the form of land, they must immediately take steps to comply with legal provisions so as not to lose their rights to the land. This decision shows that although inheritance rights are recognized, land ownership by foreigners remains limited by national law.

The question of land ownership rights, especially for foreign nationals (WNA), is something that has long been debated in various countries, including Indonesia. Land ownership boundaries are often the focus of attention because of their broad implications for state sovereignty, economic development and social justice.

In Indonesia, regulations regarding land ownership are strictly regulated in the Basic Agrarian Law (UUPA). The basic principle adopted is that ownership rights to land can only be owned by Indonesian citizens (WNI). However, in practice, there are various exceptions and debates related to inheritance rights, especially when involving foreigners.

Supreme Court Decision Number 105/PK/TUN/2013 is an important milestone in understanding the legal dynamics related to foreigners' inheritance rights to land in Indonesia. This decision provides an interpretation of the applicable legal provisions and has significant implications for judicial practice and policies in the agrarian sector.

Conflict between National Law and International Law:

- UUPA strictly limits land ownership to Indonesian citizens only, but Indonesia is also a member of the international community which is bound by various international agreements that regulate human rights, including the right to property.
- This conflict between national and international legal provisions creates legal uncertainty and can become a source of dispute.

Developments in Globalization and Foreign Investment:

- Globalization has increased the mobility of people and capital, including foreign investment in the property sector.
- This growth in foreign investment has led to demands for flexibility in land ownership arrangements, including for foreigners.

Protection of Inheritance Rights:

- Inheritance rights are universally recognized rights. However, restrictions on land ownership for foreigners can limit the inheritance rights of foreigners who are related to land owners in Indonesia.

Different Legal Interpretations:

- Court decisions, including Supreme Court decisions, often provide different interpretations of the same legal provisions.
- These differences in interpretation can create legal uncertainty and complicate efforts to resolve disputes.

1. General purpose

Analyzing Legal Provisions: Review and explain the legal provisions governing the rights of foreign heirs to land in Indonesia, including the Basic Agrarian Law (UUPA) and the Civil Code (KUHPperdata).

2. Specific goals

- a. Do you know the legal considerations of the Supreme Court in determining the rights of foreign citizen heirs to land in Indonesia?
- b. What are the facts that are the main considerations in the decision?

METHOD

This research will use normative legal research methods by analyzing various relevant laws and regulations, court decisions, and existing legal literature. In addition, a case study will be carried out on the Supreme Court decision Number 105/PK/TUN/2013 to understand in depth the legal considerations underlying the decision.

RESULT AND DISCUSSION

Regarding the inheritance rights of foreign citizens (WNA) to land in Indonesia is a complex issue involving legal, economic and political considerations. The Basic Agrarian Law (UUPA) explicitly states that only Indonesian citizens (WNI) can have ownership rights to land. However, in practice, there are various exceptions.

- **Basic Agrarian Law (UUPA):** Article 21 paragraph (1) UUPA: This provision is the main basis for limiting land ownership to Indonesian citizens only.
- **Exceptions:** Article 21 paragraph (3) UUPA provides exceptions for foreigners who obtain property rights due to inheritance without a will or mixing of assets due to marriage. However, there is a one year time limit for foreigners to transfer their ownership rights to Indonesian citizens.
- **Conflict of Norms:** There is a conflict of norms between the UUPA which limits land ownership for Indonesian citizens and the Civil Code which grants inheritance rights to all heirs, including foreigners.
- **Limited Exceptions:** Exceptions in the UUPA are limited and only apply for a certain period of time.
- **Considerations of State Sovereignty:** Restrictions on land ownership for foreigners are based on considerations of maintaining state sovereignty and preventing land control by foreign parties.
- **Protection of Human Rights:** On the other hand, these restrictions can be considered as restrictions on the right to property which is one of the human rights.

Do you know the legal considerations of the Supreme Court in determining the rights of foreign citizens' heirs to land in Indonesia? regarding the legal considerations of the Supreme Court in determining the rights of foreign citizen heirs to land in Indonesia, especially in the context of Decision Number 105/PK/TUN/2013. Of course, let's discuss in more depth the legal considerations of the Supreme Court in determining the rights of foreign citizen heirs to land in Indonesia, especially in the context of Decision Number 105/PK/TUN/2013.

Supreme Court Legal Considerations

In deciding cases related to foreign citizens' inheritance rights to land, the Supreme Court generally considers the following legal aspects:

1. Basic Agrarian Law (UUPA):
 - Article 21 paragraph (1) UUPA This provision expressly states that ownership rights to land can only be owned by Indonesian citizens. This is a strong legal basis for limiting land ownership by foreign citizens.
 - Exceptions The Supreme Court will find out whether there are exceptions or special provisions in other laws or international agreements that can provide space for heirs of foreign citizens to obtain land rights.
2. Inheritance Law:
 - The principle of equal standing of heirs. The Supreme Court will consider whether all heirs, both Indonesian and foreign citizens, have the same position in terms of inheritance rights.
 - Public order and morality The Supreme Court will consider whether granting inheritance rights to foreign citizens may be contrary to public order and morality.
3. International Agreements:
 - Bilateral or multilateral agreements The Supreme Court will consider whether Indonesia has ratified international agreements regulating inheritance rights or foreign investments that can provide protection for the heirs of foreign citizens.
 - The hierarchy of laws and regulations of the Supreme Court will determine whether international agreements have higher legal force than national laws.
4. National Interest:
 - State sovereignty The Supreme Court will consider how the decision may affect state sovereignty, especially in matters of control of natural resources.
 - National development The Supreme Court will consider whether the decision can support or hinder national development.
5. Civil Code (Civil Code):
 - General provisions regarding inheritance The Civil Code regulates inheritance rights in general, including who has the right to be an heir and how inherited assets are distributed.
 - Mixed marriages The Civil Code also regulates mixed marriages between Indonesian citizens and foreigners, including the legal consequences for joint property.

What facts are the main considerations in making decisions in the Supreme Court decision Number 105/PTUN/PK/2013? To answer this question, we need to carry out an in-depth analysis of the Supreme Court Decision Number 105/PTUN/PK/2013. In general, the Supreme Court in deciding this case will consider the following main facts:

1. Citizenship Status of Heirs:
 - Citizenship: Are the heirs submitting the application Indonesian citizens (WNI) or foreign citizens (WNA)? This citizenship status is very crucial because the UUPA strictly limits land ownership rights to Indonesian citizens only.

2. Object of Dispute:

- Type of Land: Whether the object of the dispute is agricultural land, residential land, or land that has other strategic value. This type of land will influence the legal considerations applied.
- Land Location: Where is the land located? Is it located in an area that has special regulations regarding land ownership by foreigners.

Supreme Court Legal Considerations, in deciding this case, the Supreme Court will consider the following legal aspects:

1. Legal Interpretation: The Supreme Court will interpret applicable legal provisions appropriately and consistently with the purpose of establishing the law.
2. Justice and Legal Certainty: The Supreme Court will try to provide fair decisions and provide legal certainty for all parties to the dispute.
3. National Interest: The Supreme Court will consider whether the decision taken will have an impact on national interests, such as state sovereignty and national development.

Supreme Court Decision Number 105/PTUN/PK/2013 is the result of complex consideration of various factors, both legal facts and legal considerations. By understanding the main facts and legal considerations underlying the decision, we can gain a better understanding of the legal regulations regarding foreigners' inheritance rights to land in Indonesia.

CONCLUSION

Principles of Legal Inheritance Foreign heirs have the right to inherit land from heirs who are Indonesian citizens (WNI) based on the principles of legal inheritance regulated in the Civil Code (KUHPerdata). Article 852 of the Civil Code guarantees that all heirs, regardless of gender or nationality, are entitled to inheritance in equal shares. Land Ownership Limitations

Even though foreign heirs have the right to inherit land, they cannot maintain ownership rights to land based on Article 21 Paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Only Indonesian citizens can have ownership rights to land .

If the foreign heir does not relinquish ownership rights to the land within one year after receiving the inheritance, these rights will be extinguished and the land will go to the state. This concept is regulated in Article 21 Paragraph (3) of the UUPA, which specifies that foreigners who receive property rights by inheritance must relinquish them within one year after losing their citizenship. To avoid losing their rights, foreign heirs can transfer their rights to Indonesian citizens or ask the National Land Agency to change the status of the land to use rights. This one year period is an 'opportunity' given by law for foreigners to manage their inheritance. Supreme Court Decision Number 105/PK/TUN/2013 emphasizes that although foreign heirs have the right to inherit land, they must transfer their rights or change the status of the land within a short time to avoid losing these rights by law.

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