

Analysis Of Land Ownership Disputes By Foreign Nationals Based On Wills: Case Study Of Supreme Court Decision No. 1134/Pdt/2009 In The Perspective Of International Civil Law

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KEYWORD

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ABSTRACT

*Land ownership in Indonesia is strictly regulated, especially for foreigners, through the Basic Agrarian Law (UUPA). This legal foundation limits the rights of foreigners in terms of land ownership, especially property rights, according to Article 21 of the UUPA. The case of Supreme Court Decision No. 1134/Pdt/2009 provides a clear example of how the recognition of inheritance rights for foreigners on land can lead to complicated legal issues. The method of this research is normative juridical with a statutory and case approach. This method focuses on the analysis of Supreme Court Decision No. 1134/PDT/2009 on land ownership disputes between citizens and foreigners based on wills. Primary data was obtained through court decisions and related laws and regulations, such as the UUPA, while secondary data was through legal literature, and legal periodicals. In Supreme Court Decision No. 1134/Pdt/2009, legal considerations regarding land ownership by foreign nationals (WNA) based on wills are the basis of juridical considerations in the case. One of the basic principles that apply in international civil law is *lex situs* or the law that applies in the country where the land object is located. Based on the principle of *lex situs*, any breach or agreement relating to property must be subject to the law of the country where the property is located. According to an analysis of Supreme Court decision No. 1134/Pdt/2009, although foreign nationals can receive land through wills, Indonesian agrarian law explicitly prohibits foreigners from owning land. This creates a conflict between domestic law and the legal principles of international property rights protection. Decision No. 1134/Pdt/2009 became an important reference in Indonesian international civil and agrarian law.*

INTRODUCTION

The Basic Agrarian Law (UUPA) regulates land ownership in Indonesia, especially for foreigners. According to Article 21 of the UUPA, only Indonesian citizens (WNI) are allowed to own land by hak milik, while foreigners can only own land in the form of hak pakai under this

legal basis. When land is inherited through a will to a foreigner, this provision is very important as it has legal consequences at home and abroad. The case of Supreme Court Decision No. 1134/Pdt/2009 is a clear example of how the recognition of inheritance rights over a foreigner's land can raise complicated legal issues.

A foreigner in this case received land through a will made by the testator in Indonesia. However, the Supreme Court affirmed in its decision that land titles granted to foreigners through wills are considered legally invalid because Article 26 paragraph 2 of the UUPA states that the transfer of ownership rights to foreigners is not recognized by law. Therefore, the land must be returned to the state unless it was granted to a foreigner through a guarantee.

This issue reflects the difference between national and international law on land inheritance. Foreigners can receive inheritance from a testator in another country under international inheritance law, but Indonesian agrarian law restricts this. In this case, international civil law, which usually prioritizes justice between countries, must defer to the *lex situs*, or the law applicable at the location of the property. National laws governing land in Indonesia prioritize the interests of Indonesian citizens.

It is important to remember that in the case of inheritance, foreigners who receive land from a testator in Indonesia still have rights to the land, albeit not in the form of *hak milik*. Article 42 of the UUPA provides an option for foreigners to own land in the form of *hak pakai*, which means that the right to the land is limited rather than full *hak milik*. However, within one year after the land is inherited, the status must be changed in accordance with applicable regulations.

International legal procedures relating to the recognition of foreign wills are an additional issue that arose in this case. Before they can be recognized, wills made abroad and involving foreigners must be validated and adapted to Indonesian law. In this process, the will must be registered in Indonesia, validated by a notary, and evaluated as to whether it does not violate Indonesian agrarian law. In the case of Decision No. 1134/Pdt/2009, the Supreme Court rejected the recognition of the land title because it did not comply with the provisions of the UUPA even though the will was legally made in the country of origin.

This case has international legal ramifications affecting foreigners' land ownership and the protection of foreign property rights in Indonesia. The property rights of individuals, including foreigners, must be respected and recognized under international law. However, when national laws such as the UUPA restrict the right of foreigners to own land, there is a conflict between the sovereignty of national laws and international principles regarding property rights. This shows that international law must be adaptable to applicable national and local rules.

In addition, this case also shows how important legal harmonization between countries and international law is in the recognition of foreigners' property rights. Globalization has increased the number of property transactions between countries, which demands a clear legal mechanism to deal with the issue of foreigners' land inheritance. Better legal harmonization between countries can prevent uncertainties and conflicts that may occur.

With a case study based on Supreme Court Decision No. 1134/Pdt/2009, this journal aims to examine the implications of international law in the recognition and enforcement of wills involving foreigners in the context of Indonesian land law. The study will examine the applicable law for recognizing foreign wills in Indonesia and the problems encountered when applying it. In addition, the journal will identify existing legal loopholes and suggest policies that can protect the rights of foreigners from the restrictions set by Indonesian agrarian law.

METHODS

This research method is normative juridical with a statutory and case approach. This method focuses on the analysis of Supreme Court Decision No. 1134/PDT/2009 on land ownership disputes between citizens and foreigners based on wills. Primary data is obtained through court decisions and related laws and regulations, such as the UUPA, while secondary data is obtained through legal literature and legal periodicals. Data collection techniques are literature study and descriptive-analytical documentation, or policy collection and tracing. There is research from a case study or certain events in order to draw conclusions.

RESULT AND DISCUSSION

Legal considerations of the Supreme Court in Decision No. 1134/Pdt/2009 related to land ownership by foreigners based on wills

In Supreme Court Decision No. 1134/Pdt/2009, legal considerations regarding land ownership by foreigners based on wills are the basis of juridical considerations in the case. Based on Articles 21 and 26 of the Basic Agrarian Law (UUPA), foreigners are not permitted to own land titles in Indonesia. In this case, one of the parties named in the will as the beneficiary of the land rights was a foreigner. Therefore, the main question of law in this case was what was the legal status of the land bequeathed to a foreigner, as well as whether the action taken was lawful. The Supreme Court considered Article 21 of the UUPA, which states that only Indonesian Citizens (WNI) can hold title to land, and foreigners can only obtain title on a limited basis in the case of inheritance. If a foreigner receives land through a will, he or she is obliged to relinquish the land within one year or transfer it to an Indonesian citizen. This is one of the pillars of the Court's legal reasoning, which focuses on the provision that although foreigners can acquire land through inheritance, the title must be relinquished immediately upon receipt.

The Supreme Court also considered the nationality of the testamentary beneficiary. One of the aspects considered in this case was the fact that the testamentary beneficiaries became Indonesian citizens before the land certificate was issued. This contradicts the principle that foreigners cannot own land in Indonesia, which means that the testamentary beneficiaries are legally unable to own the land if they do not change their citizenship status to Indonesian. In further legal considerations, the Supreme Court also referred to Article 26 paragraph 2 of the UUPA, which states that the transfer of ownership rights to land to foreigners is considered legally invalid. Therefore, even if the land is inherited through a will, the ownership of the land cannot be legally transferred to the beneficiary of the will who is still a foreigner at the time of inheritance. This is the main reason why the Court rejected the claims of beneficiaries who have not yet qualified as citizens.

The legal status of the certificate of ownership obtained through the sporadic land registration process is an important part of the Court's legal reasoning. The land had been registered by the testamentary beneficiary and was accompanied by signatures from authorized parties such as the lurah and camat, as well as witnesses from the surrounding community. The Court emphasized that, even if the administrative process had been properly completed, the issuance of a certificate without considering the nationality status of the testator was a violation of applicable agrarian law. In addition, the issue of procedural validity was also part of the Court's consideration. Although the land certificate had been issued and approved by various relevant institutions, the

testamentary beneficiary did not fulfill the requirements to own land in Indonesia at that time. Therefore, the Court ruled that although the certificate was procedurally valid, its legal meaning violated the applicable provisions of the UUPA on land ownership by foreigners. In addition, the court emphasized that in cases of inheritance, land titles granted to testamentary beneficiaries should be subject to strict rules regarding nationality restrictions. The Court's decision shows that Indonesia's agrarian law strongly protects Indonesian citizens from land ownership. The law only allows foreigners to own land if they fulfill certain conditions, such as changing citizenship status.

Instead, the Court considered other elements of international civil law relating to transnational inheritance. When foreigners are involved in signing over land in Indonesia, domestic law puts forward that foreigners' land ownership should be subject to domestic laws, not just laws made in their home country. This confirms that the national declaration remains the primary source for any land law issues in Indonesia. The Court emphasized the importance of validating land certificates in addition to considering citizenship status. In this case, the certificate is not necessarily valid if it is found that the issuance of the certificate violates the provisions of agrarian law. A land registration process that ignores the legal status of a testamentary beneficiary is considered a violation of law that may result in the invalidation of the certificate.

International civil law procedures that apply in the recognition of inheritance rights by foreigners in Indonesia

Due to the differences between national law and international law, the process of recognizing inheritance rights by foreigners in Indonesia is very difficult in the context of international civil law. The main issue in the case of Supreme Court Decision No. 1134/Pdt/2009 is whether foreigners can own land that is inherited through a will. Indonesia's Basic Agrarian Law (UUPA) restricts the right of foreigners to own land, and this relates to cross-border inheritance procedures.

First, one of the basic principles applicable in international civil law is *lex situs*, or the law applicable in the country where the land object is located. Based on Articles 21 and 26 of the UUPA, foreigners are prohibited from owning property rights to land in Indonesia. This means that Indonesian agrarian law still applies in cases where land is inherited. Therefore, foreigners cannot own land in Indonesia without following the proper legal procedures, even if the will is lawful in the testator's home country. Foreigners must first follow the procedure to recognize inheritance rights to land in Indonesia. Article 42 of the UUPA grants foreigners the right to own a right of use over land in Indonesia if the land does not have the status of freehold land. If the inherited land is *hak milik* land, the foreigner must change the status of the land to *hak pakai* or sell it to someone else.

Furthermore, foreigners who receive inheritance must also undergo a legal process regarding the heir certificate. Indonesian regulations state that before inheritance rights can be officially recognized, a certificate of heirship must be issued by an authorized official, such as a notary, and validated by a relevant institution, such as the National Land Agency (BPN). Although foreigners cannot acquire rights to the land, this letter is the basis for them to claim it.

Transfer of rights is the next step. In the case of land inheritance, foreigners must sell or transfer the land title to Indonesian citizens or Indonesian legal entities within a certain period of time. In accordance with the provisions contained in Article 21 paragraph (3) of the UUPA, the land rights will automatically revert to the state if the foreigner does not fulfill this obligation. In

the case of Decision No. 1134/Pdt/2009, the Supreme Court emphasized that the status of the inheritance recipient who is still a foreigner makes the right invalid and must be transferred.

In addition, in the case of inheritance by foreigners, wills made abroad must also meet the legal requirements in Indonesia. In this case, a notary in Indonesia is responsible for validating the will made by the foreign heir, which must also be registered with the Ministry of Law and Human Rights to ensure that the will complies with Indonesian law and does not violate ownership restrictions.

Foreigners are also required to settle tax obligations related to the inherited land, such as Fees for Acquisition of Rights on Land and Building (BPHTB) and other inheritance taxes. Before the land can be transferred to an Indonesian citizen or converted to a right-of-use status, the foreigner must settle these tax obligations. This is part of the administrative procedures that must be fulfilled so that the transfer or disposal of rights can be carried out legally.

Submitting an application to the BPN for land status change is another important process in recognizing foreigners' inheritance rights. This process includes document examination, land measurement, and data validation by an authorized party. In the case of inherited land, this process includes determining whether the land should be sold to a third party or granted to the foreigner as a right of use.

In addition, the Supreme Court emphasized that the beneficiary's citizenship status should be the top priority even if the will is legally valid. Foreigners who receive land through a will do not necessarily own the land unless they change their citizenship status to Indonesian before the land certificate is issued. This was demonstrated in Decision No. 1134/Pdt/2009, where the Court determined that land ownership by a foreigner who received a will was invalid.

Finally, the recognition and enforcement of foreign wills are also included in the applicable international law regulations. A will made abroad involving land in Indonesia must be recognized by Indonesian authorities before it can be used. This includes verifying that wills made by notaries and legal institutions in Indonesia are valid. Wills that violate the country's laws, especially those relating to land ownership, will be considered void.

Therefore, although foreigners can receive inheritance in Indonesia, strict procedures must be followed to ensure that inheritance rights are recognized in accordance with the provisions of Indonesian agrarian law and relevant international civil law.

The implications of international law in the recognition and enforcement of wills involving foreigners in the context of land law in Indonesia

In terms of land law in Indonesia, the consequences of international law related to the recognition and enforcement of wills involving foreign nationals (WNA) have several important aspects, especially related to the rules of *lex situs* (the law that applies where the object is located) and the limitations of national law to recognize property rights to land by foreigners. In the case of Supreme Court Decision No. 1134/Pdt/2009, this aspect is particularly relevant as it involves the heir to the land. First and foremost, based on the principle of *lex situs*, any breach or agreement relating to property should be subject to the law of the country where the property is located. In this case, Indonesian law only applies to land located in Indonesian territory, no matter which nationals are involved. This means that foreigners cannot directly obtain land ownership rights in Indonesia if they fulfill certain conditions stipulated in the Basic Agrarian Law (UUPA).

Recognition of foreign wills is also another consequence of international law. To be recognized, a will made outside Indonesia must meet the legal provisions of that country. This means that the will must be adjusted to the rules that apply here, including regarding the ownership of land by foreigners. In the case of Decision No. 1134/Pdt/2009, the Supreme Court held that even though the testator gave land to a beneficiary who was a foreigner through a will, the ownership was invalid because it violated Article 21 of the UUPA, which prohibits foreigners from owning property rights to land. From an international civil law perspective, this shows that when it comes to property ownership, domestic laws often take precedence over foreign laws. Indonesian agrarian law sets limits on the recognition of wills involving foreigners. This includes the obligation to transfer the land to an Indonesian citizen (WNI) within a certain period of time if the land is bequeathed to a foreigner, in accordance with Article 21 paragraph 3 of the UUPA.

This will have an impact on law enforcement in the future. When a foreign will is recognized in Indonesia, the contents of the will must be handled through a mechanism that complies with Indonesian law. In this case, if the foreigners want to retain their land rights, their only option is to change the status of the land from hak milik to hak pakai. This is the type of ownership granted to foreigners in accordance with Article 42 of the UUPA but with more limited rights and not the ownership of hak milik granted to Indonesian citizens. The transfer of rights is an additional consequence. If a foreigner receives inherited land, they must publicize or transfer the land rights to an Indonesian within one year of receipt. If they fail to do so, the land rights will revert to the state. This confirms that law enforcement in Indonesia must follow national legal procedures even if international law or the law of the country of origin allows inheritance to foreigners.

Administrative restrictions are an additional factor to be considered. The National Land Agency (BPN) should be responsible for all transactions relating to land in Indonesia, including the recognition of foreigners' wills. The Supreme Court ruled in this case that, although the land had been registered sporadically, the registration of the land without regard to the nationality of the beneficiary of the will was unlawful. This shows that the recognition and enforcement of foreign wills are heavily influenced by national administrative elements. Additional international law considerations relating to the protection of foreign property rights. While international law provides protection for the property rights of individuals, including foreigners, domestic law often restricts these rights, particularly in the case of land. Indonesia through the UUPA provides strong protection to Indonesian citizens in terms of land ownership, while foreigners can only have hak pakai or other more limited rights.

In addition, international law related to foreigners' inheritance of land is increasingly important as a result of globalization and increased mobility between countries. To accept foreign nationals involved in property transactions, countries with strict rules such as Indonesia often have difficulties. Therefore, a more flexible mechanism to supervise the property ownership of foreigners around the world has become very important, as demonstrated by cases such as Decision No. 1134/Pdt/2009. From the point of view of international legal harmonization, this case shows that there are still discrepancies between domestic law and international legal principles, especially regarding transnational property. Recognizing and enforcing foreign wills is difficult for many countries, especially when it comes to property that is in a different recognition. This case can

serve as a lesson for other countries to create policies that balance international recognition and the protection of national rights.

CONCLUSION

According to an analysis of Supreme Court decision No. 1134/Pdt/2009, although foreign nationals can receive land through wills, Indonesian agrarian law explicitly prohibits foreigners from owning land. This creates a conflict between domestic law and the legal principles of international property rights protection.

First of all, this decision demonstrates the importance of *lex situs*, where the law of the land remains the primary reference. Although valid wills are recognized in other countries, their execution and recognition in Indonesia must be subject to the regulations set out in the UUPA.

Secondly, the decision emphasizes that even if administrative procedures relating to land registration are properly performed, this is not sufficient to change the legal status of land bequeathed to foreigners. Property rights transferred through wills that violate the provisions of the UUPA are considered invalid, so relevant parties must understand the legal boundaries.

Third, as globalization continues to grow, it is important to consider how international law can adapt to the situation faced by foreigners in terms of land ownership. Further research on the harmonization of national and international laws is needed to build a fairer and more transparent system.

Finally, Decision No. 1134/Pdt/2009 is an important reference in Indonesian international civil and agrarian law. This decision demonstrates the difficulties that foreigners face and shows how important it is to comply with current regulations to protect the rights of landowners as well as how important it is to revisit policies to accommodate changes that are occurring around the world.

Advice

To improve the recognition and enforcement of wills involving foreigners in Indonesian land law, harmonization between national and international laws is needed, as well as improved legal education on land ownership. In addition, the government should draft more flexible policies to accommodate the situation of foreigners and provide legal assistance services to help them fulfill legal requirements. Foreigners' land ownership policies should be improved with further research on best practices from other countries.

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