ANALYSIS OF JUDGE'S DECISION RELATED TO THE TRANSFER OF LAND RIGHTS FOR FOREIGN NATIONALS BASED ON TESTAMENT
(Literature Review of Supreme Court Decision Number 1134K/PDT/2009)

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Abstract

This study aims to analyze the judge's decision related to the transfer of Land Rights for Foreign Nationals based on testament of Supreme Court Decision Number 1134K/Pdt/2009. Research questions on this study are based on problematical publishing freehold title based on testament, incidentally between Testator and Testament Recipient at that time both of them is Foreign Nationals has broken the Law Number 5 of 1960 on Basic Agrarian Law Act. This research is normative-descriptive using library research to collect relevant source, such as books, magazines, scientific writing, and others to support the writer's argument on the issue. The findings revealed that someone can acquire basic consideration of Supreme Court Decision and legal analysis about giving a decision of Supreme Court Decision number 1134K/Pdt/2009. Thus, in the case of Decision No. 1134K/Pdt/2009, the process of transferring ownership of Freehold Title is due to sporadic land registration beginning with the approval of the Head of the Environment, Lurah, and Camat, as well as land owners who are on the right, left, front, and back of the disputed object, so Freehold Title against the object of dispute may be issued on behalf of the Defendant, which is issued by the Land Office. Hence, the parties involved in the intermittent registration, including the Land Office, should be sued, not the Defendant.

Keywords: *Testament, Foreign Nationals, Supreme Court Decision, Land Right Transfer*

1. INTRODUCTION

The homeland of Indonesia is an agrarian country, which has a very wide expanse of territory and is spread from the west to the east, in the form of land and sea, so that in principle everything is used for the welfare of the people. The role of the State to regulate, one of which is implemented through the Law of the Republic of Indonesia Number 5 of 1960 (hereinafter referred to as LoGA), which in essence the State has the authority to regulate and administer the earth, water, and space, both in terms of regulation to the rules of legal relations in society, as contained in Article 2 paragraph (2) of the LoGA (Indrawan et al., 2021).

Based on this, it can be realized by giving various rights, one of which is the right in ownership of the land, such as property rights, building rights, and so on. Rights that are limited in nature, and are not given freely because they are limited by the public interest are the recognition of land rights by the state. Therefore, it is in line with land politics as

regulated in the 1945 Constitution of the Republic of Indonesia, which is contained in Article 33 paragraph (3) (Sumanto, 2017).

It is undeniable that the population in Indonesia is inhabited or inhabited by citizens of other countries, which is the impact of openness between international countries accompanied by advances in science and technology (Ardani, 2017). This fact shows the effect of globalization which frees anyone to travel or live in any country in the world.

One of the LoGA's provisions stipulates that only Indonesian residents are eligible for ownership rights, in this case property rights. In actuality, issues occur when someone gives or wants to give ownership to non-natives (foreigners), in this case a foreigner, based on a will (testament), where the will is tied to the last wish wanted before death. world. The author analyzes the Supreme Court's decision with case registration number 1134K/Pdt/2009, which is related to the problem of foreign ownership status of land rights based on a will by the will grantor to the foreigner, in which the decision the *inkracht*.

The existence of a will can be motivated by the desire of someone who owns property so that the property he will leave behind when he dies, his heirs can use it, and it is not prohibited by law even if the owner of the property is free to give property to anyone even if the action is contrary to inheritance law. As a result, there are many disagreements on how to distribute inheritance after the owner of the property dies (Agustin, 2017).

In this study, the problem that must be solved is how the position case in the case of the Supreme Court Decision Number 1134K/Pdt/2009, and what legal basis is used by the Panel of Judges in the Supreme Court's Decision Number 1134K/Pdt/2009, and how to analyze the Supreme Court's Decision Number Is 1134K/Pdt/2009 related to positive law in Indonesia?

The objectives to be achieved in this research are divided into two, namely general objectives and specific objectives. The general purpose is as an implementation of the Tri Dharma of Higher Education in the field of law and as a complement to the requirements for obtaining a law degree. Its specific purpose is to study and understand the legal considerations of the judges who examine and hear cases number 1134K/Pdt/2009 and to be able to analyze Decision Number 1134K/Pdt/2019 which will be correlated with positive law in Indonesia.

2. RESEARCH METHOD

This is a normative research, which is evaluated using statutory rules and positive law from diverse paradigms (Muhammad, 2004). The author used numerous methodologies in this work, including conceptual, legal, analytical, case, comparative, and historical approaches (Marzuki, 2013). As a result, this research focuses on the administration or inventory of positive laws that apply in Indonesia, as well as their synchronization (Marzuki, 2013).

3. RESULT AND DISCUSSION

3.1. Case of Decision Position Number 1134K/Pdt/2009

The Plaintiff (HANNA) is the younger brother of the Defendant (TAN SAN HONG a.k.a M. SIDIK) from a mother named LE RAMIDJAH and a father named TAN SUN NEN who died in 1959 with the status of a Chinese citizen, so the house is the legacy of TAN

SUN NEN occupied and controlled by LE RAMIDJAH as the mother of the Plaintiff. Before the Plaintiff's mother died, in 1994 the Plaintiff's mother had donated a plot of customary land located in Banjar Paken Village, Gubuk Dayen Peken, Ampenan Barat Djangkok III District, West Lombok, Pipil No. 763, Persil No. 59, Class I covering an area of 195m2 based on the registration of land owned by Indonesia dated June 29, 1964 No. 763 on behalf of LE RUMIDJAH, in which the grant was based on the Grant Binding Letter No. 6 dated November 1, 1994 made by Notary Petra Mariawati Ambrosius Imam.

However, the land that had been granted was actually processed for the issuance of a certificate of ownership on behalf of the Defendant even though until 1994 he was still a foreigner (Foreign Citizen) with Chinese citizenship so that SHM No. 2958 covering an area of 195m2 on 27 June 2002, however the address of the land has changed which was originally located in Banjar Paken Village, Gubuk Dayen Peken, Ampenan Barat Djangkok III District, West Lombok, Pipil No. 763, Persil No. 59, Class I with an area of 195m2, now registered at Jalan Saleh Sungkar No. 18, North Ampenan, Mataram City.

Based on the above, the Plaintiff filed a lawsuit against the Law for the actions of the Defendant.

3.2. Legal Basis for Decision Number 1134K/Pdt/2009

This civil case with case register number 1134K/Pdt/2019 is a cassation case filed by HANNA (as the Cassation Petitioner, previously the Plaintiff) against the Mataram District Court Decision register number 58/Pdt.G/2007/PN Mtr, which was read out on March 25, 2006 and decided:

In Exception:

- The Defendant's exception is rejected;

In the Main Case:

1. Reject the Plaintiff's whole claim;
2. Punish the Plaintiff Rp. 169.000,00 (one hundred and sixty-nine thousand rupiah) for the costs of this litigation.

Based on the decision of the Mataram District Court, the Plaintiff filed an appeal, and after being heard, the Panel of Judges at the appellate level, namely the Mataram High Court, upheld the decision of the first instance court in decision no. 97/Pdt/2008/PT Mtr dated December 18, 2008, and thus the Plaintiff filed an appeal.

The filing of a cassation can be observed in the memorandum of cassation, which is as follows:

That the Panel of Judges is flawed or careless in its consideration of the evidence in light of the facts as they exist in fact, because these facts dictate the direction or essential directions for this matter; and

a. Whereas the Judex Facti Panel of Judges misinterpreted/applied the law in relation to the trial facts.

The arguments for bringing the petition for cassation above, according to the Panel of Judges at the cassation level, cannot be supported, such that Judex Facti (High Court and District Court) did not misapply the law, because:

1) According to the evidence, Tan Soe Nen (father of the Plaintiff and Defendant with mother/second wife Tan Soe Nen) owns the property at Jalan Saleh Sungkar No. 18 Ampenan Utara, Mataram;
2) That on April 14, 1956, the object of dispute and its contents were inherited by Tan Soe Nen to his first wife named Tjo A Jin, and with a will made by Notary Abdurrahman, S.H. (Evidence T.1) was handed over to Tan San Kauw as the executor of the testament, and then on July 12, 1990, according to evidence T.2, Tan San Kauw handed over power to the Defendant to carry out the will from Tan Sie Nen:
3) Whereas therefore the disputed object land is legally owned by the Defendant on the basis of Freehold Title No. 2958, June 27, 2002;
4) That the evidence submitted by the Plaintiff cannot cripple the authentic evidence submitted by the Defendant

As a result, a judgement was issued at the level of cassation with the following ruling:

JUDGE

1) Reject the Cassation Petitioner's plea for cassation; the HANNA;
2) Ordering the Cassation Petitioner/Plaintiff to pay Rp. 500,000.00 in court fees at this stage of cassation (five hundred thousand rupiah).

3.3. An Examination of Decision Number 1134K/Pdt/2009 Concerning Applicable Laws and Regulations

Before analyzing or responding to Decision No. 1134K/Pdt/2009, the author, in my opinion, will explain the provisions of wills for foreigners in Indonesia.

A state in which a person may request that subsequent legal action be taken for himself before death, which act can only be carried out after death, and such action is known as a will (Sanjaya, 2018). According to Article 930 of the Civil Code, the will is a unilateral act that can only be performed by 1 (one) person (Wijaya, 2014).

Many issues arise during its implementation, such as which is stronger between wills and inheritance law (Abubakar, 2011), the transfer of rights through wills to foreign citizens, and so on. Wills are classified into two types: wills connected to the appointment of inheritance (*erfstelling*) and will grants (*legaat*) (Suryadini & Widiyanti, 2020). In general, the Civil Code controls wills through the consideration of numerous topics, including general provisions, abilities, will limits, and the form/form of the will itself (Wijaya, 2014).

Therefore, carrying out a will cannot be divorced from the job of a Notary, which is in this case tied to the making of a will. The notary's function is to explain the procedure or process until the will is enacted, so that the notary can afterwards provide legal directions to avoid future conflicts (Cahyaning et al., 2018). As a result, a Notary who has prepared a will at the request of a person must promptly register it with the Property and Heritage Agency to ensure that it is correctly recorded in compliance with the applicable laws and regulations (Lay, 2019).

In principle, all Indonesian citizens have the right to obtain ownership rights to land without regard to ethnicity or ethnicity, so that the existence of Freehold Title can later be used as proof of ownership, which in fact is strong and perfect unless the validity of the Freehold Title can be proven otherwise.

Furthermore, it is mentioned in the terms of Article 21 of the LoGA that only Indonesian citizens can enjoy property rights without discriminating against other Indonesian residents. If this is breached, the land rights will be declared null and void, and the land will be handed to the state, as specified in Article 26 of the UUPA. In terms of the situation of foreigners themselves, the LoGA has granted them a part in the form of rental rights and usufructuary rights, as stated in Article 41 of the LoGA (Sutrisna & Gunarto, 2017). The rise of foreigners acquiring land rights in Indonesia is inextricably linked to the impact of globalization, which increases national investment, despite the fact that the acquisition of land rights is restricted by the UUPA and its implementing rules (Sumanto, 2017). In other words, if a foreigner changes citizenship to become an Indonesian citizen and obtains it through their interest, the foreigner can control and/or utilize land in ownership, Right to Cultivate, and Right to Build (Rokilah, 2018).

The Defendant secured proof of ownership in the form of a certificate through a sporadic registration process, according to Decision No. 1134K/Pdt/2009. Furthermore, it is known and signed by the land owner who is adjacent to the land object to whom the certificate will be provided (north, south, east, west), indicating that the Defendant has openly submitted a procedural land registration process that must be passed on a sporadic basis. However, in this situation, the process of transferring rights occurred without a strong foundation, relying solely on a will. The willful transfer of property rights is addressed to foreigners and even foreigners; in other words, both have not changed citizenship at the time of the transfer, thus the transfer is null and void (Nurlaila et al., 2018). As a result, the lawsuit should be directed not against the Defendant but against the parties involved in the sporadic process, namely the land office, and a lawsuit can also be filed against the Head of the Environment, *Lurah*, or *Camat* who have signed the sporadic signing, where it should be argued that the sporadic signing was illegal. Because the transfer of rights is based on the parties' inheritance relationship, a certificate of inheritance from the Defendant is required in advance.

The legal repercussions of the ruling concern the legal status of the Defendant's Freehold Title, which has been registered in his or her name through sporadic and open registration on behalf of the Defendant and is nonetheless recognized as belonging to the Defendant even at the time of transfer. The beneficiary was still a foreigner, but the Defendant had changed his nationality to become an Indonesian citizen prior to the granting of the Freehold Title on his behalf.

4. CONCLUSION

In this study, we can conclude that the first, legal considerations in Decision No. 1134K/Pdt/2009, namely Judex Facti from the Mataram District Court and the Mataram High Court, is appropriate for the application of the law, because the object of the dispute is Freehold Title No. 2958 is correct as the Defendant's property based on the will made before Notary Abdurrahman, S.H., in which Tan San Kauw has handed over the power.

Second, in the case of Decision No. 1134K/Pdt/2009, the process of transferring ownership of Freehold Title is due to sporadic land registration beginning with the approval of the Head of the Environment, *Lurah*, and *Camat*, as well as land owners who are on the right, left, front, and back of the disputed object, so Freehold Title against the object of dispute may be issued on behalf of the Defendant, which is issued by the Land Office. Thus,

the parties involved in the intermittent registration, including the Land Office, should be sued, not the Defendant.

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