

JURIDDICIAL REVIEW ON THE REQUIREMENT OF THE RIGHT TO LAND FOR WOMEN MARKETED BIRDS MARRIAGE (CASE STUDY DECISION OF THE CONSTITUTIONAL COURT NUMBER: 69 / PUU XIII / 2015)

Achmad Sulchan, Nurmalia IW
UNISSULA Semarang, Center Java, Indonesia
achmad.sulchan@yahoo.com

Abstract

Mixed marriages are marriage involving a race between nations, therefore, marriage is also subject to the principles applicable in the Indonesian Law and International Law. Mixed marriage has penetrated the whole of Indonesia. Notary role in making the deeds relating to marriage agreement, inheritance etc. it deals with the issue of marriage between foreign men and women, especially about women's access rights to land for the citizen and other problems. Therefore, the researcher took the title on the Juridical Review of the Acquisition of Land Rights for Women Bound citizen Mixed Marriage (Case Study No. Constitutional Court. 69 / PUU XIII / 2015). The contents of the Constitutional Court about: Testing Law No. 5 of 1960 on the Basic Regulation and the Basic Agrarian Law No. 1 of 1974 on Marriage of the Constitution of the Republic of Indonesia th 1945. Dalam decision mentions the Applicant, Mrs. Ike Farida an Indonesian citizen. Applicant is a woman who is married to a Japanese national men by a valid marriage and are registered in the District Office of Religious Affairs Makassar East Jakarta Municipality No. 3948 / VII / 1995, the Civil Registry Office Prop. DKI Jakarta as defined in the Marriage Reports Receipt No. 36 / KHS / AI / 1849 / 1995 / 1999 dated May 24, 1999. Related to marriage, the applicant does not have marital separation agreement treasures, never abandoned his Indonesian citizenship and disenfranchised here at home. Applicant want to buy Flats in Jakarta, after the keel, towers not being handed over, and even then the purchase agreement terminated unilaterally by the developer. Then formulated the problems are: 1) What is the procedure of acquiring land rights for women citizens who are bound intermarriage? 2). Constraints and solutions that arise in obtaining the Women's Land Rights for citizens who are bound Mixed Marriage (Case Study No. Constitutional Court. 69 / PUU XII / 2015)? As this study is sociological or empirical, in which the authors conducted a study which examined at first was secondary data, then resumed research on primary data in the field, or to society, an interview with the National Land Agency, notary, and two female citizens who marry foreigners. And examine the rules relating to mixed marriages, prevailing in Indonesia. The results showed the conclusion that the Notary has an important role in helping clients about: procedures for securing land rights for the citizen who is married to foreigners, namely the reduction in the rights, for example, from Properties right, the reduction in the rights of land owners. Constrains faced was the problem of domicile for male foreigners who are married to the citizen, and a couple of mixed marriages between Indonesian citizens and foreigners do not make a marriage agreement during their marriage. The solution is that if the land area can be divided into 2: 1/2; 1/2 for the wife, the land was downgraded to a Right of Use by registering at BPN, and made a covenant marriage.

Keywords: *Mixed Marriage, Women citizen, Right of Access to Land*

A. Introduction

Indonesian citizens are living in the community, which each community has their own private functions and social functions. Where we will meet somebody and will be married, meet our spouse, meet someone from any background, religion, tribe and can be different country. Inevitably if we meet our soul mate which he/she is a foreigner, then will fall in love and decide to marry forming a family. The problem of falling in love with foreigners is more complex especially when the couple decides to marry. Since it can be different religion, different language, different culture, different Country and different Citizen.

The married between Indonesian women with Foreigners has been regulated in the Law in Indonesia, about Mixed Marriage. Explained in Law no. 1 year 1974 about Marriage, article 1 is: marriage is the inner birth bond between a man and a woman as husband and wife with the aim of forming family (household) a happy and eternal based on the One God¹. Definition of Mixed Marriage in article 57, namely: a marriage between two persons in Indonesia is subject to different laws, because of differences in citizenship and one of the foreign nationality and one is Indonesian citizenship.² All are entitled to own the property of both men and women, in this case the property rights to the land. Therefore, the researchers take the title of Juridical Review on the Acquisition of Land Rights for WNI Women Tied to Mixed Marriage (Case Study of Court Decision Number 69 / PUU XII / 2015).

The contents of the Constitutional Court's Decision on: Testing of Law No.5 of 1960 on Basic Regulations of Agrarian Principles and Law no. 1 year 1974 on Marriage the 1945 Constitution of the Republic of Indonesia. The verdict stated that the Petitioner, Mrs. Ike Farida is an Indonesian citizen, the applicant is a woman married to a man of Japanese nationality. The applicant does not have a marriage agreement of property separation, never releases his or her nationality of Indonesia and resides in Indonesia. The applicant wishes to purchase Flats in Jakarta, once paid off, the flats are not

¹ Subekti dan Tjitrosudinio, *Kitab Undang-Undang Hukum Perdata*, PT. Pradnya Paramita, Jakarta, 2001, p.537.

² Ibid, p. 555.

submitted, even then the purchase agreement is canceled unilaterally by the developer on the grounds that the Petitioner's husband is a foreigner, and the applicant does not have a Marriage Agreement.³

The purposes of this research is to understand the procedure for the acquisition of land rights for Indonesian women who are tied to mixed marriages. Besides, we want to find the constraints and solutions arising in obtaining Land Rights for WNI Women bound to Mixed Marriage according to study case of Court Decision Number 69/PUU XII/2015).

B. Discussion

The Nature of Land Ownership, according to David J. Hayton, he stated the definition of "Real Property" regarding the land, namely: The Natural division of physical property is into land (or immovable "as it sometimes called") and other objects known as chattels or "movables". This simple distinction is inadequate. In the first place, chattels may be attached to land so as to lose their character of chattels and become part of the land itself. Secondly, it is not only a sophisticated legal system of property, but also for the ownership of a wide variety. Property right is very important for man to be able to carry out his life in the world. The higher value of property rights to an object, the higher the award given to the object. Land is one of the most valuable properties for mankind, as well as for Indonesia Land Rights Ownership

Property right is very important for man to be able to carry out his life in the world. The higher the value of the property rights of an object, the higher the reward given to the object. Land is one of the most valuable properties for mankind, as well as for Indonesia⁴. Notary is a public official authorized to make an authentic deed and has other authorities as referred to in this Act or under other laws (article 1 UUJN). Whereas in the Procedure of Acquisition of Land Rights for Women Indonesian Citizen Tied Marriage Mixed from the positive law of Indonesia: The related rules are: Law no. 5 of 1960 on the Principles of Agrarian Affairs:

³ Decision No. 69/PUU-XIII/2015, p. 5.

⁴ Adrian Sutedi, *Peralihan Hak Atas Tanah dan Pendaftaran*, Sinar Grafika, Jakarta, 2013. p. 7

Article 9 Paragraph (1): provides that Indonesian citizens (WNI) may have full connection with earth, water and space; in other words, only Indonesian citizens can have the Right to Own (HM). For Foreign Citizens domiciled in Indonesia and foreign legal entities holding representation in Indonesia may be granted the Right to Use.

Article 21 paragraph 1: Only Indonesian citizens can have property rights and paragraph 3: Foreigners who after the entry into force of this Act acquire ownership rights due to the timeless inheritance or mixing of property due to marriage, as well as citizens who have property rights and after the entry into force of this Act lost that citizenship. If after such period of time the property rights have not been discharged, the right shall be void because the law and the land fall into the State, provided that the rights of the other party to which it is liable remain.

Article 41: the right to use is the right to use and / or collect the proceeds of land directly controlled by the State or the property of another person authorizing and liability as determined in the decision of his award by the competent authority to give it, or in agreement with the landowner. However, there is a concern when Indonesian women wish to remain Indonesian citizens in accordance with the Law on Citizenship No.12 of 2006 Article 26 (paragraph 3), that Indonesian women remain Indonesian citizens, so the couple can make a marriage agreement before marriage, at or after marriage (as long as), in accordance with the decision of MK no.69 / PUU-XIII / 2015, where a mixed marriage can make Marriage Agreement during marriage. Although according to Dina's mother the results of his questionnaire stated that:

"There are many people do not make pre-marriage agreements, so that they lose the right to land ownership and many do not know and illegally buy a house / land and often pretend developers do not know. Or many are in the KTP remain unmarried status. And he expects: In order for the state to be fair and to give equal rights to men and women Indonesians who marry foreigners in accessing land rights and that both men and women Indonesian citizens may have the right to access land ownership (SHM).

As for Mrs. Siti who is married to a foreigner does not make a marriage agreement and does not have the land with property right ".⁵

The reduction of Property Right on land to be HK Use in accordance with Article 2 (paragraph 1) Decree of the Minister of Agrarian Affairs / Head of National Land Agency Number 16 of 1997 concerning Change of Ownership Rights to Use Right or Use Right and Use Right to Use Right. According to the Notary (Ms. Murlina, SH Mkn and Ms. Riska, SH Mkn) Sleman-Special Region of Yogyakarta, Procedure of Acquiring Land Rights for Women Citizen Tied to Mixed Marriage: Indonesian Citizens who are married to Foreign Citizen Men may use Right to Use , if there is Building right, then it is firstly reduced to Right to Use. Later on, the process of declining rights, the selling process can be run with Right to Use. Since they have no marriage agreement. The foreigners may have a certificate of ownership of the Apartment.. According to PP 40 of 1996 on the Right to Use Enterprises concern on Building Right and Right to Use. After land derived by the land owner, it is registered to BPN (National Land Agency) to reverse name, eg on behalf of wife for UN (Land and Building Tax) completed in Deed of Sale and Purchase. ⁶

Constraints and solutions arising in obtaining Land Rights for Women Citizens bound to Mixed Marriage (Case Study of Court Decision Number 69 / PUU XII / 2015): have not made Marriage Agreement and domicile issue of a foreign national, whose domicile in LN, The solution makes a marriage agreement.

C. Conclusion

Based on the results of research and discussion that has been described in the previous chapter, the researchers can give the following conclusions:

1. Procedure of Acquiring Land Rights for Women Citizens Bound Mixed Marriage by the BPN (National Land Agency) is a

⁵ Results of Questionnaire from mother Dina who married husband United States citizenship, 26 Desember 2016.

⁶ Interview result with Mrs. Murlina, S.H., Mkn, di Kantor Notaris jl. Godean km 7 Sleman Yogya, pukul 15.00 sd 16.40, 6 February 2017.

general procedure, when people have married and there are mixed marriage assets and to facilitate the assets concerned, it is better to acquaint of rights to land using Right Use. If he purchases property rights equipped with the actual mechanism of the Vice Governor Circular, it is the release of rights and then used Right to Use. The first decline of land rights, which decreased the old landowners.

2. Constraints and solutions that arise in obtaining Land Rights for Women Citizens bound to Mixed Marriage (Case Study of Court Decision Number 69 / PUU XII / 2015) is the domicile of husbands abroad and the spouse does not make a marriage agreement. The solution is if Indonesian women want to marry with foreigners, then she should make Marriage agreement in Notary.

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Subekti dan Tjitrosudinio, *Kitab Undang-Undang Hukum Perdata*, cet ke-31, PT. Pradnya Paramita, Jakarta, tahun 2001

The Basic Agrarian Law No.5 of 1960