

THE LEGALITY OF GRANTS BY FOREIGN CITIZENS ON LAND OBJECTS IN INDONESIA: CASE STUDIES OF COURT DECISIONS

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Abstrak. *This study aims to examine and analyze the legality of granting by Singaporean citizens to Indonesian citizens before the Notary Public of Singapore on land objects located in the territory of Indonesia based on Decision No. 912/Pdt.G/2018/PA.Jmb. In addition, this study further analyzes the laws and regulations that should apply in handling grants case based on international civil law. This research was conducted using a normative juridical approach with analytical descriptive specifications. The literature study was used to obtain the legal materials needed in this research. The collected legal material is then analyzed using qualitative data analysis methods with a statute and case approach. The results show that the legality of granting the object of land wills in Indonesia from former Indonesian citizens who have become foreign citizens to Indonesian citizens based on Decision No. 912/Pdt.G/2018/PA.Jmb is invalid and void by law. This case is contrary to Article 21 section (3) of Law No. 5 of 1960 and Article 37 section (1) of Government Regulation No. 24 of 1997. Based on the concept of International Civil Law, that action can be categorized as law smuggling, namely an act committed in a foreign country and recognized as legal in that foreign country. As for immovable objects, the general principle accepted in international civil law has stated that immovable objects in their status are based on the principle of *lex situs* or *lex rei sitae*. Therefore, it is recommended that every foreign citizen who has land rights or other property rights in Indonesia must relinquish the right of ownership within one year. The granting of land rights or property rights must be made in the grant agreement before the Land Deed Official of Indonesia. Furthermore, the registration of the transfer of land rights will be carried out at the National Land Agency of the Republic of Indonesia. Thus, land rights or property rights will get guarantees, protection, and legal certainty to avoid disputes in the future.*

Keywords:
*Foreign Citizens;
Grants;
Land Deed Official;
Notary Public;
Wills.*

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INTRODUCTION

The need for land is currently increasing. This condition is in line with the increasing population in Indonesia.¹ In addition, the land is also an essential aspect of human life which is valued as a property that has a permanent nature. Therefore, humans compete to obtain and obtain rights to land. Furthermore, Humans conflict with each other, so there is a dispute between the parties involved fighting over the same land rights.

On the other hand, land can be obtained through gifts or grants. A grant is a legal action in the form of a deliberate transfer of rights by one party to another. The grantee receives and gets the land free of charge from the grantor.² In addition, the granting of land is carried out while the grantor is still alive.³ This condition is what distinguishes the grant from the will. In this case, the surrender of the will land carried out when the testator has died.⁴ Article 874 of Colonial Regulations, Staatsblad Number 23 of 1847 on the *Burgerlijk Wetboek voor Indonesie*/the Civil Code (hereinafter referred to as the Civil Code), regulates that:

“The assets which an individual leaves upon his demise, shall belong to his legal heirs, to the extent that he has not legally disposed of same by will.”

The above provisions indicate that if there is a valid will letter, then the inheritor must comply with the contents of the will letter. Whereas, if there is no will letter, then all the testator’s inheritance is the right and property of the inheritor. Related to inheritance in the form of the right of ownership to land, Article 20 Law of the Republic of Indonesia Number 5 of 1960 on Agrarian Basic Principles (hereinafter referred to as Law No. 5 of 1960) regulates that:

- (1) A right of ownership is the inheritable right, the strongest and fullest right on land which one can hold,
- (2) A right of ownership can be transferrable to other parties.

The above provisions indicate that the right of ownership to land can be transferrable to other parties, including inheritance.⁵ Right of ownership to land is a right to hold land granted by the State to related parties. In this case, to a person, group of people, domestic legal entities, and or foreign legal entities.⁶ The Civil Code regulates that every legal subject

¹Lestari, P. (2020). Pengadaan Tanah untuk Pembangunan demi Kepentingan Umum di Indonesia Berdasarkan Pancasila. *SIGn Jurnal Hukum*, 1(2), p. 74.

²Sanjaya, U. H. & Suprapton, M. Y. (2017). Kedudukan Ahli Waris yang Penerima Hibah dari Orang Tua terhadap Ahli Waris Lainnya pada Proses Pembagian Waris. *Jurnal Yuridis*, 4(2), p. 220.

³Budify, A., et al. (2020). Pembatalan Akta Hibah di Pengadilan Negeri Pematangsiantar: Kajian Putusan Nomor 33/Pdt.G/2019/PN.Pms. *SIGn Jurnal Hukum*, 2(1), p. 73.

⁴Rusydi, I. (2016). Hibah dan Hubungannya dengan Kewarisan Menurut Kompilasi Hukum Islam dan Hukum Perdata. *Jurnal Ilmiah Galuh Justisi*, 4(2), p. 155.

⁵Trovani, C. (2021). Hak Ahli Waris Berkewarganegaraan Asing terhadap Harta Warisan Berupa Tanah Hak Milik dari Pewaris Berkewarganegaraan Indonesia. *Indonesian Notary*, 3(1), p. 622.

⁶Ardani, M. N. (2017). Kepemilikan Hak atas Tanah bagi Orang Asing di Indonesia. *Law Reform*, 13(2), p. 207.

can have land rights without distinguishing between citizens and non-citizens.⁷ Unlike the case with Law No. 5 of 1960, which governs otherwise. Law No. 5 of 1960 as a rule whose position as *lex specialis derogat legi generali* has regulated more specifically and expressly regarding the provisions of the law on land.⁸ Law No. 5 of 1960 regulates that only Indonesian citizens and legal entities can have rights to certain lands.⁹ This provision is a fundamental rule on the right to national land ownership. In this case, only citizens have land rights, while foreign nationals do not have land rights in Indonesia.¹⁰

Law No. 5 of 1960 and laws and regulations on land related to the principle of Nationality caused various problems. For example, foreign citizens or foreign legal entities commit law smuggling to obtain land rights in some instances.¹¹ In essence, only Indonesian citizens can have an entire relationship with Indonesia's earth, water, and space. Meanwhile, it is only possible for foreign nationals to control land in the form of ownership of the right to use and or leasehold rights. The transfer of land rights can occur through legal action, such as sale and purchase, exchange, granting, a bequest by a will, entry into company capital (*inbreng*), or other legal actions. In this case, it must be by the agreement made before the Notary Public and or Land Deed Official.¹² In their authority as public officials, Land Deed Officials can make deeds as proof of land registration regarding land rights or right of ownership to condominium units. In addition, the land deed is also the basis for legal action on land registration.

The case of cancellation of grants at the Jambi Religious Court is one example of the problems referred to in the description above. In this case, the Decision of the Religious Court of Jambi Number 912/Pdt.G/2018/PA.Jmb (hereinafter referred to as the Decision No. 912/Pdt.G/2018/PA.Jmb) contains a case where a former Indonesian citizen gifted land located in Indonesian territory. This condition began when the inheritor, as a legal subject of a Singaporean citizen, received a will from his father to grant a plot of land located in the territory of Indonesia to a legal subject of an Indonesian citizen.

There have been several previous studies that have a discussion theme similar to this study. Paramita, *et al.*, discusses inherited land assets in Indonesia as the rights of inheritors with the status of foreign citizens.¹³ That research only discusses the right of inheritance to land based on laws and regulations in Indonesia. In contrast,

⁷Santoso, U. (2011). *Pendaftaran dan Peralihan Hak atas Tanah*. Jakarta: Kencana Prenada Media Group, p. 87.

⁸Sari, I. G. A. D., *et al.* (2018). Kewenangan Notaris dan PPAT dalam Proses Pemberian Hak Guna Bangunan atas Tanah Hak Milik. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 3(1), p. 47.

⁹Kolopaking, A. D. A. (2021). *Penyelundupan Hukum Kepemilikan Hak Milik atas Tanah di Indonesia*. Bandung: PT. Alumni, p. 5..

¹⁰Syarifuddin, M. S. A. (2021). Kedudukan Hukum dan Keabsahan Kepemilikan Hak atas Tanah Warga Negara Asing yang Berasal dari Pewarisan. *Notaire*, 4(3), p. 374.

¹¹Saraswati, A. A. R. & Yogantara, P. (2021). Peran Notaris dalam Menentukan Jangka Waktu Sewa-Menyewa Tanah terhadap Warga Negara Asing. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 6(2), p. 440.

¹²Hadiyanti, A. R., *et al.* (2017). Kedudukan Akta Hibah dalam Sengketa Kepemilikan Hak Atas Tanah. *Lentera Hukum*, 4(3), p. 222.

¹³Paramita, I. A. I. D., *et al.* (2018). Hak Ahli Waris Berkewarganegaraan Asing terhadap Harta Warisan Berupa Tanah. *Kertha Semaya: Journal Ilmu Hukum*, 6(2), pp. 1-5.

this study will analyze the rights of inheritors who are foreign citizens to land in Indonesia based on international civil law. In addition, Chayadi discussed inheritance as a form of transition from the right of ownership to the land before the Land Deed Official.¹⁴ In contrast, this study will discuss the preparation of a will letter before the Notary Public of Singapore, and then it is ratified in the Singapore Sharia Court. Furthermore, Supriyana, *et al.*, discusses the position of Indonesian citizens who have changed citizenship due to mixed marriages but obtained the right of ownership to land through inheritance.¹⁵ In contrast, this study will discuss the position of Indonesian citizens who have changed citizenship for personal reasons and still have land rights in Indonesia and do not transfer them within one year.

Based on the description above, this study aims to examine and analyze the legality of granting by Singaporean citizens to Indonesian citizens before the Notary Public of Singapore on land objects located in the territory of Indonesia based on Decision No. 912/Pdt.G/2018/PA.Jmb. In addition, this study further analyzes the laws and regulations that should apply in handling grants case based on international civil law. The benefit of this study is that the parties can understand the process of granting legal land rights to avoid law smuggling practices. In this case, the parties understand Indonesia and Singapore's principles, procedures, and legal rules.

METHOD

This study uses a normative juridical research method to analyze legal problems by referring to and originating from legal norms.¹⁶ In this case, laws and regulations are positive law and court decisions with permanent legal force. The types of data used are legal materials, including:

1. Primary Legal Materials include the Civil Code, Law No. 5 of 1960, Government Regulation No. 24 of 1997, and other laws and regulations;
2. Secondary Law Materials that explain primary law include books and articles that discuss inheritance, grants, wills, and materials obtained from the Internet; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach and a case approach which will then conclude the object of the research.¹⁷

¹⁴Chayadi, L. (2020). Implikasi Hukum atas Kedudukan Warga Negara Asing sebagai Ahli Waris untuk Hak Milik atas Tanah. *Jurnal Ilmiah Penegakan Hukum*, 7(2), pp. 159-168.

¹⁵Supriyana, A. G. O., *et al.* (2020). Status Hukum Tanah Hak Milik bagi Ahli Waris yang Pindah Kewarganegaraan Menjadi Warga Negara Asing. *Jurnal Interpretasi Hukum*, 1(2), pp. 7-11.

¹⁶Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group, p. 12.

¹⁷Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), pp. 47-48.

RESULTS AND DISCUSSION

The legality of grants from legal actions by foreigners to Indonesian citizens on land objects in Indonesia is invalid. However, land rights in Indonesia can be granted to a person or legal entity, both foreigner and Indonesian citizen. However, land rights for foreign subjects in Indonesia are minimal due to the principle of nationality. In this case, the right of ownership to land is not possible other than leasehold rights or rights to use to foreigners.

On the other hand, *lex situs* or *lex rei sitae* as a principle of International Civil Law requires that the rules applied to be based on the country's regulations where the immovable object is located. While the case regarding land grants in Decision No. 912/Pdt.G/2018/PA.Jmb is located in Indonesia, so this case must be based on laws and regulations in Indonesia. Therefore, the transfer of land rights by granting must be proven by a deed made by the competent Land Deed Official.

A. Grants Provisions in Indonesia

Provisions regarding grants are regulated in the Civil Code, precisely in Articles 1666 to 1693. Article 1666 of the Civil Code regulates that:

"A grants is an agreement, whereby the donor, while still living, grants assets voluntarily and irrevocably for the benefit of the done who accepts such. The law shall not acknowledge grants other than grants among the living."

The word "among the living" in the above provisions distinguishes between grants and wills. Grants have legal force when the parties carry out the transfer of land rights. Meanwhile, inheritance has legal power over the transfer of land rights after the testator dies.¹⁸ Furthermore, Article 1682 of the Civil Code regulates that:

"Any grants, with the exception of those regulated in Article 1687, may only take effect by notarial deed, and the original document must be kept with a notary and if it is not done so then the grant is invalid."

From the provision above, it can be understood that the existence of a notary deed will give legal force to the grantee. In this case, grants are an agreement made free of charge because one of the parties does not provide compensation.¹⁹ Therefore, the implementation of grants must go through an authentic deed procedure.²⁰ A Notary or Land Deed Official can make the authentic deed of the grant agreement if the object of the grant is in the form of land and or other immovable objects. The function of authentic deeds in grants is not merely evidence but also an essential requirement for the validity of grant approvals. Thus, grants are null and void if they are not made with an authentic deed before an authorized official, namely a Notary or Land Deed Official.

¹⁸Pramuvti, R. D. & Roisah, K. (2018). Akibat Hukum Pengalihan Hak atas Merek Terdaftar Berdasarkan Akta Hibah Wasiat. *Notarius*, 11(1), p. 137.

¹⁹Azikin, W. (2018). Hibah dan Wasiat dalam Perspektif Hukum Perdata (BW) dan Kompilasi Hukum Islam. *Meraja Journal*, 1(3), p. 83.

²⁰Sanjaya, U. H. & Suprpton, M. Y. (2017). *Op. Cit.*, p. 224.

Besides being regulated in the Civil Code, grants are also regulated in the Compilation of Islamic Law. Article 171 point g of the Compilation of Islamic Law explains that "*Grants are the giving of an object voluntarily and without compensation from one person to another living person to have.*" Meanwhile, according to sect Hanafi, grants are defined as giving ownership of an object immediately without promising anything in return.²¹ In this sense, the word "immediately" is an exception to the will because the will gives property without compensation, but the surrender is carried out in the future.

In Islamic law, the release of property by giving can be in the form of grants, wills, prizes, and alms.²² If the giver aims so that the receiver can take advantage of a gift at that time, then the act is giving grants. If the giver aims so that the receiver can take advantage of a gift in the future, then the act is giving will. If the giver aims to express affection and or strengthen the relationship, the act gives a prize. If the giver aims to get the reward of the hereafter, then the act is giving alms. Furthermore, based on Article 210 section (1) of the Compilation of Islamic Law, it regulates that:

"People who are at least 21 years old, rational, without coercion can grant up to 1/3 of their property to other people or institutions in the presence of two witnesses to own it."

From the provision above, it can be understood that grants can only be done by someone at least 21 years old. A person under 21 is still considered incompetent in granting his wealth. In addition, the provision of grants must not exceed 1/3 of the ownership so that the heirs continue to benefit more than the benefits obtained by the grantee. Furthermore, giving grants must be witnessed by at least two witnesses to anticipate problems that may arise in the future.²³

As for the cancellation of grants based on Article 212 of the Compilation of Islamic Law regulates that "*Grants are non-refundable, except for parental grants to their children.*" These provisions can be understood that the cancellation or withdrawal of a grant is a forbidden act, except for grants given by parents to their children.²⁴

Based on the description above, it can be understood that the legality or validity of grants action in Indonesia if they consist of grantor and grantee, object, and contained in an authentic deed made by a Notary or Land Deed Official.

²¹Kamarusdiana, K. & Salsabila, Z. (2019). Disparitas Putusan Hibah: Studi Analisis di Pengadilan Malang, Pengadilan Agama Tinggi Surabaya dan Mahkamah Agung. *Jurnal Indo-Islamika*, 9(1), pp. 93-94.

²²Abdoeh, N. M. (2020). *Hibah dalam Tinjauan KHI, KUHPerdara, Sosiologis, dan Filosofis*. Salatiga: LP2M Press, p. 4.

²³Suisno, S. (2017). Tinjauan Yuridis Normatif Pemberian Hibah dan Akibat Hukum Pembatalan Suatu Hibah Menurut Kompilasi Hukum Islam (KHI) dan Kitab Undang-Undang Hukum Perdata. *Jurnal Independent*, 5(1), p. 19.

²⁴*Ibid.*, p. 20.

B. Grants Provisions in Singapore

Grants in Singapore mean prizes. A Muslim in Singapore can give whatever he has and any amount for free to others. The grantor or donor may immediately transfer the right of ownership to the granted object to the grantee or donee. As an alternative, the grantor will sign a Deed of Gift document to state that he has given the prize to the grantee.²⁵ For a grant act to be valid, at least the grantor has the legal capacity for the object of the grant and has the legal capacity to provide the object of the grant to the grantee. Provision of grants must clearly state that the grantor provides grants to the grantee without any remuneration, including payment in cash or other forms of compensation from the grantee to the grantor.²⁶ In addition, there are several legal requirements for grants, and if the provisions are not followed, the granting may be declared null and void by law. Some of these conditions include that the grantor is still a minor, incompetent, physically and mentally unhealthy, and under pressure or coercion. Furthermore, if a foreign citizen receives land, residential, and property grants, the granting process must obtain approval from the competent authority. If the grants do not obtain approval from the competent authority, then within ten years after the date of death of the grantor, the object of the grants must be sold. In this case, the grantee must sell it to a Singaporean citizen or foreign national who has the approval of the competent authority.²⁷

Regarding the proportion of grants, Singapore also imposes a maximum limit that cannot exceed 1/3. The rest of the testator's estate must pass in a fixed proportion to the inheritor unless all inheritors consent to deviate from the rules.²⁸ A Muslim person in Singapore will be subject to Sharia Law Singapore and Singapore Act. A will made by a Singaporean who is a Muslim must comply with the provisions of Sharia Law in Singapore. The will letter is a legal document containing the testator's wishes or messages to the inheritor.²⁹ In this case, it contains the rules for the distribution of inheritance to the inheritor after the testator dies. There are several things in making a will in Singapore, including the testator, who must be at least 21 years old, reasonable, and physically and mentally healthy. The signing of the will letter must, of course, be witnessed by at least two people, except that the male Muslim inheritor may not be a witness.³⁰ In addition, there are differences between Sharia Law and Civil Law regarding the making of a will letter containing inheritance. In Sharia Law, making a will

²⁵Administrator. (2020, 29 April). Overview of Hibah. *IRB Law LLP*. Retrieved at the date of March 13, 2022.

²⁶*Ibid*.

²⁷Nur, A. R. (2018). Penguasaan Tanah oleh Orang Asing dalam Perspektif Hak Bangsa. *Mulawarman Law Review*, 3(1), p. 85.

²⁸Administrator. (2022, 7 February). Using Hibah for Muslim Estate Planning in Singapore. *Singapore Legal Advice*. Retrieved at the date of March 13, 2022.

²⁹Sanjaya, U. H. (2018). Kedudukan Surat Wasiat terhadap Harta Warisan yang Belum Dibagikan Kepada Ahli Waris. *Jurnal Yuridis*, 5(1), pp. 67-68.

³⁰Administrator. (2022, 7 February). *Loc. Cit*.

letter can contain the distribution of inheritance to other than inheritors, called *faraidh* inheritors. However, the *faraidh* inheritor cannot have more than 1/3 of the testator's inheritance. Furthermore, the inheritance obtained by the *faraidh* inheritor cannot be contested by the inheritor. However, the provisions for making such a will letter do not apply to grants.

Sharia Court Singapore³¹ can also issue an inheritance certificate at the petitioner's request who claims and can explain a series of facts that his position is legal as an inheritor. However, in issuing the inheritance certificate, Sharia Court Singapore did not investigate a series of factual explanations from the petitioner.³² Therefore, the Sharia Court Singapore only made an inheritance certificate document without examining the validity and correctness of the facts presented by the petitioner.

The inheritance certificate will be used as the basis for the distribution of inheritance from the testator based on Sharia Law applicable in Singapore. In this case, the Public Trustee³³ must submit a Grant of Letters of Administration or Grant of Probate in the Family Justice Courts.

The Singapore Act also regulates the status of property rights in inheritance, where the rights of ownership residing abroad can be contained in a will. However, these regulations refer to the type of right of ownership by the testator. For example, the right of ownership testator is a movable object, such as a motor vehicle, savings account, or jewelry. In this case, it must be based on Section 5 subsection (2) of the Statutes of the Republic of Singapore of 2020 Revised Edition on Wills Act 1838 (hereinafter referred to as the Wills Act 1838), which regulates that a will shall be treated as properly executed if its execution conformed to the internal law in force:

- (a) in the territory where it was executed;
- (b) in the territory where the testator was domiciled at the time:
 - (i) when the will was executed; or
 - (ii) of his death;
- (c) in the territory where the testator habitually resided at either of the times referred to in paragraph (b); or
- (d) in the state of which the testator was a national at either of the times referred to in paragraph (b).

³¹Sharia Court Singapore is one of the institutions for dispute resolution between the parties with a resolution based on sharia law applicable in Singapore.

³²Black, A. (2012). Replicating 'A Model of Mutual Respect': Could Singapore's Legal Pluralism Work in Australia? *The Journal of Legal Pluralism and Unofficial Law*, 44(65), pp. 80-81.

³³The Public Trustee is the party authorized to manage the inheritance property of the deceased testator. The value of the inheritance property does not exceed \$50,000 (fifty thousand Singapore dollars) and is under the supervision of the Ministry of Law Singapore.

From the provision above, it can be understood that if movable object rights located abroad are written in a will, then the object has become a legal subject based on the Wills Act 1838. For example, a testator has movable object rights located abroad and inherited by an underage inheritor. In addition, the child has a trustee. Therefore, the trustee can apply to the courts in Singapore as a child trustee. In this case, the Singapore court's decision will be the basis for the child trustee to use the movable object located abroad. This provision also legitimizes wills made under Sharia Law in Singapore.³⁴

In contrast, if immovable object rights are located abroad, such as land, condominiums, or houses. In this case, the will's validity is not directly subject to the place of manufacture of the will or the testator's citizenship. Based on the Wills Act 1838, immovable object rights must be subject to state regulations based on where the immovable object is located. For example, if the testator has land rights in Germany, then matters concerning the land must be subject to the jurisdiction of German law.

In practice, the testator makes a will in Singapore but is not accepted in the jurisdiction of other countries' courts will undoubtedly cause problems. This condition presents legal consequences where the inheritor cannot take legal action on the right to ownership of both movable and immovable objects in that country. This condition also often occurs when a will made abroad is brought before a legal jurisdiction that adheres to a civil law system such as Indonesia. The transnational property rights of ownership problem will always be encountered. In this case, the laws and regulations differ from one country to another.

C. Legality of Grants in Decision No. 912/Pdt.G/2018/PA.Jmb Based on International Civil Law

Decision No. 912/Pdt.G/2018/PA.Jmb has decided and adjudicated the lawsuit on the request for cancellation of the grant on a land object located in Indonesia. In this case, the grantor as a legal subject of a Singaporean citizen provides grants on land rights to the grantee as a legal subject of an Indonesian citizen. The incident began in 1963 ago. AM, as the grantor, is an Indonesian citizen who changes citizenship to become a Singapore citizen. Since AM changed citizenship, AM did not transfer the right of ownership to land but only entrusted the management and utilization of the land to AS as another party. From 2005 to 2018, as the grandchildren of AS, DI managed that land. DI as Defendant I in Decision No. 912/Pdt.G/2018/PA.Jmb.

The dispute began when the inheritor of AM, a Singapore citizen, claimed to be the owner of land rights in Indonesia. This condition is proven by the inheritor of AM with the ownership of the inheritance certificate. The Singapore Sharia

³⁴Administrator. (2020, 4 June). Muslim Wills vs Regular Wills, What Is the Difference? *Emerald Law*. Retrieved at the date of March 15, 2022.

Court issued that inheritance certificate on December 21, 2016. In addition, the inheritor of AM also stated that the late AM had made a will letter explaining that the land in question had been granted to DI before he died. Based on these conditions, the inheritor of AM began to take care of all matters related to the grant based on the will letter by AM. The Inheritor of AM then makes a deed of grant to DI before AR as the Public Notary of Singapore. That grant deed was also legalized by the Embassy of the Republic of Indonesia in Singapore on January 3, 2017. In contrast, the plaintiff argues that the granting based on the Land Deed Official deed on a piece of land is wrong. According to the plaintiff, the land does not yet have a certificate, so making the grant deed is only administrative action.

Meanwhile, the Judge stated that essential aspects must be considered in testing the validity of the grant implementation. There are grantors, grantees, and objects of grants. Inheritor of AM, as Defendant II to IV, is the grantor. DI as Defendant I is a grantee. A plot of land covering an area of 8,000 m² in Solok Sipin Urban Village is the object of the grant. Therefore, the Judge considered that the validity of the implementation of this grant was considered complete. However, the Judge also considered that granting by the Inheritor of AM, which made a deed of grant to DI before AR as the Public Notary of Singapore, was deemed illegal by law.

The Panel of Judges, in their decision, after considering and so on, remembers, adjudicates that:

- a. In Exception: rejecting the exception of the Defendant;
- b. In the Convention: rejecting the claim of the Plaintiffs in their entirety;
- c. In the Re-Convention: stating that the Plaintiff's claim in the Re-Convention is unacceptable;
- d. In Conventions and Re-Convention: to punish the Plaintiffs of Re-Convention/ Defendants of Re-Convention to pay for this case in Rp. 2,696,000.00 (two million six hundred ninety-six thousand rupiahs).

As described above, the judge's considerations in Decision No. 912/Pdt.G/2018/PA.Jmb states that the grant made by the inheritor of AM to DI is an act that is contrary to the applicable legal provisions. However, these considerations are explained with limited interpretation. Meanwhile, the legality of the grant from the legal action should be reviewed in a rigid and in-depth manner based on International Civil Law.

The basic rules of International Civil Law are in Article 16, Article 17, and Article 18 Colonial Regulations, Staatsblad Number 23 of 1847 on *Algemene Bepalingen van Wetgeving voor Indonesie*/The General Regulations of Legal Provisions for Indonesia (hereinafter referred to as the AB). These provisions

are still in effect today.³⁵ These provisions guide in determining the criteria and classification of civil cases. In this case, there are two main principles, namely, *lex fori* and *lex situs* or *lex rei sitae*. *Lex fori* is a principle used under the law where the lawsuit is filed. *Lex situs* or *lex rei sitae* is a principle that can be used based on the law where the object is located.³⁶ These two principles are based on another law, namely the principle of *Mobilia Sequuntur Personam*.³⁷ As for immovable objects, the general principle accepted in international civil law has stated that immovable objects are in their status are based on the principle of *lex situs* or *lex rei sitae*. In the legal system in Indonesia, this condition is based on Article 17 of the AB, which regulates that “for immovable objects, the law of the country or the place where the property is located shall apply.” Similar conditions are also found in Section 5 subsection (3) paragraph (b) of Wills Act 1838, which regulates that:

“Without prejudice to subsection (2), the following shall be treated as properly executed a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated.”

From the above provisions and related to Decision No. 912/Pdt.G/2018/PA.Jmb, then the applicable principle based on International Civil Law is the principle of *lex situs* or *lex rei sitae*. The object of the grant given by the inheritor of AM to DI is a plot of land located in Indonesia. Applying the principle of *lex situs* or *lex rei sitae* then has legal implications for the ownership status of immovable object rights.

On the other hand, the Singapore Sharia Court did not investigate the facts in issuing the inheritance certificate. Thus, the inheritance certificate issued by the Singapore Sharia Court is automatically null and void. Furthermore, the grant deed made by the Public Notary of Singapore, later legalized by the Embassy of the Republic of Indonesia in Singapore, is null and void. In this case, the inheritance object is located in Indonesia, so it must comply with Article 21 section (3) of Law No. 5 of 1960. In addition, the implementation of wills and grants must also comply with the laws and regulations that apply in Indonesia. By complying with the laws and regulations that apply in Indonesia, there will be no legal conflicts, no new legal problems and the implementation of wills and grants will receive legal protection and certainty in Indonesia.

³⁵Memi, C. (2017). Penerapan Klausul Pilihan Yurisdiksi (Choice of Jurisdiction) dan Pilihan Hukum (Choice of Law) dalam Penyelesaian Sengketa Bisnis Internasional (Studi Kasus: Perkara PT. Symrise Melawan PT. Mega Suryamas). *Era Hukum: Jurnal Ilmiah Ilmu Hukum*, 15(2), p. 185.

³⁶Dwisana, I. M. A. & Resen, M. G. S. K. (2021). Pembuktian Harta Bersama dalam Perceraian Perkawinan Campuran tanpa Perjanjian Kawin di Indonesia. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 6(3), pp. 570-571.

³⁷In developing International Civil Law, this principle is also suitable for cases involving immovable objects. However, the principle of *Mobilia Sequuntur Personam* is applied to cases involving movable objects. The principle of *Mobilia Sequuntur Personam* means that a movable object follows the person. In other words, movable objects are regulated and subject to national laws or the domicile of the movable object rights owner.

The status of property rights by AM and his inheritors in Indonesia is based on Article 21 section (3) of Law No. 5 of 1960 regulates that:

“A foreigner who, following the entry into force of this Law, acquires a right of ownership by way of inheritance without a will or by way of joint ownership of property resulting from marriage and an Indonesian citizen holding a right of ownership who, following the entry into force of this Law, loses Indonesian citizenship is obligated to relinquish that right within one year following the date the right of ownership is acquired in the case of the former or following the date upon which Indonesian citizenship is lost in the case of the latter. If following the expiry of the time periods, the rights is not relinquished, then the right is nullified for the sake of law and the land falls to the State with the provision that the rights of other parties which encumber the lands remain in existence.”

Article 837 of the Civil Code regulates that:

“In the event that an inheritance, which includes assets inside and outside Indonesia, is divided among foreigners, non-residents, and Dutch citizens, the latter-mentioned shall take an advance, in proportion to their share in the inheritance and the value of the assets, which they would otherwise have been precluded from pursuant to foreign laws or customs. The value advanced shall be taken from the assets in the inheritance which are not subject to this exclusion.”

From the provision above, it can be understood that foreign heirs are not entitled to the right of ownership to property which is the object of inheritance. Meanwhile, an inheritance law principle explains that when a person dies, all of his rights and obligations are immediately transferred to the inheritor.³⁸ If the inheritor is a foreign citizen, he must first have permission to live in Indonesia. In contrast, if the inheritor does not meet the requirements as the rightful owner, then the inheritor must relinquish or transfer the land rights or other property rights to other parties who meet the requirements. Granting in Indonesia is based on Article 37 section (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration (hereinafter referred to as Government Regulation No. 24 of 1997), which regulates that:

“The transfer of land rights and rights of ownership to condominium units through sale and purchase, exchange, granting, income in the company, and other legal actions for transferring rights, except for the transfer of rights through auction can only be registered if it is proven by a deed made by the authorized Land Deed Official according to the provisions of the applicable laws and regulations.”

From the provision above, it can be understood that the inheritor of AM making a grant deed to DI before AR as the Public Notary of Singapore is an action that is against the law. Supposedly, the Inheritor of AM made a grant deed to DI before the Land Deed Official of Indonesia.

³⁸Moechthar, O. (2017). Kedudukan Negara sebagai Pengelola Warisan atas Harta Peninggalan tak Terurus Menurut Sistem Waris Burgerlijk Wetboek. *Yuridika*, 32(2), pp. 292-293.

In order to fulfill the element of legal certainty related to Decision No. 912/Pdt.G/2018/PA.Jmb, Judges should strictly and rigidly consider the elements in Article 17 of the AB as the basis for international civil law. Article 17 of the AB explicitly regulates immovable objects, regardless of the owner's citizenship status of the property. This consideration is essential because International Civil Law functions as a guiding principle for Judges in finding and making laws that will then be enforced. With this consideration, Article 17 of the AB means that the place where the immovable objects are located is a determining link point that must be used to determine a *lex causae* in the case of Decision No. 912/Pdt.G/2018/PA.Jmb.³⁹

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the legality of granting the object of land wills in Indonesia from former Indonesian citizens who have become foreign citizens to Indonesian citizens based on Decision No. 912/Pdt.G/2018/PA.Jmb is invalid and void by law. In this case, the status of property rights by AM and his inheritors in Indonesia is contrary to Article 21 section (3) of Law No. 5 of 1960. Furthermore, the inheritor of AM made a grant deed to DI before AR as the Public Notary of Singapore is contrary to Article 37 section (1) of Government Regulation No. 24 of 1997. Based on the concept of International Civil Law, that action can be categorized as law smuggling, namely an act committed in a foreign country and recognized as legal in that foreign country. In addition, the transnational property rights of ownership problem will always be encountered because the laws and regulations differ from one country to another. As for immovable objects, the general principle accepted in international civil law has stated that immovable objects in their status are based on the principle of *lex situs* or *lex rei sitae*. In the legal system in Indonesia, this condition is based on Article 17 of the AB. Based on the description of these conclusions, it is recommended that every foreign citizen who has land rights or other property rights in Indonesia must relinquish the right of ownership within one year. The granting of land rights or property rights must be made in the grant agreement before the Land Deed Official of Indonesia. Furthermore, the registration of the transfer of land rights will be carried out at the National Land Agency of the Republic of Indonesia. Thus, land rights or property rights will get guarantees, protection, and legal certainty to avoid disputes in the future.

³⁹In this case, a case handled by a judge is determined by him whether this case is a *realia* case, a *personalia* case, or a *mixta* case. In the doctrine of International Civil Law, the status of an object's case is *lex causae* from the case, namely the law where the object is located.

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