# Land Tenure in Indonesia By Citizens Foreigners in Dual Citizenship Status

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**Abstract.** Foreign nationals' rights to land ownership under Law No. 5 of 1960's Basic Agrarian Principles Regulations and Law No. 12 of 2006's Citizenship Law. Dual citizenship refers to the possession of both foreign and Indonesian citizenship by a single individual. The ownership of common property in marriage is impacted by the presence of mixed marriages in Indonesia. The ownership of specific items can also be considered a sort of joint property in a marriage. The most potent and inherent right that may be possessed over property in Indonesia is the right of ownership, which is one of them. The ownership status of land rights acquired by foreigners via the blending of marital assets in marriages between Indonesian natives, however, is a problem that frequently arises. Therefore, the purpose of this research publication is to investigate in more detail the status of land rights in Indonesia that are held by foreigners through mixed marriages.

**Keywords:** Land Tenure, Foreign, Dual Citizenship

## 1 Introduction

Marriage is something that every human being who has grown up will definitely go through. Marriage is an inner bond for life to sail the ark of an eternal and eternal household, between a man and a woman called husband and wife). The most important goal of a marriage is none other than to produce children who will carry on the family line. Marriage itself has the essence of forming a harmonious household which is always in accordance with religious norms in accordance with the provisions of God Almighty.

The development of information and telecommunications technology has resulted in various telecommunication facilities and sophisticated information technology products that can become one with all information media (Utama & Mahasanti, 2021). In this age of globalization, one advantage of the expansion of information and communication technology is that it makes national borders seem to vanish. That is, people easily communicate with others without being limited by region and time. A person in a country can communicate easily with other people who are in different parts of the world at the same time. The presence of global network technology, commonly known as cyberspace or the internet, supports this. One may readily con-


M. Umiyati et al. (eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, Advances in Social Science, Education and Humanities Research 804,
https://doi.org/10.2991/978-2-38476-180-7_82

verse internationally thanks to the internet and developments in information and communication technologies. This does not preclude the notion that a person might be in a relationship while also being wed. This element contributes to mixed marriages. "Interracial relationships are defined in terms of race, critical race theory, centrally focused on the inherent Black/White binary in American society" is a definition of intermarriage (Luther & Rightler-McDaniels, 2013).

Mixed marriage also occurs in Indonesia, the term mixed marriage in Indonesia which is often expressed by members of everyday society, is mixed marriage due to differences in customs or diverse ethnic groups, or because of religious differences between the two people who will perform marriage. Customary differences such as marriage between Balinese and Javanese customs. While mixed marriages between religions, for example between Muslims and Hindus, and so on.

Specifically, "what is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality, and one of the parties is an Indonesian citizen," according to Article 57 of Law Number 1 of 1974 concerning Marriage. Article 26 of Law Number 12 of 2006 Concerning Citizenship of the Republic of Indonesia refers to mixed marriages and says that it offers Indonesian individuals the option to maintain or renounce their citizenship. Joint property in marriage is defined as "Property acquired during marriage becomes joint property" under Article 35 of Law Number 1 of 1974 Concerning Marriage in the presence of marriage with a dual status model; As long as the parties don't agree otherwise, each husband and wife's property, as well as any property they receive as gifts or inheritance, will remain under their respective jurisdiction. Control over the ownership of some items can also be considered joint property in a marriage. The right to land is the most common kind of ownership.

In the meanwhile, Law Number 5 of 1960 covering Basic Regulations on Agrarian Principles governs property ownership rights in Indonesia (Urip Santoso, 2015). Agrarian principles are specifically controlled in Article 20 Paragraph 1 of Law Number 5 of 1960, which states that "Property rights are hereditary, strongest, and fullest rights that people can have over land, bearing in mind the provisions in Article 6." However, there are several instances when questions about the status of ownership rights over land are raised by mixed marriages between foreign nationals and Indonesian natives. One example of a case is that occurred in Ruteng District, Manggarai-Flores Regency in Menjerite, West Manggarai in 2017, where Robert, an Australian citizen who claimed to have land rights, where the land was owned in the name of Fauziah who is an Indonesian citizen of the Bugis tribe. Robert says Fauziah is his wife but he does not say when they married and Robert still admits that the land is his.

Based on the above explanation, this research needs a philosophical analysis. The authors can also deepen, understand, and live truly and precisely and put it in the form of a journal with the title "Land Tenure in Indonesia by Foreign Nationals through Mixed Marriage in Legal Philosophy". Because of the fact that there are many irregularities and legal uncertainties from the consequences of these legal relationships. Where from the existing facts, it often causes confusion regarding the status of ownership rights over land that already exist in Indonesia.

## 2 Method

This research uses normative legal research as a method to solve the problems discussed. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced. Also called a document study, therefore library materials become basic data in helping to solve the problem in question (Soerjono & Mamudji, 1995). Researchers choose two approaches, namely legislative or conceptual. The legislative approach is an approach to examine the rules and regulations relating legal issues (Wiswamitra et al., 2022).

## 3 Discussion

Land is an immovable object that can be owned by a person so it is appropriate that things about land are regulated in a law. Customary law, which divides ownership of property based on inheritance, has been regulating the land sector requirements prior to being controlled in a statute. Law No. 5 of 1960 establishing Basic Regulations on Agrarian Principles is the legislation in Indonesia that governs land matters. The 1945 Constitution, which grants the state authority over the soil, sea, and space, is implemented by Law Number 5 of 1960 establishing Basic Regulations on Agrarian Principles.

The people of Indonesia, who have joined to form the Indonesian Nation, are the true owners of all land in all regions of the Republic of Indonesia, according to Article 1 of Law Number 5 of 1960 establishing Basic Regulations on Agrarian Principles. The land that belongs to the Indonesian country is given to the State of the Republic of Indonesia, with the directive that it "be used as much as possible for the prosperity of the Indonesian people," in accordance with Article 33 paragraph (3) of the 1945 Constitution."

Therefore, every Indonesian citizen is allowed to control and use the jointly owned land with any rights provided by the Land Law, except those expressly not allowed by the relevant regulations, such as Management Rights. Thus, the state has full power to regulate land issues in Indonesia so that the state can make rights that can be attached to a land. Land rights granted by the state to individuals or legal entities are juridical evidence of control over land rights so that other parties cannot interfere with these rights. It can also be said that the subject of the right to a land will get legal protection and indirectly negate the right for other parties who are not interested to take over the rights to the land.

It is represented in relation to Article 1 paragraph 1 of Law Number 5 of 1960 about Basic Regulations on Agrarian Principles "all Indonesian people" have the right to "all Indonesian territory", this reflects that all Indonesian people have equal rights to the unity of Indonesian territory; and "all Indonesians" are considered "as Indonesians". However, in the perspective of legal theory, it is not possible for a legal norm regulated in the law to have a higher position than other legal norms. This is because in the theory of legislation there is a norm lex specialis derogat legi generalis, that

legal provisions that have a more specific and equal regulatory dimension override legal norms that have a more general and equal regulatory dimension. In other words, if Law Number 5 of 1960 covering Basic Regulations of Agrarian Principles is a more broad norm, then it cannot be utilized as a reference standard for the formation of laws within.

1. The Theory of Social Change (Auguste Comte)

The existence of social change in human life has been conveyed by Auguste Comte. Auguste Comte argued that the greatest influence came from intellectual evolution. In positivism, Comte later argued that humans were undergoing evolution or experiencing stages of progress in thinking. Comte, then formulated human development into 3 stages or levels (Soekanto, 1983).

a. Theological Stage

This stage is the longest period in history. Because the beginning of the development of reason uses religious ideas that there is no mastery over other beings. This stage is also divided into three periods:

1) Fetishism Period
   The form of thought of primitive peoples is the belief in spirits or subtle nations that live with us. This can be seen in ancient times where spirits worship ceremonies were held to ask for help and protection.
2) Polytheistic Period
   This period people have believed in the form of earth rulers, namely gods who continue to control all natural phenomena.
3) Period of Monotheism
   As human thought progressed, in this last period there was a belief in one that was high in the Middle Ages. The belief in a God who has full power over the universe, governs all the phenomena of nature and the destiny of creatures.

b. Metaphysical Stage

The stage of transition from theology to the positive stage. Where all social phenomena there is a power that can be revealed (found with reason). But here there is no verification. Although the illumination of nature itself has not been based on empirical data. So, it can be said that it is still a shift in the way of human thinking.

c. Positive Stage

At this stage natural phenomena are explained empirically but not absolutely. But knowledge can change and improve along with human intellect so that it can be applied and utilized. Reason is important but it must be based on empirical data in order to obtain new laws.

From this theory it can be seen that with the intellectual evolution or development of this thought causes social changes between human relations with other humans in society. At first, the thinking of a human being was only limited to theological thinking, namely the thought of human reason about the existence of a belief, man prioritized his life to interact with spirits or gods according to his beliefs at that time, while interaction with other humans was only done to meet his primary needs. Furthermore, human thought began to develop in the direction of positivism where humans are very dependent on others in meeting their needs, both primary and secondary.

With the positivist nature of thinking and supported by the rapid development of information and technology, it triggers humans to interact with other humans despite differences in distance and time. For example, human interaction carried out through social media or smartphones, this allows someone in a country to establish relationships with people in other countries which in this era is considered to be commonplace. Furthermore, this is also what causes mixed marriages to often occur in Indonesia. With the frequent occurrence of mixed marriages that occur in Indonesia, it causes problems in determining ownership of an object, especially the consequences of land ownership in Indonesia that arise due to mixed marriages and dual citizenship.

2. Definition and Concept of Property Rights

The understanding and concept of property rights according to philosophy can be seen from the views of jurists who have long studied property rights in the study of legal philosophy. A jurist who studies property rights specifically in legal philosophy is Roscoe Pound. In his book he stated "property rights in the broadest sense include incorporeal property. Property rights as origin rights (originair recht) because with property rights can occur other rights which are derivative rights (afgeleide rechten)" (Pound, 1996).

The root right here relates to the power of property rights and exceeds other rights. Property rights as a property right regulated in the Indonesian Civil Code originating from the Dutch Burgerlijk Wetboek, are understood as an absolute right and are the parent right and are the source of ownership as in article 570 of the Civil Code. The right to make an object fully in full possession and to possess that thing freely as long as it does not contradict the law. From the concept of civil law, property rights are focused on the control of an object and the legal relationship of people with an object. Ownership is always associated with power, who is the owner and who is able to control and use the object (Sondakh, 2014).

From these property rights arise various inherent rights and include, for example, ownership of an object that allows someone to use and enjoy rights to the object. When compared to other property rights, it may be claimed that property rights are the most significant material rights. Property rights include the following features, according to Prof. Sri Soedewi Masjchoen Sofwan: (Terstruktur et al., n.d.)

1. Property rights are superior to other property rights;
2. The most comprehensive set of rights are property rights;
3. Property rights are unaffected by other property rights since they are enduring;
4. The essence of other things is their right to property (Listyanti & Griadhi, 2012)

Although property rights are the primary form of property rights, they are subject to a number of limitations, including:

1. rules and regulations in general;
2. not a source of interference;
3. Potential for onteigening;
4. Neighbor law;
5. violation of rights.

Then, in general, how to obtain property rights is regulated in Article 584 of the Civil Code, namely:

1. Ownership / registration (toeeigening);

2. Attachment / follow-up (natrekking);
3. Decade / past time (verneting);
4. Inheritance (erfopvolging), both according to law and inheritance certificates;
5. Appointment / submission (levering)

From the understanding and concept of property rights that have been briefly described above, it means that in principle, private property rights are the most important rights that a person has. Property rights are the main property rights and there are restrictions on these rights. The Civil Code has regulated how to obtain property rights, and it is clearly stated that there is no acquisition of property rights due to mixed marriages.

Only citizens of Indonesia may have ownership rights to land, according to Article 21 Paragraph 1 of Law Number 5 of 1960 about the Basic Regulations of Agrarian Principles. For someone to have ownership rights over property, this right must be satisfied in full. The notion of nationality is expressed in Law No. 5 of 1960's Article 21 Paragraph 1 about Basic Regulations on Agrarian Principles. Differences in treatment between Indonesian citizens and foreign nationals result from the implementation of the nationality concept imposed by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles in the ownership of property rights over land (Roestamy, 2011).

As a result, the provisions of Law Number 5 of 1960's Basic Regulations on Agrarian Principles, specifically Article 21 Paragraph 3 of that law, which states that "Foreigners who after the enactment of this Law acquire property rights due to inheritance without a will or mixing of property due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law lose their citizenship," apply.

within a year after acquiring such right or losing citizenship, shall waive that right. If after that time the property is not given up, the property will cease to be abolished by law and will pass to the state, provided that the rights of the parties who have encumbered it will remain in effect."

According to the explanation in Article 21 Paragraph 3 of Law Number 5 of 1960's Basic Regulations on Agrarian Principles, foreign nationals are not permitted to own land rights. However, if a foreign national acquires a property right as a result of an inheritance or a mixed marriage with an Indonesian citizen following the passage of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the foreign national or Indonesian citizen who obtains a title to land jointly or personally must give up the right within 1 (one) year of the land right's acquisition or at the time of the loss of his citizenship. The right will be legally revoked and the state will take control of the land that is the subject of the property right if there is still no surrender of title to the property after the allotted time period.

Release of these rights may be accomplished through sale or grant, or in accordance with the provisions of Article 26 Paragraph 1 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which states that "Sale, exchange, grant, gift by will, gift according to custom, and other acts intended to transfer property rights and supervision are regulated by Government Regulation." The transfer of property rights to third parties is possible. The transfer of ownership rights to land

from one party to another as a result of a legal act is referred to as a transfer or transfer of rights.

The following is detailed in Article 2 Paragraphs 1 and 2 of Government Regulation Number 103 of 2015 respecting Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia with regard to other arrangements:

(1) Foreigners having a Right of Use may own a home for their own use.
(2) Foreigners who are in possession of a stay permit in Indonesia in accordance with the rules of laws and regulations are permitted to own the residential home or dwelling referred to in paragraph (1).

Therefore, only the right of use of land used as a house or place of business is permitted for foreign nationals; ownership rights to land are not permitted. Foreign nationals may get the right to use in accordance with the guidelines in Article 41, Paragraphs 2 and 3, of Law No. 5 of 1960 Concerning Basic Regulations on Agrarian Principles, specifically:

(2) The right of use may be granted:
   a. for a certain period of time or as long as the land is used for a particular purpose;
   b. free of charge, with payment or provision of services of any kind.
(3) The granting of the right of use shall not be accompanied by conditions containing elements of extortion" (Utama, 2018).

The power to use land is granted by the decision of its grant by the official authorized to grant it or in agreement with the owner of the land, and it entitles the holder to recoup proceeds from land directly controlled by the state or land owned by others. A certificate with the status of "right to use" for a duration of 30 (thirty) years may be extended for a second time for a total of 20 (twenty) years. Foreign nationals are also permitted to exercise the right to rent buildings in addition to the right of usage. According to Law No. 5 of 1960, which deals with the fundamental rules governing agrarian principles, "(1) A person or a legal entity has a leasehold right to land, if he or she has the right to use land owned by another person for building purposes, in exchange for paying the owner a sum of money as rent." Building leasehold rights allow the holder to utilize another person's land for construction projects in exchange for a fixed rent payment to the landowner.

The Marriage Law in Indonesia explicitly regulates the topic of marriage laws. Marriage is described as "an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One and Only Godhead" in Article 1 of Law Number 1 of 1974 about Marriage. Marital bonds can occur between men and women of different backgrounds, including cultural background and country.

Marriages that occur between men and women of different countries or nationalities can be referred to as mixed marriages. What is meant by a mixed marriage under this Law, according to the terms of Article 57 of the Marriage Law, is "a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality, and one of the parties is an Indonesian citizen." The only mixed unions covered by the Marriage Law are those involving two (two) individuals of different nationalities. Mixed marriages place a strong focus on the fact that the bride and

groom have different nationalities, which makes them inherently subject to several sets of regulations.

Marriage results in a bond of rights and obligations, also causes a form of common life of the individuals who perform the marital relationship, namely forming a family or somah (gezin/household) (Soekanto, 2005). One of the consequences of a valid marriage (including mixed marriages) is the creation of joint property within the marriage. Property or wealth is needed to meet all the needs needed in family life (Judiasih, 2015).

Joint property in a marriage is defined as follows in Article 35 Paragraph 1 and Article 36 Paragraph 1 of Law Number 1 of 1974 concerning Marriage: "(1) Property acquired during marriage becomes joint property, and (1) With respect to joint property, the husband or wife can act with the agreement of both parties." M. Yahya Harahap, in the meantime, claimed that practically all property obtained during the marital bond gained the jurisdiction of joint property formed in the legal procedure. According to the new information, the following marital assets are covered under the joint property law: (Manaf, 2006)

1. property acquired as part of the marriage contract. Every object bought as part of the marriage contract comes under the control of the common property. It doesn't matter who purchases it, whose name is on the registration, or where it is situated.
2. Property created and acquired after a divorce and financed using shared assets. Even if it was bought or built after the divorce, whether or not it falls within the definition of common property is determined by where the money used to pay for it originally came from.
3. Tangible possessions gained as part of the marriage covenant. All assets acquired during the marriage contract instantly become joint assets.
4. Revenue from both common and inherent property. Income from common property, as well as income from the spouses' personal property, falls under the purview of common property. As long as there is no property division, all personal income earned by the husband and wife is immediately merged as joint property. As long as the husband and wife do not state differently in the marriage contract, the law requires that the personal income of the spouses be combined.

Due to the involvement of many legal systems, including national law in this instance the Marriage Law and international law, joint property in mixed marriages is extremely complex. Such a mixed marriage would be subject to Indonesian marriage law if it were to be implemented there, along with all of its repercussions. Property can be combined in mixed marriages thanks to joint property. These riches may be combined in the form of land or other immovable things.

If an Indonesian husband or wife purchases real estate while they are married, the property will immediately pass to the husband or wife who is a foreign national as joint property. As a result, foreign nationals who marry Indonesian residents get the same power and status as Indonesian citizens when it comes to owning joint property, such as rights to land.

However, because the requirements in Article 21 Paragraph 3 of Law Number 5 of 1960 establishing the Basic Regulations of Agrarian Principles have already been

described, foreign nationals still do not have absolute ownership rights to land. The provisions of Article 29 Paragraph 1 of Law Number 1 of 1974 concerning Marriage, which reads in part, "At or before the marriage takes place, both parties by mutual consent may enter into a written agreement ratified by the marriage registrar officer, after which the con-tract becomes effective," allow Indonesian citizens to retain their ownership rights to land despite having a mixed marriage. Before the mixed marriage takes place, an agreement has been formed for the separation of property from the title to the land when the title to the land is an inherited property of the husband or wife with Indonesian citizenship. A husband or wife with foreign nationality can eventually own ownership of land through a mixture of property, if on condition that the husband or wife changes nationality to become an Indonesian citizen. As a result, the requirements of Law No. 5 of 1960's Article 21 Paragraph 1 on the Basic Regulations on Agrarian Principles remain inviolate.

So based on the previous description, a husband or wife who is a foreign national must pay attention to his citizenship status after marriage and the right to land the property. If the foreign husband or wife wants to have ownership rights over the property, then the foreign national must change his nationality to become an Indonesian citizen, one way to obtain citizenship status of Indonesian citizenship is through legal marriage.

in accordance with the terms of Law No. 12 of 2006 about Citizenship of the Republic of Indonesia. (1) A foreign national who is legally married to an Indonesian citizen may obtain citizenship of the Republic of Indonesia by submitting a declaration of citizenship before the Official. This is stated in Article 19 Paragraphs 1 and 2 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. (2) Unless the acquisition of citizenship results in dual citizenship, the declaration referred to in paragraph (1) must be made if the person in question has resided on the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years. This means that a foreign national who marries an Indonesian native may earn Indonesian citizenship as long as the foreign national does not acquire dual citizenship.

This is so that each person has a single citizenship, which is a value that Indonesia upholds. Therefore, each citizen has a single citizenship and is not permitted to hold dual citizenship or more than one. As further explained in Article 19 Paragraph 3 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, if an applicant's application for Indonesian citizenship is denied because it would result in dual citizenship, the applicant may be granted a permanent stay permit in accordance with applicable laws and regulations, but this would not result in an adjustment of citizenship status to become an Indonesian citizen.

## 4 Conclusion

With the existence of a mixed marriage with dual citizenship status, the child resulting from a mixed marriage with dual citizenship status in order to own land with the status of Ownership Rights or Right to Build, then he must be treated as an Indone-

sian Citizen until he is 18 (eighteen) years old, and then after 18 years he can choose (option) for 3 (three) years to remain an Indonesian Citizen by relinquishing his foreign nationality, or renounce his Indonesian citizenship which then his house or building (property) is sold/transferred to another Indonesian citizen, or in other words his land rights status changes to Right of Use; Although children born from mixed marriages can be treated as Indonesian citizens under the Citizenship Law, the Basic Agrarian Law still governs the issue of land ownership. This is because inheritance is only allowed to last for one year. Thus, it can be said that in fact foreign nationals cannot have land rights in Indonesia in accordance with what is stipulated in the laws and regulations. Foreign nationals are only allowed to obtain the right of use or leasehold of a land and/or building. But the exception here, land ownership by foreign nationals can be done if a foreign national has a mixed marriage with an Indonesian. Where in the end those who have the status of owners must remain Indonesian citizens with the first joint property separation agreement before the mixed marriage takes place. Other exceptions can also be made if a foreign national legally and not unlawfully changes his nationality to an Indonesian citizen. Where the foreign national will carry all rights and obligations as an Indonesian citizen, as long as it does not cause the foreign national to have dual citizenship. Due to Indonesia's adherence to the Single Citizenship Principle.

**Suggestion**

Improving laws and regulations that aren't connected to property and building rights, regulations about land and building rights, or regulations about taxes so that these laws and regulations can achieve justice, legal clarity, and community benefit. And the scope of legislation does not only cover residential houses, but also covers land rights and buildings for residential and non-occupancy, and the subject of rights not only for Foreign Nationals, but also for Foreign Legal Entities.

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