

Legal analysis of the distribution of inheritance in the form of land rights to foreign national heirs

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Abstract

Purpose: This study aims to determine the implementation of the distribution of inheritance in the form of land rights to heirs with foreign citizenship and to identify the factors that become obstacles/constraints and solutions in the distribution of inheritance in the form of land rights to heirs with foreign citizenship.

Research methodology: This study uses sociological or empirical legal research, which mainly examines primary data, such as materials that bind legislation.

Results: The results showed that inheritance can be distributed to heirs with foreign citizenship, but the foreign nationals must transfer the land to Indonesian citizens within one year or change their rights to use rights.

Conclusion: Foreign nationals are permitted to inherit land rights in Indonesia; however, regulations require them to transfer ownership to Indonesian citizens or convert the rights into use rights within a year. This ensures the protection of national land sovereignty while providing limited options for foreign heirs.

Limitation: This study is limited to an examination of Indonesia's legal framework and empirical data, without a broader comparative analysis across regions or countries. These limitations may affect the generalizability of our findings.

Contribution: This study provides a comprehensive overview of the legal framework governing the inheritance of land rights by foreign nationals in Indonesia. It also identifies and discusses the key challenges faced by foreign national heirs during the inheritance process.

Keywords: *Foreign Citizen, Inheritance, Land Rights, Legal Analysis*

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1. Introduction

The State of Law is a state that stands on the law that guarantees justice to its citizens ([Ghina, Dewi, & Furnamasari, 2021](#)). which, in every aspect of its life, is governed by rules that are binding for each community, regardless of one's social status. Globalization has now entered all elements of Indonesian society, so that the element of connectivity between countries has become more open between one country and another, especially those who live in Batam City, which is very close to the neighboring countries of Singapore and Malaysia. It is not impossible for people who mingle to get jobs in neighboring countries or get a life companion or household with foreign nationals. To get conveniences, it is not impossible that they will switch citizenship to foreign citizens ([Djubaedah, 2010](#)). A family can

be formed through marriage. Marriage is the most important aspect of human reality. Through marriage, households can be built and upheld in accordance with religious norms and laws. In the household, a legal relationship between husband and wife will arise, and having offspring will create a legal relationship between parents and children ([Usman, 2018](#)).

In Indonesia, the State has guaranteed land rights that can be owned by individuals or legal entities, as evident in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles, namely: (1) Land rights as referred to in Article 4 paragraph (1) are: hak milik, hak guna-usaha, hak guna-bangunan, hak pakai, hak sewa, hak membuka tanah, hak memungut hasil hutan, other rights not included in the aforementioned rights which will be stipulated by law as well as temporary rights as mentioned in Article 53. (2) Rights over water and airspace as referred to in Article 4 paragraph (3) are: hak guna-air, hak pemeliharaan dan penangkapan ikan, hak guna ruang angkasa ([Syarief, 2014](#)). The transfer of land rights due to legal action is desired by the parties to give rise to rights and obligations such as sale and purchase, exchange, grants, and bequests. Meanwhile, the transfer of land rights that occurs due to legal events is an event that occurs due to the death of a person so that the property left behind is transferred to the heirs. The transfer of the heir's wealth has legal consequences for the heirs, both in the relationship between fellow heirs and between them and third parties.

The elements that must be fulfilled in inheritance are that there are people who die, property left behind, and heirs ([Pangemanan, 2016](#)). Inheritance occurs only after death ([Moechthar, 2019](#)). The inheritance law that applies to the heir regulates who is entitled to the inheritance from the heir. When someone dies, this gives rise to a legal effect, namely, how the management and continuation of rights and obligations as a result of a legal event due to the death of a person is regulated by the Law of Inheritance. The inheritance of the heirs referred to in inheritance law is all the assets of the heir, both in the form of rights and obligations that can be inherited by the heirs ([Moechthar, 2019](#)). Inheritance Property is all assets in the form of assets or liabilities left by heirs. In principle, the determination of inheritance property refers to the provisions of Article 35 of Law Number 1 of 1974 concerning marriage. Article 35 of the Marriage Law states that property in marriage is divided into two types: original property or bawahan property and joint property or what is known as gono-gini property ([Rahmadi & Tunga, 2023](#)). Congenital property is obtained during the marriage period, while joint property is obtained during the marriage period, including the proceeds from the original property ([Moechthar, 2019](#)).

Broadly speaking, inheritance law regulates the transfer of rights in the form of property, whether movable or immovable, to heirs based on kinship or marriage relations. In kinship relations, for example, the birth of a child will cause certain legal consequences in kinship relations, namely, the relationship between the child and his biological parents. Thus, a child is entitled to the property of his parents if the event of death causes inheritance, namely, the rights and obligations of a person who dies will pass to the heirs in this case in the field of property law. The inheritance of land with the status of property rights has a hereditary nature, meaning that the property rights to land do not only last during the life of a person who owns the land, but if the owner dies, it can be continued by his heirs for an unlimited period of time ([Hartanto, 2017](#)). In addition, property rights have the strongest and fullest characteristics that people can have over the land. However, not all legal relationships can be transferred to heirs; sometimes, certain legal relationships end with the death of the heir.

In Indonesia, there are three applicable inheritance laws: Customary Inheritance law, which is still regulated differently according to the customs of each region; Islamic Inheritance Law, which applies to Muslims (as the population of Indonesia who are Muslim); and statutory inheritance law, which is the law of the land. Islamic inheritance law is regulated by Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (Articles 171-214 KHI), and for those who are subject to Western Civil Law, the provisions in the Civil Code (BW) apply ([Murjiyanto, 2016](#)). The inheritance process is closely related to inheritance law. Inheritance law regulates the transfer of property left by someone who dies and the consequences for the heirs ([NIM](#)). There are three keys that become elements of inheritance: heirs, inheritance, and heirs. Basically, inheritance begins to open, and the distribution of inheritance by each heir can be done when the heir dies. Inheritance is divided into two categories: property and debt. Property can be in the form of tangible or intangible objects, movable or immovable

objects, consumable or non-consumable objects, and objects that already exist or objects that will exist. Marriage in Book I of the Civil Code regulates the legal relationship between families from life until death. However, there are problems if the heirs have foreign citizenship with inherited property in the form of land.

Inheritance of land that has the status of property rights has a hereditary nature, meaning that the property rights to land do not only last during the life of a person who owns the land, but if the owner dies, it can be continued by his heirs for an unlimited period of time. In addition, property rights have the strongest and fullest characteristics that people can have on land ([Nasrudin & Swislyn, 2021](#)). Joint ownership of an object is a situation in which one property right is owned by two or more people. Joint ownership consists of free and bound joint ownership. Joint ownership occurs due to the extent of the relationship between the rightsholder and an object. Bound joint ownership is a form of joint ownership that is one of the consequences of the legal ties that exist between the holders of joint rights. Joint ownership occurs as a result, and there is a legal relationship between those who have joint rights. Joint ownership is bound to all objects included in the partnership between two or more people, such as undivided inheritance.

Based on the above background, the author is interested in researching and writing the results in a scientific journal article entitled "Legal Analysis of the Distribution of Inheritance in the Form of Land Rights Against Foreign Heirs". Based on the background of the problems described above, the problems to be discussed are as follows:

1. How is the distribution of inheritance in the form of land rights to heirs with foreign citizenship implemented?
2. What are the obstacles/constraints and solutions in the distribution of inheritance in the form of land rights to foreign national heirs?

2. Literature review

2.1 The Concept of Inheritance Law in Indonesia

Inheritance law in Indonesia is pluralistic, consisting of three main systems: customary, Islamic, and Western (Civil Code). These three systems create differences in implementation depending on the religious affiliation and community of the heirs. Inheritance generally involves three main elements: the deceased as the heir, the estate left behind, and the legal heirs ([Assaad, Hasyim, & Yusmita, 2022](#)). In the context of land law, the Basic Agrarian Law No. 5 of 1960 (UUPA) regulates land rights, including ownership, cultivation, building, and usage rights. Ownership rights are the strongest, inheritable, and can only be held by Indonesian citizens ([Vista, 2022](#)). This provision forms the legal basis for restricting the inheritance rights of foreign nationals.

2.2 Land Inheritance Rights for Foreign Nationals

Normatively, Article 21 of the UUPA prohibits foreign nationals from holding land ownership rights in Indonesia. However, Article 21, Paragraph (3) provides an exception: foreign nationals may inherit land with ownership rights through inheritance without a will or through mixed marital property. Nevertheless, within one year, the foreign heir must transfer ownership to an Indonesian citizen or convert it into usage rights. If not, the land rights are revoked and returned to the State.

Thus, while restrictions exist, the law still provides a limited opportunity for foreign nationals to inherit land, subject to strict requirements that safeguard Indonesia's agrarian sovereignty.

2.3 Practical Aspects and Implementation Challenges

This study identifies several challenges in the practice of land inheritance distribution to foreign heirs.

- Legal restrictions: Only Indonesian citizens may hold ownership rights, binding foreign heirs to the one-year transfer rule.
- Complicated administrative procedures: The transfer process requires authorization from the Batam Indonesia Free Zone Authority (BP Batam), which imposes higher costs on foreign nationals (2.5% of NJOP).

- High costs and limited timeframe: Expenses for certificate processing, name transfers, and land status conversions create additional burdens for foreign heirs.

These obstacles indicate the need for regulatory revision, especially concerning the one-year timeframe, to provide more realistic accommodation for foreign heirs.

2.4 Legal Solutions and Alternatives

Several solutions have been proposed, including:

- Extending the one-year deadline stipulated in Article 21, paragraph (3) of the UUPA.
- Providing the option of direct conversion to usage rights without requiring a sale or transfer to an Indonesian citizen.
- Strengthening legal certainty and administrative efficiency in the inheritance certificate process for foreign nationals.

Through these solutions, a balance can be achieved between protecting the individual rights of foreign heirs and safeguarding the state's interest in national-land sovereignty.

3. Research methodology

The research method is an effort made by researchers to study, respond to, and analyze a problem. To produce an answer or solution to the problem being studied. Then, they were compiled as scientific data ([Marlia, Ridwan, & Priatna, 2018](#)). The research method used in this study is a normative research method involving an analysis of legal regulations, policies, and related legal instruments ([Suriasumantri, 1993](#)). The data sources used in this research are secondary data consisting of primary legal materials, which are a collection of related laws and regulations, secondary legal materials consisting of literature books, articles, and papers related to the issues studied, and tertiary legal materials consisting of legal dictionaries, encyclopedias, and so on ([Pramono & Indriyani, 2019](#)).

The approach used is empirical juridical, which consists of field research conducted through a series of interviews with respondents and informants related to the object of research ([Kurikulum](#)). Library research ([Putra & Suprapti, 2019](#)), which seeks to explore theories that have developed in the field of science related to a problem of methods ([Putra & Herawati, 2017](#)), as well as research techniques that have been used by previous researchers, obtain a broader orientation in the selected problem and avoid unwanted duplication by leading to the development of existing concepts and facts ([Riza, 2023](#)).

Analysis of Legal Materials used in this research uses research data obtained in the field and then analyzed qualitatively ([Noval, Nofrial, & Nurkhotijah, 2022](#)). Legal materials that are analyzed qualitatively will be described in the form of a systematic description by explaining the relationship between various types of legal materials. All legal materials are then selected, processed, and analyzed descriptively so that, in addition to describing and revealing the legal basis, they can also provide a clear picture as a whole and solutions to problems ([Siregar & Siregar, 2008](#)).

4. Results and discussions

4.1 Implementation of the Distribution of Inheritance in the Form of Land Rights to Foreign Heirs

After the occurrence of a legal event, namely the death of a person who is hereinafter referred to as the heir, the task of the heirs will take care of the body and the inheritance of the heir, the rights and obligations in the field of property law are considered to be very personal in nature and therefore cannot be transferred, the transfer and all rights and obligations immediately pass to the heirs, as stated in Article 833 number (1) of the Civil Code, which reads, Inheritance is regulated in Book II of the Civil Code in Articles 830 to 873. According to the Civil Code stated in Article 833, all heirs automatically by law obtain ownership of all goods, all rights, and all receivables from the deceased". Article 852 of the Civil Code states that the first people entitled to receive inheritance by law are the children and the husband or wife of the longest living. The share received by them is equal to one another. There is no difference between men and women, and also no difference between the first-born and the next-born. Thus, it can be said that children and husbands or wives receive equal shares.

From this explanation, it can be concluded that, in principle, according to the law, those who are entitled to receive inheritance are children and husbands or wives who live the longest; thus, we can conclude that biological children and husbands/wives who live the longest are heirs. Therefore, even though the children who are born who have declared foreign nationality and the husband/wife who lives the longest even though foreign nationality are heirs who are still entitled to receive inheritance from inheritors who are Indonesian citizens (WNI) against Objects of Inheritance in the form of Land Rights ([Penyusun](#)).

Article 20 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) states that (1) the right of ownership is a hereditary, strongest, and fullest right that can be owned by people on land, keeping in mind the provisions in article 6. (2) The right of ownership can be transferred to other parties. However, heirs who are foreign nationals may not inherit a house with the status of a hak milik, as evident in Article 21, paragraph (1): "Only Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (UUPA) states that Indonesian citizens can have property rights." This means that foreign citizens in Indonesia are not allowed to own land and/or buildings with property rights..

However, although foreign nationals are prohibited from owning property in Indonesia, Article 21(3) of Law No. 5 of 1969 on the Basic Regulation of Agrarian Principles stipulates that: "A foreigner who after the coming into force of this law acquires a property right by way of intestate inheritance or marital property intermingling, as well as an Indonesian citizen who acquires a property right and after the coming into force of this law loses his citizenship, shall be obliged to relinquish the right within one year of the acquisition of the right or the loss of citizenship ([Dollar & Riza, 2022](#))."

Therefore, although Article 21 paragraph (1) of Law No. 5 of 1969 on the Basic Regulation of Agrarian Principles states that only Indonesian citizens can have property rights, this does not prohibit foreigners from inheriting land and/or buildings with property rights from a testator who is an Indonesian citizen. Thus, foreign citizen heirs are still entitled to inherit a house from heirs who are Indonesian citizens. However, within one year, the foreigner must transfer his rights to another person who is an Indonesian citizen or can also ask the National Land Agency to change the land status to the right of use. This one-year period is an 'opportunity' given by law to foreign nationals. If the foreign national heir does not take any action on the house for more than one year, the land will become state land.

The transfer of rights and obligations from the deceased to their heirs is called "saisine," that is, the heirs who obtain all the rights and obligations of the deceased, without requiring a certain action, as well as if the heirs know about the inheritance ([Nasrudin & Swislyn, 2021](#)). After the management of the bodies of the heirs is completed, the heirs must calculate all the assets of the heirs, both in the form of assets, money, jewelry, and so on, including any receivables and debts owned by the heirs ([Utomo & SH, 2020](#)). Likewise, the certificate of land rights or the certificate of ownership of a flat unit, along with all the rights built and embedded on it, is an inseparable unit.

The steps that heirs must take are as follows: First, the heirs must obtain the death certificate for the deceased in accordance with the domicile where the deceased died. This is in accordance with Article 23 of the Civil Code, which states that the house of a person who died is the house of his last residence. A death certificate stating that the house of a person who died is considered to be located where the deceased had their last residence. For example, for those who died in Indonesia, such as in Batam, the death certificate was issued by the Population and Civil Registry Office of Batam City. However, if there are several heirs consisting of Indonesian citizen heirs and foreign citizen heirs, the Deed of Declaration of Heirs and Deed of Certificate of Heirs shall be made by the authorized official, for example, in the Notary where the place/domicile of the testator is located.

The District Court or Religious Court, where the marriage of the husband and wife is registered, can determine the inheritance for foreign heirs. The essence of a state of law is determined by the existence of the judiciary, meaning that judicial power must be fully independent to create a state of law. While the Certificate of Inheritance issued by the heir's Home Country may be valid as long as it is made and signed in accordance with the procedures applicable in the heir's Nagera, for the management of

inheritance in Indonesia, the letters must be translated by a sworn translator and the originals shown to the Notary.

The next step is to apply for a Transfer of Rights Permit at the Batam Area Development Agency Office, as the recipient of the Management Rights from the State, Management Rights are control rights from the state whose implementation authority is partially delegated to the holder, in this case, the holder is the Batam Area Development Agency, as the land manager at Batam City. To be able to take care of the Permit of Transfer of Rights (IPH), several land allocation documents are needed, consisting of the Annual Mandatory Money Invoice (UWT) along with proof of payment, Location Determination Drawing (PL), Land Utilization Agreement Letter (SPPT), Decree of the Head of the Batam Free Trade Zone and Free Port Area (BP Batam) on land allocation, and Fatwa Planology. For this, the Identity Card (Identity Card/Passport) of the Heir and Heirs, Family Card, and Birth Certificate of the Heirs are needed, while the difference in the Transfer of Rights Permit between Indonesian Citizens and Foreign Citizens lies in the Transfer of Rights Invoice, where the Invoice is calculated from the Tax Object Sale Value multiplied by 2.5%.

The next stage the heirs can check the certificate at the Land Office of Batam City, for checking, with the aim of ensuring legal certainty over the object of inheritance is not in collateral against a debt, that the certificate is not blocking either blocking the initiative or blocking the ministry, not in the seizure of disputes, and free of other burdens of any kind, and the check is only valid 7 calendar days from the date of checking issued, then there is a legal action that must be registered with the local Land Agency. Pay BPHTB Tax (Fees for Acquisition of Land and Building Rights) with the calculation of (NJOP-NPTKP for inheritance) $\times 5\% \times 50\%$, for Batam NPTKP (Non-Taxable Selling Value) of Rp. 350,000,000,- (see Appendix List of NPTKP) For example, the NJOP value in the current year PBB is Rp.750,000,000,- then the calculation of the NJOP value in the current year PBB is Rp.750,000,000,- (see Appendix List of NPTKP). .000.000,- then the calculation of BPHTB on the inheritance is (Rp. 750.000.000,- - 350.000.000,-) $\times 5\% \times 50\% = 10.000.000,-$ (as the validity of the tax that has been paid, the BPHTB must be validated first to the relevant agencies whether it has actually entered the Regional treasury, while for the Heir Tax for the Transfer of Rights (Inheritance), the heirs should take care of the SKB (Certificate of Tax Exemption) to the Regional Revenue Office, then validated, then the next step is to take care of the Tax Exemption Certificate (SKB) to the Regional Revenue Office. The process of baliknama to all heirs in accordance with the Certificate of Heirs that has been made, by attaching the Original Certificate, Death Certificate of the Heir, Identity Card and Family Card of all heirs and/or Passport of the heirs as well as Birth Certificate, Land and Building Tax for the current year, and Photocopy of Marriage Certificate/Marriage Book between the Heir and his/her spouse.

With these changes, the issuance of a Certificate of Inheritance or Certificate of Inheritance Rights is no longer based on the population group/ethnicity/race of the party for the official/agency that issues it. The making of a Certificate of Inheritance or Right of Inheritance becomes an option (see letter C), meaning that every Indonesian citizen is free to determine the making of his or her Certificate of Right of Inheritance, depending on the agency concerned whether to make and give or make it to the person who submits the application.

Based on these provisions, a notary can serve all Indonesian Citizens in the form of a Certificate of Inheritance Rights from the Notary domiciled at the place of residence of the testator at the time of death. Thus, in making a Certificate of Inheritance Rights by a Notary, attention must be paid to the suitability between the residence of the heir who died and the notary's domicile and the death certificate from the Population and Civil Registry Office, which is in accordance with the relevant proof letter died ([Hermit, 2004](#)). The provision of conformity between the residence of the deceased heir and the notary's domicile must be considered if the Deed of Certificate of Right of Inheritance is made for the purpose of applying for the Registration of the Transfer of Land Rights or Property Rights Over Flat Housing Units.

4.2 Obstacles/Constraints and Solutions in the Distribution of Inheritance in the Form of Land Rights to Foreign Heirs.

After conducting research on the juridical analysis of the division of inheritance in the form of land rights against foreign heirs in Batam City, the author found several factors that hinder the implementation of the division of inheritance in the form of land rights against foreign heirs.

a) Only Indonesian citizens can own property.

Land rights in Indonesia include the right to ownership, right to use and manage, right to use and develop, right to use, right to lease, right to cultivate, right to harvest timber, and other rights not included in the rights mentioned above, which will be determined by law, as well as temporary rights, as stated in Article 53. Other rights that are not included in the rights mentioned above will be determined by law, as well as temporary rights, as mentioned in Article 53, in the case of inheritance in the form of land rights that have the status of property rights. Although property rights are hereditary, the strongest and fullest rights that people can have over land, for the distribution of inheritance in the form of land rights whose heirs are foreign nationals, heirs are still allowed to obtain property rights due to inheritance without a will or commingling of assets due to marriage, as well as Indonesian citizens who have property rights. After the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles, stating that heirs who have lost their citizenship are obliged to relinquish their rights within a period of one year from the acquisition of the right or the loss of citizenship. If the right of ownership is not relinquished after this period has elapsed, the right is nullified by law, and the land falls to the State, provided that the rights of other parties encumbering it continue.

b) Expensive costs and convoluted procedures and short time to transfer land rights to heirs of foreign nationals

The process of transferring land rights to heirs of foreign nationals is the same as the transfer of rights to Indonesian citizens, who must obtain a Transfer of Rights Permit from the Batam Free Trade Zone and Free Port Concession Agency, which is different from the transfer of rights to the name of an Indonesian citizen ([Kesuma, 2023](#)). The Transfer of Rights Permit to a foreign citizen is required at a rate of 2.5% (two and a half percent) of the Tax Object Value; for example, the Tax Object Sale Value of the Land Rights is IDR. 500,000,000 (five hundred million Rupiah) then the Transfer of Rights Invoice is Rp. 12,500,000 (twelve million five hundred thousand Rupiah). Unlike the case with the heirs of Indonesian citizens, the calculation remains 2.5% calculated based on local location rates, which could be calculated only in Rp. 300,000 (three hundred thousand Rupiah), so with this, heirs who are foreign nationals to have land rights from inheritance require a lot of money.

After the heirs get their rights to the land that is the object of the inheritance, where the land rights certificate has changed the name of the owner to all heirs, there is still a process to change the land rights to the right of use, which also requires a long time and a lot of money, or the heirs are allowed to sell/transfer the rights to other Indonesian citizens.

If there are multiple heirs and no division of the inheritance has occurred, while the certificate of land rights mentions several heirs who are Indonesian citizens and foreigners, then the certificate becomes a joint ownership. However, if it is to be divided in the name of one person only, then the transfer is done with the Deed of Division of Joint Rights (APHB) made before the Land Deed Official (PPAT). If it is to be made in the name of one person only or several people only (meaning the heirs who give up their rights), it should be noted whether this is done free of charge or voluntarily or with or without compensation for a sum of money. It must be stated in a Deed of Declaration from the heirs so that there will be no dispute in the future, whether it is done voluntarily or with compensation for a sum of money.

If the heirs are one or more Foreign Citizens, then the Land Rights can be sold or transferred to Indonesian Citizens within a period of one year, or those who want to keep the object of inheritance still owned should make changes to the rights of land ownership/property rights on the unit of flats converted into Use Rights, based on Government Regulation No. 18 of 2021 revoking Government Regulation No. 40 of 2015, reaffirmed that the period of Use Rights is the same as Building Use Rights so that there is no longer a difference between Use Rights and Building Use Rights.

There should be a time change in Law Number 5 of 1960 concerning Basic Agrarian Regulations Article 21 number 3, an increase in time so that Foreign National Heirs can take care of everything about the Transfer of Rights to the Object of Inheritance not exceeding the predetermined time because if there is a delay, the land rights will fall to the state.

5. Conclusions

Based on the discussion related to the problem, the following conclusions can be drawn.

1. Implementation of the distribution of inheritance in the form of land rights to heirs with foreign citizenship, namely property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law lose their citizenship, are required to relinquish the right within a period of one year from the acquisition of the right or the loss of citizenship. If the right of ownership is not relinquished after this period, the owner is entitled to compensation.
2. Factors that hinder the implementation of the distribution of inheritance in the form of land rights to foreign national heirs include: a) Only Indonesian citizens can have property rights, b) Expensive costs and convoluted procedures, and a short time to transfer land rights to foreign heirs.

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