

The Responsibility of the Guardian for the Transfer of Land Rights to the Children Due to Instruction

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Abstract. *The results in the emergence of rights and obligations for a person as well as the emergence of law between children, parents and the surrounding community. A child has the right and authority as a legal subject. Children have an important role in a marriage bond, apart from being the hope of parents, children also act as successors of offspring. Children in general are a group of people who are immature, unmarried and incapable of acting for themselves. The purpose of this paper is to determine the implementation of the transfer of land rights and responsibilities to minors due to inheritance. This study uses a sociological juridical approach, which is carried out by field research aimed at the application of law. This research specification uses descriptive analysis, namely research which in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the existing problem. The data sources of this study are primary data sources and secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Methods of data collection using interviews, document studies and library materials. While the data analysis used qualitative analysis. The results of the study show that the implementation of the transfer of land rights to minors must apply for the determination of child guardianship and a permit to sell at the Religious Courts for Muslims and the District Courts for non-Muslims as one of the administrative requirements. After the decision on the guardianship determination has been issued by the local court, it can be used as a basis for the transfer of land rights by sale and purchase owned by minors due to inheritance. In the transfer of inheritance rights to land owned by minors, they cannot be freely transferred by their parents, they must comply with and comply with the applicable legal regulations in the transfer of inheritance of minors. The*

responsibility of the guardian towards minors due to inheritance is that the guardian is obliged to carry out his obligations to take care of the children who are under his control and all property as well as possible. The guardian is obliged to make a list of the child's property under his control and record all changes in the child's property.

Keywords: Children; Guardianship; Transfer.

1. Introduction

The process of the journey of human life is birth, life and death. All of these stages bring legal effects and consequences to their environment. Birth brings as a result the emergence of rights and obligations for himself and others as well as the emergence of legal relationships between children and parents, relatives and the surrounding community.¹A child has the right and authority as a legal subject. Rights and authorities appear since he has not been born so that the role of other people is needed in various matters relating to his physical and spiritual as well as overseeing all matters that are property rights so that they can be maintained and developed later.²

Humans live with a very close family system. Blood relations place a position between the obligations and rights of each other. Whether it's the obligation to maintain, maintain and other responsibilities. Although the point only revolves around responsibility, blood relations have a very large social dimension for the development of one's soul, especially in this case a child. Based on the above reasons, if a parent is deprived of his authority over the care of a child or the child's parent dies, the maintenance will be carried out by a guardian, especially in this case a child who is not yet an adult.³

Guardianship of the child's personal self is in the form of taking care of the child's self-interest, starting from nurturing, maintaining and providing religious education and guidance. This arrangement also covers everything that the child needs. All living expenses are the responsibility of the guardian. Meanwhile, guardianship of his property is in the form of managing the child's property properly, including recording a number of his assets when the guardianship begins, recording changes in his assets during the guardianship and handing it back to the child when his guardianship period has finished because the child is an adult and is able to afford it. take care of himself.⁴

The placement of a guardian in this case is very important, especially in the case of inheritance, if the child's parents who are not yet mature pass away, the child will get an inheritance so that the child must be represented by his

¹Muhammad Amin Summa, (2005), *Hukum Keluarga Islam Di Dunia Islam*, Jakarta : Raja Grafindo Persada, p. 134-135.

²Afandi Ali, (2000), *Hukum Waris, Hukum Keluarga, Hukum Pembuktian*, Jakarta : Rineka Cipta, p. 65.

³Muhammad Amin Summa, Op. Cit, p. 140

⁴Dani Ramdani, (2020), *Eksekusi Putusan Perkara Hak Kuasa Asuh Anak Yang Berkepastian Dan Berkeadilan Di Indonesia Dan Malaysia*, Jakarta : Prenadamedia Group, p.11.

guardian.⁵Proficiency itself is one of the requirements to act in law. People who are incompetent according to the law are regulated in Article 1330 of the Civil Code, namely minors and people who are placed under pardon. So that a person's maturity is a benchmark in determining whether a person can or has not taken legal action.⁶

In connection with the transfer of land rights to minors carried out by the guardian for the benefit of the child, it must be determined in accordance with the applicable law in the community. In addition, if someone dies, all legal rights and obligations will be abandoned. Rights and obligations can be tangible objects or intangible objects. Wealth in the form of property that is a legacy of a person who has died is referred to as inheritance.⁷

People who are entitled to inheritance are the closest descendants of the heirs or close relatives who are still related by blood. One of them is the child, where as the main group of heirs who are entitled to inherit property from one parent or both of his parents. It is not possible for children to carry out legal actions on their own, especially in managing the inheritance they get, because children are still in building their personality to become independent individuals. It could be that inheritance can be ignored because no one else manages it for the benefit of the child, besides that it is feared if it is used for personal interests for people who take advantage of the existing situation.⁸

Article 50 paragraph (1) of Act No. 16 of 2019 Amendments to Act No. 1 of 1974 concerning Marriage states "children who have not reached the age of 18 years or have never had a marriage who are not under the authority of their parents are under the authority of their parents. guardian", as well as Article 52 of Act No. 16 of 2019 Amendment to Act No. 1 of 1974 concerning Marriage contains provisions regarding prohibitions for guardians, where in carrying out guardianship the guardian is not allowed to transfer rights or mortgage the permanent property owned by the guardian. the child who is not yet 18 years old or has not married unless the interests of the child compel.

The provisions mentioned above become the legal basis that binds to the position and authority of a guardian in protecting and or maintaining both the soul and property of an orphan. Article 309 juncto 359 of the Civil Code which states that the transfer of property rights from children who are in the category of minors must be based on a decision issued by the local Court. However, in the field it often happens in order to fulfill the requirements for the transfer of land rights to children under the age of a guardian and then ask the court in the form of these decisions without paying attention to the interests and rights of the

⁵Dani Ramdani, Ibid, p.82.

⁶Dani Ramdani, Ibid, p. 152.

⁷Sadikin, (1995), *Perkembangan Pembangunan Hukum Nasional Tentang Hukum Keluarga dan Waris*, Jakarta : Badan Pembinaan Hukum Nasional Departemen Kehakiman Republik Indonesia, p. 10.

⁸Oemar Salim, (2000), *Dasar-Dasar Hukum Waris Di Indonesia*, Jakarta: Rineke Cipta, p.34.

child which later after the transfer of land rights is carried out there is often negligence of obligations. in exercising his trust.

2. Research Methods

This study uses a sociological juridical approach, which is carried out by field research aimed at the application of law. This research specification uses descriptive analysis, namely research that in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the existing problems. The data sources of this study are primary data sources and secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Methods of data collection using interviews, document studies and library materials. While the data analysis used is qualitative analysis.⁹

3. Results and Discussion

3.1. Implementation and Responsibility for the Transfer of Land Rights to Children Due to Inheritance

Every child who is not yet capable of taking legal action, they only have the ability to accept certain rights or are burdened with certain legal obligations. Children who are not capable of taking care of their own needs need the presence of a parent or guardian to take care of their needs, both for themselves and all their property.¹⁰

Inheritance assets owned by minors whose share rights from the inheritance of minors are still under the control of their parents. The provisions of Article 307 of the Civil Code which reads "A person who exercises parental power over a child who is still underage, must take care of the property of a child who is still underage." For this reason, Article 307 of the Civil Code is very important for minors in managing the child's property. In the transfer of inheritance rights to land owned by minors, they cannot be freely transferred by their parents, they must comply with and comply with the applicable legal regulations in the transfer of inheritance of minors.¹¹

- **Permit to determine parental authority or guardianship to represent minors in the Religious Courts.**

Parents who are in a condition that they can only act individually for their children because one of the other parents has died or their whereabouts are unknown, not because of a dispute over control/caregiving between the two

⁹Soerjono Soekamto, (2005), Pengantar Penelitian Hukum, Jakarta : Universitas Indonesia Press, p. 72.

¹⁰Lestari, Dian Intan., & Krisni Ahnad (2022) "Tinjauan Yuridis Permohonan Perwalian Dalam Pengurusan Ijn Jual Harta Anak Di Bawah Umur Di Pengadilan Negeri Jepara", *Prosiding, Konstulasi Ilmiah Mahasiswa Unissula (KIMU) 7, 19 January 2022*, p. 14, url: <http://jurnal.unissula.ac.id/index.php/kimuh/article/download/20448/6588>, accessed on 10 May 2022, at. 09.00 WIB.

¹¹Ibid, p. 16

parents, may submit an application to the Religious Court to be designated as parents who hold power over their children. The person who can be appointed as guardian is the child's family, relative, other person or legal entity. The appointment of a guardian is prioritized for people who have the closest family relationship with the child. The guardian of the child's family takes precedence over relatives, other people and legal entities.

The process for submitting an application for guardianship determination includes:¹²

- Those who can be appointed as guardians must meet the following requirements:
 - Photocopy of Identity Card (E-KTP);
 - Photocopy of Family Card (KK);
 - Photocopy of Marriage Certificate Quotation;
 - Copy of Birth Certificate Quotation;
 - Photocopy of Death Certificate;
 - Original statement of inheritance;
 - Photocopy of Certificate of Ownership;
 - Original Certificate/Introduction from the local Village.

Where the evidence of the letter above has been legalized and has been matched according to the original.

- The procedure for declaring that a child will be under the guardianship of a guardian or assigning someone to be the guardian of a child is by submitting an application to the Court. Then the officer checks the completeness of the file, if there is an incomplete case file, it will be returned to the applicant along with a checklist so that the applicant can complete the lack of the file.

- What the applicant must do is register his application at the clerk of the religious court by taking into account the relative competence of the religious court concerned. The process of registering a lawsuit or application begins by paying the down-payment of court fees, in accordance with the principle of procedural fees. This court fee will later be used for clerkship fees, call fees, notification fees, stamp duty fees, and other costs that are really needed, such as local examination fees. Applicants who cannot afford can also be allowed to litigate on a free basis on condition that they request a cover letter from the head of the village and be notified by the local sub-district head.

- Court process

After the lawsuit has been submitted or the notes made by the clerk in the list provided for that purpose, the chairman determines the day and time that the

¹²Elita Savira, Sihabuddin, (2019), Penetapan Perwalian Anak Yang Diminta PPAT Sebagai Syarat Pembuatan Akta Jual Beli Hak Atas Tanah, *Jurnal Yuridis, Notariat Universitas Brawijaya Malang*, Vol/ 6, No. 3 (2019), p. 13, url : <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/2190>, accessed on 10 May 2022, 10.00 WIB. p. 13

case will be examined before the court and he orders the petitioner to be present at that time, accompanied by witnesses who he wants to be examined, and with all the certificates he wants to use.

Then check the evidence "Because it is a volunteer (application), then the applicant submits an application for the acquisition of a determination against a minor. Then the applicant must provide proof of his application. The applicant must prove what is argued. The evidence can be in the form of a letter relating to the applicant's argument. For example, if there is a husband and wife, it must be proven by a marriage certificate or KK (Family Card), there is the birth of a child, then it is proven by a birth certificate up to the death certificate of the mother and father, and so on", then evidence of witnesses, at least 2 witnesses. If all the evidence and legal considerations are sufficiently grounded and do not conflict with the law, the judge may grant the applicant's request. Finally, after everything has been examined by the judge, the judge will read the application, In connection with the above description, there are 3 (three) kinds of decisions, namely constitutive, declaratory and condemnatoir decisions. The constitutive decision is to abolish / enter into a new legal relationship. Diklaratoir which is a statement of a legal condition according to law and the last is condemnatoir, namely a judgment that is punishing. Because of its voluntary nature, no one is punished (condemnatoir). So the decision on the application is of two nature, namely Diklaratoir or constitutive which means negating/establishing a new legal relationship. Establishing a new legal relationship means that from the application, the applicant requests that in addition to granting the application, it also states that the applicant is the guardian of the child in question.¹³

It should be noted that not all applications, especially the application for guardianship submitted by the applicant, are granted by the Panel of Judges. Before the application for guardianship determination is granted by the Panel of Judges, the existing files are examined and studied by the Panel of Judges, whether the applicant's application has a legal basis or is grounded. The court will further examine and consider the evidence submitted by the Petitioner at trial. In addition to the above, in granting and not granting the application for guardianship determination, many factors are taken into consideration by the Panel of Judges.¹⁴

Normatively, parents have become guardians of their biological children, and can represent their children in taking legal action. This is in accordance with Article 345 of the Civil Code which states that: "If one of the two parents dies, the guardianship of the minor children, by law, is held by the parent who has lived the longest of the power of his parents." But what happens when one of the parents wants to represent legal action against their underage children, such as

¹³Puspita, Fina Ardiyanti, (2019), *Tinjauan Yuridis Permohonan Perwalian Terhadap Pengurusan Harta Anak Dibawah Umur Di Pengadilan Negeri Jepara*, Skripsi, Universitas Islam Sultan Agung Semarang. p. 72

¹⁴Ibid, 73

buying and selling, then they must attach it to the competent authority in the form of a guardianship determination from the court. This is intended as a guide for authorized officials so that if problems occur later, the determination can be used as a legal basis.¹⁵

- **Implementation of the transfer of land rights by sale and purchase owned by minors due to inheritance.**

Land under certain conditions can change ownership for various reasons. Soebekti explained that according to the civil law system. A transfer or transfer of rights consists of two parts, namely:¹⁶

- Any agreement that aims to transfer rights, for example buying and selling or exchange.
- The transfer or assignment of the rights itself. In this case, what is important is the transfer or transfer of names in the case of buying and selling immovable objects, such as houses, land and so on.

The government has issued regulations relating to the transfer of land rights as regulated in Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration. The provisions of Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration confirms:

“The transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of 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 PPAT. according to the provisions of the applicable laws and regulations.”

Based on the above provisions, this can mean that the deed made by the Land Deed Making Officer (PPAT) is an absolute requirement to be able to transfer rights and register at the Land Office in the Regency/City where the land is located.¹⁷

Land registration according to Article 19 paragraph (1) of the LoGA aims to provide legal certainty. Land registration can only be done if the transfer of land rights is carried out and stated in a deed made by the Land Deed Making Official (PPAT). The PPAT deed thus has a function as a proof of ownership of land rights

¹⁵Ibid, 76

¹⁶Subekti, 2010, Various Agreements, Bandung, Citra Aditya, p. 72

¹⁷Rahmawati Etik, (2021), *Peralihan Hak Atas Tanah Pada Anak Dibawah Umur*, Tesis, Magister Kenotariatan, Universtas 17 Agustus 1945 Semarang, p. 47

as a prerequisite for land registration. The PPAT deed also serves as evidence that a legal action has taken place on the land.¹⁸

In connection with the transfer of land rights whose rights holders are minors, PPAT will ask the family of the minor to appoint one person as the guardian for the child. The PPAT reason for appointing one of the guardians is because legally a child who is still under the age according to the law is considered incompetent to carry out legal actions, so that the child is not authorized to trade with other parties even though the land parcel is entitled to the name of the child.¹⁹

The process of transferring land rights by buying and selling owned by minors due to inheritance gave birth to two legal events, namely:²⁰

- The existence of a Sale and Purchase Agreement of Land Rights

The legal requirements for buying and selling land according to customary law are the fulfillment of three elements, namely: Cash, Real and Light. This customary law is the basis of national law, which is valid at this time as contained in the Basic Agrarian Law (UUPA).

The sale and purchase of land rights must not only be done in cash, in real terms and clearly, it must also meet the legal requirements of the sale and purchase agreement. This is in accordance with the provisions of article 1457 of the Civil Code which states that buying and selling is an agreement, so that based on the provisions of article 1457 of the Civil Code, a new sale and purchase is considered valid if it meets the requirements of an agreement, namely:

- There is an agreement between the parties
 - The ability of the parties to make an agreement
 - A certain thing
 - A lawful reason
- There is an Administrative Transfer of Land Rights

The sale and purchase agreement of land rights that has been made by the parties can be registered for the transfer of land rights if the sale and purchase agreement is made a deed by the Land Deed Making Officer (PPAT). The transfer of rights to land which is the object of the sale and purchase of land has occurred since the deed of sale and purchase was made and signed before the authorized Land Deed Making Officer (PPAT).

¹⁸Ibid, p. 48

¹⁹Ibid, p. 50

²⁰Sugiyono, interview with Notary-PPAT Semarang Regency, on July 4, 2022

The basis of making a deed of sale and purchase is the agreement of the parties, to be able to carry out legal actions signing an agreement to make a deed of sale and purchase must meet the requirements of the validity of the agreement. There are several stages in making a deed of sale and purchase at PPAT, namely:

- Checking certificates at the local Land Office;
- Conduct land sale and purchase transactions, delivery and receipt of money between the two parties (seller and buyer);
- Verify the payment of BPHTB (Transfer of Duty on Land and Building Rights) for buyers and PPH (Income Tax) for sellers;
- Deed making and deed reading;
- Sign the deed of sale and purchase;
- Do numbering the deed.

After the process of making and signing the deed of sale and purchase is complete, the next step carried out by PPAT is to carry out the registration process for the transfer of rights at the local Land Office. The registration requirements for the transfer of rights due to sale and purchase are as follows:

- PPAT cover letter to register the transfer of rights;
- Letter of application for transfer of land rights signed by the prospective recipient of rights with a stamp duty of 10,000;
- Power of attorney of the applicant to PPAT;
- Evidence of certificate checking sheet;
- Determination of Trust issued by the Court and license to sell;
- Photocopy of Identity Card of the seller and buyer which is legalized;
- Photocopy of Family Card of seller and buyer which is legalized;
- Photocopy of Birth Certificate which is legalized;
- Photocopy of the letter of tax notification payable land and building tax which is legalized;
- Photocopy of the letter of deposit for local taxes on land and building rights acquisition (SSPD-BPHTB) for buyer's tax;
- Photocopy of tax deposit (SSP) and photocopy of proof of payment;
- Statement letter ready to pay tax underpayment if there is a lack of payment from the buyer and stamped;
- the second copy of the deed of sale and purchase;
- Original certificate;

The transfer of land rights is considered complete if the local Land Office has crossed out the old land rights holder in the certificate and has written down the name of the new land right holder along with the basis for the transfer. The PPAT deed in addition to functioning as evidence about the occurrence of a legal act of

buying and selling, also serves as evidence for registering the transfer of land rights.²¹

4. Conclusion

In the transfer of inheritance rights to land owned by minors, they cannot be freely transferred by their parents, they must comply with and comply with the applicable legal regulations in the transfer of inheritance of minors. Inherited assets owned by minors, if sold, must submit an application for the determination of guardianship of minors to the Religious Court for those who are Muslim and to the District Court for non-Muslims and an application for permission to sell as a basis for taking legal action. After making the application for the determination above, it can be done transfer of land rights by buying and selling with those owned by minors due to inheritance. After the process of implementing the transfer of land rights to minors is fulfilled, the responsibility of the guardian is obliged to carry out his obligations to take care of the children under his control and all property as well as possible. The judiciary as an institution that provides guardianship permits to guardianship applicants can prioritize aspects of legal protection for the assets of minors by not only prioritizing the legal formality aspect but also having to look at the future needs of the child in the future, and the government can make rules regarding a more efficient and clear mechanism regarding reporting the development of the property of minors because with the establishment of guardianship and permission to sell the property of minors due to inheritance, the child often loses his rights and often a guardian is negligent of his responsibilities.

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²¹Sugiyono, interview with Notary-PPAT Semarang Regency, on July 4, 2022

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