

MANAGEMENT OF PROPERTY OF MINORS UNDER GUARDIANSHIP

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ABSTRACT

Abstract: Management of guardianship of minors is the provision of services in the case of minors under the power of guardians which includes supervision of the performance of guardian duties over minors who are not under the control of parents and management of the child's property or property as regulated by law. A person can also be determined to be the guardian of a child through the determination/decision of the District Court or Religious Court. Generally, child guardianship applications for Islamic religion are submitted to the Religious Court, and for non-Muslim religions guardianship applications are submitted to the District Court. In practice, however, applications for guardianship of children to be Muslim can be filed with the District Court. Provisions regarding the appointment of a child's guardian through the court can be seen in Articles 359 to Article 364 of the Civil Code. In addition, Article 107 paragraph (3) also stipulates "if the guardian is unable to do or neglects to carry out his guardianship duties, the religious court may appoint one of the relatives to act as guardian at the request of the relative".

Keywords: Guardianship; Minor; Property

Introduction

Inheritance is all wealth, both money and property of a person that is given to another person based on a letter often called a will. Including if a parent dies, usually property and all assets will be inherited by the child or relative, depending on the last message from the owner (Marthianus, 2019). Then, what if the child is still a minor? Although legally all the relics of the parents will belong to the child, this ownership is not legal until the child enters the legal age of majority, which is 18 years (Dzaky, 2022). That way, children need guardians or substitutes for parents responsible for all personal needs and management of the child's property. This is by the contents of Article 50 paragraph (1) of Law Number 1 of 1974 which discusses the Subject of Marriage, which reads "Children who have not reached the age of 18 or have never held a marriage, who are not under the power of parents, are under the power of guardians. The guardianship is about the person of the child concerned as well as his property." (Rusyadi & Muliya, 2022)

The rules regarding guardianship, including all its powers and prohibitions, are written in Law Number 1 of 1974 concerning the Subject of Marriage Article 51 paragraphs (3) to (5) (Utami & Indrawati, 2022a). Subsection (3) of this article explains, "The guardian shall take proper care of the child under his control and his property concerning the religion and beliefs of the child." Meanwhile, subsection (4) of Article 51 of this law states: "The guardian shall make the property of the child under his control at the time of commencement of office and record all changes in the property of the child or children." Also, in paragraph (5), "The guardian is responsible for the property of the child under his guardianship and any losses incurred due to his fault or negligence". (Utami & Indrawati, 2022b)

The prohibition that must be avoided by guardians or foster parents of the child based on Article 52 of the Basic Law on Marriage is "The guardian may not transfer rights or mortgage permanent property owned by children who are not 18 years old or have never married, except when the interests of the child so desire". In addition to Law Number 1 of 1974, the rules regarding guardians for their care are also written in Law Number 23 of 2002 concerning Child Protection. Articles 33 and 34 of the law state that "A guardian appointed by a court or court may represent a child to perform legal acts, both in and out of court in the best interests of the child." In addition, paragraphs (2) and (3) of this article also stipulate that "The guardian shall manage the property of the child concerned for the benefit of the child in and out of court for the best interests of the child.

Research Method

Method of Approach

Regarding the type of research used, namely normative juridical research, the approach used is statutory (statute approach). The statute approach reviews all laws and regulations related to the legal issue being handled. The legislative approach is an approach using legislation and regulation (Handoyo & SH, 2021).

Nature and Types of Research

Based on the formulation of the problem in compiling this research, the type of research used is a type of normative or doctrinaire legal research. Normative or doctrinaire legal research is a legal research method that uses secondary data sources or by examining existing library materials. The nature of this research is analytical descriptive research. Analytical descriptive research is a form of research aimed at describing existing phenomena, both natural phenomena and man-made phenomena. Analytical descriptive research is research that seeks to describe and interpret something, such as existing conditions or relationships, opinions that develop, ongoing processes, effects or effects that occur, or ongoing trends then analyzed and conclusions made.

Data Sources

The secondary data used in this study include the following:

- a. Primary legal material, that is, a regulatory document that is binding and established by the competent authority. This study Includes the Civil Law Kitan, the Compilation

- of Islamic Law, Law Number 1 of 1974 concerning Marriage, and Law Number 23 of 2002 concerning Child Protection.
- b. Secondary Legal Materials, namely all relevant documents such as books, seminars, law journals, magazines, newspapers, scientific papers, and some sources from the internet related to the material studied.
 - c. Tertiary legal materials, namely all documents that contain concepts and information that support primary and secondary legal materials, such as dictionaries, encyclopedias, and so on.

Result And Discussion

The care and guardianship of minors are regulated in Law Number 1 of 1974 concerning the Subject of Marriage in Article 45 paragraph (2), which states that "Parents are obliged to maintain and educate children as well as possible until the child marries or can stand alone, and that obligation continues even if the marriage between the two parents is broken." This means that custody and guardianship of the child are entirely in the hands of both parents, even if the father and mother are no longer together in a bond or are divorced (Islami, 2019) d. Then, what is the guardianship and custody law if one or both parents of the child die? Based on Article 105 paragraph (a) of the Compilation of Islamic Law (KHI), "The maintenance of a child aged 12 years, or what is called mumayyiz shall be the right of the mother. (Harahap, 2018)" This article states that in the event of a divorce, the mother will fully become the foster parent or guardian of the child. Similarly, if the father of the child dies. However, the mother must obtain official permission from the court to fully become the guardian of the child (Dewi, 2020). Furthermore, Article 105 paragraph (b) states that "The maintenance of a child who is of legal age or mumayyiz shall be left to the child to choose between his father or mother as the holder of his maintenance rights." If it turns out that both parents of the child have died, then the child will be given the freedom to choose, whether to live with other relatives or live independently alone. Also, every family or other person has the right to be the guardian of the minor child. In Article 156 paragraph (c), it is written that "If the holder of the Hashanah is found to be unable to guarantee the physical and spiritual safety of the child, even though the cost of living has been met, then at the request of relatives the Religious Court may transfer custody to other relatives." (Lubis, 2021) This condition occurs when the mother who becomes the child's direct foster parent when there is a divorce or the father of the child dies shows a bad attitude and triggers a bad impact on the child's growth and development. If both parents of the child are found to be dead, any relatives or other people who want to be guardians, need to apply to the local Religious Court or District Court (Veronika et al., 2022).

The departure of parents must leave deep sorrow for children, especially if they are not old enough and still need love and attention. Then, what are the rules if this happens? Under the Code, the appointment of a minor's guardian must be based on the consent of both parents. However, since in this case, the child's parents are gone, this consent can be suspended (Asmayani, 2013). Usually, the appointment of a guardian will be based on the contents of the will of the parents (Mashadi, 2018). This condition is by Article 355 paragraph (1) of the Indonesian Civil Code which states that "Each parent, who exercises

parental power or guardianship for one or more children has the right to appoint a guardian for those children if the guardianship is after he dies by law or because of the determination of the Judge according to the last paragraph of Article 353, it does not have to be done by the other parent (Maradona, 2018)." That way, each parent has the right to appoint one guardian for the child as long as the position is still open, and later the final decision on guardianship will be determined by the judge. All relatives or people appointed by the child's parents have the right to be the guardian of the child. Even so, this appointment can still be suspended if the appointed guardian does not meet the guardianship requirements. As Article 332b (1) of the Criminal Code reads, "A married woman may not receive guardianship without the written assistance and permission of her husband." Even so, if the husband does not answer, then licensing can be done from a legal entity.

Conclusion

Although it looks easy being a guardian for minors is not a trivial matter. Of course, there are things a guardian can and cannot do for his foster child. All powers and prohibitions for a guardian are regulated in applicable law. Authority and Prohibition of Guardians of Minors Based on Laws and Regulations The rules regarding guardianship, including all authorities and prohibitions, are written in Law Number 1 of 1974 concerning the Subject of Marriage Article 51 paragraphs (3) to (5). Subsection (3) of this article explains that "The guardian shall take proper care of the child under his control and his property concerning the religion and beliefs of the child." Meanwhile, subsection (4) of Article 51 of this law states: "The guardian shall make the property of the child under his control at the time of commencement of office and record all changes in the property of the child or children." Also, in paragraph (5), "The guardian is responsible for the property of the child under his guardianship and any losses incurred due to his fault or negligence".

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