

Implementation of the Authority of the Health Center for Supervision of Children's Intelligent Property

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Abstract

Article 369 of the Civil Code states that if guardianship is ordered by a judge, the clerk at the court concerned must immediately notify by letter of the appointment to the Balai Harta Peninggalan with a statement. However, not all courts send copies of the existence of guardianship to the Balai Harta Peninggalan. This research is a normative juridical research using secondary data which is supported by primary data in the field. The results of the analysis are presented descriptively. Field data were taken through interviews with the Chairman and Secretary at the Balai Harta Peninggalan Semarang. The purpose of this study were to determine the effect of supervision carried out by the Balai Harta Peninggalan on inherited property for minors at Balai Harta Peninggalan Semarang. As for the authority Regulating of the Balai Harta Peninggalan in supervising the property of minors, it is that the task of the Balai Harta Peninggalan in supervising the guardian's duties does not run properly, especially because there is no synchronization between implementation and the regulations that govern it, where there is a lack of cooperation between relevant agencies, such as the District Court, Department of Population and Notary. Suggestions from the author is that there are regulations that regulate strict legal sanctions against a guardian who has been appointed by a guardian and against officials of related institutions especially because there is no synchronization between implementation and the regulations that govern it, where there is a lack of cooperation between relevant agencies, such as the District Court, Department of Population and Notary. Suggestions from the author is that there are regulations that regulate strict legal sanctions against a guardian who has been appointed by a guardian and against officials of related institutions especially because there is no synchronization between implementation and the regulations that govern it, where there is a lack of cooperation between relevant agencies, such as the District Court, Department of Population and Notary. Suggestions from the author is that there are regulations that regulate strict legal sanctions against a guardian who has been appointed by a guardian and against officials of related institutions

Keywords: Authority, Heritage Hall, supervision, Child Inheritance.

1. Introduction

According to Aristotle, a Greek thought expert quoted in the book CST Kansil, states that humans are a Zoon Politicon, which means that humans as living beings who basically always want to hang out and gather with other human beings, in other words humans are also called social creatures.¹ Humans as social beings are basically inseparable from various needs and desires that arise instinctively. One of his desires is the desire to have a partner and build a harmonious household and have children as a complement to happiness. This can be realized in a legal event called marriage.

¹C.S.T.Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, p.2

Marriage is a permanent relationship between a man and a woman which is recognized as valid by Public concerned based on the applicable marriage regulations². After the marriage, there will be legal consequences between husband and wife. One of the legal consequences is in relation to the assets in the marriage. The dissolution of a property union due to the death of a husband or wife can directly terminate an existing marriage, and result in inheritance. Prior to the distribution of inheritance to the heirs, the assets of the union in a marriage that is carried out without a marriage agreement must be divided equally, namely half the share for the husband or wife who dies, and the other half for the husband or wife who has lived the longest. Then the property of the husband or wife who dies will be divided again according to the number and position of the heirs who are entitled to receive it.

The closest heirs of the husband or wife who have died are the heirs of the first class, namely the husband or wife who has lived the longest with the children produced in the marriage. Then there is also the possibility of heirs, there are still children who are not yet mature (*minder jarig*) who are also entitled to the inheritance.

According to Wikipedia, the Authority is right to do something or to order person others to do or not to do something in order to achieve certain goals. Authority is usually associated with power. Wise use of authority is a critical factor for effectiveness organization. Authority is used to achieve the objectives of the authorized party. Therefore, authority is usually associated with a power.³

In general, authority is the scope of power possessed by a person or group to govern, regulate, and carry out tasks in their respective fields. Authority is an element of the power that a person has. In power, usually a power holder is authorized to exercise his power in accordance with the authority given to him. According to Kaplan, authority is formal power which has the right to issue orders and make regulations and has the right to expect obedience against the regulations.

After the implementation of a marriage, the important events of the marriage must be registered with the state. In addition to administrative order which is closely related to population registration, marriage registration is as important as birth and death registration. The recording will be recorded in an authentic deed and can be used as a perfect evidence tool at a later date if it is needed to prove an event and has the power and legal protection for parties who holds it.⁴

A marriage not only creates a legal relationship between husband and wife but also creates a relationship with children born in marriage as well as a relationship regarding property which results in the emergence of rights and obligations between them.

Marriage in addition to producing wealth also produces new people (children) from the husband or called offspring, so that marriage will have consequences for wealth and for offspring. The position of children as heirs is influenced by the marriage carried out by their parents.

²<https://id.wikipedia.org/wiki/Marriage> .

³ <https://id.wikipedia.org/wiki/Authority>

⁴Ratnawati, Elfrida et al. "Record Marriages for Legal Certainty and Protection (Case Study: North Minahasa Regency)". *Jurnal Legislasi Indonesia* Vol 18 No 2, 2021. Pg.237 <https://ejournal.peraturan.go.id/index.php/jli/article/view/817/pdf>

The Civil Code also contains rules regarding guardianship in full, including the existence of an institution that oversees the work of guardians in carrying out actions related to the distribution of inheritance from minors who are one of the heirs, but in the Marriage Law and the Compilation of Islamic Law this is not regulated explicitly. In detail, it only explains that the guardian is in charge of taking care of himself and the child's assets and must be responsible for his actions. In the event that the inheritance belongs to underage children or is placed under curatele (pardon), the distribution of inheritance must be carried out by a notary deed and before the *Weeskamer* (Hall of the Heritage).⁵

To prevent things from happening that can harm minors, the guardian submits an application to the Heritage Center (BHP), to take care of the assets of the minor.⁶

Balai Harta Peninggalan is a government institution that has a role as State Curator in accordance with the appointment of judges at the Court.

Raditya Triatmaji Pramana and Bambang Dwi Baskoro in their journals state that Asset management during bankruptcy is carried out by a curator appointed by the court. In other words, only the Commercial Court can decide whether a company is bankrupt or not.⁷

Apart from being the State Curator, the role of the Heritage Property Center is one of them in supervising the assets of underage children. There are still some problems that cause less than optimal implementation of the duties of the trustee institution in the community, namely regarding Human Resources (HR), facilities and infrastructure constraints. Furthermore, the problem is the ineffectiveness of the role of the trustee institution in society, which causes many people to ignore the trusteeship institution.

This study aims to determine the effect of supervision carried out by Balai Harta Peninggalan on inherited property for minors at Balai Harta Peninggalan Semarang.

2. Research methods

The approach method used in this research is empirical juridical. The results of the analysis are presented descriptively. Field data were taken through interviews with the Chair and Secretary in BHP Semarang.

3. Research Results and Discussion

A marriage not only creates a legal relationship between husband and wife but also creates a relationship with children born in marriage as well as a relationship

⁵ Surini Ahlan Sjarif, 1986, *Intisari Hukum Waris*, Ghalia Indonesia, Jakarta, p. 25

⁶ Wijaya, Hadi Kusuma, *Jurnal Ilmiah Perlindungan Hukum Bagi Anak Dibawah Umur Yang Menerima Hibah Menurut KUH Perdata*, Fakultas Hukum Universitas Mataram, 2019. <https://fh.unram.ac.id/wp-content/uploads/2019/09/HADI-KUSUMA-W-D1A114083.pdf>

⁷ Pramana, Raditya Triatmaji dan Bambang Dwi Baskoro, *The Board of Directors' Criminal Liability for Companies Which Declared On Bankruptcy*, Jurnal Daulat Hukum Volume 4 Issue 4 December 2021, hlm. 1 <http://jurnal.unissula.ac.id/index.php/RH/article/view/17784/6129>

regarding property which results in the emergence of rights and obligations between them.

Marriage in addition to producing wealth also produces new people (children) from the husband or called offspring, so that marriage will have consequences for wealth and for offspring. The position of children as heirs is influenced by the marriage carried out by their parents.⁸

The Marriage Law concerning the Guardianship of Minors and in the Compilation of Islamic Law has specifically regulated for minors, parents are obliged to represent the interests of the child inside and outside the Court.

Inheritance in the civil law system that is sourced from the Civil Code includes all property as well as the rights and obligations of the testator in the legal field of property that can be valued in money.⁹

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Guardianship of a child who is still a minor is in the form of taking care of the child's self-interest, starting from caring for and managing the child's property to handing back the child's property when the child is an adult and is able to take care of himself.¹⁰

In the event that the inheritance belongs to underage children or is placed under curatele (pardon), the inheritance must be divided by a notary deed and before the Weeskamer (Balai Harta Peninggalan).¹¹

The guardian's duties are regulated in Article 383 of the Civil Code, which states that every guardian must carry out personal care and education for the minor in accordance with his assets, he must also represent him in all civil actions.¹²

About The procedure for the separation and distribution of inheritance can be described as follows if there is a party who is the owner and who is not free to manage his property, then the separation and division must be carried out by a notary deed. This is in accordance with Article 1070 paragraph (1) of the Civil Code which states that the separation of inheritance cannot be requested on behalf of people who cannot act freely with their property, other than by heeding the regulations given regarding such people in in the Act.

Minors are included in the group of people who do not have the freedom to take care of their property (*goederen*). The law provides special provisions

⁸Hilman Hadikusuma, 1980, *Hukum Waris Adat*, Bandung, p. 7

⁹ Kamal, Alisa, *Perwalian Pengurusan Harta Warisan Anak Di Bawah Umur Menurut Hukum Perdata (Studi Kasus Di Kelurahan Kandis Kota Kecamatan Simpang Belutu Kabupaten Siak)*, Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau Volume VI No. 2 Juli – Desember 2019 Page 10. <https://jom.unri.ac.id/index.php/IOMFHUKUM/article/download/26017/25195>

¹⁰ Hanafi, Taufik dan Arief Faris Ali Sidqi, *Perwalian Atas Harta Waris Anak Di Bawah Umur Menurut Hukum Islam di Indonesia*, Jurnal Universitas Islam Kalimantan, p. 7 <http://eprints.uniska-bjm.ac.id/5911/1/ArtikelTaufik.pdf>.

¹¹ Surini Ahlan Sjarif, 1986, *Intisari Hukum Waris*, Ghalia Indonesia, Jakarta, p. 25

¹² Sudarsono, 1991, *Hukum Perkawinan Nasional*, Rineka Cipta, Jakarta, p. 210

regarding separation and division if among the owners and there are people who are not free to manage their property.

Procedures that must be followed before carrying out the separation and distribution of inheritance:

- **Boedel Registration**
Boedel registration is needed to find out the list of types of inheritance that will be divided. If in a marriage there is a marriage agreement, then the object of boedel registration is inheritance, whereas if there is no marriage agreement, the object of boedel registration is a partnership property. Boedel registration must be done within 3 (three) months from the death of the testator. If this is not done, the inheritance will continue for the benefit of minors (Article 127 of the Civil Code). Boedel registration must be carried out if there are minors who are also entitled to the inheritance.
- **Beneficiary Admission**
This is done to limit the responsibility of people who are not free to express their will, as heirs, so that they only share the debt of the heir as long as the inheritance is sufficient to pay it.
- **Checking the Will**
By sending a request for examination of the registration of a will to the Head of the Central List of Wills at the Ministry of Law and Human Rights in Jakarta. In order to know whether there is a will left by the testator, which will determine the guarantee of the absolute share of the legitimate heirs.
- **Making a Sworn Minutes of Expert Appraisers**
Separation and division are carried out by appraisal or taxation which requires an expert appraiser or appraiser, to determine the value of the inheritance.
- **Making an Appraisal Minutes**
The results of the work of these appraisers are included in the minutes of the appraisal, and must be signed by the appraisers who have been appointed. The amount of money which is the total value of the estimated assets is used as the basis for separation and distribution before a Notary.¹³
- **Making Advertisements in the State Gazette of the Republic of Indonesia**
Within three months from the end of the grace period stipulated in Article 1024, the heirs are required to summon debtors who are not well-known by placing an advertisement in the State Gazette, to immediately calculate the responsibility for their management to them as well as to well-known debtors and creditors. The beneficiary of the testamentary grant, and to pay off their debts and grants, just the price of the inheritance is sufficient.¹⁴

The handling steps taken by the Balai Harta Peninggalan as the Supervisory Guardian (both against the Guardian for the sake of Law and against the Guardian due to the Determination of the Judge), basically include:

- Compile, maintain and keep the Trust Register Carefully (Article 40 of the Household Regulations of the Balai Harta Peninggalan jo. Article 58 Instructions for BHP);
- Ordering the guardian to make a record of the inheritance (Article 48 Instructions

¹³Syahril Sofyan, 1994, *Hukum Waris ditinjau dari sudut praktek di BHP*, Papers, Medan, p. 32

¹⁴Article 1036 of the Civil Code.

- for the Heritage Office in conjunction with Article 127 of the Civil Code);
- Ordering the Guardian to announce whether there are debts of the late heirs in the State Gazette (Article 1036 of the Civil Code);
- Ordering the Guardian to make a calculation of accountability regarding the management of the inheritance (Article 1036 of the Civil Code);
- Ordering the Guardian to make a statement of acceptance of the limited inheritance at the Registrar's Office of the local District Court (Beneficiare Aanvaarding van een Boedel, Article 401 of the Civil Code and Article 1023 of the Civil Code);
- Attending the implementation of inheritance sharing and if deemed necessary, correcting the concept of inheritance sharing in question (Article 1072 of the Civil Code);
- Collect fees related to the position of BHP as Supervisory Trustee (Article 2 Paragraph (2) point 3 letter b number 2 number 4, letter c number 2, item 4 letter b and letter d of Decree of the Minister of Justice of the Republic of Indonesia Number M.02-UM. 01.06 Year 1993 Dated January 28, 1993)

4. Closing

The conclusion in this paper is that the regulatory authority of BHP in supervising the assets of minors is that the task of BHP in supervising the duties of guardians is not running properly, especially because there is no synchronization between implementation and the regulations that govern it, where there is a lack of cooperation between relevant agencies, such as the District Court, The Department of Population and Notary Public, so that it has a negative impact on the efficiency and volume of work of BHP, which causes the role of BHP as Supervisory Trustee to decline.

So there should be regulations that regulate strict legal sanctions against a Guardian who has been appointed by the Guardian and against officials of the relevant agencies, so that the Guardian and related agencies cannot ignore the conditions for state supervision of any guardianship that arises, and there are strict regulations. to discipline the Balai officers in terms of charging the Balai fees in accordance with the amount of the fee charges stipulated by the law.

5. Reference

Journal

- [1] Hanafi, Taufik dan Arief Faris Ali Sidqi, *Perwalian Atas Harta Waris Anak Di Bawah Umur Menurut Hukum Islam di Indonesia*, Jurnal Universitas Islam Kalimantan, hlm 7. <http://eprints.uniska-bjm.ac.id/5911/1/ArtikelTaufik.pdf>
- [2] Kamal, Alisa, *Perwalian Pengurusan Harta Warisan Anak Di Bawah Umur Menurut Hukum Perdata (Studi Kasus Di Kelurahan Kandis Kota Kecamatan Simpang Belutu Kabupaten Siak)*, Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau Volume VI No. 2 Juli – Desember 2019 Page 10. <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/26017/25195>

- [3] Pramana, Raditya Triatmaji dan Bambang Dwi Baskoro, *The Board of Directors' Criminal Liability for Companies Which Declared On Bankruptcy*, Jurnal Daulat Hukum Volume 4 Issue 4 Desember 2021, hlm. 1. <http://jurnal.unissula.ac.id/index.php/RH/article/view/17784/6129>
- [4] Ratnawati, Elfrida dkk. *Catat Perkawinan Untuk Kepastian Dan Perlindungan Hukum (Studi Kasus: Kabupaten Minahasa Utara)*. Jurnal Legislasi Indonesia Vol 18 No 2, 2021.
- [5] Wijaya, Hadi Kusuma, *Jurnal Ilmiah Perlindungan Hukum Bagi Anak Dibawah Umur Yang Menerima Hibah Menurut KUH Perdata*, Fakultas Hukum Universitas Mataram, 2019. <https://fh.unram.ac.id/wp-content/uploads/2019/09/HADI-KUSUMA-W-D1A114083.pdf>.

Books

- [1] C.S.T. Kansil, 1989, Pengantar Ilmu Hukum dan Tata Hukum Indonesia, Balai Pustaka, Jakarta.
- [2] Hilman Hadikusuma, 1980, *Hukum Waris Adat*, Bandung.
- [3] Irawan Soehartono, 1999, *Metode Penelitian Sosial Suatu Tehnik Penelitian Bidang Kesejahteraan Sosial Lainnya*, Bandung, Remaja Rosda Karya.
- [4] Mukti Fajar dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Empiris & Normatif*, Pustaka Pelajar.
- [5] Satjipto Raharjo, 1996, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung.
- [6] Surini Ahlan Sjarif, 1986., *Intisari Hukum Waris*, Ghalia Indonesia, Jakarta
- [7] Sudarsono, 1991, *Hukum Perkawinan Nasional*, Rineka Cipta, Jakarta.
- [8] Syahril Sofyan, *Hukum Waris ditinjau dari sudut praktek di BHP*, Makalah, Medan

Legislation

- [1] Code of Civil law
- [2] Minister of Law and Human Rights Regulation number 7 of 2021 concerning the Organization and Work Procedure of the Heritage Center
- [3] Law No. 1 of 1974 concerning Marriage.
- [4] Law No. 23 of 2002 concerning Child Protection

Internet

- [1] <https://id.wikipedia.org/wiki/Authority> accessed on December 24, 2021 at 13:37 WIB
- [2] <https://id.wikipedia.org/wiki/Marriage> accessed on October 10, 2021 at 18:45 WIB.