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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

PROCEEDINGS

The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

Table of Contents

<i>FRONT PAGE</i>	<i>I</i>
<i>Information of The International Seminar</i>	<i>III</i>
<i>Committee Composition</i>	<i>IV</i>
<i>PREFACE</i>	<i>V</i>
Fulfillment Of Teacher Protection Rights <i>Yenny AS, Rini Setiawati</i>	<i>I</i>
Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Re- view To The Constitutional Court <i>Umar Ma'ruf</i>	<i>13</i>
Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia <i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i>	<i>30</i>
Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City) <i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i>	<i>41</i>
Legal Analysis Of Racist Exams In Surabaya Papua Dormitory <i>Ma'aruf Akib</i>	<i>50</i>
Reconstruction Of Misdemeanor Settlement Based On Pancasila Value <i>S. Andi Sutrasno</i>	<i>57</i>
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i>	<i>63</i>
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i>	<i>67</i>
Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice <i>Widayati , Winanto</i>	<i>73</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Sopyono, Nuridin</i>	82
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun</i>	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari</i>	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno</i>	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan</i>	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun</i>	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih</i>	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun</i>	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir</i>	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji</i>	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng ,Ong Argo Victoria ,Sri Yulianingsih</i>	149
Recontruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**</i>	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i>	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i>	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i>	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i>	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i>	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i>	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i>	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i>	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i>	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i>	234
Reconstruction Of Criminal Responsibility For Actors Prostitutorial Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i>	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i>	248

Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice <i>Sumanto</i>	252
Reconstruction Of Justice Law Protection Law Protection <i>Wamyani</i>	260
Criminal Code Draft Law And Development In Indonesia <i>Nany Pujianti Suwigjo</i>	265
Deconstruction of the Principle of Legal Thinking <i>Sriyati</i>	270
Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java <i>Desy Dwi Nurhayati Hartanti</i>	279
Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	293
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i>	301
Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012 <i>Jaenudin Umar</i>	307
The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom <i>Supena Diansah</i>	313
Interpretation Human Rights Law Against The Teaching Material In Corruption Criminal Offenses <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	319
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i>	327
Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035 <i>Ahmad Agus Bahaudin</i>	331

Policies Against Crime Criminal Law Made By Children <i>Achmad Arifulloh</i>	341
Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia <i>Andri Winjaya Laksana , Lathifah Hanim</i>	350
Position Of Agreement On Land Acquisition For Development For Public Interest <i>Djoni Sumardi Gozali</i>	359
The Village Fund As Indonesian Social Welfare Program: The Gap Between Regulatory And Practice (A Study On Penal Perspective) <i>Ifrani*</i>	367
The Finality Of Arbitration: The Pros And Cons Of The Court's Power To Setting Aside Arbitral Awards In Indonesia <i>Yati Nurhayati</i>	376
Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methods Based On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin</i>	382
Improvement of the Presidential System in Concurrent Elections <i>Endro Wibowo Aji</i>	391
Restorative Justice and Penal Mediation in Resolving Cases of Children Confronting the Law in Indonesia <i>Agustinus Dian Leo Putra</i>	398
Criminological Aspects of Corruption Crime <i>Angga Kusumah</i>	405
Policy Online Single Submission (OSS) System as a Public Service Innovation in the Field of Environmental Licensing <i>Haris Fadillah Harahap</i>	413
The Relevance of Civil Law and Common Law Systems in Regulating Standard Contract Law in Indonesia <i>Iman Fathurrahman</i>	421

Legal Politics In Erading Money Launching Criminal Actions In Indonesia <i>Abdul Haris</i>	427
The Legal Politics Of The State Defense Industry In Indonesia <i>Ade Christian Manapa</i>	433
Political Directions For Land Law On Land Property Rights For The People <i>Aga Wigana</i>	438
Political Form Of Pre-Justice Law In Law Enforcement In Indonesia <i>Apromico</i>	443
Inner Legal Political Strategy Prevention Of Radicalism In Indonesia <i>Beno</i>	448
The Government's Efforts Through Legal Politics In Hajj Management <i>Dhanar Dhono Vernandhie</i>	453
Political Law Of Regional Autonomy As The Management Of Local Government <i>Eka Damayanti</i>	458
Responsibility Of Corporate Crimes In Criminal Actions Of Narcotics <i>Himawan Aji Angga</i>	464
Juridical Review of The Existence of Notary Prohibitions on The Office of The Curator <i>Nurchahyo Pratomo Widodo</i>	469
The Legal Strength of Covernote and Notary Responsibility for The Making of a Covernote as a Legal Product Not Regulated by Notary Laws <i>Arif Bahtiar Jefry</i>	474
Role of Notary / PPAT in Making Authentic Assets Towards False Document Description <i>Kanzu Khirzul Yaman</i>	479
Legal Review of Personal Warranties Made Against The Notary of Lending <i>Nur Chamid</i>	484

Harmonization in Regulation of Heritage Certificate by Notary in Sociolegal Perspective <i>Desi Wulan Anggraini</i>	488
Legal Protection of The Wife's Property in Marriage by Making a Marriage Agreement Made in a Notary Provision <i>Nur Ismi Hanifah</i>	492
Legal Due To The Implementation Of Absolute Authorization In The Sale And Purchase Agreement Before The Development Of Sale And Purchases <i>Bayun Kismantoro</i>	496
Political Laws Notary Honor Assembly <i>Muhammad Wildan Mahindra</i>	500
Role of Notary in The Making of Deal of Sale and Buy Agreements to Support National Development <i>Ika Yulia Ningrum</i>	506
Legal Due to The Implementation of Public Business Credits with Guarantee of The Rights of Liability Made in Notary <i>Riska Fauziana</i>	511
Implementation of Credit Agreement Through Notary Notary And Its Legal Due When Performance Occurs <i>Iqbal Rino Akta Pratama</i>	515
Implementation of Court Determination on The Sell and Purchase Process Towards Officials of Land Associates who are Herities Under The Age <i>Zaenal Arifin</i>	519
Authority of The Notary Regional Supervisory Assembly to Issue a Client's Document Return Order <i>Adi Candra Saputra</i>	524
Implementation of Management and Environment of Damaged Land <i>Agil Aladdin</i>	528

Implementation of Court Determination on The Sell and Purchase Process Towards Officials of Land Associates who are Herities Under The Age

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Abstract

Research aims to review and analyze the implementation of court orders, constraints and solutions to overcome the obstacles in the determination of the Purwokerto District Court on the Sale and Purchase Process before Land Deed Making Officials (PPAT) of the inheritance owned by children as heirs are still under age. Resulting in conclusions (1) Implementation of the Determination of the Purwokerto District Court The Officials for Making Land Deeds and the National Land Agency of Banyumas Regency carry out the Court's decision as a formal basis for the identity of the parties as well as the legal basis for the actions of the parties in the Deed of Sale and Purchase and Transfer of Rights to Land, due to the Court Ruling Number 8 / Pdt.P / 2015 / PN Pwt is a power of attorney to sell which is given to the applicant as guardian or parent of a child or underage heir. (2) Constraints and solutions to overcome obstacles in determining the limit of adult age in the framework of land services in practice have not been fully effective P / 2015 / PN Pwt is the power of attorney to sell which is given to the applicant as guardian or parent of children or underage heirs. (2) Constraints and solutions to overcome obstacles in determining the age limit of adults in the framework of land services in practice have not been fully effective P / 2015 / PN Pwt is the power to sell which is given to the applicant as a guardian or parent to a child or underage heir. (2) Constraints and solutions to overcome obstacles in determining the limit of adult age in the framework of land services in practice have not been fully effective

Keywords: Court Determination, Land Deed Making Official

A. INTRODUCTION

Based on the provisions in Article 1320 of the Civil Code, for the validity of the agreement, the second condition is the authority to act to make an engagement. The authority to act as referred to in the Article is an indicator to determine legal maturity, namely the existence of the legal authority to carry out legal actions without the help of a parent or guardian. The terms of the validity of the agreement set out in the Article above, are interpreted as that everyone is in principle capable of taking legal actions unless the law stipulates otherwise.¹ This is in accordance

with what is stipulated in Article 1329 of the Civil Code that: in principle, everyone is capable of making agreements, unless the law stipulates otherwise.

The authority to carry out certain legal actions is legally valid, if it meets the legal requirements of the agreement stipulated in Article 1320 of the Civil Code which includes: Agreements that bind themselves in the agreement, The ability of the parties to carry out the agreement, a certain thing that becomes the object of the agreement and agreement made for lawful reasons, namely causes permitted by law.²The terms of their agreement that bind themselves in the agreement, the ability of the parties to carry

¹ Ade Maman Suherman dan Juswito Satrio, 2010, *Penjelasan Hukum tentang Batasan Umur (Kecakapan dan Kewenangan Bertindak berdasarkan Batasan Umur*, Nasional Legal Reform Program , Jakarta p. 6;

² Achmad Busro, 2012, *Hukum Perikatan Berdasarkan Buku III KUH Perdata*, Pohon Cahaya Yogyakarta, p. 83;

out the agreement, is a subjective condition which means that these conditions are attached to the parties to the agreement, so that if these conditions are not fulfilled it will result in the agreement being canceled. This means that the agreement can be canceled if someone requests cancellation.

Maturity as regulated in Article 330 of the Civil Code, is maturity in the legal sense measured by the number of years that have passed, so it does not have to be in accordance with the existing facts. Maturity in the legal sense is not based on the physical characteristics of maturity and biology that are known in society. The element of legal certainty behind the provision of maturity is based on the adult age limit.³

Diversity in determining the age limit for maturity is caused by the absence of a standard that can be used accurately to determine the limit of human maturity, age and the act of marriage can indeed be one of the determinants of maturity, but it is not always the right measure because maturity itself is a situation where someone has reaching maturity levels in thinking and acting, while that level of maturity is present in different people, it is even possible that until the end of life humans never experience maturity because maturity is not always proportional to age.

Based on the background description above, the author proposes the title: "Implementation Of The Court Determination Of The Sell And Purchase Process Towards Officials Of Land Asset Manufacturers Who Are Herites Under Age. Based on the description above, the problems in this thesis can be formulated as follows:

1. How to Implement the Determination of the Purwokerto District Court Number 8 / Pdt.P / 2015 / PN.Pwt on the Sale and Purchase Process in the presence of Land Deed Making Officials (PPAT) of the inheritance owned by children as heirs are still under age

2. How are the obstacles faced and solutions to overcome the obstacles faced in the implementation of the Purwokerto District Court Decision Number 8 / Pdt.P / 2015 / PN.Pwt on the Purchase and Purchase Process in the presence of Land Deed Making Officials (PPAT) on inheritance owned by children as the heir is still a minor

B. DISCUSSION OF PROBLEMS

1. Implementation of Court Decision on the Sale and Purchase Process before the Official for Making Land Deeds (PPAT) on inheritance owned by children as heirs are still underage

Volunteer requests or lawsuits are a problem civil submitted in the form of an application signed by the applicant or his proxy addressed to the Chairman of the District Court. The characteristics of a voluntary request or lawsuit are:

- a. The problem posed is of only one-sided interest
- b. The issues that are requested for adjustment to the District Court are in principle without disputes with other parties
- c. No other person or third party is drawn as an opponent, but is absolutely one party (ex-parte).

A petition letter is an application which contains a claim for civil rights by an interested party against a matter that does not contain a dispute, so that the judicial body which is judging can be considered as a court process that is not true.⁴

In the case of Court Decision Number 08 / Pdt.P / 2015 / PN Pwt.application, only the applicant himself. Neither party has been drawn as an opponent or defendant. In principle, the purpose of the petition is to resolve the applicant's own interests without involving the opposing party. Petition must refer to resolving the applicant's

³ J Satrio, *Hukum Perikatan Perikatan pada Umumnya*, Alumni, Bandung; p. 57

⁴ A Mukti Arto, 2000, *Praktek Perkara Perdata Pada Pengadilan Agama*, Pustaka Pelajar, Yogyakarta, p. 74

interests unilaterally. Permohonan petitem must not violate or exceed the rights of others. It must be purely a request for settlement of the applicant's interests.

In the case of Court Order Number 08 / Pdt.P / 2015 / PN Pwt, the panel of judges granted the applicant's petition by giving permission to the applicant Tuti Haryanti as the biological parent who is still alive the longest as the attorney of 2 (two) immature children named Yulia Rahmawati and Wahyu Rizal to represents selling a plot of land known as Freehold Certificate No. 01869 is located in Karangklesem Village / Kelurahan Karangklesem, South Purwokerto District, Banyumas Regency, with a measurement letter Number: 00123 / Kr.Klesem / 1999 dated 21 August 1999, an area of 868 m², which is currently registered under the name of Tuti Haryanti, Yulia Rahmawati, Wahyu Rizaldi.

Whereas in Court Decree Number 08 / Pdt.P / 2015 / PN Pwt it is explained that it is true that in connection with the needs of the education costs and daily life of the Petitioner's children, the Petitioner intends to sell the Petitioner's property in the form of a plot of land known as a Certificate of Ownership No. 01869 does not conflict The duties and obligations of a guardian are to take care of the child's personal and the assets of the child under his guardianship for the child's own interest.

Court Order Number 08 / Pdt.P / 2015 / PN Pwt granted the applicant's petition by giving permission to the applicant Tuti Haryanti as the biological parent who is still living the longest as the attorney of 2 (two) immature and unmarried children named Yulia Rahmawati and Wahyu Rizal to represent selling a plot of yard land. This Power of Attorney requested to the District Court is for Legal action based on the Civil Code requires maturity as a condition of proficiency to carry out certain legal actions, based on Article 1320 of the Civil Code.

Court Decree Number 8 / Pdt.P / 2015 / PN Pwt is used as the basis for conducting a Sale and Purchase Agreement between Tuti Haryanti as the Seller to represent her 2 (two)

children who are not yet adults Article 330 of the Civil Code with Amir Sudjono as the buyer before the Deed Maker Officer Tanah Dewi Rubijanto, SH which is domiciled at Jalan Jenderal Sudirman No. 377 Purwokerto, Banyumas Regency in 2015 on a plot of land known as Freehold Certificate No. 01869 is located in Karangklesem Village / Kelurahan Karangklesem, South Purwokerto District, Banyumas Regency, with a measurement letter Number: 00123 / Kr.Klesem / 1999 dated 21 August 1999, an area of 868 m² based on the results of an interview with Kusumawati, the staff of the Transfer of Rights of the Head of the Banyumas Land Agency Office.

Court Stipulation Number 8 / Pdt.P / 2015 / PN Pwt is used as the basis for PPAT Dewi Rubijanto, SH in the procedure for transferring title to land based on sale and purchase on the legal terms of the sale and purchase of property rights over land. PPAT must also pay attention to the identity of the parties because PPAT must check the formal correctness of the identity of the parties and the legal basis for the actions of the parties. So that the Sale and Purchase Agreement can be carried out by the parties between Tuti Haryanti as the Seller and Amir Sudjono as the buyer to sign a Sale and Purchase Deed before PPAT Dewi Rubijanto, SH because Court Decision Number 8 / Pdt.P / PN Pwt has permanent legal force against Tuti Haryanti as parents of Yulia Rahmawati and Wahyu Rizaldi who are not yet mature or competent in taking legal actions to represent.

2. Constraints faced and solutions

Constraints faced in Court Decision Number 8 / Pdt.P / 2015 / PN Pwt were related to the publication The Circular of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 4 / SE / I / 2015 Concerning Age Limits in the Framework of Land Services Provision number 7 states that the adult age for land services is at least 18 years old or already married. Due to the difference in the date of the application for the District Court

Stipulation Number 8 / Pdt.P / PN Pwt with a Ministerial Circular Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 4 / SE / I / 2015

In the difference between the date of the Court's decision and the Circular of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 4 / SE / I / 2015 concerning Age Limits in the Framework of Land Services where the Ministerial Circular regarding the limit of Adult Age is determined in advance, namely on January 26 2015 and Court Orders Number 8 / Pdt.P / 2015 / PN Pwt was stipulated by the Purwokerto District Court Judge on February 4, 2015 who stated that the age of Petitioner Tuti Haryanti's child, namely Yulia Rahmawati's first child, was born in Kebumen, on April 5, 1994 so that the age at the time the court order was determined to be 20 years 9 months 28 days old and unmarried and the second child, Wahyu Rizaldhi, born in Purwokerto, on November 24, 1996 so that the age at the time of the court order was 18 years 3 months 6 days old and unmarried.

Court Stipulation Number 8 / Pdt.P / PN Pwt is a determination which has permanent legal force on the First and Last Court Decisions of First and Last Character, which cannot be filed for appeal. PPAT Dewi Rubijanto, SH and the National Land Agency of Banyumas Regency have carried out Court Decree No. 8 / Pdt.P / 2015 / PN Pwt as the basis for carrying out the Deed of Sale and Purchase and Transfer of Land Rights not applying the Circular of the Minister of Agrarian and Spatial Planning / Head of Agency National Land Number 4 / SE / I / 2015 Concerning Adult Age Limits in the

Framework of Land Services in Procedures or procedures for the transfer of title to land based on sale and purchase on the legal terms of sale and purchase of land rights based on proficiency in taking legal actions or being mature.

C. CLOSING

Based on the results of the research that has been done, the following conclusions can be proposed:

1. Implementation of the Determination of the Purwokerto District Court Number 8 / Pdt.P / 2015 / PN.Pwt Land Deed Making Officials and the National Land Agency of Banyumas Regency carry out Court Decree Number 8 / Pdt.P / 2015 / PN Pwt as the basis the formal truth of the identity of the parties as well as the legal basis for the actions of the parties in the Deed of Sale and Purchase and Transfer of Rights to Land, because Court Decision Number 8 / Pdt.P / 2015 / PN Pwt is the Power to Sell given to the applicant as guardian or parent to children or underage heirs.
2. Constraints and solutions to overcome obstacles in determining the limit of adult age in the framework of land services in practice are not yet fully effective, there are still differences of opinion and belief regarding legal provisions regarding the legal age limit for parties making deeds on land and the Ministry of Agrarian and Spatial Planning / BPN will not give any form of sanctions to PPAT, legal sanctions in the form of administrative sanctions until dismissal will be given to PPAT.

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