

Legal Position of Court Decisions Regarding Guardianship of Minors in Transactions Regarding Transfer of Land Rights by Parents as Purchasers

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Abstract. *This study discusses the legal status of guardianship court decisions in land transfer transactions involving minors, particularly in the practice of land purchases registered in the child's name while the parents are still alive, as their implementation in the field is still not uniform. This study aims to analyze the procedure for transferring land rights for minors through guardianship court decisions, as well as the obstacles and solutions in their implementation. This study is a normative legal study with a statutory regulatory approach and a conceptual approach, using secondary data collected through literature studies and analyzed descriptively and analytically. The results show that the use of court decisions is conditional and cannot be applied as a general requirement in every transaction. In transactions where the child is the seller, a court decision is still essentially necessary as a form of protection for the child's assets. Conversely, in land purchases in the name of minors by living parents, the need for a court decision depends on the basis of the parent's authority to represent the child according to statutory provisions. The obstacles encountered include normative, practical, and procedural aspects that stem from the lack of uniform application of provisions regarding the use of such court decisions. The solutions offered include affirming the basis of parental authority, preparing technical guidelines for Land Deed Officials and Land Offices, and strengthening coordination between related institutions.*

Keywords: Court; Guardianship; Land; Minors; Transfer.

1. Introduction

Land rights occupy a strategic position in the Indonesian legal system because land is not just an economic asset, but also an object that guarantees legal certainty and protection for its owners.¹This strategic position requires clarity

¹Boedi Harsono. (2008). Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Contents and Implementation. Jakarta: Djambatan, pp. 18-21.

regarding the legal subjects who have rights to it, including when land rights are attached to children who are not yet adults, considering that children do not yet have the capacity to act legally independently.²

The lack of capacity to act does not prevent children from remaining in the position of holder of land rights, as can be seen from the increasingly common practice of registering land in the names of minors.³In such conditions, parents or guardians exercise the authority to represent their children in all legal actions related to their assets, including in land sale and purchase transactions. Previous research has shown that this legal issue is a real issue in practice. Arum discovered cases of land sale deeds belonging to minors being drawn up without court approval, which subsequently gave rise to disputes regarding their validity.⁴Savira et al. also found that some Land Deed Officials (PPAT) require the establishment of a guardianship as a condition for the preparation of a deed of sale and purchase of land rights, without uniform parameters regarding when this condition is truly necessary.⁵

Other research highlights the role of Land Deed Officials (PPAT) in the general process of transferring land rights. Fatoni and Susetyo examine land sale and purchase agreements involving minors and emphasize the importance of clarifying the authority of the party acting on behalf of the child.⁶Murni emphasized the central role of PPAT in ensuring the validity of the subject and object of land rights transfer transactions,⁷Meanwhile, Arisaputra highlighted the responsibility of PPAT in transferring land rights to comply with the principle of prudence.⁸Anggraeni has also conducted a study of the court's decision regarding guardianship requests by parents in processing permits for the sale of land inherited from minors.⁹and Zalifah, et al. regarding the court's guardianship

²Subekti. (2003). Principles of Civil Law. Jakarta: Intermasa, pp. 13–16.

³Ginting, Yuda Oktavianus. (2023). "Land Registration for Ownership Rights and Their Transfer by Children." in Notary Law Journal, Vol. 2, No. 2, pp. 148–162.

⁴Arum, Sekar Puspita. (2023). "The Status of Deeds of Sale and Purchase of Land Owned by Minors Without Court Permission." in UNES Law Review, Vol. 6, No. 2, p. 4090.

⁵Savira, Elita., et al. (2017). "Determination of Child Guardianship Requested by PPAT as a Requirement for Making a Deed of Sale and Purchase of Land Rights." in the Student Journal of the Faculty of Law, Brawijaya University, p. 21.

⁶Fatoni, M. Fuad., & Susetyo, Weppy. (2017). "Legal Review of Land Sale and Purchase Agreements with Minors as Legal Subjects." in Supremacy Journal, Vol. 7, No. 1, pp. 71–75.

⁷Murni, Christiana Sri. (2021). "The Role of Land Deed Officials in the Land Rights Transfer Process." in Journal of Legal Reform Studies, Vol. 1, No. 1, pp. 17–22.

⁸Arisaputra, Muhammad Ilham. (2015). "The Role of Land Deed Officials in the Transfer of Land Rights". in RechtsVinding Journal, Vol. 4, no. 2, p. 279–282.

⁹Anggraeni, Dwi Putri. (2025). "Legal Analysis of Guardianship Applications by Parents in Processing Permits for the Sale of Land Inherited by Minors." in JURRISH, Vol. 4, No. 2, pp. 118–126.

determination in relation to the grant of land rights to minors.¹⁰ These studies generally show that research attention is still focused on children as the parties selling or inheriting land. Few studies specifically examine the situation when parents act as buyers for and on behalf of minors, even though such practices also require clarity regarding when a court order for guardianship is truly necessary as a basis for authority.

The ambiguity of these parameters has the potential to lead to inconsistent application among Land Deed Officials (PPAT) and Land Offices, leading some people to resort to court-ordered procedures even though parental authority is inherently derived from statutory provisions. Further analysis of this situation is crucial to establish clear parameters regarding the legal standing of court orders in the transfer of land rights to minors. This study aims to analyze the procedures for transferring land rights for minors through the determination of a guardianship court, as well as the obstacles and solutions that can be offered in its implementation.

2. Research Methods

This research is normative legal research using a statute approach and a conceptual approach. The research specification is descriptive analytical, which systematically describes the legal position of guardianship court decisions in the transfer of land rights for minors to be analyzed in answering the research problems. The data used are secondary data collected through library research, including primary legal materials in the form of laws and court decisions, secondary legal materials in the form of books, journals, and previous research results, and tertiary legal materials in the form of legal dictionaries and legal encyclopedias. Data analysis is carried out qualitatively through review and interpretation of the collected legal materials, with conclusions drawn using the deductive method, namely drawing conclusions from general legal provisions to answer specific problems.

3. Results and Discussion

3.1. Procedures for Transferring Land Rights for Minors through a Guardianship Court Decision

Land registered in the name of a minor is a common occurrence in Indonesian land law. This ownership can arise from various legal events, such as inheritance, gifts, or purchases made by parents for and on behalf of the child.¹¹ In land rights

¹⁰Zalifah, Yearta Kurnia., et al. (2025). "Legal Protection for Minors as Recipients of Land Rights Grants Through Court Guardianship Determination." in *Journal of Innovative and Creativity*, Vol. 5, No. 2, p. 9925.

¹¹Santoso, Urip. (2019). *Registration and Transfer of Land Rights* (9th Edition). Jakarta: Kencana, pp. 377-381.

transfer transactions, the child's position as a legal subject can be placed in two positions with different legal consequences, namely as the seller or as the buyer, so that the procedures and basis for the authority of the party representing him need to be described separately.

Legal issues arise when land owned by a minor is transferred to another party through a sale. Unlike purchasing land, which increases a child's assets, selling land has the potential to diminish or even eliminate the child's ownership rights to the property. Therefore, this legal process requires stricter oversight than transactions that benefit the child. The limitation of the guardian's authority in managing the assets of minors is regulated in Article 309 of the Civil Code (KUHPer), which stipulates that the guardian is not permitted to transfer or encumber the child's fixed assets without court permission.¹² This provision is emphasized in Article 393 of the Civil Code, which states that the obligation to obtain court permission also applies to parents who exercise parental authority over their children.¹³ This regulation is related to Article 48 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, which emphasizes that parents are not permitted to transfer rights to immovable property belonging to their children who are not yet 18 (eighteen) years old unless the child's interests require it.¹⁴ Protection of children's assets is also emphasized in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.¹⁵

An illustration of the implementation of these provisions is seen in the Decision of the Surakarta District Court Number 166/Pdt.P/2020/PN Skt, as reviewed by Wicaksono.¹⁶ In that case, both parents applied for the authority to sell inherited land in the name of the child to finance the child's needs, and the court granted the application after examining the legal relationship between the applicant and the child and the reasons underlying the sale.¹⁷ A similar application can be seen in the Blitar District Court Decision Number 199/Pdt.P/2025/PN Blt, where parents apply for a guardianship determination and permission to sell the child's inherited land, and the court also assesses the suitability of the sale to the child's best interests before the determination is issued.¹⁸ Both decisions show that the

¹²Republic of Indonesia. Civil Code, Article 309.

¹³Republic of Indonesia. Civil Code, Article 393.

¹⁴Republic of Indonesia. Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Article 48.

¹⁵Republic of Indonesia. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

¹⁶Wicaksono, Ardhan. (2023). "Child Guardianship in Selling Minors' Assets (Study of Surakarta District Court Decision Number 166/Pdt.P/2020/PN Skt)". in *Bevinding Journal*, Vol. 1, No. 2, pp. 45-53.

¹⁷Surakarta District Court. Decision Number 166/Pdt.P/2020/PN Skt.

¹⁸Blitar District Court. Decision Number 199/Pdt.P/2025/PN Blt.

judge does not merely examine the completeness of the administration and the legal relationship between the applicant and the child, but also assesses the substance of the reasons for the sale to ensure that they are in line with the child's interests.

The application for the determination of guardianship for the purposes of selling land was submitted as a voluntary case because it did not contain a dispute between the parties.¹⁹The applicant must describe their identity, legal relationship with the child, the identity of the minor child, land ownership status, and the reasons for the sale, along with supporting evidence. During the examination, the judge will verify the evidence submitted to establish the legal relationship between the applicant and the child, the applicant's authority to act on the child's behalf, and the land ownership status before assessing whether the application complies with legal requirements and is in the child's best interests. If the judge deems all requirements met, the court will grant the request through a stipulation, which serves as the legal basis for the parent or guardian to act on the child's behalf in the land sale. This stipulation does not transfer the child's ownership of the land, but merely legitimizes the parent or guardian's authority to carry out legally restricted acts.²⁰After the determination is obtained, the PPAT checks the identities of the parties, land title certificates, court decisions, and other supporting documents in accordance with the provisions of Government Regulation Number 24 of 1997 concerning Land Registration, before preparing and reading the Sale and Purchase Deed in front of the parties.²¹This deed then becomes the basis for submitting a registration application for the transfer of rights to the Land Office.

The above series of procedures demonstrates that in transactions involving a child as the seller, a court order is not merely a supplementary document, but rather the basis for proving the parent's or guardian's authority to represent the child in legal actions that could potentially diminish their assets. From Hadjon's legal protection theory, this obligation constitutes preventative legal protection, namely, supervision carried out before legal action is implemented to prevent harm to the child's interests.²²Viewed from the theory of legal certainty, court decisions provide a clear legal basis regarding the authority of parents or guardians to act on behalf of children in legal actions that reduce their assets, so that PPAT and the Land Office have definite guidelines in checking the validity of

¹⁹Harahap, M. Yahya. (2017). *Civil Procedure Law Concerning Lawsuits, Trials, Confiscations, Evidence and Court Decisions*. Jakarta: Sinar Grafika, p. 42.

²⁰Satrio, J. (2005). *Family Law on the Status of Children in the Law*. Bandung: Citra Aditya Bakti, pp. 196–198.

²¹Republic of Indonesia. *Government Regulation Number 24 of 1997 concerning Land Registration*.

²²Hadjon, Philipus M. (2007). *Legal Protection for the People in Indonesia*. Jakarta: Civilization, pp. 29–30.

transactions.²³ The legal construction is different when the child is the buyer and the person acting on his/her behalf is the surviving parent. The purchase transaction increases, not decreases, the child's assets, so the limitations on authority as regulated in Article 309 and Article 393 of the Civil Code are not relevant in this situation. Article 47 of Law Number 1 of 1974 concerning Marriage stipulates that parents represent children who are under 18 (eighteen) years of age or have never been married in all legal actions, both in and out of court.²⁴ This provision gives rise to attributive authority, namely authority that is given directly by law to parents as a consequence of the legal relationship between parents and children, without requiring a court decision as an additional condition.

This attributive authority remains in place even if family circumstances change. When one parent dies, the authority to represent the child remains with the surviving parent, as affirmed by Supreme Court Circular Letter Number 7 of 2012.²⁵ The determining parameter is not the status of the deceased parent, but rather whether the authority of the living parent can still be directly proven based on the provisions of statutory regulations. Likewise, in cases of divorce, this authority is not immediately lost. The child's position as a purchaser remains unchanged even if the parents are divorced; the issue lies in proving the authority of the party acting on behalf of the child. If the divorce decree explicitly determines who holds custody, that decree can serve as the basis for determining who exercises the authority to represent the child. The need for a court order in this situation depends on certainty regarding the party authorized to act, not on the divorce itself.

A situation that requires more careful analysis is when the child being purchased is born out of wedlock. Constitutional Court Decision No. 46/PUU-VIII/2010 expanded the civil relationship of illegitimate children to include a civil relationship with their biological father, provided it can be proven through science, technology, or other legal evidence.²⁶ However, this expansion of civil relations does not automatically grant biological fathers the authority to represent their children in all legal proceedings. Satrio explained that the civil relationship between children and parents must be distinguished from the authority to represent children in legal proceedings, as the two have different regulatory bases.²⁷ The basis for this authority still needs to be traced to the applicable provisions regarding child representation, so that a civil relationship alone is not sufficient as a basis for acting on behalf of a child in purchasing land.

²³Mertokusumo, Sudikno. (2011). Legal Theory. Yogyakarta: Atma Jaya University Yogyakarta, pp. 3-4.

²⁴Republic of Indonesia. Law Number 1 of 1974 concerning Marriage, Article 47.

²⁵Supreme Court of the Republic of Indonesia. Supreme Court Circular Letter Number 7 of 2012.

²⁶Constitutional Court of the Republic of Indonesia. Decision Number 46/PUU-VIII/2010.

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The legal construction changes significantly when both parents have died, parental authority is revoked based on a court decision, or the child is in another situation that causes him or her to no longer be under parental authority. Article 50 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that in such circumstances, the child is placed under guardianship.²⁸ Different from parental authority which arises attributively, the authority of a guardian only arises after fulfilling the mechanisms determined by statutory regulations, including a court ruling if required, so that the court ruling in this condition functions as a constitutive legal basis for the emergence of the guardian's authority, not merely a form of administrative caution as in previous conditions.

The difference in the nature of this authority is in line with the theory of authority which places attribution as authority that arises directly from the law, different from authority that only exists after going through a determination that provides legitimacy to certain parties to act.²⁹ Junaidi emphasized that clarity of the basis of authority is important in civil law because it determines the validity of every legal action taken on behalf of another party.³⁰ Gultom added that legal protection for children must still pay attention to proportionality, so that the protection instruments used are in accordance with the child's real needs and do not create unnecessary burdens for their families.³¹ Based on this description, the use of a court ruling in the transfer of land rights for minors is conditional. In transactions that place the child as the seller, a court ruling is still essentially necessary as an instrument of preventative protection for the child's assets, in line with the limitations of authority stipulated in Articles 309 and 393 of the Civil Code. Conversely, in transactions purchasing land in the name of a child by a surviving parent, the determining parameter is not the child's position as a buyer or his or her age as a legal subject, but rather the basis of the authority held by the party acting on behalf of the child. As long as this authority is still attributively born based on the provisions of laws and regulations, a court ruling is not a mandatory requirement. Conversely, if this authority has been transferred to the guardian because the child is under guardianship, the court ruling becomes the legal basis that legitimizes the guardian to act on the child's behalf, including in land purchases.

3.2. Obstacles and Solutions to the Transfer of Land Rights for Minors with the Determination of the Guardianship Court

²⁸Republic of Indonesia. Law Number 1 of 1974 concerning Marriage, Article 50 paragraph (1).

²⁹Hadjon, Philipus M. (2010). "On Authority". in Jurnal Yuridika, Vol. 25, No. 2, p. 8.

³⁰Junaidi, Muhammad. (2019). "The Concept of Authority from a Civil Law Perspective." in Mimbar Hukum, Vol. 31, No. 3, pp. 405-409.

³¹Gultom, Maidin. (2014). Legal Protection for Children and Women. Bandung: Refika Aditama, p. 33.

Although normative parameters have been established regarding the conditions requiring a court ruling, as outlined in the previous subchapter, their practical application still presents a number of obstacles. These obstacles can be grouped into three interrelated aspects: normative obstacles, practical obstacles, and procedural obstacles. Therefore, their resolution requires an integrated approach, not just addressing the impacts felt at a specific stage.

Normative barriers are the most fundamental issue because legal certainty in the transfer of land rights is determined not only by the existence of a regulation, but also by the clarity of the relationship between regulations governing the authority to act on behalf of children. Regulations regarding parental authority and guardianship are still scattered across various provisions with varying scopes, ranging from the Marriage Law and the Civil Code, to various regulations in the land sector, without explicit parameters regarding the conditions requiring a court order for the purchase of land in a child's name. This situation indicates that one of the elements of legal certainty has not been fulfilled. According to Mertokusumo, legal certainty is the guarantee that the law is enforced and that every legally entitled party can obtain their rights. This requires clarity and consistency of regulations, not merely the existence of norms.³² Otto added that legal certainty requires clear, consistent, and easily accessible legal regulations so that each party can know for certain the applicable requirements before carrying out legal actions.³³

Practical obstacles are a further consequence of the lack of uniform understanding and application of this legal structure, which not only affects the application of applicable provisions but also the performance of the duties of officials involved in the land transfer process. Yolanda found that some Land Deed Officials (PPAT) still require a court order as an administrative requirement, even if the child's representative is the longest-living biological parent.³⁴ Anggraeni found a similar pattern in the practice of managing permits for the sale of land inherited from minors by parents, where the administrative requirements between agencies were not yet completely uniform.³⁵ Zalifah, et al. also noted the same trend in transactions granting land rights to minors.³⁶ This non-uniformity causes the administrative requirements applied to differ even

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³³ Otto, Jan Michiel. (2002). *Real Legal Certainty: A Precondition for Legal, Economic and Social Development*. Leiden: Leiden University Press, p. 24-26.

³⁴ Yolanda, Wendi. (2020). "Legal Consequences of Transferring Rights to Land Owned by Children Without Court Approval of Guardianship Determination." in *Somasi Journal*, Vol. 1, No. 1, p. 93.

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though the objects, subjects and basis of authority have the same characteristics, so that the public does not obtain certainty regarding the documents that must be prepared before making a transaction. Procedural obstacles arise as a further consequence when a court order is required under circumstances that do not actually require one. Even though a request for a guardianship order is classified as a voluntary case that does not essentially involve a dispute between the parties,³⁷ Applicants must still prepare supporting documents, submit an application, attend court, and await a legally binding decision. This process incurs additional time and costs before the transfer of land rights can be finalized, even if there is no substantial dispute regarding the status of the child or their representative.

These three obstacles form a mutually influencing chain: unclear regulations lead to differing understandings of the application of administrative requirements by PPATs and Land Offices, which in turn adds to the procedural steps that communities must go through even when the legal conditions they face are essentially the same. Therefore, an effective solution needs to begin with a clarification regarding the use of court decisions based on parental authority, as described in the previous subchapter. Solutions to these normative and practical obstacles can be achieved through the development of technical guidelines or standard operating procedures by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, which explicitly explain the conditions requiring a court ruling based on the basis of parental authority to represent children. These guidelines need to be accompanied by ongoing socialization and guidance for Land Deed Officials (PPAT), including through collaboration with professional organizations such as the Association of Land Deed Officials (IPPAT), to ensure a more uniform understanding of the application of these provisions.

Meanwhile, solutions to procedural obstacles require strengthening coordination between the Courts, Land Deed Officials (PPAT), and the Land Office so that administrative requirements are applied consistently from the beginning of the land transfer process, so that the public has clarity regarding the documents that must be fulfilled without having to undergo additional, unnecessary procedures. The simplification of administrative procedures is not intended to reduce legal protection for children, but rather to ensure that such protection is provided proportionally according to the legal conditions faced, in line with Gultom's view that child protection instruments should be tailored to the real needs faced, not applied uniformly without considering the context.³⁸ The implementation of a clear legal construction regarding the use of court decisions is expected to be able to realize uniformity of service, reduce the burden of time and costs for the

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community, and continue to provide proportional legal protection for the best interests of minors.

3.3. Form of Deed of Transfer of Land Rights for Minors

The transfer of land rights involving minors, whether in the position of seller or buyer represented by parents or guardians, must be stated in an authentic deed made by a PPAT in accordance with the provisions of Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration.³⁹The form and content of the deed follow the standard format stipulated in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, so that the PPAT cannot draft the deed freely outside the stipulated format.⁴⁰The obligation to follow this standard format applies generally, regardless of whether the subject involved in the transaction is a minor or not.

The fundamental difference in deeds involving minors lies in the comparison section, namely the part of the deed that describes the identity and capacity to act of the parties. When the child is the seller, the comparison of the deed contains a statement that the party appearing is acting in the capacity of a parent or guardian representing the child based on a court order, accompanied by a mention of the number and date of the order that forms the basis of their authority. This description is important because it proves that the party signing the deed truly has the authority to transfer the rights to the land belonging to the child, in line with the PPAT's obligation to ensure the capacity and authority to act of the parties before the deed is drawn up.⁴¹ When the child is in the position of buyer and is represented by the surviving parent, the deed comparison contains a statement that the party appearing is acting for and on behalf of the child based on the parental authority in accordance with Article 47 of Law Number 1 of 1974 concerning Marriage, without the need to include a court decision as the basis for authority, except in conditions that require it as described in the previous sub-chapter. The difference in the formulation of this comparison directly reflects the difference in the basis of authority that has been analyzed, so that the deed made by the PPAT should be adjusted to the actual legal conditions faced, not standardized without considering the basis of authority of the acting party.

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⁴⁰Republic of Indonesia. Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

⁴¹Republic of Indonesia. Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials.

In addition to the comparison section, the deed of sale and purchase still contains other standard elements, namely a description of the object of sale and purchase along with its legal and physical data, the transaction price and statement of payment, as well as articles containing guarantees that the object is not in dispute, a statement of conformity with the maximum limit of land ownership, tax obligations, and responsibility for the costs of making the deed. The child as the subject who obtains or transfers rights does not affix his signature to the deed, because the legal action is fully carried out by the party representing him according to the basis of legal authority. Based on this description, the deed of transfer of land rights for minors essentially follows the standard format for a general deed of sale and purchase, with adjustments to the comparison section, which must explicitly outline the basis for the authority of the party representing the child. The clarity of the comparison reflects legal certainty regarding the authority to act and serves as a valid instrument of evidence should any questions arise regarding the validity of the transaction later on.

4. Conclusion

The use of a guardianship court order in the transfer of land rights for minors is conditional and cannot be applied as a general requirement in every form of transaction. In transactions where the child is the seller, a court order is still essentially necessary as a form of protection for the child's assets. Conversely, in transactions purchasing land in the name of a minor by a living parent, the need for a court order depends on the basis of parental authority according to statutory provisions, and only becomes mandatory when that authority has been transferred to the guardian because the child is under guardianship. Obstacles encountered in its implementation include interrelated normative, practical, and procedural aspects, stemming from the lack of uniform application of provisions regarding the use of such court orders. Based on these conclusions, it is recommended that the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency develop guidelines or implementation instructions that provide clarity regarding the use of court decisions in land purchase transactions in the name of minors, so that they can serve as a uniform reference for PPAT and the Land Office. PPAT and the Land Office are also advised to implement these provisions by taking into account the basis of the authority of parents who represent children, so that a common understanding in the application of administrative requirements can reduce differences in practice and provide legal certainty and convenience for people who transfer land rights to minors.

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