

Legal Protection for Minors Through Guardianship Institutions

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Abstract

The child, as a legal subject, has rights protected from birth, even while in the womb. This is regulated in Article 2 of the Civil Code. Children are considered a group of individuals incapable of legal actions. To engage in legal actions, they must be represented by their parents or legal guardians. Not all children are under the authority of their parents. If both parents passing away, being unable to exercise parental authority, or having parental authority revoked by the court, the child falls under guardianship. This research aims to understand the protection of children through the guardianship institution according to the Civil Code and the Marriage Law No. 1 of 1974. The research follows a normative legal approach, and secondary data is collected through document analysis. The data obtained is analyzed using descriptive methods with a qualitative approach. This research concludes that through the guardianship institution, a guardian takes on the role of the parent in fulfilling all the needs of the child. Several provisions regarding guardianship found in the Civil Code and Marriage Law No. 1 of 1974, which provide protection for children, both in terms of personal and property rights, include: (1) the guardian's obligations, (2) the existence of a supervisory guardian, (3) prohibitions for the guardian, (4) limitations on the guardian's authority, (5) revocation of the guardian's authority, and (6) the guardian's accountability.

Abstrak

Anak sebagai subyek hukum mempunyai hak-hak yang dilindungi sejak dilahirkan, bahkan semenjak masih dalam kandungan. Hal ini diatur dalam Pasal 2 KUHPt. Anak merupakan golongan orang yang tidak cakap melakukan perbuatan hukum. Untuk dapat melakukan perbuatan hukum, harus diwakili oleh orang tua atau walinya. Tidak semua anak berada dalam kekuasaan orang tuanya. Dalam hal kedua orang tua meninggal dunia, tidak mampu menjalankan kekuasaan orang tua, atau kekuasaan orang tua terhadap anak dicabut oleh pengadilan, maka anak berada di bawah perwalian. Penelitian ini bermaksud untuk mengetahui bagaimanakah perlindungan terhadap anak melalui lembaga perwalian menurut KUHPdt dan Undang-undang No.1 Tahun 1974 tentang Perkawinan. Penelitian ini merupakan penelitian hukum normatif. Pengambilan data sekunder dilakukan dengan studi dokumen. Data yang diperoleh dari penelitian dianalisis dengan menggunakan metode deskriptif dengan pendekatan kualitatif. Kesimpulan penelitian ini adalah bahwa melalui lembaga perwalian, seorang wali menggantikan kedudukan orang tua dalam memenuhi segala kepentingan anak. Beberapa ketentuan mengenai perwalian yang terdapat dalam KUHPdt maupun Undang-undang Perkawinan No.1 Tahun 1974 tentang Perkawinan yang memberikan perlindungan terhadap anak, baik terhadap pribadi maupun harta bendanya, adalah; (1) kewajiban wali, (2) adanya wali pengawas, (3) larangan bagi wali, (4) pembatasan kekuasaan wali, (5) pencabutan kekuasaan wali dan (6) pertanggungjawaban wali.

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1. INTRODUCTION

The position of humans as legal subjects, namely as supporters of rights and obligations, begins at birth and ends after death. Every legal subject has legal authority, namely the authority to assume rights and obligations. Legal authority can begin while still in the mother's womb, if the interests of the child require it. This is regulated in Article 2 of the Civil Code which determines: "

- (1) A child in a woman's womb is considered to have been born, whenever the interests of the child so require.

(2) When he dies when he is born, he is considered to have never existed."

The provisions contained in Article 2 of the Criminal Code above are often called "rechtsfictie" (Riduan Syahrani, 2013: 45).

Even though a child has legal authority, not all of them are capable of carrying out legal actions. Article 1330 of the Criminal Code determines that people who are not competent to carry out legal acts include children who are not yet adults.

For children, as long as their parents' marital ties are still ongoing, the children are under the control of their parents. This is stipulated in Article 299 of the KIHPdt which states that 'as long as the father and mother are married, each child, until he or she becomes an adult, remains under their authority, but they are not released or dismissed from that authority'. Thus, according to the Civil Code, parental authority over children rests with both parents, namely the father and mother.

A child is someone who is not yet an adult. Article 330 of the Criminal Code paragraph (1) determines that minors are those who have not reached the age of 21 and have not previously been married. Furthermore, Article 330 of the Criminal Code paragraph (3) stipulates: "Those who are not yet adults and are not under parental authority are under guardianship". Thus, children who are not under the control of their parents are under guardianship. Guardianship is the supervision of the person and management of the assets of a minor child if the child is not under the authority of the parents (Ali Afandi, 1986: 156).

A child, to be able to take legal action, must be represented by his parent or guardian. Guardianship institutions are regulated both in the Criminal Code and in Law no. 1/1974 concerning Marriage. Article 50 of the UUP stipulates: "(1) Children who have not reached the age of 18 (eighteen) years or have never been married, who are not under the authority of parents, are under the authority of a guardian, (2) Guardianship concerns the person of the child concerned, as well as his property. From the provisions in Article 50 paragraph (1) of the UUP, it can be seen that guardianship will occur if the child is not under the authority of his parents.

Children as input to the population, heirs and holders of the nation's destiny, also determine the pace of the national development process in all fields, therefore children need to receive rights protection, both civil and criminal (Bunadi Hidayat, 2014: 35).

Children's rights have been regulated in various laws and regulations. At the international level, the regulation of children's rights can be seen when the UN ratified the Declaration regarding the rights of children in 1959. Followed later in 1989, the UN ratified the Convention on the Rights of the Child on November 20 1989. Indonesia was one of the countries that ratified the Convention on the Rights of the Child based on Presidential Decree Number 36 of the Year 1990.

Child protection according to Article 1 number (2) of Law Number 23 of 2002 concerning Child Protection is "all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination."

Child protection can also be interpreted as all efforts aimed at preventing, rehabilitating and empowering children who experience child abuse, exploitation and neglect, in order to ensure the child's survival and normal growth and development, both physically, mentally and socially (Maidin Gultom, 2012: 4).

In essence, children cannot protect themselves from various threats of violence which cause mental, physical and social harm in various areas of life and livelihood, children must be assisted by other people in protecting themselves (Muhamad Arif Agus and Johari, 2022: 93). Basically, guardianship is an important thing for a person's survival, especially small children (minors) or children who are still unable to take care of themselves, such as

neglected children, both in managing assets and in taking care of their own living needs or in other terms, namely children. who are still unable or incompetent in taking legal action (Nursalam Rahmatullah, 2016:2).

A guardian is a person who is given the authority to carry out legal actions in the interests of a child who does not have both parents or because both parents are not competent to carry out legal actions.

Based on the matters described previously, the formulation of the problem is: What is the legal protection for children through guardianship institutions according to the Criminal Code and Law No. 1 of 1974 concerning Marriage?

2. RESEARCH METHOD

This research is normative legal research. Normative legal research is legal research carried out by examining library materials or secondary data (Soerjono Soekanto and Sri Mamudji, 2006: 13-14).

In order to obtain research material, this research was carried out using library research. Literary research is carried out by studying documents that examine legal materials. This legal material is taken from library materials in the form of primary legal materials, secondary legal materials, and tertiary legal materials.

- a) Primary legal materials are library materials that contain legal regulations related to research, which include:
 - 1) Code of Civil law.
 - 2) Law No. 1 of 1974 concerning Marriage.
- b) Secondary legal materials consisting of:
 - 1) Books on Civil Law
 - 2) Journals related to research material.

Data obtained from library research is analyzed in the following way: data from library research which is secondary data, is arranged systematically, so that a comprehensive picture of the principles and legal provisions relating to the problem under study is obtained, then grouped according to their sections. each to be recorded systematically. Furthermore analyzed using descriptive methods with a qualitative approach, then given an in-depth and comprehensive explanation.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Legal Protection for Children Through Guardianship Institutions According to the Criminal Codedt.

Parental power over children includes two things, namely power over the child's personality and the child's property. According to Article 298 paragraph (2) of the Civil Code, fathers and mothers are both obliged to care for and educate their children who are not yet adults. The obligation of maintenance is to provide shelter, food, clothing and care if the child is sick, while education in question is educating children to become social beings, and sending children to school so they can live independently in the future (Soetojo Prawirohamidjojo and Marthalena Pohan 1995: 202). Parental power over children's property is determined in Article 307 paragraph (1) of the Civil Code which states that the holder of parental authority over a child who is not yet an adult must take care of the child's assets.

As long as the child's marital ties still exist, the child is under the control of his parents. This is stipulated in Article 299 of the KIHPdt which states that 'as long as the father and mother are married, each child, until he or she becomes an adult, remains under their authority, but they are not released or dismissed from that authority'. Thus, according to the Civil Code, parental power over children rests with both parents and

not only in the hands of the father, but also in the hands of the mother. A child is someone who is not yet an adult. Article 330 of the Criminal Code paragraph (1) determines that minors are those who have not reached the age of 21 and have not previously been married. Furthermore, Article 330 of the Criminal Code paragraph (3) stipulates: "Those who are not yet adults and are not under parental authority are under guardianship".

A child is not under the authority of his parents, this can happen if he no longer has parents because both parents have died or by court their parental authority has been revoked or released. Children who are not under the control of their parents are under guardianship. Guardianship is the supervision of the person and management of the assets of a minor child if the child is not under the authority of the parents (Ali Afandi, 1986: 156). A child cannot carry out his own interests, so with the existence of a guardianship institution, the child's rights can still be fulfilled, so that his interests can be protected.

The legal protection for children's personal and property through guardianship institutions according to the Criminal Code is as follows:

1. Obligation to notify the occurrence of guardianship.

The obligation to notify that a guardianship has occurred is regulated in Article 368 of the KUHP which stipulates: "As soon as the guardianship begins to operate, you are obliged to notify the Inheritance Property Office (BHP) of the occurrence of the guardianship." This notification is important because with the start of guardianship, a legal relationship arises in the form of rights and obligations between the guardian and the minor child under his guardianship. Children will receive their rights from a guardian in the form of personal care and management of their property.

2. Guardian's obligations

The guardian's obligation to ensure that the child's rights can be fulfilled thereby providing protection for the child, both for himself and his property. The guardian's obligations are (a) Must provide personal care and education for the minor child in accordance with his assets, and represent him in all civil actions (Article 383 paragraph (1) of the Criminal Code). (b) Obligated to manage the assets of minor children as a good housewife and responsible for costs, losses and interest that are expected to arise due to poor management (Article 385 of the Criminal Code), (c) Obligation to provide collateral to guarantee the guardian's management of the child's assets (Article 335 of the Criminal Code), (d) The guardian's obligation to sell the child's household furniture under guardianship and all movable items that do not provide results or profits except items that are permitted to be kept in kind with Weeskamer's permission (BHP). The sale must be carried out by public auction (Article 389 KUHPdt), (e) Obligation to register state receivables if it turns out that in the child's assets under guardianship there are state receivables (Article 392 KUHPdt), (f) Obligation to belegen (plant) the remaining money belonging to the child under trust after deducting living expenses. The existence of this guardian's obligation will provide a guarantee that the child will receive his rights, including the rights to maintenance, education and management of the child's property.

3. There is a supervisory guardian

The supervisory guardian is regulated in Article 306 of the Civil Code which determines that in a guardianship there must be a supervisory guardian which is run by the BHP (Inheritance Property Office). BHP's duties as supervisory guardian is regulated in Article 366 of the Civil Code which stipulates 'in every guardianship ordered in Indonesia, the Inheritance Agency is obliged to carry out the duties of supervisory guardian'. BHP's position as supervisory trustee, its obligations are:

- (1) Carefully prepare, maintain and store trust registers (Article 58 of the Instructions for BHP).
- (2) Order the guardian to make a record of the inheritance (Article 48 of the Instructions for BHP).
- (3) Observe whether the guardian is carrying out his obligations well or not and how necessary it is to provide advice to the guardian to carry out his obligations as well as possible.
- (4) Representing the interests of the minor child, if these interests conflict with the interests of the guardian, without reducing the special obligations imposed on the Inheritance Hall in its letter of instruction at the time the Inheritance Hall was ordered to assume supervisory guardianship (Article 370 paragraph (1) of the Criminal Code) .
- (5) It is mandatory to force the guardian to make a list or details of the inheritance items in all inheritances that fall into the hands of the minor child, with the threat of compensation for costs, losses and interest, the supervisory guardian (Article 370 paragraph (2) of the Criminal Code).
- (6) It is mandatory to carry out all actions specified in the law, so that each guardian, even if not ordered by a judge, provides sufficient guarantees, or at least carries out management in the manner determined by law (Article 371 of the Criminal Code).
- (7) Every year the supervising guardian must ask the guardian (except father and mother) to provide a brief and accountable calculation and show him the contribution letters and securities belonging to the minor child. The summary calculation must be made on unstamped paper and submitted without a fee and without any legal form (Article 372 of the Criminal Code).
- (8) Demand dismissal if a guardian in a summary calculation finds signs of fraud or gross negligence (Article 373 of the Criminal Code).
- (9) Demand that the guardian's authority over the assets of the minor child be revoked and handed over to the Inheritance Property Office, until the guardian provides sufficient collateral, handing over this task back to the guardian (Article 338 of the Criminal Code).

With a supervisory guardian, it is hoped that the guardian can carry out his obligations as well as possible, so that children under guardianship will receive maximum protection.

4. Dismissal of guardian

Guardians who behave badly and are unable to fulfill their obligations, abuse their power, and ignore their obligations can be dismissed as guardians. This is stipulated in Article 380 of the Criminal Code. This provision is a limitation on the guardian's power, so that the guardian must really carry out his obligations well.

5. Obligation to provide calculations and accountability.

That the guardian's power is not without limits, so there is calculation and accountability. This is stipulated in (Article 372 of the Criminal Code), that every year the guardian must make a brief report regarding its management to the supervisory guardian (BHP). Apart from that, the guardian must also carry out an inventory/details regarding the child's assets under guardianship, which must be attended by the supervisory guardian (BHP) (Article 386 paragraph (1) KUHPdt). At the end of his duties the guardian is obliged to carry out a closing and accountability calculation (Article 409 KUHPdt) .

6. Prohibitions and restrictions for guardians

Guardians may not borrow money for the benefit of children under their guardianship, nor may they alienate or pawn immovable property and sell and transfer debt securities without obtaining power of attorney to do so (Article 393 of the Criminal Code).

The existence of provisions that prohibit guardians from alienating/transferring or pawning their children's property can also protect children's property.

3.2. Legal Protection of Children Through Guardianship Institutions According to Law No.1 of 1974 concerning Marriage.

Children are legal subjects who have rights and obligations. Children can have various civil rights, but children are categorized as incapable of carrying out legal actions. According to Law no. 1 of 1974, immature children are children who have not reached the age of 18 or have never been married. This is concluded from the provisions of Article 47 paragraph (1) of the UUP which determines that children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents as long as they are not deprived of their authority.

According to Article 45 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is stipulated that both parents are obliged to care for and educate their children as best as possible. Furthermore, according to Article 45 paragraph (2) of the UUP, the parents' obligations continue until the child marries or becomes independent, which obligations continue even if the marriage between the parents breaks down.

Thus, the dissolution of the marriage between the two parents, the death of one of the two parents and the removal of the authority of one of the two parents does not automatically result in the child being under the authority of a guardian, unless in the dissolution of the marriage, both parents have handed over the child to their parents. under the authority of the guardian (Riduan Syahrani, 2013: 104). So, the emergence of guardianship according to Marriage Law Number 1 of 1974 is because both parents die, or the authority of both parents is revoked by the court, or after the marriage is broken up, both parents' hand over the child under the authority of the guardian. Children cannot protect their own interests. For this reason, assistance from various parties is needed.

The legal protection for children's personal and property through guardianship institutions according to Law Number 1 of 1974 concerning Marriage is as follows:

1. The emergence or start of guardianship

Article 50 paragraph (1) determines that 'children who have not reached the age of 18 years or have never entered into a marriage that is not under the authority of parents, are under the authority of a guardian. Guardianship concerns the child's personality and property (Article 50 paragraph (2) Law Number 1 of 1974). The existence of this provision guarantees that children can still have their rights fulfilled. Children cannot fulfill their own interests.

2. Guardian's obligations

The obligations of a guardian according to the UUP are as follows:

- a. Guardians are obliged to take care of children under their control and their property as well as possible by respecting the child's religion and beliefs (Article 50 paragraph (3)).
- b. Guardians are required to make a list of the child's assets under their control when they start their position and record all changes in the child's assets (Article 51 paragraph (4)).

3. Revocation of guardian powers

Article 53 (1) of Law Number 1 of 1974 determines that a guardian can be stripped of his powers in the following cases: a. Grossly neglecting his obligations towards his children, b. Very bad behavior. Furthermore, paragraph (2) stipulates that, if the guardian's powers are revoked, the court will appoint another person as guardian. If the guardian behaves as mentioned above, it can affect the child's behavior and can also cause losses to his or her assets. Therefore, guardianship can be revoked by the Religious Court at the request of an adult relative (Ishak, 2017: 588). The aim of limiting the guardian's powers is to protect the personality of the child under guardianship. To become the guardian of a child, this can be done through a court order and the appointment of a guardian to exercise the power of custody over the child. This can be done if the child's parents and family are unable to carry out their obligations and/or neglect their obligations and responsibilities. The parents can be given supervision or power of custody. parents can be revoked. A person or legal entity that meets the requirements can be appointed as guardian of the child concerned. (Fijdja Baftim and Jeanya A Kermite, 2020; 168).

4. Guardian accountability

As a form of protection for children under guardianship, the guardian's powers are not without responsibility. If a guardian causes loss, he or she may be obliged to compensate for the loss. The guardian is responsible for the child's property under his or her guardianship as well as losses incurred due to his or her error or negligence (Article 51 paragraph (5)). Guardians who have caused damage to the child's property under their control, upon the claim of the child or the child's family by a court decision, the person concerned may be obliged to compensate for the loss (Article 54 of the UUP).

5. Restrictions on the powers of guardians.

A child is under the authority of a guardian, but this does not mean that the guardian's power is unlimited, so there are limitations to the guardian's power. The aim of limiting the guardian's powers is to protect the child's property under his guardianship. The limitation on a guardian's power over a child's property based on Article 52 of the UUP is that a guardian is not permitted to transfer rights or pawn fixed property belonging to a child who is not yet 18 (eight) years old or has never been married, unless the child's interests require it. Thus, the guardian may not sell, give away or guarantee the child's assets unless it is in the child's interests.

4. CONCLUSION

Children who are still minors unable to fulfill his own interests. Through a guardianship institution, a guardian replaces the position of parents in fulfilling all the interests of the child. Several provisions regarding guardianship contained in the Criminal Code and the Marriage Law No. 1 of 1974 concerning Marriage, which provide protection for children, both their personal and property, are; (1) obligations of guardians, (2) existence of supervisory guardians, (3) prohibitions on guardians, (4) limitations on guardians' powers, (5) revocation of guardians' powers and (6) guardians' responsibilities.

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