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Analysis of the Judge's Considerations Rejecting Applications for the Court Order of Guardianship And Permission to Sell Land Rights Owned by Minors And the Legal Implications Regarding Deeds of Sale And Purchase by PPAT (Study of the Court Order of the Sangatta District Court Number: 13/Pdt.P/2023/PN.Sgt)

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Abstract: The purpose of this research is to find out the judge's considerations in rejecting the application for guardianship and permission to sell land rights belonging to a minor child by his biological mother in the Court Order of the Sangatta District Court Number 13/Pdt.P/2023/PN.Sgt. The methodology is doctrinal research, by relating the main research problem with legal theory, legislation, and court precedence relating to guardianship of minors and permission to sell. This research was analyzed using an empirical juridical approach, by analyzing the legal material and then examining the results of the analysis with interviews. The researcher attempted to providing a perspective and solution to the problem raised. The results showed that the judge rejected the application with the consideration that the living parent automatically exercises parental authority and is free to take legal action on behalf of their children both before and outside the court without applying a guardianship application. The impact of the decision can be interpreted that the applicant can carry out the legal actions, including signing a deed of sale and purchase of the inherited land without a guardianship court order or permission to sell from the court. This creates legal uncertainty and confusion in the process of making a deed of sell and purchase by the Land Titles Registrar (PPAT). A sale and purchase deed made without a guardianship court order and permission from the court or a deed made on the basis of a judge's consideration as in the court order decision, the registration process would be declined by the Land Registry Office. For similar cases that may occur in the future, it will open up the possibility of parents arbitrarily exercising parental authority because there is no supervision by judge in the form of Court Order of Guardianship and permission to sell Land Rights belonging to minors

Keyword: Guardianship, Permission to Sell, Minors, The Land Titles Registrar (PPAT), Deed of Sale and Purchase.

INTRODUCTION

Provisions regarding children in Indonesia are regulated in various laws and regulations. Law Number 1 of 1974 concerning marriage states that children who have not reached the age of 18 or have never been married are under the authority of parents or guardians. Parents represent to act in all legal actions both inside and outside court (Undang-Undang, 1974). However, in the realm of law regarding ownership of land rights, especially the transfer of land rights, minors are considered not to have the skills to carry out these legal actions.

In the Civil Code, Article 299 states that during the marriage of their parents, every child is under the authority of their parents, as long as their authority is not revoked (Subekti & Tjitrosudibio, 2006 Pasal 299). From the provisions of this article, it can be concluded the principles of parental authority, namely:

- a. This power is the power that resides in the child's parents;
- b. Parental power exists over minor children;
- c. Parental authority exists as long as the marriage lasts;
- d. Personal authority lasts as long as the obligations that parents must fulfill towards their children are carried out fairly and well.

From the above, it can be concluded that if the parents do not carry out their obligations fairly or well, then they or one of them can be removed from their parental authority (Darmabrata, 2015).

Thus, if one of the parents dies, then the surviving parent by law (automatically) becomes the guardian of the child or minor children, he is the guardian according to the law (Subekti, 2002). Guardianship for children who are not under parental authority, the law determines that a guardian must be appointed for them.

Every person who holds the authority of a parent or guardian must take care of the child's belongings. However, in article 309 there is a restriction that the person may not transfer the belongings of children who are still underage, unless they pay attention to the rules in Chapter XV of Book One (Subekti & Tjitrosudibio, 2006 Pasal 309). Transferring ownership of immovable property belonging to minors cannot be done haphazardly, especially in buying and selling land rights transactions. The law requires a guardianship institution to be established by the court and a selling permit to be determined by the court to ensure that children's rights are protected in the buying and selling process. As regulated in Article 393 of the Civil Code, for the benefit of the minor, the guardian may not borrow money, nor may he alienate or pawn immovable property, nor may he sell or transfer state debt securities, receivables and share without obtaining power to do so from the District Court (Darmabrata, 2015). This means that whoever the guardian, including the oldest living parent, must first ask permission from the Court if they intend to transfer a minor's property, provided that this is done solely for the child's interests and under compelling conditions.

However, there are cases where applications for guardianship and selling permits have been rejected by judges. This research raises one of the cases contained in the Sangatta District Court's decision Number: 13/Pdt.P/2023/PN.Sgt in which a biological mother of underage children who is the longest living parent submitted an application to be designated as guardian of children who are still minors and asks for permission to sell a plot of land that is inherited property in the child's name to finance the child's interests. However, the judge rejected the application on the grounds that the surviving parent automatically exercises parental authority, so there is no need for a guardianship determination or permission from the court. As a parent, you are free to take legal action without needing court permission. This view contains confusion because it contradicts the provisions of court supervision in transactions involving the assets of minors.

This rejection raises questions regarding legal certainty in land buying and selling transactions involving the assets of minors. In conditions like this, the role of the Land Deed Drafting

Officer (PPAT) becomes important, because the PPAT must ensure that all conditions are met before drawing up the sale and purchase deed. Disagreements between judges and existing legal provisions can cause problems for the interests of children's rights, as well as risks to the validity of deeds made by PPAT.

Based on the background above, the author is interested in conducting research in this journal with the title "Analysis Regarding the Judge's Consideration in Rejecting the Application for the court order of Guardianship and Permission to Sell Land Rights Owned by Minors (Study of the Court Order of the Sangatta District Court Number: 13/Pdt.P/2023/PN.Sgt)" which aims to examine the basis of the judge's consideration in rejecting the request for a guardianship court order and permission to sell as well as the legal implications in the process of making a land sale and purchase deed by PPAT involving the property of a child under age.

METHOD

The research method that will be used by the author is doctrinal research. This research refers to the Judge's Decision in the Decree of the Sangatta District Court Number: 13/Pdt.P/2023/PN.Sgt, which is then analyzed by linking it to legal theory, statutory regulations and previous judge's decisions relating to guardianship and selling permits assets of minors. This research was conducted using literature study. In order to obtain the data needed for journal writing, this is by collecting secondary legal materials such as statutory regulations, books, scientific journals, dictionaries and so on. The data obtained was analyzed empirically, by identifying the main problem, then analyzing it using library materials and then testing it through interviews with local Land Office officials who were related to this research problem, which was obtained to produce research that was descriptive and evaluative.

RESULTS AND DISCUSSION

The judge's basis for rejecting the application for a guardianship court order and permission to sell the assets of a minor child (Study of the Court Order of the Sangatta District Court Number: 13/Pdt.P/2023/PN.Sgt)

The applicant is a biological mother who submitted an application for guardianship over her two minor children. The applicant's two children are under 18 years of age and have never been married, so they are considered incompetent in taking legal action. The application for guardianship was submitted simultaneously with the application for permission to sell the children's assets in the form of a plot of land obtained from an inheritance from their father who had previously died, that the land was the joint right of the applicant as the widow of the deceased and his children obtained from the inheritance. The applicant applied for permission to sell the inherited land because the applicant and his children were in a condition where they were unable to meet their daily needs and had difficulty meeting their two children's school fees.

Based on this request, the judge rejected the applicant's request in its entirety. The judge's consideration in deciding to reject the application was that regarding guardianship, in the facts of the trial the applicant was the mother or biological parent of the children being applied for, because the applicant's husband had died, legally the applicant's children who were not yet 18 years old were under The parent's authority in this case is the applicant. The applicant's parental authority over the applicant's biological children has never been revoked by a court decision.

So the judge is of the opinion that the application for guardianship cannot be granted because as long as the child has not yet reached 18 years of age, he is still under the authority of his parents and as long as that authority has never been revoked by a court decision, other than that the person requesting guardianship is not the child's biological parent as regulated in article 51 Marriage Law Number 1 of 1974 (Pengadilan Negeri Sangatta, 2023).

In the case of guardianship, the judge's consideration does not conflict with the provisions in the Civil Code Article 345 that "If one of the two parents dies, then the guardianship of married children who are not yet adults, by law shall be assumed by the parent who has lived the longest, simply This person has not been freed or removed from the authority of his parents" (Subekti & Tjitrosudibio, 2006, Pasal 345). And the provisions in Law Number 1 of 1974 concerning marriage state that Article 47 number 1 "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" (Undang-Undang, 1974, Pasal 47 angka 1). Article 50 paragraph 1 "Children who have not reached the age of 18 (eighteen) years or have never been married, who are not under the authority of their parents, are under the authority of their guardian" (Undang-Undang, 1974, Pasal 50 angka 1).

The judge's considerations based on the provisions above can be understood to mean that biological parents automatically legally act on behalf of their children, both regarding themselves and their assets, so that there is no need to appoint a guardian. Determining a minor's guardian over their own biological parents is a ridiculous and futile act, so such a request should be declared inadmissible (*niet ontvemkelijke verklaard*) (Zahri, 2020). Guardianship can only be applied for if the child is not under the authority of his parents.

In connection with an application for permission to sell a minor's property to support the child's interests, rejection of the court order based on these considerations creates legal uncertainty in the process of transferring rights. In his considerations, the judge stated that, without the need for a court order, the applicant as a biological parent could represent his children who, according to the provisions, were under the authority of their parents to carry out legal actions inside and outside the court, including the management of the applicant's husband's inheritance, which was inherited by his children (Pengadilan Negeri Sangatta, 2023).

This judge's view certainly creates legal uncertainty because it conflicts with provisions that require court supervision regarding the sale of assets of minors. The judge did not consider the provisions in the Civil Code that based on authority, parents are obliged to take care of their children's belongings, that they may not transfer the belongings of their children who are underage unless they pay attention to the rules in Chapter XV of Book One (Subekti & Tjitrosudibio, 2006, Pasal 308-309).

Thus, in the provisions of the Law on Marriage, Article 48, parents are not permitted to transfer rights or pawn fixed assets owned by their children who are not yet 18 (eighteen) years old or have never been married, unless the child's interests require it (Undang-Undang, 1974, Pasal 48).

From the provisions of Article 48, it can be seen that this provision clearly protects the interests of children so that parents, in exercising their power, cannot do as they please to sell or guarantee fixed objects belonging to the child which cause harm or have the potential to cause harm to the child in the future (Hartono, 2019).

In his petition, the applicant stated that because the applicant and his children were having difficulty meeting their children's daily needs and school fees, they intended to sell the inherited property. If this is related to the provisions in the Marriage Law regarding exceptions that are allowed to transfer rights, then the reason for meeting the needs and school costs of one's children is a form of exception because "the child's interests want it". Are the reasons presented by the Petitioner in accordance with the meaning of "the child's interests" which should be the basis for deciding the petition by the Judge? However, in the ruling of the Sangatta District Court Number: 13/Pdt.P/2023/PN.Sgt, the judge ignored legal considerations regarding the child's interests as the basis for his decision.

Legal Implications of the Rejection of the Application for Guardianship and Permit to Sell Based on the Judge's Considerations in the Implementation of the Deed of Sale and Purchase by PPAT.

The Land Deed Making Official or PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units (Peraturan Pemerintah, 1998).

One of the authentic deeds in question is the Sale and Purchase Deed regarding Land Rights. Legal actions related to the transfer of land rights can be carried out through the sale and purchase process. The definition of sale and purchase according to the Civil Code is an agreement whereby one party binds himself to deliver an item, and the other party pays the promised price (Subekti & Tjitrosudibio, 2006, Pasal 1457).

The process of transferring land rights so that they can be registered with the Land Office can only be proven by the existence of a Deed made by PPAT. The law gives PPAT the authority to make sale and purchase deeds.

In its implementation, PPAT must pay attention to the provisions regarding the buying and selling process. Article 1320 states the conditions for the validity of an agreement, namely "the agreement of those who bind themselves to each other, the parties' ability to make an agreement, the existence of certain things, and the existence of a lawful cause" (Subekti & Tjitrosudibio, 2006, Pasal 1320).

The ability to make an agreement means that someone has the ability to carry out legal actions, which in this case is making a sale and purchase agreement. In buying and selling fixed objects belonging to children, basically the child must be a party to the sale and purchase agreement, namely as the seller, however, children (not yet 18 years old or not yet married) are not competent to make a sale and purchase agreement because the age limit is competent to act as a Person. at Notary or PPAT is 18 (eighteen) years (Hartono, 2019).

Likewise, in the land sale and purchase agreement based on the Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 4/SE/I/2015 concerning the Age Limit for Adults in the Context of Land Services, the age of maturity that can carry out legal actions in the context of land services is at least less than 18 (eighteen) years or already married (Menteri Agraria dan Tata Ruang, 2015).

PPAT cannot be careless in making its deeds, it must pay attention to the provisions regarding the conditions for the validity of the agreement, one of which is regarding capacity to act. PPAT in the practice of making sale and purchase deeds involving children's land rights, PPAT requires a decision from the court regarding guardianship and transfer permits. This is done to ensure legal certainty regarding the deeds made, so that the deeds made do not cause problems in the future.

To fulfill one of these requirements, the applicant in this case submitted an application for guardianship and permission to sell land belonging to his children. The land that is the object of sale and purchase in this case is land obtained from the inheritance of the applicant's late husband which belonged to the applicant as his widow and his children. However, in the ruling of the Sangatta District Court Order Number: 13/Pdt.P/2023/PN.Sgt, the Judge rejected the application for guardianship and permission to sell on the basis that the applicant was the parent who lived the longest, the mother or biological parents of the children being applied for, then legally the applicant's children who are not yet 18 years old are under the authority of their parents, in this case the applicant. The applicant's parental authority over the applicant's biological children has never been revoked by a court decision.

So the judge is of the opinion that the application for guardianship cannot be granted because as long as the child has not yet reached 18 years of age, he is still under the authority of his parents and as long as that authority has never been revoked by a court decision, other than that the person requesting guardianship is not the child's biological parent as regulated in article 51

Marriage Law Number 1 of 1974. With these considerations in mind, the judge also stated in his decision that the applicant as a biological parent can represent his children who according to the provisions are under the authority of their parents to carry out legal actions inside and outside the court, including managing the inheritance of the applicant's husband is a legacy to his children (Pengadilan Negeri Sangatta, 2023).

Thus, it can be interpreted that the applicant can carry out legal actions, including signing a sale and purchase deed for the inherited land without a guardianship decree or permission to sell from the court. However, in his decision the judge stated that he rejected it entirely, giving rise to legal uncertainty in making the deed. PPAT, in order to fulfill the requirements for the validity of the agreement regarding the authority to act in making editorial deeds, must state the basis for the applicant's authority to act as a guardian who has obtained permission from the court to carry out legal actions on behalf of his minor children.

The PPAT must be more careful in executing the deed, if the elements of the parties' authority to act cannot be fulfilled then the deed cannot be accepted by the Land Office in the registration process. The authority to act in this case is a special authority granted by the court with the decision to determine the application for a selling permit, but the decision to determine the application for a selling permit which is rejected by the court cannot be used to make a sale and purchase deed. Until now, the land rights that are the object of the decision have not been registered in the process of transferring land rights at the East Kutai Regency Land Office. This proves that no PPAT has made a sale and purchase deed with this decision.

This rejection creates uncertainty and confusion in the process of making deeds by PPAT. PPAT cannot make a sale and purchase deed without a Decision on the Court Order of the Guardianship Application and Permit to Sell from the Court as a form of the principle of caution in making the deed. On the negative side, people who need fast, simple and affordable services are not being met, and they even tend to feel they are being "worked" by state institutions that are supposed to provide excellent service (Zahri, 2020).

If the PPAT forces the making of a deed based on considerations which are taken into consideration by the judge in the decision, it will certainly be very risky for the deed made in the future. In the future, if there is a similar case, the PPAT can arbitrarily make a deed involving a minor child based on these considerations, thereby opening up the possibility of parents arbitrarily exercising parental authority because there is no judge's supervision in the form of Court Order of Guardianship Applications and permits. selling land rights belonging to minors.

CONCLUSION

The judge's considerations in rejecting the request for court order of guardianship and permission to sell the property of a minor child give rise to legal uncertainty. The judge rejected the application, but took the consideration that the parent who lives the longest automatically exercises parental authority and is free to take legal action on behalf of his children both in court and outside court without submitting a guardianship application. The judge did not consider the provisions in the Civil Code that based on authority, parents are obliged to take care of their children's belongings, that they may not transfer the belongings of their children who are underage unless they pay attention to the rules in Chapter XV of Book One. As well as the provisions of the Law on Marriage, Article 48, that parents are not permitted to transfer rights or pawn fixed assets owned by children who are not yet 18 (eighteen) years old or have never been married, unless the interests of the child require it.

The legal implications or impacts of rejecting the application for a court order based on the judge's consideration, the decision can be interpreted as meaning that the applicant can carry out legal actions, including signing a sale and purchase deed for the inherited land without a guardianship decision or permission to sell from the court. This creates legal uncertainty and

confusion in the process of making deeds by PPAT. PPAT cannot make a sale and purchase deed without a Decision on the Court Order of the Guardianship Application and Permit to Sell from the Court as a form of the principle of caution in making the deed. If the PPAT carries out the deed making based on the judge's considerations in the stipulation decision, it will certainly be very risky for the deeds made in the future. The deed cannot be registered for the registration process because it was rejected by the Land Office. In similar cases that later occur, PPAT can arbitrarily make deeds involving minors based on these considerations, thus opening up the possibility of parents arbitrarily exercising parental authority due to the absence of judge supervision in the form of Court Order of Guardianship Applications and permits. selling land rights belonging to minors.

It is hoped that for similar cases in the future, the panel of judges is expected to be able to provide decisions that provide legal certainty with legal considerations in accordance with the provisions of statutory regulations. Judges should refer more to the "interests of the child's wishes" in providing legal considerations in deciding cases so that they can provide legal protection to minor children who are under the authority of their parents regarding the management of their property to avoid arbitrariness and to prevent legal loopholes. which can be utilized by certain parties.

PPAT must be careful when making sale and purchase deeds involving minors. It is important to maintain the legality and validity of the deed made, so that there are no problems in the future. Permission from the court in the process of making a sale and purchase deed by PPAT is an important instrument to ensure that the sale is legally valid and does not cause harm to the child in the future.

REFERENCE

- Darmabrata, W. (2015). Hukum Perkawinan Perdata Putusnya Perkawinan Keturunan Kekuasaan Orang Tua Perwalian dan Pengampuan. Rizkita.
- Hartono. (2019). Makna Frasa Kepentingan Anak Dalam Pasal 48 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terkait Izin Jual atau Izin Menjaminkan Benda Tetap Milik Anak Dalam Perspektif Perlindungan Anak. Universitas Brawijaya.
- Menteri Agraria dan Tata Ruang. (2015). Surat Edaran Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Tentang Batasan Usia Dewasa Dalam Rangka Pelayanan Pertanahan, SEMA Nomor 4/SE/I/2015.
- Pengadilan Negeri Sangatta. (2023). Penetapan Nomor 13/Pdt.P/2023/PN.Sgt.
- Peraturan Pemerintah. (1998). Peraturan Pemerintah Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah , PP Nomor 37 Tahun 1998, LN No. 52 Tahun 1998, TLN No. 3746, Pasal 1 angka 1.
- Subekti, R. (2002). Hukum Keluarga dan Hukum Waris. Intermedia.
- Subekti, R., & Tjitrosudibio, R. (2006). Kitab Undang-Undang Hukum Perdata: Bulgeliik Wetboek. Pradnya Paramita.
- Undang-Undang. (1974). Undang-Undang Tentang Perkawinan ,UU Nomor 1 Tahun 1974, LN No. 1 Tahun 1974, TLN No. 3019.
- Zahri, H. A. (2020). Disparitas Penetapan Pengadilan Atas Permohonan Perwalian Orang Tua Kandung. Badilag.Mahkamahagung.Go.Id. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/disparitas-penetapan-pengadilan-atas-permohonan-perwalian-orang-tua-kandung-oleh-h-a-zahri-s-h-m-hi-23-11>.