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The Position Of The Heritage Property Center (BHP) In Providing Legal Protection For The Civil Rights Of Persons In Custody And The Child In Custody

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Abstract: This study uses normative juridical research, using the statute approach, conceptual approach, and historical approach. This thesis is studied to analyze all laws and regulations related to the administration, guardianship, duties and functions of BHP. In order to analyze the position of BHP in providing legal protection for the civil rights of people in custody and children in guardianship, namely as supervisors and guardians. as well as analyzing the legal consequences of a Notary deed or PPAT that contains a determination of custody and guardianship and is not notified or registered at BHP. Legal consequences of the Notary deed or PPAT, the act can be declared to violate Article 418 of the Civil Code, thus the deed can be declared null and void or worthless. So that this of course causes harm to the parties, for that the parties can file a civil lawsuit with a Notary or PPAT to be demanded for compensation for the losses that have been incurred from the making of the deed and can be administratively dismissed. To avoid the problems mentioned above, synergy and cooperation between all parties is needed, the Court, Dukcapil, BPN, Notary and PPAT and the Government also immediately issue a law that clearly regulates the affirmation of the Registration of Court Determination at BHP and strict sanctions if it is violated.

Keyword: Guardianship, Trusteeship, Heritage Center, Notary Deed, PPAT

INTRODUCTION

Every Indonesian citizen has equal rights and obligations as citizens legally protected by the state. All Indonesian citizens have the right to their property, both movable and immovable assets, and the right to utilize their property for their own interests (Tutik, 2010). In acquiring such property, it can be obtained through inheritance, among other means. The acquisition of property obtained from inheritance is regulated under inheritance law.

Inheritance law can be defined as a set of legal principles that regulate the transfer of rights and inherited assets owned by a deceased person (testator) to living persons left behind by the testator, known as heirs (Adjie, 2008). The elements of inheritance are as follows:

a. The existence of an *erflater*, namely a person who has died (testator);

- b. The existence of an *ergenaam*, namely a living person (heir) who receives rights to the inheritance from the testator;
- c. The existence of *erfenis*, namely inherited property, which includes both rights (assets) and obligations (liabilities) left by the testator (Fuady, 2021).

According to Klaassen-Eggens, inheritance law is a legal framework that governs the distribution of assets and legal obligations that arise upon the passing of an individual, whether or not modifications are made (Kelsen, 2006). Inheritance law falls under property law, making it part of private law rather than public law. It governs the distribution of assets left behind by a deceased individual and the impact of this distribution on the recipients, shaping their relationships with each other and others. between them and third parties (Pitlo et al., 1986).

As heirs to obtain inheritance, they must meet the general requirements for inheritance. The requirements for inheritance to occur in obtaining inheritance must fulfill 2 (two) conditions:

- a. There must be a person who has died (Article 830 of the Civil Code);
- b. The heirs must have already been in existence at the time of the deceased's death (Article 836 of the Civil Code) (Prawirohamidjojo, 2011).

The heirs must first prove that the inheritance recipients are indeed the heirs, where proof as heirs can be demonstrated in several ways: by making a statement of heirs witnessed by the Village Head and District Head, through a Court Determination of heirs via District Court or Religious Court, making a statement of heirs through a notarial deed made before a Notary, or by making a Certificate of Inheritance Rights through the Heritage Property Center (BHP), which states that they are truly heirs of the deceased testator (Effendi, 2003). If one of the heirs is an adult but not legally competent to perform legal acts due to being mentally incompetent, mentally ill, blind, or other conditions stipulated by law, a petition for guardianship determination can be made in Court. Similarly, if one of the heirs is still a minor or legally incompetent under the law and thus not competent to perform legal acts, a petition for custody can be made in District Court or Religious Court.

Petitions for guardianship and custody are often used in practice as requirements for the transfer process in buying and selling assets or property owned by persons under guardianship or children under custody. The purpose of selling assets or property through Guardianship and Custody Determinations should be solely for the benefit of the person under guardianship or child under custody. To ensure certainty that the proceeds from selling assets or property of persons under guardianship or children under custody are truly used for their benefit, the presence of the state is needed as a manifestation of providing legal certainty and legal protection for the civil rights of persons under guardianship and children under custody. BHP plays a crucial role as stipulated in Article 418 of the Civil Code and Minister of Law and Human Rights Regulation No. 7 of 2021 concerning the Structure and Procedures of the Heritage Property Center.

In reality, the Heritage Property Center (BHP) is often overlooked by society, leading to a lack of awareness regarding the government's efforts in ensuring legal protection for the rights of individuals under guardianship and children under custody. This results in many land transactions being carried out by guardians or custodians without proper supervision from Notaries or Land Deed Officials (PPAT) (Setiawan, 2020), after obtaining District Court or Religious Court Determinations, are not reported or registered with the Heritage Property Center (BHP). This potentially allows abuse of interests by guardians or custodians for personal gain over sold assets or property, or can be used as a basis for guardians or custodians to control all assets or property owned by persons under guardianship or children under custody. Society also perceives that with Court Determinations, whether from District Courts or Religious Courts regarding guardianship and custody, the matter is settled without

involving the Heritage Property Center (BHP), and even considers the duties and functions of the Heritage Property Center (BHP) as hindering or complicating guardians or custodians.

After considering the information provided, the researcher is eager to delve into discussion about the Position of the Heritage Property Center (BHP) in providing legal protection for the civil rights of persons under guardianship and children under custody to find solutions to these problems. The research objectives are to analyze the form of legal protection provided by the Heritage Property Center (BHP) for the civil rights of persons under guardianship and children under custody, and to analyze the legal consequences of deeds made by Notaries/Land Deed Officials (PPAT) without prior notification to the Heritage Property Center (BHP).

METHOD

The methodology utilized in this research is primarily focused on legal norms, incorporating the methods of studying statutes, concepts, and historical contexts. The research approach is chosen to seek answers to legal issues in legal research (Marzuki, 2018, 2021); therefore, the compatibility between the approach and legal issues is the main consideration in making the selection (Ibrahim, 2006; Suratman & Dillah, 2014).

This study utilizes a variety of legal sources, including primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials have authoritative power as they are derived from laws and official rules. Meanwhile, secondary legal materials serve as guidance and tools to understand and explain the contents of primary legal materials (Mertokusumo, 2007; Waluyo, 2004). This study explores secondary legal resources such as legal publications, theses, and dissertations on the research topic, as well as legal journals with scientific articles and studies on the subject. Tertiary legal materials include reference documents that provide justification and additional explanations for legal texts.

This research utilizes two primary methods, namely literature review and document analysis, to gather legal materials. Literature study is conducted by examining scientific literature and relevant theories to obtain comprehensive understanding of the issues being studied (Sugiyono, 2020, 2021). Meanwhile, document study is conducted by analyzing various written documents, images, and monumental works such as regulations, policies, archives, photos, and other artistic works (Wignjosebroto, 2002). This method aims to identify, categorize, and interpret relevant information while confirming or supplementing data from literature studies. Both are used to deepen understanding of the legal phenomena being studied (Soerjono & Mamudji, 2009).

The method of examining legal materials relies on literature and legal documents acquired by reading a variety of sources such as books, laws, theses, journals, and internet sources pertaining to Heritage Property Center, definition of Legal Protection, Civil Rights, persons under guardianship, custody, Notaries, and PPAT. Besides analyzing through reading books, laws, theses, journals, and internet sources, while still using legal theory, laws, and existing regulations, appropriate answers to the problems can be obtained.

RESULTS AND DISCUSSION

Forms of Legal Protection Provided by Heritage Property Center (BHP) for Civil Rights of Persons in Custody and Children in Custody

The Heritage Property Center (BHP) acts as a supervisor over guardianship and custody that has been determined by the court. Its main task is to supervise the use of rights and assets belonging to persons in custody or children in custody to prevent misuse by guardians or custodians. Guardians are required to provide annual accountability reports to BHP, including permits for conducting transactions such as selling or leasing assets.

The Heritage Property Center (BHP) has important duties in guardianship as regulated in the Civil Code. Based on Article 362 jo. 452 of the Civil Code, guardians must pledge an oath to BHP prior to starting their responsibilities as a commitment to behaving responsibly. Furthermore, according to Article 370 jo. 452 of the Civil Code, guardians must compile an inventory and details of assets belonging to persons under guardianship and register them with BHP. In the context of ongoing supervision, Article 372 jo. 452 of the Civil Code stipulates that guardians must provide annual reports on the management of such property (Harahap, 2017). If there are plans to sell assets, then according to Article 396 jo. 452 of the Civil Code, guardians must provide written reports to BHP before transactions are conducted. Additionally, Article 418 of the Civil Code affirms that BHP has the authority to provide supervision and protection for the rights and assets of persons under guardianship, especially if there are indications of misuse or violations of legislation.

The regulations governing the registration of guardianship that has obtained Court determination with the Heritage Property Center are as follows:

1. Articles 433 to 462 of the Civil Code;
2. Articles 44 to 60 of Staatbslad 1872 No. 166 Instructions for Heritage Property Centers;
3. Article 3 letter (a) of Minister of Law and Human Rights Regulation No. 7 of 2021.

Regarding the duties of the Heritage Property Center, the form of legal protection provided to persons in custody is by acting as supervisory guardian (Article 449 of the Civil Code) aimed at supervising, administering oaths, requesting inventory reports of assets or property belonging to persons in custody, and supervision of the implementation of guardian duties over persons in custody, who due to their personal nature are considered incompetent or in all respects incapable of acting independently (personally) in public, so based on the Judge's decision, they are included in the category of legally incompetent persons, including those with disabilities such as intellectual disabilities.

Custody is given to children who are not yet adults or not yet legally competent, so their rights are represented by parents or custodians appointed by the court. Although there are different provisions, currently the legal age limit is juridically set at 18 years, based on the principle of *lex posterior derogat legi priori*, meaning newer rules override older rules.

The duties and functions of the Heritage Property Center as supervisory custodian are to supervise the duties and responsibilities of custodians in carrying out their obligations properly, and if necessary, the Heritage Property Center can provide direction, input, and advice to a custodian to always perform their duties and responsibilities to the best of their ability. The obligations of custodians that must be observed by the Heritage Property Center include:

1. Article 127 of the Civil Code, organizing registration of property for the benefit of minors or children in custody;
2. Article 362 of the Civil Code, namely swearing in custodians and making Minutes of Oath;
3. Article 370 of the Civil Code, representing the interests of minors or children in custody when the child's interests conflict with their custodian's interests, and supervising custodians regarding the creation of property lists for such children;
4. Article 371 of the Civil Code, requiring custodians to provide adequate guarantees, or at least custodians organize management in accordance with legislation;
5. Article 372 of the Civil Code, requiring custodians to provide calculations and accountability annually to supervisory custodians;
6. Article 373 of the Civil Code, as supervisory custodian, the Heritage Property Center can propose dismissal of custodians to the court due to indications of fraud or errors in misuse of custodian duties and responsibilities;

7. Article 393 of the Civil Code, providing information to judges about the results of selling property rights of minors for the absolute needs of the child;
8. Article 400 of the Civil Code, representing the rights of minors to enter into lease agreements when the lessee is the custodian themselves;
9. Article 403 of the Civil Code, giving power to custodians to act as plaintiffs or defendants in civil cases for the benefit of minors or children in custody;
10. Article 406 of the Civil Code, witnessing the distribution of property of minors by their custodians (Yani & Erwinsyahbana, 2022).

The Heritage Property Center (BHP) has an important role as supervisory custodian in the custody system as regulated in Article 368 of the Civil Code. Its main duties include ongoing supervision of custodian actions in carrying out custody, providing opinions or input on custodian actions requiring judicial approval, and participating in every legal action concerning the interests of children under custody. Additionally, BHP is also authorized to take action if violations of children's rights by custodians occur, and acts as a substitute when custodians are absent or custody becomes vacant (Adjie, 2017; Prawirohamidjojo & Pohan, 2008).

The Heritage Property Center as supervisory custodian has important responsibilities as regulated in Law No. 1 of 1974 on Marriage and Government Regulation No. 29 of 2019. Custodians are tasked with managing all needs of children under custody, including managing the assets or property of such children. From the time of court determination until the end of the custody period, custodians must compile detailed lists of children's assets. Additionally, custodians are responsible for managing such assets and bear all losses arising from negligence or personal errors. Custody determinations must also be administratively registered with the Population and Civil Registration Office and reported to the Social Service. After children reach 18 years of age and are considered competent to perform legal acts, custodians are obligated to surrender all children's property in full.

The Heritage Property Center in carrying out its duties as supervisory custodian due to Court determination, as regulated in Article 35 of Law No. 23 of 2002 on Child Protection, namely:

1. If children have not had their custodial arrangements legally determined by a court, their assets can be overseen by the Heritage Property Center or other authorized organizations.
2. The Heritage Property Center, along with other institutions mentioned in paragraph (1), serve as overseeing guardians in order to protect the rights of children.
3. Property management as referred to in paragraphs (1) and (2) must obtain determination.

Custody supervision conducted by the Heritage Property Center is also regulated in Article 25 of Government Regulation No. 29 of 2019, namely:

1. Supervision is conducted on caretakers or on the enforcement of child custody by the national government, local governments, and the community.
2. Supervision as referred to in paragraph (1) is carried out to:
 - a. avoiding any discrepancies or breaches in the execution of child custody arrangements, or ensuring child custody arrangements adhere to legal requirements;
 - b. minimizing instances of discrepancies or breaches in child custody arrangements;
 - c. supervising the execution of child custody agreements.

Regarding custody regulated in Article 366 of the Civil Code and guardianship regulated in Article 449 of the Civil Code, the Heritage Property Center acts as supervisory guardian applies *mutatis mutandis* based on Article 452 of the Civil Code, whereby the duties of the Heritage Property Center as Supervisory Custodian in custody matters also apply as supervisory guardian in guardianship matters.

Thus, the duties and functions of the Heritage Property Center as supervisory custodian are very important and fundamental to provide protection for children's civil rights under

custody and legal certainty for children under custody (Wisuda, 2023), so that the rights owned by children under custody are not misused by their custodians, and to protect and provide legal certainty to prevent future claims when the child under custody becomes an adult and legally competent. Legal protection for children who are not yet adults or not yet competent to perform legal acts can be divided into 2 (two) types:

1. Juridical child protection, including protection in civil matters and in public law matters;
2. Non-juridical child protection, including protection in social, health, and education fields (Yani & Erwinsyahbana, 2022).

Civil protection for children under custody includes safeguarding rights over property, including inheritance from parents or as a result of divorce. Children become the top priority in inheritance compared to other heirs (Gulo et al., 2022). The Heritage Property Center (BHP) carries out legal protection functions as supervisory custodian (Article 366 of the Civil Code) and supervisory guardian (Article 449 of the Civil Code), with the main task of supervising the implementation of custody and management of children's property not under parental authority.

The regulations governing the registration of custody that has obtained Court Determination with the Heritage Property Center are as follows:

1. Articles 330 to 418a of the Civil Code;
2. Articles 47 to 60 of Staatbstad 1872 No. 166 Instructions for Heritage Property Centers;
3. Articles 33 to 36 of Law No. 35 of 2014 on Amendment to Law No. 23 of 2002 on Child Protection;
4. Articles 50 to 54 of Law No. 16 of 2019 on Amendment to Law No. 1 of 1974 on Marriage;
5. Government Regulation No. 29 of 2019 on Requirements and Procedures for Custodian Appointment;
6. Article 3 letter (a) of Minister of Law and Human Rights Regulation No. 7 of 2021 on Organization and Work Procedures of Heritage Property Centers;
7. Compilation of Islamic Law.

Besides its duties as supervisory custodian, the Heritage Property Center can also act as temporary custodian as regulated in the last paragraph of Article 359 of the Civil Code. The Heritage Property Center, when necessary, both before and after the appointment of custody, takes necessary actions to care for and inventory the property of children under custody, and can legally represent the rights of children under custody until the custody takes effect and receives Court determination.

The Heritage Property Center can act as temporary custodian in several specific conditions: when appointed custodians refuse or neglect to carry out their duties (Article 332 of the Civil Code), when parents or custodians cannot exercise their authority temporarily (Article 359 of the Civil Code), and when children under custody do not have permanent residence in Indonesia or their address is unknown (Article 360 of the Civil Code). In such conditions, BHP is given authority to take temporary actions to protect children and their assets until there is a definitive custodian determined.

Regarding the duties of the Heritage Property Center as temporary custodian for the care of persons and property of children who are not yet legally competent, this will end when a custodian has been appointed and determined by the District Court or Religious Court. After the custodian receives court determination, the duties of the Heritage Property Center change to supervisory custodian (Yani & Erwinsyahbana, 2022).

If the person responsible for taking care of the heritage property refuses to fulfill their responsibilities as detailed in Article 372 of the Civil Code, the Heritage Property Center can take steps to remove them from their position, as specified in Article 373 of the Civil Code.

If the custodian is hesitant to follow the requirements set forth in the aforementioned Article, or if the supervisory custodian discovers evidence of fraud or serious negligence during a review, they are required to request the removal of the custodian. Such a request must be made for any situation mandated by law.

The Heritage Property Center has a crucial role in Indonesia's legal system, not only as supervisory guardian and supervisory custodian, but also as temporary custodian and guardian for posthumous child. This role is important to ensure certainty and legal protection for persons under guardianship and children under custody (Darmabrata & Sjarif, 2004). Although court determinations have established who becomes guardian or custodian, they are often not accompanied by detailed arrangements regarding the management and supervision of the relevant party's property. This is where the Heritage Property Center functions to ensure that assets are used solely for the benefit and welfare of the relevant party and to prevent abuse of authority by guardians or custodians. The Center is also authorized to provide considerations in legal actions over assets, such as sales or leases, to ensure they do not violate the law (Butarbutar, 2023; Tutik, 2008). This role is affirmed in Article 418 of the Civil Code, which states that the Center's intervention cannot be set aside and violations of these provisions are null and void. Therefore, before guardians or custodians carry out their duties, court determinations must be registered with the Heritage Property Center to obtain supervision that ensures legal protection for the rights of persons and children in custody. This also aims to prevent misuse that could negatively impact the welfare of protected parties. If later persons in custody recover or children in custody become adults, they can sue their guardians or custodians if misuse occurs, which can lead to civil and criminal cases and nullify previous court determinations. Thus, the existence of the Heritage Property Center is very important for upholding legal certainty and protection as regulated in Articles 366 and 449 of the Civil Code, Article 418 of the Civil Code, Article 35 of Law No. 23 of 2002, Article 25 of Government Regulation No. 29 of 2019, and Minister of Law and Human Rights Regulation No. 7 of 2021.

Legal Consequences of Notary Deeds/ Land Deed Officials (PPAT) Without Prior Notification to the Heritage Property Center (BHP)

As public officials, both Notaries and PPATs can have criminal, civil, and administrative responsibilities related to the creation of authentic acts they have made. This is because acts made by Notaries and PPATs can serve as legally valid evidence in court and as valid proof in property rights transfers at the National Land Agency. From the above explanation, an analysis can be made regarding the forms of responsibility of Notaries or PPATs for authentic acts they have made based on court determinations regarding custody and guardianship that were not notified or registered with the Heritage Property Center, namely:

Criminal Responsibility of Notaries and PPATs

As public officials, Notaries and PPATs have legal responsibility for their actions in creating authentic deeds. These deeds have strong legal force and can be used as valid evidence in court as well as valid recording evidence regarding rights transfers (Tafonao & Butarbutar, 2023). In making such deeds, Notaries and PPATs first request from the parties the requirements, evidence, and wishes or statements from parties requesting the creation of authentic deeds, which are then submitted and shown to Notaries and PPATs (Parmono, 2020). Subsequently, Notaries and PPATs conduct data verification with relevant institutions. Regarding such deed requests, both Notaries and PPATs can provide legal advice related to the parties' wishes if such requests contradict laws and regulations, because both Notaries and

PPATs must be accountable for the legal products they create in court if there are claims (Navisa & Sunardi, 2024).

Requests for authentic deeds involving the rights of persons in custody and children in custody who have obtained final court decisions without notification and registration to the Heritage Property Center cannot result in criminal prosecution of either Notaries or PPATs due to the absence of criminal elements in the creation of such authentic deeds. Similarly, neither Notaries nor PPATs have the authority to investigate or inquire with parties about the use of money from sales proceeds or in the utilization of assets or wealth owned by persons in custody and children in guardianship, and such deed requests are based on statements from parties making agreements that have received court determinations (Heriyani & Yuniarlin, 2015). The task of investigating the above problems becomes the duty of the police as regulated in Article 1 number (4) of the Criminal Procedure Code.

Civil Responsibility of Notaries and PPATs

a. Civil Responsibility of Notaries

The duty of a Notary to uphold ethics and laws when serving the community is known as civil responsibility, which requires accountability. In providing services where act requests contain court determinations establishing custody and guardianship where the rights of persons and children in custody are represented by their custodians and guardians not registered with the Heritage Property Center, who should act as supervising custodians and supervising guardians, it is evident that these Notaries have breached Article 15 paragraph (1) of the Notary Position Law (UUJN) by not following the rules. Notaries have the power to create official documents related to actions, agreements, and decisions required by laws or requested by interested parties to be documented officially. They also need to ensure the accuracy of dates, keep records of documents, provide copies and summaries of documents, as long as these responsibilities are not given to others by law.

Since Notaries do not require act requests containing court determinations regarding custody and guardianship to be registered with the Heritage Property Center, if there are errors or negligence in carrying out their duties and authorities that result in losses to other parties, according to Article 1365 of the Civil Code, notaries can face civil lawsuits for any wrongful act that results in harm to another individual, which requires the responsible party to provide compensation for the damages caused (Navisa & Sunardi, 2024).

From the errors made by such Notaries, it is possible to cause material losses to persons in custody and children in guardianship because their rights are misused by their custodians and guardians without supervision from the Heritage Property Center. Therefore, Notaries can be sued civilly in court to compensate for damages and interest on losses caused by the issuance of authentic acts they have made. For this reason, when performing their responsibilities, Notaries are required to adhere strictly to laws, rules, the Notary Code of Conduct, and upon assuming the role of public servants, Notaries must take an oath that they must uphold and follow in fulfilling their duties and responsibilities (Diatnika & Mahendrayana, 2022). By accepting and creating authentic deeds containing court determinations about custody and guardianship without notification to the Heritage Property Center, Notaries are believed to be failing to comply with legal requirements as outlined in various laws and regulations, including but not limited to Article 366, Article 449, and Article 418 of the Civil Code. Additionally, Government Regulation Number 29 of 2019 on Guardian Appointment Procedures, Minister of Law and Human Rights Regulation Number 7 of 2021, and Government Regulation Number 28 of 2019 on Non-Tax State Revenue also address this issue.

b. Civil Responsibility of PPATs

In creating authentic deeds, Land Deed Officials (PPATs) have strict obligations as regulated in various laws and regulations. PPATs as public officials refer to the provisions of Article 2 paragraph (1) and Article 3 paragraph (1) of Government Regulation Number 37 of 1998. If deeds made involve parties in custody or guardianship, PPATs must include proof of notification or registration of court determinations to the Heritage Property Center (BHP). Negligence in this matter prevents BHP from carrying out supervisory functions, as regulated in Article 3 letter a of Minister of Law and Human Rights Regulation Number 7 of 2021. PPATs must also uphold laws and regulations, the 1945 Constitution, and their oath of office according to Article 45 letter a and Article 34 paragraph (1) of BPN Head Regulation Number 1 of 2006. Before making deeds, PPATs must verify physical and juridical data according to Article 97 of ATR/BPN Minister Regulation Number 16 of 2021. If deeds are made without permission from relevant institutions, then based on Article 39 letter e of Government Regulation Number 24 of 1997 and Article 418 of the Civil Code, such deeds are null and void by law. Consequently, the rights of parties in custody or guardianship are potentially harmed and open opportunities for misuse by guardians or custodians. In this case, PPATs can be held civilly responsible based on Article 1365 of the Civil Code and Article 55 of BPN Head Regulation Number 1 of 2006.

Deeds made by PPATs must validate legal actions such as sale and purchase, grants, and others as stated in Article 2 paragraph (2) of BPN Head Regulation Number 1 of 2006. As authentic deeds, PPAT acts must be made according to forms and conditions determined by law (Article 1868 of the Civil Code) and become valid evidence of rights transfers, as regulated in Government Regulation Number 24 of 2016 and Article 1865 of the Civil Code. PPAT authority only applies within their working area and uses official act forms from BPN according to Article 3 paragraph (1) and Article 51 of BPN Head Regulation Number 1 of 2006. Additionally, PPATs must read the contents of acts before two witnesses and register rights transfers to the local ATR/BPN office no later than seven days after act signing as regulated in Article 103 of ATR/BPN Minister Regulation Number 3 of 1997.

Land rights transfers can cause legal data changes in the land registration system, as regulated in Article 94 paragraph (3) of ATR/BPN Head Minister Regulation Number 16 of 2021. Such changes can occur due to various causes, including sale and purchase, exchange, grants, inheritance, merger or dissolution of legal entities, encumbrance and mortgage rights transfers, rights extinguishment, division of joint rights, court decisions, changes in rights holder names, and extension of rights periods. To ensure legal certainty and justice in the transfer process, several regulations serve as the legal basis used, namely Basic Agrarian Law Number 5 of 1960, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 37 of 1998 jo. Government Regulation Number 24 of 2016, and several implementing regulations such as ATR/BPN Head Minister Regulation Number 3 of 1997 (along with its amendments up to ATR/BPN Head Minister Regulation Number 16 of 2021), BPN Head Regulation Number 1 of 2006 jo. BPN Head Regulation Number 23 of 2009, and BPN Head Regulation Number 1 of 2010 concerning land service standards and regulation.

Administrative Responsibility of Notaries and PPATs

Administrative Responsibility of Notaries

A Notary as a public official can be held administratively responsible for legal products they have made if proven to violate laws and regulations and the Notary Code of Ethics. Deeds made by Notaries involving custody and guardianship where the parties act as custodians (curators) or guardians for minors who have received determinations from District Courts or Religious Courts, and Notaries do not require such court determinations to be

notified or registered with the Heritage Property Center, then acts made by such Notaries can be considered as not meeting formal and material requirements that are conditions for the validity of authentic deeds.

The validity conditions of authentic acts consist of two aspects: formal and material requirements. Formally, deeds must be made before notaries, attended by all interested parties (including custodians or guardians), and witnessed by two witnesses as regulated in Article 40 paragraph (1) of UUJN (Ridwan, 2018). Deeds must also contain complete identities of parties, witnesses, notaries, and the time and place of creation as regulated in Article 38 paragraph (2) letter c of UUJN, be read before the parties, and signed by all parties according to Article 44 paragraph (1) of UUJN. Meanwhile, material requirements demand agreement of parties and content of lawful legal actions, such as sale and purchase agreements, grants, or other contracts. Deeds must also reflect relevant legal relationships and be made at the request of related parties, as mentioned in Article 38 of UUJN. In the context of custody or guardianship, deeds made without involving the Heritage Property Center as supervising custodians or supervising guardians can be said to not fully meet formal and material requirements (Navisa & Sunardi, 2024).

Therefore, the form of administrative responsibility of Notaries in carrying out their duties related to creating authentic acts or other agreements regulated by law can be analyzed (Hadjon, 1987; Hadjon et al., 1999), including the creation of rights transfers or leases and other agreements related to the transfer of rights to assets or wealth or inheritance belonging to persons in custody or children in guardianship. Where the custody and guardianship have received court determinations, but the custodians and guardians do not notify and register them with the Heritage Property Center and with such determinations directly request rights transfers through sale and purchase, leases, or agreements before notaries, then when performing their responsibilities, Notaries go against the provisions of Article 16 paragraph (1) letter (a) of Law Number 2 of 2014 related to changes in Law Number 30 of 2004 regarding the Notary Position, also known as (UUJN). As a result, Notaries who are found to have violated the provisions of Article 16 paragraph (1), letters a through l of the UUJN, may be subject to sanctions as stipulated in Article 16 paragraph (11). These sanctions may include a formal written warning, temporary suspension from duties, or dismissal (either honorable or dishonorable) depending on the severity and nature of the violation.

Furthermore, Notaries may be found in breach of Articles 38, 39, and 40 of Law Number 2 of 2014 (which amends Law Number 30 of 2004). When such breaches occur, the resulting documents may lose their legal validity as private documents, in accordance with Article 41 of the same law regarding Notary Position (known as UUJN).

When Notaries violate the Notary Position Code of Ethics, administrative penalties can be applied through three supervisory bodies: the Regional Supervisory Council (MPD), the Regional Supervisory Assembly (MPW), and the Central Notary Supervisory Assembly (MPPN) by:

- (a) Giving verbal warnings;
- (b) Giving written warnings;
- (c) Temporary suspension from Notary duties;
- (d) Honorable and dishonorable dismissal.

Therefore, acts made by Notaries as mentioned above also contradict Article 2 and Article 3 letter (a) of Minister of Law and Human Rights Regulation Number 7 of 2021, and Article 418 of the Civil Code. Additionally, this also contradicts the validity conditions of agreements as stated in Article 1320 of the Civil Code. The validity conditions of agreements require 4 (four) conditions, namely:

- (a) Agreement of those who bind themselves;
- (b) Capacity to make an obligation;

- (c) A certain thing;
- (d) A lawful cause.

Thus, it can be analyzed that in creating authentic acts by Notaries without including proof of registration and containing elements of not achieving agreement validity conditions, the act products can:

- (a) Be null and void for violating subjective conditions;
- (b) Be null and void for violating objective conditions;
- (c) Be degraded in evidentiary value as private documents;
- (d) Have no binding legal force and can be declared invalid based on court decisions.

Administrative Responsibility of PPATs

In order to guarantee clarity in the creation of documents and recording of property transfers, a Land Deed Official (PPAT) must adhere to the procedures outlined in Article 97 paragraph (1) of the ATR/BPN Head Regulation Number 16 of 2021. More specifically, before proceeding with the preparation of documents regarding the transfer or encumbrance of Land Rights or Ownership Rights over Apartment Units, the PPAT is required to:

- (a) ensure conformity of physical and juridical data on certificates with electronic data in databases through electronic land information services; and
- (b) ensure and be certain that the physical object of land parcels to be transferred and/or encumbered is not in dispute.

Land Deed Officials (PPATs) are obligated to ensure that legal subjects conducting land rights transfers are legally competent parties. If not, there must be court decisions establishing custody or guardianship, and supervision from the Heritage Property Center (BHP) over the use of such assets. Therefore, in creating sale and purchase acts or land rights transfer deeds belonging to persons in custody or children in guardianship, PPATs must attach proof of court determinations that have been notified or registered with BHP. If not, then such legal products are considered as not meeting administrative elements and violating laws and regulations, particularly Article 10 paragraph (1) of Government Regulation Number 24 of 2016. In addition to administrative penalties such as removal from office, PPATs (Land Deed Officials) who engage in such misconduct may also face ethical sanctions under Article 6 paragraph (1) of the PPAT Code of Ethics. These ethical penalties range from warnings and reprimands to suspension, termination, and dismissal with dishonor. Since PPATs function as collaborative partners with the Ministry of Agrarian Affairs, they are required to perform their responsibilities in compliance with the Basic Agrarian Law and its related regulations. They also operate under the oversight and monitoring framework established by the ministry.

When PPATs produce legal documents or authentic deeds that violate laws and regulations related to custody and guardianship, they neglect their obligation to notify and register such matters with the Heritage Property Center. This failure constitutes a breach of several legal provisions that establish the supervisory authority and responsibilities of the Heritage Property Center, including Articles 366, 449, and 418 of the Civil Code; Article 3 letter a of the Minister of Law and Human Rights Regulation Number 7 of 2021; Articles 98 paragraph (1) letter a and paragraph (2) of ATR/BPN Minister Regulation Number 16 of 2021; Government Regulation Number 24 of 2016; the PPAT Code of Ethics; and Article 28 paragraph (4) letter a of BPN Head Regulation Number 1 of 2006 concerning the PPAT oath of office. Such violations indicate a serious failure on the part of PPATs to fulfill their legal duties, particularly in ensuring proper supervision and registration procedures in custody and guardianship matters.

Therefore, in carrying out their duties and obligations, both Notaries and PPATs must hold firmly and be loyal to the Republic of Indonesia, Pancasila, the 1945 Constitution,

UUJN and its amendments, Government Regulations concerning Land Deed Official Positions and their amendments, oaths of office, other laws and regulations, Code of Ethics, and always carry out their positions honestly, independently, and impartially to anyone and any party, so that the purpose of creating authentic acts to provide legal certainty, legal protection, and legal accountability can be achieved.

Ideally, in selling assets or wealth belonging to persons in custody, it is mandatory to submit copies of court determinations to the Heritage Property Center as stated in Articles 368, 369, and Article 449 of the Civil Code. Similarly, guardians who wish to sell or transfer assets belonging to minors must provide evidence that such children are still underage and have never married, and attach lists of assets or wealth to the court as stated in Article 394 of the Civil Code. Furthermore, in selling or transferring assets belonging to such children, it must be done before supervisors, namely the Heritage Property Center as stated in Article 395 of the Civil Code. And judges permit the sale or transfer of such assets with joint approval of supervising guardians and blood relatives as stated in Article 396 of the Civil Code.

CONCLUSION

After the discussion, it was found that the form of legal protection provided by the Heritage Property Center for civil rights of persons and children in custody is to act as supervising custodians and supervising guardians to oversee the use of rights by custodians and guardians, including supervision and recording of all sales proceeds and use of rights to assets or wealth owned by persons and children in custody. Where such custody and guardianship have received court determinations, the subsequent duties and functions of the Heritage Property Center are stated in Articles 449 and 366 of the Civil Code and Articles 2 and 3 of Minister of Law and Human Rights Regulation Number 7 of 2021, where the Heritage Property Center carries out its duties to provide protection for legal subjects. In legal protection, persons in custody include people with intellectual disabilities, as stated in Article 433 of the Civil Code, and those included as children in custody or regarding adult age limits include, among others, according to Article 47 paragraph (1) of Marriage Law Number 1 of 1974 and Article 39 of UJN, which is 18 years old and never married, and in Article 452 of the Civil Code where persons in custody have the same position as minors.

The legal consequences of acts made by Notaries or PPATs involving rights of persons and children in custody proven by court determinations but not notified or registered with the Heritage Property Center mean such deeds can be said to be deeds that fail to meet both formal and material criteria may be considered to have contravened the regulations outlined in Article 418 of the Civil Code, resulting in deeds made by such Notaries or PPATs being declared null and void by law. With deeds made by Notaries and PPATs declared null and void by law, such deeds cannot be used as valid evidence of rights transfers or agreements, so neither Notaries nor PPATs provide legal certainty, legal protection, and accountability and do not exercise their authority as public officials regarding deeds they have made. Therefore, if there are parties who feel harmed in creating such deeds, they can file civil lawsuits demanding compensation for losses incurred, and also receive administrative sanctions both legally and sanctions for violating the Code of Ethics against Notaries and PPATs.

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