

**DETERMINATION OF PARENTS AS GUARDIANS OF BIOLOGICAL CHILDREN WHO ARE STILL MINORS IN THE SALE AND PURCHASE OF LAND RIGHTS  
(Analysis of the Determination of the Semarang Religious Court Case No. 396/Pdt.P/2022/PA.Smg)**

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**ABSTRACT;** Article 47 paragraph (1) Law no. 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 their parents as long as they are not deprived of their authority. However, what happened in the field was that many biological parents applied to the Semarang Religious Court for guardianship because they were asked by the PPAT on the grounds that it was the basis for making a Sale and Purchase Deed required by the National Land Agency (BPN), one of them in case number 396/Pdt.P/2022/PA.Smg. The formulation of the problem in this study: (1) What is the procedure for buying and selling land rights for minors? (2) Why does BPN require parents to be the guardians of biological children who are underage in buying and selling land rights? (3) What is the basis for the judge's considerations regarding the determination of parents as guardians of biological children who are still minors in the sale and purchase of land rights in case No. 396/Pdt.P/2022/PA.Smg? The research method used in this research is normative juridical research. The specifications in this study are analytical descriptive. Data is analyzed by way of Qualitative. The results of this study are (1) The procedure for transferring land rights owned by minors, namely the stages of the procedure in PPAT and the stages that must be fulfilled are permission to determine parental authority or determination of guardianship representing minors to the court. (2) The reason BPN requires the determination of parents is because it is the basis for making a sale and purchase deed and as legal evidence for the interests of the parties in the future. (3) The basis for the judge's consideration is that the assembly grants his request with consideration based on the principle of prudence and legal certainty.

**Keywords:** Guardianship; Minors; Determination of Case No. 396/Pdt.P/2022/PA.Smg.

## INTRODUCTION

Minors who own land rights are not automatically entitled to transfer their land rights. Minors, because they are considered incapable of doing legal acts, need a guardian to be able to transfer their land rights through sale. A person who becomes a guardian for a minor must obtain a guardianship application from the local court.

Article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that children who have not reached the age of 18 (eighteen) years or have never entered into marriage, are under the authority of their parents as long as they are not deprived of their authority, and paragraph (2) also explains that their parents represent the child regarding legal acts both inside and outside the Court. This provision is in line with Article 345 of the Civil Code which states that:

"if one of the parents dies, the guardianship of the immature married children shall by law be held by the parent who lives the longest, provided that this has not been released or dismissed from the power of the parents".<sup>1</sup>

Thus the parents are entitled to represent the child regarding all legal actions of the child except for something that has been determined otherwise by the Law, but in the field that happens otherwise, throughout 2022 there were 140 cases of applications for guardianship determination, including several cases of applications for child guardianship determination submitted by biological parents to the Semarang Religious Court because they were asked by PPAT on the

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<sup>1</sup> Determination Number 396/Pdt.P/2022/PA.Smg

grounds that they were the basis for making a Sale and Purchase Deed required by the National Land Agency (BPN), one of which was in case number 396/Pdt.P/2022/PA.Smg.

Based on the description above, because there is a contradiction between the Legislation and the practice in the field. So this research raises the title "APPOINTMENT OF PARENTS AS WALI OF CHILDREN IN THE SELLING AND BUYING OF RIGHTS TO LAND ( nalysis of the Stipulation of the Semarang Religious Court No. 396/Pdt.P/2022/PA.Smg).

## PROBLEM

Based on the background of the problem above, the problem formulation in this study is:

1. What is the procedure for selling and buying land rights for children who are still underage.
2. Why does the National Land Agency (BPN) require the determination of parents as guardians of biological children in the sale and purchase of land rights.
3. What is the basis for the judge's consideration regarding the determination of parents as guardians of biological children in the sale and purchase of land rights in case No. 396/Pdt.P/2022/PA.Smg.

## RESEARCH METHODS

### 1. Method of Approach

He approach method used in this research is normative juridical, normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research.

### 2. Research Specifications

This research is descriptive analytical, namely research describing, examining and explaining in detail, systematically and thoroughly about the problem to be studied, and the facts obtained will be analyzed carefully to answer problems so that they are easily understood and concluded.

### 3. Data Source

The data sources used in this research are primary and secondary data:

#### a. Primary Data :

Data obtained by researchers directly from the source and/or sources through interviews (interviews) are inter-personal role situations that are face-to-face and the interviewer asks several questions to the respondent. Interviews with Semarang City BPN Officials, Semarang City Religious Court Judges and Semarang City PPAT Notaries.

#### b. Secondary Data, namely data obtained through literature studies. Secondary data obtained through literature studies consisting of legal materials consisting of :

##### 1) Primary Legal Materials, sourced from directly obtained materials that will be used in this study and are legal materials that have juridically binding force :

- a. Constitution 1945
- b. Law Number 5 of 1960 concerning Basic Agrarian Law.
- c. Law Number 1 of 1974 concerning Marriage which was amended by Law Number 16 of 2019.
- d. Law No. 4 of 1979 Concerning Child Welfare.
- e. Law Number 23 of 2002 Concerning Child Protection.
- f. Civil Code.
- g. Government Regulation Number 24 of 1997 Concerning Land Registration.
- h. Regulation of the Minister of Agrarian Affairs Number 3 of 1997 Concerning Land Registration.
- i. Government Regulation Number 37 of 1998 Concerning Land Deed Officials.
- j. Head of BPN Regulation No. 8 of 2012 on the Amendment of PMA 3 of 1997 on Land Registration.
- k. Government Regulation No. 24 of 2016 Concerning Land Deed Officials.
- l. Determination of case No. 396/Pdt.P/2022/PA.Smg

##### 2) Secondary Legal Materials, namely materials that are closely related to primary legal materials, which can help analyze primary legal materials, namely: materials that include reports and data on the National Land Agency (BPN) of Semarang City, Semarang Religious Court and Notary Office / Land Deed Making Officer (PPAT).

##### 3) Tertiary legal materials are legal materials that are complementary in nature that provide additional guidance or explanation of primary and secondary legal materials.<sup>2</sup>

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<sup>2</sup> Agus Dwiyanto, Agus, 2004, *Reformasi Birokasi Publik di Indonesia*, Gadjah Mada University Press, Yogyakarta, halaman, 41.

Tertiary legal materials contained in research such as Legal Dictionary, Big Indonesian Dictionary (KBBI).

#### 4. Data Analysis Method

Data analysis is the process of compiling, categorizing material data, looking for patterns or themes, with the intention of understanding its meaning. The data analysis used in this study research is qualitative analysis.

## DISCUSSION

### Procedures for the Sale and Purchase of Land Rights for Minors

The sale and purchase of land rights owned by minors compared to the sale and purchase of land rights in general has several similarities in the process.

The procedure for transferring land rights owned by minors is as follows:

#### 1. Procedure stage at PPAT

The stages in the implementation of buying and selling before a Land Deed Official (PPAT) adhere to the stages in making a deed. The following are the stages of buying and selling land rights:

##### a. Preparation of Sale and Purchase Deed

Before making a sale and purchase deed of land rights, the PPAT must first conduct an inspection at the local Land Office to determine the suitability of the certificate of land rights concerned with the existing registers at the Land Office by showing the original certificate to the Land Office officer. This examination needs to be done in order to avoid buying and selling land against fake certificates or double certificates or original but fake certificates. This is to avoid the occurrence of fraud in land transactions where it turns out that what is sold does not belong to the rightful seller.

##### b. The stage of making and signing the sale and purchase deed

After the preparation of the deed and everything has fulfilled the terms and conditions, then it is carried out by making and signing the land sale and purchase deed by the PPAT. The making of the sale and purchase deed without having to be attended by the parties to the legal action (seller and buyer) or the person authorized by them with a written power of attorney in accordance with applicable laws and regulations. The power of attorney for the seller must be by notarial deed or authentic power of attorney, while the power of attorney for the buyer may be made by deed under the hand.

The completeness of the process of making or signing must also be complete. The documents submitted by the seller to the PPAT in making this sale and purchase deed are:

- 1) Photocopy of identity card
- 2) Photocopy of Family Card
- 3) Copy of marriage certificate
- 4) Copy of Land and Building Tax Notification Letter (SPPT).

For sellers who are not yet capable or children who are still minors must attach a Guardianship Determination from the Court. For those who are subject to Islamic law, then file a guardianship case at the Religious Court. As for those who are subject to other religions, the settlement of the case in the General Court.<sup>3</sup>

Meanwhile, the documents that must be submitted to the PPAT by the buyer as the new prospective right holder are:

- 1) Photocopy of identity card
- 2) Photocopy of Family Card
- 3) Copy of marriage certificate

##### c. Registration of the sale and purchase transfer process

After the sale and purchase deed is signed by the seller and buyer, by the PPAT and the witnesses, the PPAT is then obliged to submit the sale and purchase deed and other documents required for the registration of the transfer of land rights concerned to the Land Office within no later than seven working days from the signing of the deed concerned.

- 1) The stage that must be fulfilled is a permit for the determination of parental authority or the determination of guardianship representing minors to the Court.

Determination of parental authority or determination of guardianship representing minors according to the provisions of Article 309 jo Article 393 of the Civil Code, the transfer of property rights from minors must be based on a determination from the District Court. However, in certain areas this court decision is less of a necessity given

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<sup>3</sup> Elly Ninaningsih, *Notary and PPAT in the Working Area of Semarang City*, Central Java Province on November 16, 2022, at 11.00 pm.

that the parties are not subject to Western Civil Law but are subject to Law Number 1 of 1974 concerning Marriage. Normatively, parents are already guardians for their biological children and can represent their children outside and inside the court. This is in accordance with Article 47 of Law Number 1 of 1974 concerning Marriage which reads :

- a) Children who have not reached the age of 18 (eighteen) years or have never entered into marriage are under the authority of their parents as long as they are not deprived of their authority;
- b) The parents shall represent the child regarding all legal actions inside and outside the Court.

The following are the requirements to apply for a guardianship determination permit to represent a child who is still not legally competent: <sup>4</sup>

- a) Applicant's ID card;
- b) Certificate of Inheritance for native Indonesians witnessed and confirmed by the Head of Village (Lurah) and confirmed by the Sub-District Head (Camat)/for Indonesians of descent: Notary's Certificate of Inheritance;
- c) Copy of the child's birth certificate;
- d) Copy of death certificate;
- e) Copy of marriage book or marriage certificate;
- f) Copy of family card;
- g) Copy of the land certificate to be sold;
- h) Application letter to the Chief Justice of the Court.

### **Reasons why the National Land Agency (BPN) requires the stipulation of parents as guardians of underage biological children in the sale and purchase of land rights.**

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (abbreviated as ATR / BPN) is a non-ministerial government agency in Indonesia that has the task of carrying out government duties in the field of Land in accordance with the provisions of laws and regulations. BPN was formerly known as the Agrarian Office. ATR/BPN is regulated by Presidential Regulation Number 47 of 2020. <sup>5</sup>

In carrying out its duties, BPN is assisted by PPAT in carrying out legal acts, one of which is to make a deed of transfer of land rights, because the one who has the right to carry out is PPAT (Land Deed Official). Without a deed of transfer from a PPAT, the National Land Agency (BPN) cannot work to register land rights and before carrying out the making of a deed regarding the transfer or acquisition of land rights PPAT must first conduct an examination at the Land Office regarding the suitability of the certificate of land rights concerned with the existing lists at the local Land Office by showing the original certificate.

As for the function of a PPAT deed in a sale and purchase according to the Supreme Court in Decision Number 1363/K/Sip/1997, Article 19 of Government Regulation Number 10 of 1961 (PP 10/1991) clearly determines that a PPAT deed is only a means of evidence and does not mention that the deed is an absolute requirement for the validity of a land sale and purchase. Likewise, Boedi Harsono said that the PPAT deed functions as a means of proof regarding whether the sale and purchase has been carried out. <sup>6</sup>

From the above decisions and opinions, it can be understood that the PPAT deed functions as a means of proof that a legal action has taken place on land. On the other hand, with the land registration system according to Government Regulation No. 24 of 1997 on Land Registration (PP 24 of 1997), the registration of sale and purchase can only be done with a PPAT deed as evidence. Article 37 states that the transfer of land rights through sale and purchase can only be registered if it is proven by a deed made by an authorized PPAT in accordance with the provisions of the Law. This explains that the PPAT deed, in addition to serving as evidence of the occurrence of a legal action in the transfer of land, such as sale and purchase, exchange, grant, also serves as evidence to register the transfer of land rights.

Theoretically, the making of a deed has two functions, namely the deed has a formal function, which means that the deed is to complete the perfection of a legal act. The deed is a formal

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<sup>4</sup> Munadi, Judge of Semarang City Religious Court, on the day, Jum'at tanggal 24 Februari 2023, at 13.00 pm.

<sup>5</sup> [https://id.wikipedia.org/wiki/Badan\\_Pertanahan\\_Nasional](https://id.wikipedia.org/wiki/Badan_Pertanahan_Nasional) diakses pada tanggal 25 Februari 2023, at. 13.00

<sup>6</sup> Boedi Harsono, 2008, *Indonesian Agrarian Law; History of the Formation of the Basic Agrarian Law, its Content and Implementation*, Jakarta: Djambatan, page, 472.

requirement for the existence of a legal act. Second, the deed has a function as evidence, meaning that the deed from the beginning is for evidentiary purposes if there is a dispute between the parties to the agreement. When holding a deed, if in the future there is a dispute, the parties can easily prove it with evidence that has been prepared beforehand. Land rights can be transferred from the right holder to another person. More specifically in this case is the issuance of a child guardianship determination which will later be used to make a sale and purchase deed so that it becomes valid evidence. There is a successive relationship in this case, to issue a deed of sale and purchase of land rights by PPAT requires a child guardianship determination from the Court, both of which are actually needed as evidence for the benefit of the parties in the future.<sup>7</sup>

This paper focuses on the reason why BPN requires the establishment of child guardianship in the transfer of sale and purchase of land rights for children whose parents have died, where the regulations, namely Articles 345-354 of the Civil Code and Article 47 of the Marriage Law, state that guardianship automatically falls to the parent who lives the longest. The transfer of land rights owned by the child whose property ownership lies with the child, if a sale is made, the PPAT will request a guardianship determination from the Court because it is required by BPN and from all the explanations above it is known that evidence is a strong reason for the request. The evidence can safeguard the parties themselves, the PPAT and also the BPN. The stipulation of guardianship is needed to ensure the truth of the existence of guardianship for minors who are still not capable of performing legal acts. All because the sale and purchase of land rights must be proven by a PPAT deed and its veracity is considered sufficient to register the transfer of rights that occurs.

As stated in Article 37 paragraph 1 of Government Regulation No. 24/1997 which states that the transfer of rights can only be registered if it is with a PPAT deed and it is a condition for the registration of the transfer of rights. Of course, all of this is still inseparable from Article 1320 of the Civil Code regarding the validity of legal acts of transfer of rights carried out must fulfill the material requirements. The relevant context in this case is that the child who owns the land rights cannot make a sale and purchase in the act of transferring land rights, because he is not yet competent and therefore his parents who live the longest must become his guardian, which is determined by the Stipulation of the Religious Court.

The party selling the land rights must meet the requirements of being authorized to sell the land rights in question. Similarly, the purchaser must meet the requirements of the subject of the land rights to be received. However, in the case of BPN buyers who do not require a Court Determination, biological parents can legally represent their minor children by proving the child's birth certificate and marriage book and family card, unlike for the sale of land rights, parents cannot automatically represent their children without a court determination. This is done because there are restrictions on the power of parents to protect the child's property. Quoting from the book *Introduction to Legal Science* by Donald Albert Rumokoy and Frans Maramis, Rights are divided into various kinds of Rights, but the author only includes discussions that are in accordance with the main theme as follows:<sup>8</sup>

1. Absolute rights, namely rights that contain the power to act, also called *onpersoonlijk* rights, which are included in absolute rights or *onpersoonlijk* rights, one of which is family rights (*familierechten*), namely rights arising from the family, for example the right to parental authority as Article 47 of Law number 1 of 1974 concerning marriage explains that parents have the right to represent their children who are not yet 18 years old regarding legal acts inside and outside the Court, but with exceptions as long as parental authority to their children is not revoked. However, this absolute power is not entirely given to parents and it is clearly limited in Law Number 1 of 1974 concerning Marriage in Article 48 which explains that parents are not allowed to transfer rights or duplicate fixed goods owned by their children who are not yet 18 (eighteen) years old or have never entered into marriage, unless the interests of the child require it, Therefore, to find out about this, parents only need to submit an application by arguing that all transfers of children's property are in accordance with the best interests of the child and for the child and prove their arguments and let the court determine the truth, and if it is granted, the parents have the right to act legally on their children to transfer or duplicate their children's property;
2. Personality rights (*persoonlijkheidsrechten*), namely human rights to themselves.

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<sup>7</sup> Lila Trisnarningsih, *Section Head of Land Rights Data Maintenance and PPAT Development*, on February 23, 2023 at 11.00 pm

<sup>8</sup> Donald Albert Rumokoy, and Frans Maramis, 2016, *Introduction to Legal Science*, PT Gravindo Persada; Jakarta, 3rd cet, page. 124.

Every subject of law, both adults and minors, is a bearer of rights and obligations, but does not always mean capable or capable of carrying out their own rights and obligations. In general, even though everyone has legal authority, there are groups of people who are considered incapable of exercising some rights or obligations. Legal subjects who basically have legal authority and are considered capable of acting alone, but there are legal subjects who are considered incapable of acting alone. In a legal perspective, it means that not every legal subject can hold legal authority and can be authorized to act alone in carrying out legal acts. Legal subjects can be authorized and act alone if they are deemed by the law to be capable, capable, or appropriate to act in carrying out legal acts.

Article 1330 of the Civil Code above which becomes the author's focal point is related to "Maturity", refers to the Supreme Court Circular Letter Number 7 of 2012 in the General Civil Chamber meeting which from the plenary meeting is a form of uniformity regarding the definition of Adult, as for the definition of Adult is capable of acting in law, namely a person who has reached the age of 18 years or has been married. As long as a person has not reached 18 years of age or is married, he/she cannot act legally for himself/herself.

When viewed from one of the theories used to analyze this problem, namely using the theory of legal certainty. Legal certainty is where the law is implemented in accordance with the legal substance that has been agreed upon by the community where the law applies. A statutory regulation should not have double meaning or multiple interpretations, there must be certainty, clarity and logic of the meaning contained therein. Legal certainty that has been determined by the enactment of a regulation can be implemented if the implementation of a regulation is consistent with what is stated in the regulation without being affected by other situations that have a subjective nature.

Legal certainty is certainly obtained by submitting a determination to the Court because the Court legally has the authority, competence and legitimacy to determine guardians of minors. Even though one of the parents of a minor is still alive, their authority in this case is not considered to have legal certainty, because parental authority is born naturally without specific written supporting data. This is in contrast to the determination of guardian by the court, where the determination has strong evidentiary power. Through court decisions, doubts about the credibility of parental authority over their biological children are dispelled.

Some of the above analysis embodies a thought that the determination of child guardianship required by the BPN for the making of a Sale and Purchase Deed of land rights has the purpose of proving, authentically the existence of legal guardianship guaranteed by the institution in this case the Religious Court that the minor represented by his guardian to make a sale and purchase is true and the sale and purchase has occurred and for future interests on a certain day, certain parties are in it.

### **The judge's reasoning related to the determination of parents as guardians of biological children who are still minors in the sale and purchase of land rights case No. 396/Pdt.P/2022/PA.Smg.**

Throughout 2022 there were 140 cases of application for guardianship determination, among which there were several cases of application for child guardianship determination submitted by biological parents to the Semarang Religious Court because it was requested by PPAT on the grounds that it was the basis for making a Sale and Purchase Deed required by the National Land Agency (BPN). One of them is case number 396/Pdt.P/2022/PA.Smg with the following case:

Considering, that the Applicant with his petition dated October 06, 2022 which was registered at the Semarang Religious Court Registrar on October 11, 2022 with case register Number 396/Pdt.P/2022/PA.Smg, argued the following matters:

1. That the Applicant was legally married to a man named the Applicant's husband, in Padas District, Regency. Ngawi, East Java on May 16, 1990, as recorded in Marriage Certificate Excerpt No. XXX/76/V/1990: XXX/76/V/1990, issued by the Religious Affairs Office of Padas Sub-District, Ngawi Regency. Ngawi.
2. That from the Applicant's marriage with the Applicant's husband there have been 6 (Six) children each named :
  - a. Child I, female, place/date of birth; Semarang December 26, 1990;
  - b. Child II, female, place/date of birth Semarang January 04, 1997;
  - c. Child III, female, place/date of birth Semarang July 25, 2002;
  - d. Child IV, male, place/date of birth Semarang, May 04, 2008;

- e. Child, female, place/date of birth Semarang August 03, 2010;
  - f. Child, female, place/date of birth Semarang March 08, 2018.
3. That on June 19, 2001 the Applicant's husband passed away in Semarang City, as recorded in the death certificate No. XXX-KM-24062021-0011 issued by the Civil Registration Officer of Semarang City dated June 25, 2021.
  4. That the Applicant's late husband, apart from leaving an heir of six children and the Applicant as his wife, the Applicant's late husband left no other descendants and during his lifetime never made any child adoptions.
  5. That during the marriage of the Applicant and the late husband of the Applicant, joint property was obtained in the form of: A piece of land Certificate of Property No. XXX/Gondoriyo, covering an area of  $\pm$  1200 M2 located in Semarang City, Central Java Province, registered in the name of: (Applicant).
  6. That with the death of the Applicant's husband, all the costs of daily living including education costs and so on, for Child III, Child IV, Child, Child (the Applicant's immature children) who are currently still in school, are in the care and dependence of the Applicant.
  7. That currently the Applicant intends to sell and/or mortgage the land certificate SHM No. XXX/Gondoriyo.
  8. That because currently the Applicant's 4 (four) children named: Child III, Child IV, Child, Child are still immature and incapable and unable to take care of their interests in terms of taking legal action in connection with the sale or placement of the Mortgage on the inherited property, they must be represented by a guardian, and the Applicant as her biological mother (her parents) who is still alive is entitled to become her guardian to take care of her interests in carrying out all legal actions on the inheritance of the Applicant's late husband.
  9. That in connection with the sale and or pledging of the inheritance, the Applicant has obtained the consent of the Applicant's adult children.
  10. That for such purposes the Applicant must first obtain permission and a Stipulation of Guardianship from the Religious Court to take legal action on the sale or pledge of the inherited property in relation to the rights of the Applicant's children as heirs of the Applicant's late husband.

Based on the above reasons, the Applicant hereby submits a request for the life of the Chairman of the Semarang Religious Court to be pleased to examine the Applicant's request and then decide and provide a Stipulation which reads as follows:

**PRIMARY:**

1. Accept and grant the petition of the Applicant;
2. Determine that the Applicant is the Guardian of his four minor children, namely:
  - a. Child III, female, place/date of birth Semarang July 25, 2002;
  - b. Child IV, male, place/date of birth Semarang, May 04, 2008,
  - c. Child, female, place/date of birth Semarang August 03, 2010,
  - d. Child, female, place/date of birth Semarang March 08, 2018.
3. Grant permission to the Applicant to take legal action as Guardian to represent the interests of her minor children, as well as for the Applicant's own interests to sell and/or place a mortgage on the inheritance of the Applicant's late husband (the Applicant's husband) which is the right and share of her six children, in the form of: A piece of land, Certificate of Title No. XXX/Gondoriyo, covering an area of  $\pm$  1200 M2 located in Semarang City, Central Java Province, registered under the name of: Sunarti (Applicant).
4. Determine the costs of the case according to the applicable law;  
If the panel of judges is of another opinion, please make a decision that is as fair as possible.

In this case, the panel considered that based on the applicable laws and regulations, a minor does not need to be appointed a guardian if one of the parents is still alive. The surviving parent can automatically act on behalf of his/her minor child for the child's personal interests and for the interests of his/her property, both in court and outside of court. This means that it can be said that for the sake of law the surviving biological parent also acts as a guardian.

Next, the panel considered that although the surviving parent has the authority to take legal action against his/her minor child, in practice it can grant the application for guardianship because of the need to fulfill the requirements determined by other agencies, if the conditions specified in the legislation are met, because in the field, especially in the banking world, In the field, especially in the banking world, the transfer of rights to land and buildings and certain institutions that are run on the principle or principle of prudence and legal certainty still require written evidence (*lex scripa*) of a title or legal relationship, so that in such circumstances parents need to obtain a determination from the court on their validity as guardians of their own biological children.

The Tribunal considers that an important issue in the petition is the gap between the legislation regarding the powers of parents who are included as guardians and the practice of civil law which requires written evidence based on the principle of prudence and legal certainty against biological parents who act on behalf of their minor children. Where the gap between positive law and practice in the field of civil law in the case a quo is beyond the power of the parent/applicant, a solution must be found without prejudice to the intent and substance of the legislation governing this matter.

According to the author, if the panel adheres to the text, the petition should not be accepted/rejected. However, by using the principles of prudence and legal certainty, the petition was granted with elegant and cool legal considerations. A legal consideration that brings together the formulation of the text and its context, namely between the sound of the article and the practice in the field which is the legal needs of the community.

The ruling in the copy above also does not merely appoint a guardian, unlike other guardianship decisions that are often found, but appoints the guardian to carry out legal actions on behalf of the four children, including to sell and/or place a lien on the child's property. Although it does not clearly stipulate to give permission/authorization to sell, because such permission to sell is the absolute authority of the general court.

## CONCLUSION

Based on the analysis and discussion above, the author concludes as follows:

1. Procedures for transferring land rights owned by minors, namely there are procedural stages at PPAT which include :
  - a. preparation for making a Sale and Purchase Deed ;
  - b. the stage of making and signing a sale and purchase deed where in the process of making and signing documents such as photocopies of Identity Cards, photocopy of Family Card, photocopy of marriage certificate, photocopy of tax notification letter payable of land and building tax, for children who are still minors if they want to sell land must attach a guardianship determination from the court for those who are subject to Islamic law then propose a guardianship case at the religious court. For those who are subject to other religions, the case will be settled in the general court.
  - c. registration of the sale and purchase transfer process. Then the next stage is the stage that must be fulfilled is the determination of parents or the determination of guardianship representing minors to the court.
2. The reason the National Land Agency requires the determination of parents as guardians of biological children who are still minors in the sale and purchase of land rights is because it is the basis for making a deed of sale and purchase. Theoretically, the making of a deed has a function, namely a formal function, which means that the deed is to complete the legal action. The deed also has a function as evidence, meaning that the deed from the beginning is for evidentiary purposes if there is a dispute in the future between the parties to the agreement, the issuance of a child guardianship determination which will later round off the sale and purchase deed so that it becomes valid evidence for the benefit of the parties in the future.
3. The basis of the judge's consideration related to the determination of parents as guardians of biological children who are still minors in the sale and purchase of land rights in case number 396/Pdt.P/2022/PA.Smg is that the panel considers, that parents who are still alive are authorized to take legal action over their children who are still minors, but in practice they can grant guardianship applications because they need to meet the requirements determined by the agency concerned.

## SUGGESTIONS

1. For the government to formulate a regulation that requires a guardian to apply for a guardianship application if they want to transfer land rights belonging to a minor so that there is no disparity in the regulations.
2. For judges to be more careful in making a decision in the application for guardianship because it covers the protection of the property of children under the age of majority.
3. The public needs to know about the process of transferring inherited property or goods owned by children if they want to transfer them to the child's family, it is better to submit a guardianship application to the court to ensure the legality of the transfer of the property so as not to get legal problems in the future and to report to the Heritage Center regarding any assets owned by the child.



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