

LEGAL PROTECTION TO UNDER AGE CHILDREN WHO HAS THE ASSET TRANSFERRED BY PARENTS OR THEIR PROXY

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ABSTRACT

A marriage made without a marriage agreement, if one dies, the joint property will be transferred to the husband / wife who lives the longest (based on STB 1935 Number 486, Article 852 a) and children who are adults or those who are underage. The assets of under age children transferred by parents / guardians in the form of fixed assets are still ambiguous in the provisions because there is a difference between one land office and another. At the Semarang City Land Office, there is a court order (selling permit) required, while in other districts it does not require a court order. This research was conducted with an empirical juridical approach with descriptive analytical research specifications, and the sources and types of data were primary and secondary data. The primary data collection technique was with interviews, and the secondary data was with document studies, descriptive qualitative data analysis methods. The research results show that: 1) The transfer of rights to land owned by under age children, between the Semarang City Land Agency and the Demak District Land Agency in principle is the same, in accordance with the SOPs stipulated in the Regulation of Head of the Indonesian National Land Agency No. 1 of 2010 concerning Service Standards and Land Management. The difference lies in the additional terms (requirements analysis) because the rules / policies governing specifically for the transfer of rights to land owned by under age children have not been existed. 2) The legal protection for under age children whose property is transferred by parents / guardians have two rules: a) With the determination of the court. b) Not by a court ruling. Both those who use the determination and not all have the same goal to protect the incompetent from the arbitrariness of the guardian. 3) Future renewal for the transfer of assets of under age children by parents / guardians is preferably with the determination of the court because it is to create legal certainty and provide a sense of security. The process is online and does not mention the classification of the population in community service.

Key words: Legal Protection, Underage Children, Transferred Assets, Parents / Guardians

A. INTRODUCTION

Legislation governing adulthood in Indonesia, among others:

- Law Number 1 of 1974 concerning Marriage Article 47 paragraph 1, states that children have not reached the age of eighteen or have never entered into a marriage under the control of their parents as long as they are not deprived of their authority.
- RI Law No. 35 of 2014 concerning Child Protection, Article 1 reads "A child is a person who is not yet 18 years old including a child in the womb".
- Circular from 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 is 18 Years or Marriage Has Been Underway.
- Civil Code Article 330, reads "Immature are those who have not reached the age of even twenty-one years, and first married" The

assets of under age children transferred by parents / guardians in the form of fixed assets such as land, the provisions are still ambiguous because there is a difference between one land office and another. There are those that require a court permit, there are also land offices that do not require it.

Prior to the enactment of Law Number 1 of 1974 concerning Marriage, for groups of people who are subject to the Civil Code, the requirement of a "court permit" for parents / guardians who will transfer or guarantee immovable objects (land) belonging to under age children under the age of guardianship , regulated in Article 309 in conjunction with Article 393 of the Civil Code.

For indigenous groups,¹ customary law that applies to them, does not recognize the terms of "permission to sell". Since the entry into force of Law Number 1 of 1974 concerning this Article 48, the Law only stipulates that parents are not allowed to transfer rights or mortgaged the rights of permanent goods owned by children who are not yet 18 (eighteen) years of age or have not entered into a marriage , except if the child's interests want it.

Law Number 1 of 1974 concerning Marriage, Article 66 which is a transitional article states that regarding what is regulated in Law Number 1 of 1974, the provisions in the Civil Code Article 309 jo Article 393 of the Civil Code are no longer valid (as long

¹ Istilah golongan penduduk pribumi masih digunakan dalam praktek pelayanan pertanahan di BPN untuk membedakan dengan golongan Tionghoa/keturunan.

as regarding sales or guarantee of immovable property belonging to under age children by parents who exercise the authority of their parents or guardians)

Civil Code Article 309 which reads "he must not transfer the assets of his under age children, but by observing the rules listed in the chapter the fifteenth book to the first about transferring the belongings of children not yet mature ".

Civil Code Article 393 which reads "in the interest of the immature, the guardian may not lend money, nor may he alienate or mortgage immovable property nor may he sell or transfer documents, State debt, accounts receivable and shares. share without obtaining power of attorney for that from the District Court. The court will not give that power but is based on absolute necessity or if there is a benefit and after hearing or calling legally the blood relatives / semenda of the immature and will be the guardian of the supervisor ".

The fact that occurs in the city of Semarang if there is a transfer of rights (from buying and selling) of land owned by under age children, for residents of the indigenous group is required to meet additional requirements, namely guardianship and permission to sell which is requested at the District Court. Without it, the process cannot be carried out.

In contrast to the reality that occurred in Demak District, for the same process, namely the transfer of rights to land owned by under age children, additional requirements in the form of guardianship and statements made by the guardian are known by the Lurah / Village Head. Without having to make a request in the District Court.

Examples of court licenses in the form of trusteeship and permission to sell as completeness of the requirements for the transfer of rights through sale and purchase are to be seen in the Establishment of the Semarang District Court Number 526 / Pdt.P / 2014 / PN.SMG, which at the time the writer carefully completed the transfer of rights at the Office Semarang City Land. The transfer of rights under study is the transfer of rights through specific sale and purchase for indigenous groups.

The problems examined in this study are:

1. How about the transfer of rights to the land of under age children?
2. How is legal protection for under age children whose property is transferred by parents or guardians?
3. What is the renewal going forward for the transfer of rights to the assets of under age children?

B. DISCUSSION

1. Transfer of Rights to Land Owned by Children Under Age by Parents or Guardians

a. of Service Standards and Land Arrangements According to Regulation of the Head of BPN RI Number 1/2010

The scope of this regulation includes: Groups and types of services; Requirements; Cost; Time; Procedure; Reporting. For the process of transferring rights to land owned by under age children, enter the service group maintenance of land registration data. Requirements that must be met include: The

- 1) completed application form has been signed by the applicant or his attorney is sufficient enough.
- 2) Power of attorney if authorized.
- 3) Copy of applicant's identity (KTP, KK) and power of attorney if authorized, which has been matched to the original by the ticket window clerk, KTP and KK of the seller.
- 4) Original certificate.
- 5) Deed of sale and purchase from PPAT.
- 6) Permission for transfer of rights if the certificate / decision is enclosed with a sign stating that the right can only be transferred if permission has been obtained from the competent authority.
- 7) Photocopy of SPPT of the current year, which has been matched with the original by the ticket window clerk, submission of evidence of SSB-BPHTB, SSP-PPh and proof of payment of income (at the time of registration of rights).
- 8) Zone of original land value

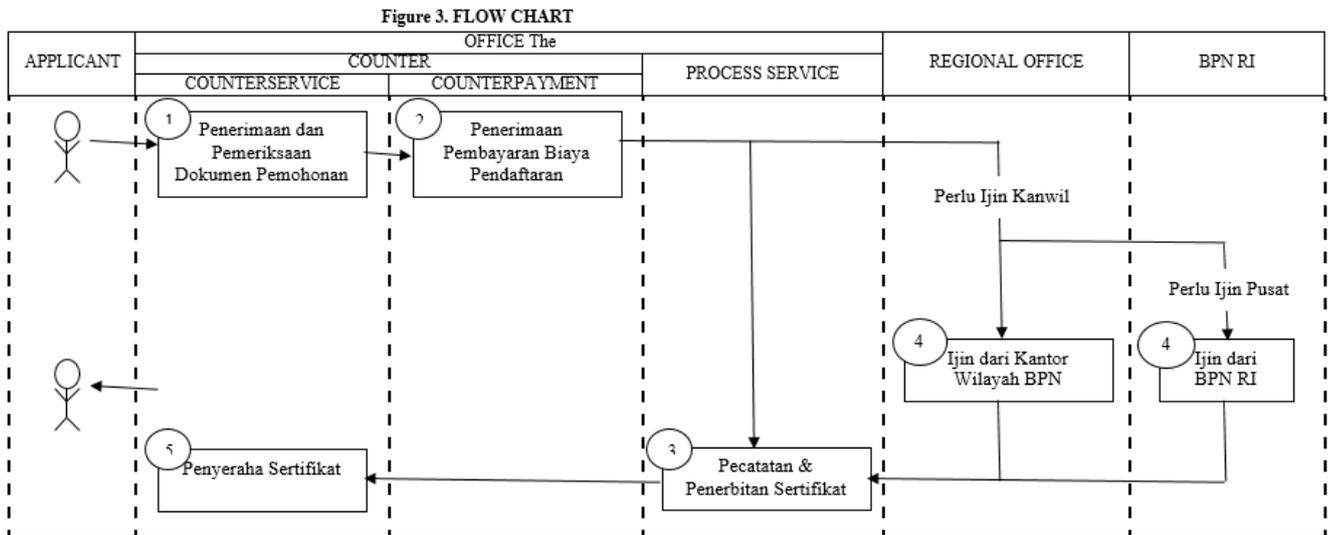
Fee, according to the provisions of government regulations on types and tariffs on types of non-tax revenue (PNBP) that apply to BPN RI. Based on PP. 13/2010, PNBP rate for the process of transferring rights: $(1/100 \times \text{area} \times \text{ZNT}) + \text{Rp. } 50,000$

Time, regulated in article 8 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia (Perkaban RI) Number 1/2010 concerning service standards and land arrangements, which states:

- 1) Time as referred to in article 4 letter d is the period of completion of land services as from the receipt of complete documents and has settled the payment of the fee specified.
- 2) The period of time referred to in paragraph 1, is the longest period of time for the completion of each type of land service which is calculated based on working days.
- 3) For the delivery of more than one type of service, the time period is the cumulative sum of time required for each type of service.
- 4) The period of time referred to in paragraph 1 is listed in the appendix to this regulation.

- 5) The period of time as referred to in paragraph 4 does not apply to requests for land services in the process where a dispute, case or other legal problem is known and the file can be returned to the applicant.
- 6) The service completion process as referred to in paragraph 5, is completed in accordance with statutory provisions. For the process of transferring land rights the time required is 5 working days. With complete file provisions without any shortcomings and problems. The fact that occurs for the process of transferring land rights, with a complete request, a maximum of 14 working days, has been completed in the sense that the product can be taken at the collection counter.

Procedure, as referred to in Article 4 letter e, is the service process stage for each type of activity. Flowchart for the switching process rights to land and apartment units:



b. Process Transfer of Land Rights in the City of Semarang National Land Agency and Demak Regency

1) Process of Transfer of Land Rights in the City of Semarang National Land Agency The

a) process of checking certificates The

- (1) certificate is checked to find out the latest status, whether there is a block, seizure, mortgage rights are being installed or not. The results of checking can be taken approximately 2-3 days, calculated from the entry request. If the results are clean, it means it's safe, meaning the process can continue. Usually checking is carried out before the signing of the sale and purchase deed in front of the PPAT.
- (2) While waiting for the results of checking to be completed, we request the (thematic) land value zone for the land parcel in question, because this will be the basis for calculating payment for Non-Tax State Revenue (PNBP). The results of the ZNT application can be taken within 2 days, calculated from the entry request.

b) Tax payment process (PPh, BPHTB)

After the results of the net checking are known, a sale and purchase certificate is signed in front of the PPAT. At the same time, taxes can also be paid. PPh can be paid at an independent bank, and BNI 46. While BPHTB is paid at the local treasury / Regional Revenue and Asset Management Office (DPKAD).

c) Verification process

Proof of payment of BPHTB, accompanied by a photocopy: certificate, the current year's PBB and its payment, we bring the applicant's KTP to the BPKDB DPKAD office for verification. Also added with the form provided to be filled and signed. About 2 days after the application is submitted, the process is complete, the file can be retrieved. The results of the verification are marked by the validation of the officer and the agency's stamp.

If the PPAT does not verify, a statement will be made instead, both from the PPAT itself and the applicant (buyer). Fill in the statement that the BPHTB tax has been paid with the NOP (filled in according to the United Nations) in the regional treasury / BPD with the account number as it turns out in the proof of payment.

d) The process of transferring land rights of the

- (1) Applicant came to BPN, bringing the application file, among others:
 - Application sheet provided, filled out and signed.
 - The original certificate has been checked.
 - Deed of sale and purchase from PPAT.
 - Determination of guardianship and permission to sell from the District Court.
 - 3rd copy to the BPHTB payment and 4th copy to PPh.
 - Land value zone results.
 - The statement of land and building has been physically controlled over the material.
 - The statement of land and building is not in dispute above the material.
 - Power of attorney if authorized.
 - Photocopy of Identity Card of the parties and power of attorney if any (has been matched to the original).

- Photocopy of KK of the parties (has been matched according to the original) and photocopy of PBB of the current year which has been matched according to the original.
- (2) If the file is considered complete there are no deficiencies. Immediately calculate the amount of costs to be paid by the applicant, to issue proof of deposit payment (SPS). Payment at the designated bank ATM, BRI. As proof has been paid, a receipt will be obtained later for proof of collection of the finished product.
- (3) Within a maximum of 14 working days, the applicant came again to the BPN, while bringing a receipt to take the certificate, the process of transferring rights had been completed. Here, the name written on the certificate is changed to be in the name of the buyer, the process is complete.

Semarang City BPN in carrying out the process of transferring land rights, especially those belonging to under age children, in addition to requirements that are in accordance with the SOP (*Standard Operating Procedure*) must also be equipped with guardianship and permission from the court so that the process can be carried out. These additions are called "Requirements Analysis" or also referred to as supporting data.² So without the supporting data the process cannot be carried out because the application file is considered incomplete.

In the process of transferring the rights of buying and selling that occurred in Semarang City BPN, the author of the study was between E CS (as a seller) and R (as a buyer) a plot of land located in Mangkang Wetan Village - Tugu District, Semarang City.

Erni Indriyarti is a widow, who had previously been married to the late Agus Sumanto, as evidenced in the marriage certificate No. 1432 / III / 77/87 dated 15 March 1987 issued by the Office of Religious Affairs in the West Semarang District, Semarang City. That from the marriage 5 children were born, namely:

- 1) Meinar Pradini, a woman born in Semarang May 5, 1989.
- 2) Mochamad Soffan Aldisa, male born August 18, 1990.
- 3) Iqbal Hamdi, male born September 7, 1997
- 4) Fella Saskia, woman born 1 November 1998
- 5) Zahra Maulidina, woman born April 20, 2005

The applicant's husband, named Agus Sumanto, died on October 18, 2010, apparently in his death certificate No. 474.4 / 37 / X / 2010, dated October 25, 2010 issued by the Mangkang Wetan village office in Semarang.

After the death of the applicant's husband, the applicant and his 5 children have been appointed as heirs based on a Certificate of Inheritance issued by the Mangkang Wetan Village Chief, Semarang city.

In the marriage of the applicant to the late Agus Sumanto, in addition to being born 5 children, assets were also obtained in the form of:

- A plot of land with certificate of ownership no. 628, located in the village Mangkang Wetan, District Tugu, Semarang, Central Java province with an area of 146 m² which kepemilikanya recorded on behalf of the applicant and the applicant's children.
- A plot of land with certificate of ownership no. 627, located in the village Mangkang Wetan, Tugu subdistrict, Semarang, Central Java province with an area of 160 m² which kepemilikanya recorded on behalf of the applicant and the applicant child.
- A plot of land with certificate of ownership no. 1071 is located in the village Mangkang Wetan, Tugu subdistrict, Semarang city with an area of 139 m² which kepemilikanya recorded on behalf of the applicant and the applicant's children.

At this time the applicant and the applicant's children are in dire need of living expenses and education costs for the applicant's children, the applicant intends to sell the land.

Because the applicant's child is still under age, in the interest of selling the land the applicant is in dire need of a determination from the Semarang District Court.

The applicant as the biological mother of the children who are immature is very appropriate if appointed as a guardian, to care for and care for and carry out legal actions for the benefit of these children.

Based on the foregoing matters, the petitioner begs the Chairperson of the Semarang District Court to accept and grant the petitioner's request and appoints the applicant Erni Indriyarti as a parent and at the same time as the guardian of under age children child named:

- Iqbal Hamdi, Fella Saskia, and Zahra Maulidina, to represent legal actions on certain (special) matters to sell:
- A piece of land with certificate of ownership no. 628 is located in the village Mangkang Wetan, Tugu subdistrict, Semarang Central Java province with an area of 146 m² which kepemilikanya recorded on behalf of the applicant and the applicant's children.
- A plot of land certificate of ownership no. 627 is located in Mangkang Wetan sub-district, Tugu sub-district, Semarang city, Central Java province with an area of 160 m² whose ownership is registered in the name of the applicant and the applicant's children.
- A plot of land certificate of ownership no. 1071 is located in Mangkang Wetan, Tugu sub-district, Semarang City, Central Java province with an area of 139 m² whose ownership is registered in the name of the applicant and the applicant's children.

Imposing this fee to the applicant

To support the request, the applicant submits proof of letter in the form of:

- 1) Photocopy of Birth Certificate Quotation Number. 6335/1997 which explains that in Semarang on September 7, 1997 a boy named Iqbal Haamdi was born to a husband and wife Agus Sumanto and Erni Indriyarti.

² Agung Basuki, S. ST., MH (Kasubi Peralihan, Pembebanan Hak dan PPAT) BPN Kota Semarang, Wawancara tanggal 15-2-2016, jam 1.30-2.00 WIB.

- 2) Photocopy of Birth Certificate Quotation Number. 6006/19998, which explained that in Semarang on November 1, 1998 a daughter named Fella Saskia was born to the husband and wife of Agus Sumanto and Erni Indriyarti.
- 3) Copy of Birth Certificate No. 3398/2005, which explains that in Semarang on 20 April 2005 a daughter named; Zahra Maulidina from husband husband Agus Sumanto and Erni Indriyarti.
- 4) Photo copy of Marriage Certificate No. 12/32 / III / 77/87, which explained that a marriage contract had taken place between Agus Sumanto and a woman named Erni Indriyarti who was issued by a West Semarang marriage registration employee on 15-3-1987.
- 5) Photocopy of Family Card no. 3374162012100002, on behalf of the head of the Erni Indriyarti family.
- 6) Photocopy of Identity Card of the Central Java Province NIK. 337416503650001 on behalf of Erni Indriyarti.
- 7) Photocopy of Death Certificate no. 474.4 / 37 / X / 2010 which explained that on Monday, 18-10-2010 had died due to Agus Sumanto's illness issued by the Mangkang Wetan Ketan Tatib village chief on 25-10-2010
- 8) Photocopy of Certificate of Inheritance which explained that the heirs of the late Agus Sumanto were Erni Indriyarti, Meinar Pradini, Mochamad Soffan Aldisa, Iqbal Hamdi, Fella Saskia and Zahra Maulidina, which were made on 26-9-2014 by heirs known to the Mangkang Wetan lurah.
- 9) Photo copies of books land property is located in the village 628 Mangkang Wetan, Tugu subdistrict, Semarang Central Java area of 146 m² kepemilikanya registered in the name of the applicant and the applicant's children.
- 10) Photocopy of land ownership book no. 627 Mangkang Wetan is situated in the village, district Tugu Semarang Central Java area of 160 m² the ownership is recorded on behalf of the applicant and the applicant's children.
- 11) Photocopy of land ownership book no. 1071 Mangkang Wetan is situated in the village, district Tugu Semarang Central Java area of 139 m² kepemilikanya registered in the name of the applicant and the applicant's children.

The evidence above has been matched with the original and has been sufficiently furnished. Besides submitting documentary evidence. Two witnesses have also been presented under oath by providing the following information:

- 1) Witness : Machmud Basuki
- 2) Witness : Siti Umul Khoirot
 - that the witness, knew the applicant because the neighbor
 - knew that the witness knew, the applicant had married her husband named Agus Sumanto
 - that the applicant's husband was a lurah Mangkang Wetan
 - that the applicant's husband has passed away now
 - that the applicant's husband died on 18-10 2010 due to illness
 - that the applicant has 5 children, of which 3 are underage namely Iqbal, Fella and Zahra
 - that besides leaving 5 children also left property in the form of land, located in Mangkan Wetan sub-district Tugu sub-district Semarang city of Central Java province
 - that the applicant applied for permission to sell his land located in Mangkang Wetan sub-district for the education costs of his children
 - that the witness knew the land was certified and had no problems.

With the trust and permission to sell from the District Court (as an analysis of the requirements) and other requirements that are in accordance with the SOP have been completed, the process of transferring the rights of sale and purchase between E CS and R can be carried out, because the file is considered complete.

This rule has been applied since November 21 2012 until now³. With reference to the Civil Code specifically article 393 and article 394. Sounds Article 393 Civil Code:

For the benefit of the immature, the guardian may not borrow money, nor may he alienate or pawn his immovable goods, nor may he sell or transfer letters state debt, receivables and shares without obtaining power of attorney for that from the District Court. The court will not give this power of attorney, but is based on absolute necessity, or clear if there are benefits and after hearing or calling legitimately the blood relatives or semenda of the immature and will be the guardian of the supervisor.

Article 394 Civil Code:

If a guardian wishes to sell immovable property, then in his request letter a list of all assets of the immature must be attached by stating which items he wishes to sell. The District Court may grant the sale, both of the items designated, both of the other items, which according to the Court's consideration that the sale of the goods does not cause so many objections to the immature.

In essence, the two articles mentioned above state that for the Chinese population, when carrying out the process of transferring land rights, installation of mortgage rights by the guardian must have a district court license.

Connected with the rules that are being applied in the Semarang City BPN which requires guardianship and permission to sell from the District Court for indigenous residents who carry out the process of transferring rights to land owned by under age children. This aims to protect the immature from the arbitrariness of the guardian / person who represents.

³ Agung Basuki, S. ST., MH (Kasubi Peralihan, Pembebanan Hak dan PPAT) BPN Kota Semarang, Wawancara tanggal 15-2-2016, jam 1.30-2.00 WIB.

The occurrence of population classification in land services is due to the provision of Article 2 of the Transitional Rules of the 1945 Republic of Indonesia which states that:

"All State bodies and existing regulations are still in effect as long as no new provisions have been made according to this Constitution".

Through the Cabinet Presidium Instruction No. 31 / U / IN / 12/1966 dated 27-12-1966, the elimination of the distinction of population groups in Indonesia has been determined. On the basis of the consideration that for the achievement of fostering the unity of the Indonesian nation which is round and homogeneous and there is a feeling of fate among fellow Indonesians. Although the classification of the population has been abolished by the cabinet presidium's instructions, in practice the classification of the population for certain fields of law cannot be avoided.⁴

The Cabinet Presidium Instruction Number 31 / U / IN / 12/1966 also states that the abolition of the population does not reduce the validity of the provisions regarding marriage, inheritance and other civil law provisions. In other words, the provisions of Article 66 of Law No. 1/74 jo the instruction can be concluded that regarding some provisions of civil law in the field of marriage (except those which have been regulated in Law No. 1/1974) and inheritance is still in effect the Civil Code for some Indonesian residents.

Since the enactment of Law Number 1/1974 concerning marriage, especially in Article 48 of the said law, it only stipulates that parents are not allowed to transfer the right / mortgaged property rights owned by children who are not yet 18 (eighteen) years old or Never entered into a marriage, except if the interests of the child want it. Whereas regarding guardians, Article 52 of Law Number 1/1974 only states that the guardians of Article 48 of this Law also apply. So in both Article 48 and Article 52 of Law Number 1/1974 there was no mention of the "court permit" requirements.⁵

Policies / rules that have been enforced in the City of Semarang BPN, from the entry into force of the rule that is starting November 21, 2012 until now. Regarding the permit requirements / determination of the District Court for the transfer of the rights of the assets of under age children by parents / guardians (in the indigenous population) is to protect the interests of the immature from the arbitrariness of the guardian.

Of course the policy or regulation is applied of course with a variety of considerations, both for the benefit of the BPN as the agency authorized to carry out the certificate process and for the applicant. Many things that underlie the existence of a rule / policy are enforced, both in terms of security, cost effectiveness and time and so forth that are positive. The rule maker or policy is in good standing applying the rule to protect under age children from the arbitrariness of adults who are appointed as guardians.

2) Implementation of the Transfer of Land Rights at the Demak Regency National Land Agency

In carrying out the process of transferring rights to land belonging to under age children, it is in accordance with the standard of land services (SOP) as a guide. In addition, another requirement was added, namely a trust made by the applicant with the knowledge of the local village head / village head followed by a statement made by the applicant / guardian.

The process of transferring land rights from buying and selling in the field (which occurred in Demak Regency):

1) Certificate checking process

- a) Before the transfer process was carried out, the certificate was checked to find out the current status, whether there was a block, confiscated, mortgage rights were installed or not. The results of checking can be taken approximately 2-3 days, calculated from the entry request. If the results are clean, it means it's safe, meaning the process can continue. Usually checking is carried out before the signing of the sale and purchase deed in front of the PPAT.
- b) While waiting for the results of checking to be completed, we request the (thematic) land value zone for the land parcel in question, because this will be the basis for calculating payment for Non-Tax State Revenue (PNBP). The results of the ZNT application can be taken within 2 days, calculated from the entry request.

2) Verification Process

Aiming at validity that the tax calculation of an object to be processed is in accordance with the local taxation rules.

Form SSPD-BPHTB that has been filled out with a photocopy: certificate, PBB for the current year and repayment, the applicant's ID card plus the form provided by the DPKAD BPHTB research section has been filled in completely and signed, to be verified. Approximately 2 days after the application is submitted, the process is complete, the file can be retrieved.

⁴ Herlien Budiono, 2013, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan*. Buku Kedua, PT Aditya Bakti, p. 85.

⁵ Mulyoto, 2012, *Perjanjian (Teknik Cara Membuat dan Hukum Perjanjian yang harus dikuasai)*, Cakrawala Media, Yogyakarta, hlm. 20.

Verification results that are approved, marked by the validation of the officer and the agency's stamp, while the results of verification that are not approved by the officer, will get a note on a separate paper, which has been provided by the officer with the written value of land and buildings per meter, that later as a basis BPHTB calculation approved.⁶

The verification process in Demak Regency is a must or stage that must be passed before the transfer is made at the National Land Agency, without it.

3) Tax payment process (PPh, BPHTB)

From the verification results that have been approved by the officer, the tax payment can be made.

4) The process of transferring land rights of the

a) Applicant came to BPN, bringing the application file, among others:

- Application sheet provided, filled out and signed.
- The original certificate has been checked.
- Deed of sale and purchase from PPAT.
- Determination of guardianship and permission to sell known by the Village Chief / Village Head of Demak Regency.
- 3rd copy to the BPHTB payment and 4th copy to PPh.
- Land value zone results.
- The statement of land and building has been physically controlled over the material.
- The statement of land and building is not in dispute above the material.
- Power of attorney if authorized.
- Photocopy of Identity Card of the parties and power of attorney if any (has been matched to the original).
- Photocopy of KK of the parties (has been matched according to the original) and photocopy of PBB in the current year which has been matched according to the original.

b) If the file is considered complete there are no deficiencies. Immediately calculate the amount of costs to be paid by the applicant, to issue proof of deposit payment (SPS). Payment at the local BPN cashier. As proof has been paid, a receipt will be obtained later for proof of collection of the finished product.

c) Within a maximum of 14 working days, the applicant came again to BPN, while bringing a receipt to retrieve the certificate, the process of transferring rights had been completed. Here a change of the name written on the certificate takes place on behalf of the buyer, the process is complete.

The guardianship certificate, which the applicant made in the knowledge of the lurah / village head, stated that because children who are not yet mature perform legal actions / are not old enough to do legal actions. For this purpose, a guardian was appointed, followed by a statement made by the guardian, that the purpose of the sale of a parcel of land was really for the needs and interests of the minor child. In addition, the trust will be rejected.⁷

As performed by the applicant named U, because his son named D is still not an adult, in carrying out the transfer of rights to their parcels of land, a guardianship certificate was made known by the Head of Brambang Village - Kelurahan Karangawen - Kabupaten Demak. To strengthen the trusteeship, the applicant U made a statement explaining that the plot of land, after the inheritance was processed, an APHB (Deed of Sharing of Joint Rights) process would be carried out on the grounds that it would be given only to one name namely S, because D had already obtained it. (Incidentally during the research, there was a transfer of rights from APHB not from buying and selling, only the difference was in the statement made by applicant U only. It contained that the sale of the plot of land was, for the sake of interest, the cost of living of the immature).

The rules for the existence of the trusteeship have been carried out from before Mr. Tukiran served as Kasubsi Land Rights and Land Registration until now. The basis for the regulation is Law No. 1/1974 concerning marriages, especially article 48, for natives who are not required to have guardianship and permission to sell from the District Court. During Mr. Tukiran's office until now, there has never been a transfer of rights from the sale and purchase of assets of minors who are licensed to sell them from the District Court.⁸ However, the process of transferring rights to minors' land continues to run smoothly and there have never been any cases that have arisen in the community due to guardianship made by the applicant with the knowledge of the lurah / village head.

- a. Constraints Faced in the Implementation of the Transfer of Rights to Land Belonging to Children Under Age At the beginning of the rule, there must be guardianship and permission from the District Court, there are obstacles that must be faced, especially in the Semarang City Land Agency. Given that Semarang is a large city, so the problems faced are increasingly diverse (complex). In addition to the lack of socialization in the community, problems come mainly from the middle and lower economic class. Usually the objects they have are small with low selling points. Because of such an object, if a sale is made, the value of the currency is not proportional to the costs that must be incurred in fulfilling the requirements analysis, namely trusteeship and selling permit that is requested at the District Court. Aside from the material aspect, the existence of a permit application to the Court will add time to the process of transferring rights.

⁶ Etika Hotma Uli Manurung, SH., M.Kn., (Notaris/PPAT Kabupaten Demak), Wawancara tanggal 16 Maret 2016 jam 14.30 WIB

⁷ Tukiran (Head of Sub-Section for Land Rights and Land Registration), BPN Demak Regency, Interview on 16-2-2016, at 15.00-15.30 WIB.

⁸ Tukiran (Kasubsi Land Rights and Land Registration), BPN Demak Regency, Interview on 16-2-2016, at 15.00-15.30 WIB.

This is very pronounced if the proceeds from the sale of objects will be immediately used, especially for urgent needs. Considering the permit application process in the court itself requires a lot of time, because of the time of the trial and so on. Not all applicants understand and understand in submitting an application in court, so that sufficient time is needed for proceedings in court. For applications, from the receipt of the file and the registration, which has been marked by the PNBP paid at the State Savings Bank, until later the trial and the finished product (determination) take approximately one month. Not to mention the process in the land.

In such case, if the applicant file an objection is made by coming to the land office. It is recommended to go directly to the Head of Subdivision, assignment of rights and PPAT. By expressing the intent and purpose of buying and selling the object in question. After hearing a number of objections to the reasons supporting the sale, the policy will be given by the Head of Office, because the authority is on him.

For the policy that was given, a coincidence had occurred, namely by completing the application file in the form of guardianship of a permit to sell the applicant made known by the lurah / village head who was strengthened by the local camat. Thus the application file has been considered complete, so that the transition process can be carried out.

Regarding the responsibilities of the BPN as the agency in charge of processing the transfer of rights, the responsibility is limited to administrative (implementing administrative activities).⁹ If there are requirements that have not been met, this will be informed by contacting the applicant via sms, in order to complete the file. Before the completeness is fulfilled, the process cannot be continued. So far with the requirement of establishing a court for guardianship and permission to sell to residents of the indigenous group, it does not hamper the process of transferring rights. There are 1 or 2 files that were stopped due to lack of permission to sell and trust from the court. As time went on, eventually the community became aware of and aware that the process of transferring rights to land belonging to minors in the indigenous population, especially for the city of Semarang requires that a permit / court be accepted.

2. Legal Protection of Underage Children Who Owned the Property Transferred By Parents or Their Guardians

Legal protection of citizens is the responsibility of the State. Therefore the State is obliged to give without exception. Legal protection is essentially every person has the right to get protection from the law. Almost all legal relations must be protected, one of which is legal protection for minors who own property transferred by their parents / guardians.

To protect the assets / assets of minors, who because of their interests are sold, so that later they are not disadvantaged as adults. Even though in Law Number 1/1974 regarding marriages, Article 48 does not regulate permission to sell, but the rules in Semarang City BPN still require, keeping in anticipation of cases of disputes / disputes. The city of Semarang is a large city, its people have referred to the urban community, so the level of problems is higher.¹⁰

Regarding the management of the assets of minors can be done through representatives of parents or guardianship of minors, either according to the law or based on court decisions.

In the event that legal action is needed for the assets of minors, it can be carried out through legal guardianship based on parental authority (*onderlijke macht*) or guardianship that is determined by the court to one of his parents (*voogdij*) or guardianship according to the law by other parties (*wettelijke voogdij*) as contained in Article 45 to Article 54 of Marriage Law No. 1 of 1974.

Representative or guardianship power may not be used to transfer, transfer or charge the assets of a minor, except in the case of the child's interest (Article 48 of Marriage Law Number 1 of 1974 in conjunction with Article 307, 309, 1315, 1317, 1340 Civil Code).

For mistakes or negligence that befall the assets of the child, the guardian can be sued by the family of the child or the child itself for losses incurred by the guardian as stated in article 54 of Law Number 1 of 1974. Thus, to protect minors and avoid abuse of power / guardian.¹¹

Underage children who are under guardianship, the management of the assets, including other property belonging to minors, becomes the business and responsibility of a guardian. This arrangement is to keep the items of cyanak preserved, and to take care in such a way that they are not destroyed and do other deeds that are deemed necessary, and are appropriate for the sake of the goods themselves or for the interests of the child. The guardian also needs to make a list of the assets of minors who are under his authority at the time of starting his position and record all changes in the child's assets.

A guardian must also be responsible for losses incurred to the property of minors under his authority if the loss arises due to negligence or error. For this reason, guardians can also be prosecuted to compensate for losses

⁹ Tukiran (Kasubsi Land Rights and Land Registration), BPN Demak Regency, Interview on 16-2-2016, at 15.00-15.30 WIB.

¹⁰ Agung Basuki, S.ST., MH, Sub-Section Chief, Imposing Rights & PPAT, Semarang City BPN, Interview on Date. 2-2-2016 Hours 1.30-2.00 WIB

¹¹ Tukiran (Kasubsi Land Rights and Land Registration) BPN Demak Regency, Interview on 16-2-2016, at 15.00-15.30 WIB.

incurred both by the child in the future, and by their families. Carefulness and honesty are very much needed by a guardian in managing the property of minors who are under his authority.

1. Legal Protection of Underage Children Who Owned the Property Transferred By Parents or Their Guardians (Semarang City BPN)

In essence, all forms of protection provided especially for the interests of minors in carrying out the process of transferring the rights of buying and selling assets belonging to minors, namely in the form of representatives or guardians, for which must have obtained permission from the court. Basing on the thought that of course the court at the time of giving permission to the person representing the minor had already considered and paid attention to the interests of the people represented. Therefore, it may be assumed that the requirement to ask permission from the court is sufficient to protect those whose actions are represented. If the court feels that this is not enough, of course he will order to fulfill additional conditions, such as must be attended by the Probate Court, the document must be notarized, the concept must be approved by the Probate Court and so on.¹²

In addition to protecting the assets owned by minors from being misused by guardians, the existence of trusts and selling licenses requested at the District Court, it will better protect those who process the transfer in this case are BPN and PPAT as the makers of the sale and purchase deed.

By requiring guardianship and permission to sell from the District Court, in addition to protecting the incompetent, it also protects the agency that processes the certificate and the PPAT as the maker of the land deed.

2. Legal Protection of Underage Children Who Have Assets Transferred By Parents or Their Guardians (BPN Demak Regency)

Not much different between BPN Semarang City and Demak Regency. In carrying out the process of transferring rights from the sale and purchase of rights to land owned by minors for indigenous groups of residents in addition to the requirements specified in the SOP / standard of land services must be met, there are additional requirements that must be included, namely the existence of guardianship. It's just that the trusteeship here is made by the applicant with the knowledge of the lurah / local village head, which is then followed by a statement made by the applicant / guardian with the lurah / village head known.

The reality is that, although the Demak Regency BPN does not require a guardianship and a permit to sell that has been requested at the District Court, requests for stipulations, especially trusts and licenses to sell, are ongoing. Requirements for application include¹³: 1) Photocopy (applicant's ID card, family card, marriage certificate, child birth certificate, father / mother death, certificate, inheritance statement) all of which are legalized / sealed Rp. 6,000. 2) Duplicate application 4 Rp. 150,000. 3) Pay official fees at Bank Rakyat Indonesia according to the respective regional rates.

One week after the application was submitted, a hearing was held with two witnesses who knew the family's history / whereabouts. In addition, original documentary evidence must be brought to be presented to the judge. During the hearing, the applicant and witness must all be present, if not the trial is adjourned. For normal, if everything goes according to the procedure, a period of one month from the time the application is submitted, the determination is ready

Unlike the guardianship information that is known by the village head / village head, the point is because the child is not yet mature yet capable of carrying out legal actions, for this reason a guardian is appointed. Before the drafting of the trusteeship is made, the prospective trustee is first asked for what purpose the trusteeship was made. If it is used for the interests of the person who has not been able and certainly will not bring harm either when the trusteeship is made or even later when the adult is not capable. This is a consideration for the issuance of a trusteeship letter. Considering the village head / village head is partly responsible.

In addition to the responsibility of the maker of the trusteeship document, the responsibility of the village head / village head is stated in the statement letter. In the statement if the guardian does not do it for the benefit of the person who has not been able to, then immediately the guardianship request will be rejected.

Judging from its contents, the trusteeship certificate, is very simple and simple. Here includes the name of the minor being requested for guardianship, date of birth and occupation and address. Because until the time of request for guardianship the child is not old enough to do legal action. For this purpose, a guardian is appointed

¹² J. Satrio, 1998, *Inheritance Law Regarding the Boedel Separator*. PT Citra Aditya Bakti, Bandung, p. 243.

¹³ Bambang Purwanto, SH., (Young Registrar) of Demak District Court, Interview on Tuesday 21-6-2016 at 11:30 WIB

by stating the name, occupation and address. At the end of the statement, the date (time) of the application is stated, to be subsequently signed by the lurah / village head with a stamp stamped afterwards.

Compared to the trusts and selling licenses requested at the District Court, there are many differences. Because the history of making a certificate that is known by the village head / village head, without including evidence of a letter that supports the making of the trust itself. For example: birth certificate for minors, parents' marriage certificate, family card, applicant's KTP, death certificate, inheritance certificate, land certificate requested and witnesses of at least two people who know the family history.

Although this guardianship statement was followed by a statement letter by the applicant, it was very weak and vulnerable to a lawsuit. Because in this trusteeship certificate information data obtained is only one-sided, namely from the applicant, while other supporting data is not available. Only the applicant's good intention reinforces this statement, namely that as the appointed guardian, carrying out legal actions is truly in the best interests of the immature.

In essence, by requiring representation / guardianship in the process of transferring rights from buying and selling rights to land owned by minors (indigenous population) is a form of protection provided. Both to BPN, the not capable and PPAT as the deed of the maker.

Began to apply the rules as mentioned above, so far in the district of Demak there has never been a legal dispute that originated in the ignorance of the interests of people who have not been able to, even though in this case trust is only made only by the village head.

3. Future Renewal for the Transfer of Underage Rights of Children by Parents or Guardians

Parents (fathers and mothers) are both obliged to maintain and educate all their children who are not yet mature. Losing the right to assume parental authority or to become a guardian does not relieve them of their obligations, giving benefits in balance with their income, to finance maintenance and education.

In the event that one of the parents has passed away, the minor child is under guardianship. The function of the trusteeship is to carry out maintenance and education of the person of the child who is not yet an adult in accordance with his assets, as well as represent in all civil actions or in accordance with applicable laws.¹⁴

One of the civil acts that must be represented is in the process of transfer of the property of minors, so that later it will run smoothly, in accordance with applicable regulations, additional requirements are required, namely guardianship and permission to sell. In addition to the requirements that are in accordance with all service standards (SOP). The problem is the trusteeship and permission to sell itself. So far, what we know is that a court product in the form of a decision or decision is a legal product that is final (has permanent legal force) in the sense that in the future there is a refutation, objection, filing a lawsuit, and so on, it is unlikely to be defeated / canceled. Considering the judge gave the permission by asking for approval and opinions from the person who represented the minor, was sworn in first, there were witnesses, reasons and evidence that supported the issuance of permission to sell and guardianship. The principle of *res judicata pro veritate habitur* (the judge's decision must be considered correct) as long as it is not otherwise decided by a higher court.¹⁵

For now the policy rules that are enforced at Semarang City BPN are appropriate. By requiring guardianship and permission to sell which must be applied in a district court. Protection to protect yourself from all possibilities that will happen, both now and in the future.

The first renewal that was carried out mainly in the implementation of the transfer of the rights of minors is that which provides protection for all parties. The applicant, the processor and the maker of the deed in the form of a trust and a license to sell are determined by the District Court. To safeguard the possibility of actions or agreements that are detrimental to parties who are not yet capable. People who by law are required to represent them must always ask permission from the court.¹⁶

The second renewal which adheres to a cheap and fast legal process. During this time, generally what happens when it involves matters with the court (petition) in addition to the required costs, also time. It is not enough once or twice to submit one application. Besides, there are many ignorance factors about the petition in court.

According to Tukiran as the Head of the Sub Section of land rights and land registration in BPN Demak Regency, the reasons for the application for determination in the Demak District Court have many obstacles, because every time an applicant submits an application for a decision, the District Court recommends filing a lawsuit. For example, the owner of an object whose existence is unknown (the name listed in the certificate) will transfer the rights. So the

¹⁴ Tan Thong Kie, 2013, *Notary Study and Other Practical Notary Practices*, PT Ichtiar Baru Van Hoeve, Jakarta, p. 36

¹⁵ Sigit Irianto, 2009, *Civil Law (Sourced from the Agreement)*, UNTAG Faculty of Law, Semarang, p. 5

¹⁶ *Ibid.*, P. 240

District Court suggested a lawsuit be filed, while from the BPN Demak Regency, for such cases suggested with a request for determination on the grounds because there was no dispute. As we know that filing for a lawsuit is more expensive, so in this case the applicant is not willing.

In accordance with the results of the study, there are many obstacles in the application for the determination in the District Court, due to the existence of several persons who carry out their duties not in accordance with the SOP (*Standard Operating Procedure*) specified. In this case specifically about the fees charged to the applicant. In addition to the official fees that have been stipulated, there are other costs that are levied to the applicant who has a larger amount so that the request for application is smooth, and if this is not fulfilled, the process is long (approximately one month from the request is calculated until the decision is issued) with a halting process.

The third update, is the implementation of the system *online* for the process at BPN. Before the applicant arrives to submit his application, all files must be made *online* first. When later facing the ticket window clerk, just match according to the data input when *on line*. This is very helpful to relieve officers, as well as speed up the process and of course more transparency to the community. The fourth renewal is the presence of counter officers who are friendly and nimble, so that applicants who come will feel more comfortable and helped. Especially for those who are still experiencing difficulties, it will be very valuable. The fifth (last) renewal is the absence of population classification in the land service process.

A. CONCLUSION

The transfer of rights to land owned by minors / minors, between the Semarang City Land Agency and the Demak Regency Land Agency is in principle the same, in accordance with the SOPs stipulated in the Head of the Indonesian National Land Agency No. 1 of 2010 concerning Service Standards and Land Management. Only difference is the existence of additional requirements (requirements analysis). Semarang City BPN in the form of trusteeships and selling licenses were requested at the District Court. Demak Regency BPN, additional requirements in the form of guardianship and statements made by the applicant with the knowledge of the Village Chief / Village Head. This difference is due to the rules / policies governing specifically for the transfer of rights to land owned by minors do not yet exist.

Legal protection for minors whose property is transferred by parents / guardians, there are two rules: 1) With the determination of the court. 2) Not with a court order. Whether those who use the determination or not all have the same goal, the main thing is to protect the incompetent from the arbitrariness of the guardian. In addition, to protect PPAT as the Land Deed Making Official requested.

Future renewal for transfer of assets of minors by parents / guardians: by requiring guardianship and permission to sell that is requested at the District Court, because it is to create legal certainty and provide a sense of security. The transition process is carried out online and does not mention population classification in community services.

REFERENSES

BOOKS :

- Herlien Budiono, 2013, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan*. Buku Kedua, PT Aditya Bakti.
- J. Satrio, 1998, *Hukum Waris Tentang Pemisah Boedel*. PT Citra Aditya bakti, Bandung.
- Mulyoto, 2012, *Perjanjian (Teknik Cara Membuat dan Hukum Perjanjian yang harus dikuasai)*, Cakrawala Media, Yogyakarta.
- S. Chandra, 2005, *Sertipikat Kepemilikan Hak Atas Tanah*, Gramedia, Jakarta.
- Sigit Irianto, 2009, *Hukum Perdata (Bersumber Dari Perikatan)*, Fakultas Hukum UNTAG, Semarang.
- Tan Thong Kie, 2013, *Studi Notariat Dan Serba Serbi Praktek Notaris*, PT Ichtar Baru Van Hoeve, Jakarta.

LAWS :

- The 1945 Constitution of the Republic of Indonesia.
- Civil Code (Civil Code).
- Law Number 1 of 1974 concerning Marriage.
- Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Republic of Indonesia Law No. 35 of 2014 concerning Child Protection.

Government Regulation Number 24 of 1997 concerning Land Registration.

Minister of Agrarian Regulation / Head of BPN Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.

Regulation of the Head of BPN RI Number 1/2010 Regarding Service Standards and Land Management.

Circular Letter 4 / SE / I / 2015 concerning the age limit for adults in the context of land services.

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