

Guardian's Responsibility For The Recording Of Children's Property Under Its Custody

Muhammad Rifki¹, Zahratul Idami², Muzakkir³

¹ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

² Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

³ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

Abstract : Article 51 paragraph (3) to paragraph (5) of Law No. 1 of 1974 on the Articles of marriage and article 110 paragraph (1) to (4) The compilation of Islamic law shall be held about the responsibility (obligation) to be made by the Guardian to the self and of children under their custody. In reality there are 5 (five) things that occur in the court of Shar'iyah of Banda Aceh to the Guardian to the child under his guardian. The results of this research show that guardians do not record the property due to some things, in the case of 0044/PDT. P/2015/MS. BNA There is no initiative to register the registration of property, the lack of goodwill by the Guardian in the management of the child's property, the role of the supervisory guardian is also not running, because of the absence of a raw of makanism to its duties and functions. The legal consequences if the asset is not recorded by the Guardian, namely Yusvisit as a trustee in the case of 86/PDT. P/2016/MS. BNA is a legal act of Guardian's property, such as buying and selling, lease, accepting/rejecting the beneficiary and grant, conducting the separation or merger of the property shall have the consequences of the law null and void, the applicant is not entitled to transfer or transfer the property of the child where the Guardian does not give a record of the property that has been the responsibility, and Yusvisit as a guardian can be sued for The child under its guardian. It is advisable that the Government of Aceh can make the implementing rules on Qanun ACEH Number 10 year 2018 about Baitul Mal in relation to the supervision of custody, the rules of implementing it can be a Governor regulation.

Keywords: Responsibilities, guardians, registration of property.

Date of Submission: 10-06-2020

Date of Acceptance: 28-06-2020

I. INTRODUCTION

Speaking of custody problems then not regardless from the discussion of children and the age limit of a child, this is important because to know when a child is placed under the custody and can lead a response to a fact. In Arabic "The son is called Walad, a word that contains reverence, as a creature of God who is going through the development of the everlasting God of the righteous." The orphan is derived from the Arabic language of the Fi'il Madli "Yatama" Mudlori "Yaitamu" and Mashdar "YATMU" which means sad or meaningful by itself. As for the ' Syara ' which is meant by orphans is a child who is left dead by his father before he baligh.

Shaykh Muhammad ibn Shalih al-'uthaymeen (May Allaah have mercy on him) Menye-butkan that the orphan was the son who left his father before the Baliqh, both male and female. As for the son who lived his mother before Baliqh is not the orphan, not according to the language, according to the sharia. For the orphan is taken from your word, separate and self-meaning. That is, separate from the person who search (livelihoods). For his father was the one who sought for him. It is also said by Shaykh Abdul Aziz ibn Baaz (may Allaah have mercy on him).

In Law No. 1 of 1974 on the Fundamentals of marriage. The responsibilities and obligations of the guardian to the child under the custody are governed by section 51 paragraph (3) to paragraph (5). In paragraph (3), the Guardian shall take care of the child under his control and his possessions in the most appropriate respects with respect to the child's religion and beliefs, whereas verse (4) governs that the Guardian shall make the property of children under His finances at the time of his office and recorded all the changes of the possessions of the children or children. In paragraph (5) It is also determined that the Guardian is responsible for the property of the child under its guardian and the loss caused by mistake or negligence.

The provisions of article 33 and article 34 of LAW No. 23 of 2002 on child protection also determines, that a designated guardian under the determination of the Court or the court may represent the child to perform legal action, both in and out of court For the best interest for the child. In paragraph (2) and (3) it governs that

the Guardian shall manage the property of the child in question for the interest of the child in or outside the court for the best interest for the child.

Provisions of Article 52 Act No. 1 year 1974 on the subject of marriage further govern, that the Guardian shall not transfer the rights or mortgaged the permanent goods owned by his son who is not 18 years old or has never married, Unless the interest of the child wills.

The trustee is also stipulated in the other provisions of the compilation of Islamic Law (KHI) which governs the obligation of the guardians in article 110 paragraph (1) to (4) which governs that the guardian is obliged to take care of and the property of the child under its guardian and is obliged to provide religious guidance, education and other skills. Guardians are prohibited from binding, burdening and alienating the property of children under its custody, unless it is profitable or unavoidable. In addition, guardians are responsible for the child's property and reimburse the damages arising as a result of errors or negligence. The responsibility of the guardian must be substantiated by proof once a year.

The compilation of Islamic Law (KHI) as a material law for religious court judges is a guideline or reference in making decisions regarding matters that become the competence of the courts of religion (Muhammad, 2009). The compilation of Islamic Law (KHI) Article 1 h in-explain the meaning of custody is as a authority given to a person to do something of law as a representative for the benefit and on behalf of children who do not have both parents Parents who are still alive but are not able to do legal deeds.

The compilation of Islamic law article 109 governs, that the religious court may revoke the custody of a person or legal entity and provide it to the other party in the application of his relatives when the Guardian is drunkard, gambler, wasteful, insane and or otherwise neglect or Abusing his rights and authority as guardian in the interest of the person under his/her custody. The duties and responsibilities of guardians are actually very heavy, because a person in addition to having to take care of the child should also maintain and maintain the property of the orphan. His obligation also must record both the expenditure and perubahan of the property of the child under his guardian so that the property can be handed back to the child when the adult is in good condition and clear, so as not to Cause libel. Children who are still minors who are left by their parents by the law are deemed to be able to perform the legal action, so that he/she is required to be a guardian who will represent him in order to take care of his interests Personal or other interests relating to education, health and others.

The government has issued the LAW No. 48 year 2007 on the determination of the PERPU number 2 year 2007 on the handling of legal issues in the framework of the rehabilitation and reconstruction of the region and people's life in Nanggroe Aceh Darussalam province. The trustee in the PERPU is governed by article 27 up to section 32, but the arrangement is more to the child's property not to the supervision over the use of a child's property by the Guardian (for caregiving under its guardian). Provision of Article 31 paragraph (1) the PERPU governs that the underage child whose parent has died or is unable to act according to the law, the property is managed by the Guardian in accordance with the provisions of the legislation (Idami, 2012).

The definition of adult age still has a lack of opinion, both the opinion of experts and prevailing laws and regulations. In line with this, Muhammad Hasan Wadong also mentions the age limit of children can be grouped, "the maximum age grouping as a form of child's ability in legal status, so that the child switches status into adulthood or can be subject Law that can be independently responsible for the acts and legal actions of the child (Wadong, 2000).

The procedure of appointment of children according to KHI is conducted in District Court/Shara'iyah Court. Among the purposes of lifting the child through the Court agency is to acquire legal certainty, legal legality, legal documents. Legal documents have be the adoption of legally very important in family law, because the consequences of the child's position concerning the right and to-the face that includes the relationship of Blood (NASAB), the provision, the birthright and the trust especially in the appointment of the child will have a long impact to the generations of descendants concerning the legal aspects of inheritance, legal responsibility and others (Asmara, 2012).

a. In the Civil Code (civil law)

- 1) "section 330 paragraph (1) mentions the boundary between an immature (Minderjarigheid) with an adult age (Meerderjarigheid) which is 21 years old unless the child is married before age 21 or because of adulthood (Venia Aetatis)."
- 2) The immaturity as such in article 419 of civil law. By maturity, a minor child may be declared adult or to him may be granted certain rights of an adult. What is necessary for the child who is not adult is stated by the Adult declaration (Venia Aetatis) given by the head of state after listening to the advice of the great Makamah as such in article 420 of civil law. As a result, the person is expressed as full adult having the same position as an adult. Except for mating still require parental/guardian permission. Also to sell his unmovng goods requires permission of the district court where he lived (Meliala, 2005).

With regard to this trust, including the Guardian who is appointed or appointed by the judge through the determination of the Court of Shar'iyah. Especially for children who are Muslim, the determination of the trust is performed by the Court of Shari'yah where the child's domicile. In this study the determination taken is the establishment of a trust issued by the Court of Shar'iyah of Banda Aceh. From the year 2015 until 2016 there are 5 applications in the court of Shar'iyah of Banda Aceh to become guardians of minors.

In this study, the determination of the establishment is the establishment of a trust issued by the Court of Shar'iyah of Banda Aceh, where in the implementation of the designation stated that:

- a. Grant the applicant application.
- b. Set the
 - 1) Cut Annisa dances binti T. Yulizar Putra (female, born in Banda Aceh 13 May 2002);
 - 2) T M Nafis bin T Yulizar Putra (male, born in Banda Aceh 12 April 2006);

Under the custody of the applicant T. Yulizar Putra bin T. Muhammad Ali:

- a. Instruct the applicant as a trustee to carry out the responsibility of the custody of the two children in accordance with the provisions of the legislation until the child is mature by law;
- b. Instruct the applicant to record/register all expenses on behalf of the child in the book provided for it.

In view of the contents of the court's assignment, there is a guardian's responsibility to perform the property management of the underage where the court of Shar'iyah orders to record or register all expenditures on behalf of the child in the book provided to it. Based on the explanation above can be understood the position of the guardian is very important, not only the management of wealth is preferred but how the trust can shape the soul is more precedence. Based on this, the study was titled "The Guardian's responsibility for the recording of the child's property under its trustee."

Based on the descriptions of the background above, it can be identified several things that are the subject of the problem in this research is why the Guardian does not record the property of children under its custody and whether Of the law if the property is not recorded by the Guardian.

This type of approach is an empirical approach method. This research is to obtain primary, secondary, tertiary data. Primary data is obtained through interviews, secondary data obtained from structured or unstructured interviews, and tertiary data is obtained from a combination of primary data and secondary data. The legal material obtained from the literature research, will be processed and analyzed qualitatively.

II. LITERATURE REVIEW

In the fiqh of Islam, the trust is called al-Walayah (Caring/mastering something). Etymologically the trust has several meanings, namely Love (Al-Mahabbah), Help (An-Nashrah) and power/authority (AS-Sunan wa al-Qudrah). As for the terminology of the Fuqaha, custody is the power or authority that a person has to do his own actions directly without having to rely on the permission of others (Summa, 2005). As for the English Dictionary, the Trust also has the following definitions:

- a. People who are according to the law (religion, customs) are assigned the obligation to take care of orphans and their property, before the child is adult: the sale of the land cannot be confirmed because the owner is not mature and the Guardian does not approve it;
- b. Person who is the guarantor of the child's management and parenting: The Guardian of the child is his uncle because the child lives with his uncle;
- c. The bride's nanny at the time of marriage (i.e. who did the vows of marriage to the groom): Because his father had died, his brother who became the Guardian to marry the daughter;
- d. The righteous (chaste); Denominations;
- e. Head of Government etc.: the state mayor; Care and supervision of orphans and their property.

As for the opinion that the custody is related to the Guardian. As for the Guardian has many meanings whose use is adapted to the context of the sentence. Here are some notions about guardians:

- a. People who are according to the law (religion, customs) are offered the obligation to take care of orphans and their wealth, before the child is mature;
- b. The businessman of the bride at the time of marriage (i.e. who is doing the promise of marriage to the groom);
- c. Righteous people (scholars), denominations of religion;
- d. Head of government and so forth (Sahrani, 2010).

The Guardian is the person who maintains the orphan and takes care of the child's property either in the form of an individual person or a legal entity (Thalib, 1986).

The trust is also closely related to the Hadhanah. Hadhanah is the maintenance and nurturing of children who are still small or immature. In another sense, Hadhanah is the maintenance of a young child after the end of the marriage and the children still need help from his father or mother. Child care is the right of a child who in Islam must be secured, protected and fulfilled by parents, families, government and state communities. Among the rights of the Child is the maintenance of Kehormahan, the maintenance of

offspring/NASAB, the maintenance of the soul, the preservation of reason and maintenance of wealth (Anshori, 2007).

According to the compilation of the law of Islam, the custody is ' the authority given by one to do something of law as a representative for the sake and on behalf of children who do not have both parents, parents who are still alive but incompetent Legal action.

According to Abdulkadir Muhammad, the Trustee is a legal obligation by a guardian to supervise and care for the child who is not mature and his possessions (Muhammad A. , 2000). According to Subekti, the trustee is derived from the guardian who has the meaning that other people as a substitute for parents according to the law is obliged to represent an immature child or not yet Ihtilam AL in doing legal action (Soimin, 2002).

The trust is the supervision over the person as stipulated in the law, and the management of goods from the immature child. Likewise, with the mastery and protection of a person as a guardian, the person has a legal relationship with a person who is possessed and protected, his or her children or someone other than the parent who has been legalized by law to act As Guardian, therefore the custodian is a authority given to a person to commit a legal act as a representative for interest and on behalf of a child who does not have both parents or parents are still alive But is not capable of doing legal action (Vollmar, 1997).

The trustee in carrying out its duties is obliged to nurture the child under the Guardian and also take care of the child's property with the best possible by respecting the religion and beliefs of the child, but the Guardian must maintain all The child's possessions at the time of starting his position as a guardian and also obliged to record all changes of the child's possessions. The designated Guardian under the court of appointment may represent the child to perform legal action, both inside and outside the court for the best interest for the child as stated in article 33 and 34 ACT No. 23 year 2002 on Child protection. Subsection (2) and (3) also governs that the Guardian has the obligation to administer the child's property for the child's sake.

In respect of this trustee, including the Guardian appointed or appointed by the judge through the determination of the court. Especially for children who are Muslim, the determination of the trust is done by the Court of Religion where the child's domicile.

III. WALI DOES NOT RECORD THE PROPERTY OF CHILDREN UNDER ITS CUSTODY AND THE CONSEQUENCES OF ITS LEGAL

In case the case numbered 0044/PDT. P/2015/MS. BNA Wali does not record the property due to some things including (Sarong, 2019):

- a. Wali in the case 0044/PDT. P/2015/MS. BNA no initiative to register the registration of property. The applicant assumes no important record of the property of the child under the custody caused by the court explaining the rights and obligations of the Guardian as a parent who then according to the Guardian is considered not so important because the Guardian will not use the property of the foster child for his purposes. The inadequacy of the Guardian's knowledge related to the rights and obligations is also the basis for not recording the property of its foster children. The Guardian is aware that a child who is not 18 years old cannot be given the property because it is still minimal in the wealth management for the child's needs.
- b. Lack of goodwill by the Guardian in the management of the child's property. This good faith is necessary because to manage the child's property according to his needs, Missal of education, health, and others, until the child grows large to be useful for the nation and the country. Therefore, good goodwill is as the basis for the Guardian in the use of the child's property.
- c. In this case the observer does not care about the understanding of the importance of the recording of children's possessions so that the Guardian does not know what to do with the property of which he is responsible. The government does not provide an understanding of how the supervision of a child's property can provide welfare for the child.
- d. The regulation does not make room for the Guardian to act in force, so that the rights and obligations of the Trustee are expressly in acting and supervising the property of the child's rights.

In each of the trustees ordered in Indonesia, the Heritage Hall is obliged to perform the duties as a trustee. The Heritage Hall as the trustee has a duty as a party representing the interest of the child who is not mature, if there is interest in the child contrary to the interests of the guardian, by not reducing the obligations The supervision was handed over to BHP in the custody of the supervisor was ordered to him.

The trustee must impose the Guardian against the threat of loss and interest in which the Guardian is given the penalty to reimburse, and make the inventory or details of the goods of the property in any inheritance that falls to the immature child. However, the custody process becomes disharmony while the trustee process is deemed to have been completed by the Guardian after the establishment of the court. Guardians often neglect the provisions of article 368 of the Civil Code, which requires the Guardian to notify BHP of the occurrence. This is to remember that the trusteeship's determination by the District Court, which minimally states the obligation of the Guardian to report to BHP as the trustee.

According to the results of the interview, the government needs to give birth to an institution whose nature is to supervise the property that is charged to foster care, so that its use can be beneficial for children and countries. This institution can be set up to provide understanding for the guardians of the Foster child, and also as a place of complaint if there is abuse of the Guardian's power to the child (Sarong, 2019).

The trust has the function of a child to maintain the welfare of the child, to supervise matters relating to him and all manner that he has not been able to obtain. Such as the maintenance, care, and education of a child who is still underage.

The trust of the child's personal self is in the form of caring for the child's self-interest, ranging from nurturing, nurturing, and giving education and religious guidance. This arrangement also includes in everything that the child needs. All of these life financing is the responsibility of the Guardian. Meanwhile, the custody of its goods is in the form of managing the child's property well, including noting a number of his wealth when the custody begins, noting the changes in his wealth during the custody, and resubmitting To the child when the child has finished his/her day because the boy is mature and is able to take care of himself.

The legal consequences for guardians who do not record children's property can be described as follows:

- a. As a trust applicant in matters 86/PDT. P/2016/MS. BNA There is a legal act of Guardian's property of Sianak, such as buying and selling, renting rent, accepting/rejecting heirs and grants, conducting separation or merging of the property will have the legal consequences null and void. This is null and void, meaning that the deed that the guardians do is deemed to have never occurred.
- b. The applicant is not entitled to transfer or transfer the property of the child whose guardian does not give a record of the property that has been the responsibility, so that no misuse of the harats has been given to the Guardian. Transfer or transfer of fixed goods or moving goods, guardian must first take into account the child's interests. Furthermore, in this case it is also necessary to note the importance of the goods themselves. This means that when the goods are a type of goods that cannot be stored, such as agricultural products, then it should be when the Guardian quickly sells it and the sales result is included in the child's list of wealth.
- c. Guardians may be required to pay damages when they neglect their duties and result in material harm to the child under his/her custody. On the basis of article 54 of law No. 1 of 1974 which reads Wali who has caused harm to a child's property under his control, for the child's or family's claims with the judgment. From the provisions of the above article can be seen that the claim to pay losses to the Guardian arising from the child and the child's family. From such a fact can also occur in the opposite case as if the Guardian abusing his authority and the child and family of the child does not prosecute the obligation of the guardian to give legal remedies But morally the Guardian in the child's eyes and the child's family has a disability and cannot be trusted.

IV. CONCLUSION

Wali does not record property due to some things, in the case of 0044/PDT. P/2015/MS. BNA There is no initiative to register the registration of property, lack of goodwill by the Guardian in the management of the property of children, in this case the government does not think of understanding related to the importance of the registration of children's possessions so that the Guardian does not know what to do with the property that is his responsibility. The consequences of the law for the Guardian who does not record the child's property namely, yusvisited as a trustee applicant in the case 86/PDT. P/2016/MS. BNA There is a legal act of guardians on the property of the Sianak, such as buying and selling, renting rent, accepting/rejecting heirs and grants, conducting separation or incorporation of the property will have the consequences of the law void and yusvisit as an applicant is not entitled to transfer or transfer the property of the child where the Guardian does not give a record of the property that has

REFERENCES

- [1]. Muhammad, Ghulam. *Sistem Hukum Kewarisan dalam Kompilasi Hukum Islam*. Medan : Warta Univertaria, 2009. p. 67.
- [2].). Idami, Zahratul. *Tanggung Jawab Wali Terhadap Anak Yang Berada Di Bawah Perwaliannya (Suatu Penelitian Di Kota Banda Aceh*. Banda Aceh : s.n., 2012, Jurnal Dinamika Hukum, Vol. Vol. 12, p. 3. 1.
- [3]. Wadong, Maulana Hasan. *Advokasi Dan Hukum Perlindungan Anak*. Jakarta : Grasindo, 2000. pp. 14-15.
- [4]. *Prinsip Adat Aceh Tentang Perwalian Anak Korban Gempa Dan Tsunami Di Banda Aceh Dan Aceh Besar*. Asmara, Laila M Rasyid dan Romi. 2012, Universitas Malikussaleh, Vol. 12, p. 7. 3 .
- [5]. Meliala, Djaja S. *Perkembangan Hukum Perdata Tentang Orang dan Hukum Keluarga*. Jakarta : Nuansa Aulia, 2005. p. 23.
- [6]. Summa, Muhammad Amin. *Hukum Keluarga Islam di Dunia Islam*. Jakarta : Raja Grafindo Persada, 2005. p. 134.

- [7]. Sahrani, H.M.A. Tihami dan Sohari. *Fikih Munakahat Kajian Fikih Nikah Lengkap*. Jakarta : Raja Grafindo Persada, 2010. p. 207.
- [8]. Thalib, Sayuti. *Hukum Kekeluargaan Indonesia*. Jakarta : UI-Press, 1986. p. 135.
- [9]. Anshori, Ibnu. *Perlindungan Anak Menurut Perspektif Islam*. Jakarta : Komisi Perlindungan Anak Indonesia (KPAI), 2007. p. 51.
- [10]. Muhammad, Abdulkadir. *Hukum Perdata Indonesia*. Bandung : Citra Aditya Bakti, 2000. p. 98.
- [11]. Soimin, Soedharyo. *Hukum Orang dan Keluarga Perspektif Hukum Perdata Barat/BW , Hukum Islam, dan Hukum Adat*. Jakarta : Sinar Grafika, 2002. p. 55.
- [12]. Vollmar. *Pengantar Studi Hukum Perdata*. Jakarta : Rajawali Pers, 1997. p. 150.
- [13]. Sarong, Hamid. *Tanggungjawab Wali*. [interv.] Akademisi UIN Ar- Rany. Desember 27 , 2019.

Muhammad Rifki, et. al. "Guardian's Responsibility For The Recording Of Children's Property Under Its Custody." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(6), 2020, pp. 20-25.