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Legal Analysis of the Appointment of Guardians for the Protection of Minors Based on a Will in Indonesian Civil Law: A Study of Court Decision No. 184/Pdt.G/2022/PN Medan

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Abstract
Minors are legally considered incapable of performing legal acts and therefore require legal protection through guardianship. In civil law, guardianship functions as a substitute for parental authority over children who are not under the care of their parents, including the management of the child's personal and property interests. One form recognized in Indonesian civil law is testamentary guardianship, namely the appointment of a guardian through a will. However, in practice, the implementation of testamentary guardianship does not always align with the best interest principle of the child, particularly when the guardian's authority may potentially affect the protection of the child's rights and assets. This study aims to analyze the legal validity of testamentary guardianship and examine the judge's legal considerations in determining guardianship in Medan District Court Decision Number 184/Pdt.G/2022/PN.Mdn. The research employs normative legal research using statutory, conceptual, and case approach methods. Primary legal materials include provisions of the Indonesian Civil Code concerning guardianship, while secondary materials consist of legal doctrines and relevant scholarly literature. The findings indicate that the appointment of a guardian through a will is not absolute and must be assessed against the best interest principle. Judges evaluate several factors, including the legal validity of the will, the moral integrity and responsibility of the proposed guardian, and the emotional relationship between the guardian and the child. This article contributes to the development of civil law discourse by highlighting the limitations of testamentary guardianship in practice and emphasizing that guardianship should function primarily as a mechanism of child protection, rather than merely as a legal instrument for controlling or managing the child's assets.

INTRODUCTION

As social beings, humans need partners in order to achieve their life goals. The existence of customary rules within every community serves as evidence that humans require life partners to fulfill these goals. Marriage, in essence, is an inner and legal bond between a man and a woman as husband and wife with the aim of forming a happy and everlasting family (household) based on belief in the Almighty God. A valid marriage, recognized by both religion and the state, forms the foundation of a stable and harmonious family. Such a family contributes significantly to the development and sustainability of a nation by nurturing future generations who are raised with good values and a strong sense of responsibility. The family plays a central role in the mental and physical development of children. Educating and caring for children greatly influences their future, as parents provide protection and guidance until the children become independent or reach adulthood.[1]

Children represent the next generation of the nation and play a strategic role in sustaining national ideals. Childhood is a crucial stage in the process of human maturation. Therefore, every child must be given the opportunity to grow and develop optimally, physically, mentally, socially, and morally. Protection and guidance for children must be ensured through the fair fulfillment of their rights and through treatment free from discrimination.[2] The Unitary State of the Republic of Indonesia guarantees the welfare of every citizen, including the protection of children as part of human rights.[3] Children are also an inseparable part of the continuity of human life and the sustainability of a nation and state. Given the importance of children's role, their rights are explicitly affirmed in Article 28B paragraph (2) of the Constitution, which states that the state guarantees every child the right to survival, growth, and development, as well as the right to protection from violence and discrimination.[4]

From the perspective of the Indonesian nation, children are not only viewed as the nation's future assets but also as blessings from the Almighty God whose rights must be safeguarded, protected, and respected. Every child inherently possesses human dignity and worth as part of human rights, as guaranteed in the 1945 Constitution of the Republic

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[1] Nismayani Marbun, Janpatar Simamora., "*Tanggung Jawab Ayah Atas Nafkah Anak Dalam Perceraian*", Jurnal Ratio Emas Data Dalam Ringkasan, Vol. 5, No. 2, 2025, p. 284.
[2] Mohd, Yusuf. D. M, dkk., "Kejahatan Anak Dibawah Umur dari Aspek Sosiologi Hukum", Jurnal Ilmu Hukum *The Juris*, Vol. 6, No. 1, p. 2.
[3] Pasal 1 Undang-Undang Nomor 35 Tahun 2014, Perubahan atas Undang-Undang Nomor 23 Tahun 2002, Tentang Perlindungan Anak.
[4] Nikmah Rosidah, *Sistem Peradilan Pidana Anak*, Unila, Bandar Lampung, 2019, p. 1.

of Indonesia and the United Nations Convention on the Rights of the Child.[5] Child protection and the fulfillment of children's rights constitute integral components of human rights. In this context, child protection is defined as all activities aimed at guaranteeing and safeguarding children and their rights so that they may live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination. Meanwhile, children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the government, and the state.[6]

According to legal provisions, a child is defined as a person who has not yet reached the age of 18, including a child who is still in the womb, as stipulated in Law Number 35 of 2014 concerning Child Protection. However, in family life, situations often arise in which children are no longer under the direct care of their parents, such as when parents pass away, divorce, or are unable to fulfill their obligations of care and protection. Because minors are not legally capable of acting on their own behalf, legal protection is required to safeguard their rights, including their right to inherit property from their parents. This is regulated, among others, in Article 50 paragraph (1) of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019, which states that "a child who has not reached the age of 18 or has never been married and is not under parental authority shall be placed under guardianship."[7] In such circumstances, a legal institution is needed to replace parental authority for children who are underage or have not yet reached the age of 18 or are unmarried.

The institution that replaces parental authority is known as guardianship. In Dutch legal terminology, guardianship is referred to as *voogdij*.[8] A guardian assumes the role of the parents in representing the minor child, both in legal matters and in everyday life. The purpose of guardianship is to place the child under legal responsibility so that the child's personal interests and property are protected. Since a child is not yet legally competent to safeguard his or her own interests, a guardian is required to protect the child's rights and property in accordance with statutory regulations.[9] A guardian may be appointed by the parents through a will or through an oral declaration made before two

[5] Kudunun Tirsa, "*Penetapan Pengadilan Mengenai Penunjukan Wali Anak*", Jurrnal Lex et Societatis, Vol. 2, No. 6, 2014, p. 82.
[6] Nomensen Sinamo, Hendri Jayadi,. *Hukum Perlindungan Anak*, Jala Permata Aksara, Jakarta, 2024, p. 105.
[7] Ilyas, "*Perlindungan Hukum Terhadap Anak yang Dibawah Umur Akibat Kehilangan Orang Tua*", Kanun Jurnal Hukum, Vol, 13, No, 2, 2011, p. 78.
[8] Neman, Heidy Amelia., "*Pertanggungjawaban Hukum Wali Tidak Melaksanakan Kewajiban Pada Anak Di Bawah Perwaliannya*". Jurnal Ilmu Hukum: ALETHEA, Vol. 4, No. 2, 2021, p. 148.
[9] Widya, et al., "*Perwalian Terhadap Pengurusan Harta Anak Di Bawah Umur (Studi Penetapan Pengadilan Agama Binjai).*" USU Law Journal, V0l. 4, No. 3, 2016, p. 179.

witnesses prior to their death. If both parents have passed away, the guardian may be appointed from among the child's closest relatives. In carrying out guardianship duties, the guardian must care for the child and manage the child's property responsibly, including preparing an inventory of the child's assets at the beginning of the guardianship and recording any subsequent changes.[10]

Based on Articles 47 and 50 of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage, parents legally act as guardians for their biological children without requiring a court determination. However, in judicial practice, a court determination of guardianship is required for minors who have lost their parents, particularly when the child holds the status of an heir. In such cases, relatives or family members must first obtain a guardianship determination from the District Court or the Religious Court in order to represent the child in legal actions, including the administration and transfer of rights over inherited property for the child's benefit.

A guardian bears legal responsibility to protect and manage the interests of the child under guardianship honestly and responsibly. If a guardian neglects their duties, abuses their authority, or fails to fulfill their obligations, the court has the authority to revoke the guardianship and appoint a replacement guardian.[11] In principle, the guardian's obligations include caring for and raising the child, fostering moral and religious development, ensuring education and healthcare, providing housing, and managing the child's property. In addition, the guardian must prepare an inventory of the child's assets at the beginning of the guardianship, record any changes, and transfer all such assets to the child once the child has reached adulthood or entered into marriage, provided that the child has legal capacity.[12]

The determination of a guardian is not solely based on the closeness of family relations but must prioritize the principle of the best interest of the child. This principle becomes increasingly important when the child possesses property, as the guardian is obliged to manage it responsibly to prevent misuse. In judicial practice, guardianship petitions are generally submitted by close family members, relatives, or other parties considered capable of ensuring the child's protection and welfare. Furthermore, the appointment of a guardian is also supported by Article 51 paragraph (1) of Law Number

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[10] Gusmawati, Kartika, Esther Masri, and Otih Handayani., "*Pertanggungjawaban Wali Dalam Menjalankan Kekuasaan Terhadap Harta Anak Di Bawah Umur Setelah Berakhirnya Perwalian*." Jurnal Hukum Sasana, Vol. 9, No. 1, 2023, p. 111.

[11] Djumati, Nathalia Jesica., "*Penentuan Hak Perwalian Aanak Akibat Perceraian Menurut Undang-Undang Nomor 1 Thaun 1974 Tentang Perkawinan"*, Jurnal Lex Privatum, Vol, 6, N0, 4, 2018, p. 42.

[12] Idami, Zahratul., "*Tanggung jawab wali terhadap anak yang berada di bawah perwaliannya (suatu penelitian di Kota Banda Aceh).*" Jurnal Dinamika Hukum, Vol. 12, No. 1, 2012, p. 66.

1 of 1974 concerning Marriage, which states that "a guardian may be appointed by one parent exercising parental authority before his or her death, either through a will or through an oral declaration before two witnesses." This provision demonstrates that the state grants parents the authority to designate the person who will care for and protect their child after their death. Such regulation is essential to create legal certainty regarding the party responsible for the child so that the fulfillment of the child's rights remains guaranteed even after the parents have passed away.[13]

The determination of guardianship is closely related to inheritance because guardianship generally arises after the death of the parents, which simultaneously gives rise to inheritance events. The position of heirs is regulated in Articles 830 to 854 of the Indonesian Civil Code. The Civil Code affirms that heirs are parties who have blood or marital relations with the deceased. Article 832 of the Civil Code classifies heirs, including children and their descendants, parents, and siblings, in order to provide legal certainty and prevent inheritance disputes.

If one parent dies, the legal relationship between the child and the surviving parent continues, including in matters related to inheritance rights. However, if both parents have died or are unable to fulfill their caregiving responsibilities, a guardianship determination becomes necessary. The appointment of a guardian, especially one based on the deceased's will, is important to ensure that a minor child is protected and can lawfully obtain and manage his or her inheritance rights.[14] Therefore, a legal mechanism is required to guarantee the protection of the rights of minor heirs, particularly in situations where the child lacks legal capacity and may potentially face conflicts of interest with other heirs. One such mechanism that plays an important role in this context is the appointment of a guardian through a will made by the deceased.

A will is one of the legal instruments in inheritance law, defined as the expression of a person's wishes regarding the management of their property after their death. Thus, a will may be understood as a written document containing a person's final decisions before leaving this life.[15] A will can only be executed if it fulfills the legal requirements. It may also contain advice or instructions that must be carried out after the testator's death, relating to rights and responsibilities such as educating children, paying debts, or returning borrowed items.[16] The making of a will or testament is a highly personal act,

[13] Soedharyo Soimin, *Hukum Orang dan Keluarga,* Sinar Grafika, Jakarata, 2010, p. 87.
[14] Sudikno Mertokusumo, *Hukum Waris Indonesia*, Liberty, Yogyakarta, 2002, p. 12.
[15] Sajitu Thalib, *Hukum Kewarisan Islam diIndonesia*, Sinar Grafika, Jakarta, 2000, p. 104.
[16] Jayadi, Ahmad. "*Prospek Legislasi Hukum Kewarisan, Hibah dan Wasiat.*" Constitutional Law Review Vol. 2. No, 1, 2023, p, 37.

meaning that it cannot be performed by a representative, whether such representation is based on law or on contract.[17]

The Civil Code refers to a will as a *testament* (meaning the last will), indicating that a person's wishes will take effect after their death, and also referring to the document that contains such provisions. Thus, a testament is a legal document containing a person's declaration regarding what they wish to occur after their death, which may be revoked at any time.[18] Legally, Article 876 of the Civil Code states that the appointment of an heir constitutes a form of will.

Studies concerning child guardianship and the execution of wills have been widely discussed in civil law literature. Several studies highlight the validity of wills and the legal position of heirs within the Indonesian inheritance law system. Other research focuses on the legal protection of minors in the management of inherited property. However, most of these studies still focus on normative aspects of guardianship or inheritance law separately. Research that specifically analyzes guardianship based on wills in judicial practice and examines judges' considerations in protecting the interests of children remains relatively limited.

Based on the foregoing explanation, it can be seen that there is still a gap in studies that comprehensively analyze how the practice of determining guardianship based on a will is implemented in court decisions, particularly in relation to the protection of children as heirs. Few studies have examined how judges balance the testator's wishes expressed in a will with the principle of the best interests of the child in judicial practice. Therefore, an analysis of court decisions becomes important in order to understand how these legal norms are concretely applied.

Based on this background, this study aims to analyze the determination of guardianship based on a will from the perspective of Indonesian civil law and to examine the legal reasoning of judges in the Decision of the Medan District Court Number 184/Pdt.G/2022/PN.Mdn. The issues examined in this study are: (1) what is the legal position of the appointment of a guardian based on a will within the Indonesian civil law system, and (2) how do judges consider and determine guardianship for a minor in the aforementioned court decision.

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[17] Arkan, Mohammad Hafid., "*Peran notaris dalam membuat akta wasiat yang bertentangan dengan kompilasi hukum Islam (studi akta notaris nomor 12 tanggal 27 oktober 1984 tentang wasiat).*" Lex Renaissance, Vol. 5, No. 3, 2020, hlm. p.

[18] Yahya Harahap, *Kedudukan, Kewenangan dan Acara Peradilan Agama*, Sinar Grafika, Jakarta, 2003, p. 167.

METHODS

This research is a normative legal study that aims to examine the determination of guardianship for minors based on the applicable legal provisions and their implementation in judicial practice. This study employs several approaches, namely the statute approach, conceptual approach, and case approach.[19] The statute approach is used to analyze legal provisions regarding guardianship in the Indonesian Civil Code**,** Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019**,** and Law Number 35 of 2014 concerning Child Protection. The conceptual approach is applied to examine the concept of guardianship and the principle of the best interest of the child, while the case approach is used to analyze the application of legal norms in the Decision of the Medan District Court Number 184/Pdt.G/2022/PN.Mdn.

The legal materials used in this research consist of primary legal materials, namely statutory regulations and court decisions; secondary legal materials, including books, scientific journals, and expert opinions; and tertiary legal materials, such as legal dictionaries and encyclopedias. The collection of legal materials was conducted through library research. Subsequently, the legal materials were analyzed using prescriptive and interpretative methods by examining the judges' legal reasoning and assessing its conformity with applicable legal norms and the principle of the best interest of the child.[20]

RESULT AND DISCUSSION

1. Requirements for the Determination of Guardianship in the Protection of Minors Based on a Will under Indonesian Civil Law

Law Number 1 of 1974 concerning Marriage regulates guardianship in Article 50, which states that a child who has not yet reached the age of 18 or has never been married and is not under the authority of their parents shall be placed under the authority of a guardian, both with respect to their person and their property. A minor is not yet legally competent and therefore is not capable of carrying out his or her own legal interests.

According to Article 330 of the Indonesian Civil Code, a person is considered a minor if he or she has not reached the age of 21 and has never been married.[21] In principle, parents are responsible for fulfilling the child's needs, including living expenses, education, and health, and must act in the best interests of the child. However, not all children remain under the care of their parents, making it necessary to establish a

[19] Sugiono, *Metode Penelitian Kuantitatif, Kualitatif, fsn R&D*, Alfabeta, Bandung, 2017, p. 137.
[20] Soerjono Soekanto, *Pengantar Penelitian Hukum*, IU Press, Jakarta, 1986, p. 421.
[21] H. Amir junaidi., *Peradilan Anak*, Penerbitan Baskara Media, Surakarta, 2022, p. 25.

mechanism that replaces the parental role through the institution of guardianship (*voogdij*).

According to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage and the Civil Code, it is explained who must be placed under guardianship, including minors. Article 50 explains who must have a guardian. Not only minors must have a guardian; there is also a legal concept for adults who are incapable of performing legal acts. In such circumstances, the adult is placed under curatorship. Such individuals generally cannot perform legal acts independently and therefore must be represented by their curator.

In the Civil Code (*Burgerlijk Wetboek*), guardianship may take several forms. First, guardianship by the surviving spouse, which means that if a married couple has children and one spouse dies, the surviving spouse automatically becomes the guardian of the children. Second, guardianship appointed through a will, where the parents agree to transfer the authority of care for their child to another person, either a family member or a non-family member who is willing to act as the child's guardian; however, such a will only becomes effective after both parents have passed away, since a will represents the final instruction of the testator and cannot be implemented while the parents are still alive. Third, guardianship appointed by a judge, which occurs when the court determines guardianship based on legal considerations and available evidence.

A guardian appointed by the court is responsible for carrying out parental duties, including fulfilling parental obligations, providing care, education, and protection for the child, supporting the child according to their abilities, talents, and interests, ensuring the child's welfare, preventing early marriage, developing the child's character and ethical values, guiding the child in understanding and practicing religious life properly, managing the child's property to meet their needs, and representing the child both in court and outside court proceedings.[22]

Guardianship is a form of supervision over minors who are not under the authority of their parents, including the management of the child's property or assets.[23] Guardianship is also a legal institution that replaces parental authority in caring for, protecting, and representing children who are not yet legally competent due to age or because they have never been married.[24] The determination of a guardian for a minor

[22] Ida Kurnia. Alexsander. Clif., "*Perwalian dan Permasalahannya*", Jurnal Bakti Masyarakat Indonesia, Vol. 5, No. 3, 2022. p. 464-465.
[23] Suberti, *Pokok- Pokok Hukum Perdata*, Intermasa, Jakarta, 2003, p. 52.
[24] Ishak, "*Perwalian Menurut Konsep Hukum Tertulis di Indonesia.*" Kanun Jurnal Ilmu Hukum, Vol. 19, No. 3, 2017, p. 573.

through a will represents a form of parental responsibility to ensure the protection of the child after their death. A will serves as a means of appointing a trusted person to care for and represent the child's interests. However, the wishes of the testator are not absolute, because the court still has the authority to ensure that the appointment of the guardian aligns with the principle of the best interest of the child. Since minors lack legal capacity, any actions concerning their person or property must be carried out by a legally authorized party. Therefore, guardianship functions as a substitute for parental authority, both in caregiving and legal representation, and testamentary guardianship still requires validation and supervision by the court.

In principle, any person may be appointed as a guardian. Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, particularly Article 51 paragraph (2), stipulates that the appointment of a guardian should preferably come from within the child's family or from another adult who is mentally sound, fair, honest, and of good character. The appointment of a guardian is prioritized for individuals who have the closest kinship relationship based on lineage.[25] In legal terms, kinship refers to family relationships established through marriage or bloodline, where individuals share a common ancestor. This is reinforced by Article 290 paragraph (1) of the Civil Code, which states that legitimate blood relatives are lineal relatives divided according to the order of a direct line of descent from descendants to ancestors or from ancestors to descendants.[26] This kinship line serves as the primary reference in determining who is most entitled and suitable to assume guardianship responsibilities.

Law Number 23 of 2002 concerning Child Protection also regulates guardianship. Article 33 stipulates that if the parents of a child are legally incapable of performing legal acts or if their residence or whereabouts are unknown, a person or legal entity that meets the required qualifications may be appointed as the child's guardian. The appointment of such a guardian must be determined through a court decision, and the appointed guardian must have the same religion as the child. Furthermore, for the benefit of the child, the guardian is responsible for managing the child's property. Additional provisions regarding the requirements and procedures for appointing a guardian are further regulated through Government Regulation.

This situation is reflected in Decision Number 184/Pdt.G/2022/PN.Mdn, which involved a minor who had lost his parents and was therefore no longer under full

[25] Muhammad Daud Ali, *Hukum Perdata Islam, Sinar grafika*, Jakarta, 2009, p. 5.
[26] Kostarika Octavia Sihotang, & Janpatar Simamora., "*Ahli Waris Berkewarganegaraan Asing Terhadap Harta Warisan Berupa Tanah Hak Milik Pewaris Berkewarganegaraan Indonesia",* AURELIA: Jurnal Penelitian dan Pengapdian Masyarakat Indonesia, Vol. 4, No. 1, 2025, p. 1687.

parental authority. During his lifetime, the child's father had made a will appointing his sister (the defendant) as the guardian responsible for caring for the child and representing the child's personal and property interests, including an insurance policy at PT Prudential Life Assurance. However, the appointed guardian neglected her duties because she lived abroad and failed to fulfill the child's legal needs. Subsequently, the child's paternal uncle (the plaintiff) filed a petition with the court to be appointed as the guardian, arguing that he had been caring for the child and living with him, and that the appointment was necessary for the child's education, care, and management of civil rights. Nevertheless, the plaintiff did not disclose the existence of the will that had appointed the defendant as guardian.

The court examined the evidence, witness testimony, and the suitability of the parties involved. The defendant argued that the plaintiff's request aimed to control the child's assets, particularly the withdrawal of the insurance policy funds. The judge assessed not only the validity of the will but also the moral aspects, responsibility, and emotional relationship of the parties involved in order to ensure the principle of the best interest of the child. The judicial considerations in Decision Number 184/Pdt.G/2022/PN.Mdn show that the panel of judges did not merely assess the formal validity of the will but also evaluated the suitability of the guardian candidate based on responsibility, emotional relationship with the child, and the ability to guarantee the child's interests. This approach is consistent with the best interest of the child principle, which places the child's welfare as the primary consideration in every decision concerning children.

However, from the perspective of child protection, the judicial reasoning may still be subject to criticism. First, although the judge emphasized the importance of the child's best interests, the decision focused more on the unlawful act committed by the plaintiff for failing to disclose the existence of the will. This approach indicates that the analysis was more oriented toward procedural aspects and the parties' good faith rather than a deeper evaluation of the child's factual condition and caregiving needs.

Second, the judge actually had the opportunity to conduct a more comprehensive assessment of the suitability of the guardian appointed in the will, considering that the defendant resided abroad and did not directly carry out caregiving responsibilities. This condition raises questions regarding the effectiveness of the guardianship, particularly in meeting the child's daily needs, education, and supervision of the management of the child's property.

From the perspective of child protection law, the appointment of a guardian should not only be tested based on formal legality or the wishes of the testator but also based on the factual capability of the prospective guardian to perform caregiving functions in

practice. Therefore, the court should ideally conduct a more comprehensive assessment of the child's social, psychological, and welfare conditions before determining or maintaining a particular guardian.

Thus, this decision demonstrates that although the best interest of the child principle has been used as a basis for consideration, its application could still be strengthened through a deeper analysis of the child's substantive welfare.

In the appointment of a guardian through a will, the wishes of the parents must still be examined by the court to ensure that the prospective guardian is capable of guaranteeing the child's best interests. The determination of a guardian involves not only assessing the validity of the will but also evaluating the moral integrity, responsibility, and ability of the guardian candidate to protect both the child's person and property. Therefore, guardianship based on a will must be oriented toward the protection of children's rights rather than merely fulfilling the wishes of the testator.[27] Article 2 of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for the Appointment of Guardians emphasizes that guardianship aims to protect children's rights, fulfill their basic needs, and manage their property in order to ensure optimal growth and development in accordance with the child's best interests.

Guardianship is a form of legal protection that includes authority and responsibility to represent children who are not legally competent, both in personal matters and in the management of their property. Therefore, a petition for the determination of a guardian must meet the legal requirements stipulated in Government Regulation Number 29 of 2019, namely:

a. An Indonesian citizen domiciled in Indonesia.
b. At least 30 years old.
c. Physically and mentally healthy.
d. Of good conduct.
e. Economically capable.
f. Of the same religion as the child.
g. Obtaining written consent from a spouse if married.
h. Willing to become a guardian through a written statement.
i. Providing a statement that they have never and will never commit violence, exploitation, neglect, or abuse against the child.
j. Prioritizing the closest family members of the child.

[27] Merchiano, Rexy, et al., "Analisis Hukum dalam Penetapan Pengadilan Agama tentang Perwalian Anak Kandung yang Masih di Bawah Umur." *Lex Stricta: Jurnal Ilmu Hukum,* Vol. 2, No.1, 2023, p. 49.

k. Obtaining written consent from the parents if they are still alive, their whereabouts are known, and they have legal capacity.

Based on these provisions, a guardian appointed by the court bears the obligation to exercise caregiving authority similar to that of parents, including caring for, nurturing, educating, and protecting the child, supporting the child's development according to their talents, interests, and abilities while prioritizing the child's best interests, and preventing child marriage.

The requirements and mechanism for appointing a guardian are regulated in Government Regulation Number 29 of 2019, particularly Article 3, which provides the legal basis for determining the party authorized to exercise guardianship. A person may be appointed as a guardian when the parents are absent, their whereabouts are unknown, or when, for certain reasons, they are unable to carry out their duties and responsibilities. In such circumstances, the guardian may come from the child's family, relatives, other individuals, or a legal entity, provided that they meet the required qualifications and obtain a court determination. The regulation further emphasizes that the appointment of a guardian should prioritize members of the child's family. If family members are unavailable, unwilling, or do not meet the necessary requirements, relatives may be appointed. However, if both family members and relatives are unavailable, unwilling, unknown, or fail to meet the requirements, the court may appoint another individual or a legal entity to serve as the guardian.

Based on these provisions, the appointment of a guardian is not solely based on kinship relations but also on legal, moral, social, and administrative suitability. A prospective guardian must be an Indonesian citizen domiciled in Indonesia, an adult, physically and mentally healthy, of good character, and economically capable of ensuring the child's growth and development. The appointment also requires religious compatibility, spousal consent for married applicants, written willingness, and guarantees that the guardian will not commit violence, exploitation, neglect, or abuse against the child. These provisions affirm that child protection is the primary objective of guardianship; therefore, a guardian must be trustworthy and capable of protecting both the personal and property interests of the child. Guardianship constitutes supervision and management of minors who are not under parental authority, including the management of their property. Its purpose is to place the child under the responsibility of a guardian so that all of the child's interests are protected. The guardian replaces the parental role in caring for, representing, and protecting the child who lacks legal capacity,

both in personal matters and in the management of the child's property, ensuring that the child's interests remain safeguarded in accordance with the law.[28]

2. Legal Basis of the Panel of Judges' Considerations in Determining Guardianship for a Minor in Decision Number 184/Pdt.G/2022/PN.Mdn

Judges have the authority to determine decisions in cases disputed by the parties. Such decisions are binding upon the parties and may become jurisprudence if followed by other judges in similar cases.[29] Judicial consideration is an essential element in achieving a decision that is just (*ex aequo et bono*), ensuring legal certainty, and providing legal benefits. Therefore, judicial reasoning must be formulated carefully and objectively. In examining a case, judges base their decisions on evidence in order to obtain conviction regarding the truth of the legal facts before rendering a judgment.

A judge cannot render a decision without being convinced that the events under examination actually occurred and have been proven according to the law. Therefore, in deciding a case, judges must consider three dimensions of truth: juridical, philosophical, and sociological.[30] In adjudicating a case, judges must integrate legal certainty with substantive justice so that the decision does not merely apply statutory regulations but also reflects the value of justice. In the Indonesian rule-of-law system, judges do not only function as law appliers but also as law discoverers and developers. Therefore, judicial decisions must reflect a sense of justice grounded in the values of Pancasila.[31]

The chronology of the case examined in this research originates from Decision Number 184/Pdt.G/2022/PN.Mdn, which involved two minor girls who had lost their parents and were therefore no longer under parental authority. During his lifetime, their father made a will appointing his sister (the defendant) as the guardian responsible for caring for the children and representing them in matters related to their personal interests and inherited assets, including an insurance policy at PT Prudential Life Assurance. However, the defendant later married a foreign citizen and lived abroad, which led to the perception that she had neglected her responsibilities as guardian. Based on this situation, the children's paternal uncle (the plaintiff) submitted a petition to the court to

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[28] Tamauli Sembiring, & Muhammad Iman., "*Analisis KUHPerdata pasal 345 Terhadap Permohonan Perwalian atas Anak dari Saudara Kandung (Study Putusan Nomor 375/Pdt.P/2023/PA. SGM)",* Terang: jurnal kajian ilmu sosial, politik dan hukim, Vol.1, No. 2, 2024, p. 59.

[29] Faqih, Aunur Rohim. "*Kode Etik dan Pedoman Perilaku Hakim.*" IN RIGHT: Jurnal Agama dan Hak Azazi Manusia Vol. 3, No. 1, 2013, p. 215.

[30] Perkasa, Aditya, and Lukmanul Hakim. "*Pertimbangan Hakim Terhadap Dispensasi Persyaratan Umur Pernikahan yang Diajukan Anak di Bawah Umur Karena Alasan Agama (Studi Putusan Nomor 38/Pdt. P/2023/PA. Prw).*" Journal of Law, Education and Business Vol. 2, No.1, 2024, p. 7.

[31] Kulffal , HMA., "*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa Hakim: Antara Gaji, Keadilan, Kejujuran, dan ketaqwaan*", UMM Press, Malang, 2012, p. 40-41.

be appointed as guardian in order to represent the children in matters concerning education, care, and the management of their civil rights. In his petition, the plaintiff did not disclose the existence of the will that had previously appointed the defendant as guardian. Prior to this, the plaintiff had also attempted to obtain a guardianship determination in order to claim the insurance policy, but the request was rejected by PT Prudential Life Assurance because the legally appointed guardian according to the will was the defendant. The facts presented during the trial showed that legally there had already been a valid appointment of a guardian through the will. The panel of judges assessed the evidence, witness testimonies, and the suitability of the parties as guardians by referring to the principle of the best interest of the child. The plaintiff was considered dishonest and contrary to the law because he ignored the existence of the will. Therefore, the court rejected the plaintiff's claim on the grounds that it contained elements of an unlawful act.

Judicial Considerations:

The panel of judges in Case Number 184/Pdt.G/2022/PN Medan first examined and evaluated the legal status of the child who became the object of the dispute. Based on the facts presented during the trial, the child was still under the age of majority and therefore legally incapable of performing legal acts independently. The child was unable to manage personal interests or the property left by the parents. In Indonesian civil law, a minor cannot act independently in legal transactions. Therefore, the institution of guardianship is required as a form of legal protection. This is in line with Article 1 point (1) of Law Number 35 of 2014 concerning Child Protection, which defines a child as a person under the age of 18, as well as Article 50 paragraph (1) of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019, which stipulates that a child who is not under parental authority must be placed under guardianship. On this basis, the judge considered that the existence of a guardian constitutes an absolute legal necessity to ensure that the child's personal interests and property remain protected.

The panel of judges then considered the existence of a will made by the child's father during his lifetime. The will essentially appointed the defendant as the guardian responsible for caring for the child and representing the child in managing personal matters and the father's inherited property, including the insurance policy. The appointment of a guardian through a will is known as testamentary guardianship (*testamentair*). Under Indonesian positive law, the appointment of a guardian by parents prior to their death constitutes a valid legal act as long as it complies with statutory provisions. This is consistent with Article 51 paragraph (1) of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019, which states that a guardian may be appointed

by parents through a will or an oral declaration before two witnesses. The panel of judges considered that as long as the will had not been annulled by a court decision, the appointment of the guardian contained therein remained legally binding. Therefore, another party could not unilaterally replace the appointed guardian without legitimate legal grounds.

The panel of judges further considered the facts revealed during the trial that the plaintiff did not disclose the existence of the will when submitting the guardianship petition and had previously attempted to claim the insurance policy but was rejected because he was not the legitimate guardian. Such conduct was considered inconsistent with transparency and honesty. In guardianship cases, the moral integrity of the prospective guardian is crucial because it is directly related to the protection of the child's rights and property. Evidence constitutes the primary basis for determining the truth of legal events. Without honest and complete evidence, a petition cannot be granted. Therefore, the plaintiff's lack of transparency regarding the existence of the will became an important consideration for the judges in evaluating the plaintiff's good faith.

The panel of judges also evaluated the completeness of administrative documents, documentary evidence, and witness testimonies submitted by the parties. From the examination, it was found that: (1) there was a will from the child's father appointing the defendant as guardian; (2) the child was still a minor and possessed inherited property; (3) the plaintiff filed a guardianship petition without disclosing the existence of the will; and (4) the plaintiff had previously attempted to claim the insurance policy but was rejected because he was not the legitimate guardian. After assessing all facts, evidence, and legal grounds, the panel of judges concluded that the child was indeed a minor requiring guardianship, that a legitimate guardian had already been appointed through the will, that the plaintiff had acted dishonestly and lacked good faith, and that the plaintiff's petition had the potential to harm the child's interests.

In its considerations, the panel of judges did not rely solely on family relationships but also on the principle of the **best interest of the child**. This principle requires that every decision concerning children must prioritize their protection, welfare, and future. This is consistent with Article 4 of Law Number 35 of 2014 concerning Child Protection as well as Articles 2 and 3 of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for the Appointment of Guardians. These provisions emphasize that a guardian must be capable of protecting the child, fulfilling the child's living needs, managing the child's property, and ensuring the child's optimal growth and development.

In addition, the judges applied the best interest of the child principle as regulated in Law Number 35 of 2014 and Government Regulation Number 29 of 2019. The judges assessed whether the guardianship petition truly aimed to protect the child or was instead oriented toward controlling the child's assets. In this case, there were indications that the petition was primarily intended to claim the insurance policy rather than to ensure the child's care and protection. The panel of judges therefore evaluated whether the guardianship request was genuinely filed in the child's interest or for the personal interest of the applicant. The court found indications that the plaintiff's objective was more oriented toward controlling the child's assets rather than protecting the child.

The panel of judges also considered the plaintiff's lack of good faith, noting that the plaintiff failed to disclose the existence of the will and sought guardianship primarily to claim the insurance policy. Such conduct was considered inconsistent with the purpose of guardianship. In civil law, any act that causes harm to another party and violates the law may be categorized as an unlawful act. This is related to Article 1365 of the Civil Code, which states that every unlawful act that causes harm obliges the perpetrator to compensate for the damage.

Furthermore, the judges considered the aspect of protecting the child's property. The child possessed inherited assets that had to be managed carefully and responsibly. A guardian is not permitted to use the child's property for personal interests. This is consistent with Article 51 paragraphs (3) and (4) of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019, which requires guardians to manage the child's property properly, prepare an inventory of assets, and record every change in the child's property. Therefore, any guardianship petition must guarantee that the child's property will not be misused. In this case, the judges observed the risk of potential misuse if the plaintiff were appointed as guardian.

Based on these considerations, the panel of judges rejected the plaintiff's claim because it was contrary to the law and did not reflect the best interest of the child. This decision emphasizes that guardianship is not a means of controlling a child's assets but rather an instrument of legal protection. Based on all these considerations, the panel of judges concluded that the child indeed required a guardian, but a legitimate guardian had already been appointed through the will. The plaintiff was considered dishonest, lacking good faith, and his petition had the potential to harm the child's interests. Therefore, the plaintiff's claim was rejected because it was contrary to the law and did not reflect the principle of child protection. The decision reaffirms that guardianship is a legal protection instrument rather than a means of controlling the assets of a minor.

CONCLUSION

Based on the results of the research on Decision Number 184/Pdt.G/2022/PN Medan, it can be concluded that the appointment of a guardian through a will in Indonesian civil law has legal force as long as it is made validly; however, its nature is not absolute. The determination of guardianship remains under the authority of the court, which functions to examine whether the appointment is consistent with the principle of the best interest of the child. Therefore, the wishes of the parents expressed in a will do not automatically bind absolutely if, in their implementation, they do not ensure optimal protection for a child who is not yet legally competent. The research findings show that in Decision Number 184/Pdt.G/2022/PN Medan, the panel of judges did not only assess the formal aspect of the existence of the will, but also considered the moral integrity, good faith, and the orientation of the parties' interests toward the child's welfare. The rejection of the plaintiff's petition was based on the consideration that a lawful guardian had already been appointed through the will, as well as indications that the petition was not entirely oriented toward the child's interests. This demonstrates that the court places the principle of child protection as the primary parameter in assessing the suitability of guardianship. Theoretically, this research confirms that testamentary guardianship in the Indonesian civil law system is conditional in nature, as it must still be examined through judicial supervision to ensure its conformity with the principle of child protection. This finding implies that the practice of appointing a guardian through a will cannot merely be understood as the execution of the testator's wishes, but rather as a legal instrument that must always be oriented toward the protection and the best interests of minors.

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