

Legal Provisions in Indonesia Submitting a Guardianship Application to the Court After the Birth of Law Number 29 of 2019

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Abstract

This study aims to find out about the Provisions for Submission of Applications for Guardianship After the Birth of the Government Regulation of the Republic of Indonesia Number 29 of 2019. The method used in writing this journal is the Qualitative Method with data collection techniques, namely library research which is collected and analyzed using descriptive techniques. Based on the results of the research, it shows that the provisions for child guardianship have been strictly regulated based on the Government Regulation of the Republic of Indonesia Number 29 of 2019 which states that a guardian is a person or entity that in reality exercises parental authority over a child. Furthermore, Article 1 paragraph 2 states that parents are biological fathers and/or mothers, or fathers and/or stepmothers, or adoptive fathers and/or mothers. Furthermore, Article 1 paragraph 3 states that a child is someone who is not yet (eighteen) years old, including a child who is still in the womb. Legal Procedures for Application for Guardianship After the Birth of Government Regulation of the Republic of Indonesia Number 29 of 2019 must meet the requirements as stipulated in the Government Regulation and be submitted by a person or legal entity as a potential guardian to the court. The application for the appointment of a guardian as referred to in paragraph (1) is submitted together with the application for the revocation of the guardianship. The application for the appointment of a guardian and the application for the revocation of custody which has been accepted by the Court shall be determined through trial. A person or legal entity is declared a guardian after obtaining a court order.

Keywords *Legal Procedure, children, Guardianship*

INTRODUCTION

Guardianship is the authority given to a person to carry out a legal action as a representative for the benefit of and on behalf of a child who does not have both parents, parents who are still alive, are incapable of carrying out legal actions.

Guardianship is etymologically (language), derived from the word guardian, and the plural "awliya". This word comes from an Arabic word meaning "friend", "client", "relative", "protector". Guardianship in terminology is the authority given to a person to carry out a legal action as a representative for the benefit of and on behalf of a child who does not have both parents and whose parents are still alive but are incapable of carrying out legal actions.

According to Muhammad Amin Summa as quoted in the book Wahbah Al Zuhaili that guardianship is the power/authority possessed by a person to directly carry out an action on their own without having to depend on the permission of another person. Meanwhile, according to Sudarso, guardianship is the management of assets and personal supervision of a child who is not yet an adult while the child is not under parental authority.

Thus, a guardian is a person who is authorized to take legal actions in the interest of a child who does not have either parents, or because both parents are incapable of carrying out legal actions.



Article 1 paragraph 1 of Government Regulation Number 29 of 2019 states that what is meant by a guardian is a person or entity that in reality exercises parental authority over a child. Parents, namely biological father and/or mother who gave birth, or father and/or stepmother, or adoptive father and/or mother.

Trustees can cover themselves and the children's assets. Children in guardianship are children who have not reached the age of 21 and or have never been married. In the event that the guardianship rights are with the parents, then in principle only one guardian is allowed for a child. An exception to this principle is when a mother who becomes guardian (*moedervoogdes*) remarries another man, the man who becomes the mother's husband can also act as guardian (*medevoogd*). There are two reasons for guardianship.

Guardians who are unable to act or neglect to carry out their guardianship duties, the Religious Courts may appoint a relative to act as guardian at the request of the relative. As much as possible, the guardian is taken from the child's family or another person who is an adult, of sound mind, fairness, honesty and good behavior, or a legal entity.

The right of guardianship of a child against a person or legal entity can be revoked and transferred by the Religious Courts to another party at the request of the child's relatives if the guardian is a drunkard, gambler, spendthrift, crazy and negligent or abuses his rights and authority as a guardian for the benefit of the person under his guardianship. . The guardian is also obliged to take care of himself and the property of the person under his guardianship as well as possible and is obliged to provide religious guidance, education and other skills for the future of the person under his guardianship.

Guardians are prohibited from binding, encumbering and sequestering the assets of people under their guardianship, except when the action is unavoidable for those under their guardianship. The guardian is responsible for the property of the person under his guardianship and compensates for losses arising as a result of his mistakes or negligence in which the guardian's responsibility is proven by the books of accounts which are closed once a year.

The guardian is obliged to hand over all the assets of the child who has reached the age of 21 years or is married. Disputes between guardians and people under their guardianship regarding assets can be submitted to the Religious Courts to adjudicate them. The guardian can use the property of the person under his guardianship, as long as it is needed for his benefit according to decency or *bil ma'ruf* if the guardian is poor.

Furthermore, Law Number 23 of 2002 concerning Child Protection states that what is meant by a guardian is a person or entity that in reality exercises parental authority over a child. Trusteeship is specifically regulated in articles 33, 34, 35 and 36 of Law No. 23 of 2002.

Parents who are incapable of carrying out legal actions, or whose place of residence and whereabouts are unknown, then a person or legal entity that meets the requirements can be appointed as the guardian of the child concerned. The appointment as the guardian of the child is carried out through a court decision with the provisions that the religion must be the same as the child's religion. The appointed guardian is obliged to manage the child's property and carry out legal actions, both inside and outside the court for the best interests of the child.

Children who have not received a court decision regarding guardianship, then the child's assets can be managed by the Probate Court or other institutions that have the authority to act as supervising guardians to represent the interests of the child, provided that they must also obtain a court order.

The appointed guardian turns out to be incompetent in carrying out legal actions or abuses his power as guardian, then his guardianship status is revoked, and another person is appointed as guardian through a court order. Likewise, when a guardian dies, another person is appointed as guardian through a court order. From the framework as mentioned above, it is important to conduct research on legal provisions in Indonesia. Filing an application for guardianship in court after the issuance of Law Number 29 of 2019. Based on the preliminary description, the formulation of this research problem is as follows:

1. What are the guardianship provisions based on Government Regulation of the Republic of Indonesia Number 29 of 2019?
2. What are the Legal Rules for Filing Applications for Guardianship at Courts After the Birth of the Government Regulation of the Republic of Indonesia Number 29 of 2019 on the Judicial System in Indonesia?

METHOD

The research method is a normative juridical approach, namely an approach in the sense of studying norms, applicable laws, which are related to procedures for library research, namely reading, quoting, copying and studying theories that are closely related to research problems. This writing.

In this study, non-doctrinal research was used, in which this research was assumed to look directly at events that occurred in the midst of society, this type of research is usually interpreted as a method that uses data or facts about legal events that occurred in the midst of society.

The approach taken is a qualitative comparative approach, which is a way of analyzing research results that produce comparative data. Then understanding the data stated by the respondents in writing or literally as well as real behavior, which is researched and studied as a whole. This Qualitative Research is an analytical procedure that does not use statistical analysis or research that is based on efforts to build views that are examined in detail, formed with words or Holistic descriptions.

RESULTS AND DISCUSSION

Trusteeship Provisions Based on Government Regulation of the Republic of Indonesia Number 29 of 2019

In the Government Regulation of the Republic of Indonesia Number 29 of 2019 concerning Terms and Procedures for Appointing Guardians, several definitions are put forward which are principally related to parties entitled to be guardians of a child.

The issuance of Government Regulation of the Republic of Indonesia Number 29 of 2019 concerning Terms and Procedures for Appointing Guardians with Considerations based on the provisions of Article 5 paragraph (21) of the 1945 Constitution of the Republic



of Indonesia and also based on Law Number 23 of 2002 concerning Child Protection (Gazette Republic of Indonesia of 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235) as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (State Gazette of the Republic of Indonesia of 2014 Number 297, Supplement to the State Gazette of the Republic of Indonesia Number 5606);

In Article 1 paragraph 1 of the Government Regulation of the Republic of Indonesia Number 29 of 2019 concerning Terms and Procedures for Appointing a Guardian, it has been stated that a guardian is a person or entity that in reality exercises parental authority over a child.

Furthermore, Article 1 paragraph 2 of Government Regulation of the Republic of Indonesia Number 29 of 2019 concerning Terms and Procedures for Appointing Guardians also states that parents are biological fathers and/or mothers, or fathers and/or stepmothers, or adoptive fathers and/or mothers. Furthermore, Article 1 paragraph 3 states that a child is someone who is not yet (eighteen) years old, including children who are still in the womb.

To be appointed as a Guardian because the parents are absent, the whereabouts of the parents are not known, or for some reason the parents are unable to carry out their obligations and responsibilities, a person who comes from:

- a. Child's Family.
- b. You.
- c. Others; or
- d. Legal entities must meet the requirements for the appointment of a guardian and go through a court order.

A person who is appointed as a guardian, according to Government Regulation Number 29 of 2019 concerning Requirements and Procedures for Appointing a Guardian, prioritizes the child's family. (In the event that the child's family is not available, is not willing, or does not meet the requirements, another person or legal entity can be appointed," Article 3 paragraph (4) of Government Regulation Number 29 of 2019 concerning Requirements and Procedures for Appointing a Guardian states that the child's family who is appointed as a Guardian must meet the following requirements:

- a. Indonesian citizens who are permanently domiciled in Indonesia.
- b. Minimum age of 30 (thirty) years.
- c. Physically and mentally healthy.
- d. Well behaved.
- e. Economically capable.
- f. Religion is the same as the religion a child adheres to.
- g. Obtain written consent from husband/wife, for those who are married.
- h. Willing to become a Guardian as stated in this statement.
- i. Make a written statement never and will not do:
 1. Violence, exploitation, neglect and mistreatment of children or
 2. The application of corporal punishment for any reason, including to enforce discipline against children.

- j. Prioritize the closest degree of the Child's Family and obtain written approval from the Parents if:
 1. There still is.
 2. Known to exist; And
 3. Capable of carrying out legal actions.

Legal Rules Procedure for Submitting Guardianship Applications Post-trial Issue of Government Regulation of the Republic of Indonesia Number 29 of 2019 on the Religious Court System in Indonesia

An application for submission of an application for guardianship after the birth of the Government Regulation of the Republic of Indonesia Number 29 of 2019 can be made by submitting an application to the District Court / Religious Court in the area where the applicant lives or where the marriage took place.

The procedure for submitting an application for guardianship after the birth of the Government Regulation of the Republic of Indonesia Number 29 of 2019 is carried out in accordance with the procedures for filing other lawsuits. Application for Submission of Application for Guardianship After the Birth of Government Regulation of the Republic of Indonesia Number 29 of 2019 is submitted by the competent authority or their Proxy to the Court whose jurisdiction covers the place of residence of the Applicant.

Submission of an Application for Guardianship After the Birth of Government Regulation of the Republic of Indonesia Number 29 of 2019 can only be made because the parents are not present, the whereabouts of the parents are not known, or for some reason the parents are unable to carry out their obligations and responsibilities. This application can only be made by someone who comes from:

- a) Child's Family.
- b) You.
- c) Others; or
- d) Legal entity must meet the requirements for the appointment of a guardian and through a court order.

The legal procedures mentioned above must be passed by the Applicant provided that a person who is appointed to be the guardian as referred to in paragraph (1) prioritizes the child's family. If the Child's Family is not available, is not willing, or does not meet the requirements, you can be appointed. In the event that the child's family and relatives are not available, are not willing, their whereabouts are not known, or they do not meet the requirements, another person or legal entity may be appointed.

Furthermore, the child's family who is appointed as guardian must meet the following requirements: Indonesian citizens who are permanently domiciled in Indonesia; Minimum age of 30 (thirty) years; Physically and mentally healthy; well behaved; economically capable; having the same religion as the child's religion; Obtain written consent from husband/wife, for those who are married; willing to become the Guardian stated in the statement; Making a written statement has never and will not commit: violence, exploitation,



neglect, and mistreatment of children; or the application of physical punishment for any reason, including to enforce discipline against children; prioritize the closest degree of the Child's Family; and get written consent from parents if: still there; known to exist; and capable of performing Legal Actions.

Applications for guardianship after the issuance of Government Regulation of the Republic of Indonesia Number 29 of 2019 must meet the requirements as stipulated in this government regulation and be submitted by a person or legal entity as a prospective guardian to the court. The application for the appointment of a guardian as referred to in paragraph (1) is submitted together with the application for the revocation of the guardianship. The application for the appointment of a guardian and the application for the revocation of custody which has been accepted by the Court shall be determined through trial. A person or legal entity is declared a guardian after obtaining a court order.

Furthermore, the person or legal entity that will be appointed as a trustee must attach a recommendation from the agency that administers government affairs in the social sector of the local district/city when carrying out the court decision process. Recommendations from the agency that administers government affairs in the local district/city social sector are taken into consideration in determining guardians or revoking parental powers. The agency that carries out government affairs in the district/city social sector in providing recommendations by assigning a professional social worker to conduct an assessment of the person or legal entity to be appointed as the Trustee; and assisted by a consideration team for the appointment of a Guardian.

CONCLUSION

Based on the description of the previous chapters, the following conclusions can be drawn:

1. Provisions for child guardianship have been strictly regulated based on Government Regulation of the Republic of Indonesia Number 29 of 2019 which states that a guardian is a person or entity that in reality exercises parental authority over a child. Furthermore, Article 1 paragraph 2 states that parents are biological fathers and/or mothers, or fathers and/or stepmothers, or adoptive fathers and/or mothers. Furthermore, Article 1 paragraph 3 states that a child is someone who is not yet (eighteen) years old, including a child who is still in the womb.
2. Legal Procedures for Application for Guardianship After the Birth of Government Regulation of the Republic of Indonesia Number 29 of 2019 must meet the requirements as stipulated in the Government Regulation and be submitted by a person or legal entity as a potential guardian to the court. The application for the appointment of a guardian as referred to in paragraph (1) is submitted together with the application for the revocation of the guardianship. The application for the appointment of a guardian and the application for the revocation of custody which has been accepted by the Court shall be determined through trial. A person or legal entity is declared a guardian after obtaining a court order.

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