

## Implementation of Land Sale and Purchase Agreement Owned by Minors in Bantul Regency Indonesia



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**ABSTRACT:** Children as immature human beings are not capable of taking legal actions. To take legal actions children must be represented by parents or guardian.

Article 48 of Law Number 1 of 1974 determines that 'parents are not allowed to transfer rights or pawn fixed assets owned by their children who have not reached the age of 18 or have never been married, unless if the interests of the children require it'. Thus, parents may not sell, donate or guarantee the assets owned by their children unless for their children's interests.

The problem in this study is what is the basis of the judge's consideration in giving determination as guardian so that he/she is authorized to sell the assets which are the rights of minors and how is the process of the implementation of the sale and purchase of the land rights owned to minors.

The method used in this study is normative and empirical legal study. Based on the study results it is known that to sell assets owned by minors requires permission from the court. So, the guardian of the minors must first apply to the court to be designated as guardian and given permission to sell the minor's assets. Judge's consideration in determining a guardian and being given permission to carry out legal action selling land owned by minors is in accordance with the provisions on Article 47 paragraph (2) of Law Number 1 of 1974 concerning Marriage, that parents, in this case the applicant as the mother, has the right to represent the child regarding all legal actions inside and outside the court to sell a plot of land for the purposes of daily living expenses, and the family has no objections. After obtaining guardianship determination from the court, the legal process of the sale and purchase of land rights owned by minors juridically can only be carried out before the PPAT (Land Deed Making Officer) by completing supporting documents.

**KEYWORDS-** sale and purchase, assets owned by children, minors, guardianship, Indonesia

### I. INTRODUCTION

Children as immature human beings is considered incapable of taking legal actions. Children are human beings who are still small that have not matured yet (Badudu and Muhammad 1994, 45). Article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage, determines that children who have not reached the age of 18 or have never been married is under the authority of their parents as long as the parents are not revoked from the authority. Immature children to take legal actions must be represented by their parent or guardian.

Criteria for a person's capability is determined by the age that has been reached. According to the provisions on Article 330 of the Civil Code junto Article 1330 of the Civil Code which is interpreted as *argumentum a contrario*, it can be seen that the age of being capable to take legal actions is 21 years old, because minors are those who have not reached the age of 21 and have not previously been married. According to Article 47 paragraph (1) and Article 50 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it can be concluded that minors are children who have not reached the age of 18 or have never been married. In law, maturity is a measurement for a person to be declared legally capable, namely being able to take legal actions (Khairunisa & Winanti 2021, 781).

Furthermore, according to Article 39 paragraph (1) of Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning The Position of Notary, it can be seen that in order to carry out legal actions which is outlined in a notary deed, and those carried out before the notary must meet the requirement at least 18 years old or married. Provisions regarding maturity limit have legal consequences on whether or not a person is legal to carry out legal actions (Nahrowi 2016, 253).

As for the consequences of not being old enough or not being an adult yet, the immature children are not capable to take legal actions on their own behalf inside or outside the court. The inability to act of the immature children cover entire legal fields. If the minors take legal actions, they must be represented. Parties who can act as the representatives of the minors are their parents, if

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the children are under the authority of the parents, or their guardian if the children are under guardianship. One example of legal actions carried out by children are selling land due to the necessity of money for children's life expenses.

Article 1457 of the Civil Code determines that a sale and purchase is an agreement by which one party binds himself to hand over an asset and the other party to pay the prices that has been promised. Based on the provisions of the article, it can be seen that a sale and purchase agreement is consensual, meaning that the sale and purchase agreement has already occurred since the time an agreement was achieved regarding the assets and the prices. An agreement is a meeting of two wills, where the will of one person fills in what the other person wants (Satrio 1992, 128). In Addition, the sale and purchase agreement is an obligatory in the sense that the ownership rights has not been transferred yet, the handover is a legal action which transfers the ownership rights (Subekti 1996, 27). The essential element of a sale and purchase agreement is the existence of the assets and the price. A price is an amount of money that is worth the assets, a price is always in the form of money not a goods (Abdulkadir 1992, 30).

Objects of a sale and purchase is goods. According to an Article 499 of the Civil Code, what is called a good is every item and every right that can be authorized by ownership rights. According to Kartini Mulyadi and Gunawan Widjaya, an authorization in the form of ownership rights is an authorization that has economic value (Muljadi and Widjaya 2003, 32). So, the definition of good (zaak) juridically is everything that can be claimed or which can be objects of ownership rights, so everything that cannot be owned by a person is not included in the meaning of assets, such as moon, star (Syahrani 1992, 116). Article 1333 of the Civil Code determines that an agreement must have the subject matter of a thing (zaak) of at least a specified type. The uncertain amount of thing is not an obstacle, as long as the amount can then be determined and calculated.

In practice, the owner of the object of the sale and purchase agreement can belong to a minor. Children is considered as a group of people who are not capable to take legal actions. So, the management and responsibility of the children's assets is represented by the parents. This matter is regulated in Article 47 paragraph (2) of Law Number 1 of 1974 which determines that parents represent children regarding legal actions inside and outside the court. Taking legal actions involving the ownership of minors is not quite easy. There is a prohibition determined in Article 48 of Law Number 1 of 1974. Article 48 of Law Number 1 of 1974 determines that 'parents are not allowed to transfer rights or pawn fixed assets owned by their children who have not reached the age of 18 or have never been married, unless if the interests of the children require it'. Thus, it can be seen that parents may not sell, donate or guarantee the assets owned by their children unless for the children's interests.

With the existence of the provisions, it is not easy for parents to sell or guarantee assets owned by their minor children. This is a form of protection of the children's assets. Efforts to protect children is not only reflect concern and enthusiasm to provide care and financial guarantees to them alone, but also because the presence of the sense of justice in dealing with the fate of children (Fachri Said 2018, 150).

Parents are parties who are obligated to fulfil all rights and interests of their children. Sometimes a child needs a large sum of money for education, for medical expenses when sick, but the parents cannot afford it, so to meet the needs of their children they have to sell assets owned by their minor child.

Based on the analysis above, the formulation of the problems is:

1. What is the basis of the judge's consideration in granting permission to the guardian to sell land rights owned by minors?
2. How is the process of the implementation of the sale and purchase of land rights owned by minors?

## II. METHOD OF STUDY

The type of study used is normative legal study and empirical study. Normative legal study is a legal study conducted by examining literature or secondary data (Soekanto & Mamudji 2006, 13-14). Normative legal study is based on secondary legal materials as study material to seek principles, doctrines and legal sources in a philosophical, sociological and juridical sense. Empirical legal study examines the implementation of land sale and purchase agreements owned by minors in Bantul Regency.

In order to obtain study materials, literature study in the form of primary legal materials, secondary legal materials, and tertiary legal materials is conducted. Empirical study using primary data is conducted by field study using interview techniques. Data analytical techniques used descriptive method with a qualitative approach, namely by observing the facts in the field, then compared with secondary data and continued with given an in-deep and thorough explanation.

## III. RESULT OF STUDY AND ANALYSIS

### A. Determination of Guardianship of Minors in The Bantul District Court

Children are a group of people who are not capable of taking legal actions. Children if taking legal actions regarding assets or their interests must be represented by their parents or guardian. So, the management and responsibility of children's assets is represented by parents or guardian. This is regulated in Article 47 paragraph (2) of Law Number 1 of 1974 concerning Marriage which determines that 'parents represent children regarding legal act inside and outside the court'.

In practice, to sell assets owned by minor must be with guardianship in the written form of judge's determination. So, a guardian who will represent minor must apply for guardianship to the court. Guardianship is very important for child's survival. A

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guardianship is required in the term of managing child's life and assets, because children are not capable yet to act legally so need to be guided and taken care off (Apriliani & Kornelis 2022, 149).

The party applying for guardianship is usually a parent, namely the father or mother of the child. In practice, the filing of guardianship application can be seen in Bantul District Court's Provision included in the Provision Number 180/Pdt.P/2020/PN Btl. The situation is as follows:

The applicant's name is Susi Astuti binti Nasirun, the address is in Jeblog, Tirtonirmolo Village. The applicant together with her children intend to sell a plot of paddy field for education fees and daily expenses. One of the children's applicant is still 13 years old (born in 3rd of November 2007), so is not old enough. Thus, requiring the determination of guardian from the court. The applicant then on 30th of June 2020 asked the Head of Bantul District Court to be willing to grant the applicant's request, namely determining that the applicant is the guardian of her son whose name is Muhammad Syamil Abdillah born in Bantul in 3rd of November 2007 based on the birth certificate number: 12224/P/2009.

To strengthen the argument of her application, the applicant has submitted documentary evidence, 2 (two) witnesses at trial under oath according to their respective religions, which basically provide information that the applicant's child is minor, and the applicant intends to sell the land for education fees and daily living expenses. Regarding the application, the other family members do not have any objections. Then, the judge considered that based on the evidence of the letter connected with the provisions of Article 47 of Law Number 1 Of 1974 concerning Marriage, in the paragraph (1) it has been regulated that "Children who have not reached the age of 18 (eighteen) or have never been married are under the authority of their parents as long as the parents are not revoked from the authority". And in paragraph (2) it is determined that "parents represent the child regarding all legal actions inside and outside the court". Furthermore, the judge also considered that if it related with the fact that the applicant's child is still classified as a minor in which has not reached the age of 18 (eighteen) or has never been married, then the child is legally still under the authority of his parents, in this case is her mother, namely is the applicant, so it is stated that the child is not capable yet to act under the law. Another judge's consideration was that because the applicant's child named Muhammad Syamil Abdillah was still a minor so he was still under the authority of his parents, in this case the applicant who was his biological mother because the applicant's husband named Susanto had passed away. In accordance with the provisions of Article 47 paragraph (2) of Law Number 1 Of 1974 concerning Marriage, the parents in this case the applicant as the mother has the right to represent the child regarding all legal actions inside or outside the Court, in this case to sell a plot of land for daily living expenses, and toward the process the families have no objections. Thus, the applicant's request deserves to be granted.

Based on these considerations, the judge finally granted the applicant's request entirely, those are determining that the child of the applicant named Muhammad Syamil Abdillah born in Bantul on the 3rd of November 2007 was not an adult yet and incapable to act under the law and gave permission to the applicant to represent the child in carrying out legal actions to sell a plot of land located in Tirtonirmolo Village, Kasihan District, Bantul Regency.

### B. Implementation of Sale and Purchase of Land Owned by Minors in Bantul Regency

Article 1320 of the Civil Code determines that in order to make a legal agreement it must meet the legal requirements of an agreement, namely:

- 1) Agreed to bind themselves.
- 2) Capable of making an agreement.
- 3) A certain thing.
- 4) A lawful reason.

The first two conditions are subjective requirements because they are related with the subject of the agreement. To carry out sale and purchase agreement, the parties must be capable. The capability of a person is determined by the age that has been reached. According to Article 39 paragraph (1) of Law Number 2 of 2014 concerning the amendments of Law Number 30 of 2004 concerning the Position of Notary, the parties can act as applicants if at least 18 years old or married.

According to Article 1458 of the Civil Code, sale and purchase is considered to have already taken place between the two parties once they reach an agreement regarding the assets and the prices, even though the assets have not been handed over or the prices have not been paid. Based on the provisions of the article, it can be seen that the sale and purchase agreement is consensual, meaning that the sale and purchase agreement has occurred since the time the agreement regarding the assets and the prices was reached. An agreement is a meeting of two wills, which the will of one party fills in what the other party wants (Satrio 1992, 128). So, a sale and purchase agreement has occurred once an agreement regarding the assets and the prices was reached. As for land sale and purchase agreements, just an agreement regarding asset and price is not enough. The land sale and purchases are a formal agreement. This means that in order a land sale and purchase agreement to occur, it is required to be in formal form, which stated in a deed made by the PPAT (Land Deed Making Officer). This is in accordance with the provisions in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which determines that 'transfers of the rights of land and the rights of apartment units ownership through sale and purchase, exchange, grants, entry into companies and other legal actions of transferring rights, except for transfers of rights through auctions, can only be registered if proven by a deed made by

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the PPAT who is authorized according to the provisions of the applicable laws and regulations'. Based on these provisions, it can be seen that the land sale and purchase agreement must be stated in a deed made by the PPAT. The legal consequences of the land sale and purchase agreement made before the PPAT are the appearance of obligations and rights between the parties, namely the seller and buyer and the transition of the land rights ownership which is the object of the sale and purchase (Mega Puspa Sari 2018, 245).

According to Article 38 paragraph (1) of Government Regulation Number 4 of 1997, the making of the deed as referred to Article 37 paragraph (1) is attended by the parties who carry out the legal actions in question and is witnessed by at least 2 (two) witnesses who meet the requirements to act as witness in the current legal actions.

Thus, based on the provisions in Article 37 and 38 of Government Regulation Number 24 of 1997, the process of land sale and purchase must be carried out before the PPAT (Land Deed Making Officer), and is attended by all parties: the seller and the buyer, the two witnesses, and the PPAT.

Article 48 of Law Number 1 of 1974 determines that parents are not allowed to transfer rights or pawn fixed assets owned by their children who have not reached the age of 18 or have never been married, unless if the interests of the children require it. Thus, it can be seen that parents may not sell, donate or guarantee the assets owned by their children unless for the children's interests.

For objects of sale and purchase owned by minors, those can only be conducted after the guardianship determination has been issued from the court.

As for the process of the implementation of the land rights sale and purchase owned by minors is as follows:

- 1) The seller and buyer come before the PPAT by completing the supporting document in making of the sale and purchase agreement. Documents that must be completed by the seller and the buyer are:
  - a) Copy of the court's determination of giving permission to the guardian to sell the child's land.
  - b) ID card of the parents/guardians of the minors as seller, and ID card of buyer.
  - c) Family Card of the guardian also the minors and family card of the land buyer.
  - d) Birth certificate of the minors.
  - e) Land certificate in the name of the minors.
  - f) Copy of SPPT PBB which has been matched with the original.
  - g) NPWP of the buyer.

- 2) Checking the certificate to the Office of the Land Agency

Checking the land's certificate is conducted by the PPAT in the Office of the Land Agency to verify the validity of the ownership certificate. Certificate of land ownership is tested for its validity in the Office of Land Agency. Checking includes the validity of the land rights owner because the Office of Bantul Land Agency is moving toward data digitalization. In addition, measurement certificates are also validated, and land boundaries are verified to avoid the overlapping of the images with adjacent certificates, by attaching the shared location of the requested land to avoid the occurrence of multiple certificates. Checking the certificate is conducted so that it is in accordance with the original certificate in the Office of Land Agency, for administrative order. After checking, then the Office of Land Agency will issue an electronic certificate that stated the conformity between the certificate held by the applicant and the data in the Office of the Land Agency.

- 3) Tax payment (PPh and BPHTB)

PPh tax (Income tax) is paid by seller.

BPHTB (Land and or Building Rights Acquisition Fees) is paid by buyer.

- 4) Signing the deed of the land sale and purchase (AJB) that made before the PPAT

After the reading of AJB by the PPAT, then the signing is done by the seller, buyer, two witnesses and the PPAT. The signing and making of the deed of sale and purchase becomes an essential thing and is required in the process of land sale and purchase because at that moment the rights of the land are transferred from one party to another (Clarista 2019, 3).

- 5) Completing the Application Letter for Right Transition Registration

The Application Form for Right Transition Registration is already available at the Office of the Land Agency. The applicant or the attorney only needs to fill out the application form.

- 6) Submitting the deed of sale and purchase of land to the BPN Office for the process of transferring the name by completing the supporting documents

Article 40 paragraph (1) of Government Regulation Number 24 of 1997 states that 'no later than 7 (seven) working days from the date the deed is signed by the persons in question, the PPAT is required to submit the deed it made along with the relevant documents to the Office of Land Agency to be register'.

After that, the PPAT is required to submit a written notification regarding the submission of the deed of land sale and purchase to the parties concerned. Based on these provisions, the right transition registration is then conducted at the Office of Land Agency. The registration is submitted to the Land Registration Section. After receiving the registration, the Office of Land Agency examines and checks the validity and the completeness of the documents.



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### 7) Payment of Registration fee and PNPB:

After examining the application documents and if according to the officer the documents are completed and the contents are valid, the SPS (order of deposit) is then issued, then the applicant is asked to pay the registration fee and PNPB (Non-Tax State Income).

This is in accordance with the provisions in Article 61 of Government Regulation Number 24 of 1997 concerning Land Registration that the applicant must pay the land registration fee and measurement fee if it requires measurement/solving. After payment is made, then BP (Proof of Registration) will be issued.

### 8) Certificate Issuance

After all the requirements and activities related to the right of land transition registration are in accordance with the regulation, then data modification is made by crossing out the holder's name of the land rights that were previously registered in the certificate into the name of the applicant or the buyer. The Head of the Office of Land Agency sign the certificate. And for getting the certificate, the applicant can come directly to the Office of Land Agency by bringing the original registration proof form the Office of Land Agency and a copy of the applicant's ID card. If the certificate getting is represented, it must be accompanied by procuration letter legalized by a notary and a copy of the endorsee's ID card, then the Certificate Retrieval Service officer records in the list of work submission.

## CONCLUSION

To sell assets owned by minors requires a permission from the court. So, the guardian of the minors must first apply to the court in order to be designated as guardian and given permission to sell assets owned by minors. Judge's consideration in determining a guardian and being given permission to carry out legal action selling land owned by minors is in accordance with the provisions on Article 47 paragraph (2) of Law Number 1 of 1974 concerning Marriage, that the parents in this case the applicant as the mother has the right to represent the child regarding all legal actions inside or outside the Court, in this case to sell a plot of land for daily living expenses, and the families have no objections. The implementation of the sale and purchase of land rights owned by minors juridically can only be carried out before the PPAT, after obtaining guardianship determination from the court.

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