

## The Role of the Bhp as a Supervisory Agent in Protecting the Property of Persons Under Guardianship

Endang Heriyani<sup>1</sup>, Prihati Yuniarlin<sup>2</sup>

<sup>1,2</sup> University of Muhammadiyah Yogyakarta, Indonesia

**ABSTRACT:** Not all adults are capable of performing legal acts. Adults who are mentally incompetent, insane, or blind, or who are wasteful must be placed under guardianship. This is to protect their person and property. Requests to place someone under guardianship must be submitted to the District Court. According to Article 449 of the Civil Code, Wees en Boedelkamer (Balai Harta Peninggalan “BHP”) is appointed as the supervisory guardian in guardianship cases. This study aims to determine the role of the BHP as the supervisory guardian in protecting the property of persons under guardianship. This study is a normative legal study. The research data used is secondary data. The data collection technique was carried out through document study. The secondary data obtained was then analyzed using descriptive qualitative analysis. The conclusion of this study is that the role of the BHP as a supervisory guardian in guardianship is: (1) As a supervisor of the guardian's performance (2) To give approval when the guardian takes legal action regarding the assets of the person under guardianship, (3) To propose the dismissal of the guardian to the court if the guardian commits fraud or a major error in managing the assets of the person under guardianship, (4) To order the guardian to submit an accountability report on the management of the assets of the person under guardianship.

**KEYWORDS:** Guardianship, BHP, Guardian Supervisor, person under guardianship.

### I. INTRODUCTION

Every human being in Indonesia is recognized as a legal subject. A legal subject or person is anyone who can be the holder of legal rights and obligations (Satrio, J., 1999: 13). As legal subjects and holders of rights, human beings have various rights, such as the right to life, the right to a good name, the right to protection, and the right to property. The position of humans as holders of rights and obligations begins at birth. A baby who is still in its mother's womb is considered to have legal authority if there is an interest that requires it and the baby is later born alive. This is an exception specified in Article 2 of the Civil Code, which states, "A child in a woman's womb is considered to have been born if it is in the child's best interests. If the child dies at birth, it is considered never to have existed." The provision contained in Article 2 of the Civil Code is often referred to as *rechtsfictie*, because the law creates a fictitious situation as if the child in the womb had already been born (Riduan Syahrani, 1992: 45).

A person ceases to be a holder of rights and obligations upon their death. This means that as long as a person is alive, they have legal authority. Article 3 of the Civil Code stipulates that “no punishment shall result in civil death or the loss of all civil rights.”

Every legal subject has legal authority, namely the authority to uphold rights and obligations, but not all are capable of performing legal acts. Article 1330 of the Civil Code defines persons who are not competent to perform legal acts, namely: (1) minors, (2) persons placed under guardianship, (3) persons prohibited by law from performing certain legal acts.

Persons placed under guardianship are adults who are permanently mentally incompetent, insane, blind, or spendthrifts. In such circumstances, family members may request the court to place these persons under guardianship.

According to Article 433 paragraphs (1) and (2) of the Civil Code, “every adult who is always in a state of stupidity, brain disease, or blindness must be placed under guardianship, even if he or she is sometimes capable of using his or her mind, and because of his or her extravagance.” In law, adulthood is the measure by which a person is declared legally competent, i.e., able to perform legal acts (Khairunisa, Amelia & Winanti, Atik; 2021: 781).

According to Subekti, adults who suffer from memory loss according to the law must be placed under guardianship. Furthermore, an adult can also be placed under guardianship on the grounds that they squander their wealth/are wasteful (Subekti, 2001; 56). According to J Satrio, guardianship (Curatele) is a situation where an adult's legal status is reduced to that of a minor, with the consequence that their authority to act is revoked (J. Satrio, 1999; 74). The reasons for guardianship are extravagance, mental weakness, and lack of reasoning ability (Osgar S. Matompo and Moh Nafri Harun, 2017: 30).

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People who are placed under guardianship do not lose all their rights to perform legal acts. So, if people who are placed under guardianship are going to perform legal acts, they must be represented by their guardian. To become a guardian, one must submit an application to the court. Based on Article 434 of the Civil Code, it can be understood that the parties who can file a petition for guardianship are: every blood relative in a direct line, in a collateral line up to the fourth degree. According to Article 435 of the Civil Code, if a person who is blind is not requested to be placed under guardianship, then the prosecutor's office is obliged to request it. Thus, the prosecutor can also file a petition for guardianship.

According to Article 449 of the Civil Code, "any court decision on guardianship that has become final and binding must be immediately notified to the BHP as the Supervisory Guardian." Based on this article, the BHP acts as the Supervisory Guardian (Toeziende Curator) in the guardianship of adults who are mentally incompetent, mentally ill, or spendthrift.

Wen Boedelkamer (Balai Harta Peninggalan "BHP") was an institution established when the Dutch colonizers entered Indonesia in 1596 as traders. As the Dutch population grew and accumulated wealth, an institution called the West En Boedel Kamer (Heritage Property Office) was established on October 1, 1624, in Jakarta (<https://bhpsurabaya.kemenkum.go.id>) to manage these assets for the benefit of their heirs in the Netherlands. To cover the vast territory of Indonesia, the Medan Inheritance Office, BHP Semarang, BHP Surabaya, and BHP Makassar were subsequently established. In fact, at that time, an Inheritance Office, which served as a representative office, was established in almost every residency/regency. Currently, there are only five BHP in Indonesia: Jakarta, Semarang, Surabaya, Medan, and Makassar. Each BHP has a working area at the provincial level (level I) and the regency/city level (level II).

Every person placed under guardianship has the same status as a minor. (J. Satrio, 1999; 74). This is because even though they are adults, they are considered incapable of performing legal acts, so they are treated like minors. People under guardianship need protection because they are mentally weak, insane, stupid, or wasteful, so that no one can take advantage of their incompetence. People who are mentally weak or insane need to be protected, both physically and financially, because they are not aware of the consequences of their actions. Likewise, people who are stupid or very ignorant need to be protected because they are vulnerable to being deceived by people who will take advantage of them. People who are wasteful also need to be protected so that their property does not quickly diminish or disappear due to their wastefulness, which can harm themselves and their families. Likewise, guardians should not abuse their power, as this can harm those under their guardianship. Therefore, it is very important to guarantee the rights and legal certainty of a person under guardianship, so that there is no abuse of responsibility by a guardian (Niken Dwi Amanda et al., 2024: 422).

Based on the above discussion, the problem formulation is: What is the role of BHP as a supervisory guardian in protecting the assets of persons under guardianship?

## **II. RESEARCH METHOD**

### **Type of Research**

This research is normative legal research. Normative legal research is legal research conducted by examining reference materials or secondary data (Soerjono Soekanto and Sri Mamudji: 2006: 13-14). In normative research, the principles, norms, and laws related to guardianship are examined conceptually.

### **How to Collect Research Materials and Data**

In normative research using legal materials, both primary, secondary, and tertiary legal materials are collected through literature study, which is by studying materials that constitute secondary data.

The description of the legal materials used is as follows:

- 1) Primary legal materials  
Primary legal materials are reference materials containing legislation, including:
  - a) Civil Code.
  - b) Court decisions.
- 2) Secondary legal materials consist of:
  - a) Books related to the research material
  - b) Journals and papers related to the research material.

### **Data Analysis Techniques**

The data obtained from the research was analyzed in the following manner: data from literature research, which is secondary data, was systematically organized to obtain a comprehensive overview of the principles and legal provisions related to the issues under study. It was then analyzed using descriptive methods with a qualitative approach, to provide an in-depth and comprehensive explanation.

### III. RESULTS AND DISCUSSION

#### Guardianship Institutions as Protection for Individuals and Property under Guardianship

Article 433 of the Civil Code stipulates that "Every adult who is permanently in a state of mental incapacity, insanity, or blindness must be placed under guardianship, even if he or she is occasionally capable of using his or her mind. An adult may also be placed under guardianship due to profligacy."

Guardianship is a condition of a person (curandus) whose personal characteristics are considered incompetent or in all respects incapable of acting independently (personally) in legal matters (Rachmadi Usman, 2006: 86). Guardianship is regulated in Articles 433 to 462 of the Civil Code.

A person under guardianship must be represented by a guardian (curator) in order to perform legal acts. This is to protect the person and property of the person under guardianship, because the person under guardianship is sometimes unaware of the consequences of their legal actions. Additionally, it is to provide legal certainty for third parties who perform legal acts with persons under guardianship so that the legal consequences of their actions are not disputed in the future. Legal acts of persons under guardianship who are not represented by their guardian are invalid and can therefore be annulled.

As subjects of law, humans have many interests and needs that must be fulfilled in their lives. These needs relate to the fulfillment of food, shelter, health, and other social aspects of life. In addition, humans as legal subjects can sometimes receive rights such as inheritance rights. The fulfillment of various needs and the receipt of inheritance rights for people under guardianship cannot be done independently, because they are considered incapable of performing legal actions. To perform legal actions, they must be represented by a guardian. The guardianship institution is an effort to protect people under guardianship due to certain conditions such as memory loss, mental disability, or profligacy. The existence of a guardian representing a person under guardianship is expected to prevent other parties from harming the person under guardianship.

People who are placed under guardianship due to profligacy still have the right to perform legal acts such as making a will or getting married.

According to Article 434 of the Civil Code, the following people can apply to be appointed as guardians:

1. Blood relatives in a direct line.
2. In-laws in the collateral line up to the fourth degree
3. Husband or wife
4. The person concerned, if they feel that they are mentally weak and incapable of managing their own interests properly, may request guardianship for themselves.

The Civil Code does not specifically regulate the requirements to become a curator; it only determines who has the right to file a petition for guardianship.

The process of submitting a guardianship application to the Court includes the following stages:

1. Submission of a guardianship application to the Court, stating the facts that prove the need for a person to be placed under guardianship. The supporting documents required for the application are:
  - a. Application letter.
  - b. Identity of the applicant (Identity Card) or identity of the person under guardianship.
  - c. Documents related to the condition of the person under guardianship (such as a psychiatric report).
  - d. Proof of ownership of the property of the person under guardianship.
2. Examination of the case by hearing the blood relatives or relatives by marriage of the person under guardianship. During the trial, blood relatives or relatives by marriage must be heard in accordance with Article 438 of the Civil Procedure Code, which states: "If the District Court considers that the events are important enough to justify guardianship, then blood relatives or relatives by marriage must be heard."
3. Official notification to the prospective guardian.
4. Question and answer session with the person under guardianship).

During the trial, the court must hear testimony from the person for whom guardianship is being requested. Thus, the judge will interview the person for whom guardianship is being requested. This may be taken into consideration by the judge in granting the guardianship request.
5. The judge's decision in an open hearing.
6. Appointment of a guardian by the judge.

Article 452 of the Civil Code stipulates that "every person placed under guardianship has the same status as a minor." This means that even though a person is an adult, if they are under guardianship, they can also be considered immature or incapable of performing legal acts (Zaeni Asyhadie and Arief Rahman, 2014: 63).

According to Article 446 of the Civil Code, "guardianship begins to take effect from the moment the decision or ruling is pronounced. All civil actions taken thereafter by the person placed under guardianship are null and void. However, a person placed under guardianship due to extravagance remains entitled to make a will." Based on this article, it can be understood that guardianship begins when the guardianship decree is read by the court judge.

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Thus, guardians can carry out their duties and exercise their authority in caring for their wards.

The obligations of a guardian are:

1. Before carrying out their obligations, guardians must take an oath before a BHP official and promise to fulfill their obligations.
2. Manage the personal affairs and assets of the person under guardianship.
3. Accurately record the assets of the person placed under guardianship.
4. Represent the person under guardianship in performing legal actions related to the property of the person under guardianship.
5. Prepare calculations and accountability reports on their management to the supervisory guardian, namely the BHP.

According to Article 449 of the Civil Code, "any court decision regarding guardianship that has become final and binding must be immediately notified to the BHP as the supervisory guardian." Based on this article, the BHP acts as the supervisory guardian in guardianship cases.

The BHP carries out its main duties and functions in accordance with Articles 2 and 3 of the Decree of the Minister of Law and Human Rights Number 7 of 2021 concerning the Organization and Work Procedures of the Heritage Property Office. (<https://bhpjakarta.kemenkumham.go.id/index.php/layanan-publik/pengampunan>).

Article 2 of the Decree of the Minister of Law and Human Rights Number 7 of 2021 concerning the Organization and Work Procedures of the Heritage Center states that the BHP has the task of representing and managing the interests of legal subjects in the context of implementing court decisions and/or determinations or legal interests in the field of heritage. Furthermore, Article 3 states that in carrying out the duties referred to in Article 2, the BHP shall, among other things, perform the functions of managing and resolving guardianship issues.

The institution of guardianship is important to protect people who cannot take care of themselves due to mental disability, insanity, or profligacy. Without a guardianship institution, persons under guardianship may suffer losses from the actions of others who take advantage of their incompetence by misusing their property. Thus, a guardianship institution can protect the rights of persons under guardianship and prevent losses that may befall persons under guardianship due to their inability to manage their property caused by mental disability, memory loss, or profligacy.

### **The Role of BHP as Guardian in Protecting Persons under Guardianship.**

In Indonesia, guardianship applications can be submitted to the District Court for persons of religions other than Islam, and for Muslims, guardianship applications are submitted to the Religious Court. Requests to place someone under guardianship (Curatele) must be submitted to the District Court, outlining the events that strengthen the presumption of reasons for placing the person under guardianship, accompanied by evidence and witnesses that can be examined by the judge (Subekti, 2001; 56). The judge will conduct a thorough examination and hear statements from blood relatives, in-laws, and the person for whom guardianship is requested before making a decision.

In practice, an example of a guardianship petition can be seen in Decision Number 23/Pdt.P/2020/PN Kln. The guardianship petition was filed by Sri Minuk, requesting to be appointed as the guardian of her biological child. The applicant is the biological mother of Andi Kristanto (born in Klaten on May 6, 1978) and Alfianto (born in Klaten on December 31, 1980). That Andi Kristanto and Alfianto have been examined at Dr. RM. Soedjarwa Regional General Hospital in Klaten and found to have mental retardation. The petitioner intends to become the guardian of her own biological children, namely Andi Kristanto and Alfianto, who are legally recognized, and subsequently to be able to manage their rights and obligations as heirs of their biological father, Joko Kristanto. To prove her claim, the petitioner has submitted documentary evidence and two witnesses. After hearing the testimony of the witnesses, the petitioner's biological son, Andi Kristanto, was called into the courtroom, and the judge communicated with Andi Kristanto in open court. However, Andi Kristanto was unable to communicate properly and was physically different from other normal humans.

Based on the evidence presented by the petitioner in connection with the above witness statements, the judge ruled that the petitioner's son, Andi Kristanto, had suffered from mental retardation, which prevented him from carrying out normal activities like most people. This is also reinforced by the examination of Andi Kristanto, who was brought to court by the petitioner, where observations and interviews during the trial showed that Andi Kristanto cannot communicate properly due to his mental retardation, unlike normal people, and therefore cannot perform actions like normal people. The judge ruled that the petitioner's child, Andi Kristanto, could be placed in a guardianship institution (curatele) so that his rights in daily social life could be protected. The judge ruled that the requirements for a guardian are basically that the person must be an adult and capable of taking responsibility for their duties as a guardian and will not commit any deviant acts that could harm the interests of the person placed under guardianship. The petitioner is the biological mother of Andi Kristanto and, based on witness testimony, is responsible for and has been living with Andi Kristanto, so she is considered to be someone who understands Andi Kristanto's attitude and behavior. The judge concluded that Andi Kristanto was in an abnormal condition due to mental retardation and that this, as defined, was a mental disorder, which is a collection of abnormal conditions, both mental and physical, resulting in

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changes in an individual's mental functions or obstacles in performing social roles. The judge concluded that the petitioner could be appointed as guardian (curator) for the petitioner's child named Andi Kristanto.

The judge then considered that the basic duty of a curator is to manage the assets of a person placed under curatorship. If necessary, the curator must represent that person and oppose any action that could harm the assets of the person under curatorship.

Finally, the judge granted the petitioner's request, declaring that Andi Kristanto was placed under guardianship and declaring the petitioner as the guardian (curator) of Andi Kristanto. In addition, the judge also ordered the clerk of the Klaten District Court to send a copy of the decision to the BHP in Semarang to be announced in the State Gazette.

The guardianship ruling is a complex legal process, in which the judge must consider various legal and non-legal factors before deciding on guardianship. The judge must ensure that the respondent truly needs guardianship for their own interests, based on medical evidence and testimony (Niken Dwi Amanda, et al., 2024: 428).

Based on the provisions of Article 444 of the Civil Code, "all decisions and rulings regarding guardianship must be announced by placing them in the State Gazette."

According to the State Gazette decision, the district court clerk was ordered to send a copy of the decision to the BHP. This is in accordance with the provisions of Article 499 of the Civil Code, which stipulates that "the appointment of a guardian shall be notified to the BHP, which shall then act as the supervisory guardian." The existence of a supervisory guardian is expected to serve as a watchdog over the performance of the guardian, so that they can carry out their duties properly.

After the BHP receives a copy of the decision, the BHP can carry out its function as a supervisory guardian. So, the BHP can only carry out its duties as a supervisory guardian after a copy of the court decision on guardianship has been sent to the BHP.

Based on the authority vested in the BHP, the steps taken by the BHP as the supervisory guardian in guardianship are as follows:

1. Summoning the guardian.

The summons is carried out by sending a letter to the guardian of the person under guardianship to come to the BHP. When the guardian arrives at the BHP, a Court Appearance Report is made. The guardian's statement is recorded in the Court Appearance Report.

2. Announcement through daily newspapers.

The BHP orders the guardian to announce the District Court's decision regarding guardianship in the State Gazette. This is in accordance with the provisions of Article 444 of the Civil Code regarding the obligation to announce the judge's decision regarding the existence of a guardian in newspapers and the State Gazette. The purpose of announcing the guardianship in newspapers and the State Gazette is so that third parties who have legal interests with the person under guardianship are aware of the legal status of the person under guardianship and do not enter into direct legal relations, but must go through the guardian who represents them.

3. Conducting a local inspection of the person under guardianship.

During this inspection, the BHP will check the identity of the guardian and the person under guardianship, as well as their domicile. This is to ensure that the person is indeed under guardianship. The on-site inspection aims to ascertain the actual condition of the person under guardianship and their assets. In addition, an on-site inspection is also carried out by the BHP if there are signs that the guardian is committing misconduct. Through an on-site inspection, it is possible to ascertain the person's health, psychological condition, and whether their basic needs, such as food, clothing, and shelter, are being adequately met.

4. Taking an oath before members of the legal technical team.

This is stipulated in Article 362 of the Civil Code, which states that before carrying out their duties as guardians, guardians must first be sworn in by the BHP. This oath is the first step that must be taken before guardians carry out their duties, so that this oath can serve as a moral foundation for guardians in carrying out their duties. The oath is expected to enable the guardian to perform their duties properly, solely for the protection of the person under guardianship.

5. Ordering the guardian to register all the assets of the person placed under guardianship (Article 370 in conjunction with Article 452 of the Civil Code).

The guardian must record and register the assets of the person under guardianship. This is intended so that all assets of the person under guardianship are clearly inventoried. The recording of assets can be used as a guideline for the BHP in supervising the performance of the guardian, whether the guardian has committed acts that cause loss to these assets. In addition, it can also be used as a basis for assessing the guardian's accountability at the end of their duties. If the assets are reduced, the guardian must be able to provide an explanation and accountability, so that steps can be determined to protect the assets of the person under guardianship.

6. Submission of the minutes of the oath, the minutes of the hearing, and the minutes of the recording of assets.

The submission of the oath report is formal evidence that a guardian has been sworn in and can be used as a basis for carrying out their duties as a guardian. The submission of the appearance report is administrative evidence

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that the guardian has appeared before the BHP as the supervisory guardian, so that it can be used as a basis for the BHP in supervising the guardian's performance. The submission of the asset recording report is a form of transparency regarding the inventory of the assets of the person under guardianship. This is an important first step in carrying out the duties of a guardian in managing the assets of the person under guardianship. It is hoped that guardians will not misuse the assets of persons under guardianship, such as embezzlement, transfer of assets for the benefit of the guardian rather than for the benefit of the person under guardianship, and other actions that harm the person under guardianship. Asset recording also serves as the basis for BHP to conduct supervision.

7. Granting permission to sell if the guardian intends to sell the property of the person under guardianship.

Permission or approval from the BHP is the basis for the guardian to apply to the court for permission to sell the property of the person under guardianship. In order to sell the property of the person under guardianship, an application for permission to sell must first be submitted to the court. Sales are usually carried out for the benefit of the person under guardianship, such as to meet urgent needs for living expenses or medical expenses. The supervisory guardian must act actively to protect the interests of the person under guardianship. The process of applying for permission to sell immovable property is not only requested from the District Court, but permission must also be requested from the supervisory guardian, so that from the outset the supervisory guardian can help examine whether the reasons for the sale application are truly in the interests of the person under guardianship (Siti Ismijati Jenie, 2022: 8). Thus, in the process of selling the assets of a person under guardianship, if the BHP as the supervisory guardian is involved, it will protect the interests of the person under guardianship.

8. Ordering the guardian to compile and submit an accountability report on the management of the assets of the person under guardianship (Article 372 of the Civil Code).

This is intended to prevent the guardian from committing irregularities or misusing the assets of the person under guardianship. The guardian's authority is limited, not unlimited, so there are calculations and accountability. For this reason, the guardian must provide a report on the assets of the person under guardianship periodically, namely once a year. Article 372 of the Civil Code stipulates "that the guardian must make a brief accountability report on their management to the BHP every year."

9. Submit a request for dismissal of the guardian to the Court if there are signs of fraud or gross negligence in the administration of guardianship.

The guardian's duty is to manage the interests and property of the person under guardianship. The guardian must perform their duties to the best of their ability. Therefore, if the guardian commits fraud or serious misconduct in managing the property of the person under guardianship, the BHP may file for dismissal of the guardian with the court. This is to ensure that the person under guardianship continues to receive proper care so that their interests and property remain protected.

10. Order the guardian to prepare a final accountability report on the assets of the person under guardianship to the supervising guardian (BHP).

All obligations imposed on a guardian must, of course, be accounted for. Therefore, at the end of their term, a guardian must prepare an accountability report to be submitted to the supervisory guardian, namely the BHP. This is a form of accountability for guardians in carrying out their duties.

By observing several actions of the BHP as a supervisory guardian, it can be seen that its role is very much needed to protect the assets of persons under guardianship. Thus, a court decision regarding the appointment of a guardian for a person under guardianship is not enough; an institution is still needed to supervise the duties of the guardian to ensure that the rights of the person under guardianship are truly protected.

The function of the BHP as a supervisory guardian continues until the person under guardianship is declared cured or capable of taking care of themselves so that the guardianship can be revoked. This process usually requires medical evidence or an evaluation stating that the person under guardianship has recovered and is able to take care of themselves and their property. The termination of guardianship does not occur automatically, but must go through a court decision. A request for termination of guardianship can be submitted by blood relatives, the husband or wife of the guardian, supported by evidence showing that the person is capable of taking care of themselves and managing their property.

## IV. CONCLUSIONS

Based on the analysis that has been carried out, it can be concluded that BHP can perform the function of supervisory guardian after the court's decision on guardianship is reported to BHP. The role of BHP as supervisory guardian in guardianship is: (1) As supervisor of the guardian's performance, (2) To give approval when the guardian takes legal action regarding the assets of the person under guardianship, (3) To propose the dismissal of the guardian to the court if the guardian commits fraud or a major error in managing the assets of the person under guardianship, (4) To order the guardian to submit an accountability report on the management of the assets of the person under guardianship.

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