

Legal Protection of Minors Whose Land Certificates are Used as Collateral for Debts

Maxe Hidayat, Abdul Rokhim, Sunardi Sunardi

Magister Kenotariatan, Universitas Islam Malang, Kota Malang, Jawa Timur
22302022049@unisma.ac.id

Abstract

This study aims to analyze the legal consequences of minors' land certificates used as debt collateral by their biological mothers and legal protection for minors whose land rights are used as debt collateral by their biological mothers. The research method used is normative juridical using statutory, conceptual, and case approaches. Minors (minderjarig) according to the law are not capable of performing legal acts independently, including in terms of making their land rights as forest collateral. Legal actions of minors whose fathers die can be represented by their biological mothers who act as guardians based on court decisions. The urgency of this research is to provide a description and analysis of guardians who replace their parents to replace minors to carry out legal processes by analyzing the cases raised. The case raised is the novelty of the results of this research analysis. The results of this study indicate that the legal consequences of a minor's land certificate used as debt collateral by his biological mother without going through the determination of the guardian and the power of attorney to make the minor's land rights from the court are null and void (nietig van rechtswege). The law (Article 393 of the Civil Code) has provided preventive legal protection against minors whose land titles are used as debt collateral by their biological mothers if this is done without the appointment of a guardian and power of attorney from the court. The minor's biological mother in her position as guardian is only authorized to make the certificate of land title on the basis of absolute necessity or clearly beneficial to the minor after hearing or legally summoning the child's immediate family or blood relatives and the supervisory guardian.

Keywords: *Debt Collateral; Land Certificates Minors; Legal Protection*

1. INTRODUCTION

Inheritance law as one part of family law plays an important role. One type of inherited property in Indonesia is immovable property. The inheritance of immovable property is only possible if the heir has died and the inheritance will be distributed to the heirs. In Indonesia, the distribution of inheritance law often causes problems in family relationships, one of which is the amount of distribution of inheritance that does not match between adult heirs and underage heirs. In the law, there is no mention of differences in the distinction of male and female heirs or differences in the age of the heirs.¹

According to Article 1330 and Article 330 of the Civil Code, heirs who are minors may not act freely in matters relating to the law or anything related to it, because they are considered legally incompetent. Children are not considered legally competent, they cannot take legal action, so in this case, a guardian is required. Children have not been deemed legally competent, they cannot take legal action; consequently, a guardian is required.²

¹ Ade Ahmad Fauzan, Deny Guntara, dan Muhamad Abas, "Peralihan Harta Waris Oleh Seorang Ahli Waris Tanpa Persetujuan Ahli Waris Lainnya (Studi Putusan Mahkamah Agung Nomor 218 K/Pdt/2020)," *UNES Law Review* 6, no. 1 (11 September 2023): 1044, <https://doi.org/10.31933/unesrev.v6i1.811>.

² Fira Nurulnisa dan Dwi Aryanti Ramadhani, "Analisis Pemberian Hibah Kepada Anak Di Bawah Umur Melalui Proses Handlichting Berdasarkan Hukum Perdata," *Jurnal Ius Constituendum* 8, no. 3 (18 Oktober 2023): 437, <https://doi.org/10.26623/jic.v8i3.7803>.

According to Article 345 of the Civil Code, if one of the child's parents dies, the surviving parent shall legally take over the minor child, unless the surviving parent is released or discharged from parental responsibility. For children who are still under the care of their parents, the local district court must appoint a guardian.³

A guardian is someone who is given the power of guardianship by religion, as the Compilation of Islamic Law explains that guardianship is the authority given by a religious court to a person to carry out a legal act to act as a representative to carry out interests on behalf of a child who is brought under his guardianship as the child has been abandoned by his parents (died) or the parents are still alive but do not have the conditions for the ability to carry out legal acts. Based on Article 383 Paragraph (1) of the Civil Code, guardianship is someone who is able to act as a child's representative in all legal proceedings.

In general, each guardianship has only one guardian, unless the maternal guardian (*moerdervoogdes*) remarries, in which case her husband becomes the paternal guardian; if one parent dies, the surviving parent automatically becomes the guardian of his children. Guardianship (*voogdij*) is the supervision of minors who are not under the authority of their parents and the management of the objects or property of the child is regulated by law.⁴ The position of guardian is not simply given the freedom to transfer the rights of the child to another person, although he has the right and authority to manage the child.⁵

The right and authority of a guardian to pledge his land is a condition of the child's property rights in debt security. In addition, if the property is disputed land, it cannot be used as debt collateral. The procedure for a Power of Attorney to Enforce Mortgage can be completed before a state-approved official is authorized to make legal deeds regarding the sale and purchase of land rights if all formal and material requirements have been met. A deed made before a public official authorized to do so and whose form has been stipulated by law is considered authentic and the official in question is a notary.⁶

In reality, there are some indications that there is still a practice of transferring land rights carried out by the guardian without being preceded by a stipulation from the local district court before carrying out the sale and purchase action. This occurs because the absence of a stipulation from the local district court in advance will lead to legal consequences in debt guarantee activities. By not fulfilling this condition, it will have a legal effect. The legal effect in question is that the agreement can be canceled by law. According to the Civil Code Article 1331 paragraph (1) which explains in the previous article it can demand the cancellation of the agreement that has been made by the parties in

³ Irselin Tasik Lino, "Permohonan Perwalian Anak Dibawah Umur Oleh Ibu Kandung Dalam Pengelolaan Harta Warisan," *Jurnal Ilmu Hukum: ALETHEA* 4, no. 2 (2021): 133, <https://doi.org/10.24246/alethea.vol4.no2.p131-146>.

⁴ Ramlah Dahlan dan Abdollah Reza, "Pengangkatan Anak Dan Hubungannya Dengan Perwalian Dalam Tinjauan Hukum Islam dan Perundang-undangan Di Indonesia (Studi Kasus Di Pengadilan Agama Palu Kelas 1 A)," *Al-Mashadir : Jurnal Ilmu Hukum dan Ekonomi Islam* 4, no. 1 (January 13, 2022): 2, <https://doi.org/10.31970/almashadir.v4i1.79>.

⁵ Zahra Apritania Jati, "Peralihan Hak Atas Tanah Yang Dimiliki Anak Oleh Orang Yang Bertindak Sebagai Wali," *Jurnal Ilmu Hukum: ALETHEA* 4, no. 2 (2021): 116–17, <https://doi.org/10.24246/alethea.vol4.no2.p115-130>.

⁶ Nilna Muna Yuliandari dan Yu Un Oppusunggu, "Upaya Hukum Notaris Yang Diberhentikan Dengan Tidak Hormat Ditinjau Dari Peradilan Tata Usaha Negara," *Jurnal USM Law Review* 4, no. 2 (1 Desember 2021): 847, <https://doi.org/10.26623/julr.v4i2.4363>.

the power of attorney not excluded by law for people who are considered incapable of making an agreement.

In this study, there are several studies that are almost similar, namely, *First* written by Jati,⁷ the previous study only focused on the regulation and transfer of land rights but not on inherited property, which was carried out by buying and selling without a determination from the district court. *Second*, written Dewi,⁸ previous research discusses the regulation of guardianship for orphans and orphans, this study, focuses on discussing guardians who make inherited property for underage children to be used as debt collateral. *Third*, written by Klamaya.⁹ The research focuses on legal protection, in this study, there is a discussion of the regulation and implications of land used as debt collateral by biological mothers. This research aims to find out the legal consequences and legal protection for underage children whose inheritance (land rights) is used as debt collateral by their biological mother.

2. METHOD

This research is a normative legal research, the approaches used are conceptual approach, statutory approach, and theory approach. There are several legal materials used for this research, namely primary legal materials in the form of the Civil Code, Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2002 concerning Child Protection, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices, Government Regulation Number 29 of 2019 concerning Terms and Procedures for Appointing Guardians, while secondary legal materials in the form of legal literature in the form of books and journals relevant to legal issues in this study. The collection of legal materials is carried out using document study techniques, by identifying, inventorying, and classifying relevant legal materials, while the legal material analysis technique uses interpretation techniques following a predetermined approach, some interpretations are also adjusted based on the type of legal material, for clear norms grammatical interpretation is used, while for unclear norms it can use formal or systematic interpretation.¹⁰

3. RESULTS AND DISCUSSION

3.1 Legal Consequences of Minor's Land Title Used as Debt Collateral by Her Birth Mother

Minors cannot transfer land rights on their own, due to their age which is still not legally competent to perform legal acts as stated in Article 1320 of the Civil Code. This is so that when they become adults, there will be no claims or lawsuits from other parties

⁷ Jati, "Peralihan Hak Atas Tanah Yang Dimiliki Anak Oleh Orang Yang Bertindak Sebagai Wali," 115.

⁸ Eva Cahyana Dewi, "Tinjauan Yuridis Mengenai Perwalian Anak Yatim Piatu Yang Masih Dibawah Umur," *Perspektif Hukum*, 22 November 2020, 328, <https://doi.org/10.30649/ph.v20i2.83>.

⁹ Klamajaya K dan Luqman Hakim, "Perlindungan Hukum Ahli Waris Dibawah Umur Terhadap Penjualan Tanah Harta Waris Yang Dilakukan Oleh Wali (Studi Kasus Putusan Nomor: 313/Pdt.P/2023/PN Dps)," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 9 (27 April 2024), <https://doi.org/10.5281/zenodo.11077315>.

¹⁰ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel (Edisi Revisi)*, vol. 3, 5 (Yogyakarta: Mira Buana Media, 2022), 130.

regarding the validity of land ownership by the new right holder.¹¹ The necessity of proper and orderly legal administration (legal management) activities so that there is protection, certainty, and settlement.¹²

Legal actions carried out by a child are regulated in Article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that children who have not reached the age of 18 years or have never entered into marriage are under the authority of their parents as long as they are not deprived of their authority.¹³ Paragraph (2) of the Law stipulates that parents represent the child regarding legal acts inside and outside the court. Further arrangements are regulated in Article 48 which states that parents are not allowed to transfer rights or mortgage fixed goods owned by their children who are not yet 18 years old or have never entered into marriage unless the interests of the child require it. Article 39 Paragraph (1) a of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Office of Notary related to the age requirement of the confrontant in making a notarial deed. Article 37 paragraph (1) of Government Regulation No. 24/1997 on Land Registration states that the relinquishment of land rights is an activity of transfer of rights that must be carried out by a deed made by a Land Deed Official or hereinafter referred to as a Land Deed Official.¹⁴ This is done as a condition for registering the transfer of land rights at the Land Office. The process of releasing the rights must pay attention to the position of the land rights, if the ownership is joint, then it must get approval from all those entitled to the land to be sold and bought, including the ownership of land rights by minors.

According to Article 393 of the Civil Code, the guardian is not allowed to take out loans for the benefit of the minor, sell or transfer debentures, receivables, or shares, or alienate or mortgage property without the approval of the District Court.¹⁵ This power shall not be granted by the District Court unless necessary or proven to be beneficial, and only after the minor's family or blood relatives and the supervising guardian have been properly heard or summoned. Legally, the transfer of land rights by a minor without a guardianship order from the District Court is null and void and legally defective.

Legally, the legal guardian of a minor is obliged to carry out the sale of the child's land if it is in his name and ordered by the court to do so because legal organizations do not have the authority to act as guardians in the case of associations, foundations, and charitable institutions chosen by parents, the policy of associations, foundations, and charitable

¹¹ Ali Munib, Suratman Suratman, dan Diyan Isnaeni, "Tanggung Jawab Notaris Terhadap Pembatalan Akta Atas Terjadinya Tindakan Pemalsuan Oleh Notaris," *Jurnal USM Law Review* 7, no. 3 (28 September 2024): 1249, <https://doi.org/10.26623/julr.v7i3.9653>.

¹² Kamilia Savira dan Sjarif Fitriani Ahlan, "Efektivitas Sistem Barcode Dalam Pengamanan Akta Autentik," *Jurnal USM Law Review* 5, no. 1 (23 April 2022): 158, <https://doi.org/10.26623/julr.v5i1.4630>.

¹³ Elfrida Ratnawati Gultom dan Devika Anindya Sari, "Hak Mewaris Anak Angkat Perempuan Di Tana Toraja," *Jurnal USM Law Review* 4, no. 2 (2 Desember 2021): 880, <https://doi.org/10.26623/julr.v4i2.3777>.

¹⁴ Yuni Angraini dan Ana Silviana, "Pendaftaran Peralihan Hak Atas Tanah Sebagai Harta Bersama (Studi Kasus Jual Beli Tanpa Izin Suami, Isteri Dan Anak)," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (5 Juli 2023): 410, <http://dx.doi.org/10.24269/ls.v7i2.7400>.

¹⁵ Fira Nurulnisa dan Dwi Aryanti Ramadhani, "Analisis Pemberian Hibah Kepada Anak Di Bawah Umur Melalui Proses Handlichting Berdasarkan Hukum Perdata," *Jurnal Ius Constituendum* 8, no. 3 (18 Oktober 2023): 437, <https://doi.org/10.26623/jic.v8i3.7803>.

institutions for guardians appointed if directed by the court.¹⁶ Although not regulated in legislation, Article 370 of the Civil Code regulates the supervision of the property of minors. The supervisory guardian can order the guardian to make an inventory and calculation of the child's property and inheritance.¹⁷

The legal basis for guardianship in the Civil Code is found in Chapter XV, where several regulations regarding guardianship are found in Articles 345-354 of the Civil Code. In this situation, if one of the parents has passed away, the surviving parent takes over the guardianship of the children while they are still minors, in accordance with their obligations.

Children who are in the care of a guardian must be supervised and managed by the *weskameer* (balai warisan), in this case together with the guardian. However, there is currently no legally binding regulation, and implementation is in accordance with Articles 359, 366, 370, and 388 of the Civil Code. To stop the theft of children's assets while they are under guardianship, institutional supervision is essential. Therefore, in accordance with this context, a directive has been developed to be implemented as soon as possible.

According to the Civil Code, the additional duties of the guardian that must be carried out are a) Article 368 explains that the guardian is obliged to inform the hall of the existence of the approved guardianship; b) Article 127 of the Civil Code explains that the guardian is obliged to register the spouse's property from the beginning of leaving them; c) Article 338 of the Civil Code explains the obligation to ensure the annual amount that the child can use and the costs related to his maintenance; d) Article 389 of the Civil Code explaining that the obligation of the guardian to ensure that all tables, chairs and other furniture that were part of the minor's property at the beginning of the guardianship have been sold; including all immovable property that does not bring results, income or profit, except for goods that are still in a form that can be stored with the permission or permission of the Hall; e) Article 392 explaining if it turns out that in the Minderjarigen's property there are state receivables, the obligation to register them.

Based on the description above, of course it is different according to Article 110 of the Compilation of Islamic Law which describes the duties of guardians that must be carried out, namely: a) In addition to providing religious instruction, education, and other skills for the future of the individual for whom he is responsible, the guardian is also obliged to take good care of himself and the property of the person for whom he is responsible; b) Unless it is absolutely necessary for the benefit of the person for whom he is responsible, the guardian may not bind, encumber, or transfer the property of the person for whom he is responsible; c) The guardian shall be responsible for the property of the person under his or her care and shall pay compensation for any loss caused by his or her fault or carelessness;

¹⁶ Rusfandi Rusfandi, "Kedudukan Hukum Dari Wali Anak Di Bawah Umur Dalam Melakukan Transaksi Penjualan Harta Warisan," *Jurnal Jendela Hukum* 7, no. 1 (2020): 60, <https://doi.org/10.24929/fh.v7i1.1569>.

¹⁷ Yulita Dwi Pratiwi, "Harmonisasi Perlindungan Harta Kekayaan Anak Dalam Perwalian Melalui Penguatan Peran Wali Pengawas," *Jurnal Suara Hukum* 1, no. 1 (14 Maret 2019): 73, <https://doi.org/10.26740/jsh.v1n1.p61-90>.

d) The guardian's obligation shall be evidenced by an accounting which shall be closed once a year, without affecting the procedure provided for in Article 51 paragraph (4) of Law No. 1 of 1974 Concerning Marriage.

Guardianship is indeed the supreme power of the Religious Court, so the judges who heard the panel granted the request because they felt that everything that had happened so far was done for the glory of God Almighty. In this case, the Panel of Judges authorized guardianship based on the needs of the community. In this case, it is considered an important issue that belongs to the community because of a custom that still survives until now developing in the community.

In such a situation, efforts to establish guardianship in society should not cause societal problems, not least for the guardian or the child under guardianship. for the protection and welfare of the child, as well as for the exercise of the rights of minors and important matters. The child then gets the main purpose of the guardianship institution, which is to help him or her grow and develop normally like other children in the neighborhood. In reality, a person appointed as a guardian is subject to duties and regulations, such as limitations derived from established rules. Meanwhile, guardians have legal protection; they are exempt from the law as long as they can show that the assets are used as a guide for the child's benefit, such as supporting the child's daily needs and future interests.¹⁸

There was a case where Mrs. X's son was not allowed to pledge his land certificate to the bank because according to Indonesian civil law, the owner of the collateral is considered legally incompetent and is not allowed to take legal action. As both mother and debtor, Mrs. X has the right to manage the minor's property. In addition, it is also clear that under the Marriage Law, Mrs. X is prohibited from using a minor's certificate as collateral for a bank loan or mortgage.

In accordance with the procedure, the Land Deed Official made a Deed of Granting Mortgage secured by a land certificate belonging to Mrs. X's minor child. The following editorial on Article 48 of Law No. 1/1974 on Marriage explains that, because Mrs. X had the motive to increase the company's capital and to guarantee the certification of Mrs. X's child's education, the establishment of APHT did not violate Indonesian laws and regulations in order to provide for her child.

The banking activity itself considered more than just cause, Mrs. X only provided written security (*lex scripta*) in the form of a court guardianship decree against the minor child's land title, but the bank also sued Mrs. X because the district court had appointed the minor child's biological mother as guardian in District X. Mrs. X was the biological mother of the child, as indicated on the child's birth certificate, but she needed to request a guardianship decree. The bank needs this to get court assurance that the data is accurate.

¹⁸ Anjar Restu, "Mekanisme Peralihan Hak Atas Tanah Karena Jual Beli Dalam Hal Salah Satu Penjual Masih Di Bawah Umur Dan Pendaftarannya Di Kantor Pertanahan Kota Tegal," *Jurnal Akta* 4, no. 1 (28 Juli 2017): 1, <https://doi.org/10.30659/akta.v4i1.1529>.

Mrs. X, the debtor, is a woman who is considered physically and mentally competent as a guardian for her minor biological child so that the Land Deed Official can hold her accountable if problems arise in the process of binding the mortgage on Mrs. X having a guardianship decree document.

The appropriate step in this research is to request collateral in the form of a certificate of ownership of the child's land as part of the credit-granting procedure. Mrs. X. This is done because as a creditor, the bank needs certainty of credit repayment if Mrs. X defaults as a client so that the bank can prioritize the repayment of money received from the sale of the pledged property. Since a mortgage is created when it is recorded in the land book, the bank has legal certainty regarding its mortgage ownership when it makes a Deed of Grant of Mortgage using a Land Deed Official and registers it with the Land Office. This also fulfills the principle of publicity.

This requires that the preparation of Deed of Grant of Mortgage with a minor's land certificate as collateral at Bank X has complied with legal requirements and standard banking practices, while the filling of the Deed of Granting Mortgage at the Land Deed Official's office aims to ensure the smooth running of the credit disbursed by Mrs. X. The concept of publicity and the creation of mortgage rights as legal certainty for banks as holders of mortgage rights are fulfilled by the registration of Deed of Grant of Mortgage by the Land Deed Official at the Land Office. Based on this description, the legal consequences of a minor's property rights being used as debt collateral by his biological mother if there is no court decision as his guardian, as well as the consent of his biological child in the perspective of Indonesian law is that it can be null and void. Provisions in certain laws that state that certain people or parties are not authorized are rules that are coercive. It can also happen that a person is declared not authorized to perform certain legal acts because according to the law, that person does not meet certain qualifications or requirements.

According to Article 48 of Law Number 1 Year 1974 concerning Marriage, parents are not allowed to transfer rights or mortgage the fixed assets of children who are not yet eighteen years old or have never been married, unless the interests of the child demand it. Law Number 1 Year 1974 concerning Marriage does not further regulate how parents charge or transfer their children's fixed assets. Parents are not allowed to transfer property belonging to minors, according to Article 309 of the Civil Code, but must follow the guidelines of Chapter XV of Book I of the Civil Code. Article 48 of Law Number 1 Year 1974 on Marriage.¹⁹

The legal consequences of a minor's property rights being used as collateral for debt by his biological mother in the absence of a court order as his guardian and the consent of his biological child in the perspective of Indonesian law must first be seen whether the

¹⁹ Vieka Oktanie Liastikha, "Kedudukan Ahli Waris Pengganti dalam Sengketa Waris Berdasarkan KUH Perdata," *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton* 10, no. 2 (30 Mei 2024): 310, <https://doi.org/10.35326/pencerah.v10i2.5120>.

child's interests require it, by requesting a court order to pledge the land. Therefore, in addition to the husband's death certificate, the heirs' certificate, and the identity of the heirs, a court order that the mother has been authorized to pledge the child's property, i.e. the child's share in the mother's estate, is required. If this is not fulfilled, then the agreement in any form can be null and void. However, if the procedure for making the principal agreement or in granting credit is not carried out through the correct legal procedure, it can result in the cancellation of the mortgage right based on a court decision and the position of the bank as the holder of the preferred rights/precedence over other creditors will be disadvantaged due to a lawsuit or challenge from a minor.

Based on the description above, the legal consequences of a minor's land title certificate (*minderjarig*) which is used as debt collateral by his biological mother without going through the determination of the guardian and the power of attorney to make the minor's land title from the court is null and void (*nietig van rechtswege*), because it does not fulfill legal procedures or legal defects as specified in Article 393 of the Civil Code. However, in court practice, the actions of the biological mother who makes a certificate of land rights belonging to a minor without the determination of the guardian and the power of pledge from the court are not null and void but can be canceled (*vernietigbaar*) through a civil lawsuit. This means that as long as it is not canceled by the court based on a lawsuit from the child's next of kin or the supervisory guardian, the act of the biological mother pledging the minor's land title as debt collateral without the determination of the guardian and power of attorney from the court is considered valid as long as it is done for the basic (absolute) needs of the minor.

Children's inheritance rights being used as debt collateral has several impacts. One very significant impact on the child is that the child suffers a loss in the case, the inheritance rights that he has are lost. even though the inheritance rights given to children have many benefits, one of which is for the needs of daily life. Regarding the bank, as long as the bank acted in good faith and did not know or suspect that the certificate guarantee was unlawful, the bank cannot be charged with criminal sanctions. However, the bank can be made a co-defendant either when applying for APHT annulment or suing your brother civilly through an unlawful act lawsuit based on Article 1365 of the Civil Code. This is because the bank is considered an interested party and is harmed by the action. However, if the bank wants to execute the inherited land, which it knows was obtained from an unlawful act, the bank can be reported with suspicion of participation in a criminal offense.

3.2 Legal Protection of Minors Whose Property is Pledged as Collateral for Debt by Their Birth Mother

The parties who submit applications, especially guardianship applications, are not all granted by the Panel of Judges. After the Panel of Judges examines and studies the existing files, then the final form of the examination of the Panel of Judges is whether or not the application for guardianship determination is granted. The legal product of the determination is a guardianship determination. The determination of the Panel of Judges is

based on considerations that exist according to the results of the Panel of Judges in examining the case.

The guardian has responsibility for the child's property and provides compensation for any losses caused by the child's fault or carelessness. Based on Article 107 Paragraph (2) of the Compilation of Islamic Law which explains that if the guardian is unable to carry out his guardianship duties or is negligent, then his relatives can request that the religious court appoint him as a guardian.²⁰

Every country bases the implementation of child protection on four general concepts, which are based on the Convention on the Rights of the Child and Law No. 23/2002 on Protection. These principles include:

First: Principle of Non-discrimination;

The principle of Non-Discrimination means that all rights recognized and contained in the KHA must be applied to every child without any distinction. This principle is in Article 2 of the Compilation of Islamic Law Paragraph (1), "Regardless of race, color, sex, language, creed, or political belief, States Parties uphold and guarantee the rights set forth in the present Convention to all children under their control without discrimination on any additional factor, such as the birth of the child's parents or legal guardians, national, ethnic, or socioeconomic origin, ownership position, disability, or another status. Second paragraph: "States Parties shall take all necessary measures to ensure that children are protected against any form of discrimination or punishment that may be based on the status, customs, beliefs or opinions of the child's parents, legal guardians or family members".

Second: The Principle of the Best Interests of the Child;

This principle is stated in Article 3 Paragraph (1) of the Compilation of Islamic Law: "In all actions concerning children by public and private social welfare institutions, judicial institutions, government agencies or legislative bodies, the best interests of the child shall be the primary consideration". This principle reminds all child protection providers that considerations in decision-making regarding the future of children, are not by adult standards, let alone centered on the interests of adults. What is good by adult standards is not necessarily good by the standards of the child's interests. It may be the intention of adults to provide help and assistance, but what actually happens is the destruction of the child's future.²¹

Third: *The Right to Life, Survival, and Development*;

This principle is stated in Article 6 of the Compilation of Islamic Law Paragraph (1): "States Parties recognize that every child has an inherent right to life." Paragraph (2): "States parties shall ensure to the maximum extent the survival and development of the child." Since the right to life of a child is something that is brought from birth and is not a

²⁰ Wendi Yoanda, "Akibat Hukum Peralihan Hak Atas Tanah Milik Anak Tanpa Persetujuan Penetapan Perwalian dari Pengadilan (Studi Putusan Pengadilan Negeri Malang No. 217/Pdt.G/2017/PN.Mlg)," *Jurnal SOMASI (Sosial Humaniora Komunikasi)* 1, no. 1 (20 Juli 2020): 95, <https://doi.org/10.53695/js.v1i1.37>.

²¹ Hadibah Zachra Wadjo dkk., "Penyelesaian Perkara Anak Sebagai Pelaku dan Korban Ditinjau Dari Asas Kepentingan Terbaik Bagi Anak," *SASI* 26, no. 2 (4 Juni 2020): 201, <https://doi.org/10.47268/sasi.v26i2.306>.

gift from the government or an individual, this concept makes it clear that the state must ensure the survival of every child. States must create an enabling atmosphere, adequate housing and infrastructure, and access for all children to meet their basic needs in order to protect their right to life. Related to this idea has also been explained in the previous discussion on children's rights.

Fourth: *Respect for the views of The Child;*

The following principle is enshrined in Article 12(1) of the Compilation of Islamic Law, which states:

“States Parties shall ensure that children who have their own views have the right to express their views freely in all matters affecting the child and that such views shall be respected in accordance with the age and maturity of the child.”

The autonomy of the child's personality is affirmed by this idea. Therefore, he is not just a passive, obedient, and weak person; rather, he is an independent person with experiences, desires, fantasies, obsessions, and goals that may differ from those of an adult.²²

A child protection perspective is a method of approaching all problems by prioritizing the needs of children. When this perspective is used, children's issues are always prioritized. According to the Declaration of the Rights of the Child a child who is physically and mentally immature, requires special protection and care, including appropriate legal protection, before and after his or her birth.²³

International Convention on the Protection of Children The UN General Assembly essentially responded to this in terms of child protection by issuing a statement on the Declaration of the Rights of the Child on November 20, 1959, which is seen in Principles 1, 2, and 9. These principles, among others, say that: 1) Principle I, “All the rights set forth in this declaration shall be enjoyed by children. It is essential that all children, regardless of race, color, sex, language, religion, political beliefs, money, birth, or other social status, be accorded those rights, regardless of their family membership; 2) Principle 2, “according to laws or other regulations, children shall be provided with special protection as well as opportunities and facilities that enable them to grow physically, mentally and socially in a healthy and reasonable manner while enjoying freedom and dignity.” For this reason, it is best to consider the child first when drafting laws; 3) Principle 9, “Children shall be protected from all forms of abuse, exploitation and neglect. Trafficking in children of all kinds shall be prohibited”.

In addition, the adoption of the Convention on the Rights of the Child by the UN General Assembly on November 20, 1989, marked the culmination of child protection efforts (UN Resolution No. 44/25 of December 5, 1989). Since then, international standards have put a special focus on children around the world, namely: 1) Providing children with care, nurture, education, and protection; 2) Developing children according to their skills,

²² Hadi Supeno, *Kriminalisasi Anak; Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan* (Gramedia Pustaka Umum: Jakarta, 2010), 53.

²³ Supeno, 53.

interests, and abilities; 3) Preventing child marriage; and 4) Teaching children moral principles and character education.²⁴

The 1945 Constitution of the Republic of Indonesia and several national and international laws and regulations guarantee the maintenance and fulfillment of children's rights, which are among the human rights upheld by the state. By ratifying international conventions that regulate children's rights, such as the Convention on the Rights of the Child regulated by Presidential Decree No. 36 of 1990, this guarantee is strengthened.²⁵

In accordance with their roles and responsibilities, the State, Government, Local Government, Community, Family, and Parents have an obligation to defend and ensure the realization of children's human rights. The government must base efforts to protect children's rights on the principles of human rights, especially respect, fulfillment, and protection because the protection of children does not guarantee that children receive treatment and opportunities that meet their needs in various fields of life.

Meanwhile, a biological mother who pledges debt against her minor son's certificate without the need to prove it with a deed issued by a Land Deed Official will not get legal protection. In providing clarity of ownership, a Land Deed Official is tasked with carrying out guidelines as an act of transfer of land rights by sale and purchase with a deed of sale and purchase being made as an authentic deed used as a requirement to prove the transfer of land rights.²⁶

Based on the description above, Article 393 of the Civil Code has provided preventive legal protection to minors whose land title certificates are used as debt collateral by their biological mothers if this is done without the appointment of a guardian and power of attorney from the court. The minor's biological mother in her position as guardian is only authorized to make the certificate of land title on the basis of absolute necessity or clearly beneficial to the minor after hearing or legally summoning the child's immediate family or blood relatives and the supervisory guardian (in this case the Balai Harta Peninggalan).

In practice, legal protection of children's inheritance rights has not been given properly. This is due to economic shortcomings, which ultimately lead to the use of children's inheritance rights to fulfill their daily needs. In addition, the legal protection provided is the establishment of the Balai Harta Peninggalan which is a technical implementation unit or work unit at the Ministry of Law and Human Rights of the Republic of Indonesia which is technically under and responsible to the Directorate General of General Legal Administration through the Directorate of Civil Affairs. Based on the results of the research, it is known that the legal position of the Heritage Hall in the management of

²⁴ Nabila Thifallya Regina dkk., "Peran Unicef Dalam Perlindungan Anak Di Indonesia," *Jurnal Penelitian dan Pengabdian Kepada Masyarakat (JPPM)* 3, no. 3 (13 Agustus 2023): 118.

²⁵ Yunita Ajeng Fadila dan Khayatudin, "Tinjauan Yuridis Pelindungan Pekerja Anak Di Indonesia Dalam Perspektif Konvensi Hak Anak," *Yustitiabelen* 8, no. 2 (29 Agustus 2022): 146, <https://doi.org/10.36563/yustitiabelen.v8i2.563>.

²⁶ Putu Indri Sri Giyanthi dkk., "Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin," *Jurnal Preferensi Hukum* 3, no. 1 (27 Februari 2022): 38, <https://doi.org/10.22225/jph.3.1.4621.37-41>.

neglected inheritance is as a representative of the interests of people who because of the law or judge's decision cannot carry out their own interests based on applicable laws and regulations. The legal authority of the Balai Harta Peninggalan based on Article 1127 of the Civil Code is to carry out the management of every neglected inheritance.

4. CONCLUSION

The legal consequences of a minor's land certificate (*minderjarig*) which is used as debt collateral by his biological mother without going through the determination of the guardian and the power of attorney to make the minor's land rights from the court is null and void (*nietig van rechtswege*), because of legal defects. However, in court practice, the actions of the biological mother who makes the certificate of land rights belonging to the minor without the determination of the guardian and the power of pledge from the court are not null and void but can be canceled (*vernietigbaar*) through a civil lawsuit from the minor's next of kin or the supervisory guardian (Balai Harta Peninggalan). The law has provided preventive legal protection to minors whose land certificates are used as debt collateral by their biological mothers if this is done without the appointment of a guardian and power of attorney from the court. The minor's biological mother in her position as guardian is only authorized to make the land title certificate on the basis of absolute necessity or clearly beneficial to the minor after hearing or legally summoning the child's immediate or blood relatives and the supervisory guardian (Article 393 of the Civil Code).

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