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The Guarantee of Children's Right in Determinating Guardian ad Litem on Sale and Purchase of Inherited Property

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Abstract: On selling the property of minors, absolutely parents must pay attention to the main objective, namely the welfare of the child. Thus, it is not used for personal interests and overrides the interests of children because this is contrary to children's rights. This study examines protecting children's rights for Guardian ad Litem (GAL), which will trade their children's property. To study the rules governing how a guardian ad litem can handle inherited property for the benefit of minors because he is considered an heir to his parent's property if his parents die. This study uses an empirical juridical methodology from the legislative framework, cases, conceptual frameworks, and interviews. Then, the novelty contains the role of the government in regulating minors who legally sell their inherited property and consider related children's rights. The study shows that *Badan Pertanahan Nasional* (BPN) of Kota Surakarta has carried out its duties effectively, supported by the conditions set for parents who want to sell the property on behalf of their children. The results of this study are the steps taken by the government to ensure that parents do not abuse their power to steal children's property and further examine guardian ad litem ship according to Islamic law. The role of BPN of Kota Surakarta is also in collaboration with the Religious Court in charge of determining guardian ad litem of minors. It can be concluded that the reasons for parents who want to sell their children's inheritance are clear and not abused by parents who want to become guardian ad litem. It caused the role of guardian ad litem in Islam to include the maintenance of themselves and their property. So that all guardians ad litem maintain health, justice, honesty, and good behavior.

Keywords : Childres's Right; Guardian ad Litem; Sale and Purchase; Inherited Property

INTRODUCTION

Family is defined as a group of people related by marriage, blood, and adoption. The family consists of a husband, wife, and children. Not only biological children can be said to be children, but stepchildren and adopted children can also be called children. Since children are born, parents must be guardian ad litem s who can provide love and understand children's rights. Following Law Number 35 of 2014 on Child Protection, the state also protects children when their parents are not there to care for them. If the child has no property, the guardian ad litem must fulfill the child's basic needs, including food, clothing,

and shelter.¹ If the child has property, the guardian ad litem is obliged to take good care of it because Allah is wrathful at the guardian ad litem who eats from his property.² In contrast to the reality that in this case there are many cases of parents who sell the inheritance of children who are still underage, and according to the survey of the national land agency called *Badan Pertanahan Nasional* (BPN) of Kota Surakarta, the reason used most often is for education costs.

According to BPN of Kota Surakarta, property certificates in the name of minors are allowed because they do not pose a risk. Then, according to Law Number 35 of 2014, "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." An eight-week-old child can have their land certificate registered at BPN of Surakarta. Many parents in Surakarta request the appointment of a guardian ad litem to handle their children's inheritance in the event of a sale or purchase because their children are considered legally incompetent. If your inheritance puts you as heir, then the validity of your parents' marriage must be considered.³

Articles 1330 and 330 of the Civil Code state that heirs who have yet to reach the age of majority are not legally competent. It means that they cannot make their own decisions regarding legal matters. Since they lack the legal capacity, minors must be accompanied by an adult as their guardian ad litem in any legal proceedings. The law mandates that the remaining parent becomes the Guardian ad litem ad Litem (GAL) of the minor upon the death of the other parent unless revoked or removed from parental authority, as referred to in Article 345 of the Civil Code. If a minor does not have a parent who can care for them, the local court must step in and select guardian ad litem.⁴ Protecting oneself and one's property is part of being guardian ad litem, per Article 107, paragraph 2 of the Compilation of Islamic Law. In addition to providing spiritual direction, education, and other life skills for the benefit of the individuals entrusted to their care, guardian ad litem is responsible for ensuring their welfare and the welfare of their foster children or clients to the extent reasonable. In short, inheritance law governs the division of a deceased person's property after death, including how the property is transferred and the legal consequences for the heirs. Everything related to the inheritance of a person's rights and/or responsibilities regarding their property to their descendants after death is regulated in Islamic inheritance law. Guardian ad litem is responsible for looking after themselves and those entrusted to them, in this case, children legal guardian ad litem must act for children who receive their parents' inheritance. After

¹ Mustika Wijaya Mega, "Perlindungan Hukum Terhadap Hak Anak Dibawah Umur Untuk Mendapatkan Pendidikan," *Pakuan Law Review* 2, no. 2 (2019): 257–77.. DOI: <https://10.33751/palar.v2i2.938>.

² Abdul Hakim, Risadalina, and Elviana Sagala, "Kedudukan Wali Anak Di Bawah Umur Terhadap Harta Waris Menurut Hukum Islam," *Jurnal Ilmiah Advokasi* 8, no. 2 (2020): 49–58. DOI: <https://doi.org/10.36987/jiad.v8i2.1778>.

³ Laksmita Dewi Kusuma and Syaifudin Zuhdi, "Status Ahli Waris Transeksual Dalam Pandangan Tokoh Nahdlatul Ulama (Nu) Kota Surakarta," *PhD Diss*, 2023. URI: <http://eprints.ums.ac.id/id/eprint/115480>.

⁴ Etik Rahmawati and Widyarini Wardani Indriasti, "Hak Atas Tanah Pada Anak Di Bawah Umur," *Notary Law Research* 2, no. 2 (2021): 77–92. DOI: <http://dx.doi.org/10.56444/nlr.v2i2.2569>.

receiving an inheritance from their parents, a child can feel justice and security in law. To establish the competence of parents to act as guardian ad litem, it is necessary to pay attention to child protection measures. If the guardian ad litem successfully obtains this determination, they must gather all the required documents for themselves and the child. In addition, the certificate of inheritance called *Surat Keterangan Waris* (SKW) can reveal whether the heirs are legally capable of administering the estate; moreover, the SKW is essential in dealing with the sale of assets belonging to minors. Article 832 of the Civil Code states that sibship, whether legally married or not and spouses with the longest life expectancy are the only people entitled to receive inheritance according to law, as regulated in the following regulations. Based on this provision, children are considered heirs if there are no blood siblings or spouses or the longest-living parent. In this case, the state is obliged to pay off the deceased's debts to the extent that the estate's value allows. In addition, the first group of heirs consists of children. Adopted children can be considered heirs of their adoptive parents, according to the Badan Pertanahan Nasional of Kota Surakarta. This is because children are legally adopted if decided by the court (Directorate General of Population and Civil Registration, 2022). Child adoption cannot be finalized until the prospective adoptive parent "Calon Orang Tua Angkat) (COTA) complies with certain rules and regulations specific to the jurisdiction where the prospective adoptive parent resides. Appropriate and reliable individuals must have full ownership of the rights of the minor. No one can say with certainty how challenging it is, but Muslims have a religious obligation to defend the rights of children without parents. As such, anyone can file a complaint or report if a minor's life or future is threatened due to an untrustworthy guardian ad litem. Permission to arrange for the minor's inheritance rights in the district court can also protect the minor's rights if his or her assets are transferred to living guardian ad litem. After the guardian ad litem has been appointed, the transfer of the minor's estate can proceed. A judge's decision is required to transfer a child's estate, even if the guardian ad litem is also a parent.

This study contains laws governing minors who legally sell their inherited property, compared to the Juridical Review of the Legality of the Sale and Purchase of Inherited Property by Minors by Verawati Nainggolan (2021). Investigating the current state of legal action and its potential impact requires a study. In 2018, Rajab and Pak Syaiful sold and purchased 2,000 square meters of land on Jalan Sultan Hasannudin Rt. 06 in West Balikpapan Regency, East Kalimantan. Rajab inherited this property from his parents. However, Rajab was not accompanied by his guardian ad litem when he entered the sale and purchase agreement; he was 18 years old and single then. The age of majority is 21 years old, as stated in four articles of the Civil Code. Thus, according to Articles 1320 and 1330 of the Civil Code, Rajab could not legally enter into a binding contract because he was not yet an adult. Raja must reach 21 in 2019 before the land sale and purchase agreement can be extended or authorized. Hence, guardian ad litem ship is needed to resolve the case.⁵

⁵ Verawati Nainggolan, Bruce Anzward, and Johan Putra Kadir, "TINJAUAN YURIDIS TERHADAP KEABSAHAN JUAL-BELI TANAH WARISAN OLEH ANAK DIBAWAH UMUR," *PhD Diss*, 2019. URI:

Furthermore, there is also a similar study by Irselin Tasik Lino entitled *Permohonan Perwalian Anak Dibawah Umur Oleh Ibu Kandung Dalam Pengelolaan Harta Warisan*. Her study is motivated by the fact that there are parents who want to apply for a guardianship determination in court because one of the parents has died and left an inheritance, so to manage children's rights and others, the relevant institutions require a guardianship determination over minors from the court.⁶ This study focuses more on the role of the government in guaranteeing children's inheritance rights when there are parents who want to sell the inheritance of children who are still minors and further examines guardianship according to Islamic law. Although previous studies addressed topics such as the inheritance rights of minors, whether it is legal to buy and sell their assets, and child guardianship requests, this study intends to look at how the government seeks to protect the rights of minors when deciding who will be able to buy and sell their assets. Inheritance of minors and interpretation of guardianship according to Islamic law.

METHOD

The type of study implemented is empirical juridical, which is carried out through an examination of theories, laws, and regulations such as the Civil Code, Child Protection Law, and compilation of Islamic law called Kompilasi Hukum Islam (KHI), and interviews with Mr. Tarto who served as the first land manager at BPN of Kota Surakarta who explained the role of the BPN related to guaranteeing children's rights in the determination of guardian ad litem on the sale and purchase of inherited property of minors. Furthermore, the approach implemented is the Empirical Juridical method. In this study approach, the majority examines the application of legislation related to the guarantee of children's rights in the determination of guardian ad litem in the process of buying and selling the inheritance of minors, a case approach to examine the implications of legal norms or rules in practice to get an idea of how to handle if there is a case of guardian ad litem who wants to sell the inheritance of a minor. Furthermore, the researcher took a theoretical approach to develop ideas related to the government system that protects children's rights when deciding who will be their guardian when they inherit money or property. Legislation and secondary sources such as books, articles, and journals on the subject of law are equally used in this study. To provide an explanation and the causes of the occurrence of a legal event, the data analysis technique of this writing uses descriptive analysis and other things, of course, also conduct interviews at BPN of Kota Surakarta on topics related to guaranteeing children's rights in determining guardian ad litem in the process of buying and selling property of minors.

<http://repository.unissula.ac.id/id/eprint/28823>.

⁶ Irselin Tasik Lino, "PERMOHONAN PERWALIAN ANAK DIBAWAH UMUR OLEH IBU KANDUNG DALAM PENGELOLAAN HARTA WARISAN," *Jurnal Ilmu Hukum: Alethea* 4, no. 2 (2022): 131–46. DOI: <https://doi.org/10.24246/alethea.vol4.no2.p131-146>.

DISCUSSION

A. The Position of the Guardian ad Litem on the Rights of Minors in Managing Their Inheritance Property

Nowadays, Indonesia has not drafted a national inheritance law. Therefore, parties to inheritance disputes can choose their preferred legal framework, Islamic law, customary law, or the Civil Code.⁷ As minors lack the legal capacity to enter into a contract for the purchase or sale of real estate, any agreement involving the purchase or sale of land inherited by a minor is void and voidable. The non-fulfillment of the acting capacity requirement has legal consequences, as it allows for the annulment of the sale and purchase. Therefore, the law requires the appointment of a guardian ad litem to act on their behalf in all litigation.⁸

The application for the determination of guardianship of biological parents against minors is one type of voluntary case submitted to the court in order to obtain legal legality related to the authority of parents to their children in carrying out legal acts as a form of representing the interests of children both for themselves and their property in or out of court.⁹ By law, parents may not sell or mortgage their children's rights. Children are a gift and responsibility from God. Thus, naturally, they are well cared for if He blesses a marriage with them.¹⁰ Children who are not yet 18 years old or have never been married are considered to be under the authority of their parents based on Article 47 paragraph (1) of the Marriage Law, as stated in Article 48 of the same law. Unless the child's best interest demands otherwise, the guardian ad litem has the right to control the fixed property of the unmarried minor who is not yet 18. According to Article 50, paragraph (1), guardian ad litem can exercise his or her powers over a minor who is not yet 18 years old and does not live with his or her parents. The paragraph goes on to say that the jurisdiction of the guardian ad litem covers the person and property of the minor's parents. *Legitieme Portie*, or the share each heir receives from an inheritance, is a legal letter establishing the relationship between an heir and his fellow heirs.¹¹

Furthermore, a person must be at least twenty-one years old to be considered a legal adult following Article 98 of the Compilation of Islamic Law. As long as they have never been married and do not suffer from mental or physical disabilities, Positive Law considers children to be minors. Persons under the age of eighteen, even those still in the womb, are considered children under Law Number 35 of 2014, amending Law Number 23 of 2002.

⁷ Iwan Permadi and Irsyadul Muttaqin, "Pemenuhan Hak Perempuan Terhadap Tanah Warisan Dalam Sistem Waris Bagi Rusa Masyarakat Bangka," *Jurnal Ius Constituendum* 8, no. 3 (2023): 482–93.. DOI: <http://dx.doi.org/10.26623/jic.v8i3.7464> .

⁸ Nainggolan, Anzward, and Putra Kadir, "TINJAUAN YURIDIS TERHADAP KEABSAHAN JUAL-BELI TANAH WARISAN OLEH ANAK DIBAWAH UMUR."

⁹ Firman Wahyudi, "PENERAPAN PRINSIP PRUDENTIAL DALAM PERKARA PERWALIAN ANAK," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 31, no. 3 (2019): 368–83. DOI : <https://doi.org/10.22146/jmh.44398>.

¹⁰ Elfrida Ratnawati and Devika Sari Anindya, "Hak Mewarisi Anak Angkat Perempuan Di Tana Toraja," *Jurnal USM Law Review* 4, no. 2 (2021): 879–92. DOI: <http://dx.doi.org/10.26623/julr.v4i2.3777> .

¹¹ Patma, Suwanti, and Nam Rumkel, "KEDUDUKAN HUKUM PERJANJIAN JUAL BELI YANG DILAKUKAN OLEH AHLI WARIS TERHADAP HARTA WARISAN YANG BELUM DIBAGI," *Hermeneutika: Jurnal Ilmu Hukum* 5, no. 2 (2021).. DOI: <http://dx.doi.org/10.33603/hermeneutika.v5i2.5703>.

People who are unmarried and under the age of 18 are considered children. According to Law Number 39 of 1999 on Human Rights, article 1 point (1). This also includes fetuses. Since minors are not considered adults until they turn 18, a legal guardian ad litem must be present whenever a minor wants to buy or sell real estate. Since the adoption of a child is, in most cases, legally defined as the transfer of a child from the biological parents to the adoptive parents by local customs, the adoptive parents can also legally protect the rights of a child born into a different family. The child's adoptive parents are now responsible for the child's upkeep because the biological parents have abandoned the child.¹²

Failure to carry out the guardian's duties, obligations and powers may result in the court revoking the guardian's authority to appoint a new guardian. As some estates need time to develop before, they can be used, a guardian can only utilize his or her powers to deplete or harm the estate of the person in his or her care if it will ultimately benefit the estate. One can be sued for damages if one mismanages the guardian ad litem, thus making the guardian's task very difficult. Further, having someone knowledgeable as guardian ad litem is an additional requirement. From the time he is appointed as guardian until the time the child is accountable when the child becomes an adult for relinquishing his rights as guardian ad litem, therefore, in addition to honouring the faith of the person entrusted to his care, a guardian has some other responsibilities, including providing for the children in his care and overseeing the management of any property the children may have. When assuming the role of guardian ad litem, other interested parties must safeguard the minor's assets and keep track of any transactions involving those assets.¹³ Then, Articles 33 and 34 of the Child Protection Law, guardian ad litem appointed by the court can represent the child in legal proceedings, both inside and outside the court, if it is in the child's best interests. Paragraphs 2 and 3 further states that the guardian ad litem must act in the minor's best interests by managing the minor's property. Of course, this situation requires some legal protection. To ensure the mental and physical safety of individuals who are subjected to arbitrary actions, society and law enforcement should implement several legal safeguards.¹⁴ The results of this study show that as an intermediary in changing guardian ad litem and ownership of property of minors, BPN is one of the government's efforts to protect children's rights in selling their inheritance. For parents who want to sell the property of minors, BPN guarantees the fulfilment of children's rights. Therefore, parents who want to buy or sell a minor's inheritance are obliged to do so. According to Mr Tarto, manager of BPN of Kota Surakarta, in this case, a determination letter from the Religious Court is required, as well as

¹² Abidin Abidin and Abdullah Kelib, "REKONSEPTUALISASI AKIBAT HUKUM PENGANGKATAN ANAK MENURUT KAJIAN KOMPILASI HUKUM ISLAM," *Abdullah Kelib Jurnal USM Law Review*, vol. 1, 2018.. DOI: <http://dx.doi.org/10.26623/julr.v1i1.2226>.

¹³ Yulita Pratiwi Dwi, "Harmonisasi Perlindungan Harta Kekayaan Anak Dalam Perwalian Melalui Penguatan Peran Wali Pengawas," *Jurnal Sastra Hukum* 1, no. 1 (2019): 61–90.. DOI: <https://doi.org/10.26740/jsh.v1n1.p61-90>.

¹⁴ Kusbianto, Azmiati Zuliah, and Muhammad Pulungan Asri, "Perlindungan Dan Aturan Hukum Keluarga Terhadap Perempuan Dan Anak Dalam Perkawinan," *Jurnal Ilmiah Advokasi* 7, no. 1 (2019): 1–8.. DOI: <https://doi.org/10.36987/jiad.v7i1.240>.

copies of the Identity Card, Identity Card of Family, Birth Certificate, and Notification Letter. Those documents will form the basis of the interview. Property rights acquisition fees, BPHTB, and any inherited rights are due for the current year. Since a child's rights cannot be revoked, BPN upholds the practice of recording property in the name of a minor. Most parents want to sell their children's inherited property to cover their living expenses and pay for their education.

In guaranteeing the rights of minors over their property, the government is in line with child protection laws, specifically Law Number 35 of 2014 on the Amendment of Law Number 23 of 2002. To prevent guardian ad litem from acting irresponsibly and buying or selling the property of minors without their consent, as long as specific requirements are met, the transaction can be considered legal. As with sales in general, the rules governing the sale of heirs' property are uniform. Terms and conditions of purchase and sale. For example, when the heirs and seller agree on an inheritance, the sale agreement becomes legally binding.¹⁵ The inheritance in question is clear, meaning that the rights of the heirs have been exercised. After paying the costs of maintenance, debts, zakat, funeral expenses of the heir, and the money needed to carry out the will, for example. Provisions on inheritance in inheritance law: if the testator passes away, the inheritance will fall on the heirs. The fulfillment of the duties of the heirs follows the determination of their rights. Here, the obligation of the heir implies that his inheritance will be passed on to his descendants without any further action on his part. Part of the inheritance becomes the right of each heir.¹⁶

The heirs are deemed to have been freed and entitled to their property after they have received their portion. No one can legally buy or sell an undivided estate because it is still under the rights of the other heirs, and no one knows who gets it. Both parties to the transaction need to state that the seller is the sole owner of the item before the sale can occur, as stated in the terms of the sale. However, if each heir gives his or her consent, selling or buying the undivided inheritance is valid. Nevertheless, the rights of the other heirs remain in the inheritance, so any sale or purchase that takes place without their knowledge or consent is null and void.

B. Islamic Law Perspective on Guardianship

Islamic law prioritizes the division of inheritance. Islamic law has various rules concerning the division of property, especially when dealing with heirs of different faiths. Islamic law, or Syariah, regulates the distribution of inheritance fairly and equitably.¹⁷ The process of supervising and managing the rights of minors is called guardianship. The aim is for the guardian ad litem to take full responsibility for the needs of the minor and keep the

¹⁵Amri Sihotang Panahatan et al., "Pembatalan Perjanjian Jual Beli Tanah Oleh Penjual Karena Pembeli Wanprestasi," *Jurnal USM Law Review* 6, no. 3 (2023): 1210–22. DOI: <http://dx.doi.org/10.26623/julr.v6i3.7502>.

¹⁶Liliana Tedjosaputro, "Jaminan Yang Setara: Mengkalibrasi Kontrak Dan Hukum Waris," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 174–89. DOI: <https://doi.org/10.14710/jphi.v3i2.174-189>.

¹⁷Hendri Susilo et al., "HAK WARIS ANAK YANG BERBEDA AGAMA DENGAN ORANG TUA BERDASARKAN HUKUM ISLAM," *Jurnal USM Law Review* 4, no. 1 (2021): 175–89. DOI: <http://dx.doi.org/10.26623/julr.v4i1.3409>.

child under his or her supervision.¹⁸ The Arabic word "awliya" means "guardian," and the noun "guardianship" comes from the same word root. "Friend," "client," "relative," and "protector" are the Arabic origin of this word. A legal guardian ad litem is a person who has the power to act legally on behalf of a minor who has no living parents or whose parents are living but incapacitated due to mental or physical disability.¹⁹ Indeed, a young child is not stable enough, both mentally and physically. Suppose the oldest living parent is also responsible for the child's guardianship. In that case, the child may face life restrictions after the death of either parent, as the oldest living parent can assume the role of guardian ad litem without anyone's permission.

There are two branches of guardianship. The first branch deals with replacing the incapacitated person in the field of al-muwalla 'alaihi, such as marriage, education, health, etc. Civil guardianship, also known as guardianship over the person, is known as al-wilayah 'ala an-nafs. Second, the power to supervise the property of the al-muwalla 'alaihi. Trust over property is referred to by the term al-wilayah 'ala al-mal.

Meanwhile, articles 107-111 of the Compilation of Islamic Law regulate guardianship. The Compilation of Islamic Law states in Article 107, paragraph (4), that the guardian ad litem should ideally be chosen from the child's nuclear family or from other adults who meet the criteria: sound mind, fairness, honesty, and good character.²⁰ Alternatively, a legal entity can be chosen. It is important to note that just because one parent outlives the other does not automatically make them the child's primary guardian ad litem. It is necessary to obtain court approval to transfer rights and property to the child's biological parents, explain why the property belongs to the minor, and provide proof. If it is improper in the future, the guardian ad litem must return and compensate for the loss caused by his carelessness or mistake following Article 110, paragraph (3) Compilation of Islamic Law. In short, guardian ad litem has the legal authority to do so, either because of a court order or because the minor's parents have not been proven legally unfit to do so. It is because the Religious Court has the authority to revoke the status of a Muslim guardian ad litem in matters related to Article 109 of the Compilation of Islamic Law. It can be said that the minor is legally incompetent. It is possible to apply to the Religious Court to revoke the rights of the guardian on behalf of the person in their care if the guardian is an alcoholic, gambler, extravagant, insane, or unfit to be a guardian. It can be done at the request of the child's close relatives or other interested parties. If the child's parents have passed away, and the close relatives have applied to the Religious Court to appoint one of the family members as guardian, the process is the same.

¹⁸ Fira Nurulnisa and Dwi Ramadhani Aryanti, "Analisis Pemberian Hibah Kepada Anak Di Bawah Umur Melalui Proses Handlichting Berdasarkan Hukum Perdata," *Jurnal Ius Constituendum* 8, no. 3 (2023): 436–49. DOI: <http://dx.doi.org/10.26623/jic.v8i3.7803>.

¹⁹ Nurtio Harahap, "PERWALIAN ANAK DALAM TINJAUAN KOMPILASI HUKUM ISLAM," *Urnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 4, no. 1 (2018): 116–29. DOI: <https://doi.org/10.24952/el-gonuniy.v4i1.1831>.

²⁰ Hakim, Risadalina, and Sagala, "Kedudukan Wali Anak Di Bawah Umur Terhadap Harta Waris Menurut Hukum Islam." DOI: <https://10.36987/jiad.v8i2.1778>.

Except in cases where an 18-year-old child is also legally incapable, no one under 18 can exercise any rights relating to them. Guardian ad litem is required by Compilation of Islamic Law to release all property controlled by the guardian ad litem to the minor upon the minor's 21st birthday, as referred to in Article 111.

Only reliable adults should have legal authority over children. Although this is highly unlikely, Muslims have a religious obligation to defend the rights of children who have no parents. As such, anyone can file a complaint or report if an untrustworthy guardian threatens a minor's life or future. The role of a guardian ad litem includes the care of oneself and one's property. All guardian ad litem must maintain good health, fairness, honesty, and behavior. In addition to parents, other relatives or even legal entities can act as guardians and claim priority rights. A legal entity is when the minor's rights are a legal entity's property. Here, it is not the shares that are at issue but the existence of a social, legal entity that takes care of the interests of minors who need the protection of their rights to inheritance, such as a company. Apart from providing spiritual guidance, education, and other life skills for the benefit of the individual entrusted to them, guardians are responsible for ensuring their welfare and the welfare of their foster child or client to the extent deemed reasonable. The rights and age limitations outlined in Hadhanah Mumayyiz also shed light on guardianship in Islamic law. Specifically referring to Article 105 of the Compilation of Islamic Law, which is based on Presidential Instruction Number 1 of 1991. The mother has the right to take care of her child, who is not mumayyiz yet or is not twelve years old yet, according to Article 105 letter (a) of the Compilation of Islamic Law, as mentioned in the introduction. Since the Qur'an, hadith, and fiqh literature do not specify the age at which a person can be considered mumayyiz, this article continues to give rise to various interpretations, especially regarding the word mumayyiz. On the other hand, using the word or in the article shows that the age requirement to be considered mumayyiz is still debated. "The care of children who are not 12 yet is the right of the mother. "However, under what legal circumstances is the age limit of twelve (twelve) years considered a child's mumayyiz? "The maintenance of a child who is mumayyiz is left to the child to choose between his father or mother as the holder of his parenting rights," reads additional Article 105 Compilation of Islamic Law letter (b). According to this article, a child is entitled to *khiyar hadhanah* or choosing between his parents when he is 12 years old, inseparable from Article 105 letter (a) Compilation of Islamic Law. Similarly, "the cost of child maintenance shall be borne by the father" according to Article 105 letter (c) Compilation of Islamic Law. Then, the father continues to pay for the mother's maintenance until the child is married or reaches the age of 21 years, as stated in the Compilation of Islamic Law (article 149 letter (d)) and Law Number 1 Year 1974 (article 156 letter (d)) and in article 45 paragraph (2) of those law.

Hadhanah according to Sayyid Sabiq is a caring attitude towards young children (both boys and girls) or those who are immature, have not yet developed the ability to distinguish between good and evil, are not yet able to take care of themselves independently, and are not yet sure of what they can do to help themselves or avoid the

dangers they encounter, protect them from harm, and provide them with the physical, mental, and intellectual support they need to lead a whole and responsible life.²¹ Unfortunately, according to the Quran, no precedent in inheritance law allows adopted children to inherit from both their biological parents and each other. As a result, compulsory wills have emerged that specify which relatives should receive inheritance from the testator, even if they do not have legal standing.²²

As stated in Article 21, paragraph 3, guardian ad litem who is needy or dhuafa can use the child's property in his care to cover the child's daily food cost. Guardian ad litem oversees everything. The Baitul Mal Agency carries out the supervisory guardian ad litem role in this qanun. Any guardian ad litem found neglecting his/her duties by violating Article 21 paragraphs 1 and 2 shall be imprisoned for up to six months and/or a fine of up to fifty million rupiah as referred to in Article 58.²³

CONCLUSION

In summary, the state ensures the protection of minors' rights and inheritance. Children under 18 require a guardian ad litem to manage their inheritance. If a parent is alive and capable, they ensure the child's rights and future. If not, the Religious Court appoints a guardian ad litem based on relatives' requests, with the community overseeing the child's welfare. The guardian ad litem's duties are specified in Islamic Law and national legislation. BPN Kota Surakarta helps facilitate inheritance transfers but requires Religious Court determination and documentation. In Islam, safeguarding orphaned children's rights is a duty, and any failure by a guardian ad litem can be reported. Guardianship involves managing both the child's well-being and property, and can be assumed by parents, relatives, or legal entities, adhering to principles of fairness and honesty.

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²¹Achmad Muhajir, "Hadhanah Dalam Islam," *Jurnal SAP* 2, no. 2 (2017). DOI: <http://dx.doi.org/10.30998/sap.v2i2.2089>.

²²Penerapan Diversi Senen and Abdullah Kelib, "IMPLEMENTASI BAGIAN WASIAT HARTA WARIS ANAK ANGKAT DALAM KAJIAN KOMPILASI HUKUM ISLAM (KHI)," *Jurnal USM Law Review* 2, no. 1 (2019): 56–62. DOI: <http://dx.doi.org/10.26623/julr.v2i1.2258>.

²³Nurul Utami Fadilla and Septi Indrawati, "Perlindungan Hukum Terhadap Anak Dalam Perwalian Dan Tanggung Jawab Seorang Wali," *Amnesti Jurnal Hukum* 4, no. 1 (2022). DOI: <https://doi.org/10.37729/amnesti.v4i1.1479>.

researchers in similar studies.

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