

# **The Scope of Supervision By The Heritage Over The Use of Assets By Persons Under Guardianship**

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## **ABSTRACT**

The Estates Office (BHP) is a colonial legacy institution that continues to exist in the Indonesian legal system, with the authority to manage inherited assets, oversee guardianships, and implement trusts. This study aims to analyze the BHP's authority in overseeing trusts, the role of notaries and PPATs in supporting the legality of legal actions, and Limitations on the use of assets by guardians for the benefit of those under guardianship. The method used is socio-legal research with a legal and conceptual sociology approach, through a case study at the Surabaya Legal Trust Agency (BHP). The results of the study indicate that BHP has a strategic role as a supervisory guardian to ensure that the guardian carries out its obligations in accordance with the law, protects the rights of parties who are legally incompetent, and prevents abuse of authority. However, the effectiveness of supervision is still hampered by limited human resources, undigitized administrative infrastructure, difficulties in cross-agency coordination, and legal gaps regarding sanctions for negligent guardians. Concrete cases demonstrate negligence by guardians that impacts the fulfillment of the needs of the custodial party, demonstrating the weakness of existing technical regulations. This study emphasizes the importance of reformulating regulations regarding guardianship, strengthening the capacity of BHP, accelerating digitalization, and optimizing inter-agency cooperation to increase the effectiveness of supervision. Thus, BHP can function optimally as a state instrument in providing substantive legal protection for vulnerable parties, while realizing the principles of legal certainty, justice, and benefit.

**Keywords:** Estate Management, Guardianship, Legal Supervision, Regulation.

## **1. INTRODUCTION**

Indonesian independence marked the beginning of national legal reforms that sought to break free from the colonial legal system. However, this transition did not immediately eliminate all colonial-era legal products. One example is the continued enforcement of existing regulations, as stipulated in Article I of the Transitional Provisions of the 1945 Constitution, which states that all existing laws and regulations remain in effect as long as they have not been replaced by new ones based on the 1945 Constitution.

One institution that has remained since the colonial era is the Estates Office (BHP). Initially established by the Dutch East Indies government to manage the assets of Dutch citizens and represent the legal interests of individuals unable to act independently, either due to law or specific circumstances. Post-independence, this institution continues to exist as part of the national legal structure and is legitimized through national regulations, including Regulation of the Minister of Law and Human Rights Number 7 of 2021.



The BHP has a crucial mandate in handling guardianship, custody, inheritance, and estate management cases for individuals declared absent or neglected. In practice, the BHP represents the state in ensuring legal certainty regarding the assets of individuals who are legally unable to represent themselves. This function is closely related to the fundamental principle of the rule of law, namely the protection of citizens, especially those in vulnerable situations (Ali, 2002).

One legal instrument frequently associated with BHP duties is guardianship. Guardianship is a condition in which a person is declared legally incompetent due to medical, psychological, or social reasons, requiring a guardian to represent their legal interests. However, guardianship is not a permanent status. In legal practice, there is a possibility that a person under guardianship may recover, and therefore, their guardianship status may be revoked.

Problems arise from the lack of legal regulations explicitly governing the mechanism for revoking guardianship and the limitations on a guardian's actions regarding the assets of the person being supervised. A concrete case is found in Supreme Court Decision Number 152/K/Pdt/2014, in which the Supreme Court granted a request to revoke guardianship based on medical evidence and witnesses stating that the person who committed the crime had recovered. This decision emphasizes that the purpose of guardianship is legal protection, and if the basis for guardianship is lost, the status must be revoked.

The Supreme Court's ruling indicates a legal vacuum (*rechtsvacuum*), particularly regarding the formal and material requirements for revoking guardianship and the limitations on the guardian's use of assets. The Civil Code regulates who may be granted guardianship, but it does not detail the mechanism for terminating such status. Consequently, the judge in this case assumed the role of *rechtsvinder*, filling the legal vacuum through progressive legal interpretation (Amiruddin, 2006).

The absence of detailed regulations regarding guardianship and the guardian's role in managing the assets of the custodian raises the potential for abuse of authority. Furthermore, this legal ambiguity can negatively impact third parties who interact with the guardian or engage in fraudulent activities, such as in the sale and purchase of assets. Therefore, clear regulations regarding the limits on the guardian's use of assets for the benefit of the custodian are essential to ensure legal certainty and protect rights (Wijayanti, 2009).

In this context, the role of a notary becomes crucial. As a public official, a notary has the authority to draw up authentic deeds, including deeds of guardianship, which often serve as the basis for legal actions involving legal entities (BHP). Notaries, who are under the supervision of the Ministry of Law and Human Rights, play a crucial role in ensuring the legality and validity of



legal actions on behalf of legally incompetent individuals, as well as providing protection against potential manipulation or abuse by guardians.

In addition to notaries, land officials (PPAT) also play a role in managing land matters related to inherited property or property owned by someone else. PPATs fall under the authority of the Ministry of Agrarian Affairs and Spatial Planning/BPN. Despite their different fields, synergy between notaries, PPATs, and BHPs is essential for the legal and proper management of assets, particularly in transactions involving the transfer or assignment of assets.

Taking into account the complexity of this problem, further regulations are needed in the form of derivative regulations, such as the Minister of Law and Human Rights Regulation or special regulations that regulate two important aspects, namely (1) the mechanism for revoking guardianship and (2) limitations. authority guardians in using or managing the assets of those they custodian. These two aspects are crucial to ensuring substantial legal protection for vulnerable individuals.

The lack of comprehensive regulations also impacts public services provided by the Public Service Authority (BHP). As an extension of the state in the legal field, the BHP is required to operate within clear and definite legal boundaries. Therefore, this legal vacuum not only impacts individuals but also the performance of state institutions themselves in fulfilling legal objectives of justice, certainty, and benefit.

Thus, the urgency of this research lies in the urgent need to encourage the reformation of legal policies related to guardianship and guardianship authority, particularly regarding the management of assets by BHP. This reform will make a real contribution to strengthening legal protection and strengthening the accountability of legal institutions in facing societal dynamics and the challenges of civil practice in Indonesia.

## **2. RESEARCH METHODS**

The research method used is Socio-Legal Research. The approach used in this study is carried out using a legal sociology approach and a conceptual approach. Laws that are actually created and implemented by humans cannot be separated from the social conditions of society and human behavior related to legal institutions. The research location in this case focuses on the Surabaya Heritage Hall, which is one of the BHP offices with a strategic working area in East Java. Data collection techniques are carried out through interviews and observations related to this research. After all legal materials are collected, they are then analyzed using qualitative descriptions by presenting data obtained in the field in the form of what is stated by respondents in



writing and verbally and real behaviors to be further compiled, described and analyzed to obtain answers and conclusions to the problems posed through logical thinking and can provide a solution to the problems that arise regarding the research objects.

### **3. RESULTS AND DISCUSSION**

#### **Supervisory Authority of the Estates Office Regarding the Use of Assets of Persons Under Guardianship According to Law in Indonesia**

Estate Planning Office (BHP) is an institution with strategic value within the civil law structure in Indonesia. The Civil Code (BHP) is not simply a historical product of colonial heritage, but has undergone a process of adaptation and contextualization in accordance with the national legal system. It has become an integral part of the state's instrument for ensuring legal protection for vulnerable groups, while simultaneously fulfilling the state's function of ensuring legal certainty in aspects of family law, inheritance law, and civil economic law.

One of the key findings of this study is that the Legal Aid Office (BHP) plays a multidimensional role in the civil legal system. This role encompasses preventive, curative, and repressive dimensions. In the preventive dimension, the BHP plays a role in preventing abuse of power by guardians or custodians, for example through routine monitoring mechanisms, evaluation of annual reports, and providing legal recommendations to the courts. In the curative dimension, the BHP manages unmanaged or unclaimed assets, in order to protect them from embezzlement or loss of legal value. Meanwhile, in the repressive dimension, the BHP has the authority to propose the revocation or replacement of a guardian/custodian if a legal violation is discovered.

This research also shows that the functions carried out by the BHP have a strong legal umbrella. The Civil Code explicitly regulates the role of the BHP in Articles 348, 359, 366, 449, 463, and 1130. This demonstrates consistent legal recognition of the existence and authority of the BHP in Indonesian law. In addition, implementing regulations such as the Instruction of the Inheritance Office (Stbl. 1872 No. 166) and various other legal instruments remain valid as positive law, as affirmed in the Transitional Provisions of the 1945 Constitution. This serves as the legal basis for the continued role of the BHP even though this institution originated from the colonial legal regime (NURHAYATI & PURWANTO, 2017).

In practice, the guardianship and custodianship oversight function carried out by the Guardianship and Custodianship Agency (BHP) is a crucial instrument for preventing exploitation or abuse of legal power over legally incompetent individuals. This function is highly relevant to the social conditions of Indonesian society, where conflicts of interest frequently arise within families.



Through financial reporting mechanisms, tracking ownership documents, and annual reporting obligations, the BHP serves as the "eye of the state" monitoring potential deviations from legal and ethical norms in the management of the assets of individuals under guardianship or custody.

Other findings indicate that the role of the BHP in inheritance law is also highly strategic, particularly in the preparation of wills and the issuance of certificates of inheritance rights. These activities, besides being administrative in nature, also have significant legal implications. Mistakes or manipulation in the opening of a will or the issuance of a certificate of inheritance can lead to protracted legal disputes, even leading to criminal proceedings. The BHP, through its strict mechanisms, serves as a legal safeguard, ensuring that the will of the testator and the rights of the heirs are carried out in accordance with applicable law.

This research also highlights that the role of the BHP in managing unclaimed inherited assets represents a concrete manifestation of the state's role in protecting the economic and legal value of an asset. If an inheritance is not claimed within the specified timeframe, without such a mechanism, the asset has the potential to become unclaimed and give rise to social conflict, embezzlement, or even become the object of illegal disputes. With the BHP, all stages, from sealing and inventory to management and reporting, are carried out systematically with a clear legal basis.

Furthermore, this research shows that the function of managing the assets of an absent person (*afwezigheid*) also has significant legal implications, especially in modern, highly mobile societies. Many cases of prolonged absence result in a vacuum in legal ownership of their assets. The BHP acts as a temporary manager to ensure these assets do not lose value, are not misused by third parties, and remain accountable upon the person's return or when their inheritance is to be divided.

Another important finding is that despite the crucial function of the BHP, its existence is often overlooked in the discourse on national legal reform. The BHP receives little attention in state institutional reform, even though its role touches on the most fundamental civil rights. In this context, the study recommends the need for regulatory reform to strengthen the BHP, both in terms of organizational structure, human resources, and functional strengthening within the ever-evolving national legal system.

Institutionally, the BHP also has a coordinating function with judicial institutions, notaries, and local government agencies. In practice, the administration of assets, wills, and inheritance certificates cannot proceed without cross-sectoral involvement. This study found that the effectiveness of the BHP's work is largely determined by synergy between institutions. Therefore,



a more integrated cooperation mechanism is needed, such as a national information system on inheritance, wills, and guardianship that is accessible to all relevant agencies to expedite and simplify the legal process. This research also shows that the BHP plays a crucial role in safeguarding the rights of women and children, who in many cases are victims of neglect or exploitation in the context of inheritance or family property. Through its role as guardian and supervising custodian, the BHP indirectly carries out a mission of protecting marginalized groups in society. Thus, the BHP not only carries out a technical legal role but also substantively upholds social justice and human rights values.

Ultimately, this study confirms that the BHP remains highly relevant in the context of modern Indonesian civil law. The numerous inheritance disputes, intra-family property conflicts, and the absence of legal entities make the BHP an institutional solution with strong legal roots and a tangible function in the field. Despite its colonial origins, the BHP has successfully adapted and become a distinctive institution within the national legal system. Going forward, the BHP requires more serious attention in institutional reform, both in terms of regulations and institutions, as well as strengthening its human resource capacity.

### **Factors And Implementation That Influence The Effectiveness of The Prosecutor's Office's Supervision of The Use Of Property Under Guardianship**

#### **1. Implementation of the Estates Office in Guardianship**

The Estates Office (BHP) is an institution that plays a strategic role in the Indonesian civil law system, particularly in the area of guardianship. In practice, the BHP has two primary functions related to guardianship: acting as a temporary guardian and acting as a supervising guardian. These two functions not only support the orderly administration of civil law but also directly impact the legal protection of minors who are not yet legally competent to initiate civil proceedings independently.

##### **a. Temporary Guardianship**

Based on the provisions of the Civil Code (KUHPperdata), the Estate and Estates Office acts as a temporary substitute for the guardian in certain circumstances, especially when the guardian appointed by the court or by law refuses, neglects, or is incompetent to carry out his duties. Article 332 of the Civil Code states that if the appointed guardian refuses or neglects to carry out his duties, the Estates Office acts as a temporary guardian. In this capacity, the Estates Office is responsible for:

- Personal care of minors (including personal care and protection),
- Management of children's assets,





- Ensure that there is no gap in legal protection during the transition period of appointing a legal guardian.

This role is reinforced by Article 359 of the Civil Code, which stipulates that in any appointment of a guardian, if an urgent need arises either before or after the appointment takes effect, the BHP may take temporary measures to protect the child's interests. This provides a clear legal basis for the BHP to intervene proactively in critical situations, thereby ensuring the child's ongoing protection.

Furthermore, Article 338 of the Civil Code states that every guardian who manages a child's assets is required to provide a guarantee. If the guardian fails to fulfill this obligation, the judge can revoke the guardianship authority and hand it over to the BHP. This demonstrates that the BHP also serves as the ultimate legal safeguard in the Indonesian guardianship system.

Substantively, the existence of a temporary guardianship agency (BHP) is a form of state protection for children as vulnerable legal entities. This function is not merely administrative or temporary, but also contains elements of distributive justice and the protection of children's human rights. In unstable family situations, such as divorce, parental death, or family conflict, the state, through the BHP, assumes responsibility for the child's welfare, at least until a legally authorized guardian can fulfill his or her role.

#### **b. Supervisory Guardianship**

In every trust that is open in the Indonesian jurisdiction, BHP is legally assigned as a supervising guardian. This function is explicitly regulated in Articles 366–375 of the Civil Code, which state that the supervising guardian is obliged to supervise all actions of the guardian from the beginning until the end of the guardianship. Guardianship can arise from two sources:

- Judge's Determination, when the guardian is formally appointed by the court; and
- The provisions of the law, which apply automatically, such as in the case of parents who die or become legally incompetent.

In this context, the role of BHP becomes very important because it has the authority to:

- 1) Conducting an evaluation of the suitability and capabilities of the guardian,
- 2) Receive accountability reports from the guardian periodically,



- 3) Verifying the accuracy of children's wealth data, and
- 4) Provide recommendations to the court if it is found that the guardian's actions are detrimental to the child.

As the supervising guardian, the BHP acts independently and can file objections or request the revocation of guardianship if there are indications of abuse of power by the guardian. This provides healthy checks and balances in the family law system.

Article 127 of the Civil Code also provides the administrative basis for the guardian's role as a supervising guardian. In the event of the death of one parent, the surviving parent is required to prepare an inventory of assets, which must then be submitted to the guardianship supervisory agency (in this case, the BHP). This inventory serves as a crucial tool for the BHP to monitor and evaluate the guardian's actions, particularly regarding the management of the child's assets (Yani, 2022).

By carrying out this supervisory function, the BHP ensures that child care is not solely based on the guardian's authority, but also on the basis of the child's best interests. In practice, this supervisory function includes the following aspects:

- Protection of children's assets;
- The right to education;
- The right to health; and
- The right not to be abused or exploited by guardians.

### **The Impact of Legal Reform Efforts on the Duties of the Estate and Estate Agency (BHP)**

The Indonesian government's efforts to reform national law since the beginning of independence have had a significant impact on the existence of the Estates Office (BHP). Fundamental changes in the Civil Code (KUHPerdata) resulting from the enactment of various new laws have meant that the BHP no longer holds the same standing as it did during the colonial period. Several regulations that have a direct impact on the BHP's authority include Law No. 5 of 1960 concerning Basic Agrarian Principles, Law No. 1 of 1974 concerning Marriage, and Law No. 37 of 2004 concerning Bankruptcy. The birth of these new regulations requires the BHP to adapt to the ever-evolving legal conditions, in order to maintain its important role in the national legal system (Melinda & Djajaputra, 2021).

These changes reflect efforts to reform national law, not only technically but also addressing the institutional and functional aspects of state institutions. The BHP, which previously held a central position in the areas of guardianship, bankruptcy, and inheritance management, now faces new challenges with the limitation of its authority and the division of roles with other



institutions. This demonstrates a dualistic consequence: on the one hand, it strengthens the BHP's relevance in certain areas, while on the other, it narrows the scope of its authority.

In the area of guardianship, Law No. 1 of 1974 concerning Marriage brought fundamental changes. Prior to the enactment of this law, the Civil Code served as the primary basis for regulating guardianship, with the BHP playing a crucial role as a supervising guardian. However, after the Marriage Law came into effect, most provisions in the Civil Code only applied to certain groups, while those provisions were no longer relevant to indigenous communities. As a result, the BHP's role as a supervising guardian became increasingly unknown to the public, even though this role is truly crucial in protecting the interests of minors who are not under the authority of their parents.

Although the role of the BHP in guardianship is not explicitly stated in Law No. 1 of 1974, this function remains valid based on Article 66 of the law, which states that other provisions not yet regulated remain valid. This is also in accordance with Article II of the Transitional Provisions of the 1945 Constitution, which emphasizes that old laws and regulations remain valid as long as they have not been replaced by new ones. Thus, the role of the BHP as a supervisory guardian still has strong legal legitimacy, and its existence is still needed to prevent the occurrence of a legal vacuum in matters of guardianship.

The strengthening of the BHP's role as a supervising guardian is also evident in Article 35 of Law No. 23 of 2002 concerning Child Protection. If the court has not yet appointed a guardian, the BHP can manage the assets of minors. This demonstrates the recognition that the BHP remains relevant in the modern legal system, particularly in providing legal protection for children in vulnerable situations. Therefore, despite changes in its role, the BHP's supervisory function remains significant (Permadi, 2023).

With this new regulation, the BHP's role as a guardian can be applied to all Indonesian citizens, without discrimination as was the case during the colonial era. This expanded role represents a strategic opportunity for the BHP to demonstrate its relevance in the modern era. However, public awareness of the BHP's role remains minimal, leaving the general public unaware of its crucial role in providing legal protection for minors. Legal changes also significantly impacted the function of the BHP in the bankruptcy sector. Initially, the *Faillissements-Verordening* (Staatsblad 1905:217 jo Staatsblad 1906:348) served as the basis for bankruptcy regulations, with the BHP as the sole authorized curator. However, this regulation was deemed no longer appropriate to the legal needs of society and national economic developments. Consequently, Government Regulation in Lieu of Law No. 1 of 1998 was enacted, which was later



enacted as Law No. 4 of 1998, and subsequently Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

The introduction of Law No. 37 of 2004 brought significant changes by introducing private curators alongside the BHP. This marked a paradigm shift in the bankruptcy system, from a monopoly of BHP as government curator to a competitive climate with private curators. Consequently, BHP must improve their quality and professionalism to remain competitive in handling bankruptcy cases. In practice, commercial court judges have the authority to appoint curators, whether from the Publicly-Owned Enterprise (BHP) or privately-owned enterprises. Although the law provides a default position for BHPs if no other proposals are made, judges often give preference to privately-owned enterprises. This poses a serious challenge for BHPs, as even if their qualities are not inferior to those of government curators, public image and trust often favor privately-owned enterprises.

The curator's function as a BHP encompasses various important tasks, such as managing and settling the bankrupt debtor's assets, announcing the bankruptcy declaration, compiling an inventory of assets, listing debts and receivables, and distributing the proceeds of the bankruptcy estate to creditors. All of these tasks must be carried out with transparency and prudence, as they affect the interests of both the debtor and the creditors. The existence of a private curator with the same authority as the BHP does expand options for debtors and creditors. However, on the other hand, this could diminish the BHP's role as a state institution that previously had sole authority in bankruptcy. Therefore, the BHP's continued function as a curator requires an institutional strengthening strategy to compete professionally with private curators.

In the area of inheritance, the BHP's authority is closely related to the issuance of Certificates of Inheritance Rights (SKHW). Based on Articles 20 and 23 of Government Regulation No. 10 of 1961 concerning Land Registration, a SKHW is a document required to register the transfer of land rights due to inheritance. Thus, the BHP plays a crucial role in providing legal certainty regarding the status of inherited assets. The BHP has administrative authority over the issuance of SKHWs, including recording wills, conducting on-site inspections of inherited assets, and managing inheritance files. This ensures that the SKHWs issued by the BHP have a high level of accuracy, as they are based on official inspection data. This function distinguishes the BHP from other institutions authorized to issue SKHWs.

However, the BHP's authority to issue SKHWs is increasingly limited due to the division of authority between notaries, village heads/sub-district heads, and other officials. For example, for indigenous people, SKHWs can be drawn up by the heirs, witnessed by the village head and the



sub-district head; while for those of Chinese and European descent, a notary must issue them. This limits the BHP's role to certain groups, further narrowing its scope of duties (Permadi et al., 2024).

Based on the overall research findings, it can be concluded that efforts to reform national law have had dual consequences for the BHP. On the one hand, its role remains necessary in the areas of guardianship, bankruptcy, and inheritance to ensure legal certainty. However, on the other hand, its scope of authority is increasingly limited due to the presence of other institutions that share similar functions. This situation highlights the importance of strategies for institutional strengthening, increasing professionalism, and public outreach to ensure the BHP remains relevant in Indonesia's modern legal system.

### **The Process of Implementing Guardianship at the Surabaya Estates Office**

The Surabaya Inheritance Office (BHP) as a technical implementing unit under the Ministry of Law and Human Rights has strategic authority in the areas of inheritance management, guardianship supervision, and the implementation of guardianship. The guardianship function has a legal basis in the Civil Code (BW) Articles 433–462 which position guardianship as a legal status when a person is declared incompetent to perform legal acts. This incompetence can be caused by wastefulness, mental weakness, stupidity, brain disease, or blindness, so that a guardian appointed by a judge's order is required. BHP in this case plays a supervisory guardian (*toeziende curator*) who ensures that every guardian's actions are in line with the best interests of the party placed under guardianship.

Research shows that the requirements for implementing guardianship are both administrative and legal. The primary requirement is a decision from the District Court, formally legitimizing the guardianship status. Furthermore, the identity of the guardian and the complete identity of the person under guardianship must be clear to avoid potential legal disputes. Another important requirement is proof of the wealth or property of the party placed under guardianship, considering that guardianship concerns not only personal protection but also asset management. With these requirements, the guardianship system ensures effective legal protection while reflecting the principle of legal certainty (Permadi et al., 2023).

From a procedural perspective, the guardianship process begins with the prospective guardian submitting an application to the Head of the BHP, after which the documents are verified by an officer. If the documents are deemed complete, the applicant is required to pay the PNBPN in accordance with the provisions. This stage demonstrates that guardianship services emphasize not only legal aspects but also administrative and financial dimensions integrated into the state service system.



Furthermore, the guardianship must be announced in newspapers and the State Gazette of the Republic of Indonesia. This announcement serves as a public transparency instrument, ensuring all parties are aware of the legal status of the person placed under guardianship. The Guardianship Agency (BHP) then prepares various official documents, such as a property registration, oath minutes, explanatory minutes, and a statement, if necessary. The guardian's oath of office can be held at the BHP office or at their residence, signifying the guardian's moral and legal commitment to carry out their duties honestly and responsibly.

The final stage is ongoing supervision by the Surabaya Legal Aid Agency (BHP Surabaya) as the supervising guardian. This supervision ensures that neither the personal interests nor the assets of the person placed under guardianship are misused. Therefore, the study concludes that the Surabaya Legal Aid Agency plays a central role in providing legal protection for those with legal incompetence. The guardianship system implemented not only provides legal certainty but also ensures substantive justice, transparency, and accountability in protecting the rights of vulnerable parties.

### **Guardianship Cases at the Estates Office**

The Surabaya Estate Management Agency (BHP) as the supervising guardian in custody faces serious challenges in practice. One real-life case illustrates a husband residing in Surabaya who was placed under the guardianship of his wife, who lives in Jakarta. Legally, the wife has the responsibility as guardian to manage, supervise, and protect her husband's interests. However, in practice, the guardian rarely fulfills her obligations, partly due to personal factors such as a reluctance to live with her in-laws. This situation leads to neglect of meeting the husband's basic needs, including medical expenses, transportation, and accommodation while traveling, thereby posing a risk of loss to the custodian.

This issue highlights a structural weakness in the guardianship system. On the one hand, the law mandates that the guardian assume full responsibility for the interests of fraudulent parties. However, on the other hand, Article 3 of Minister of Law and Human Rights Regulation No. 7 lacks detailed provisions regarding the mechanism for using the guardian's assets or sanctions for negligent guardians. This regulatory gap creates legal uncertainty and increases the potential for negligence, as there is no legal instrument to compel the guardian to effectively fulfill their obligations (Sulistyarini et al., 2022).

From a legal perspective, this case should fall under the jurisdiction of the Surabaya District Court, in accordance with the husband's domicile as the custodial party. This confirms that the custodial authority is formally valid, but weak implementation in practice prevents the goal of



legal protection from being achieved. Oversight mechanisms should be implemented in layers, involving the Legal Aid Agency (BHP) as the supervising custodian, to ensure the interests of the custodial party are protected. However, research shows that without clear regulations, this oversight function cannot be carried out optimally.

Therefore, this study emphasizes the urgency of more detailed and operational regulatory improvements regarding guardianship. Revisions to Minister of Law and Human Rights Regulation No. 7 of 2021 should include provisions on guardianship obligations, asset management reporting mechanisms, and strict sanctions for negligent guardians. These regulations are crucial to provide legal instruments that can be used by the BHP and the courts to enforce guardianship obligations. Furthermore, oversight can be strengthened through mandatory periodic reporting, asset management audits, and direct monitoring by supervisory agencies (Simbolon & Sh, 2022).

Solutions to guardianship issues also require both administrative and practical approaches. Administratively, guardians should be required to submit periodic reports and official records regarding expenses and the fulfillment of the needs of the custodian. Practically, the use of communication technology can facilitate long-distance coordination between guardians and custodians, and allow for the involvement of third parties or professionals if the guardian is unable to perform their duties optimally. Furthermore, public awareness of the rights and obligations of guardians needs to be strengthened to increase legal awareness. With these integrated measures, the guardianship system can return to its primary purpose: providing real, effective, and equitable legal protection for those who are legally incompetent.

### **Constraining Factors That Arise in the Implementation of the Role of the Surabaya Estate and Heritage Office**

In carrying out its duties as a guardian, the Surabaya Estate Agency (BHP) faces several obstacles that impact the effectiveness of its guardianship. The limited number of competent human resources in inheritance law and estate administration is a major obstacle, as the limited number of staff is not commensurate with the increasing volume of cases. Case complexity is also increasing, particularly regarding the management of modern assets such as stocks, cryptocurrencies, or intellectual property rights, which require specialized technical knowledge. This situation leads to a backlog of cases, delays in service delivery, and a decline in the quality of legal protection for those under guardianship.

Furthermore, the BHP faces challenges in coordination and communication with relevant parties. Difficulties in tracking heirs domiciled abroad or in remote areas are exacerbated by the lack of access to integrated population data. Differences in legal systems between countries also



create complications in resolving cases involving foreign heirs. Technically, limited infrastructure and a conventional management information system make the administrative process slow, prone to errors, and lacking integration with other agencies such as the National Land Agency (BPN), the Directorate General of Taxes (DGT), and financial institutions. Consequently, the asset verification and validation process takes a long time and contributes to low public satisfaction with BHP services (Beni, 2008).

The problem is further complicated by the legal vacuum surrounding the guardianship and management of inherited assets. The absence of strict sanctions for negligent guardians creates legal uncertainty and opens up opportunities for misuse of the guardian's assets. The lack of collaboration between agencies also hampers the effectiveness of guardianship oversight and monitoring. Therefore, the effectiveness of the BHP's role can only be enhanced through more detailed regulatory improvements, strengthening human resource capacity, accelerating the digitalization of services, and optimizing collaboration with relevant institutions. These steps are crucial to ensuring that the guardianship function truly protects the rights and interests of both the legally incompetent and their heirs.

#### **4. CONCLUSION**

Based on the research results, the authority of the Estates Office (BHP) in guardianship under Indonesian law is based on the Civil Code and related regulations, with its position as a supervisory guardian whose function is to ensure the guardian's compliance with their obligations. The BHP has the authority to monitor the guardian, examine reports on the use of assets, provide guidance, and demand accountability in the event of misuse or negligence. However, this authority is limited to a supervisory function alone, without the authority to directly manage assets. Therefore, the BHP's primary role lies in strengthening control mechanisms to ensure the interests of the guardian are truly protected.

The effectiveness of implementing this authority in practice is significantly influenced by internal and external factors. Internal factors include limited human resources, uneven employee capacity, and conventional administrative and digitalization systems. Meanwhile, external factors, such as constraints on inter-agency coordination, difficulties in tracking heirs, minimal data integration, and a legal vacuum regarding sanctions for negligent guardians, further worsen the quality of supervision. The lack of cross-agency collaboration, particularly between the BHP and the District Court, Notaries, the Civil Registration Office, and the National Land Agency (BPN), also poses a significant obstacle. Therefore, this study emphasizes the importance of regulatory





reform, increased human resource capacity, accelerated digitalization, and strengthened inter-agency cooperation as strategic steps to ensure effective BHP supervision and optimal legal protection for those under its guardianship.

## REFERENCES

- Ali, A. (2002). *Menguak tabir hukum: Suatu kajian filosofis dan sosiologis*.
- Amiruddin, A. Z. (2006). *Pengantar Metode Penelitian Hukum* Jakarta: Raja Grafindo Persada. *Cet. Ke-1*.
- Beni, A. S. (2008). *Metode Penelitian Hukum*. Bandung: Pustaka Setia.
- Melinda, S., & Djajaputra, G. (2021). Pembuatan Akta Notaris Di Luar Wilayah Jabatannya Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. *Syntax Literate; Jurnal Ilmiah Indonesia*, 6(7), 3521–3541.
- NURHAYATI, B. R., & PURWANTO, I. H. (2017). *Hukum Perdata, Hukum Perorangan dan Keluarga*. Universitas Katolik Soegijapranata.
- Permadi, I. (2023). Electronic title certificate as legal evidence: The land registration system and the quest for legal certainty in Indonesia. *Digital Evidence & Elec. Signature L. Rev.*, 20, 47.
- Permadi, I., Kamula, A. A., Sari, B. S. W., & Wiratmanta, A. (2023). *HUKUM AGRARIA KONTEMPORER: Relasinya dengan Pembangunan Ekonomi di Indonesia*. Pustaka peradaban.
- Permadi, I., Maharani, D. P., & Ahmad, M. Y. (2024). LEGAL PERSPECTIVES ON DIGITALISING LAND CERTIFICATES: Analyzing Synchronization and Harmonization in Indonesia's Job Creation Law. *Jurisdictie: Jurnal Hukum Dan Syariah*, 15(2), 337–379.
- Simbolon, N. Y., & Sh, M. (2022). *Pengantar Ilmu Hukum*. *Pengantar Ilmu Hukum*, 87.
- Sulistyarini, R., Widyanti, Y. E., Suwardiyati, R., & Wicaksono, S. (2022). *Hukum Perdata: Buku Ajar*. Universitas Brawijaya Press.
- Wijayanti, A. (2009). *Hukum ketenagakerjaan pasca reformasi* (Vol. 1). Sinar Grafika.
- Yani, D. (2022). Perlindungan Hukum Terhadap Harta Warisan Anak Melalui Revitalisasi Balai Harta Peninggalan (BHP). *Jurnal Notarius*, 1(1).

