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**THE VALIDITY OF A HUSBAND'S GUARDIANSHIP OVER HIS WIFE IN THE SALE AND PURCHASE OF LAND RIGHTS**

**WIFE'S INHERITED PROPERTY (Case Study Ngawi District Court Number 14/Pdt.G./2019/PN Ngw)**

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**Abstract**

The transfer of land rights through sale and purchase is evidenced by the execution of a Sale and Purchase Deed (Akta Jual Beli) before a Land Deed Official (PPAT). This research aims to analyze the validity of a husband’s guardianship over his wife in the sale and purchase of land that constitutes the wife’s separate property, conducted without the consent of the heirs, as well as the liability of the PPAT in preparing a sale and purchase deed based on a guardianship determination without the heirs’ approval. The research method used is normative juridical research. The validity of guardianship that does not comply with the provisions of Article 434 Paragraph (1) of the Indonesian Civil Code has the potential to violate the rights of the heirs in the sale and purchase of the wife’s separate property. The execution of the sale and purchase deed creates issues for the PPAT, as negligence in preparing the deed based on a guardianship decision without valid heirs’ consent, whether intentional or not, can result in losses to other parties and give rise to civil and administrative liability. This study concludes that the husband’s guardianship over the wife in the sale and purchase of the wife’s separate property is formally defective because it contradicts statutory regulations, affecting the validity of the sale and purchase deed which does not meet material requirements. The actions taken by the PPAT are contrary to Article 16 Paragraph (1) Letter a of the Law on Land Deed Officials (UUJN), which requires that in preparing deeds, the PPAT must act honestly, faithfully, thoroughly, independently, impartially, and safeguard the rights and interests involved in the legal act.

**Keywords:** Guardianship, Inheredited Property, PPAT responbility

# Introduction

Government Regulation No. 24 of 1997 on land registration has the objective that Indonesian citizens as landowners are required to register their land. Land registration aims to provide legal certainty and administrative order in the management of land rights. The National Land Agency, hereinafter referred to as BPN, is a government agency authorized to carry out the registration process and issue land certificates as proof of legal ownership.(Sutedi, 2014) Effect of land registration, there can be a transfer of rights to land or buildings, or registration of rights for the first time. The transfer of rights does not immediately occur, but must be proven by an authentic deed. An authentic deed is an official document made by an authorized official and meets the requirements stipulated in the Law.

Conveyancer **(**PPAT) has an important role in the sale and purchase of land or buildings. The presence of a Conveyancer (PPAT) is required to make a valid and legally binding deed of sale and purchase. The authority of PPAT in making a deed of sale and purchase must pay attention to material truth and formal truth. The sale and purchase of land rights, which is inherited property controlled by each party in marriage, should not be the authority of the spouse during marriage. The making of a deed of sale and purchase before a PPAT which is the inherited property of the wife is legally invalid by the husband in marriage.

The provisions of Article 35 paragraph (2) of Law Number 1 Year 1974 explain that inherited property, namely property owned by a person before marriage, including property derived from gifts or inheritance, is generally the control of each spouse personally. This applies unless there is a marriage agreement that regulates otherwise. (Hadikusuma, 2007) Before marriage, both husband and wife already have their respective assets. This property remains their personal property after marriage, meaning they have full control over the property. The property owned by a person before marriage (innate property) remains the person's personal property even after marriage. This property is separate from the joint property acquired during the marriage. A married couple may not take or use their spouse's property without permission, unless there is a specific agreement allowing it.

A case involving the sale and purchase of a husband's property to a wife under guardianship without the consent of her biological children based on a guardianship order occurred between the Plaintiffs and the Defendants where Defendant I was the Plaintiff's biological father who was the husband of Endang Hariwarti's biological mother. Ms. Endang Hariwarti was blessed with two parcels of land. The land was inherited from the parents of Endang Hariwarti's brother. That Endang Hariwarti's sister suffered from an illness diagnosed by a Neurologist as Vascular Dementia, which causes a decrease in brain function and memory loss or mental disorder. Without the Plaintiff's permission, Defendant I filed a guardianship application with the Ngawi District Court in relation to the assets of sister Endang Hariwarti (the Plaintiff's biological mother). Based on the decision of the Ngawi District Court No. 65/Pdt.P/2018/PN Ngw, Defendant I sold his wife's property in the form of land. The actions of Defendant I in selling Endang's property without informing or seeking permission from the Plaintiff, as the biological child or potential heir, harmed the plaintiff.

The request for guardianship in the above case is regulated by Article 434 Paragraph (1) of the Civil Code, namely: “Every blood relative has the right to request the guardianship of a blood relative, based on a state of imbecility, cerebral palsy, or dark eyes”. The guardianship decision was made without the consent of the children as legal heirs, and the entire blood family, namely the heirs, were unaware of the guardianship and did not know that the Applicant had become the guardian of Endang Hariwarti. A guardian must fulfill certain requirements and exercise his/her authority with care. A guardian has rights granted by law. The rights and obligations of the guardian are limited by law to prevent arbitrariness. (Windajani, 2008) Base on Article 434 of the Civil Code contradicts the court decision that appointed the Defendant I as guardian ad litem.

The determination of Defendant 1 as guardian ad litem was used as the basis to sell the land SHM number: 2201 with an area of 599m2 and SHM number: 2202 with an area of 593m2 in the name of the right holder Endang Hariwarti, to Defendant II and Defendant III, based on the sale and purchase deed SHM no. 822/2018 and SHM number. 822/2018 and SHM no. 823/2018 dated October 5, 2018 made before Prakoso Pranajaya (Defendant IV) as acting PPAT of Paron Sub-District who issued the land title deed and registered the land title to Defendant V. The PPAT is not entitled to determine the formal correctness of formal documents that have been issued by certain agencies, but the PPAT is obliged to examine all the completeness and validity of the evidence or documents shown to the PPAT, as well as hear the testimony or statements of the faces as a basis for consideration to be stated in the sale and purchase deed carefully and carefully. (Christian Assikin Y., , 2019,) Defendant I sold the land (inherited property) based on a guardianship order using a court-appointed guardianship license. This sale was made based on two sale and purchase deeds number 822/2018 and 823/2018 made by a state official in charge of making authentic deeds (PPAT), namely Prakoso Pranajaya as Defendant IV. PPAT must be careful and ensure that all legal procedures have been followed. very contrary to UUJN Article 16 Paragraph (1) Letter a deed making must: act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the rights involved in legal actions. The PPAT is obliged to examine all the completeness and validity of the evidence or documents shown to the PPAT, as well as hear the testimony or statements of the faces as a basis for consideration to be stated in the deed of sale and purchase carefully and carefully. PPAT is responsible for making the sale and purchase deed on the basis of a court order, but the form of PPAT's responsibility needs to be researched because there are legal consequences for making a deed that is not based on the validity of a sale and purchase agreement against the assets.

# Problem

1. How legalize of the husband's guardianship of his wife over the sale and purchase of land rights that are the wife's inherited property without the consent of the heirs?
2. How PPAT responbillity by creating sale and purchase deed based on guardianship decision without consent from the heirs?

# Research Method

This research method using normative juridical, which analyzes the process of finding rules, processes and principles that can answer legal issues, (Marzuki, 2010) by compile legal data through literature study with reference to primary, secondary and tertiary legal sources. The research approach used is the Legislation approach, case approach and conceptual approach, which is then analyzed qualitatively. The research specification used is prescriptive research. The legal analysis used in this research is qualitative, carried out by explaining and analyzing legal issues with the deductive method, a conclusion will be drawn as an answer to the problem under study. This research uses the statutory interpretation method by linking a regulation with other regulations.

# Problem

**1. The Validity Of Guardianship By A Husband Over His Wife For The Sale And Purchase Of Land Rights That are The Wife's Inherited Assets Without The Consent Of The Heirs.**

Guardianship is granted to an incapacitated person to guarantee and protect his or her rights. P.N.H. Simanjuntak explains the definition of guardianship as follows: (Simanjutak, 2007) “Guardianship is a legal measure that aims to place an adult in the same position as a minor. The individual under guardianship is called Curandus, while the person responsible for guardianship is called Curator. The guardianship process itself is known as Curatele.” The District Court's guardianship order in this case was not based on Article 434 of the Civil Code. The guardianship order against Defendant I should have followed the procedure set out in Article 438 of the Civil Code. This article requires that before the court makes a decision, the opinions of blood relatives or relatives by marriage must be heard. The plaintiff, as the biological daughter of Endang's mother, was entitled to give her opinion regarding the guardianship application. Article 439 of the Civil Code states: “After District Court hearing or legally summoning the persons referred to in the previous article, the person for whom guardianship is sought shall also be heard, and if the person is unable to come, the examination shall be held at his house by one or more Judges appointed for that purpose, accompanied by a clerk, and in all cases attended by the prosecution service.” Article 439 of the Civil Code confirms that in guardianship cases, in addition to hearing the opinion of the family, the court must also provide an opportunity for the person for whom guardianship is sought to express his opinion directly. It can be concluded from Article 438 of the Civil Code that in applying for guardianship, Defendant 1 should have sought the opinion of the Plaintiff, who as previously described is the biological daughter of Endang's mother.

In guardianship applications where a husband or wife wishes to represent their spouse in managing their respective assets, the judge must be very careful. The judge is obliged to listen to the opinions of the blood relatives, especially the children of the spouse, because according to the law, it is the children who should take care of their parents' inheritance. The guardianship application in this case is governed by Article 434 Paragraph (1) of the Civil Code, namely: “Every blood relative has the right to request the guardianship of a blood relative, based on a state of imbecility, cerebral palsy, or dark eyes”. The guardianship order was made without the consent of the children as legal heirs, and the entire blood family, namely the children, were unaware of the guardianship order and did not know that the Applicant had become the guardian of Endang Hariwarti. A guardian must fulfill certain requirements and exercise his/her authority with care. A guardian has rights granted by law. The rights and obligations of the guardian are limited by law to prevent arbitrariness.” (Windajani, 2008) If a guardianship application is accepted by the court, both the prospective guardian and the person to be guarded must fulfill certain conditions. (Santoso, 2023 ) In order to be a guardian, the guardian must be a blood relative of the person to be guarded, either in the straight line (e.g. parents, children) or side line (e.g. siblings, uncles/aunts) up to the fourth degree.

The Conditions of Being a Guardian:

1. The person must be mentally retarded, insane, or have some other mental disorder that renders them incapable of taking care of themselves.
2. Extravagance, i.e. they can also apply for guardianship if they are proven to have committed excessive extravagance to the detriment of themselves or others.
3. Incapacity, which means that the person is unable to manage their own interests and rights properly.

Article 434 of the Civil Code stipulates that a guardian is a blood relative, in the straight line or sideways, only up to the fourth degree and does not stipulate the authority of a husband or wife to request a guardianship order for his or her wife or husband. Defendant I (Endang Hariwati's husband), based on Article 434 of the Civil Code, does not have the authority to act as guardian over his wife (Endang Hariwati) who suffers from Demintia Vascular disease and without the consent of the Plaintiff. The Plaintiff is a blood relative as well as her children who were not consulted in the guardianship application and acted on their own in carrying out a legal action.

The judge must also assess whether the plaintiff as the child is mature enough (legally capable) to carry out this duty. The guardianship application must be detailed and clear. The applicant must specify the purpose of the application, i.e. what he/she wants to become a guardian for. The applicant should also request clear authority from the court, such as the authority to conduct land transactions and represent their spouse in court. The judge can then make a decision that is appropriate and in the best interests of all parties involved. Guardianship applications, especially those filed by a husband or wife against their spouse, must be carefully considered by the judge. The judge should not only look at the application from the applicant's perspective, but also consider the opinions of the children and the interests of all parties involved. The validity of the guardianship application must be made in detail and clearly so that the judge can make an appropriate decision, namely:

1. An application for guardianship must submit evidence that the respondent is a person who needs to be placed under guardianship in accordance with Article 437. When a person applies to become a guardian for another person, the applicant must provide strong evidence. This evidence is intended to convince the judge that the person for whom the guardianship application is made really needs a guardian. This evidence must be in accordance with the provisions listed in Article 437 of the Civil Code. A doctor's certificate showing a physical or mental health condition that makes a person incapable of taking care of themselves, witness testimonies from people who have direct knowledge of the respondent's condition, other documents such as the results of a psychological examination, a certificate from the police, or other relevant documents.
2. Article 438 of the Civil Code requires that the opinions of blood relatives or next of kin be heard in the proceedings. Article 438 of the Civil Code stipulates that in the guardianship application process, the opinions of the blood relatives of the person applying for guardianship must be heard. The opinion of the blood relatives is very important because if the blood relatives have a different opinion on the guardianship applicant, the blood relatives can give the guardianship rights to the father or husband of Mrs. Endang because the family agrees.
3. The court must hear the testimony of the person seeking guardianship. In addition to hearing the opinions of the family, the judge must also hear direct testimony from the person against whom the guardianship application is being filed (the respondent), namely Ms. Endang. The respondent may not be fully capable of providing clear testimony, but her opinion should still be considered. The aim is to ensure that the judge's decision is based on complete and correct information.

A husband cannot legally be a guardian over his wife without a specific reason for transferring her property because it violates the regulations stipulated in Article 434 of the Civil Code. The guardians are blood relatives and Article 438 of the Civil Code by hearing the testimony of blood relatives if there is another agreement to grant guardianship over his wife, if the blood relatives know and agree to the guardianship by the husband then the judge can decide on the guardianship because of the agreement of the entitled parties. The guardianship was applied for by the respondent 1 himself without the knowledge of his blood relatives, therefore the guardianship was formally flawed because it contravened the law by not being known by his children as the legitimate blood relatives who were entitled to guardianship, so the respondent 1's position as guardian was legally invalid in eroding the legal rights of the guardian, especially regarding the sale of the guardian's property. The authority of the first respondent to sell the land which was the property of the guardian without the consent of the plaintiff was invalid because the plaintiff was not a legitimate seller according to the law because he had violated the guardianship regulations, so materially the authority of the guardian to sell the property of his wife was not fulfilled because the land which was the property of Mrs. Endang was the right of her children as her heirs.

The sale and purchase of Mrs. Endang's inherited property based on the guardianship decision as evidence of the transfer of land rights must fulfill the legal requirements of an agreement. Deviations from the material terms of the sale and purchase agreement in the preparation of an authentic deed mean that there are errors or discrepancies in the content or substance of the agreement set out in the deed. The contents of this agreement must fulfill the legal requirements of an agreement as regulated in civil law.

The object of land rights for inherited property is regulated in Article 35 paragraph (2) of Law Number 1 Year 1974, namely “The inherited property of each husband and wife and the property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise.” The above article explains that inherited property, which is property owned by a person before marriage, including property derived from gifts or inheritance, is generally under the control of each spouse personally. Therefore, if there is a guardianship application, the guardianship is carried out by the blood family or the agreement of the blood family if a husband will guard his wife, but for the transfer or sale of inherited property, the approval of his children as legal heirs is required even though the guardian has not died because there is a share of the rights of his descendants, namely his children. Control of inherited property applies unless there is a marital agreement stipulating otherwise. In conclusion, Article 438 of the Civil Code states that in the process of applying for a guardianship license, the Applicant (Defendant I) should have involved the Plaintiff, who is the biological child of her mother (EH), however, during the trial there was no evidence to suggest that the Plaintiff was ever asked or heard in relation to the guardianship application and the sale license submitted by Defendant I. The decision of the Ngawi District Court regarding the guardianship rights was deemed legally flawed and invalid to be used as the basis for the sale and purchase of land recorded in the Sale and Purchase Deed: the deed of the Ngawi District PPAT in the name of PRAKOSO PRANAJAYA, SH (Defendant IV).

1. **PPAT's responsibility in making a sale and purchase deed based on a guardianship decision without the consent of the heirs.**

When a PPAT makes a deed of sale and purchase without involving all eligible heirs, the deed is potentially legally flawed and can be canceled. This can cause problems for the PPAT because its negligence, whether intentional or not, can result in losses for other parties. As a result, the PPAT can be sued for damages and even charged with a crime if it is proven to have made a mistake in the process of making the deed. Cancellation of the deed by the court can occur if a legal defect is found in its making, either from an administrative, civil, or criminal perspective if the PPAT concerned is proven guilty in the procedure of making the Sale and Purchase Deed. (Herlin, 2008)

* 1. Liability of PPAT

Dicstrict Court Decision Number 14/PDT.G/2019/PN Ngw which is a legal case involving an unlawful act committed by a PPAT. This action violates the provisions of Article 1365 of the Civil Code, which states that every person who through his fault causes harm to another person is obliged to compensate for the loss. In this case, the party who feels harmed due to the PPAT's error or negligence in making the sale and purchase deed can file a civil lawsuit. The plaintiff must prove the existence of an unlawful act committed by the PPAT, which includes elements such as the existence of an act, fault, loss, and causal relationship between the act and the loss. (Badrilzaman, 1987)

The explanation of the above elements, if connected to the case in this decision regarding the sale and purchase of the wife's property based on the guardianship decision without the consent of the heirs, is as follows:

* + 1. An Existence of an Act
    2. Defendant IV as a PPAT has been proven to have violated the professional code of ethics by not performing his duties responsibly, honestly, independently, and impartially. The actions of the PPAT were also contrary to the Regulation of the Head of BPN RI Number 1 Year 2006. The PPAT has violated his oath of office and participated in the criminal conspiracy that caused the dispute. The PPAT ignored its obligation to be careful in determining the parties authorized to perform legal acts, especially in the case of the sale and purchase of inherited property, resulting in a deed of sale and purchase that was made legally defective. A PPAT should, if he bases the making of a sale and purchase deed on a court guardianship decision, be more careful to secure himself because it is inherited property and has children, according to the laws and regulations, if his children as legal heirs are not present in front of him, he must consciously know the legal consequences of his actions in the future.
    3. Unlawful Act

The actions taken by the PPAT as Defendant IV above are in contravention of UUJN Article 16 Paragraph (1) Letter a, which states that in making a deed, the PPAT must be honest, trustworthy, thorough, independent, impartial, and safeguard the interests of the rights involved in the legal action.

* + 1. Presence of Errors

Based on Article 1365 of the Civil Code, to be considered as committing a tort, a perpetrator must be proven to have an element of fault. This fault can be in the form of intent or negligence, and there are no excuses that can eliminate legal responsibility. In this case, Defendant IV as the PPAT has been proven to have violated the precautionary principle stipulated in Government Regulation No. 24 of 1997, thereby causing harm to the Plaintiff. The actions of Defendant IV who was not careful and meticulous in carrying out his duties as a PPAT is a form of negligence that can be used as a basis to hold the Plaintiff legally responsible.

* + 1. Presence of Loss

The unlawful act of Defendants IV and I in issuing a deed of sale with false information has resulted in the loss of the Plaintiff's property rights over the disputed land.

* + 1. The existence of a causal relationship between the act and the harm.

As a result of the creation of sale and purchase deeds number 822/2018 and 823/2018, the Plaintiff's title to the land was transferred to the names of Defendants II and III, to the detriment of the Plaintiff because it violated the Plaintiff's rights to the land.

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* 1. Administrative Responsibility of PPAT

The sale and purchase of the wife's property which is the right of her son as the heir has violated the provisions of the implementation of the PPAT office, violation of the obligation for PPAT to present the legitimate parties because the property is the original property which is the inheritance of Endang's mother's parents and violation of the PPAT Code of Ethics which has been carried out by Defendant 1 as a PPAT, namely:

* + 1. Failure to be professional in carrying out his/her obligations and duties as a PPAT as a public official authorized by law to make authentic deeds regarding legal acts concerning land.
    2. The existence of criminal intent in entering into an agreement because the person acting under a court order of guardianship is acting under his or her own power of attorney to conduct a sale and purchase without the participation of his or her legal heirs, which may result in disputes or conflicts that may harm the legal heirs.
    3. Making the PPAT deed knowing that the property is inherited property from Endang's parents as his wife, the PPAT should have asked to present the parties authorized to carry out legal acts because the biological children as the legal heirs were not present in front of him.
    4. The statement given in the preparation of the sale and purchase deed was not based on the truth in accordance with the laws and regulations because the basis for the preparation of the sale and purchase deed was a guardianship order, which could lead to a dispute.
    5. The establishment of a Sale and Purchase Deed that has been registered with SHM No. 822 of 2018 and SHM No. 823 of 2018 dated October 5, 2018 is not based on procedures in accordance with the provisions of the laws and regulations, namely not presenting the entitled parties, there is a deviation from the PPAT's oath of office, namely that the PPAT will carry out his office with full awareness, responsibility, carefulness and honesty and impartiality.

The Sanction of violations committed by PPAT in the form of temporary dismissal is carried out by the Head of the Regional Office of the National Land Agency Article 14 paragraph (2) Permen ATR / BPN 2/2018. Violation of the Code of Ethics by PPAT can provide Sanctions to PPAT based on Article 6 paragraph (1) of the PPAT Code of Ethics, namely for members who violate the PPAT Code of Ethics may be subject to sanctions in the form of reprimand, warning, temporary dismissal from membership of the PPAT Association; dismissal from membership of the PPAT Association; dishonorable dismissal from membership of the PPAT Association.

# Conclution

A husband cannot legally become a guardian over his wife without a specific reason for transferring her property because he violated the regulations set out in Article 434 of the Civil Code, which states that blood relatives can be guardians and Article 438 of the Civil Code requires testimony from blood relatives. The guardianship was applied for by the respondent 1 himself without the knowledge of his blood relatives and he has 3 children who are capable of being adults, therefore the guardianship was formally flawed because it was not known by his children as legitimate blood relatives who are entitled to guardianship, so the position of the respondent 1 as guardian was legally invalid in eroding the legal rights of the guardian, especially regarding the sale of the property of the guardian. The authority of the 1st respondent to sell the land which was the property of the guardian without the consent of the respondent was invalid because the plaintiff was not a legitimate seller according to the law because he was in violation of the guardianship regulations, so formally the authority of the guardian was not fulfilled so that the sale of the property of his wife violated the material requirements of the sale of the property of Endang's mother, which was the right of her children as her heirs.

The liability of a Land Deed Official (PPAT) in the preparation of a sale and purchase deed based on a guardianship decision regarding the sale and purchase of the wife's inherited property by the husband without involving all of her children as heirs may be subject to civil liability for alleged unlawful acts as well as administrative liability through reporting to the Regional Development and Supervisory Council (MPPD). PPATs are personally liable for the performance of their duties and positions in making deeds that are not in accordance with applicable laws and regulations, which results in losses for the parties that should have been listed in the deed or third parties. PPAT does not involve all of its children as heirs in the sale and purchase deed, so the action can be considered a violation of the law. The aggrieved party has the right to file a civil lawsuit alleging that the PPAT has committed an unlawful act.

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