



LEGAL STATUS OF PARENTAL AUTHORITY OVER UNDERAGE CHILDREN IN APPLYING FOR BANK CREDIT IN PALANGKA RAYA CITY

Siti Nurhaliza¹, Ariani Yestati², Evi³, Mutia Evi Kristhy⁴

^{1,2,3,4}Ilmu Hukum, Universitas Palangka Raya, Kalimantan Tengah, Indonesia

Article Info

ABSTRACT

This research examines the gap between normative legal provisions and banking practices regarding parental authority over minor children in loan applications. Legally, Article 47 of the Marriage Law and Article 345 of the Civil Code stipulate that living parents automatically have guardianship authority without requiring a court decision. However, in practice, banks still require the establishment of guardianship as an administrative requirement for applying for a loan secured by the child's parents' inheritance. The juridical empirical research method was applied in this study, thru interviews with judges from the Palangka Raya District Court and officials from Bank BRI, as well as a study of laws and regulations. The research results indicate a gap between the applicable law and banking practices. The judge ruled that appointing a guardian for the parents was actually unnecessary because that authority was already legally vested, while the bank applied the principle of prudence as stated in Article 29 paragraph (2) of Law Number 10 of 1998 concerning Banking, in order to avoid legal risks and disputes in the future. This research recommends the need for institutional cooperation between the courts and banking thru coordination forums or memoranda of understanding, in order to align legal perceptions regarding the limits of the natural guardianship authority of biological parents.

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Corresponding Author:

Siti Nurhaliza
Ilmu Hukum
Universitas Palangka Raya
sitinurhalizaaa1104@gmail.com

1. INTRODUCTION

The position of parents as guardians for their biological children is a legal necessity regulated by law. This guardianship authority is not merely a moral responsibility, but has been constructed as a legal right and obligation inherent in parental status, providing a legal basis for parents to act on behalf of their children's interests, both in extrajudicial legal relationships and in court proceedings before judicial institutions. (Merchiano et al., 2023)

The legal basis containing the rules related to this is Article 47 of Law Number 1 of 1974 concerning Marriage (Marriage Law), which states that children under the age of majority and who have not yet married are under the authority of their parents. Furthermore, Article 345 of the Civil Code (KUHPerdata) explains that if one of the parents dies, parental authority over the child is automatically transferred to the longest-living parent. (Saefudin, 2022). Based on that rule, if one of the parents is still alive, then custody of the child should still exist, so there is no need for a guardianship order from the court. (Lino, 2022)

Although the law is clear, as long as one parent is still alive, whether the father or the mother, a guardianship order is not actually needed. However, in practice, especially when dealing directly with banking practices, even if one parent is still alive, a guardianship order from the court is still required.

Thus, living biological parents are not automatically authorized as guardians for their children. It is necessary to obtain a guardianship order from the court, which determines that the parents are suitable and entitled to act legally on behalf of their children. Administrative requirements mandating court-appointed guardians for all legal actions, including applying for credit secured by a child's assets, impose an additional burden that not only has financial implications but also diminishes the legal rights of both the child and the parents. The case at the Palangka Raya District Court regarding a guardianship application, where the biological mother filed a guardianship application for her biological children to complete administrative requirements at Bank BRI for a credit loan, as stated in Decision Number 42/Pdt.P/2025/PN Plk.

Based on Palangka Raya District Court Decision Number 42/Pdt.P/2025/PN Plk, a biological mother filed a guardianship determination for her two minor children. The application was submitted to meet the administrative requirements for applying for a loan at Bank BRI, using her husband's inheritance as collateral. In its consideration, the panel of judges affirmed that based on Article 47 of the Marriage Law, the applicant essentially does not require a guardianship decree. However, for practical benefit, the Judge granted the application only for the purpose of applying for a loan, and then the Judge provided a note to the banking industry to understand the concepts of parental authority and guardianship.

A similar case occurred not only in Palangka Raya City. In decision Number 504/Pdt.P/2021/PN Mjk at the Mojokerto District Court, the Judge granted the guardianship application filed by the biological father for his three minor children for the purpose of applying for a loan at Bank Mandiri, using his wife's inheritance as collateral. In his consideration, the Judge opined that legally, biological parents automatically become guardians, but a court order is still required for banking purposes based on the principle of prudence. This principle requires written evidence (*lex scripta*) regarding the basis of rights or legal relationships. Therefore, even biological parents must still obtain a guardianship determination to affirm their validity as guardians for their biological children for legal certainty.

Based on this case, it indicates a discrepancy between the applicable law and the reality in the administrative practices of banking. Article 345 of the Civil Code, which stipulates that if one of the parents dies, the minor child is under the authority of the surviving parent. This is also stated in Article 47 of the Marriage Law, which states that parents have authority over minor children and represent them in various legal acts as long as that parental authority is not revoked. However, in reality, living parents do not automatically become guardians of their children, but must first obtain a guardianship order from the court. (Sugiastuti, 2023)

Thus, the research problem in this study is the regulatory gap between positive law and banking practices regarding the authority of biological parents, who automatically become guardians of their children on one hand, while on the other hand, banks still require a court order (*beschikking*). As such, the problem can be formulated as follows: how is parental authority regulated under Law Number 1 of 1974 concerning Marriage and the Civil Code, and how is the legal status of parental authority applied to minors in applying for bank credit in the city of Palangka Raya?

2. RESEARCH METHODS

The empirical legal method is applied in this study, which is a method designed to describe and examine the law as it appears in social practice. This study aims to understand law in action, focusing on the factual conditions (*das Sein*) of law's application in society. (Muhamimin, 2020). The research was conducted by the Author at the Palangka Raya District Court Class IA, located at Jl. Diponegoro No.21, Langkai, Kec. Pahandut, Kota Palangka Raya, and at Bank BRI KC Palangka Raya Jl. Ahmad Yani No.85, Pahandut, Kec. Pahandut, Kota Palangka Raya. The location was chosen because it is closely related to the research topic of parental power dynamics, and it provides direct access to several parties involved in the credit borrowing process from the bank and the judge handling the parents' guardianship determination application.

The data analysis technique in this study focuses on utilizing primary data sourced directly from the interview process. Interviews were conducted orally with Judges at the Palangka Raya District Court Class IA and Credit Operations Supervisors at the BRI Palangka Raya Branch Office. Meanwhile, secondary data was collected thru a review of various references relevant to the research object, including legal literature, legislation, online information sources, and other supporting documents. All of this data was then analyzed using a descriptive qualitative method, which involved describing the empirical findings, linking them to applicable legal provisions, and drawing conclusions to address the formulated problems.

3. RESULT AND ANALYSIS

Parental Authority Regulations Based on Law Number 1 of 1974 concerning Marriage and the Civil Code

As stipulated in Article 298 of the Civil Code, it is emphasized that every child has a moral and legal obligation to respect and obey their parents. Conversely, parents are obligated to provide maintenance, care, as well as education and guidance to their minor children, according to their respective abilities and responsibilities. Based on this, it can be understood that a child who has not reached the age of 21 and has never been married is considered to lack legal capacity. Thus, parents are legally fully responsible for meeting their children's basic

needs, including care, education, and welfare. (Suparyanto, 2018). Conversely, children who have reached adulthood are responsible for caring for their parents and family members in a direct upward lineage if the parents are unable to do so.

Based on Article 47 paragraph (1) of the Marriage Law, it is stated that "A child who has not reached the age of 18 (eighteen) years or has never been married is under the authority of their parents as long as they are not deprived of that authority." Paragraph (2) states "that the child's parents represent the child's interests regarding legal actions both inside and outside of court." These provisions serve as the legal basis for parents in exercising their authority over their children, including the obligation to represent the child's interests in both legal matters in court and outside of court. However, in situations where one of the parents passes away, Article 345 of the Civil Code stipulates the automatic transfer of parental authority to the surviving parent, which states, "If one of the parents dies, the guardianship of the minor child is legally assumed by the surviving parent, provided that the parent is not released or dismissed from parental authority."

Parental authority is divided into two parts according to the Marriage Law and the Civil Code, namely:

a. Parental authority over children.

A legally legitimate child is under the authority of their parents (ouderlijke macht) until they reach adulthood or get married. This power is essentially exercised jointly by both parents, although it is generally exercised by the father, as stipulated in Article 300 of the Civil Code. If a father is unable to exercise parental authority, for example due to serious illness, memory impairment, traveling without certainty of whereabouts, or being under guardianship (curatele), then that authority passes to his wife. (Gusmawati et al., 2023). Parental authority essentially encompasses the obligation to educate and care for children. Those who are not of sufficient age or do not yet have the legal capacity to act on their own must have their actions associated with their parents. (Yulia, 2015).

As per Article 41 of the Marriage Law, the responsibility for the child's living and academic expenses is essentially borne by the father. However, if the father is unable to fulfill those obligations, the court may determine that the burden should also be borne by the mother. Furthermore, Article 45 states that both parents are obligated to ensure the best possible life and education for their children until they marry or are able to live independently, and this obligation does not cease even if the parents' marriage ends. This responsibility is known as the right to alimony, which is the legal obligation of parents to provide care and education for their children.

Additionally, Article 46 stipulates that children are obligated to respect and obey their parents, as long as what is commanded does not violate the law. After reaching adulthood, children are also obligated to help their parents who are in a direct upward lineage when they need assistance. As for Article 47, it states that a child who has not reached the age of 18 or has never been married is under the authority of their parents, and in this case, the parents have the right to represent the child in legal actions, both inside and outside of court. (Wulandari et al., 2021).

b. Parental authority over a child's property.

Based on the provisions of Article 307 of the Civil Code, the management of the property of a child who is not yet legally competent is the authority of the parents or the holder of parental authority. In this context, parents act as the representatives of the child in any legal actions related to the ownership or management of the property. Additionally, parents are entitled to enjoy the benefits or income derived from their child's property, as long as the use of that income is directed toward the child's interests and well-being. Article 313 of the Civil Code states that parents are not entitled to enjoy the income from their child's property if it concerns:

1) Goods acquired by the child thru their own work and effort.

2) Gifts received by the child with the condition that both parents are not allowed to enjoy them.

The right to the benefits of the harvest cannot be transferred to heirs because this right is a subjective right. According to Article 309 of the Civil Code, "if parents wish to pledge or sell the property of their minor child, they must obtain permission from the court." Furthermore, according to Article 319 of the Civil Code, "parents of recognized illegitimate children are not entitled to the enjoyment of the fruits of the child's property. The right to enjoyment of the fruits ends with the death of the child." (P.N.H. Simantunjak, 2017).

Furthermore, as stated in Article 48 of the Marriage Law, "Parents are not permitted to transfer the rights or mortgage the immovable property owned by their child who is not yet 18 years old or has not yet married, unless the child's best interests require it."

Application of the Legal Status of Parental Authority over Underage Children in Banking Credit Applications in Palangka Raya City

In civil law practice, there are situations where children who are not of sufficient age can be indirectly involved in a legal relationship entered into by their parents, for example, in the management or transfer of

inheritance from deceased parents. If a father passes away and leaves behind a wife and minor children, along with an inheritance of a house, and the mother intends to sell the house to meet the children's living expenses, such action is legally permissible under Article 47 of the Marriage Law. As the legal parent, the mother has the authority to act as guardian in managing the interests of selling the house. This provision is reinforced by Article 345 of the Civil Code, which states that if one of the parents has died, parental authority over the minor child rests with the surviving parent. Based on this, legally, the authority of the surviving parents automatically includes guardianship over their children, as long as the parents are legally competent, their custody rights have not been revoked, and their whereabouts are clearly known. Therefore, applications for guardianship determination thru the court should no longer be necessary, as the legal basis for guardianship is automatically inherent based on statutory provisions. (A. Zahri, 2020).

Based on the cases that occurred in the Palangka Raya District Court, there is a difference between normative law and banking practices. In Case Number 42/Pdt.G/2025/PN Plk, the petition filed by a biological mother is listed, seeking a ruling to be appointed as guardian of her minor child. The applicant is known to have been legally married according to Christian religion in October 2001, had three children, and lost her husband who passed away on October 17, 2024. The applicant intends to obtain legal authority to represent their minor child in legal matters, specifically to apply for a credit loan with a guaranty of the Certificate of Ownership in the name of their late husband to Bank BRI. The applicant has children who are not of sufficient age, named CHILD II and CHILD III, and for this purpose, the applicant, as the biological mother, can legally become the guardian of CHILD II and CHILD III. In that decision, the applicant is indeed the biological parent and has authority over the children as per Article 47 of the Marriage Law, and if the applicant is the longest-living biological parent, then based on Article 345 of the Civil Code, the applicant's children, namely CHILD II and CHILD III, are under the applicant's authority. However, in practice, for administrative purposes in banking, the applicant is still required to obtain a guardianship order from the Palangka Raya District Court as a formal requirement to be able to act on behalf of their children before Bank BRI.

From a civil law perspective, the principle of prudence holds an important position as an ethical and normative foundation in the formulation of all policies and legal products. This principle serves as a control mechanism to ensure that every legal action, especially those concerning the interests of other parties with equal rights, is carried out properly. Essentially, the appointment of a guardian by the biological parents for a minor child is intended to provide legal legitimacy for the parents to take legal actions on behalf of their child, especially when those actions relate to the management or maintenance of the deceased parent's estate. (Wahyudi, 2020).

In banking practices in Indonesia, including in Palangka Raya City, the application of the principle of prudence (prudential banking principle) as regulated in Article 29 paragraph (2) of Law Number 10 of 1998 concerning Banking (Banking Law), the principle of prudence is the main principle for banks in providing credit. (Akbar et al., 2024). The article states, "Banks are obliged to maintain the health of the bank in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the bank's operations, and are obliged to conduct business activities in accordance with the principle of prudence." Based on this article, banks are required to conduct their operational activities with the principle of prudence in order to safeguard the public funds entrusted to them. Based on interviews with the Credit Operations Supervisor of Bank BRI KC Palangka Raya, it was found that legally, biological parents automatically become guardians. However, from the bank's perspective, this policy refers to the bank's internal guidelines, which require the appointment of a guardian for children under 21 years of age and who are not married to legally represent the child, particularly in applying for credit using the child's inheritance from their parents.

Based on that statement, the establishment of guardianship required by the Bank illustrates the implementation of the Prudence principle as stated in Article 29 paragraph (2) of the Banking Law. These requirements are included in other aspects related to bank operations, particularly legal compliance, which is an integral part of the bank's implementation of the principle of prudence as an effort to ensure that all business activities are carried out in accordance with the provisions of the law. Not only that, but this requirement is closely related to asset quality and legal risk management, as banks are obliged to ensure that the loans they provide do not contain legal defects that could reduce the bank's asset quality and avoid legal risks in the future. (M. Masrukhan et al., 2024). The bank strives to maintain its health thru asset quality and legal risk management, ensuring that any legal action against collateral is taken by legally authorized and legitimately entitled parties. Based on the interview with the Credit Operations Supervisor of Bank BRI KC Palangka Raya, this step is not merely a formality, but serves as undeniable formal proof and ensures the bank's legal position remains secure if problems arise in the future.

However, the application of the principle of prudence in the context of parental authority reveals a discrepancy between the applicable law and banking practices. Banks tend to require court approval as an absolute condition for any transaction involving the interests of a minor, even tho, legally, the surviving parent has full authority under the law. In legal considerations in Decision Number 42/Pdt.P/2025/PN Plk, the Judge stated that the Petitioner, as the biological mother, legally has parental authority over her two biological children,

as stated in Article 47 of the Marriage Law, which states: "(1) Children who have not reached the age of 18 or have never married are under the authority of their parents as long as they are not deprived of that authority. (2) Parents represent the child in all legal actions inside and outside the Court." Based on this, according to the law, parents are directly the guardians of their children in taking legal action both inside and outside the court. Based on the interview with the Chief Judge in decision number 42/Pdt.P/2025/PN Plk, it was stated that the appointment of guardianship thru the court is actually unnecessary, as this mechanism is intended for parties other than the biological parents.

In his consideration, the Judge weighed the benefits and advantages in deciding this Petition, and therefore felt that in order to serve the best interests of the child, guardianship could be granted to the Petitioner only for the purpose of representing the child in applying for a loan. Therefore, the Judge was of the opinion that the Petitioner's request could be granted. Furthermore, the Judge emphasized that the financial industry, including banks, insurance companies, and other financial institutions, should wisely understand the concepts of guardianship and parental authority. This is to prevent future applications from biological parents seeking to become guardians of their biological children for specific legal actions, especially since the parents are legally authorized to take various legal actions both inside and outside the Court for the benefit of their children. Parental authority in legal acts is essentially inherent and binding on the child and their property, even in cases involving third parties. However, in the reality of banking practice, written evidence (*lex scripta*) is often required for a case. Thus, even tho they are the biological parents, it is still necessary to obtain a guardianship order from the court as a form of formal legitimacy for its validity. (Billah, 2024).

This issue is not only happening in Palangka Raya City and Bank BRI. In Decision Number 504/Pdt.P/2021/PN Mjk at the Mojokerto District Court, in this case, the biological father filed a guardianship application for his three minor children. The applicant is applying for guardianship of their minor children, initials ZNH, ZGH, and ZSH, to represent them in banking transactions. The purpose and objective of the Applicant applying for credit at Bank Mandiri is for the development of their herbal business for the benefit of their children. The applicant guarantees the inheritance of his wife, namely residential land, with proof of ownership certificate in the name of the applicant and his three children. Therefore, the three children of the Applicant must sign the credit agreement, and for this purpose, the Applicant is submitting a guardianship application to the Mojokerto District Court. In its consideration, referring to Article 47 of Law Number 1 of 1974 concerning Marriage and Article 345 of the Civil Code, it is stated that for children who are not yet of age, they are automatically under the supervision of their parents. Parents directly become guardians of the minor child as long as their parental authority is not revoked without prior court approval.

Based on this case, it shows a similarity regarding the difference between the applicable law and administrative practices in banking. However, the conflict between the normative provisions and banking practices raises its own issues in the application of the law. On one hand, the court's decision and the judge's view have affirmed that the authority of biological parents is an inherent power that automatically vests by law, making the appointment of guardianship for biological parents no longer necessary. However, on the other hand, banking practices still require additional legal provisions considered necessary to strengthen the legality of parental legal actions regarding the property of minor children. The bank must have a strong legal basis to ensure that the acting party truly has full authority and will not cause disputes in the future. Therefore, even tho the biological parents are listed on the child's Family Card or Birth Certificate, the bank still requires a guardianship order from the court as a form of formal legal verification. Based on interviews with the Credit Operations Supervisor of Bank BRI KC Palangka Raya, the bank must ensure that the party acting on behalf of the child has legitimated legal authority. Thus, the credit agreement made becomes valid, legally secure, and poses no risk to the bank or the customer in the future. The principle of prudence applied by the Bank is not only to safeguard the security of credit and public funds, but also as a form of protection for the rights of children as the rightful owners of assets. Thus, this policy is preventive and balanced, ensuring that no party is disadvantaged, whether from the bank or from the legally incompetent child.

4. CONCLUSION

As discussed above, it can be seen that normatively, biological parents have full authority as natural guardians under Article 47 of the Marriage Law and Article 345 of the Civil Code. These provisions legitimize the fact that parents, whether the father or mother is still alive, are authorized to represent their child in any legal act without requiring a guardianship order from the court. However, in practice, particularly in the banking environment, there is the application of the principle of prudence, as stated in Article 29 paragraph (2) of the Banking Law, which requires banks to ensure the validity and legal capacity of parties acting legally. The case that occurred at the Palangka Raya District Court in decision Number 42/Pdt.P/2025/PN Plk, where the Petitioner, as the biological mother, filed a guardianship determination petition to the Palangka Raya District Court to complete the credit application administration at Bank BRI. A similar situation occurred in decision Number

504/Pdt.P/2021/PN Mjk at the Mojokerto District Court, where the biological father filed a guardianship petition to complete the credit agreement at Bank Mandiri. This shows a difference between normative legal provisions, where the surviving biological parent can represent their child legally without court approval, and banking legal practices, which require the appointment of a guardian as an administrative requirement for loan applications, as one application of the prudential principle.

There needs to be institutional cooperation between the District Court and banking institutions, particularly in terms of legal understanding regarding the status of biological parents as natural guardians of minors and the concept of guardianship in accordance with applicable legal regulations. This cooperation can be realized in the form of a memorandum of understanding (MoU) between the courts and the banks to align perceptions regarding legal limitations and administrative needs in guardianship applications. This way, banks can exercise the principle of prudence without creating administrative obstacles that burden the public, while the courts can provide clear legal guidance to banks in determining when guardianship is truly needed, so that not all cases have to go thru court guardianship.

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