

Legal Certainty of Court Clerks' Obligation to Notify Guardianship Appointments to the Balai Harta Peninggalan in Indonesia

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ABSTRACT

Keywords:

*Legal Certainty,
Court Clerks,
Guardianship, Balai
Harta Peninggalan.*

Article Info

Received:

11/02/2026

Revised:

18/03/2026

Accepted:

18/05/2026

Published:

31/05/2026

This article examines the legal certainty of the obligation of court clerks to notify guardianship appointments to the Balai Harta Peninggalan (BHP) within the Indonesian legal system. Although the Indonesian Civil Code establishes the normative basis for notification and recognizes the BHP as a supervisory guardian, the procedural framework governing the implementation of this obligation remains insufficiently detailed, particularly with regard to notification procedures, timing, and uniform application across courts. This study employs normative legal research using statutory, conceptual, and case approaches. Primary and secondary legal materials are analyzed to examine the regulatory framework governing guardianship, the role of the BHP, and selected court determinations. The analysis reveals a regulatory gap between the existence of the normative obligation and the absence of comprehensive procedural mechanisms for its implementation. The gap is particularly evident in the different approaches adopted by General Courts and Religious Courts, resulting in variations in institutional supervision and the protection of children's property. This study contributes a normative reconstruction by proposing a standardized notification mechanism and a maximum seven-day period for court clerks to notify the BHP. Such regulation is necessary to strengthen legal certainty, institutional accountability, and the protection of children's rights in guardianship proceedings.



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How to cite: Zahara Imtiyaz, Z., Sulistyarini, R., & Sri Kusuma Dewi, A. (2026). Legal Certainty of Court Clerks' Obligation to Notify Guardianship Appointments to the Balai Harta Peninggalan in Indonesia. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 6(3), 340–350. <https://doi.org/10.54443/ijerlas.v6i3.5277>

Introduction

Children are legal subjects whose rights and interests are entitled to protection by the State. The constitutional guarantee of legal protection and certainty under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia applies to children as vulnerable legal subjects who have limited legal capacity to independently exercise and protect their civil rights. This protection is further reflected in Indonesia's child protection legislation, which requires the State to ensure that children are able to live, grow, develop, and participate in accordance with human dignity while being protected from violence, discrimination, and other forms of harm. The principle of the best interests of the child therefore constitutes an essential consideration in every legal measure affecting children, including measures concerning their personal status and property rights.

One important dimension of child protection concerns the legal management and supervision of a child's property. Children who have not reached legal maturity generally lack full legal capacity to independently perform legal acts, particularly those involving the administration and disposition of property. The institution of guardianship (*perwalian*) therefore serves not only to provide care and representation but also to ensure that the child's property is administered responsibly and in accordance with the law. Guardians are entrusted with substantial authority over the person and property of the child, making institutional supervision particularly important to prevent abuse of authority, negligence, conflicts of interest, or improper management of assets. Accordingly, guardianship should be understood not merely

as a private familial relationship but as a legal institution designed to protect the interests of children who are unable to protect their own legal and economic interests.

Within this framework, the Balai Harta Peninggalan (BHP) occupies an important institutional position, particularly in relation to the supervision of guardianship and the protection of the property of legally vulnerable persons. Under the Indonesian Civil Code, the BHP is recognized as a supervisory guardian (*wali pengawas*) whose functions include supervising the management of a minor's property, maintaining relevant records, monitoring the guardian's compliance with legal obligations, and taking action when conflicts of interest arise. The effectiveness of these supervisory functions, however, depends upon the BHP receiving formal information concerning the appointment of a guardian. Notification therefore functions as an institutional link between the judicial determination of guardianship and the subsequent administrative supervision of the guardian. Without timely notification, the BHP cannot effectively register the guardianship or initiate the supervisory functions assigned to it by law.

The court clerk (*Panitera*) consequently occupies a strategic position in ensuring the effectiveness of this supervisory mechanism. As a judicial officer responsible for case administration, documentation, and the issuance and transmission of judicial documents, the court clerk serves as an important administrative link between judicial determinations and their implementation. In the context of guardianship, the Indonesian Civil Code provides a normative basis for the obligation of the court clerk to notify the BHP of a guardianship appointment. In particular, Article 369 assigns the notification obligation to the clerk of the court that issues the guardianship determination. This demonstrates that notification is not merely an optional administrative practice but forms part of the legal mechanism through which guardianship supervision is activated. At the same time, the existence of a normative obligation does not necessarily guarantee uniform implementation, particularly when the applicable regulations do not provide sufficiently detailed procedural standards concerning the mechanism, timing, and format of notification.

The central legal problem therefore lies not simply in whether an obligation to notify the BHP exists, but in the legal certainty of its implementation. The current regulatory framework contains provisions establishing guardianship, defining the supervisory role of the BHP, and assigning notification responsibilities to court clerks. However, the regulation does not comprehensively establish operational parameters concerning how and when notification must be carried out. This distinction is important because a legally recognized obligation may remain ineffective when its implementation lacks clear procedural standards. The absence of a definite timeframe and standardized notification mechanism may create different administrative practices among courts and weaken the continuity between the issuance of a guardianship determination and the commencement of institutional supervision. Such uncertainty is particularly significant because guardians may immediately exercise authority over the child's property following their appointment, while effective preventive supervision depends on the BHP receiving notification from the court.

The problem becomes more significant when the implementation of guardianship is examined across the General Court and Religious Court systems. The manuscript's analysis of selected court determinations indicates that General Courts have applied the Civil Code framework in recognizing the supervisory role of the BHP and imposing notification obligations, whereas several guardianship determinations issued by the Malang Religious Court did not address notification to the BHP or institutional supervision, despite involving the management of property belonging to minors. These different approaches demonstrate a regulatory fragmentation in the implementation of guardianship supervision. Consequently, the level of institutional protection available to children may depend upon the judicial forum through which guardianship is determined rather than solely upon the objective legal interests and needs of the child. This situation raises an important question concerning equality of legal protection and the realization of legal certainty in Indonesia's pluralistic family-law system.

The foregoing condition indicates a gap between the normative recognition of the notification obligation and the availability of a clear and uniform procedural mechanism for implementing that obligation. This gap is particularly relevant to legal certainty because certainty requires legal rules to provide sufficient clarity, predictability, and consistency for institutions and legal subjects. In guardianship proceedings, notification to the BHP should consequently be viewed as an integral component of the protection mechanism rather than as a purely administrative formality. The absence of standardized procedures may result in delayed or omitted notification, thereby preventing the BHP from exercising its

supervisory authority at the earliest stage of guardianship. From the perspective of child protection, such a condition potentially weakens preventive supervision over the management of children's property and may undermine the principle of the best interests of the child.

Based on this problem, this article examines the legal certainty of the obligation of court clerks to notify guardianship appointments to the Balai Harta Peninggalan in Indonesia. The study specifically analyzes the normative basis of the court clerk's notification obligation, the relationship between notification and the supervisory authority of the BHP, and the implications of differing approaches between General Courts and Religious Courts. It further examines whether the existing regulatory framework provides sufficient procedural certainty to ensure timely and uniform notification. The article proposes a normative reconstruction of the notification mechanism, including the establishment of a clear timeframe for notification, as a means of strengthening institutional accountability, ensuring effective supervision of guardians, and providing equal protection for children's property interests. In this regard, the study argues that the development of a standardized procedural framework, potentially through a Supreme Court Regulation, is necessary to harmonize guardianship procedures and strengthen legal certainty throughout the Indonesian judicial system.

Method

This study employs normative legal research (*yuridis normatif*) to examine the legal certainty of the obligation of court clerks to notify guardianship appointments to the Balai Harta Peninggalan (BHP). Normative legal research is appropriate because the principal issue examined in this study concerns the construction, consistency, and adequacy of legal norms governing guardianship, the supervisory authority of the BHP, and the procedural responsibilities of court clerks. The analysis is directed toward identifying the applicable legal rules, examining their normative relationships, and formulating a prescriptive legal argument concerning the need for a clearer and more uniform notification mechanism.

The research applies three complementary approaches, namely the statute approach, conceptual approach, and case approach. The statute approach is used to examine the hierarchy and substance of legal provisions governing guardianship, child protection, court administration, the authority of the BHP, and the obligation to notify guardianship appointments. Particular attention is given to the relevant provisions of the Indonesian Civil Code, the Marriage Law, the Compilation of Islamic Law, Government Regulation Number 29 of 2019, Minister of Law and Human Rights Regulation Number 7 of 2021, and other relevant judicial regulations. The conceptual approach is employed to examine legal concepts relating to guardianship, legal certainty, supervisory guardianship, legal capacity, child protection, and the management of children's property.

The case approach is used to examine selected court determinations concerning guardianship and the notification of guardianship appointments to the BHP. The cases are analyzed comparatively to identify differences in the application of the notification obligation between the General Courts and Religious Courts. Particular attention is given to Determination Number 84/Pdt.P/2025/PN.Mlg and Determination Number 2400/Pdt.P/2024/PN.Sby, as well as selected guardianship determinations of the Malang Religious Court, including Numbers 381/Pdt.P/2024/PA.Mlg, 393/Pdt.P/2024/PA.Mlg, 396/Pdt.P/2024/PA.Mlg, 422/Pdt.P/2024/PA.Mlg, and 439/Pdt.P/2024/PA.Mlg. The comparison is intended to identify whether differences in judicial practice reflect a broader regulatory fragmentation affecting legal certainty and the protection of children's property.

The legal materials consist of primary and secondary legal materials. Primary legal materials include legislation, regulations, and court determinations directly related to guardianship, child protection, court administration, and the supervisory authority of the BHP. Secondary legal materials comprise legal textbooks, scholarly journal articles, academic publications, and other authoritative legal literature relevant to the concepts and doctrines examined in this study. The materials are selected based on their relevance to the research problem and analyzed in relation to the normative construction of the court clerk's notification obligation and the BHP's supervisory function.

The analysis is conducted through systematic normative interpretation and comparative legal analysis. First, the relevant legal provisions are identified and examined individually. Second, the provisions are interpreted in relation to one another to determine the normative relationship between the court clerk's obligation, the BHP's supervisory authority, and the protection of children's property. Third, the selected court determinations are compared to identify consistency or divergence in judicial implementation. Finally, the findings are assessed from the perspective of legal certainty and the best interests of the child to determine whether the existing regulatory

framework provides adequate clarity, predictability, and uniformity. On this basis, the study formulates a prescriptive recommendation concerning the standardization of notification procedures, including the proposed establishment of a definite notification timeframe.

Results and Discussion

The Role and Legal Position of Court Clerks (Panitera)

Within the judicial system, the court clerk (*Panitera*) holds a strategic position as a functional judicial officer responsible for the administration and documentation of court proceedings (Naffi, 2015). Conceptually, the *Panitera* is an official entrusted with managing judicial records, drafting minutes of hearings, issuing official documents, and ensuring the orderly administration of cases. In comparative legal systems, this role is known as the *Clerk of the Court* in common law jurisdictions and *Griffier* in the Dutch legal system. Black's Law Dictionary defines the Clerk of Court as an officer responsible for maintaining court records, issuing judicial processes, recording judgments and orders, and providing certified copies of court documents (Black, 1968). Accordingly, the *Panitera* serves as an essential administrative support to judges, ensuring accuracy, transparency, and accountability in judicial proceedings.

The legal position of the *Panitera* is explicitly regulated under Article 11 paragraph (3) of Law Number 48 of 2009 on Judicial Power, which stipulates that judges are assisted by a *Panitera* in examining, adjudicating, and deciding cases. In addition to this supportive role, the *Panitera* is also vested with execution-related authority, particularly in implementing court decisions that have obtained permanent legal force (*in kracht van gewijsde*), as provided under Article 54 paragraph (2) of the same law. This dual function places the *Panitera* at the intersection of judicial decision-making and its administrative enforcement.

Further regulation is found in Supreme Court Regulation Number 7 of 2015 concerning the Organization and Administration of Court Clerkship and Secretariat. Article 1 paragraph (4) affirms that responsibility for case administration rests with the *Panitera* under the authority delegated by the Chief Judge. As a structural judicial officer, the *Panitera* is tasked with managing case administration comprehensively, including record-keeping, archiving, issuance of copies of judgments and determinations, management of court registers and case-related funds, monitoring judicial information systems, and accompanying judges during hearings. These responsibilities underscore the *Panitera*'s central role in ensuring procedural order and legal certainty within the judiciary.

In the context of guardianship cases, the *Panitera*'s administrative authority is directly linked to the obligation to notify the appointment of guardianship to the *Balai Harta Peninggalan*. Given that guardianship determinations produce legal consequences for the protection of children's property, the *Panitera*'s duty to document and communicate such determinations constitutes a crucial element in activating supervisory mechanisms. Therefore, the effectiveness of legal protection and certainty in guardianship cases is inseparable from the proper execution of the *Panitera*'s statutory duties.

Guardianship

Child guardianship constitutes a legal mechanism aimed at ensuring the protection and fulfillment of children's rights, particularly in circumstances where parents are no longer able to perform their parental responsibilities due to death, revocation of custody, or legal incapacity. Beyond its juridical dimension, guardianship embodies a broader social and moral function, ensuring that children continue to receive care, education, and guidance in line with the principle of the best interests of the child, as recognized under Indonesian child protection law. Within the Indonesian legal system, guardianship is regulated under two principal legal frameworks. Under the Indonesian Civil Code (KUHPerdata), guardianship arises when a child is no longer subject to parental authority, assigning the guardian responsibility for both the personal care and property management of the child. For Muslims, guardianship is governed by the Compilation of Islamic Law (Kompilasi Hukum Islam), which provides that children who are unmarried and below a certain age may be placed under guardianship upon the death of their parents. This dual framework reflects Indonesia's recognition of legal pluralism in family law, with guardianship matters adjudicated either by general courts or religious courts depending on the parties' religious affiliation. Despite operating under different legal regimes, both systems share a common objective: ensuring optimal legal protection for children. The principle of the best interests of the child serves as a guiding norm, reinforced by Indonesia's ratification of the Convention on the Rights of the Child and its incorporation into national legislation.

Courts play a crucial role in implementing this principle by carefully assessing the eligibility of prospective guardians, including their moral integrity, economic capacity, psychological readiness, and social environment.

Once appointed, guardians are vested with clearly defined rights and obligations, particularly concerning the management of the child's property, which must be conducted prudently and in good faith. However, guardianship authority is not absolute. Legal oversight mechanisms are established to prevent abuse, notably through the supervisory role of the Balai Harta Peninggalan within the civil law system. Comparative legal perspectives from common law and continental European jurisdictions further demonstrate the importance of institutional supervision in safeguarding children's interests, emphasizing that guardianship must function as a protective legal institution rather than a source of vulnerability for the child.

Balai Harta Peninggalan

The Balai Harta Peninggalan (BHP) constitutes a long-standing public institution within the Indonesian civil law system, vested with authority and responsibility in the administration and protection of property interests belonging to legally vulnerable subjects (Kemenkumham Aceh, 2023). Historically, the BHP originated from the Wees en Boedel Kamer, established in 1624 during the Dutch colonial administration to manage estates and safeguard the interests of heirs, particularly minors, whose legal and economic interests could not be protected independently (Kemenkumham Aceh, 2023). The emergence of this institution was closely linked to colonial expansion, increasing mortality among European settlers, and the need for a formal mechanism to manage estates left behind in the colonies. Following Indonesian independence, the continued existence of the BHP was constitutionally preserved under Article II of the Transitional Provisions of the 1945 Constitution, which recognizes the validity of pre-existing institutions insofar as they are not replaced by new legislation. This continuity underscores the normative recognition that the protection of property rights for legally incapacitated persons requires institutionalized state supervision.

Over time, the organizational structure and territorial jurisdiction of the BHP have undergone several regulatory adjustments, both during the colonial period and under post-independence governance. Currently, the BHP operates as a Technical Implementation Unit under the Ministry of Law and Human Rights, with functional accountability to the Directorate General of General Legal Administration. Its operational presence is limited to five regional offices located in Jakarta, Medan, Semarang, Surabaya, and Makassar. This centralized institutional design inevitably increases dependence on accurate and timely administrative coordination with judicial institutions, particularly courts that issue guardianship determinations.

Normatively, the authority of the BHP is grounded primarily in Book I of the Indonesian Civil Code, complemented by ministerial regulations and sectoral legislation. Article 2 of the Minister of Law and Human Rights Regulation Number 7 of 2021 explicitly mandates the BHP to represent and manage the interests of legal subjects in the execution of court decisions or legal obligations related to inheritance, guardianship, and asset administration. Article 3 further elaborates a broad range of functions encompassing guardianship, curatorship, administration of unclaimed estates, management of absentee property, registration and opening of wills, issuance of inheritance certificates, bankruptcy administration, and the management of various forms of entrusted funds. This extensive mandate positions the BHP not merely as an administrative body, but as an institutional guardian of legal certainty and substantive justice in civil matters involving vulnerable persons. Among these functions, its role in guardianship administration is particularly central to the present discussion, as it directly relates to the obligation of court clerks to notify guardianship appointments. In guardianship matters, the BHP is expressly designated as supervisory guardian under Article 366 of the Civil Code and reinforced by child protection legislation. This designation reflects the legislator's intent to ensure that guardianship is not exercised in isolation but is subject to continuous institutional oversight. The supervisory role of the BHP is fundamentally preventive, aiming to minimize the risk of abuse, mismanagement, or neglect of a minor's property interests (Natasha, 2019).

As supervisory guardian, the BHP performs a series of interrelated duties. These include the registration and inventory of all assets belonging to the minor, the administration of official records concerning such assets, and the requirement that guardians take an oath prior to assuming their duties. The

BHP also monitors the guardian's compliance with legal obligations by requiring periodic accountability reports and annual financial statements regarding the management of the minor's property. Moreover, the BHP is authorized to intervene when a conflict of interest arises between the guardian and the child (Article 370 of the Civil Code). In such circumstances, the BHP may represent the child's legal interests directly, ensuring that decisions affecting the child's property are not influenced by competing personal interests of the guardian. The BHP also provides legal opinions to the court concerning proposed transactions involving a minor's assets, such as sales, leases, or divisions of property, thereby reinforcing judicial decision-making with institutional expertise (Article 393 and 400 of the Civil Code).

Importantly, these supervisory functions are contingent upon formal notification of guardianship appointments (Notarynews.id, 2025). Without notification, the BHP is unable to register the guardianship, initiate asset supervision, or exercise its oversight authority. This condition demonstrates that the obligation of court clerks to notify the BHP is not merely procedural, but constitutive of the BHP's ability to perform its statutory mandate. Beyond guardianship, the BHP also functions as supervisory curator in cases of legal incapacity. Individuals declared legally incapable due to mental illness, intellectual disability, emotional instability, or chronic financial irresponsibility are placed under curatorship by court order (Widagdo, 2012). In such cases, the BHP supervises the appointed curator to ensure that the rights and property of the incapacitated person are adequately protected.

The duties of the BHP in this context largely mirror its role in guardianship supervision, including asset registration, oversight of financial management, verification of accountability reports, and public notification of curatorship decisions. The BHP may also act as curator in specific situations, such as for unborn children whose fathers have died, thereby safeguarding prospective inheritance rights. These responsibilities further illustrate the BHP's role as a systemic safeguard against legal and economic vulnerability. The authority of the BHP extends to the administration of wills, particularly the opening and registration of sealed or secret wills following the death of the testator. This function ensures transparency and legal certainty in succession processes. Additionally, the BHP is entrusted with the management of unclaimed estates, where no heirs assert their rights or where heirs formally renounce the inheritance. In such cases, the BHP acts as the legal representative of the estate, conducting asset inventories, managing liabilities, representing the estate in litigation, and ultimately reporting the outcome of its administration.

Similarly, in cases of legal absence, the BHP may be appointed by the court to manage the property of individuals whose whereabouts are unknown. The BHP's duties include safeguarding assets, notifying relevant authorities, publishing public notices, and ensuring accountability in the management of absentee property. These functions further reinforce the BHP's institutional role as a custodian of legal certainty in situations marked by uncertainty and vulnerability. In addition to its core civil law functions, the BHP may act as curator in bankruptcy proceedings, issue certificates of inheritance, manage unclaimed social security benefits, and administer funds arising from unreturned bank transfers. While these functions may appear ancillary, they collectively demonstrate the breadth of the BHP's mandate and its central role in managing property interests that would otherwise remain legally unprotected.

Legal Certainty in the Regulation Governing the Obligation of Court Registrars to Notify the Appointment of Guardianship to the Balai Harta Peninggalan

The regulation concerning notification of guardianship appointments is fundamentally linked to the objective of ensuring that judicial determinations do not remain merely formal legal acts, but are capable of being implemented and supervised effectively. Notification functions as the connecting mechanism between the judiciary and the state institution entrusted with supervisory authority, namely the Balai Harta Peninggalan. Through notification, a guardianship determination becomes the initial stage of state administrative supervision, enabling continuous oversight over the guardian's exercise of authority (Subekti, 2003). The existence of a notification obligation is essential because supervision over guardians can only be exercised if the supervisory institution has official knowledge of the appointment. In the absence of clear regulation concerning who bears the obligation to notify, to whom notification must be delivered, and at what procedural stage such notification must be carried out, implementation risks becoming inconsistent. Differences in judicial interpretation across courts ultimately weaken legal certainty for guardians, wards, and supervisory institutions (Mertokusumo, 2006).

In Indonesian positive law, the obligation to notify guardianship appointments is not formulated in a single, standalone provision. Instead, it is constructed through an interconnected set of statutory norms. The Indonesian Civil Code constitutes the principal normative basis governing notification and the supervisory function of the Balai Harta Peninggalan, while other legislative instruments further elaborate and systematize its implementation in line with the evolution of the legal system. Therefore, an assessment of whether the notification obligation fulfills the principle of legal certainty requires a comprehensive examination of these interrelated regulations and their application in judicial determinations (Soeroso, 2016).

The Indonesian Civil Code regulates guardianship in a relatively comprehensive manner, encompassing the appointment of guardians, the scope of guardians' authority, and the supervisory role of the Balai Harta Peninggalan. The obligation to notify guardianship appointments is not expressly stated in a single provision, but is implicitly and systematically constructed through Articles 366, 369, and 449 of the Civil Code. Article 366 establishes the Balai Harta Peninggalan as the supervisory guardian for every guardianship. Once guardianship is determined by a court decision, the guardian acquires a legal status that carries binding rights and obligations. These obligations extend beyond legal representation to include full responsibility for the ward's maintenance, education, health, and overall development, as well as the management of the ward's property. Although guardians are vested with authority to manage the ward's assets, such authority is not absolute. The Civil Code requires guardians to act in good faith and with the same prudence as a person managing their own affairs.

To prevent abuse of authority, Article 366 introduces an institutional supervision mechanism by positioning the Balai Harta Peninggalan as supervisory guardian, particularly in relation to asset management. The role of the Balai Harta Peninggalan is not to replace the guardian, but to ensure that all actions remain aligned with the best interests of the ward (Natasha, 2019). The institution is authorized to represent the ward when conflicts of interest arise and to ensure that guardianship is conducted responsibly and in compliance with legal norms (Pratiwi, 2019). Article 369 explicitly regulates the obligation to notify the appointment of guardianship to the Balai Harta Peninggalan and assigns this obligation to the court clerk of the court issuing the guardianship determination. This provision demonstrates that notification is conceived as an integral part of judicial procedure rather than a private obligation of the guardian (Prodjodikoro, 1983). By assigning the duty to the court clerk, the legislator ensures that notification is conducted formally, neutrally, and with administrative accountability (Mertokusumo, 2006). Clear determination of the obligated subject and the relevant procedural framework reinforces legal certainty and limits inconsistencies in the application of legal norms among courts. Article 369 is imperative in nature and does not allow discretion to disregard notification. Its mandatory character reinforces predictability and uniformity in guardianship procedures. Furthermore, notification serves as a preventive protection mechanism for wards by enabling the Balai Harta Peninggalan to register the guardianship promptly and initiate supervision from the outset.

Article 449 provides the legal basis for the Balai Harta Peninggalan to exercise supervisory authority over guardianship administration, particularly regarding asset management (Satrio, 2000). This provision clarifies both the identity of the supervisory institution and the scope of its authority, thereby preventing overlapping competencies or supervisory gaps (Asshiddiqie, 2015). The normative relationship between Articles 369 and 449 demonstrates a systematic legal construction in which notification operates as a prerequisite for effective supervision. Without notification, the supervisory powers conferred by Article 449 cannot function optimally, thereby undermining legal certainty in guardianship implementation. The Marriage Law regulates guardianship in Articles 50 to 54. It establishes that children under eighteen years of age or unmarried and not under parental authority are placed under guardianship. Guardianship under this law encompasses both personal care and asset management. The law sets out criteria for guardian appointment, prioritizing family members and individuals who are mature, mentally sound, honest, and of good conduct. Guardians bear full responsibility for managing the child's property, including preparing an inventory of assets and bearing liability for losses arising from negligence. Although the Marriage Law provides substantive rules regarding guardianship, it does not regulate notification to the Balai Harta Peninggalan or institutional supervision in detail. As a result, guardianship determinations under this law often focus on personal suitability of the guardian rather than administrative oversight mechanisms (Abdurrahman and Riduan, 1978).

Minister of Law and Human Rights Regulation Number 7 of 2021 further clarifies the institutional position and authority of the Balai Harta Peninggalan. It affirms the BHP's function as a state institution responsible for managing the interests of certain legal subjects in the execution of court decisions and determinations. Its functions include guardianship supervision, curatorship, administration of unclaimed estates, absentee property, registration and opening of wills, issuance of inheritance certificates, bankruptcy administration, and management of entrusted funds. This regulation reinforces the BHP's role not merely as an administrative body, but as a substantive guarantor of legal certainty and protection for vulnerable legal subjects.

Court Determination and Its Implications for Legal Certainty

A review of relevant court determinations demonstrates the existence of divergent normative constructions concerning the implementation of the notification obligation. In Determination Number 84/Pdt.P/2025/PN.Mlg and Determination Number 2400/Pdt.P/2024/PN.Sby, the courts explicitly imposed a legal obligation upon the court clerk to notify the Balai Harta Peninggalan and formally designated the institution as the supervisory curator. These determinations demonstrate consistent application of Articles 369 and 449 of the Civil Code and reflect an understanding of guardianship and curatorship as legal mechanisms requiring institutional oversight. In these cases, legal certainty is enhanced through clear allocation of supervisory authority and predictable administrative procedures.

Conversely, several determinations issued by the Religious Court of Malang, including Numbers 381/Pdt.P/2024/PA.Mlg, 393/Pdt.P/2024/PA.Mlg, 396/Pdt.P/2024/PA.Mlg, 422/Pdt.P/2024/PA.Mlg, and 439/Pdt.P/2024/PA.Mlg, did not address notification to the Balai Harta Peninggalan or institutional supervision, despite involving asset management on behalf of minors. These decisions primarily relied on the Marriage Law and the Compilation of Islamic Law, framing guardianship as a personal legal relationship between parent and child. As a result, the supervisory dimension of guardianship was absent, creating uncertainty regarding post determination control over asset management.

This divergence illustrates regulatory fragmentation between the civil law regime and the Islamic family law regime. While guardianship status is legally recognized, the absence of notification and supervision mechanisms undermines broader legal certainty, particularly concerning the protection of children's property interests.

The findings demonstrate that the obligation of court clerks to notify guardianship appointments to the Balai Harta Peninggalan constitutes a core component of legal certainty in guardianship law. Notification activates institutional supervision and transforms judicial determinations into enforceable and accountable legal instruments. Failure to comply with this obligation results in a breakdown of supervisory mechanisms and weakens protection for vulnerable legal subjects. Accordingly, the obligation to notify should be interpreted as an integral element of guardianship procedure rather than a mere administrative formality. Reinforcing compliance with Article 369 of the Civil Code is essential to harmonizing judicial interpretation, ensuring uniform supervisory mechanisms, and upholding the principle of legal certainty in the administration of guardianship.

The Legal Position and Responsibility of Court Clerks in Notifying the Appointment of Guardianship to the Balai Harta Peninggalan

Within the Indonesian judicial system, court clerks occupy a strategic institutional position in ensuring that judicial determinations are not merely declaratory, but are capable of being implemented and supervised in accordance with statutory mandates. This role becomes particularly significant in guardianship proceedings, where the effectiveness of legal protection for minors is highly dependent on post determination administrative actions. The obligation of court clerks to notify the appointment of guardianship to the Balai Harta Peninggalan constitutes a fundamental procedural mechanism for transforming a judicial determination into an administratively enforceable and supervised legal status.

The normative foundation for this obligation is explicitly articulated in Article 369 of the Indonesian Civil Code, which mandates that whenever guardianship is ordered by a judge, the court clerk of the competent court must immediately notify the Balai Harta Peninggalan in writing. The provision further requires that such notification contain information regarding the presence of the appointed guardian during the proceedings or, where guardianship is assigned to an association, foundation, or charitable institution,

whether such appointment was made at its own request or based on its expressed willingness. This formulation demonstrates that the legislator intentionally assigns the notification duty to the court clerk, thereby positioning notification as an integral component of judicial administration rather than a discretionary or ancillary act.

In addition to the Civil Code, the obligation of court clerks is reinforced by Article 13 of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for the Appointment of Guardians. This regulation obliges court clerks to transmit copies of court determinations or judgments regarding guardianship appointments to multiple governmental institutions, including agencies responsible for population administration and civil registration, social affairs at the local level, and central government institutions responsible for matters related to inherited property. The inclusion of the Balai Harta Peninggalan within this notification framework confirms its recognized role as the competent authority in supervising property-related aspects of guardianship.

Despite the clarity of the obligation itself, existing legislation does not provide a detailed procedural explanation regarding the technical mechanism, timeframe, or standardized format for notification to the Balai Harta Peninggalan. This regulatory gap has led to legal uncertainty, as it leaves room for divergent interpretations among courts. Nevertheless, the absence of procedural detail does not negate the binding nature of the obligation. Rather, it underscores that notification is a direct normative consequence of guardianship regulation within the Indonesian civil law system.

From a procedural perspective, the Balai Harta Peninggalan is not involved at the initial stages of guardianship proceedings. The entire process, from the submission of the guardianship petition to evidentiary examination and judicial determination, falls exclusively within the jurisdiction of the court. During this phase, the Balai Harta Peninggalan does not possess authority to access case information or independently identify the existence of a guardianship determination. Consequently, the institutional position of the Balai Harta Peninggalan is inherently passive, as its ability to act is entirely dependent on the receipt of official notification from the court (Notarynews, 2025).

This structural arrangement renders notification by the court clerk a decisive connecting mechanism between the judicial determination of guardianship and the subsequent stages of implementation and supervision. Only after receiving formal notification can the Balai Harta Peninggalan register the guardianship, initiate supervisory oversight, and exercise its statutory authority as supervisory guardian, particularly with respect to the management and protection of a minor's assets. Without such notification, the guardianship remains confined to the judicial domain and is effectively invisible within the administrative system of state supervision.

The failure to notify the Balai Harta Peninggalan has significant legal consequences. From a juridical standpoint, the absence of notification prevents the activation of the supervisory functions mandated by law. As a result, the guardian's authority over the child's property operates without institutional oversight, increasing the risk of mismanagement, abuse of authority, or actions that are not aligned with the best interests of the child. From the perspective of legal certainty, such a condition undermines predictability, accountability, and uniformity in the implementation of guardianship law.

Accordingly, the responsibility of court clerks to notify guardianship appointments should be understood as a substantive legal obligation rather than a mere administrative formality. It serves as a safeguard that ensures continuity between judicial decision making and administrative supervision, thereby reinforcing the protection of minors as vulnerable legal subjects. In this context, legal certainty is not achieved solely through the issuance of a court determination, but through the consistent and mandatory execution of post determination obligations by court clerks, including notification to the Balai Harta Peninggalan. Strengthening compliance with this obligation is therefore essential to realizing the normative objectives of guardianship regulation and ensuring effective legal protection for children's proprietary interests.

Future Regulation

The absence of comprehensive regulation governing guardianship procedures, particularly regarding the obligation to notify the BHP of guardianship appointments, reveals a normative gap within Indonesia's judicial system. Guardianship cases are frequently treated as purely administrative matters, despite their substantive implications for child protection and the management of assets that children are legally

incapable of administering independently. When procedural aspects of guardianship are not regulated clearly and uniformly, the legal protection inherent in the guardianship institution becomes fragile and ineffective.

To date, no Supreme Court Regulation (Peraturan Mahkamah Agung / PERMA) specifically governs guardianship procedures in an integrated manner. This regulatory absence has resulted in fragmented judicial interpretations, heavily dependent on the jurisdiction of the court and the interpretative preferences of individual judges. Consequently, legal certainty is difficult to achieve, as there is no binding procedural guideline applicable across judicial environments. Guardianship cases are thus processed according to varying standards, even though the protected legal interests are fundamentally identical.

Within the General Court system, guardianship norms are relatively clearer, as they are grounded in the Indonesian Civil Code. The Civil Code not only regulates the appointment of guardians but also explicitly recognizes the concept of a supervisory guardian exercised by the Balai Harta Peninggalan. Articles 366 and 369 of the Civil Code establish the guardian's responsibility over both the person and property of the minor, while Article 449 requires that guardianship appointments be notified to BHP as a form of state supervision. Normatively, this framework reflects a system of checks and balances intended to prevent abuse of guardianship authority.

However, despite the existence of substantive norms, the Civil Code does not provide explicit procedural rules governing how and when such notification must be carried out. No provision clearly mandates that court clerks must submit copies of guardianship decisions to BHP within a specified timeframe. As a result, the notification obligation often depends on judicial order or individual initiative rather than on an imperative legal command. This condition weakens the supervisory function of BHP, even though such supervision is an integral component of child protection.

The issue becomes more complex within the Religious Court system. Operating under the Religious Courts Law and the KHI, guardianship regulation in this context emphasizes familial lineage and moral-religious responsibility. The concept of a supervisory guardian, as recognized in the Civil Code, does not exist in KHI, nor is there any obligation to notify BHP of guardianship appointments. Consequently, guardianship decisions in Religious Courts rely solely on assessments of legal capacity and familial status, without institutional supervision over asset management.

This divergence between the General Courts and Religious Courts creates unequal levels of legal protection for children. Children whose guardians are appointed by General Courts benefit from additional institutional oversight through BHP, while those under Religious Court guardianship do not receive equivalent protection. Legal protection thus depends on the forum adjudicating the case rather than on the objective needs of the child, contradicting the principles of legal certainty and equality before the law.

From a procedural law standpoint, the absence of a notification deadline constitutes an incomplete procedural norm. While the obligation exists, it lacks operational parameters, allowing indefinite delays. In guardianship cases, such delays are particularly problematic, as guardians acquire full authority over the child and their assets immediately upon appointment. Without early supervision, the preventive function of BHP cannot operate effectively.

Viewed through the lens of child protection, this condition conflicts with the principle of the best interests of the child. This principle requires that legal measures concerning children be implemented not only lawfully but also promptly and effectively. Delayed notification postpones supervision and increases the risk of misuse of guardianship authority. Accordingly, notification to BHP must be understood not as a secondary administrative duty, but as a substantive component of the guardianship protection mechanism.

In this context, establishing a maximum period of seven days for court clerks to notify BHP of guardianship appointments is normatively and academically justified. Procedurally, a seven-day period aligns with commonly applied administrative deadlines in judicial procedure, ensuring efficiency and orderliness. Administratively, notification requires no additional documentation or complex procedures; it merely involves transmitting a copy of an enforceable decision. From a child protection perspective, a short and definite timeframe reflects urgency and precaution, enabling supervisory mechanisms to function from the outset. Furthermore, a fixed deadline enhances accountability of court clerks as judicial officers. Clear temporal limits allow delays to be objectively identified and evaluated, strengthening internal judicial oversight. Accordingly, a seven-day notification requirement represents a rational and proportionate norm that integrates legal certainty, administrative feasibility, and the best interests of the child.

Conclusion

This conclusion highlights a normative deficiency in Indonesian procedural law regarding the obligation to notify guardianship appointments to the Balai Harta Peninggalan. Divergent legal regimes between the General Courts and Religious Courts have produced inconsistent supervisory mechanisms, resulting in unequal protection for children under guardianship. The absence of a clear procedural obligation and a definite notification timeframe undermines legal certainty and weakens preventive oversight, despite the immediate authority granted to guardians upon appointment. From a normative perspective, the lack of temporal regulation contradicts both the principle of legal certainty and the principle of the best interests of the child, which require clarity, promptness, and effectiveness in legal actions affecting children. Accordingly, the imposition of a seven-day deadline for notification by court clerks is proposed as a rational and proportionate solution, given the administrative nature of the obligation and its critical role in ensuring early supervision. The adoption of a Supreme Court Regulation is therefore necessary to standardize guardianship procedures, strengthen legal certainty, and ensure equal protection of children's interests across all judicial environments.

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