

TINJAUAN YURIDIS TERHADAP STATUS HAK ATAS TANAH ATAS NAMA ANAK YANG MENJADI HARTA BERSAMA DALAM PROSES PERCERAIAN NON-MUSLIM (Studi Putusan Pengadilan Negeri Tuban Nomor 25/Pdt.G/2013/PN.Tbn.)

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INTISARI

Penelitian ini membahas perlindungan hukum terhadap hak atas tanah atas nama anak dalam konteks harta bersama hasil perkawinan non-Muslim di Indonesia. Sebagai negara hukum, Indonesia menjamin hak warga negara atas tanah, termasuk anak, melalui berbagai peraturan perundang-undangan, namun praktiknya menunjukkan adanya kelemahan perlindungan, terutama ketika tanah anak menjadi objek sengketa harta bersama akibat perceraian.

Penelitian ini menggunakan pendekatan hukum normatif, dengan metode deskriptif-analitis dan data sekunder yang diperoleh melalui studi kepustakaan, mencakup peraturan perundang-undangan, putusan pengadilan, literatur, dan doktrin.

Hasil penelitian menunjukkan bahwa meskipun UUPA, KUHPerdara, dan UU Perlindungan Anak memberikan dasar hukum kepemilikan tanah anak, mekanisme pengawasan terhadap tindakan wali masih lemah. Banyak kasus tanah atas nama anak dipindahtangankan tanpa izin pengadilan atau pengawasan, sehingga anak rentan dirugikan. Analisis studi dokumen dengan sistem internasional, seperti Belanda, Malaysia, dan Filipina, menunjukkan bahwa mekanisme pengawasan dan akuntabilitas wali lebih kuat di negara-negara tersebut. Studi kasus terkait sengketa tanah di Malang menunjukkan bahwa putusan pengadilan cenderung formalistik, memprioritaskan legalitas dokumen tanpa menilai kepentingan terbaik anak (*best interest of the child*). Penelitian ini merekomendasikan reformasi hukum pertanahan dan perlindungan anak, termasuk penambahan mekanisme pengawasan wali, pembentukan regulasi turunan terhadap UU Perlindungan Anak, penerbitan pedoman Mahkamah Agung, serta pencatatan tanah anak secara khusus dengan pengawasan ketat. Pendekatan hukum progresif dan sosiologis diperlukan agar perlindungan hukum terhadap anak bukan hanya normatif, tetapi operasional, adil, dan menjamin kesejahteraan generasi penerus.

Kata Kunci : hak anak, tanah, harta bersama, perkawinan non-Muslim, perlindungan hukum, best interest of the child

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ABSTRACT

This study examines legal protection of land rights in the name of children within the context of marital property resulting from non-Muslim marriages in Indonesia. As a state based on the rule of law, Indonesia guarantees citizens' land rights, including those of children, through various statutory regulations. However, in practice, weaknesses in protection emerge, particularly when a child's land becomes an object of dispute over marital property following divorce.

This research employs a normative legal approach, using descriptive-analytical methods and secondary data obtained through literature review, including legislation, court decisions, literature, and legal doctrine.

The results indicate that although the Basic Agrarian Law (UUPA), the Civil Code (KUHPerduta), and the Child Protection Law provide a legal basis for children's land ownership, mechanisms for supervising guardians' actions remain weak. Many cases involve land in the name of children being transferred without court approval or supervision, making children vulnerable to loss. Document analysis with international systems, such as those in the Netherlands, Malaysia, and the Philippines, shows that guardianship supervision and accountability mechanisms are stronger in these countries. Case studies of land disputes in Malang reveal that court decisions tend to be formalistic, prioritizing document legality over the best interests of the child. This study recommends legal reforms in land law and child protection, including the establishment of stricter guardianship supervision mechanisms, formation of derivatives regulation of the Child Protection Law, issuance of Supreme Court guidelines, and special registration of children's land under strict oversight. A progressive and sociological legal approach is necessary to ensure that legal protection for children is not only normative but also operational, fair, and able to safeguard the welfare of future generations

Keywords : *children's rights, land, marital property, non-Muslim marriage, legal protection, best interest of the child*

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