

ABSTRAK

Dewi, Novia Putri. 2026. **“Analisis Yuridis Penetapan Perwalian Anak Di Bawah Umur Oleh Saudara Kandung Dalam Melakukan Perbuatan Hukum Jual Beli Tanah (Studi Penetapan Nomor : 0022/Pdt.P/2024/PA/BL)”** . Program studi Ilmu Hukum, Fakultas Hukum Universitas Islam Balitar. Pembimbing : Eko Yuliasuti, S.H.,M.H. dan Novia Dewi Aprilia, S.H.,M.Kn.

Penelitian ini dilatarbelakangi oleh permasalahan hukum yang timbul dalam Penetapan Nomor 0022/Pdt.P/2024/PA/BL, di mana seorang kakak kandung, Novita Dwi Ratnasari, mengajukan permohonan perwalian atas adik kandungnya yang masih di bawah umur, Rafael Sheva Nandito, untuk keperluan pengurusan administrasi jual beli tanah warisan, meskipun ibu kandung Rafael masih hidup namun bekerja di luar negeri (Taiwan) dan tidak dapat menjalankan fungsi perwalian secara efektif. Kondisi ini menimbulkan pertanyaan mendasar mengenai keabsahan penunjukan kakak kandung sebagai wali menggantikan orang tua yang masih hidup, perwalian berdasarkan Kompilasi Hukum Islam serta kesesuaian penerapan hukum oleh Majelis Hakim Pengadilan Agama Blitar dalam penetapan tersebut. Tujuan penelitian ini adalah untuk menganalisis keabsahan kedudukan kakak kandung sebagai wali dalam perbuatan hukum jual beli tanah dan untuk mengkaji ketentuan perwalian menurut hukum Islam yang berlaku di Indonesia serta penerapan hukum oleh Majelis Hakim dalam penetapan tersebut. Penelitian ini menggunakan jenis penelitian yuridis normatif dengan pendekatan perundang-undangan dan teknik pengumpulan bahan hukum melalui studi kepustakaan yang kemudian dianalisis secara preskriptif analitis. Hasil penelitian menunjukkan bahwa penunjukan Novita Dwi Ratnasari sebagai wali Rafael Sheva Nandito telah memenuhi seluruh syarat substantif dan prosedural berdasarkan Pasal 319a jo. Pasal 359 KUH Perdata jo. Pasal 3 dan Pasal 5 PP Nomor 29 Tahun 2019 jo. Pasal 51 ayat (2) UU Perkawinan, sehingga Novita sah mewakili Rafael dalam penandatanganan akta jual beli tanah warisan di hadapan PPAT hingga selesainya proses balik nama sertifikat; selain itu, penerapan hukum oleh Majelis Hakim mencerminkan proses penemuan hukum (*rechtsvinding*) yang progresif dan integratif dengan memadukan KHI Pasal 107-112, UU Perkawinan, UU Perlindungan Anak, dan KUH Perdata secara sistematis berdasarkan asas kepentingan terbaik bagi anak (*best interest of the child*). Kesimpulan penelitian ini menegaskan bahwa penetapan perwalian tersebut sah secara yuridis dan mencerminkan keadilan filosofis, sosiologis, dan yuridis, sehingga penetapan ini dapat dijadikan pedoman praktis bagi penyelesaian kasus perwalian serupa di masa mendatang.

Kata Kunci: Perwalian, Kakak Kandung, Jual Beli Tanah, Anak Di Bawah Umur, Pengadilan Agama

ABSTRACT

Dewi, Novia Putri. 2026. ***“Legal Analysis of the Appointment of a Sibling as Guardian for a Minor in a Legal Transaction for the Sale and Purchase of Land (Case No. 0022/Pdt.P/2024/PA/BL).”*** Department of Law, Faculty of Law, Balitar Islamic University.

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This study was motivated by legal issues arising in Case Number 0022/Pdt.P/2024/PA/BL, in which a biological older sister, Novita Dwi Ratnasari, filed a petition for guardianship over her biological younger brother, Rafael Sheva Nandito, who is a minor, for the purpose of handling the administrative matters related to the sale of inherited land, even though Rafael’s biological mother is still alive but works abroad (in Taiwan) and is unable to effectively fulfill her guardianship duties. This situation raises fundamental questions regarding the validity of appointing a biological sibling as a guardian in place of a living parent, guardianship under the Compilation of Islamic Law, and the appropriateness of the application of the law by the Panel of Judges of the Blitar Religious Court in that ruling. The objective of this study is to analyze the validity of the biological brother’s position as a guardian in the legal transaction of land sale and purchase, and to examine the provisions of guardianship under Islamic law applicable in Indonesia, as well as the application of the law by the Panel of Judges in this case. This study employs a normative legal research design with a statutory approach and uses legal data collection techniques through a literature review, which is then analyzed using a prescriptive-analytical method. The results of the investigation indicate that the appointment of Novita Dwi Ratnasari as the guardian of Rafael Sheva Nandito has met all substantive and procedural requirements under Article 319a in conjunction with Article 359 of the Civil Code in conjunction with Articles 3 and 5 of Government Regulation No. 29 of 2019 in conjunction with Article 51(2) of the Marriage Law, thereby validating Novita’s authority to represent Rafael in signing the deed of sale for the inherited land before the land registry official until the completion of the certificate transfer process; Furthermore, the application of the law by the Panel of Judges reflects a progressive and integrative process of legal discovery (rechtsvinding) by systematically combining the Compilation of Islamic Law Articles 107–112, the Marriage Law, the Child Protection Law, and the Civil Code based on the principle of the best interests of the child. The conclusion of this study affirms that the guardianship order is legally valid and reflects philosophical, sociological, and legal justice, so that this decision can serve as a practical guideline for resolving similar guardianship cases in the future.

Keywords: *Guardianship, Sibling, Land Sale, Minor, Religious Court*