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Provisions regarding Inheritance, Guardianship and Banking within the Indonesian Government Regulation in Lieu of Law (*Perpu*) 2/2007

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PENGATURAN TENTANG PEWARISAN, PERWALIAN DAN PERBANKAN DALAM PERPU RI NOMOR 2 TAHUN 2007

The Government Regulation in Lieu of Law (*Perpu*) 2/2007 on the Management of Legal Issues and Implementation of Rehabilitation and Reconstruction of the Regions and Communities of the Nanggroe Aceh Darussalam (NAD) Province and Nias was signed by the President Susilo Bambang Yudhoyono on 6 September 2007. This ratification was a bit behind schedule but it is important that the Indonesian people, especially all tsunami-affected population, are aware of this new regulation. The *Perpu* regulates a number of issues such as land, banking as well as inheritance and guardianship issues. This article will limit its discussion to inheritance, guardianship and banking issues.

Inheritance

With regard to inheritance, article 24 paragraph (1) of the *Perpu* stipulates that everyone has a civil right to property in accordance with the legislation, while paragraph (2) mentions that the rights as stipulated in paragraph 1 cannot be transferred.

In the case of the death of an owner of property, the right to property may be transferred to a rightful heir in accordance with the legislation. The District Court or *Mahkamah Syar'iyah* (Islamic Court) will appoint the rightful heir or the guardian of an underage heir in accordance with the prevailing regulation. Article 25 paragraph (2) mentions that in the case of inheritance to an underage minor or an heir with incapability to act before the law, the management of the property will be placed under the heir's most immediate kin. In the case that the immediate kin is absent, the



property can be left under the management of members of the local community or a customary institution who will be appointed by the District Court or *Syariah* Court. Paragraph (5) of the same article also mentions that the Court can revoke the appointment in cases of misuse or mismanagement of the property of the ward or if the management harms the interest of the ward.

to represent the right and interest in the management of the child's property.

In principle, the stipulations in *Perpu 2/2007* are similar to those stipulated in a number of regulations with some additions. However, as mentioned by the Dean of Faculty of Law of Syiahkuala University, Mawardi Ismail, during a workshop on the *Perpu 2/2007* held recently, one short fall is that it does not deal with the care of orphans. Mawardi Ismail regrets this shortcoming within the *Perpu* as it leaves the impression that it is only focusing on the property left to orphans rather than giving attention to the orphans themselves.

Guardianship

Under Article 1 (5) of *Perpu 2/2007* a guardian is defined as a person or institution having the authority to act as the guardian of a child. Issues on guardianship within this *Perpu* focus on the management of property.

It clearly stipulates that if a rightful heir cannot be located or perform the duties of a guardian, the authority is passed to the *Baitul Mal* or the Public Trustee (*Balai Harta Peninggalan*). The Head of *Baitul Mal* of Aceh, Amrullah, says that a decision to revoke the right of a guardian in the event of misuse or mismanagement of the ward's property or if their harm the interest of their ward can be made based on a report by the *Baitul Mal* at the *gampong* level, which is chaired by the *Imeum Meunasah* (village religious leader), to the court/*Mahkamah Syar'iyah*. In the case of criminal offenses conducted by the guardian, *Baitul Mal* at the *gampong* level will also report the guardian to the police. Article 26 paragraph (2) stipulates that the court shall appoint another guardian.

Meanwhile, article 27 requires that in the event that owners or heirs of property cannot be located, under the law the property is placed under the guardianship and management of *Baitul Mal* (for Moslems) or the Public Trustee (for non-Moslems) until there is a decision by the court. In such cases *Baitul Mal* or the *Balai Harta*



Peninggalan can submit an application to the court requesting their appointment as the guardian of such property, as stipulated by Article 28. Article 29 requires that, in the event that the rightful owner of the property is later known, the owner or heir can submit their objection against the management and guardianship of their property by *Baitul Mal* and *Balai Harta Peninggalan* to the Court or *Mahkamah Sya'riyah*. In such an event the *Baitul Mal* or *Balai Harta Peninggalan* shall return the property to the rightful owner or heir when the court approves the application of the owner or heir.

The guardianship section of the *Perpu* clearly confirms that a guardian will be appointed to manage the property of an underage minor whose parents are dead or who has no legal capacity. However, in the absence of a request for the appointment of a guardian of the child from the child's family, *Baitul Mal* or the *Balai Harta Peninggalan* will submit the request to be appointed the guardian of such property to the Court/*Mahkamah Sya'riyah*, as stipulated by Article 32.

Banking

Perpu 2/2007 addresses the problem of the bank accounts of tsunami-affected victims. Before the enactment of the *Perpu*, many problems pertaining to bank accounts remained unsolved in the absence of a surviving heir or because legal heirs have not been identified. The *Baitul Mal* has had legal problems in dealing with such cases in the past. Fortunately, says Amrullah, with the enactment of the *Perpu*, *Baitul Mal* can now be actively involved. In relation to this, Article 19 requires the Bank to announce the names and addresses of bank accounts while Article 18 stipulates that in the absence of surviving or legal heirs, the banks have the authority to transfer the bank account to *Baitul Mal* or the *Balai Harta Peninggalan*.

The transfer of a bank account to *Baitul Mal* or the *Balai Harta Peninggalan* should be made in stages, as stipulated by Article 18 paragraph (2) as follows:

- a. Identification of bank accounts with no owner or surviving heirs/guardian.
- b. Identification of address of bank account holder at least 3 times within 2 years after the *Perpu* takes into effect.
- c. Application to the court for the transfer of the bank account as stipulated in paragraph (1).

Meanwhile, Article 16 stipulates that the bank can issue recognition of ownership of bank accounts that are missing during the earthquake and tsunami based on their existing records and after recognising the validity of the identity of the owners or their surviving heirs/guardian. Paragraph (2) of the article requires the following for recognition of the validity of their identity:

- a. Completion of identification form regarding bank account ownership by bank account owner or surviving heir/guardian
- b. Court statement to certify surviving heir/guardian of owner of bank account in case of request by heirs/guardian.

However, paragraph (4) of Article 16 says that in cases where banks do not have the records regarding the bank account, but the bank account holder can show evidence of ownership, the bank will make a decision based on the evidence. Mawardi Ismail, as stated in *Serambi* daily of 11 November 2007, says that this provision puts the bank account holder and their heir in the relatively weak position. Everything will depend upon the bank in unilaterally accepting that the proof is valid.

However, it is hoped that neither the bank nor the bank account holder/heir/guardian will lose out by this. It is the hope of everyone that tsunami-affected populations do not experience further misery caused by the lack of detailed stipulations in regulations that affect their lives.