



Trusteeship during the Covid-19 Pandemic: Urgency and Challenges in Indonesia

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Abstract: COVID-19 has had a broad impact in many sectors, including social welfare and legal certainty. During covid-19, in 2021 about 28,000 children being orphaned, and this continues to grow along with the outbreak of the Covid-19 virus in Indonesia. Constitutionally, state guarantees for children's welfare are regulated in various laws and regulations, however, many children do not get care until they grow up, causing the child to be under trusteeship. In positive law, trusteeship has been regulated in the Civil Code, the Compilation of Islamic Law, Law 1 of 1974 and PP 29 of 2019. However, the extent to which these regulations can meet the need for trusteeship in Indonesia still needs to be studied. This paper includes the extent to which Orphan Chamber's (*Balai Harta Peninggalan* or BHP) role in the trust can function correctly. This study used normative juridical research uses a statute approach through library studies. This study found and confirmed that every child is not only entitled to protection for himself. He is also entitled to protection for his property. However, some of these regulations still have various problems ranging from overlapping rules to problems in practice. Meanwhile, the existence of disharmony provisions causes the role of BHP as trustee of trustees and temporary trustees to be less than optimal. However, with the RUU BHP, the concept of trusteeship and the role of BHP institutionally and its duties and functions will be strengthened, although with various notes. Such is the case by optimizing his role as supervisory trustee in situations of natural or non-natural disasters such as the Covid-19 pandemic.

Keywords: Orphan's Chamber, Balai Harta Peninggalan, Trusteeship

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A. Introduction

The Covid-19 pandemic that has hit the world, including Indonesia, has changed various aspects of human life, including social, economic, cultural, political and other aspects. In Indonesia itself, since the government first announced the first positive case in early 2020, a large wave of the spread of the deadly virus is still going up and down. In addition, the emergence of various new variants of this virus seems to extend the series of Covid-19 pandemic situations.¹ Based on data submitted by the government through covid19.go.id, the total number of deaths from this deadly virus has reached 144,102 people.²

The number of deaths during the Covid-19 pandemic certainly leaves deep concern. Moreover, this causes many children to lose their parents. Based on research conducted by the Kompas Team in 2021, around 30,912 children became orphans due to the death of their parents caused by Covid-19.³ This data is in line with what was conveyed by the Ministry of Social Affairs, which stated that there were around 28,000 children who were orphaned during the Covid-19 pandemic.⁴

Basically, according to the constitution's mandate, the state is obliged to guarantee the growth and development of every child,⁵ especially for children who are not in the power of their parents. In the scope of legal studies, children who are not old enough and are not under the authority of their parents cause Trusteeship events. Trusteeship is a form of legal protection for children's rights that arise automatically and are inherent due to their position as legal subjects. In addition to protecting the child, Trusteeship can also take the form of protection for the child's assets.

¹ Rokom, "Virus Corona Varian Baru B.117, B.1351, B.1617 Sudah Ada Di Indonesia," 2021, <https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20210504/1737688/virus-corona-varian-baru-b-117-b-1351-b-1617-sudah-ada-di-indonesia/>.

² Rokom.

³ Tim Kompas, "Anak Korban Pandemi Butuh Pendampingan Jangka Panjang" (Jakarta, 2021), <https://www.kompas.id/baca/dikbud/2021/08/24/anak-korban-pandemi-butuh-pendampingan-jangka-panjang>.

⁴ Fahreza Rizky, "Wapres Sebut Ada 28.000 Anak Yatim Piatu Akibat Pandemi Covid-19," 2021, <https://nasional.sindonews.com/read/570494/15/wapres-sebut-ada-28000-anak-yatim-piatu-akibat-pandemi-covid-19-1634364629>.

⁵ See Article 28B of the UUD 1945 "*Every child has the right to survive, grow and develop and obtain protection from violence and discrimination, because children are assets and the next generation of the nation*"

Table 1. Estimated Number of Orphans/Orphans/Orphans Due to Covid-19⁶

No.	Location	Amount
1.	Java Island	21.427
2.	Sumatera Island	4.267
3.	Kalimantan Island	2.805
4.	Sulawesi Island	1.176
5.	Bali Island	482
6.	Nusa Tenggara Timur Island	209
7.	Papua dan Papua Barat Island	205
8.	Maluku dan Maluku Utara Island	172
9.	Nusa Tenggara Barat Island	167

Source: Tim Kompas, 2021

In a trusteeship institution, the appointment of a trustee is made before a judge in court. A trustee acts as a control holder for children in carrying out legal actions. In addition, the trustee also plays a role in protecting the property and soul of the child under his Trusteeship from unwanted things. Therefore, with a trustee, both the child and his property can be saved.⁷

However, the various powers of a trustee need to be accompanied by supervision. Because not infrequently, a trustee abuses his authority by selling the child's property without the knowledge of the court, especially the supervisory trustee. Therefore, the term supervisory trustee is known in the KUHPperdata (KUHPperdata). Article 366 of the KUHPperdata states that in every trust ordered in Indonesia, the Balai Harta Peninggalan is obliged to carry out its duties as a supervisory trustee. The trusteeship oversight mechanism carried out by the Heritage Property Office begins when the district court clerk submits a copy of the Trustee's determination to the Heritage Property Office under the mandate of Article 369 of the KUHPperdata. With the notification that a trusteeship event has occurred, BHP, as the supervisory trustee, can exercise its various powers in

⁶ Kompas, "Anak Korban Pandemi Butuh Pendampingan Jangka Panjang."

⁷ Hartini Retnaningsih, "Perlindungan Sosial Dalam Upaya Pemenuhan Hak-Hak Anak Yatim Piatu Korban Pandemi Covid-19 Social Protection in Efforts to Fulfill the Rights of Orphans Due to the Covid-19 Pandemic Pendahuluan Pandemi Covid-19 Yang Terjadi Sejak" 12, No. 2 (2021): 237–253, <https://doi.org/10.46807/aspirasi.v12i2.2101>.

supervising a trustee's overall children's assets derived from their parents' inheritance.

Apart from being a supervisory trustee, BHP has other powers, namely as a temporary trustee, to manage the self and assets of an immature child when the court has not determined a Trustee as stated in Article 359 of the KUHPerdata. Although in practice, the role of a temporary trustee is still a discourse and is rarely applied for various reasons. For example, there is an assumption that Article 359 is difficult to implement in practice because they are no longer relevant to the conditions of the times or even to the problem of structuring the BHP institution with all its powers which still do not need strengthening.

Meanwhile, the role of BHP as a supervisory trustee in practice is still not maximized. This is suspected to be due to various reasons, ranging from ambiguity and disharmony in-laws and regulations, the problem of not yet optimal cooperation between agencies involved in the trusteeship, and the urgency of restructuring the BHP.

For example, BHP often does not receive notification that trusteeship has occurred. Because it is undeniable that the existence of BHP is still poorly recognized by both government agencies and the public.⁸ Meanwhile, it is rare for a judge's decision to order that a trusteeship event be notified to BHP. This has hampered the supervising trustees that BHP should have carried out.

Based on data obtained through the Directory of Decisions of the Mahkamah Agung⁹ in 2021, out of a sample of 127 trusteeship applications set by the court, there was not a single ruling ordering to notify BHP of the trusteeship event.

The non-optimal role of BHP as a supervisory trustee or temporary trustee is still an exciting topic to study. Especially in the Covid-19 pandemic situation where BHP is an institution that should be present to ensure children's rights are maintained either through their role as supervisory trustees or temporary trustees.

Therefore, this paper will examine legal issues related to the role of BHP as supervisory trustee and temporary trustee for children under

⁸ Shela Natasha, "Rekonstruksi Eksistensi Balai Harta Peninggalan Sebagai Wali Pengawas Melalui Harmonisasi Peraturan Hukum Tentang Perwalian," *Majalah Hukum Nasional* 49, No. 2 (2019): 131–160, <https://doi.org/10.33331/mhn.v49i2.34>.

⁹ "Direktori Putusan Mahkamah Agung," n.d., https://putusan3.mahkamahagung.go.id/search.html?q=perwalian&jenis_doc=putusan&cat=0cfd1c8a1e785166c0663821392a1c96&jd=&court=&t_put=2021&t_reg=&t_upl=&t_pr=&tp=0.

trusteeship, especially due to the Covid-19 Pandemic, as well as describe what the obstacles are so far and see whether the legal concept of trusteeship offered by The RUU BHP has been able to encourage the role of BHP in the rights of children under trusteeship.

B. Method

This research is normative juridical research (doctrinal research), which examines various laws and regulations governing Trusteeship in Indonesia.¹⁰ Meanwhile, the various norms in positive law will then be seen regarding synchronized and applied.¹¹ Due to the type of normative juridical research, the approach used in this research is the statute approach to see the conformity between legal norms both horizontally and vertically. The data used to solve legal issues in this study were obtained through a literature study sourced from primary legal materials¹² that are authoritative such as judges' decisions and laws and regulations whose content regulates trusteeship matters such as the Indonesian Civil Code (*KUHPerdata*), Marriage Law (*UU Perkawinan*), Islamic Law Compilation (*Kompilasi Hukum Islam or KHI*), and Child Protection Law (*UU Perlindungan Anak*). In addition, secondary sources of legal material such as books, scientific journals, and news relevant to legal issues are used as additional analysis material. Various data that have been obtained are then analyzed qualitatively.

C. Result and Discussion

1. Trusteeship and Its Oversight: The Importance of Reconceptualization

Etymologically trusteeship (*voogdij*) comes from the word trustee. The trustee itself in the KBBI defines another person who is a substitute for parents who, according to the law, are entrusted with the obligation to take care of orphans and their assets before the child grows up.¹³ Meanwhile, trusteeship is the authority to carry out legal actions in the interest of or on

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Prenanda Group, 2014).

¹¹ Rizki Bagus Prasetyo, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat Dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, No. 2 (2021): 327, <https://doi.org/10.30641/kebijakan.2021.v15.327-346>.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*.

¹³ <https://kbbi.kemdikbud.go.id/entri/wali>

behalf of children whose parents have died or are unable to carry out legal actions.¹⁴ In other words, Trusteeship is a legal protection given to a child who has not reached adulthood or has never married and is not under the authority of his parents.¹⁵ The protection is both for the child and for his property.¹⁶

In Indonesia, the concept of Trusteeship can be found in several laws and regulations such as in the KUHPerdara (Article 331-Article 418a), the UU Perkawinan (Article 50 – Article 54), the Kompilasi Hukum Islam (Article 107-112) as well as in the UU Perlindungan Anak (Article 112, Article 33-36). Each of these laws and regulations holds similarities and differences between them.

For example, in KUHPerdara, there are three reasons for the emergence of legal Trusteeship events, namely: Trusteeship by law (*wettelijke voogdij*), Trusteeship due to parental will (*testamentair voogdij*) or Trusteeship determined by a judge (*datieve voogdij*). However, in the UU Perkawinan and the KHI, the term legal trusteeship is not known because, according to the UU Perkawinan, divorce does not cause a child to be in trusteeship. This also applies to children of wedlock, whose power remains with their mother.

Then, related to the size of maturity, according to the KUHPerdara and in the KHI, a child who has considered an adult has reached the age of 21 years and has never been married before. In contrast to the UU Perkawinan, after the revision of the size of men or women who can carry out marriages are those who are 19 years old. However, the age of a person who is considered an adult is different from one another. A child is said to be immature at all, 15 years or 17 years old. Meanwhile, a child who is an adult (18 years but still not 19 years old) can be said to be an adult even though he is not allowed to marry by law.¹⁷ Following the provisions of Article 50 paragraph (1), children who have not reached the age of 18 years old or have never been married who

¹⁴ Ridwan, Hambali Thalib, and Hamza Baharuddin, "Sistem Perwalian Dalam Perspektif Hukum Perdata Islam Dengan Hukum Perdata Sipil," *Journal of Lex Theory* 1, No. 2 (2020): 116–128.

¹⁵ Samsir Alam Nst, Universitas Muhammadiyah, and Tapanuli Selatan, "Analisa Hukum Tentang Penetapan Perwalian Anak di Bawah Umur Berdasarkan Penetapan Pengadilan di Wilayah Hukum Pengadilan Negeri Padangsidempuan" 8, No. 2 (2021): 372–379.

¹⁶ Shela Natasha, "Rekonstruksi Eksistensi Balai Harta Peninggalan Sebagai Wali Pengawas Melalui Harmonisasi Peraturan Hukum Tentang Perwalian."

¹⁷ Nazmina Asrimayasha Nugraha, Sonny Dewi Judiasih, and Elis Nurhayati "Status Kedewasaan Anak Yang Melakukan Perkawinan di bawah Umur dalam Pembuatan Perjanjian Kawin Pada Praktik Kenotariatan" *ACTA DIURNAL: Jurnal Ilmu Hukum Kenotariatan* 4, No. 1 (2020): 114–132. <https://doi.org/10.23920/acta.v4i1.518>

are not under the authority of their parents are under the authority of the Trustee, likewise in the UU Perlindungan Anak, which contains provisions for adults who are 18 years old.

According to Article 331 (a) of the KUHPerdata, the legal event of trusteeship comes into force when (1) a trustee is appointed by a judge. Still, if the trustee is not present, then trusteeship begins when the trustee's appointment is notified to the trustee. (2) if a parent appoints a trustee, the trusteeship takes effect when the parent dies, and the trustee accepts their appointment as trustee. (3) While the trustee is based on the law, trusteeship takes effect when one of the child's parents dies. Meanwhile, in the UU Perkawinan, trustees come into force when:

- 1) If a judge appoints the trusteeship and if the trustee is not present, then the trusteeship shall come into force as from the notification of the appointment.
- 2) If a trustee is appointed by one of the child's parents at the time of the adoption, due to his death, he acquires the power to apply, and who has considered a trustee declares his ability to accept the appointment.
- 3) If a married woman is appointed as trustee, either by the judge or one of the parents of both parents, when she, with the help or power of her husband or with the power of the judge, declares her ability to accept the appointment.
- 4) If an association of foundations or charitable institutions at their request or ability, are appointed as trustees when they declare they are able to accept the appointment.
- 5) If a person becomes a trustee by law at the event that results in his trusteeship.
- 6) If appointed by one of the parents who exercise parental authority, before he dies, a will or message is carried out in the presence of two witnesses if a person becomes a trustee by law at the event that results in his trusteeship.¹⁸

Furthermore, in the case of trusteeship law, the statutory regulations provide provisions regarding the requirements to become a trustee, its obligations and prohibitions and what things can cause a trustee to be dismissed from his position as a trustee.

Basically, the law allows anyone to become a trustee. Still, there are various exceptions where several groups of people with certain conditions cannot be appointed as trustees. Therefore, a trustee must be of sound mind,

¹⁸ Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia* (Jakarta: Indonesia Legal Center Publishing, 2002).

mature age, and not under trusteeship because the trustee will act as a parent for underage children when exercising their power.

The purpose of trusteeship is to protect themselves and the child's property so that they are maintained and cared for properly according to the law. Therefore, the trustee has obligations that are inherent and have been determined by law, such as:¹⁹ (1) the obligation to take care of children under his control and property as well as possible, (2) the obligation to make a list of children's assets that are under their control and record all changes (3) the obligation to be responsible for the assets of children who are under their trusteeship and the losses caused by their mistakes or omissions (4) The trustee is prohibited from transferring the rights or mortgaging the goods owned by the child under his trusteeship unless there is an interest that requires it.

Meanwhile, concerning their duties in managing the property of the child, in particular, the trustee has civil obligations such as:

- 1) Notify BHP that trusteeship has occurred (Article 368 of the KUHPerdata)
- 2) Carry out an inventory of children's assets under their trusteeship. (Article 386 (1) of the KUHPerdata)
- 3) Make a mortgage guarantee bond or add to an existing guarantee when the child's assets under his trusteeship increase (Article 335 of the KUHPerdata)
- 4) Registering state receivables if there are state debt securities in the child's assets (Article 392 of the KUHPerdata)
- 5) Determine the amount that can be used annually by the child and the cost of managing it (Article 338 of the KUHPerdata)
- 6) Submit a letter of application for every sale of children's assets to the District Court (Article 394 of the KUHPerdata)
- 7) Organizing the management of children's assets properly under the provisions of the law (Article 371 of the KUHPerdata)
- 8) Provide calculations and responsibility for all management that has been done (Article 409 of the KUHPerdata).

In carrying out the various obligations above, a trustee may be dismissed from his duties as a trustee.²⁰ The conditions for a trustee to be dismissed in a legal trusteeship event include: (1) the trustee has terrible behavior, (2) in carrying out his duties, the trustee is incompetent or abuses

¹⁹ Komariah, *Hukum Perdata* (Malang: UMM Press, 2001).

²⁰ Ishak, "Perwalian Konsep Hukum Tertulis Di Indonesia," *Kanun Jurnal Ilmu Hukum* 19, No. 3 (2017): 571–590.

his skills, (3) the trustee is sentenced to a sentence that has permanent legal force (4) the trustee intentionally does not notify the trusteeship to BHP (5) the trustee does not provide trusteeship responsibility to BHP.²¹

Therefore, to ensure the achievement of the objectives of trusteeship while protecting children's rights from abuse by trustees in the KUHPerdata, the term trustee supervisor is known. Article 366 of the KUHPerdata that BHP is assigned as a supervisory trustee in each trusteeship. The duties of the supervisory trustee itself are regulated in Article 370 to Article 374 of the KUHPerdata, including:

- 1) represent the child's interests if it conflicts with the interests of the trustee.
- 2) obliged to order the trustee to make an inventory of the inheritance handed down to the child.
- 3) supervise the management of children's assets carried out by the trustee.
- 4) dismissal if the trustee acts fraudulently for his fault.
- 5) ask the court to appoint a new trustee if repeated trusteeship.

Referring to Article 366 of the KUHPerdata, the task of the supervisory trustee is the responsibility of BHP. In addition, the existence of BHP as a supervisory trustee is also contained in the Child Protection Law. This is implied in Article 35 Paragraph (2) "Balai Harta Peninggalan or other institution as referred to in paragraph (1) acts as a supervisory trustee to represent the interests of the child". It is different in the UU Perkawinan and the KHI. The term supervisory trustee is not known in both regulations.

BHP is a Technical Implementation Unit under the Direktorat Jenderal Administrasi Hukum, Kementerian Hukum dan HAM. Based on history, the existence of BHP existed long before the Republic of Indonesia was established. During the Dutch colonial era, BHP was known as Weesen Boedelkamer or Weeskamer, first formed in Jakarta (1624) to meet the needs of the members of the VOC (Vereenigde Oost Indische Compagnie) in managing the assets left for the heirs residing in the Netherlands.

In the field of civil law, especially in the field of trusteeship, BHP has several tasks, including:

- 1) as a trustee for children who are still in the womb (Article 38 of the KUHPerdata jo with Article 45 of the BHP Instructions (Staatsblad 1872 Number 166)
- 2) Management of the personal and property of children who are still immature as long as a trustee has not been appointed (temporary trustee)

²¹ R. Soetojo and Marthalena Pohan, *Hukum Orang Dan Keluarga (Personen En Familie-Recht)* (Surabaya: Airlangga University Press, 2008).

based on Article 359 of the KUHPerdata *jo* with Article 55 Staatsblad 1872 Number 166)

- 3) As a supervisory trustee (Article 366 and Article 369 of the KUHPerdata *jo* with Article 47 Number 166)
- 4) Representing the interests of minors in the event of a conflict with the interests of the trustee (Article 370 of the KUHPerdata *jo* with Article 25 a Reglement Voor Het College Van Boedelmeesteren)
- 5) Taking care of minors' assets if the management is revoked from their trustees (Article 388 of the KUHPerdata)
- 6) Supervisory supervisor if there are people who are declared to be under trusteeship (Article 449 of the KUHPerdata)

The various inherent tasks assigned by the Law to BHP indicate that the role of BHP in the field of civil law can be said to be quite strategic and essential, as well as his duties as supervisory trustee, which is explicitly stated in Articles 366 and 369 of the KUHPerdata.

However, even though the law mandates BHP as a supervisory trustee in each trust, this is still far from being expected in practice. Often the trusts that the courts have established escape the supervision of BHP. Sometimes trusteeship is without going through a court of law.²² This has resulted in the role of the BHP function, which should be the supervisory trustee not running optimally for various reasons.

First, as mentioned above, several laws and regulations govern trusteeship in Indonesia. Various laws and regulations that regulate these do not necessarily make the trusteeship arrangements clear and precise. Instead, it creates ambiguity when used as a guide. For example, the difference in the size of the adult age between the KUHPerdata (21 years) and the UU Perkawinan and the UU Perlindungan Anak (18 years) creates differences of opinion in its application. It does not reflect legal certainty.

In addition, the various laws and regulations governing the trusteeship above do not all regulate the trustee's supervision. It is recorded that only the KUHPerdata and the UU Perlindungan Anak regulate this. Meanwhile, the UU Perkawinan and the Kompilasi Hukum Islam do not recognize

²² Atikah Farah, Yunanto, and R Suharto, "Pengaturan dan Pelaksanaan Perwalian oleh Lembaga Kesejahteraan Sosial Anak Berdasarkan Hukum Perdata Indonesia (Studi Kasus di Panti Sosial Asuhan Anak Aisyiyah Semarang)" *Diponegoro Law Journal* 5, No. 3 (2016): 1–11. <https://ejournal3.undip.ac.id/index.php/dlr/article/viewFile/12345/11991>

trusteeship supervision. This confuses its implementation, which results in the ineffectiveness of trusteeship supervision that BHP should carry out.²³

In this regard, the debate that often arises is related to the classification of the population where the trusteeship provisions in the KUHPerdata apply to groups Timur Asing (Chinese and Non-Chinese). Meanwhile, the trusteeship arrangement stipulated in the UU Perkawinan and KHI applies only to the Muslim population. Talking about the classification problem it cannot be separated from the legacy of the Dutch Colonial, which carried out the classification of the population, and the laws that apply to each of these groups in Articles 163 and 131 IS (Indische Staatsregeling), such as:²⁴

- 1) For European groups, namely those who come from the Netherlands and other Europeans whose laws in their country of origin use the Dutch family law and each of their descendants applies civil law (KUHPerdata and Commercial Law (Commercial Code, or KUHD)
- 2) For the Bumiputra group (indigenous Indonesians), customary civil law, which is synonymous with an unwritten law, applies)
- 3) For the Timur Asing Groups like Chinese and Non-Chinese, European civil law applies.

The classification of the population both philosophically, sociologically and juridically is no longer relevant to be applied at this time.²⁵ Even though the Ampera Cabinet Instruction Number 31/U/IN/12/1966 was issued regarding the elimination of population groups in Indonesia, this only applies specifically to Civil Registry matters while the provisions regarding other civil provisions still refer to the old legal rules.²⁶

The absence of trusteeship supervision in the Marriage Law should mean that all these rules are still subject to Article 366 of the KUHPerdata. Considering that Article 66 of the UU Perkawinan still provides legitimacy for trusteeship supervision carried out by BHP as long as the UU Perkawinan has not been regulated. It is different from the UU Perlindungan Anak, which

²³ Taufik H. Simatupang, "Eksistensi Dan Efektivitas Pelaksanaan Tugas Balai Harta Peninggalan Di Indonesia," *Jurnal Penelitian Hukum De Jure* 18, No. 3 (2018): 397-414, <https://doi.org/10.30641/dejure.2018.v18.397-414>.

²⁴ Setiati Widiastuti, *Hakekat Dan Karakteristik Sistem Hukum Di Indonesia* (Modul Pembelajaran PKN, 2015).

²⁵ Shela Natasha, "Penghapusan Pasal Penggolongan Penduduk Dan Aturan Hukum Dalam Rangka Mewujudkan Unifikasi Hukum," *Majalah Hukum Nasional* 48, No. 2 (2018): 167–192, <https://doi.org/10.33331/mhn.v48i2.107>.

²⁶ Dwi Ari Purwadi, "Kajian Yuridis Terhadap Pelaksanaan Pencatatan Akta Kelahiran Untuk Mewujudkan Tertib Administrasi Kependudukan Di Kecamatan Wanareja" (Universitas Muhammadiyah Purwokerto, 2016).

expressly gives the authority of the supervisory trustee to BHP. Therefore, every trust should involve BHP as the supervisory trustee. Because the provisions of Article 366 of the KUHPerdata are still valid and binding, they need to be adequately implemented.

Second, if you refer to the various regulations governing trusteeship above, it can seem that the regulations do not complement each other but instead seem to stand alone. This creates confusion when it will be implemented in practice. For example, the existence of different regulations between the KUHPerdata and the KHI and the UU Perkawinan (which does not regulate the matter of supervisory trustees) causes the courts to ignore the BHP often whenever there is trusteeship.²⁷ The provisions of Articles 366 and 369 states that in every court, trusteeship through the clerk must submit a copy of the trustee's determination to BHP to be sworn in. It is not implemented. If the trustee does not notify the trusteeship to BHP, the trustee can be fired.²⁸

Research conducted by Taufik H Simatupang (2021) shows that the reason the PN did not notify the existence of trusteeship by submitting a copy of the determination to the BHP was that there was no SEMA or PERMA that regulated this matter. It differs from PA, not submitting a copy of the trusteeship determination to BHP because Muslim people submit most trusteeship applications. So that it does not use the KUHPerdata but uses KHI as the basis for its rules.²⁹ The reason for the absence of SEMA or PERMA, which requires the court to submit a trusteeship determination to BHP, certainly proves that so far, the provisions of Articles 366 and 369 of the KUHPerdata are no longer considered valid. The article is still valid, and there are no other provisions that revoke its validity. Meanwhile, the article is obvious and can be applied in terms of content. Therefore, in addition to the need for harmonization and making technical regulations either through SEMA or PERMA, there is also a need for coordination between the Direktorat Jenderal Administrasi Hukum Umum and the Mahkamah Agung regarding the duties and functions of BHP as supervisory trustee. Considering the role and function of BHP only depends on other agencies. Even though in conditions of the Covid-19 Pandemic, BHP has the authority to become temporary trustees for children who have lost their parents before

²⁷ Shela Natasha, "Rekonstruksi Eksistensi Balai Harta Peninggalan Sebagai Wali Pengawas Melalui Harmonisasi Peraturan Hukum Tentang Perwalian."

²⁸ Soetojo and Marthalena Pohan, *Hukum Orang Dan Keluarga (Personen En Familie-Recht)*.

²⁹ Taufik H. Simatupang, "Efektifitas Pelaksanaan Fungsi Pengawasan Perwalian Oleh Balai Harta Peninggalan Di Indonesia" (Jakarta, 2021).

the court determines a trustee. Because this is clearly stated in Article 359 of the KUHPerdata in conjunction with Article 55 Stb 1872 No. 166). However, this is accompanied by the support of management and solid human resources from internal BHP itself.

The existence of the Covid-19 pandemic should be used as a momentum to reconceptualize trusteeship in Indonesia. Given that many children have lost their parents. Then, ensuring that every trusteeship is by legal procedures is necessary that the state must do to guarantee children's rights.

2. Revitalization of BHP through the RUU BHP

Based on its history, the establishment of BHP during the Dutch Colonial era was inseparable from the need for managing the assets of the VOC members for their heirs in the Netherlands. In addition, the expansion of the VOC's territory led the Dutch government to form the Wees en Boedelkamer institution on October 1, 1624.³⁰

The position of BHP during the Dutch colonial era was in the jurisdiction of each Raad van Justitie through the Royal Dutch decree dated July 4, 1921 No. 69 (Stb 1921/489).³¹ Previously in the Regulation Concerning the Composition of Judicial and Judicial Wisdom Bodies in Indonesia (LN. 1847 No. 23 jo. 1848 No. 57), the District Court held the highest supervision over the Balai Harta Peninggalan in all its jurisdictions Inheritance and Trustees.³²

The ups and downs of the establishment of BHP have occurred since the Dutch colonial era through Stb. 1921/575 and Stb 1926/41 jo. No. 127 was established by BHP in the areas of Jakarta, Semarang, Surabaya, Padang, Makassar, Medan, Bandung, Jogjakarta and Malang. It was even recorded long before that, BHP had existed in various parts of Indonesia such as in Banda (1678), Ambon (1695), Ternate (1695), Palembang (1691), Jepara (1727), Banten (1725), Cirebon (1739), in Timor (1764) and Bengkulu (1827).³³ Currently, there are only 5 BHP throughout Indonesia which are domiciled in Medan, Jakarta, Semarang, Surabaya and Makassar.

³⁰ Syuhada, "Analisis Hukum Terhadap Kewenangan Balai Harta Peninggalan Dalam Pengelolaan Harta Kekayaan Yang Tidak Diketahui Pemilik Dan Ahli Warisnya (Studi Di Balai Harta Peninggalan Medan)" (Universitas Sumatera Utara, 2009).

³¹ Syuhada.

³² Presented by Nurhendro Putranto in his Presentation during the Public Discussion of Research Results "Efektifitas Pelaksanaan Fungsi Pengawasan Perwalian Oleh Balai Harta Peninggalan Di Indonesia" (Taufuk H Simatupang, 2021)

³³ Syuhada, "Analisis Hukum Terhadap Kewenangan Balai Harta Peninggalan Dalam Pengelolaan Harta Kekayaan Yang Tidak Diketahui Pemilik Dan Ahli Warisnya (Studi Di Balai Harta Peninggalan Medan)."

After Indonesia's independence and through the Fourth Amendment to the UUD 1945, it is based on Articles I and II of the Transitional Rules that all existing laws and institutions are still valid and functioning as long as they implement the Constitution on the condition that a new one has not been enacted. Therefore, its existence must still be considered, including the BHP, which was initially made by the Dutch colonial government, which was transferred to the government of a newly independent country based on the transitional rules of the UUD 1945.

Post-independence BHP's journey as a trusteeship institution is still experiencing ups and downs. Initially, BHP was part of the Departemen Kehakiman dan Hak Asasi Manusia along with the Peradilan Umum, Peradilan Tata Usaha Negara and Peradilan Agama. However, over time, there are demands to form an independent and independent judiciary. In 2004 through Presidential Decree 21 of 2004, the three courts were transformed and included in the scope of the Mahkamah Agung. However, it is different from the BHP, which until now is still in the Departemen Kehakiman dan Hak Asasi Manusia (now the Kementerian Hukum dan HAM).

After Indonesia's independence and through the Fourth If referring to other countries such as the United States³⁴The "US Trustee Program" is part of the Department of Justice. Likewise, with the Netherlands, the issue of trusteeship and its institution (Voogdijraad) is under the auspices of the Ministerie van Justitie en Veiligheid.³⁵ It is different in Indonesia after the judiciary is independently integrated into the Mahkamah Agung. BHP, which was initially in the Dutch colonial era, was always under the judiciary, is now separate. Therefore, the implementation of its duties and functions must require extra-institutional coordination to be carried out optimally. As stated above, one of the problems with BHP's less than an optimal role as a supervisory trustee is that so far, the duties and functions of BHP have depended on other agencies such as courts and civil registry offices. Without a copy of the decision submitted by the court to BHP, it will be difficult for BHP to control the course of trusteeship. Likewise, the absence of notification of death by the Civil Registry Office to BHP makes the duties and functions of BHP in supervising the trusteeship to become a temporary trustee unable to work correctly.

The plan to strengthen BHP institutionally is carried out with the drafting of the RUU BHP to replace various laws and regulations that

³⁴ <https://www.justice.gov/ust/about-program>

³⁵ <https://english.rijksdienstn.com/trusteeship-council/child-protection>

regulate BHP so far. In his preamble, the purpose of the establishment of the RUU BHP was, among other things, to replace colonial legal products that were discriminatory and replace them with national legal products that were inspired and rooted in Pancasila and the 1945 Constitution.³⁶ However, it has been more than five years since the RUU BHP has not been ratified.

Based on the RUU BHP, institutionally, the position of BHP will be strengthened by increasing the number of institutions that were initially only in five regions, with each legal area being in every provincial capital. This will undoubtedly help the tasks and functions of BHP, which are currently still not optimal. With the existence of BHP in each province, of course, the role of BHP in guardianship events can run more effectively, considering that the coverage area is not too wide. However, this needs to be supported by the quantity and quality of BHP's human resources, considering that currently, in terms of quantity, the number of BHP employees is still not sufficient to support the tasks and functions of the region, which has an extensive scope and a tremendous workload.³⁷

Meanwhile, from a substantial point of view, so far there has been a classification of the population which has led to the assumption that the trusteeship provisions in the KUHPerdata only apply to Chinese and Non-Chinese Foreign Easterners, which can be answered by the provisions in Article 4 paragraph (2) of the RUU BHP where the Balai Harta Peninggalan applies to all Indonesian citizens regardless of a population group. This is, of course, in line with the Adminduk Law, which only divides the population into two, namely WNI and WNA.

However, this must be supported by efforts to harmonize various laws and regulations governing trusteeship so far. Such harmonization will certainly facilitate its implementation so that the overlapping rules so far that have caused the less than the optimal role of BHP as supervisory trustee in practice and temporary trustee can be resolved.

In terms of duties and functions, the role of BHP as a supervisory trustee is increasingly emphasized by the provisions in Article 7 of the RUU BHP. This article is supported by the provisions in Article 6 of the RUU BHP, where the Kantor Catatan Sipil is obliged to report every death to BHP no later than the 5th day of the following month. After that, BHP asked for

³⁶ See RUU BHP “products of colonial law that are discriminatory products must be replaced with legal products nationally inspired and sourced from Pancasila and the UUD Republic Indonesia 1945.

³⁷ Simatupang, “Eksistensi Dan Efektivitas Pelaksanaan Tugas Balai Harta Peninggalan Di Indonesia.”

information regarding his heirs and inheritance. This is very helpful for the role of BHP because so far, the Kantor Catatan Sipil does not know the role of BHP in trusteeship, so it has never notified BHP of the death event.³⁸ Likewise, the provisions of Article 12 of the RUU BHP, which requires every trustee to be sworn in before BHP after being determined by the court, seems to emphasize that the court is obliged to submit a copy of the trustee's determination to BHP for which the trustee is sworn in before the chairman of the BHP.

In addition, the RUU BHP strengthens the duties and functions of BHP in the field of trusteeship, including its role as a temporary trustee, which was previously regulated in Article 359 of the Civil Code. Article 9 of the RUU BHP states that if there is a vacancy for a trustee, BHP will become a temporary trustee for a maximum of 90 days before the court appoints the trustee after receiving a proposal from BHP. Of course, the role of BHP as a temporary trustee is very much needed, especially in Indonesia, which is incidentally prone to disasters. History records that several significant disasters occurred in Indonesia and caused many children to lose their parents. Just like the current Covid-19 pandemic.

In the current condition of the Covid-19 Pandemic, the task of BHP as a temporary trustee must be the main thing. Given the number of children who have lost their parents, it is not proportional to the public's knowledge of the importance of taking care of themselves and their property. The government needs to pay serious attention to maximize this role in the future.

Therefore, in the author's opinion, apart from the role of BHP as a supervisory trustee, its role as a temporary trustee is no less essential to be strengthened in the RUU BHP, which is currently being discussed. In addition, there is also a need for support in terms of institutions and human resources to support these tasks and functions to keep children's rights protected and ensure that their growth and development can run well into adulthood.

D. Conclusion

Although there are several laws and regulations governing trusteeship in Indonesia, these have not been able to answer the problems in the field. The existence of overlapping rules, legal vacuums to the existence of no more extended relevant rules have become obstacles that have been happening so

³⁸ Simatupang, "Efektifitas Pelaksanaan Fungsi Pengawasan Perwalian Oleh Balai Harta Peninggalan Di Indonesia."

far. Meanwhile, these various problems resulted in BHP's less than optimal role, both in terms of institutions and duties and functions. So far, BHP's role as trusteeship supervisor has only depended on other agencies such as Pengadilan and the Kantor Catatan Sipil. Meanwhile, his supervisory trustee in practice is still experiencing various obstacles ranging from the position, area coverage, workload to human resource problems. The existence of the RUU BHP is expected to clarify various trusteeship rules and strengthen the duties and functions of BHP both as supervisory trustee and temporary trustee. So that in the conditions of the Covid-19 Pandemic, the role of BHP can be felt in protecting children's rights.

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