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Abuse of Guardianship in Criminal Justice

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Abstract: Guardianship (curatele) aims to protect individuals who are legally declared incompetent in exercising their rights and obligations, as stipulated in Article 433 of the Indonesian Civil Code. However, in criminal proceedings, guardianship status is often misused by suspects as a strategy to evade legal processes, even without valid medical grounds. This issue arises due to the absence of clear regulations governing guardianship within the criminal law framework, leading to a legal vacuum and opening avenues for manipulative practices that amount to obstruction of justice. This study adopts a normative juridical approach and literature review to analyze the misuse of guardianship status and the urgency of establishing new regulations that set objective standards for medico-legal evaluation. The findings indicate that weak coordination between law enforcement and medical institutions, as well as the lack of integrative evaluation standards, contributes to the misuse of guardianship. Therefore, firm regulations and cross-sectoral evaluation mechanisms are needed to ensure that guardianship is granted solely to individuals who genuinely require it and not misused as a shield from criminal liability.

Keyword: Guardianship, Abuse, Criminal Justice, Obstruction of Justice, Legal Vacuum, Medico-Legal Evaluation, Regulation.

Abstrak: Pengampuan (curatele) bertujuan untuk melindungi individu yang secara hukum dinyatakan tidak cakap dalam menjalankan hak dan kewajibannya, sebagaimana diatur dalam Pasal 433 Kitab Undang-Undang Hukum Perdata. Namun, dalam proses peradilan pidana, status pengampuan seringkali disalahgunakan oleh tersangka sebagai strategi untuk menghindari proses hukum, bahkan tanpa alasan medis yang sah. Hal ini terjadi karena tidak adanya peraturan yang jelas mengenai pengampuan dalam kerangka hukum pidana, sehingga terjadi kekosongan hukum dan membuka peluang terjadinya praktik-praktik manipulasi yang mengarah pada obstruction of justice. Penelitian ini menggunakan pendekatan yuridis normatif dan tinjauan literatur untuk menganalisis penyalahgunaan status pengampuan dan urgensi pembentukan peraturan baru yang menetapkan standar objektif untuk evaluasi medis-legal. Temuan penelitian menunjukkan bahwa lemahnya koordinasi antara penegak hukum dan institusi medis, serta kurangnya standar evaluasi yang integratif, berkontribusi terhadap penyalahgunaan pengampuan. Oleh karena itu, dibutuhkan peraturan yang tegas dan mekanisme evaluasi lintas sektoral untuk memastikan bahwa pengampuan hanya diberikan

kepada orang yang benar-benar membutuhkan dan tidak disalahgunakan sebagai tameng untuk menghindari pertanggungjawaban pidana.

Kata Kunci: Perwalian, Pelecehan, Peradilan Pidana, Obstruksi Peradilan, Kekosongan Hukum, Evaluasi Medis-Hukum, Regulasi.

INTRODUCTION

Background

Guardianship (*curatele*) is a legal institution aimed at providing protection to individuals who are legally declared incapable of exercising their rights and fulfilling their obligations. This provision is regulated in the Indonesian Civil Code (KUHPerdata), specifically in Article 433, which states: "Every adult who is continuously in a state of mental deficiency, insanity, or mental derangement must be placed under guardianship, even if he or she is occasionally capable of reasoning." (Civil Code, Article 433) Legally, guardianship (*pengampuan*) aims to ensure legal protection for individuals who are deemed legally incapacitated by appointing a legitimate guardian. The primary purpose of guardianship is to guarantee that the legal rights of individuals in such incapacitated conditions remain protected through assistance provided by a designated guardian. However, in the practice of criminal justice, there is a growing tendency for abuse of guardianship status by certain parties, including suspects seeking to evade legal proceedings. In several cases, guardianship status is invoked not based on legitimate medical conditions, but rather as a legal strategy to avoid investigation and prosecution. This phenomenon indicates the existence of a legal loophole that may lead to obstruction of justice and a violation of the principle of equality before the law. (Directorate General of General Legal Administration, n.d.) The current provisions on guardianship are regulated solely under civil law, without any direct correlation to criminal law that governs how such status should be treated for individuals designated as criminal suspects. This creates a legal vacuum in the realm of criminal law, as there are no clear regulations that explicitly stipulate the mechanism and requirements for granting guardianship status to a suspect. As a result, the process of granting guardianship may be manipulated and is at risk of being misused as a shield to evade criminal liability. (Constitutional Court of the Republic of Indonesia, 2023). In the context of criminal law, the status of a suspect placed under guardianship is often misused as a means to evade legal proceedings that should rightfully be carried out. The phenomenon of suspects exploiting their status as "under guardianship" (*terampuh*) to avoid criminal prosecution is a critical concern in this study. This reflects a legal loophole that allows suspects to effectively circumvent investigation and prosecution. Such a condition illustrates the existence of a legal vacuum within criminal law, as current regulations do not explicitly define the mechanisms and requirements for granting guardianship status to criminal suspects. In the absence of clear rules and standardized procedures, the assignment of guardianship status to suspects is highly vulnerable to misuse as a legal shield. This situation not only undermines the principle of equality before the law, but also erodes public trust in the criminal justice system as a whole. The court mechanism for granting guardianship through a guardianship petition is, in essence, intended to provide legal protection for individuals who are legally incapacitated. However, this status is frequently exploited by certain parties as a loophole to escape criminal liability. As a consequence, there arises a potential for obstruction of justice when suspects invoke such legal status as a justification for evading prosecution. This, in turn, diminishes the effectiveness of the criminal justice system in upholding justice. Based on the assessment conducted by the Community Legal Aid Institute (Lembaga Bantuan Hukum Masyarakat, 2020), the evaluation process for individuals proposed for guardianship lacks an integrative

standard that combines both medical and legal assessments. The court's determination of guardianship status often does not involve an objective psychiatric forensic evaluation, thereby creating opportunities for procedural deviations. (Directorate General of General Legal Administration, n.d.; Community Legal Aid Institute, 2020) Therefore, clear regulations and strong inter-agency coordination—among law enforcement authorities, medical institutions, and the judiciary—are urgently needed to ensure that guardianship status is not misused as a shield or excuse to evade legal responsibility. In the absence of clear rules and standardized procedures, the granting of guardianship status to suspects remains highly vulnerable to abuse as a legal tool to avoid prosecution. This situation not only undermines the principle of equality before the law but also erodes public trust in the criminal justice system as a whole. Through this study, it is expected that policy recommendations will be produced that not only address existing legal loopholes but also strengthen the synergy among law enforcement institutions, while maintaining the consistency and integrity of criminal justice proceedings in Indonesia. The determination of guardianship status for individuals deemed legally incapacitated is a legitimate protective instrument within Indonesia's civil law system. However, in criminal law practice, this status is frequently misused by suspects seeking to escape criminal liability. The manipulation of 'under guardianship' (terampuh) status is used to claim criminal incapacity, even though the suspect may still be consciously and actively capable of engaging in other legal actions. This misuse raises serious concerns about the existence of legal loopholes that may hinder the proper course of criminal proceedings and threaten the principle of equality before the law. The absence of firm regulation concerning the procedures and requirements for granting guardianship status to suspects has resulted in a significant legal vacuum. This condition allows for potential obstruction of justice, ultimately weakening the effectiveness of law enforcement. Therefore, comprehensive regulation is necessary to ensure that individuals with special legal status, including those declared under guardianship, can still be held criminally accountable if it is proven that they possess the awareness and capacity to act legally. This study highlights the legal gap in Indonesia's criminal justice system concerning the misuse of guardianship status (trusteeship) by suspects to avoid criminal responsibility. The assignment of 'under guardianship' status is often not based on an integrated medical and legal evaluation, and lacks objective psychiatric forensic review. The absence of specific regulation governing the procedures and criteria for guardianship in the context of criminal law creates a legal vacuum that is prone to abuse and risks triggering obstruction of justice. This research emphasizes the urgent need to draft new regulations to close the existing legal loopholes. Such regulations are crucial to ensure a balance between legal protection for individuals lacking legal capacity and the fair and effective enforcement of criminal law.

Research Questions

1. How does the misuse of guardianship status occur within the criminal justice system, and how do regulatory gaps and weak medico-legal evaluations affect the principles of equality and law enforcement?
2. What kind of new regulation is required to prevent the misuse of guardianship status and ensure justice within the criminal justice system?

Research Objectives

1. To analyze the modes and implications of guardianship status abuse in the criminal justice system.
2. To propose a regulatory model that can prevent the misuse of guardianship status and ensure a balance between legal protection and criminal law enforcement

METHOD

This study uses a normative juridical approach, which examines law as a set of norms written in statutory regulations. Data was obtained through literature study, by reviewing relevant regulations and supporting academic literature. The analysis in this study is conducted qualitatively, meaning that the data collected is not processed using numbers or statistics, but analyzed based on its content and meaning. The approach used is deductive, starting from general legal rules (such as laws or legal principles), which are then used to understand and explain more specific legal issues.

RESULT AND DISCUSSION

The existence of legal norms does not automatically guarantee their implementation in practice. Based on the Theory of Legal Effectiveness, a rule will be effective if it fulfills three main elements: clarity of norms, quality law enforcement, and public compliance. In cases involving abuse of guardianship status, weak regulation and the lack of legal-medical evaluation become vulnerable points that undermine the function of law and potentially ignore the principle of equality before the law. The misuse of the "legal incapacity" status as a shield to avoid criminal liability is a distortion of justice. When such a loophole is allowed to persist, the law loses its function as a guardian of truth and justice. This underscores the need for strict, transparent regulations based on objective legal-medical evaluations to close the gap for manipulation.

According to the Theory of Legal Protection, the state is obliged to guarantee protection for all citizens, including those with mental disorders. However, such protection must be exercised cautiously to prevent it from being exploited as a means to evade legal accountability. Unclear regulations weaken legal protection not only for victims but also for the integrity of the legal system itself. Therefore, a legal protection mechanism is required, both preventive through a strict and verifiable guardianship procedure and repressive through corrective measures in case of abuse or errors in the determination of such status. From the perspective of the Theory of Obstruction of Justice, efforts to avoid legal proceedings by manipulating guardianship status constitute an act of obstructing justice. This is not merely an administrative violation, but a real form of hindrance to a legitimate legal process. Thus, the state must take firm action through new regulations to prevent guardianship from becoming a tool that blocks access to justice.

CONCLUSION

The effectiveness of law depends on the clarity of norms, proper enforcement, and public compliance. The abuse of guardianship status due to weak regulation and medical evaluation threatens the principles of equality and justice. The state has an obligation to provide appropriate legal protection so that guardianship is not misused to obstruct judicial processes. Therefore, new regulations that are strict and transparent are needed, with both preventive and corrective mechanisms. From the perspective of the Theory of Obstruction of Justice, the misuse of guardianship status is a form of hindering the legal process that must be anticipated to preserve the integrity of the justice system.

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