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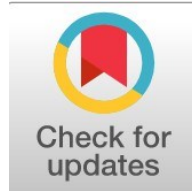
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Juridical Implications of Reforming Child Guardianship Requirements on Children's Rights Protection Under Minister of Social Affairs Regulation Number 7 of 2024

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Abstract

General Background: Child guardianship is a legal mechanism for protecting children who are no longer under effective parental authority, and appointment decisions should prioritize the best interests of the child. **Specific Background:** Minister of Social Affairs Regulation Number 7 of 2024 introduces more detailed mechanisms for assessing prospective guardians, including social assessment, home visits, Social Work Reports, and supporting suitability requirements. **Knowledge Gap:** Its implementation raises unresolved questions about the legal position of these assessments in judicial proceedings, their procedural status, and their relationship with judicial independence. **Aims:** This normative legal study, supported by a limited socio-legal perspective, examines the regulation's implementation and legal position in relation to legal certainty, prospective-guardian assessment, and children's rights. **Results:** The framework moves guardianship from predominantly administrative screening toward substantive, child-centered assessment, provides a broader factual basis for identifying risks before appointment, and supplies more detailed technical standards. Consistent application, however, depends on institutional capacity, professional assessment availability, inter-agency coordination, and judicial interpretation. **Novelty:** The study links the revised assessment framework with preventive legal protection, legal certainty, and the best interests of the child while preserving the court's evidentiary authority. **Implications:** Continued coordination and clear procedural guidance are needed so that implementation remains consistent without limiting judicial independence or displacing the child's welfare as the central consideration.

Highlights:

- Social workers, home visits, and Social Reports broaden the factual basis for evaluating prospective caretakers.
- Early screening can identify risks of neglect, violence, exploitation, and property mismanagement before appointment.
- Uniform application depends on institutional capacity, inter-agency coordination, professional resources, and consistent judicial interpretation.

Keywords: Child Guardianship, Children's Rights Protection, Legal Certainty, Best Interests of the Child, Minister of Social Affairs Regulation Number 7 of 2024.

Introduction

Children are legal subjects who possess fundamental rights from birth and constitute an important part of the nation's future human capital. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees every child's right to survival, growth, and development, as well as protection from violence and discrimination. At the international level, the United Nations Convention on the Rights of the Child (UNCRC) establishes the principle of the best interests of the child, requiring that children's interests be given primary consideration in every action concerning them.[1] This protection becomes particularly important when children lose parental care or are no longer under effective parental authority.

In such circumstances, the guardianship system (*voogdij*) serves as a legal mechanism to protect the child's personal interests and property. Guardianship is not merely a family arrangement but a legal institution that grants authority and imposes responsibility on the appointed guardian to act for the benefit of the child.[2] Therefore, the appointment of a guardian should not be based solely on family relationships or administrative completeness, but should also consider the prospective guardian's psychological, moral, social, and managerial capacity. Insufficient assessment may create risks of neglect, violence, exploitation, or improper management of the child's property.[3]

The need for a more comprehensive assessment is reflected in Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing Guardians. The regulation establishes substantive requirements for prospective guardians, including supporting documents such as a Police Record Certificate (SKCK), mental health examination, and recommendations from the relevant social service authorities. These requirements indicate a shift from a predominantly administrative approach toward a more substantive assessment of the suitability of prospective guardians.[4]

The implementation of this framework was further strengthened through the issuance of Ministry of Social Affairs Regulation Number 7 of 2024 concerning the Implementing Regulation of Government Regulation Number 29 of 2019. This regulation provides technical mechanisms for assessing prospective guardians, including social assessment, home visits by Social Workers (*Pekerja Sosial/Peksos*), and the preparation of Social Reports as supporting materials in guardianship proceedings. The regulation is therefore significant in strengthening the connection between judicial examination and professional social assessment.[5]

The development of this regulatory framework is increasingly important given the continuing vulnerability of children to violence, neglect, and other forms of abuse. Guardianship may place a child in a position of substantial dependence on the appointed guardian, particularly with regard to care, education, health, and the management of property. Consequently, the quality of the guardian selection process is closely related to the effectiveness of child protection. The regulatory development also reflects a shift from a family-centered approach toward a child-centered approach, in which the best interests of the child become the primary consideration in determining guardianship.

Nevertheless, the implementation of Ministry of Social Affairs Regulation Number 7 of 2024 raises legal questions concerning its position within judicial proceedings. In particular, questions arise regarding the extent to which social assessment and Social Reports should influence judicial consideration, whether such assessments constitute mandatory procedural requirements or supporting evidence, and how judges should harmonize the regulation with their independent authority to examine evidence and determine the best interests of the child.[6] These issues demonstrate that the existence of technical regulations does not automatically resolve the challenges of implementing a child-centered guardianship system.

Based on this background, this study examines the implementation and legal position of Ministry of Social Affairs Regulation Number 7 of 2024 in guardianship proceedings, particularly in relation to the assessment of prospective guardians and the protection of children's rights. The study focuses on how the regulation operates within judicial practice and whether its implementation provides sufficient legal certainty and substantive protection for children requiring guardianship. In this way, the research seeks to contribute to the development of a guardianship system that prioritizes the best interests of the child rather than merely fulfilling formal administrative requirements.

Method

This study employs normative legal research (*normative juridical research*) supported by a limited socio-legal perspective to examine the implementation of legal norms in guardianship proceedings. The research uses a statutory approach to examine the hierarchy and relationship among the 1945 Constitution of the Republic of Indonesia, the relevant child protection and marriage legislation, Government Regulation Number 29 of 2019, and Ministry of Social Affairs Regulation Number 7 of 2024. A conceptual approach is also employed to analyze relevant legal concepts and doctrines, particularly *Parens Patriae* and the *Best Interests of the Child* principle.[7] The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation, the Compilation of Islamic Law, and relevant court decisions. Secondary legal materials consist of legal literature, academic publications, and accredited scientific journals, while tertiary materials include legal dictionaries and encyclopedias. The legal materials are collected through library and document research and analyzed qualitatively through a deductive-prescriptive method. The analysis begins with general legal principles and applicable regulations and proceeds to formulate conclusions concerning the legal position and implementation of Ministry of Social Affairs Regulation Number 7 of 2024 in guardianship proceedings. The analysis is directed toward assessing the consistency between the regulatory framework and the principle of the best interests of the child, particularly in relation to the assessment of prospective guardians and the role of social assessment in judicial

proceedings. The results are then used to formulate legal arguments concerning legal certainty, child protection, and the need for effective implementation of the guardianship framework.

Results and Discussion

A. The Legal Implications of Updating Guardianship Requirements in Minister of Social Affairs Regulation No. 7 of 2024 on Child Rights Protection

Child guardianship in the Indonesian legal system reflects the state's responsibility to protect children who are no longer under effective parental authority. This responsibility can be understood through the principle of *parens patriae*, under which the state has a protective role toward children who are unable to fully protect their own interests. The legal framework governing guardianship is found in several instruments, including the Civil Code (KUHPdata), Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, and the Compilation of Islamic Law (KHI).[8] Within this framework, the appointment of a guardian is not merely a matter of transferring authority but also a mechanism for ensuring that the child's personal interests and property are adequately protected.

The development of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for the Appointment of Guardians, followed by Ministry of Social Affairs Regulation Number 7 of 2024 as its implementing regulation, strengthens the substantive dimension of the guardianship process. The regulatory framework introduces requirements that enable the suitability of prospective guardians to be assessed more comprehensively, including criminal record verification, physical and mental health information, economic circumstances, and social assessment. The involvement of Social Workers (*Pekerja Sosial/Peksos*) and the preparation of Social Reports further expand the assessment beyond formal administrative documents.[9]

This development represents a movement from a predominantly administrative approach toward a more child-centered model of guardianship. Under the earlier approach, documentary requirements could establish the identity and legal relationship of the parties but did not necessarily provide sufficient information regarding the prospective guardian's ability to provide care, maintain the child's welfare, or manage the child's property responsibly. The introduction of social and professional assessments allows these substantive aspects to be considered before guardianship is determined. Consequently, the protection of children's rights can begin at the stage of selecting and assessing the prospective guardian rather than only after a violation or dispute has occurred.

The legal implications of Ministry of Social Affairs Regulation Number 7 of 2024 can be observed in several dimensions:

1. **Strengthening the Substantive Assessment of Prospective Guardians:** The regulation expands the basis for assessing prospective guardians beyond administrative eligibility. Information concerning criminal records, health, social conditions, economic capacity, and the results of social assessments may provide the court with a broader factual basis for determining whether a prospective guardian is capable of fulfilling the responsibilities of guardianship. This is particularly important because guardianship creates continuing obligations toward the child's welfare and, where applicable, the management of the child's property.
2. **Strengthening Preventive Child Protection:** The new assessment mechanisms allow potential risks to be identified before guardianship is formally established. From the perspective of Philipus M. Hadjon's Legal Protection Theory, this development reflects preventive legal protection because the state seeks to prevent violations of children's rights through verification and assessment at the beginning of the guardianship process. The mechanism is therefore not merely administrative but serves a protective function by reducing the possibility that an unsuitable person will obtain guardianship authority.
3. **Strengthening the Role of Social Assessment in Judicial Proceedings:** The involvement of Social Workers and the preparation of Social Reports introduce a multidisciplinary dimension into guardianship proceedings. The court can obtain information concerning the child's social environment, the prospective guardian's circumstances, and the conditions in which the child will be cared for. Nevertheless, the Social Report should be understood as part of the evidentiary and assessment framework rather than as automatically replacing the judge's authority to examine evidence and determine the case. The final judicial determination remains subject to the court's assessment under the applicable procedural and substantive law.
4. **Strengthening the Principle of the Best Interests of the Child:** The regulatory development places greater emphasis on the actual welfare and protection of the child. The assessment of prospective guardians is directed not merely toward determining whether a person formally qualifies but toward determining whether the proposed guardianship arrangement is compatible with the child's best interests. This principle is relevant to decisions concerning care, education, health, social development, and the protection of the child's property. Accordingly, the appointment of a guardian should be understood as a responsibility-oriented legal relationship rather than merely the granting of legal authority.

From the perspective of Lawrence M. Friedman's Legal System Theory, the effectiveness of these regulatory changes depends on the interaction of legal substance, legal structure, and legal culture.[10] The legal substance is reflected in the increasingly detailed requirements governing the appointment of guardians. The legal structure involves the institutions responsible for implementing those requirements, including the courts, Social Services, Social Workers, and other relevant authorities. Meanwhile, legal culture concerns the understanding and commitment of judges, government officials, families,

and society to place the best interests of the child at the center of the guardianship process. If one of these elements does not operate effectively, the existence of comprehensive regulations may not necessarily produce equivalent protection in practice.

The regulation therefore has implications not only for the prospective guardian but also for judicial practice. Judges are required to consider the relevant legal framework and assess whether the available evidence sufficiently demonstrates the suitability of the prospective guardian. At the same time, the court retains its judicial authority to evaluate the evidence and determine the legal consequences of the facts established during the proceedings. This distinction is important to prevent technical requirements from being treated merely as bureaucratic formalities while also ensuring that the Social Report and other professional assessments receive appropriate consideration.

The implementation of Ministry of Social Affairs Regulation Number 7 of 2024 may nevertheless raise questions concerning procedural uniformity. Differences in institutional capacity, availability of Social Workers, access to professional assessments, and judicial interpretation may affect how the regulatory requirements are implemented in individual cases. Such differences do not automatically demonstrate judicial non-compliance, but they indicate the importance of clear coordination and procedural guidance among the institutions involved in guardianship proceedings.

Therefore, the legal implications of the regulatory update should be understood not simply as an addition to the administrative requirements for appointing guardians. More fundamentally, it represents an effort to strengthen the substantive protection of children by ensuring that guardianship decisions are supported by broader information concerning the prospective guardian and the child's circumstances. The effectiveness of this reform ultimately depends on the consistency between the legal norms, institutional capacity, and professional assessment mechanisms supporting judicial decision-making. In this respect, further institutional coordination and clear procedural guidance may be necessary to ensure that the child-centered objectives of the regulation are implemented consistently while preserving the independence and authority of the judiciary.

B. Analysis of Legal Certainty and the Best Interests of the Child in the Revision of Guardianship Requirements of Minister of Social Affairs Regulation Number 7 of 2024

The enactment of Minister of Social Affairs Regulation Number 7 of 2024 as an implementing regulation of Government Regulation Number 29 of 2019 strengthens the regulatory framework governing the appointment of child guardians. Under Article 8 paragraph (1) of Law Number 12 of 2011 as amended by Law Number 13 of 2022, ministerial regulations are recognized within the Indonesian legal system insofar as their formation is based on an order from higher legislation or on the authority of the relevant institution. In this context, Minister of Social Affairs Regulation Number 7 of 2024 functions primarily as a technical and operational instrument for implementing the requirements and procedures for appointing guardians. Its existence provides more detailed guidance concerning assessment and verification than was previously available at the regulatory level.[13]

From the perspective of legal certainty developed by Gustav Radbruch and further elaborated in the work of Jan Michiel Otto, legal certainty requires norms that are sufficiently clear, consistent, and capable of being applied predictably. The issuance of Minister of Social Affairs Regulation Number 7 of 2024 contributes to this objective by providing more detailed mechanisms for assessing prospective guardians. Requirements relating to criminal records, health conditions, social circumstances, and Social Reports provide identifiable parameters for evaluating the suitability of prospective guardians. The regulation therefore strengthens normative guidance for institutions involved in the guardianship process.[14]

However, legal certainty cannot be assessed solely from the existence of a regulation. It also depends on the consistency of its interpretation and implementation by the institutions involved. In guardianship proceedings, the relationship between the technical requirements established by the Ministry of Social Affairs and the procedural authority of the court becomes particularly important. The Social Report and other assessment documents may provide relevant factual information for judicial consideration, but the court remains responsible for examining the evidence and determining the legal consequences of the facts established in the proceedings. Consequently, the regulatory framework must be understood together with the applicable procedural and evidentiary principles.

This issue becomes important because differences in institutional capacity and interpretation may influence the implementation of the regulation. The availability of Social Workers, access to psychological examinations, coordination between Social Services and courts, and the completeness of supporting documents may differ from one case to another. Therefore, the existence of Minister of Social Affairs Regulation Number 7 of 2024 does not by itself guarantee uniform judicial outcomes. Legal certainty requires not only clear regulatory requirements but also effective coordination and consistent institutional implementation.

At the same time, the regulation strengthens the principle of the best interests of the child, as recognized in Article 3 paragraph (1) of the Convention on the Rights of the Child and reflected in Indonesia's child protection legislation. The principle requires the child's interests to be treated as a primary consideration in decisions concerning children. In the context of guardianship, this principle requires the assessment of prospective guardians to focus not merely on family relationships or administrative eligibility but also on the prospective guardian's ability to provide appropriate care and protect the child's physical, psychological, social, educational, and economic interests.[15]

The incorporation of social assessment into the guardianship process represents an important development in this regard.

Home visits and assessments conducted by Social Workers can provide information that may not be available through conventional documentary evidence alone. Information concerning the prospective guardian's living environment, family relationships, economic circumstances, and capacity to care for the child can assist the court in obtaining a more comprehensive understanding of the proposed guardianship arrangement. Such assessment supports a preventive approach to child protection because potential risks may be identified before guardianship is formally established.

The principle of the best interests of the child also requires the court to consider the individual circumstances of each child. A guardianship decision should therefore not be based solely on whether the prospective guardian satisfies formal requirements. The court must also consider whether the proposed arrangement is genuinely capable of supporting the child's welfare and development. In this respect, Minister of Social Affairs Regulation Number 7 of 2024 provides an important framework for moving guardianship assessment toward a more substantive and child-centered approach.

Nevertheless, the strengthening of the regulatory framework does not eliminate the need for judicial judgment. Legal certainty and the best interests of the child must operate together. Excessive formalism may result in the child's interests being overlooked when procedural requirements cannot be fulfilled for reasons beyond the parties' control, while excessive judicial flexibility may weaken consistency and predictability. The appropriate approach is therefore to use the regulatory requirements as a structured framework for assessment while allowing judges to evaluate the evidence and circumstances of each individual case in accordance with the law.

From an evaluative-normative perspective, Minister of Social Affairs Regulation Number 7 of 2024 strengthens both the legal certainty and child-protection dimensions of the guardianship system. However, its effectiveness remains dependent on institutional coordination, professional assessment capacity, and consistent interpretation within judicial practice. Further procedural guidance and coordination among the Ministry of Social Affairs, Social Services, Social Workers, and the judiciary may therefore be necessary to ensure that the regulation is implemented consistently without limiting judicial independence.

Ultimately, the significance of Minister of Social Affairs Regulation Number 7 of 2024 lies not simply in the addition of requirements for prospective guardians but in the transformation of the underlying orientation of guardianship law. The regulation provides a framework through which legal certainty can be strengthened while placing the best interests of the child at the center of the appointment process. Its effective implementation should therefore ensure that guardianship decisions are based on clear legal standards, adequate factual assessment, and consideration of the child's long-term welfare.

Conclusion

Based on the analysis and discussion, two main conclusions can be drawn. First, the revision of child guardianship requirements through Minister of Social Affairs Regulation Number 7 of 2024 strengthens the legal framework for protecting children's rights by moving the guardianship process from a predominantly administrative approach toward a more substantive and child-centered assessment. The involvement of Social Workers, social assessment, home visits, Social Reports, and other supporting requirements provides a broader basis for evaluating the suitability of prospective guardians. These mechanisms strengthen preventive legal protection by enabling potential risks of neglect, violence, exploitation, and improper management of the child's property to be identified before guardianship is determined.

Second, Minister of Social Affairs Regulation Number 7 of 2024 contributes to strengthening legal certainty and the implementation of the best interests of the child by providing more detailed technical standards for the assessment of prospective guardians. Nevertheless, regulatory certainty does not automatically guarantee uniform implementation in judicial practice. Differences in institutional capacity, availability of professional assessments, and interpretation of the relationship between ministerial regulations and judicial procedure may create challenges in achieving consistent application. Therefore, effective implementation requires continued institutional coordination and clear procedural guidance while maintaining the independence of judicial decision-making. In this context, the best interests of the child should remain the central consideration in ensuring that guardianship decisions provide both legal certainty and substantive protection for children.

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