

Juridical Review of Legal Relations in Child Care Agreements (Study at The Orphanage Orphaned Daughter Aisyiyah Grogol Sukoharjo)

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ABSTRACT

Along with the development of the era of human life, the birth rate of children is increasing rapidly. Children as creatures of God Almighty have the right to life and independence and to protection from parents, families, communities, and the state. The rapid development and increase in human civilization have an impact on the higher life of fulfilling services. In this case, the orphanage acts as a social welfare institution that has the responsibility of providing services to neglected children, as well as providing substitute services or child care in fulfilling their needs. Where this supports the birth of a child care agreement. One example is the child care agreement at the Aisyiyah Women's Orphanage Grogol Sukoharjo. The purpose of this study was to determine the form and content of the child care agreement at the Aisyiyah Grogol Sukoharjo Orphanage and to determine the legal relationship in the child care agreement at the Aisyiyah Grogol Sukoharjo Orphanage. The method used in this research is normative juridical method. The results showed that the form of the child care agreement at Aisyiyah Grogol Sukoharjo Orphanage is a written agreement and the contents of the agreement are also in accordance with Article 1338 of the Civil Code regarding the principle of freedom of contract and also in accordance with Article 1320 paragraph (1) of the Civil Code regarding the principle of consensualism. Furthermore, the legal relationship in this agreement is in accordance with Article 1338 paragraph (1) of the Civil Code regarding the principle of pacta sun servanda, in

accordance with Article 1338 paragraph (2) and (3) of the Civil Code, and the rights and obligations arising in the agreement are in accordance with Law Number 4 of 1979 concerning Child Welfare and also QS Al Anam verse 151, Al Baqarah verse 233, At Tahrir verse 6.

Keywords: *Child care agreement; form and content of the agreement; legal relationship*

INTRODUCTION

Along with the development of the era of human life, the number of births to children is increasing rapidly. As creatures of God Almighty, children have the right to life and independence and receive protection from parents, family, society, and the state (Purwanto 2020). So no human being or other people can take away the right to life and freedom. Indonesia ratified the Convention on the Rights of the Child (Konvensi Hak-hak Anak (KHA)), contained in Presidential Decree 36/1999, on 25 August 1990, which includes the contents that children possess human rights. There are responsibilities of the government, parents, and society aiming at the child's interests. Best for children to create optimal child protection. Then there is Law Number 35 of 2014 as an amendment to Law Number 23 of 2002, which regulates child protection and explains the rights and obligations of children, as well as the responsibilities and duties of the state, government, community, family, and parents. In addition, there are also rules regarding custody, child care, care and adoption, and the provision of protection (Fitriani 2016).

The rapid development and increase in human civilization impact the higher life of services. Where this supports the birth of a childcare agreement. One of the social problems now is the problem of abandoned children. This childcare agreement is present in the community but is not regulated by law, but is also not prohibited by law from being carried out. This is closely related to the provisions in the Civil Code (KUHP), based on the form of the agreement, which is a series of words containing promises or commitments that are spoken or written (Asmawardhani 2015). Because childcare agreements are not regulated by law, their implementation raises problems regarding legal relations between the parties, which contain rights and obligations. The connection with this provision is that

the child care agreement can be interpreted as each parent entrusting their child to another party. Another meaning of safekeeping is a contract that contains the representation of a person in the care of something in the form of property rights or goods which are respected and can be controlled by specific procedures (Nurliana 2019).

Where parents entrust their children for a certain period and are accompanied by conditions agreed upon by the parties, the form of the agreement is the transfer of rights to child care where the child will receive protection and supervision during the custody process, both mentally and physically (Nola 2012). For example, in the child care agreement at the Yatim Putri Aisyiyah Grogol Sukoharjo Orphanage, the reasons for the parents or family to leave the child were economic factors and a broken home (Hasanah and Maarif 2021).

Parents can cooperate by caring for each other and not letting go, hoping that after the child is released from the orphanage, the parents are obliged to care for, educate, and accompany the child. Then there is a re-assessment every two years. Then, when the family is ready or able in terms of the economy and parenting, it can be returned to the family. There are 34 children in the orphanage, 2 children aged 6-12 years, 11 children aged 13-15, and 21 children aged 16-19. However, in the orphanage, there is also an imbalance between the number of children cared for and the number of caregivers. The number of children in the orphanage is 34, and the caregivers consist of 1 caregiver assisted by 3 accompanying caregivers. This imbalance occurs due to inadequate sources of funds if there is an addition of human resources so that with the number of caregivers, the orphanage feels more is needed. Based on the background above, the formulation of the problem in this article is what is the form and content of the child care agreement at the Yatim Putri Grogol Sukoharjo Orphanage and what is the legal relationship in the child care agreement at the Yatim Putri Orphanage Grogol Sukoharjo?

RESEARCH METHOD

The method used in this research is a normative juridical method. The type of research used by the authors in this study is descriptive. The kind of data used in this study is the primary data source consisting of the Civil Code, Law Number 23 of 2002 concerning Child Protection, official documents, legal journals, books, laws, and scientific papers. Furthermore, the secondary data source is the Agreement on Handing Over Child Care Rights at the

Orphanage for Yatim Putri Aisyiyah Grogol Sukoharjo. This study uses data collection methods in the form of literature studies, namely data collection techniques, by looking for concepts, theories, opinions, or discoveries closely related to the subject matter. Which were then analyzed qualitatively and using a deductive data analysis method (Dimiyati and Wardiono 2004).

RESULTS & DISCUSSION

Form and Content of Child Care Agreement at Orphanage for Orphanage Putri Grogol Sukoharo

Form of agreement at LKSA Orphanage for Yatim Putri 'Aisyiyah entitled SERVICE CONTRACT. Based on this research, it can be explained that the service contract between Hj. Sri Suwarni, S.Pd., as the first party, namely the beneficiary, and Annisa Fitri Nurjanah, as the second party, namely the beneficiary, made in writing.

In the said agreement, the parties, consciously and without coercion from any party, agree to sign the agreement as described. The conformity of the will of each party also proves that there is a principle of consensual agreement in a service contract between the beneficiary and the beneficiary. There has been a conformity of will or understanding since the signing of the deed of an agreement made by the parties on Monday, 22 March 2021.

Then in the competence or legal ability to carry out contractual legal actions. In the case of making a service contract between the beneficiary, it has met the qualification requirements. This can be seen from the initial agreement letter mentioned by the first party, namely the subject of the agreement, namely Hj. Sri Suwarni, S.Pd., with the position of Head of the Yatim Putri 'Aisyiyah Orphanage, having his address at Kuru RT 03, RW 08, Telukan, Grogol, Sukoharjo, whose date of birth was Surakarta, 11 January 1958. The first party was declared competent in agreeing according to law because he has a job and serves as Chairperson of the Orphanage for Orphanage Putri 'Aisyiyah, and at the time of deciding, he is 63 years old, he is capable of making agreements. In addition, the second party as a beneficiary in the Service Contract is Annisa Fitri Nurjannah Syarifudin, not yet in school, born in Karanganyar on 7 August 2013, having her address at Perum Tekad Makmur RT 005 RW 013, Joho, Mojolaban, Sukoharjo. In this case, the beneficiary is declared immature/competent because he is not yet 21 years old. In this case, the beneficiary is represented by his parents because he still needs to be qualified to carry out a legal action, namely an agreement.

The object of this agreement is a Service Contract between the beneficiary and the beneficiary that the achievement that must be fulfilled is to do something. Therefore, first, the beneficiary should fulfill the rights of the beneficiary as stipulated in the Service Contract, and then the beneficiary must comply with what is written in the Service Contract. Therefore, in the Service Contract between the beneficiary and the beneficiary, it is evident that the agreement is made with a clear purpose in the social field, which is not an act contrary to law, decency, and public order.

Article 1338 paragraph (1) of the Civil Code regarding the principle of freedom of contract, where everyone is allowed to enter into agreements. Where this is also done by beneficiaries and beneficiaries who make agreements in the social field, the agreement contains the rights and obligations agreed upon by the parties. Then the agreement is also binding as stipulated in Article 1338 paragraph (1) of the Civil Code or the Principle of Pacta Sunt Servanda. The agreement contains rights and obligations that the parties have agreed upon and apply as law for the beneficiary and the beneficiary. The Pacta Sunt Servanda principle relates to the consequences of an agreement, then the implications of the Service Contract, what is regulated in the Service Contract will apply as law for those who make it.

Article 1338 paragraph (2) of the Civil Code also explains that an agreement is not permitted to be revoked or canceled by one of the parties because the agreement has been made with the agreement of the parties in agreeing. So if one party wants to cancel an agreement, it must get the agreement of the other party who agreed. This provision applies to Service Contracts between beneficiaries and beneficiaries where cancellation of the agreement is not permitted by one party alone without the consent of the other party. Under the Service Contract in point, the beneficiary's responsibility is "Implementing programs/activities of the Aisyiyah Yatim Putri Orphanage LKSA, which are carried out periodically from 22 March 2021 to 30 June 2043."

Agreements agreed upon by the parties must be carried out under decency and justice, regulated in Article 1338 paragraph (3) of the Criminal Code, that agreements must be carried out based on good faith. This provision also applies in arrangements by beneficiaries and beneficiaries where the agreement's implementation must be carried out properly and correctly and pay attention to the norms of decency and decency (Sinaga 2019).

Based on this description, it can be explained that the Service Contract at the Yatim Putri Aisyiyah Grogol Sukoharjo Orphanage has been made in writing under applicable law. Therefore, in this case, according to the provisions of Article 1320 of the Civil Code, the

agreement is declared valid because the terms of the agreement have been fulfilled.

Legal Relations in the Child Care Agreement at the Orphanage Orphanage for Yatim Putri Grogol Sukoharjo

An orphanage called the Child Orphanage, the Child Welfare Institution (LKSA) is a non-profit social institution that accommodates, educates, and looks after orphans, orphans, and underprivileged, abandoned children. Likewise, the Orphanage for Orphanage Putri Grogol Sukoharjo has the same role as orphanages in general. However, the children in the orphanage have different backgrounds, including orphans, children who still have their parents but their parents cannot afford it, and children from families that are not harmonious. Therefore, the presence of an orphanage is beneficial for children who still lack affection from their parents or family.

Orphanage caretakers or foster parents have a role similar to that of parents, namely meeting the children's daily needs and providing guidance, one of which is moral intelligence and social intelligence. Moral intelligence and social intelligence must have a balance so that it does not only favor social intelligence but also promotes moral intelligence. Moral intelligence itself can be done by teaching children always to be kind to fellow friends, always help friends who need help, and avoid conflict as much as possible (Sepriana and Yusri 2017). Meanwhile, social intelligence is done by getting a proper education. One of the reasons parents leave their children at the Orphanage for Yatim Putri Grogol Sukoharjo is so that their children can continue their education and get a proper education, especially for those with a background with parents who have difficulty making a living for their children. Therefore, the Orphanage for Yatim Putri Grogol Sukoharjo has one of the programs, namely helping children to complete their education up to the high school level.

Every parent wants optimal child growth and development, both physically and mentally. Therefore, the role of parents in the process of growth and development of a child is essential. Thus, the orphanage for the Orphanage Putri Grogol Sukoharjo always maintains communication and friendship with parents who leave their children in the orphanage so that parents are aware of their child's development process. Every parent who places their child in the Orphanage for the Orphanage of the Putri Grogol Sukoharjo has rights and obligations. If these rights and duties are not fulfilled, the orphanage will give a warning, after which the orphanage will decide whether the child still wants to stay in the orphanage.

Based on Article 25 of the Law of the Republic of Indonesia Number 35 of 2014

concerning Amendments to Law Number 23 of 2002 concerning Child Protection (UUPA), it also explained the obligations of society in efforts to protect children, which can involve community organizations (Mahardika, Dewi, and Widyanantara 2020), in this case, the Grogol Putri Orphanage Orphanage in Grogol Sukoharjo makes efforts to protect children, namely caring for children to fulfill their rights.

Then in Article 26, paragraph (2), UUPA regulates that when parents cannot carry out their obligations and responsibilities towards children, this can be switched. This is stated in Article 53 of the UUPA, which regulates that the government or society must provide protection services to children. In the Service Contract between the beneficiary and the beneficiary, an initial assessment is carried out, in which case there are reasons for entering the Yatim Putri Aisyiyah Orphanage, namely, the family does not adequately care for the child, the whereabouts of the child's family is unknown, the child is a victim of violence, and the child is separated from his family. In the Service Contract, with the beneficiary, Annisa Fitri Nurjanah, because the family does not adequately care for the children and the beneficiary is an orphan, so, in this case, the Orphanage Orphanage Putri Aisyiyah is obliged to replace the responsibilities of her parents in Article 26 paragraph (1) of the UUPA.

Then there are some general rules and basic principles as guidelines. Islam teaches that maintaining the child's survival, growth, and development is a must, while underestimating or relaxing the implementation of these basic principles is considered a grave sin. This can be read in several verses of the Qur'an, including QS. An-Nisa': 29 The verse explains that what is meant by the prohibition against killing oneself includes the ban on killing other people because killing others means killing oneself because the community is a unit. QS. Al-An'am: 151 From the verses above, it can be concluded that every child has the right to live, grow, and develop according to his nature. He doesn't even have a soul yet. That is, Islam does not justify someone intentionally, without reasons explained by religion, to have an abortion. QS. Al-Baqarah: 233. Based on the children's rights contained in the Al-Qur'an, namely the right to life, the right to education and teaching, and the right to receive love is also manifested in the efforts of the Orphanage Orphanage for Orphans Putri Grogol Sukoharjo..

CONCLUSION

Based on the results of the analysis and discussion of the Juridical Review of Legal Relations in the Child Care Agreement (Study at the Yatim Putri Aisyiyah Grogol Sukoharjo Orphanage), it can be concluded that the form of the Child Care Agreement at the Yatim Putri

Aisyiyah Grogol Sukoharjo Orphanage is a form of a written agreement and is a standard agreement. The contents of the agreement follow the regulatory characteristics of the law, which follows Article 1313 of the Civil Code, which explains that the agreement is made by one or more people who bind themselves to others. Then the agreement also follows Article 1320 paragraph (1) of the Civil Code regarding the principle of consensual where there is an agreement between the two parties as evidenced by the signing of the agreement. In addition, the agreement follows Article 1338 of the Civil Code regarding the principle of freedom of contract, where everyone is entitled and free to make agreements.

That the legal relationship is a relationship that arises from this agreement which gives birth to rights and obligations that are binding on both parties. Each party has carried out its rights and obligations per what is stated in the agreement. The agreement follows Article 1338 paragraph (1) regarding the principle of *Pacta Sun Servanda*, where an agreement made legally applies as a law for the parties who make it and is also binding for the parties, then also following Article 1338 paragraph (2) where the agreement is not allowed to be revoked or canceled by one of the parties because the agreement has been made with the agreement of the parties in agreeing. And also, by Article 1338 paragraph (3) of the Civil Code, the agreement must be carried out in good faith. The rights and obligations arising from this child care agreement are also under Law Number 4 of 1979 concerning Child Welfare. Apart from that, the agreement is also following the children's rights contained in the Qur'an, such as the right to life, the right to education and teaching, and the right to receive affection which is also manifested in the efforts of the Orphanage Orphanage for Orphans Putri Grogol Sukoharjo which is stated in surah Al Anam verse 151, Al Baqarah verse 233, At Tahrim verse 6.

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