

The Legal Relationships Arising from Childcare in the Orphanages of Al-Hikmah Sejalan Cangkringan

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ABSTRACT

Every parent has the intention to provide a better future and prosperous life to their children, but not everyone can do them, and there are many ways to solve it, one of them is by entrusting their children to an orphanage. The purpose of this study was to determine the legal relationships arising from childcare for the welfare of children and whose the parties are responsible for the welfare of children at the Orphanage of Al-Hikmah Sejalan Cangkringan. The research method used to complete this research is empirical normative method using primary and secondary data through qualitative data collection and compiled descriptively. The result of this research is that the existence of a legal relationship between foster children and the Al-Hikmah Orphanage is only limited to the relationship of a foundation that provides childcare assistance, there is no guardianship between two parties but there is a *kafalah* that foster children get welfare in the form of a place to live, affection, education, daily necessities and the party responsible for the welfare of the children in the orphanage is the manager and care giver as the main responsibility with the help of the wider community. Research on the legal consequences of childcare is still not paid attention by many researchers, as well as about the legal relationship between foster children and the orphanage. Therefore the author wants to dig deeper into the importance of the legal relationship that exists in the orphanage with this research.

Keywords: *Childcare, legal relationship, orphanage.*

INTRODUCTION

Every human being in his activities has the same goal which is to meet the basic needs of his life. These basic needs include the need to establish offspring, defend them, and acknowledge their existence. To meet the needs of having offspring, humans do marriage. In marriage it is expected to give birth to a child who will carry on the bloodline. Apart from that reason many families consider that children can support the family economy and the hope for the future life of the parents.

Article 4 letter (d) of Law Number 1 of 1974 explains “having offspring” as one of the very important factors in a marriage so that in the case “wife cannot give the birth” the husband can have more wives or polygamy is an exception to the principle of monogamy.[1] According to the article, it can be seen how the psychological burden that must be borne by any spouse who cannot or has not been able to obtain offspring easily for various reasons. So for those who have difficulty having children, they must do several ways to be able to have offspring by carrying out a pregnancy program, such as Baby tube (IVF program) and child adoption. However, many families can easily obtain offspring but then neglect their children due to economic factors, divorce or escape from their responsibilities.

Children are the generation of the nation and the nation's future, so that every child has the right to live and his identity as protection in law. The protection and welfare of children in Indonesia have been regulated in various policies and regulations such as in the 1945 Constitution which states that neglected children and poor people must be taken care of the state. Law Number 4 of 1979 concerning Child Welfare has stipulated the welfare, care, and guidance based on love both in the family, to grow and develop, the welfare of children is the responsibility of parents.

Children who live under the authority of parents but are not fulfilled their welfare properly become neglected person. This unfortunate situation can also be caused by other things such as poverty which results in not meeting the needs of children both physically, spiritually and socially.[2] Meeting the child welfare is the primary responsibility of parents, but if it cannot be achieved then there are some other trusted parties who are able to fulfill these rights and obligations. If there is no more other parties, then the state government should do its role as prescribed in the Article 34 of the 1945 Constitution that the rights and obligations of those poor and neglected children become the responsibility of the state. They must be nurtured, cared for, educated and fulfilled their rights, because childhood is a phase in which children

experience growth and development to determine their future.[3]

One of the parties who implement child care is an orphanage, to enforce the provisions and obligations that must be fulfilled under the provisions of the law to enrich the child under the Guardian. In the care of children who are done by the foundation/orphanage house must regulate the interests of children who are not mature yet. It is done so that the child can feel the love and protection on his rights as if he was in his own parents. The effort to nurture and improve the welfare of the children is also based on the philosophy of Pancasila as it is Indonesian way of life and basic governance.

The orphanage house is a child-care institution acting as a guardian for children who are experiencing economic problems, orphans, and neglected children. Those children whose welfare are disturbed need special treatment from the government or the community in accordance with Article 11 paragraph 2 of Law Number 4 of 1979 concerning Child Welfare that child welfare efforts are carried out by the Government or the community.

Many things become the background of handing over a child to an orphanage, one of which is due to economic factors that cause parents to be unable to care for these children. Parents prefer to give their children to an orphanage so that children can live well. Another cause is due to the death of both parents and no one wants to take care of them then they become the orphan. Another cause is the divorce parents that tend to neglect their children.

Giving children to an orphanage is a way for them to get better supervision and guidance. Thus, the purpose of organizing an orphanage is to provide social services that include care, guidance, education, development and rehabilitation and also expected to be members of the community who can live better and take full responsibility for their own lives, families and society. The orphanage function is as a substitute for the family in developing a child's personality covering the physical, psychological and social aspects to prepare a stand-alone and responsible foster child both economically, mentally and socially.

Many studies have discussed the legal consequences of adoption, such as Jatmiko Winarno in his paper "Akibat Hukum Pengangkatan Anak" [4] explained that in adoption there are legal consequences conducted by the orphanage and parents who adopted the child, while research on the consequences childcare laws are still of little concern to many researchers. Basically children who are under the care

of an orphanage are also entitled to legal protection but further research needs to be done on the legal relationships arising from childcare at the Orphanage.

In order to find out and get a further overview on the legal relationships between child and the Orphanage of Al- Hikmah Sejalan Cangkringan and the party who responsible for providing the welfare of children in Orphanage of Al-Hikmah Sejalan Cangkringan Sleman, the author decided to conduct the research under the title "The Legal Relationships Arising from Childcare in the Orphanage of Al-Hikmah Sejalan Cangkringan".

LITERATURE REVIEW

A. Definition and Arrangement of Childcare

Child rearing in Arabic is referred to as "*hadhanah*". *Hadhanah* and it means "putting something near the ribs or on the lap", because the mother when breastfeeding her child puts the child on her lap, as if the mother at that time was protecting and caring for her child, so "*hadhanah*" was used as a term that meant education and child care from birth to be able to stand alone take care of himself carried out by the child's relatives.[5] According to Sayyid Sabiq, *Hadhanah* is to take care of children who are still small whether male or female or who have grown up but have not *tamyiz*, without orders from him, provide something that makes good, keep it from something that damages the physical, spiritual, and reason so able to stand alone in facing life and can assume responsibility when he is an adult.[6]

Hadhanah in civil law is commonly referred to as parenting or guardianship. The right of custody or guardianship is the right of a child from a parent and is also a parent's obligation to the child. Article 45 paragraph 1 and paragraph 2 of the Marriage Law contains imperative provisions that both parents are required to maintain and educate their children as well as possible. These obligations apply until the child marries or can stand alone.

B. Foster Care by the Orphanage

Orphanages or children's social institutions as well as child welfare institutions (LKSA) are non-profit social institutions that accommodate, educate and care for orphans, orphans and abandoned children. The orphanage has the goal of facilitating orphans, orphans, orphans, and neglected children in finding and determining the right direction of life for the future of their lives as human beings with dignity, useful for themselves, family and society later on. The

orphanage also has a function as a social institution where children are provided for daily needs, trained and provided with skills in accordance with what the foster children have. The orphanage is taught various skills, religion and morals.

The orphanage also holds functions that must be carried out in its operation, these functions are manifested in the programs and services provided by the orphanage. According to the social department of the Republic of Indonesia the orphanage has a function:[7]

1. As welfare services agency for children and carry out alternative care for parents instead.

Alternative care is a substitute family based care carried out by parties outside the nuclear family or child relatives. Alternative care that is held by the family / orphanage must be prioritized to provide an environment that can meet the needs of children's love, attachment, and permanence through a substitute family.

2. As a centre for social welfare services

The orphanage serves as a recovery, development and prevention. The function of recovery and alleviation of children is shown to restore and instil the social function of foster children. The function of protection is to prevent children from violence and abuse, this function is directed also to families in order to increase the ability of families to care for and protect families from possible disunity. The development function emphasizes the development of the potential and ability of foster children and not healing in the sense of more emphasis on developing their ability to develop themselves in accordance with conditions and environmental situations. Whereas the prevention function focuses on interventions in the social environment of foster children aimed at one side can prevent foster children from deviant behaviour patterns, on the other hand encourage the social environment to develop reasonable patterns of behaviour.

3. As data centre, information, and Social welfare consultancy for children

In the long run, orphanages are expected to conduct activities:

a. Determining, discovering, collecting, clarifying, and storing systematic data relating to the needs, problems, abilities, and characters of children and adolescents who are experiencing a level of consciousness.

b. Assisting the problem solving of social insecurity in the environment through special meetings inside and outside the orphanage, such as workshop seminars.

c. Disseminating information aimed at improving the wisdom and program social welfare services of children, the development of science especially for higher education, and the enhancement of awareness, responsibility, support and opportunities with citizens.

d. Developing the skill

Orphanages are expected to implement educational and research skills inside and outside the orphanage aimed at adding economically productive businesses.

C. Legal Relationship between Children and Institutions

According to the Ministry of Social Affairs of the Republic of Indonesia, a social orphanage is a social welfare business institution that has the responsibility to provide social welfare services to neglected children by providing support and alleviation of abandoned children, providing replacement services for parents/ guardians of children in meeting physical, mental needs and social care for foster children so as to obtain broad, appropriate and adequate opportunities for the development of the child's personality in accordance with what is expected as part of the nation's next generation and as individuals who are actively involved in the field of national development. So, the orphanage is a social welfare institution that is responsible for providing substitute services in meeting the needs of foster children, so they can get broad, appropriate and adequate opportunities for personality development in line with expectations.

The orphanage has the aim of providing services, guidance and skills to foster children to become qualified human beings between foster children and orphanages arising from a legal relationship namely guardianship. Trusteeship can be done by a person or a body or foundation, in general the trusteeship is the same as parental authority in caring for their children only the difference is that parental power covers all aspects of the child's life both personally, the child's assets and in the field of civil and criminal law. One that carries out trusteeship is an orphanage, to carry out the trusteeship function there are provisions regarding trusteeship to be determined by law.

Many things become the background of the surrender of children to orphanages including economic factors that cause parents to be unable to fulfil children's rights.

Pursuant to General Provisions Article 1 of the Child Protection Law that a guardian is a person or entity that in reality carries out parental authority as a parent to a child, whereas parental authority is the power of parents to nurture, educate, maintain, foster, protect, and develop children according with their religion and abilities, talents and interests. Based on this provision, it can be seen that the power exercised by a guardian is fostering power as a surrogate parent to the child.

Guardianship can be done by a person and/ or a body or Foundation. In a trusteeship conducted by a person/ foundation is required to hold the interests of minors who are under his guardianship. This is done so that a child who is under his guardianship can feel love and be protected by his rights, as if the child is under the authority of his own parents. Article 365 paragraph 1 of the Civil Code states that in all cases if a judge must appoint a guardian, the trusteeship may be ordered and handed over to a body of legal entities domiciled in Indonesia. It also depends on the articles of association, the deed of establishment or regulations which aim to care for and care for children who are under age for a long time until the child becomes an adult.

One of the parties implementing trusteeship is an orphanage, to carry out the trusteeship function there are provisions regarding trusteeship as determined by law. And as trustees, there are obligations related to fulfilling the welfare of children under their guardianship. Aside from that as a social welfare service institution, the orphanage also has certain obligations towards the realization of child welfare efforts.

The orphanage as a trusteeship acts as a guardian for children who are experiencing economic or abandoned children. Orphans, abandoned children and children are not able to be children who disturbed prosperity are thus requiring the handling of orphanages managed by the Government and the public in accordance with Article 11 paragraph 2 of Law Number 4 of 1979 on the welfare of the child that the child's welfare efforts are conducted by the Government or the community.

The power of the guardians arises when the parents die, the parents are not able to perform their obligations as parents, and the parental power of the child has been revoked by the court.

The appointment of Guardian pursuant to Article 51 paragraph 1 of Law Number 1 of 1974 is:

1. Orally in the presence of two witnesses.
2. In writing with Wills
3. In writing with the determination of judges in the event of the revocation of power of guardians.

According to article 51 paragraph 3-5 of Law Number 1 of 1974 Guardian's obligations are:

1. To take care of the child under his authority and property with the most well-respected religion and trust
2. To create a list of children's possessions at the time of starting their duties and record all changes of children's possessions.
3. To provide liability for damages that befall the property of the child by mistake or negligence.
4. Not allowed to move or mortgaged the permanent belongings of the child, except the interest of the child's desire.

There are a lot of things behind the hand of a child to an orphanage, which is because of the economic factors that cause parents to not be able to care for the child. Parents prefer to hand over their children to the orphanage so that the child can live worthy. The other cause was because the death of both parents and no one was willing to care for the child so that the power to care for the child was handed to the orphanage. Another thing that often happens is the abandonment of the child, which caused the child to be born outside the will of his parents.

As a result of the children being handed over to the orphanage, they will get better supervision and coaching. Thus, the purpose of organizing an orphanage is that in a certain period of time provides social services that include care, guidance, education, development and rehabilitation and then submit them into a community member who can live more worthy and accountable as appropriate to themselves, family and society. Meanwhile, the orphanage function is as a substitute for the family in developing personal children that include physical, psychic and social aspects to prepare children's stand-alone foster care and responsible both in economic, mental and social.

Thus, the duties of guardians are very heavy and full of responsibility; then with the appointed person or agency to be a guardian demands a great responsibility for the task. In accordance with Article 51 of Law Number 1 of 1974 concerning

Marriage of a guardian must be in good faith in carrying out the duty of the trustee, because the child under the custody is not his own flesh. It can be pointed out by providing good care and care in terms of education, health and compassion. On the outline of the trust is equal to the power of the parents in the maintenance of his son, only the difference that the power of the parents covers all aspects of the child's life either personally, the wealth of children as well as in the field of civil and criminal law while pursuant to Article 50 Paragraph 2 Law Number 1 of 1974 The breadth of custody of the child is as wide as what is the legal obligation on the implementation of parental power, which includes the maintenance of the child's physical and spiritual welfare.

D. Legal Consequences of Childcare and Protection of Child Welfare

The orphanage must meet every need of the child under its guardianship, as stated in Article 383 of the Civil Code that "Every guardian must carry out child care and education in accordance with his assets and represent him in all civil actions". As Pipin Syarifin argues [8], the role of guardians for minors is very large, both for their property and survival of children. Besides having to meet the needs of the Orphanage children also have to provide legal protection for foster children.

Childcare has legal consequences, namely:

1. Parental power

The biological parent's power over the child cared for by others is still present. The responsibility carried out by the foundation is not the responsibility of the guardian as stipulated in the law but the responsibility of the foundation only includes the responsibility as a social institution that provides care services for children who do not get proper care from their parents. The orphanage foundation is a social institution that aims to fulfil the basic rights of children and provide protection for children from neglect, exploitation and discrimination so that growth and development, survival and participation of children can be realized. But it must also pay attention to rules related to guardianship for the benefit of children.

If the orphanage foundation is a guardian, then in carrying out its trusteeship, the trustee must carry out all his obligations as trustees and be responsible for all the actions of the

children under his guardianship. Foundations have the same rights and obligations as those given or ordered to guardians, unless the law stipulates otherwise.

2. Guardianship

Guardianship is a substitute for parents who are legally required to represent minors in legal action. The guardian is fully responsible for the child under his authority and also his property. In each trusteeship, there is only one person who can be appointed as guardian, as regulated in Article 331 of the Civil Code.

As it is known that the foundation is a place of social services to care for and protect foster children with orphaned backgrounds, abandoned children, and victims of riots or natural disasters so that some or even whole families are lost. Because the purpose of the orphanage foundation is to help people in the social field whose activities are devoted to helping children obtain their rights that have been regulated and protected by the state as stipulated in Law Number 23 of 2002 concerning Child Protection.

3. Child welfare

Childcare is a legal institution that is needed in human life, including in Indonesian society. Child care is focused on the interests of children in which care arrangements are needed to ensure the interests of children, certainty, security, safety, care and growth of adopted children, so that child care provides opportunities for children to live more prosperously.

Childcare arrangements are also needed to ensure government and community supervision so that childcare is carried out with honest (genuine) motives and the interests of children are protected in other words that the government plays an active role in the childcare process through supervision and licensing.

Based on the Regulation of the Minister of Social Affairs Number 30 of 2011 concerning National Standards for the Care of the Child Welfare Institution (LKSA), the Institution is bound to the regulations issued by the Minister of Social Affairs in 2011 concerning Childcare Standards. In chapter IV there

is a regulation regarding the needs of children with the title Care Services Standards, including:

- a. Food
Based on Social Ministry Regulation Number 30 of 2011 concerning National Standards for the Care of the Child Welfare Institution, children must consume food that is maintained with nutritional and nutritional quality according to their age and developmental needs while living in the Child Welfare Institution, in adequate numbers and frequency, main food at least 3 times a day and snacks at least 2 times a day.
- b. Cloth
The Child Welfare Institution must adequately meet the needs of clothing for each child, in terms of number, function, size and appearance that takes into account the wishes of the child. Child Welfare Institutions must allocate a budget to meet children's clothing needs.
- c. Education
Child Welfare Institutions must support children to gain access to formal, non-formal and informal education according to their age, interests and caregiving plans while staying at the Child Welfare Institution.
- d. Access to health
The Child Welfare Institution is responsible for caring for sick children, including providing medicines and special foods needed by children, so that it is not permissible to repatriate children if they are sick.
- e. Rules of discipline or sanctions
The Child Welfare Institution must understand that the enforcement of rules and discipline, including how the discipline is enforced, is an effort to support positive behaviour and respect for others.
- f. Maintain the child's privacy
The caretakers and staff of the Child Welfare Institution must receive training and support to respect and maintain all information about children who are confidential in

nature and set up a system to ensure the confidentiality of the information. Child Welfare Institutions must provide various facilities that support children's privacy.

- g. Daily schedule, play time and children's break
Children, supported by caregivers should prepare daily schedules to help them carry out daily activities that require responsibility such as school, study, worship, and picket; but remains proportionate to the child's opportunity to rest and play. Child Welfare Institutions must provide opportunities and allocate adequate time for children to play and recreation.
- h. Involvement of children in work at the Child Welfare Institution
The children on duties are limited to the types of work aimed at improving life skills such as cleaning a child's room, washing and ironing personal clothes, and helping to prepare food on children's holidays.

METHODS

The type of research used is empirical normative research. Normative legal research, namely legal research that examines written law from the aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanation from article by article, formality and binding strength of a law but does not bind the applied aspects or its implementation.[9] Empirical research is unwritten positive legal research regarding the behavior of community members in social life relationships.[10] Normative legal research by reviewing written law which is binding from all aspects related to the subject under study. Empirical legal research is done by examining the legal consequences arising from the existence of child care and those who are responsible for the welfare of foster children at Orphanage of Al-Hikmah Sejalan Cangkringan, Sleman.

FINDING AND ANALYSIS

A. The Legal Relationship between Child and the Orphanage of Al Hikmah Sejalan Cangkringan Sleman.

1. The Orphanage Al-Hikmah Sejalan Cangkringan Sleman

The Orphanage Al-Hikmah Sejalan Cangkringan Sleman was established on January 1st 2004, numbering a building unit in RT 04 RW 30. The Orphanage Al-Hikmah Sejalan Cangkringan Sleman is located in the district of Cangkringan Sleman Regency of Special region of Yogyakarta and led by Mr. Suharna as the manager.

Al-Hikmah's name has the hope that all people who put kindness in the orphanage belong to the people who are good and noble. Al-Hikmah Orphanage has several observers, namely the Yayasan Kawan Sejalan which has more care in the existence of Al-Hikmah orphanage. The building was built then handed over to the orphanage manager to be managed and utilized accordingly. With the help of the building and infrastructure provided by Yayasan Kawan Sejalan, Al-Hikmah orphanage inaugurated under the name of The Orphanage of Al-Hikmah "Sejalan".

2. Vision, Mission and Aims The Orphanage Al-Hikmah Sejalan Cangkringan

Vision:

The realization of a child who is creative and potential to produce a child who has a self-reliant, intelligent, independent, skilled in socializing and become pious (*sholeh-sholeha*) and generous child.

Mission:

- a. Seeking to raise awareness on society will be the importance of providing education services for orphans, orphans and children who belong to the *Dhuafa*.
- b. Educate the children to have creative, intelligent, healthy, and adaptable ability, sensitive to the surrounding environment and sublime character.

Aims:

- a. Provide parenting, care, education and welfare coaching in children who serve as a substitute for the family for a certain period of time as long as the child has not been

able to be independent in carrying out his life.

- b. Make the foundation on the development of attitudes, knowledge, skills, and the copyrights that the child needs to adapt to their environment.
 - c. Assist the Government in the handling efforts of abandoned and underprivileged children.
 - d. Assist the Government in organizing education and coaching in children since childhood. It is supported by exposure "SA" As a leader who suggests that: "The Orphanage *Al-Hikmah Sejalan* was established to help the people."
- ## 3. Legal Relationship Between the Orphanage f Al-Hikmah Sejalan Cangkringan Sleman and the Foster Child.

According to the social Department of the Republic of Indonesia Social Orphanage Child care is a social welfare institution that has the responsibility to provide social welfare services in the displaced children by conducting the upbringing and reduction of neglected children, provide a substitute service of parents/guardians in meeting the physical, mental and social needs to foster children so as to obtain a broad, precise and adequate opportunity for the development of his personality in accordance with the expected as part of the generation of the appeal of the nation's ideals and as a human being who will be active in the field of national development. Therefore, it can be said that the orphanage is a social welfare institution that is responsible for providing substitute services in fulfilling physical, mental and social needs in its foster children, so that they have a broad, precise and adequate opportunity for the development of personality in accordance with expectations.

The purposes of the orphanage according to the social Department of the Republic of Indonesia are:

- a. To provide services based on the profession of social workers to the abandoned children by assisting and

guiding them toward personal development that is natural and has work skills so that they become a member of the community who can live worthy and full of responsibility, both against him, family and society.

- b. To create human beings that are mature and dedicated, have work skills that can sustain his life and the life of his family.

So, it can be said that the purpose of the orphanage is to give service, guidance and skills to foster children in order to become qualified human beings. In this orphanage, the children are given the services and the needs of their life ranging from basic needs such as clothing, boarding, food and also secondary needs such as formal and non-formal education.

According to the Social Department of Republic of Indonesia Orphanage has the function such as:

- a. The centre of the Child's social welfare service, the orphanage serves as a recovery, protection, development and prevention.
- b. data and information centre and social Welfare Consultancy for children.
- c. Skill development centre (which is a supporting function), orphanage as an institution that carries out the functions of families and communities in the development and personality of young children.

Children living in orphanages are called foster children, The Orphanage of Al-Hikmah Sejalan Cangkringan Sleman accept children from the age of 5 years to 17 years who are orphans, and *Dhuafa*. The orphanage also received a neglected child from the police. The requirements to be a foster child in The Orphanage Al-Hikmah Sejalan Cangkringan Sleman are:[11]

- a. Moslem
- b. Age between 5 to 17 years
- c. Possess the Certificate of incapacitated, orphaned from local authority (Kelurahan)

- d. Own legalized copy of the family card

- e. Possess the copy of birth certificate

The legal relationship between the orphanage and the foster children must be based on the establishment of a court issued by a state/religious court that designates an orphanage as the guardian of the children. Pursuant to Article 33 Paragraph 1 of the Child Protection Law that in the event that the parent of the child is not able to do legal action, or unknown place of residence or existence, then a person or legal entity that meets the requirements may be appointed as the guardian of the child concerned. Furthermore, in Paragraph 2 governs that to be the guardian of a child as referred to in Paragraph 1 is done through the determination of the court. So if there is no determination of the Guardian, the orphanage does not exercise power as a trustee only as an institution that provides social services.

To be a guardian, the orphanage should follow the procedures set out in the prevailing laws and regulations. The state/Religious court judge the position of the orphanage in question can persuade the guardian of the orphanage adjusted based on the basic budget and the orphanage deed seeks to nurture children for a long period of time.

When the orphanage becomes a guardian, the judge may appoint the caretaker of the orphanage to be the Guardian as stipulated in Article 31 Paragraph 1 of the Foundation law that the caretaker is an orphanage organ/foundation that performs the orphanage management, then at Article 35 Paragraph 1 of the Foundation Act is also regulated that the orphanage is fully responsible for the management of orphanages for the interests and objectives of the orphanage as well as entitled to.

The trustee by this orphanage entered into force since the caretaker expressed the ability to accept the appointment as a guardian, as stipulated in Article 331 (a) Paragraph 4 (e) of the Civil Code. The orphanage also has the

same rights and obligations as the other guardian in the custody where the members of the self-care and the responsibility of the custody. After the appointment of the Guardian, the local court clerk must immediately notify the Trustee Council and the prosecutor's office on the District Court in accordance with the orphanage law has a seat.

The requirement to be a guardian is[12]:

- a. Adult /*Baligh* and resourceful
- b. In the same religion as the child
- c. In good Healthy Physically and spiritually
- d. Without any punishment history for abusing his authority
- e. No prison sentence records

These terms apply to the orphanage administrators who are appointed as guardians. The Board of orphanage appointed as Guardian shall notify the custodian of the Estate Hall (BHP). If it does not notify the Treasure Hall of the trust, then the Guardian can be fired. The Guardian must also inform the letter regarding the placement of foster children in an orphanage to BHP as the trustee and also the District court attorney which is one region with the orphanage. It is intended to be deemed necessary; the orphanage can be visited by the prosecutor's office or someone who is persuaded by the Trust agency to investigate the circumstances of the children in the orphanage. The appointment of trustees always occurs in every custody. The trustee is also given the opportunity each week to visit the children of orphanages who are under his supervision under Article 365 of Civil Code.

As mentioned in the general provisions of Article 1 of the Law of child protection that a guardian is a person or entity in actuality exercising the power of foster care as a parent; the foster power is the power of parents to nurture, educate, nurture, protect, nurture, and cultivate children in accordance with his or her self-religion and abilities, talents and interests. Based on this thickness,

it is knowable that the power of a guardian is a Foster carer as a substitute parent of a child.

Although without a determination to persuade The Orphanage of Al-Hikmah Sejalan Cangkringan Sleman as a guardian, the orphanage conducts its activities and its role as a substitute parent for children who are deposited in the orphanage because the orphanage is the social welfare institution of the child who performs the role as a social institution aimed at organizing children's parenting. Pursuant to Article 37 Paragraph 1 of the Child Protection Law that child care is addressed to children whose parents cannot guarantee their child's natural growth, whether physical, mental, spiritual, or social. Furthermore, in Paragraph 2, the child parenting as referred to in Paragraph 1 is done by the institution that has authority in it.

Parenting organized by The Orphanage of Al-Hikmah Sejalan Cangkringan Sleman is the manifestation of its concern in social issues especially the children around its community. Its social welfare program are designed to fulfil basic rights of children as mentioned in the appendix of the Decree of Social Minister of Republic Indonesia Number 15 A/HUK/2010 about the General Guidelines For The Children's Social Welfare Program.

The Orphanage of Al-Hikmah Sejalan Cangkringan Sleman is socially and religiously based in the form of parenting and education services for their children without regard to the custody concerns. Children under the orphanage are still under the rule of his parents or under other guardians who have been governed by the law while the orphanage is not the legal guardian of the children who are deposited.

The Orphanage of Al-Hikmah Sejalan Cangkringan Sleman is the institution that performs its function as a social institution but not as the guardian of the children because there is no stipulation of the court that appoint an orphanage as Guardian. As

long as there is no stipulation, there is no trust either. This happens to children who are not known to be in the presence of parents but who are in the orphanage. They may be asked to apply for custody to the court.

B. The party responsible for providing the welfare of children in Orphanage of Al-Hikmah Sejalan Cangkringan Sleman

Child orphanage is a project of services and forgiveness of orphans, cracked families, and abandoned children by means of fulfilling all needs, both in the form of material and spiritual, including clothing, food, board, education, health. In certain circumstances the family is unable to perform its function properly in fulfilling the needs of the child which then leads to child permeating.[13]

Orphanage of Al-Hikmah Sejalan Cangkringan is a foundation engaged in the social, humanitarian and religious fields, an orphanage that was born out of the concerns and conditions of society that need special attention from society where many children, especially among poor families who drop out of school, miss out on science, and many orphans, especially in areas that are familiar with education and information and technology.

Orphanage of Al-Hikmah Sejalan Cangkringan facilitates its foster children to get their rights so that they can get a decent life and education. The Al-Hikmah Sejalan orphanage is ready to energize all parties, both institutionally and personally, who want to make contributions and provide solutions for the welfare of their foster children.

To make a child get prosperous, it takes physical fulfilment such as clothing, food, shelter and psychological aspect such as love and attention. Fulfilling these needs require the funds and personnel's. So to meet these needs there are several parties who are responsible:

1. Orphanage

In this case, the orphanage is fully responsible for all the needs for the welfare of foster children in the orphanage. Based on

Article 2 letter (a) of Law Number 44 of 2017 concerning the Implementation of Child Care, it is stated that the implementation of childcare aims to meet basic services and the needs of every child for love, attachment, safety, welfare and children's civil rights.

“For parties who are directly involved in the orphanage, namely the board and carers”.[14]

The caretakers and carers have the biggest responsibility for the welfare of foster children at Orphanage of Al-Hikmah Sejalan Cangkringan. By using a system of care, protection, education for children to adulthood until they are able to stand on their own to be able to meet their own needs and get love, safety, welfare. To be able to meet all these needs, caregivers and administrators need not only manpower but also substantial funds. The funds generated by the orphanage come from the personal funds of the management and caregivers. Besides, the orphanage also has a farm as one of the cottage's income.

“To back up the needs of the orphanage, we have 9 cows which we care for and sell when there is an urgent need”.[15]

This animal husbandary activity is obliged to train children to take responsibility, live independently, and have a provision for the future about livestock and learn to make a mutual assistance by searching for grass and cleaning the cage so that the children understand how to find money.

2. Biological Parent/Family

The family is the smallest institution in society, so that the welfare of society is very dependent on family welfare. The family is formed through marriage, because marriage is strongly encouraged by Islam for those who have the ability.[16]

One of the objectives that is to be achieved by Islamic religion by Sharia marriage, is the birth of a child as a descent, clean the descendants, obviously his parents, so obviously it is the responsibility of the child in maintaining, raising, educating so that he

became a child who would later be in the future of the day he had *Mukallaf*.

The father or parents are obliged to provide for their children, even though it is an obligation of a father that must be fulfilled, but in fact this is not the case, as well as a mother who has a more important role in the household structure or can determine or imprint the character of the the child is no less important for the role of both parents for a child. So here about the attitude of parents who leave their children in an orphanage by not providing for their children for any reason, it is not justified according to Islamic law and the applicable laws in Indonesia. Because in the law regarding child protection regarding the rights and obligations of children it is regulated in such a way and in the Al Quran surah Al Baqarah verse 233 it also regulates the obligations of a father or male parent to his wife and children regarding their support.

So if a father does not provide his child with the needs for living at orphanage, it is very clear that it violates Islamic law as well as the positive law that applies in Indonesia, because in its rules regarding children's livelihoods it cannot fade for any reason and any circumstances. Thus, the child can sue the father about his income if it is not given because the child support is obligatory for someone who has the right to support him. The high daily costs that must be spent are not proportional to what they get, things like this that make parents unable to pay for their children's lives.

So for parents/ families/ guardians of foster children who are in Orphanage of Al-Hikmah Sejalan Cangringan Sleman, are still obliged to give love to foster children, for material/ income it must still be given according to the conditions of the parents/ family / guardian of the foster child. , because the orphanage is only a party who performs its duties as a substitute for a temporary family or temporary carer, the rights of the parents will not be lost for their children because the orphanage is not a legal guardian for foster children.

3. The community

As explained by caregivers about their strategy in obtaining funds to fulfil the need of the orphanage, they receive assistance from the community in the form of charity or *Infaq*, *Sodaqoh*, and so forth.

“For the funds directly involved are the caretaker and caretaker, if for the outside party from the community, anyone who wants to help us receive and until now there is no adequate donors.”[17]

From the above interview it can be seen that the help of the wider community is very helpful to the economy of the orphanage to support the welfare of foster children who are in the orphanage but to the extent that the assistance from donors remained there has not been so with the help from the government.

4. Government orphanages

Orphanages managed by the Government as well as by local governments, can management in a much better than private orphanages. Because government-run orphanages or local governments are more structured and clear administrative governance so the government easily monitors the management of orphanages and easily contributes funds.

So far, the Orphanage Al-Hikmah Sejalan Cangkringan Sleman has not gained any attention and assistance from the government because the orphanage has not submitted a permit formally due to power limitation to prepare all the requirements required. As presented by Suharna in the interview:

“Until now there has been no if the government, because we also have not filed a permit because of the care we still distress to complete all the files with all the constraints that exist, we will have to get the group permission, while to prepare everything we can not only focus by taking care of the children first”.[18]

CONCLUSION AND SUGGESTION

A. Conclusion

1. The legal consequences of the childcare that is in Orphanage of Al-Hikmah Sejalan Cangkringan arise because of the legal relationship that causes the orphanage to act as a person in charge of the welfare of the foster child while in the orphanage. The legal relationship between the foster child and orphanage is not a trustee due to the absence of a testament or agreement between the parent/ child family with an orphanage and there is also no court decree pointing or establishing an orphanage as the legal guardian of foster child in an orphanage. Orphanages only have the authority to conduct child care for children whose parents/families cannot guarantee their child's natural, physical, mental, spiritual and social growth in order for children to be well-being. Foster children who are in the orphanage have gained welfare in accordance with the purpose of the Orphanage of Al-Hikmah Sejalan Cangkringan Sleman, namely in the provision of caregiving the orphanage for children.
2. The party responsible for fulfilling the welfare of the child is the caretaker and caretaker as the main party in the children's foster-care. To be able to fulfil all children welfare needs in the orphanage, the parents/family of foster care remains responsible for providing affection for children who are deposited in the orphanage. In addition, some of the widespread community is responsible for the welfare of foster children by providing assistance in the form of endless support and funds, but there are obstacles felt by the Orphanage of Al-Hikmah Sejalan Cangkringan Sleman has not received the orphanage license because of the effort in taking care of the conditions that are consuming a lot of time and energy without such permission is one of the reasons why the Government cannot directly provide material assistance to the orphanage besides the absence of adequate donors for the orphanage. But not only by relying on the help of the wider community alone, orphanage also has a cow farm that serves as a teaching material to foster children

entrepreneurial and livestock and independent by the search for eating cows, cleaning cows and their cage, and managing farms that later when the orphanage requires urgent need they can sell their livestock. Then the responsible party in the orphanage besides the caretaker and the caretaker is a wider community that is so meaningful to foster children.

B. Suggestion

1. The clarity of the legal relationship between foster child with Orphanage of AL-Hikmah Sejalan Cangkringan Sleman about the trust is indispensable, because the responsibility of the orphanage as a substitute for parents will bring up the responsibility of the orphanage maintainers to foster children so that the rights of children under the custody of the orphanage will be obtained by the child.
2. The responsibility of the orphanage to foster care is to fulfil the welfare of foster children, to fulfil its responsibilities should the orphanage take care of the establishment of an orphanage manager as the guardian of the child Foster and orphanage immediately manage the necessary licensing for the orphanage so as to facilitate the orphanage affairs in the administration and obtain attention and assistance from the government.

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