

CHAPTER I

PRELIMINARY

A. Background

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.

¹ Rusli Pandika, 2012, *Hukum Pengangkatan Anak*, Jakarta: Sinar Grafika, page 9.

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

² Muladi, 2007, *Hak Asasi Manusia*, Bandung: Refika Aditama, page 25.

³ Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: Bina Ilmu, page 205.

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 consequences arising from childcare at the Orphanage.

In order to find out and get a further overview on the application of child care and legal consequences conducted by orphanages based on current law in Indonesia, the author decided to conduct the research under the title “THE LEGAL CONSEQUENCES OF CHILDCARE TOWARDS THE CHILD WELFARE IN THE ORPHANAGE OF AL-HIKMAH SEJALAN CANGKRINGAN SLEMAN”.

B. Problem Formulation

Based on the description on the background of the problem above, the problem formulation is:

⁴ Jatmiko Winarno, 2012, *Akibat Hukum Pengangkatan Anak*, Jurnal Hukum Universitas UNISULA, page 1.

1. What are the legal consequences for child arising from the existence of childcare for the welfare of children in Orphanage of Al-Hikmah Sejalan Cangkringan Sleman?
2. Which parties are responsible for providing child welfare at the Orphanage of Al-Hikmah Sejalan Cangkringan Sleman?

C. Objective of Research

Based on the formulation of the problem above, the objectives of this research can be formulated as follows:

1. To find out the legal consequences that arise as a result of childcare for the welfare of children at the Orphanage of Al-Hikmah Sejalan Cangkringan Sleman.
2. To find out which parties are responsible for providing child welfare at the Orphanage of Al-Hikmah Sejalan Cangkringan Sleman.

D. Benefits of Research

There are several benefits of this research, namely:

1. Theoretical Aspects

This study provides benefits to determine the legal consequences of child welfare in childcare in Orphanage of Al-Hikmah Sejalan Cangkringan Sleman and to find out who are responsible for the welfare of childcare in Orphanage of Al-Hikmah Sejalan Cangkringan Sleman.

2. Practical aspects

This research will provide a better understanding of the legal consequences arising from childcare for the welfare of children and which parties are responsible for providing child welfare in Orphanage of Al-Hikmah Sejalan Cangkringan Sleman.