

THE IMPLEMENTATION OF NATIONAL STANDARDS FOR CHILD WELFARE INSTITUTIONS, THE DECREE OF MINISTER OF SOCIAL AFFAIRS NUMBER 30/HUK/2011

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ABSTRACT

This study examines the implementation of the National Standards for Child Welfare Institutions in Denpasar, Bali, as laid out in the decree of the Minister of Social Affairs number 30/HUK/2011. The aim of the National Standard is sustainable childcare as part of a sustainable society. The research method used is an empirical juridical research method with a statute approach, factual approach, and conceptual approach. This study is descriptive in nature and is obtained from data sources consisting of primary and secondary data. Literature has been reviewed and has been supplemented with priorly taken interviews with sources determined through a purposive sampling technique with a qualitative analysis model. The result of this study indicates that even though the Decree of the Minister of Social Affairs No.30/HUK/2011 stipulates that Child Welfare Institutions are supposed to help children by empowering and facilitating the child's family without separating the child and parents, the Child Welfare Institutions in Denpasar still accept many children who are neither parentless nor abandoned by their families. Child Welfare Institutions in Denpasar accept children entrusted to them for economic reasons or poverty. This ultimately results in the non-fulfillment of children's rights, particularly the right to have a family. Given such circumstances, it can be concluded that Child Welfare Institutions in Denpasar haven't implemented the National Standard on Child Welfare Institutions of 2011.

Keywords: Child Welfare Institutions, Childcare, Children Rights, People, Sustainable childcare

1. INTRODUCTION

Denpasar has a high level of business, education, and government development. As the capital of Bali, Denpasar has a higher population growth compared to other cities in Bali. (Agustianingsih & Roychansyah, 2022). As a result, people from outside the city and Bali choose to settle in Denpasar (Trendyari & Yasa, 2014). Along with the increasing industry and the development of its supporting facilities that continue to grow, the high urbanization rate in Denpasar also impacts the emergence of various social problems.

One problem that arises is the growing inequality in income between Denpasar people. Based on the 2022 BPS-Statistics of Denpasar Municipality report, the percentage of poor people in Denpasar is 2,96%, with a total income of Rp 662,499 per month. As a result, many low-income families are unable to care for their children and, as a result, submit their children to Child Welfare Institutions. Based on the 2022 Denpasar Women Empowerment and Child Protection Service report, Denpasar currently has 18 Child Welfare Institutions with a total of 547 children institutionalized. In another sense, there are still hundreds of children in Denpasar who have not received the right to have a family.

Indonesia has ratified the 1989 United Nations Convention on the Rights of the Child as a form of the government's willingness to overcome the neglect of children's rights. Although Indonesia has not renewed that convention through ratification of the United Nations General Assembly 2019 Resolution on the Rights of The Child, the Minister of Social Affairs of the Republic of Indonesia has formed the Decree of the Minister of Social Affairs of the Republic of Indonesia Number 30/HUK/2011 concerning National Standards on Child Welfare Institutions as a guideline for implementing child care regulations by Child Welfare Institutions. The regulation stipulates that every child has the right to be cared for by their parents and, as far as possible, not to be separated from their parents or family. Separating is only possible if the child's family does not provide adequate care, the child is a victim of violence or exploitation, or the child's family is the victim of social conflicts or natural disasters (Ministry of Social Affairs of the Republic of Indonesia, 2011: 21).

Furthermore, The Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 stipulates that institutionalized care is the last option of alternative care services for children who cannot be cared for in the prominent family, extended family, a foster family, or a substitute family (Ministry of Social Affairs of the Republic of Indonesia, 2011: 22). In other words, economic difficulties and poverty should not be the main reason for separating a child from their family and institutionalizing a child in the services of a Child Welfare Institution.

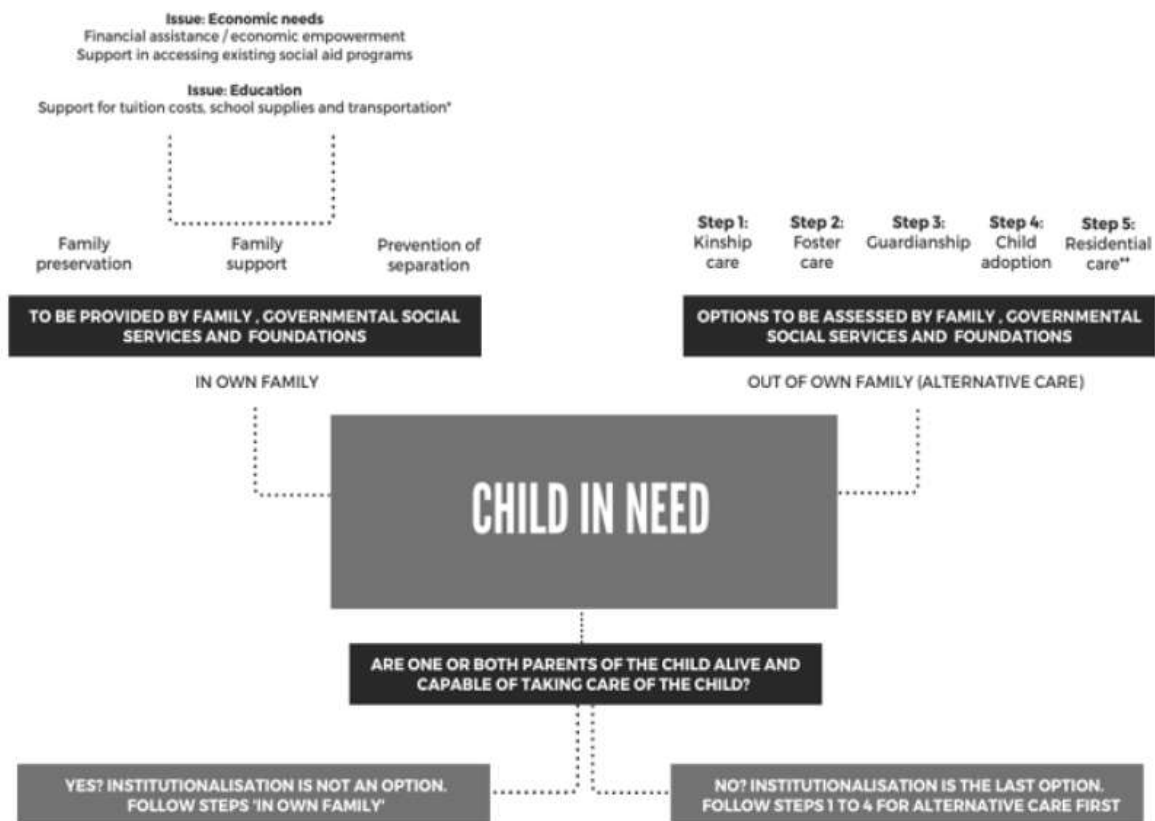


Figure 1: Continuum of child care in Indonesia (Westerlaken, 2021)

Various provisions in The Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 place Child Welfare Institutions as an essential pillar in fulfilling children's rights, especially for children who do not have parents or family. Through these institutions, it is anticipated that every child can obtain all their rights, especially the right to have a family. In addition, with the formation of these National Standards, it is hoped that all children should be able to obtain the right to grow and develop effectively, reasonably, and according to laws and regulations.

2. RESEARCH METHODOLOGY

The type of research in this paper is legal research with empirical juridical aspects, that is, by studying legal phenomena regarding the occurrence of gaps between norms and reality or people's behavior (gaps between *das Sollen* and *das Sein*) (Sunggono, 2002), using the statue approach, fact approach, and conceptual approach. The authors use primary data obtained directly through interviews and observations by respondents and informants by Westerlaken (2020), with sources determined through a purposive sampling technique and secondary data from literature research and prevailing laws and legislations. The researchers used a qualitative analysis model by describing and providing an overview of the legal issues observed to obtain narrative research results on the implementation of National Standards for Child Welfare Institutions in Denpasar.

3. RELATED RESEARCH/LITERATURE REVIEW

3.1. Children Rights

Based on the United Nations Convention on The Rights of the Child, ten principles underlie the formation of children's rights throughout the world, namely the right to be treated equally (non-discrimination), the right to obtain special protection, the right to have a name and nationality, the right to grow and develop, the right to education, the right to health, the right not to be oppressed or abused, the right to recreation, the right to love, and the right to be cared for by a family. Subsequently, Law Number 4 of 1979 on Child Welfare stipulates that children have the right to receive welfare, treatment, nurture, guidance, service, maintenance, protection, and first aid. Furthermore, Law Number 23 of 2002 on Child Protection states that children have the right to live, develop, receive protection from violence and discrimination, get an identity and citizenship status, choose a religion, health services, and social security, get an education, special treatment, giving an opinion, and receive care.

3.2. Childcare

One of the children's rights that must be protected is the right to own and be cared for by one's family, as stated in the preamble to the Convention on the Rights of the Child:

"The family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (United Nations Convention on the Rights of the Child)."

In addition, Article 14 of Law Number 23 of 2002 concerning Child Protection states that *"Every child has the right to be cared for by their parents unless there are valid reasons and/or legal regulations indicating that separation is in the best interests of the child and is the final consideration."* Based on these provisions, the right to own and be cared for by one's family is mandatory and must be carried out by one's parents or family. If a child does not have parents or a family, the government has an obligation to carry out this responsibility through a child's social welfare institution.

3.3. Child Welfare Institution

Article 2 of the Decree of the Minister of Social Affairs of the Republic of Indonesia Number 30/HUK/2011 stipulates that Child Welfare Institutions are "Institutions formed by the Government, Regional Government, or society with the objective of organizing child care". Child Welfare Institution-based care is the last method of alternative care services for children who cannot be cared for by a prominent family, extended family, relatives, or substitute family. The main priority of the Child Welfare Institution should be to provide support for children within their family, with the primary orientation of strengthening the capacity to care for the child's family. Therefore, foundations managing a Child Welfare Institution should try as much as possible to prevent children from being separated from their families or placed in Child Welfare Institutions.

4. RESULT AND DISCUSSION

4.1. Result

Based on the 2006-2014 BPS-Statistics of Denpasar Municipality report, the number of children in Child Welfare Institutions in Denpasar subsequently high after 2006 and had its culmination in 2008 (837 children living in Child Welfare Institutions in Denpasar city), and had its lowest point in 2011 (559 children living in Child Welfare Institutions in Denpasar city). The 2021 Denpasar Women Empowerment and Child Protection Service reports that currently, 591 children are institutionalized in Denpasar.

In the doctoral research of Westerlaken (2020), nine Child Welfare Institutions in Denpasar permitted conducting research. Seventy-six percent (76%) of the children in these nine Child Welfare Institutions still had both parents alive, and another sixteen percent (16%) had one parent alive and known. Several children submitted to Child Welfare Institutions acknowledged that they did not want to be separated from their parents and live in Child Welfare Institutions. Poverty and access to education were the most common reasons for institutionalization.

One of the children living in a Child Welfare Institution in Denpasar testified that there is forced attendance when guests visit the Child Welfare Institution, which disrupts school tasks, rest, and dignity. She also conveyed that there were many rules in the institute which made her feel imprisoned, such as regulations for holidays or meeting her parents. Another child referred to the Balinese holidays of Galungan and Kuningan and the fact that she was not allowed to visit her family because the Child Welfare Institution cannot be empty in case guests visit the institution on holidays. The fact that children need to entertain guests with the objective of securing the economic situation of Child Welfare Institutions

can be defined as orphanage trafficking, as described in the Australian Modern Slavery Act (Government of Australia, 2018).

Westerlaken (2020) also found that some children encounter violence when living in Child Welfare Institutions, either by the institution's officers or other orphanage children. Several local media also discussed violence and force in child welfare institutions, such as the case of child abuse by the chairman of the foundation by Radarbali (2019) and the case of child abuse at Yayasan Pelangi Anak reported by Nusa Bali (2016).

When Westerlaken (2020) interviewed several parents and relatives who submitted their children to Child Welfare Institutions, financial struggles were mentioned as the primary reason for submitting their children. The parents of a twelve-year-old girl testified that they submitted her to a Child Welfare Institute because they felt unable to fulfill their daughter's needs. In line with the National Standard, the Child Welfare Institute should have empowered the family and should have ensured the family was not forced to live separately. Instead, this girl was institutionalized.

A brother-in-law of an institutionalized boy aged twelve years old conveyed that the Child Welfare Institution where his nephew lives guarantees all the children's needs. He declared that he doesn't mind if the institution commits violence against his nephew. He said that the purpose of the violence was to educate children. In four out of nine institutions in Denpasar, Westerlaken (2020) found indications of physical, sexual, and mental abuse. From the nine Child Welfare Institutions that Westerlaken (2020) researched, not a single institution was found that prohibited children from being institutionalized based on poverty or access to education.

4.2. Discussion

The Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 stipulates that Child Welfare Institution-based care is the last option for alternative care services for children who cannot be cared for in the prominent family, extended family, a foster family, or a substitute family (also see figure 1). This expectation is contrary to the reality in the field. The Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 set that:

"Every child has the right to be cared for by his parents unless there are valid reasons and/or legal regulations indicating that separation is in the child's best interest and is the final consideration."

The meaning of "valid reasons and/or legal regulations" as referred to in the rule above, are if the child's family does not provide adequate care, ignores or abandons the child, commits violence, or is separated from the family due to disasters, both social conflicts and natural disasters. (Ministry of Social Affairs of the Republic of Indonesia, 2011: 22). The Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 also set that:

"Economic reasons and poverty should not be the main reason for the separation of a child from its family and placement of children in the services of Child Welfare Institutions."

For families of children bearing economic problems and poverty, The Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 stipulates that the form of care support carried out

by Child Welfare Institutions is to facilitate assistance for needs and empower families, including financial and psychosocial aid, so that children are not placed in Child Welfare Institutions.

Research shows that Child Welfare Institutions in Denpasar do not implement these National Standards for Child Welfare Institutions on parenting for children as determined in the Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011. Child Welfare Institutions still accept numerous children who are neither parentless nor abandoned by their families. In contrast, Child Welfare Institutions in Denpasar accept children who are entrusted based on economic reasons or poverty, even though Child Welfare Institutions are supposed to help children by empowering and facilitating the child's family without separating the child and the parents (Ministry of Social Affairs of the Republic of Indonesia, 2011: 20). Given such circumstances, it is clear that the act of separating children from their parents by Child Welfare Institutions is not based on valid reasons, and as such is violating the National Standard for Child Welfare Institutions as determined by the Minister of Social Affairs of The Republic of Indonesia.

Sadly, Child Welfare Institutions have committed violations of children's rights, such as violations of the right to freedom and the right not to be subjected to physical, sexual, and mental violence. The objective of forming a Child Welfare Institution should be to ensure that children are protected from these circumstances. In addition, many parents or families are unaware of their roles and responsibilities in nurturing, educating, protecting, and developing their children according to their abilities, talents, and interests.

5. CONCLUSION

While the Ministry of Social Affairs has established National Standards for Child Welfare Institutes, it is clear that Social Welfare Institutions in Denpasar do not adequately implement these standards. Even though the Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011 stipulates that Child Welfare Institutions are supposed to help children by empowering and facilitating the child's family without separating the child from their parents, still numerous children, who are neither parentless nor abandoned by their families, are institutionalized. Child Welfare Institutions in Denpasar are known to accept children entrusted to them for economic reasons or poverty from their parents or family. This ultimately results in the non-fulfillment of children's rights, particularly the right to have a family. Given such circumstances, it can be concluded that there are still gaps between norms and reality.

It is recommended that the Ministry of Social Affairs of the Republic of Indonesia and the Social Service of Denpasar deal with this problem by taking preventive measures and supervise parents experiencing economic difficulties or poverty to prevent institutionalization. Besides that, it is recommended to ensure strict sanctions to Child Welfare Institutions that break the Decree of the Minister of Social Affairs of the Republic of Indonesia No.30/HUK/2011. Further enforcement of these standards should be guaranteed.

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