

Analysis of Daycare Agreements in the Legal Perspective of Treaties According to the Civil Code

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Abstract

Child care occurs when a person accepts a child from another person, on the condition that he will take care of it and receive wages for the work and return it to its original condition. at the time specified in the agreement. The recipient of the deposit has the obligation to take care of his own child. In essence, all agreements made must be in accordance with the legal requirements of the agreement according to Article 1320 of the Civil Code. in accordance with Article 1320. This research is aimed at the development of civil science, namely by knowing how the standard of agreement for daycare management is and knowing the agreement according to Article 1320 of the Civil Code on child care agreements. used in this study is normative, where this study analyzes an agreement that is still not in accordance with Article 1320 of the Civil Code. From this provision, parents and the community are more selective in reading and understanding the contents of the agreement, because the child is entrusted.

Keywords: Covenant, Book of Laws, Child Care Park



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INTRODUCTION

The success of gender equality has led to many parents choosing to keep working for the sake of making a living, and even because of these decisions there is often something to be sacrificed for the decisions chosen. Parents who are supposed to take care of, care for and guide children in a task and responsibility of both parents in a family, are said to be an obligation because the growth and development of a child really needs the role of parents in parenting. The increasingly rapid career world makes parents often choose to work and use childcare services in daycare which is currently called daycare, so daycare is the most effective solution that helps parents who work or have other activities that are quite dense which is currently increasing rapidly and the majority occurs in big cities in Indonesia.

Daycare Park becomes an alternative for both parents who are busy with their work so that daycare is an alternative parenting for the child to grow and develop. The legal relationship between parents as parties who entrust their children and daycare managers in the law still looks weak. But there is an agreement that appears in this child care agreement and its application is not prohibited in the law or in its implementation in the community. In the Civil Code, it has been regulated regarding agreements, but based on the legal phenomenon that occurs in one of the children's care parks in Denpasar city in the implementation of the agreement, it has not adjusted to the legal conditions in the agreement described in Article 1320 of the Civil Code, of course this will cause problems regarding the form of responsibility of the entrusted recipient. And when its subjective requirements are not met it will result in the agreement being arguably void, Meanwhile, if the objective requirements are not met, it will result in the agreement being cancelled for law which means that from the beginning there has never been an agreement and there has never been an agreement.

The agreement in leaving the child is not regulated in the laws and regulations, which causes the implementation of the agreement to have risks when there is a default. The legal guidelines that will be used in an effort to resolve them are certainly more difficult. But daycare is increasing every day. One of the child care parks in the city of Gianyar that the author reviewed the agreement is a child care park located in Lolipop Daycare which in its standard agreement is still not in accordance with the laws and regulations, namely the terms of the agreement legally contained in Article 1320 of the Civil Code. Of course, this will raise problems regarding the form of responsibility of the entrusted recipients.

RESEARCH METHODS

This research uses a type of normative legal research, especially related to how the provisions of the legal requirements of the agreement in Article 1320 of the Civil Code.

RESULTS OF RESEARCH AND DISCUSSION

Research Results

In Book III of the Civil Code (Civil Code), the meaning of the agreement is found, namely in Article 1313 concerning Perikatan. Article 1313 of the Civil Code explains: "a covenant is an act performed by one or more who makes himself or herself in another person or more." Scholars give an opinion that a covenant is an event where one makes an appointment to someone else, or in which a pair of people make an appointment to do a thing. Each agreement has its formation guidelines and different standards according to the needs of a treaty. Based on the science of law, namely positive law, it is well known as 4 important elements that must be included so that a legal action can be called a valid agreement, in Article 1320 of the Civil Code, a valid agreement must complete 4 requirements, namely, an agreement to make itself bound, capable in order to be able to draw up an agreement, a certain thing, and a lawful cause. A covenant law has five well-known principles in civil law, as in general agreements regulated in the Civil Code, the principle consists of: Personality (personality principle), Good Faith (good faith principle), Pacta Sent Servanda (principle of legal certainty), Consensualism (principle of consensualism), and Freedom of Contract (principle of freedom of contract. The principles of a covenant are generally a treaty already fulfilling the terms of a treaty, which cannot be carried out as agreed between the two parties in the agreement.

The legal foundation of the agreement in entrusting the child when viewed on the basis of the object is not classified under the agreement to entrust the goods that are regular in the Civil Code, this is because in the agreement to entrust the child, who is entrusted or handed over is the child, and what is used as the object in the agreement is the services that will be given when the child is entrusted, but in the agreement to entrust the goods entrusted or handed over are the goods that are entrusted or handed over are the goods that are also made his object in his covenant. So the agreement in entrusting children has a difference from the agreement to entrust goods. This child-entrustment agreement is classified in an agreement to carry out a service that has been determined and has been regulated in the Civil Code. This can be seen based on the object, namely in the agreement to entrust the child which is used as the object is the services that have been given when the child is entrusted, as well as the agreement when carrying out certain services that are used as objects in the agreement are services when carrying out a job or services that have been carried out by an agreement between the two parties before. Then in the agreement, the party who provides services for the child to entrust later gets a reward in the form of wages from the services that have been given, as well as in the agreement when carrying out other services also has the right to get compensation in the form

of wages from the services he has provided, then the legal foundation of the agreement to entrust the child is included in the agreement to carry out the services that have been determined which are regular in Article 1601 of the Civil Code.

Discussion

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Child Care Agreement Format

CHILD CARE AGREEMENT

Me signed below:

Name :

Identity Number :

Address :

Telephone Number :

It is the parent/guardian of our child named

Name :

Place, Date of Birth :

Address :

Gender :

Hereby declare that we are willing to leave our children at Lolipop Daycare located on Jl. Dewi Candra Number 4, Banjar Menguntur Batubulan, Gianyar, Bali. We have informed us in detail about our child's condition and will comply with the rules and regulations provided by Lolipop Daycare. If any undesirable things happen that result not due to the negligence of the Lolipop Daycare daycare officer, it will be our sole responsibility. Thus this letter of agreement is made so that it can be obeyed together.

Gianayar, _____
Parents

(.....)

The analysis carried out on an agreement made is a standard agreement drawn up based on a deed under the joint hand of the standard contract is a contract written and drawn up by one of the parties in the contract in question. A standard contract is a form of contract that contains certain terms and is drawn up by one party only. A standard contract has the same meaning as an adhesion agreement which is dependent on a party having an interest in executing the contract or canceling the contract. The principle used in the standard contract is the principle of consensualism, which is a principle that states that the sale and purchase agreement has been born at the time of the "agreement" of prices and goods, and the principle of contracting freedom is that everyone has the freedom to draw up or not to draw up agreements, the freedom to make contents, enforceability and terms in the agreement, based on a certain form or not and having freedom in choosing what laws are used in the agreement. The principle of binding force is to explain that all parties are obliged to carry out whatever has been promised, just as explained in Article 1338 of the Civil Code, that the agreement is enforced like a law for all parties involved. The child care agreement in the standard agreement has the characteristics of:

1. The producer drafts an agreement unilaterally, this is because it has a relatively higher position than the parent as the consumer;
2. Parents as consumers are not involved in determining the content of the agreement;
3. The Agreement is drawn up in writing; and
4. Consumers are required to accept the contents of the agreement because they need.

The agreement was drafted under hand due to the need for parents for child care, a standard agreement is an agreement in which almost all of its clauses have been standardized by the person using it and other parties who generally do not have the opportunity to discuss or propose changes. Therefore, even if an agreement is made with a notarial deed, if it only takes over its clauses that have been standardized by one party by not giving the other party the opportunity to carry out negotiations, it will make the agreement still called the standard agreement. Standard agreements are generally applied to home sale and purchase agreements with developers, bank transactions such as bank credit agreements, credit card agreements, car sale and purchase agreements, shipping regulations (bills of lading), the use of insurance policies and others. Following the development of what residents need, there are characteristics of standard agreements who adjust and follow the demands of citizens to carry out innovations. These characteristics illustrate the economic principles and laws that are certain and enforced in the Country just as parents need a daycare as a safe place to leave their children.

The principle of legal certainty refers to the understanding of agreements based on the standard agreement seen from the interests of the parties in establishing the terms of the agreement, for the benefit of the parties in need, this only agrees to the conditions offered, hereby it can be known in legal certainty there are characteristics of standard agreements that are generally applied in an agreement in today's society that develops and is used in various fields, namely:

1. The form of the agreement is that the manuscript of the agreement is written for the category of standard agreements that are written in writing. The content of the sentence or the words must have standard regulations that are compiled by writing in the form of a notarial deed (authentic deed) or deed under the hand. Because the standard agreement is written, the sentences and words are arranged regularly and neatly. The writing of standard agreements often uses small letters and meetings, it causes losses to consumers or other parties who have lower economic capabilities, because consumers will have difficulty in understanding the content of the agreement in question.
2. Preparation of standardized agreements, preparation of agreements in the form of sizes, formulations and models. The arrangement is standardized which means that the size, formulation and model have been determined, so it cannot be changed, changed, or arranged using other methods because it has been printed. The formulation of the terms of the agreement can be compiled systematically and use articles or numbers or in short in the form of several other clauses that have their own meanings and who understand only the entrepreneur and for a short time consumers will find it difficult to understand the agreement.
3. The terms of its agreement are decided by the party having stronger economic conditions. The terms of the agreement contain terms and conditions that are unilaterally decided by a person whose economic conditions are stronger then it is more beneficial to people who have stronger positions. This is illustrated based on the exoneration clause in the form of freedom of responsibility of the entrepreneur who changes as his responsibility.

4. When they receive, will cause them to be obliged to sign the agreement and to accept the consequences that will arise under the agreement in question. In the event of a default terms offer, it means rejecting the terms.
5. Disputes are resolved using deliberation or can also use judicial methods regarding dispute resolution standards. In general, the same as the agreements imposed in Indonesia, generally in the standard agreements, it is said that when they have not used the judicial code, the existing dispute resolution uses the method of deliberation and consensus.

Affirmation is given to the law of the covenant, when a treaty has been fulfilled its requirements and according to the law of the Islamic treaty when its pillars and conditions have been fulfilled in the treaty is binding and must be fulfilled and enacted into law. Which means that the agreement gives rise to legal consequences that must be met by the various parties involved. According to Islamic law a legally drafted treaty has 2 juridical forms. First, that the agreement must be carried out by the parties without coercion and in good faith, in the agreement is not carried out by one party alone or a default is formed, so it gives the other party the right to fight for damages or terminate the agreement with the help of the judiciary. Second, that it is a treaty that is not heeded by a party, which causes the party to be sanctioned.

An agreement that is said to be valid is an agreement that complies with all the requirements of Article 1320 of the Civil Code which is enacted into law for its compilers, which cannot be canceled without the agreement of all parties involved or because there are several reasons that meet the law, and must assume good faith. The agreement is enacted into a law for the party who drafted it, meaning that all parties involved must abide by the agreement just as they obey the law. When there are parties who violate the agreement they drafted, they are said to be like committing violations of the law that have legal consequences in the form of legal sanctions. Thus, whoever violates the agreement he drafted, they will get the same punishment as has been decided in the Law.

Daycare is part of a service that carries out the implementation of educational programs in a non-formal manner so that it must provide convenience for parents who have other activities by entrusting childcare in daycare because in general daycare provides services regarding the rights that children get and obtain affection other than those obtained from his parents. Children who are entrusted in daycare will be legally protected so that the child avoids actions that endanger the child's psyche with the existence of legal rules that protect children who are deposited in daycare, generally to be aware that there are rules that are compiled so that the entrusted child gets rights and comfort for both the child and his parents who use daycare services.

In order for human rights as a subject of law to be protected, it is given a legal protection and for the realization of disciplined citizens so that they can maintain and regulate the habits and associations of citizens in detail and scheduled the same as explained in the Law that regulates this in order to compile a good life for their children, there must be collaboration between parents and government officials (Salim: 2018). Special protection is given to children in precarious circumstances. The realization of legal protection for children should be carried out from an early age because it is the child who is the successor to the ideals of his nation and country. The legal protection given to children must be of high quality and have a degree and level that is exactly like that of parents because children are very easy to obtain violence carried out by people and have the consequences that will have an influence on their personal and mental life as a child, so in the future providing protection to children has been regulated in the Law and citizens need to increase their concern not only their parents but the entire community

for the realization of peace and peace in the child because in a covenant leaving the child there is a principle of freedom in carrying out the contract, but one of the legal requirements is regular in Article 1320 of the Civil Code, then the aspect of legal protection will later provide protection for the child, then the parents will trust the daycare when entrusting their child until the parents have a calm mind and heart then the process of parenting the child in the daycare has certainty of the construction of the legal agreement guided by an agreement in the form of a signed form attached to the rules that Daycare parties have been drafted by being bound by the party entrusted as a valid agreement.

CONCLUSION

Legal arrangements on child care in Indonesian positive law is regulated in Article 1601 of the Civil Code as a form of agreement to perform service work. The standard of the child care agreement must be the same as the legal requirements of the agreement in "Article 1320 of the Civil Code. Permendikbud No.84 of 2014 concerning the Establishment of Early Childhood Education Units" and "Decree of the Minister of Social Affairs of the Republic of Indonesia No.47 HUK 1993 concerning Child Care Parks" where it was decided that the place to leave children is a place of social welfare that has the function of replacing the family at a predetermined time for children who have busy parents, so they do not have the opportunity to provide the services needed to their children by organizing preschool education and socialization for children aged 3 months to primary education. The implementation of the agreement to entrust children at Lolipop Daycare where the organizer, namely Lolipop Daycare, and the party who entrusts the child, namely the parents, carries out and understands the contents of the agreement agreed between the two parties, by passing through procedures, payment and rules that are applied to the agreed things.

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