

The Legitimacy of Child Guardianship in Orphanages at the Mandailing Natal Regency Orphanage Foundation

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ABSTRACT

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This study discusses the procedures and validity of at the Mandailing Natal regency orphanage foundation. This study uses a normative-empirical legal method through literature study and field data collection, which is analyzed qualitatively to compare legal provisions with child guardianship practices in orphanages. The results show that the guardianship process at the Mandailing Natal regency orphanage foundation is carried out in a simple manner, generally based only on a statement letter from the parents, without going through a court decision. This occurs because most of the children come from poor families or their origins are unknown, so the transfer of guardianship is carried out informally. However, legally, the foundation does not have the status of a legal guardian without an official appointment from a judge or through a parental will. The foundation's ignorance of legal procedures also contributes to the lack of legality of guardianship. As a result, even though the foundation performs a caregiving function, legally they do not have full authority over the foster children. Therefore, formal legal steps are needed to ensure that the guardianship status complies with the provisions of the law and regulations.

1. Introduction

The protection and fulfillment of children's rights is one of the obligations of the state that is explicitly regulated in Indonesian legislation (Nasution et al., 2024; Nawangsari et al., 2024). Article 2 Paragraph (1) of Law Number 4 of 1979 concerning Child Welfare emphasizes that every child has the right to obtain welfare, care, nurturing, and adequate guidance within the family environment or in special care so that they can grow and develop normally (Analiansyah et al., 2025; Lisma & Nikmah, 2021; Muazzul, 2025).

In the practice of running orphanages, various forums that perform child care functions, whether established by local governments or by the community, are categorized as Child Social Welfare Institutions (*Lembaga Kesejahteraan Sosial Anak/LKSA*), so that their management must meet standards of protection and the best interests of the child (Agastya et al., 2024; Rosita et al., 2024). In the community sphere, the management of social services for children is often carried out through foundations. Article 1 of Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 concerning Foundations defines a foundation as a legal entity that has certain assets to achieve objectives in the social, religious, and humanitarian fields without membership (Aji et al., 2024; Heriyanti & Daulay, 2024).

As a social service management body, orphanage foundations have administrative and legal functions that determine governance, accountability, and protection for the children under their care. However, in practice, many foundations still face administrative and legal obstacles that affect the

implementation of child protection functions, particularly those related to the status and evidence of guardianship over children (Damayanti et al., 2025; Rita et al., 2025; Rosita et al., 2024).

Guardianship is a legal institution that is relevant in the context of the care of children who are not under the authority of their parents (Allagan et al., 2025; Analiansyah et al., 2025). In terms of marriage law, Article 50 Paragraphs (1) and (2) of Law Number 1 of 1974 stipulate that children who have not reached the age of 18 or have never been married and are not under parental authority are under the authority of a guardian, and guardianship covers aspects of the child's personal life and the management of their property (Aditya & Waddington, 2021; Rohman & Putri, 2022).

In Islamic jurisprudence, the concept of guardianship or *al-walayah* also implies authority and responsibility for managing the interests of children, as explained by experts such as Wahbah al-Zuhayli (Huzaimah & M. Tamudin, 2024; Yasin et al., 2024). Differences in the sources and forms of evidence of guardianship, whether through court decisions, notarial deeds, or informal transfers, have legal implications for the legitimacy and accountability of care by third parties such as foundations (Amadea et al., 2022; Simatupang et al., 2023).

Preliminary survey results at an orphanage foundation in Mandailing Natal Regency indicate that children are being handed over to orphanages without a clear court decision or notarial deed as proof of transfer of guardianship. This situation raises substantive and administrative legal issues, including uncertainty regarding the legal status of children, potential conflicts of authority between families and institutions, and limited access to children's rights, such as civil registration, access to education, and asset management (Ahmad, 2023; Imtina et al., 2024; Rita et al., 2025). In addition, child welfare policies emphasize that social institutions are obliged to facilitate foster care within families and prevent the placement of children in LKSA solely for economic reasons (Agastya et al., 2024; Rosita et al., 2024). The practice of handover without following adequate legal mechanisms has the potential to disregard this principle.

Based on the legal framework and field findings, this study aims to analyze the legal status of guardianship when children are handed over to orphanages, identify the legal implications and child protection issues that arise, and formulate policy recommendations to strengthen legal certainty and the protection of children's rights. The main research questions are: What is the position of guardianship according to legislation and Islamic fiqh norms when the transfer of care is carried out by parents to a foundation without a court decision or deed? What are the legal and practical consequences for children's rights in the context of such transfers? And what policies or legal mechanisms need to be strengthened to ensure legal certainty and the best interests of the child?

The research is limited to normative-legal analysis supplemented by a pre-survey case study of an orphanage foundation in Mandailing Natal Regency. The findings are expected to provide theoretical and practical contributions to policymakers, foundation managers, judicial officials, and child protection stakeholders in order to clarify guardianship mechanisms and improve the accountability of foster care services.

2. Literature Review

2.1. Legal Status of Foundations

The legal status of foundations in Indonesia has fundamental implications for the provision of social services managed by non-profit organizations. Law No. 28 of 2004 on Foundations confirms the position of foundations as legal entities that obtain approval from the Minister of Law and Human Rights, so that their legal entity status becomes a legal precondition for carrying out activities in the social, religious, and humanitarian fields (Aji et al., 2024; Heriyanti & Daulay, 2024).

This arrangement places foundations under a legal governance system that requires the separation of assets for specific purposes, the absence of members, and administrative and accountability obligations that are specific to legal entities. In practice, the certainty of a foundation's legal status determines its capacity to perform legal roles such as guardianship, management of children's assets, and public accountability. Therefore, any formal ambiguity in the legalization or registration of a foundation has the potential to cause legitimacy issues and weaken the legal protection mechanisms for the children under its care (Damayanti et al., 2025; Rita et al., 2025; Rosita et al., 2024).

2.2. Orphanage

Orphanages, as a form of child welfare service, are residential care institutions designed to provide shelter and services for children who need substitute care. Conceptually, orphanages combine the functions of physical care, fulfillment of psychosocial needs, and facilitation of children's social development. The fundamental difference with the foster care model is the residential scale and institutional character (Disassa & Lamessa, 2021; Shawar & Shiffman, 2023).

Official guidelines and policies, including those issued by the Ministry of Social Affairs, designate orphanages as institutions responsible for providing comprehensive services to neglected children and playing a role in preventing children from being placed in institutions due to economic factors (Agastya et al., 2024; Rosita et al., 2024). In the context of guardianship law, the position of orphanages requires procedural certainty: the transfer of care from parents to institutions must fulfill the principle of the best interests of the child and be supported by clear legal evidence such as court decisions or official notarial deeds (Ahmad, 2023; Imtina et al., 2024; Rita et al., 2025).

The gap between legal norms and field practices, including the surrender of children without formal guardianship mechanisms, indicates the risk of loss of administrative access and civil rights for children and confirms the need for research examining the synchronization between the legal framework of foundations, the functions of orphanages, and the protection of children's rights (Analiansyah et al., 2025; Lisma & Nikmah, 2021; Muazzul, 2025).

3. Methods

This research method is normative-empirical with a dual approach. Normatively, the research examines the legal framework governing child guardianship, including legislation, legal doctrine, court decisions, and relevant academic literature to map the applicable legal provisions, principles, and issues (Negara, 2023). Normative material sources were obtained from a literature review of laws, implementing regulations, books, journal articles, and other official documents. Normative legal analysis was conducted using interpretive methods to explain the meaning of the rules and their implications for guardianship practices in social institutions such as orphanages.

An empirical approach is used to examine the application of these legal provisions in the practice of child care in orphanages, including cases of child surrender without a court decision or notarial deed (Disemadi, 2022). Empirical material sources are collected through field observations, in-depth interviews with law enforcement officials, foundation managers, child protection agencies, and community members, as well as case documentation and related archives. Data analysis was conducted qualitatively using source triangulation techniques to compare legal norms and field facts, identify implementation gaps, and formulate policy implications and recommendations that could improve legal certainty and the best protection for children (Cheong et al., 2023).

4. Results and Discussion

4.1. Child Guardianship Procedures at Orphanage Foundations in Mandailing Natal

In general, guardianship management in Mandailing Natal Regency orphanages focuses on managing the personal aspects of children, such as meeting their daily needs, caring for them, and guiding them, and does not include managing their property. This condition stems from the fact that the majority of children living in orphanages come from underprivileged families and therefore do not leave behind any assets that need to be managed.

Therefore, the guardianship carried out by the institution is more functional and pragmatic in nature, whereby the orphanage acts as the party that takes care of the children's daily lives without claiming or managing their inheritance (Damayanti et al., 2025; Tjempaka & Christy, 2024). This approach prioritizes meeting the basic needs and development of children, while the administrative aspects of wealth ownership are relatively irrelevant in the majority of cases (Hayati, 2023; Rosita et al., 2024).

Procedurally, the transition of guardianship often takes place in a simple and administrative manner, generally based on a statement letter from the biological parents or guardians who hand over

the child to the orphanage. The statement letter becomes an internal document that forms the basis for custody, but is not always accompanied by a court decision or notarial deed as formal proof of guardianship in accordance with applicable legal provisions. As a result, this form of transfer is more akin to a handover of custodial responsibility than a formal legal transfer of guardianship authority. The absence of formal documents has implications for the legal certainty of the guardian's status and opens up the potential for administrative problems in the future, for example, when legalization is required for identity, school, or certain legal actions (Ahmad, 2023; Imtina et al., 2024; Rita et al., 2025).

Cases of children without clear identities or origins reveal similar patterns of practice but with more complex consequences (Inui et al., 2025; Nasution et al., 2024; Petcharamesree, 2023). When children enter orphanages, the institutions are often considered to act as *de facto* guardians, so that in practice guardianship is transferred to the institution.

This situation poses real administrative challenges, ranging from difficulties in obtaining birth certificates and school registration to access to health services, because the institutions may not have formally recognized legal proof to represent the children in bureaucratic matters. Regardless of their formal status, orphanages continue to carry out their caregiving responsibilities, but legal uncertainty can hinder the fulfillment of children's civil rights and legal protection in the long term (Agastya et al., 2024; Rosita et al., 2024).

Although the guardianship procedures in orphanages are simple and sometimes inconsistent with formal legal norms, orphanage administrators continue to implement various concrete measures for the welfare of children, such as providing education, support facilities, and health services. These findings indicate a practical commitment on the part of orphanages to carry out their caregiving functions, despite legal and administrative limitations.

From the perspective of policy and child protection, these conditions require harmonization between field practices and formal legal mechanisms, for example through improved documentation, coordination with regional authorities and child protection agencies, and legalization procedures for guardianship so that legal certainty and access to children's rights can be guaranteed without reducing the role of orphanage services.

4.2. Authority of Orphanage Foundations to become Guardians

The appointment of a guardian must be carried out in accordance with the provisions of the applicable laws and regulations, with priority given to those who are legally entitled. The Civil Code (*Kitab Undang-undang Hukum Perdata/KUH Perdata*) recognizes the principle that parents, in this case the surviving father or mother, have the primary right to become guardians, as reflected in Article 345 of the KUH Perdata. Parents may also appoint guardians through a will to take effect after their death (Allagan et al., 2025; Sulistianingsih et al., 2023).

Historically, the Civil Code distinguishes between human legal subjects and legal entities, so that Article 359 of the KUH Perdata states that legal entities cannot be appointed as guardians because they are not included in the category of persons who can exercise all the personal rights and obligations attached to the institution of guardianship (Kurnia et al., 2022; Mulia et al., 2024).

On the other hand, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) adopts a more flexible approach to guardianship subjects. Article 108 of the KHI opens up the possibility for parents to bequeath guardianship to an individual or a legal entity, including a foundation, to take care of their children and assets after the parents' death (Analiansyah et al., 2025; Anne et al., 2022; Simatupang et al., 2023). This normative difference creates tension between the civil law rules codified in the KUH Perdata and the Islamic legal norms reflected in the KHI, especially in legal jurisdictions whose practices accommodate both sources.

In judicial practice, if a minor is not under parental authority and there is no valid guardianship arrangement, the court is obliged to appoint a guardian after summoning and hearing blood relatives or relatives by marriage in accordance with applicable procedures (Allagan et al., 2025; Anne et al., 2022). The reality of differing provisions and court rulings that sometimes allow foundations or legal entities to act as guardians highlights the need for harmonization of rules and administrative mechanisms that ensure legal certainty and the best protection for children. Such harmonization is important so that the appointment of guardians, whether through wills, court decisions, or other mechanisms, can fulfill the

elements of legality, accountability, and the best interests of the child (Damayanti et al., 2025; Huzaimah & M. Tamudin, 2024; Mulia et al., 2024).

4.3. Partnership agreement between the Orphanage Foundation and Foster Children

Orphanages serve as social welfare service providers that aim to meet the basic needs and protect children from neglect and violations of their rights. Functionally, the foundation provides residential care, education, and health services, but this administrative and social role does not automatically change the foundation's position to that of a legal guardian for children (Damayanti et al., 2025; Rita et al., 2025; Rosita et al., 2024).

Guardianship status only arises based on legal provisions (Zulfahmi et al., 2024), such as a court ruling or other recognized legal mechanisms, so that without this legal basis, the foundation continues to operate as a service provider, not as a guardian (Ahmad, 2023; Analiansyah et al., 2025; Imtina et al., 2024; Rita et al., 2025). Specifically for children whose origins are unknown or who are no longer under the authority of their parents, the procedure for establishing guardianship must go through the courts (Analiansyah et al., 2025; Huzaimah & M. Tamudin, 2024).

A request for the appointment of a guardian can be submitted to the court by the relevant parties so that there is legal certainty regarding who has the authority to represent the child in civil matters and asset management (Sulistianingsih et al., 2023). Without a court decision, children are vulnerable to administrative obstacles because there is no recognized legal entity to act on their behalf, such as difficulties in obtaining birth certificates, school registration, or access to public services (Amadea et al., 2022; Susanto Limbong & Aisyah, 2023).

The phenomenon of handing children over to orphanages without formal legal procedures is often exacerbated by the low level of understanding among foundation administrators regarding guardianship regulations. This lack of knowledge results in little initiative to apply for guardianship or coordinate with relevant authorities, leading to a legal vacuum for foster children (Cahyani & Kadir, 2023; Damayanti et al., 2025).

Therefore, harmonizing procedures between foundation practices and formal legal mechanisms through capacity building for administrators, developing adequate internal guidelines, and collaborating with social services and judicial institutions is a prerequisite for ensuring legal certainty and protecting children's rights.

4.4. Legal Responsibility of Orphanage Foundations as Guardians of Orphanage Children

A foundation formally appointed as guardian by the court acquires the rights and obligations assigned to a guardian, unless there are provisions in the law that stipulate exceptions. In practice, if the foundation's administrators are explicitly appointed by a judge as guardians, the appointed administrators bear legal responsibility for the implementation of guardianship, both individually and collectively, for the welfare, maintenance, education, and protection of the children under their care (Damayanti et al., 2025; Rita et al., 2025; Rosita et al., 2024). The law also recognizes the possibility of delegating guardianship duties through written authority to other board members, but such delegation does not eliminate the accountability obligations of the board members appointed as guardians (Aji et al., 2024; Heriyanti & Daulay, 2024).

From the perspective of managing children's assets, foundation administrators can implement asset protection mechanisms in accordance with applicable laws, including transferring the management of children's assets to authorized institutions such as the *Balai Harta Peninggalan* (Heritage Asset Center) through written procedures as a means of protecting assets (Alimuddin & Muhsin, 2023; Sulistianingsih et al., 2023).

Meanwhile, the concept of guardianship, which includes the rights and obligations of parents to care for, educate, and protect their children, can be revoked or supervised by the court if the parents neglect their obligations, as stipulated in child protection provisions, see Article 30 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (Nasution et al., 2024; Ngazizah et al., 2025). Thus, any action concerning the revocation of parental authority or transfer of guardianship must go through the judicial mechanism to ensure legal certainty and the best interests of the child.

In practice, there have been no court petitions filed regarding the revocation of custody or the establishment of guardianship involving orphanages in Mandailing Natal. Therefore, many children are handed over based on the principle of social openness, namely the possibility of returning the child to their family if requested, but this leaves legal uncertainty. The practice of returning children at the request of the family without a court decision is in line with the social role of the foundation as a provider of temporary protection, but at the same time emphasizes the need for formal legal procedures so that the status of guardianship, asset management, and the civil rights of children are permanently protected and accountable.

5. Conclusion

Based on the findings of the study, the practice of child guardianship in orphanages in Mandailing Natal is currently still carried out in a simple and administrative manner, generally based on a letter of surrender from the parents, without going through a court decision or official deed. This situation creates a legal uncertainty, namely that although the foundation actually performs a custodial function, its status does not meet the legal criteria under the KUH Perdata, thereby jeopardizing the children's administrative access and civil rights, such as identity registration, education, and asset management, if any. The lack of understanding among foundation administrators about guardianship procedures and weak coordination with relevant institutions exacerbate the problem, so that the best interests of the child are not fully guaranteed legally.

Normatively, the KUH Perdata requires that the subject of guardianship be an individual, while the KHI allows for the appointment of a legal entity through a will or court order, resulting in a discrepancy in norms that requires harmonization of practices and regulations. To provide legal certainty and protect children's rights, efforts are needed to legalize the status of guardianship, including by submitting a request for the appointment of a guardian to the court, as well as increasing the capacity of foundation administrators, developing internal guidelines, and intensifying coordination with social services and judicial authorities. These steps are important to ensure that institutional care not only fulfills its practical welfare function but is also supported by legal legitimacy that protects the rights and best interests of children.

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