



D.R. 19/99

Naskhah Sahih—Bahasa Kebangsaan

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Akta Penjagaan Budak 1961.

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DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Penjagaan Budak (Pindaan) 1999.

(2) Akta ini hendaklah mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*.

Pindaan seksyen 2

2. Akta Penjagaan Budak 1961 [*Akta 351*], yang disebut "Akta ibu" dalam Akta ini, dipinda dalam subseksyen 2(1) dengan—

(a) menggantikan noktah di hujung takrif "Judge" dengan koma bertitik; dan

(b) memasukkan selepas takrif "Judge" takrif yang berikut:

"Protector" means—

(a) the Director General of Social Welfare;

(b) the Deputy Director General of Social Welfare;

- (c) a Divisional Director of Social Welfare, Department of Social Welfare;
- (d) the State Director of Social Welfare of each of the States,

and includes any Social Welfare Officer appointed under any law regulating the appointment of a Protector.'

Penggantian seksyen 5

3. Akta ibu dipinda dengan menggantikan seksyen 5 dengan seksyen yang berikut:

5. (1) In relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal.

(2) The mother of an infant shall have the like powers of applying to the Court in respect of any matter affecting the infant as are possessed by the father."

Penggantian seksyen 6

4. Akta ibu dipinda dengan menggantikan seksyen 6 dengan seksyen yang berikut:

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6. (1) On the death of a parent of an infant, the surviving parent, if any shall, subject to this Act, be guardian to the infant either alone or jointly with any guardian appointed by the deceased parent, and—

- (a) if no guardian has been appointed by the deceased parent; or
- (b) in the event of the death or refusal to act of the guardian or guardians appointed by the deceased parent,

the Court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent."

Penggantian seksyen 7

5. Akta ibu dipinda dengan menggantikan seksyen 7 dengan seksyen yang berikut:

“Power of parent to appoint testamentary guardian. 7. (1) A parent of an infant may by deed or will appoint any person to be guardian of the infant after that parent's death.

(2) Any guardian appointed under subsection (1) shall act jointly with the surviving parent, if any, but if—

(a) the surviving parent objects to the guardian so acting; or

(b) the guardian considers that the surviving parent is unfit to have the custody of the infant,

the guardian may apply to the Court and the Court may—

(aa) refuse to make any order (in which case the surviving parent shall remain the sole guardian of the infant);

(bb) make an order that the guardian shall act jointly with the surviving parent; or

(cc) made an order that the guardian shall be the sole guardian of the infant.

(3) If the Court makes an order under paragraph (2)(cc), the Court may make—

(a) such order regarding the custody of the infant and the right of access of the surviving parent to the infant as, having regard to the welfare of the infant, the Court thinks *fit*; and

(b) an order requiring the surviving parent to pay to the guardian such periodical sums towards the maintenance or education of the infant as the Court may consider reasonable having regard to the means of that surviving parent.

(4) If guardians are appointed by deed or will by both parents of an infant, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(5) A guardian appointed by the Court under section 6 to act jointly with the surviving parent shall continue to act as guardian after the death of the surviving parent, but if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the surviving parent."

Penggantian seksyen 8

6. Akta ibu dipinda dengan menggantikan seksyen 8 dengan seksyen yang berikut:

"Guardian of orphan. 8. If both parents of an infant have died without appointing a testamentary guardian, any Magistrate, *penghulu*, police officer or Protector may cause the infant to be taken before the Court, and the Court shall appoint a guardian of the infant's person and property or either of them."

Seksyen baru 8 A

7. Akta ibu dipinda dengan memasukkan selepas seksyen 8 seksyen yang berikut:

"Protector to be temporary guardian of abandoned infant. 8 A. (1) If an infant-

(a) has been abandoned by his parent or guardian;
or

(b) has no parent or guardian,

and no other suitable person is willing and able to care for him, the Court—

(aa) shall appoint a Protector to be a temporary guardian of the infant's person and property or either of them until such time as a guardian of the infant's person and property can be appointed;

(bb) shall determine the extent of the powers and duties of the Protector as a temporary guardian in relation to the infant's person and property; and

(cc) may impose such other terms and conditions as, having regard to the welfare of the infant, the Court thinks fit.

(2) Subsection (1) shall apply whether or not an infant is placed—

(a) in a place of safety; or

(b) in the care, custody and control of a foster parent,

pursuant to any law relating to the care and protection of an infant.

(3) Section 4 shall not apply to a temporary guardian appointed under this section."

Pindaan seksyen 17

8. Subseksyen 17(1) Akta ibu dipinda dengan menggantikan perkataan "three hundred" dengan perkataan "one thousand".

Seksyen baru 19A dan 19B

9. Akta ibu dipinda dengan memasukkan selepas seksyen 19 seksyen yang berikut:

“Dispute between joint guardians. 19A. (1) If two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the Court for its direction, and the Court may make such order regarding the matters in difference as it may think proper.

(2) The powers of the Court under subsection (1) shall include the power to—

- (a) make such order regarding the custody of the infant and the right of access of the parents or of either of them to the infant, as, having regard to the welfare of the infant, the Court thinks fit;
- (b) order the parents or either of them to pay such periodical sums towards the maintenance or education of the infant as the Court may consider reasonable having regard to the means of such parents or parent; and
- (c) vary or discharge any order previously made under this section.

Enforcement
of orders for
payment of
money.

19B. (1) If the Court has made an order under this Act for the payment of money and there is any income or pension capable of being attached payable to the person against whom the order is made, the Court shall, in addition to any other powers for enforcing compliance with the order, have power—

- (a) after giving the person an opportunity of being heard; and
- (b) on being satisfied that the person has without reasonable cause failed to make any payment which he is required by the order to make,

order the income or pension to be attached as to the whole or part of the amount payable under the order and the amount attached to be paid to the person named by the Court.

(2) An order under this section shall be an authority to the person by whom the income or pension is payable to make the payment in accordance with the order and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the payer.

(3) This section shall be binding on any person or body, including the Government."

HURAIAN

Rang Undang-Undang ini bertujuan meminda Akta Penjagaan Budak 1961 ("Akta").

1. *Fasal 1* bertujuan mengadakan peruntukan bagi tajuk ringkas Rang Undang-Undang dan permulaan kuat kuasanya.
2. *Fasal 2* bertujuan meminda seksyen 2 Akta dengan memasukkan takrif "Protector".
3. *Fasal 3* bertujuan meminda seksyen 5 Akta untuk memberikan kepada ibu seseorang budak hak yang sama berkenaan dengan budak itu sebagaimana yang diberikan kepada bapanya oleh undang-undang yang ada sekarang.
4. *Fasal 4* bertujuan menggantikan seksyen 6 Akta. Selain merupakan suatu pindaan yang berbangkit yang menjadi perlu disebabkan oleh pindaan kepada seksyen 5 Akta, *fasal* ini juga bertujuan memberi Mahkamah kuasa untuk melantik penjaga seseorang budak di bawah hal keadaan tertentu.
5. *Fasal 5* bertujuan menggantikan seksyen 7 Akta untuk menjadikannya jelas bahawa bapa atau ibu seseorang budak mempunyai kuasa untuk melantik mana-mana orang menjadi penjaga budak itu selepas kematian bapa atau ibu budak itu dan bahawa penjaga itu hendaklah bertindak bersama dengan ibu atau bapa yang menakat. Walau bagaimanapun, seksyen 7 yang dicadangkan juga memperuntukkan bahawa jika ibu atau bapa yang menakat itu membantah atau jika penjaga itu berpendapat bahawa ibu atau bapa yang menakat itu tidak layak untuk mendapatkan jagaan budak itu, penjaga itu boleh memohon kepada Mahkamah dan Mahkamah boleh membuat suatu perintah berkenaan dengan penjagaan budak itu.
6. *Fasal 6* bertujuan menggantikan seksyen 8 Akta bagi maksud penjelasan.
7. *Fasal 7* bertujuan memasukkan seksyen baru 8A ke dalam Akta untuk membolehkan Mahkamah melantik seorang Pelindung sebagai penjaga sementara diri dan harta seseorang budak jika budak itu merupakan seorang budak terbuang atau tidak mempunyai ibu atau bapa atau penjaga. Dicapangkan supaya Pelindung hendaklah dilantik sedemikian sama ada atau tidak budak itu mempunyai ibu atau bapa peliharaan atau tinggal di tempat selamat. Mahkamah dikehendaki menentukan takat kuasa dan kewajipan seseorang penjaga sementara yang dilantik sedemikian.
8. *Fasal 8* bertujuan meminda seksyen 17 Akta untuk menambahkan jumlah yang boleh digunakan bagi nafkah atau pendidikan seseorang budak oleh penjaganya tanpa keizinan Mahkamah daripada tiga ratus ringgit kepada satu ribu ringgit.
9. *Fasal 9* bertujuan memasukkan seksyen baru 19A dan 19B ke dalam Akta. Di bawah seksyen 19A yang dicadangkan, jika dua atau lebih daripada dua orang bertindak sebagai penjaga seseorang budak dan terdapat pertikaian antara mereka tentang apa-apa perkara yang menyentuh kebajikan budak itu, mana-mana seorang daripada mereka boleh memohon kepada Mahkamah untuk mendapatkan arahan.

Seksyen baru 19B yang dicadangkan bertujuan membolehkan Mahkamah, jika suatu perintah untuk mendapatkan nafkah seseorang budak telah dibuat terhadap mana-mana orang dan terdapat apa-apa pendapatan atau pencen yang kena dibayar kepada orang itu, untuk memerintahkan supaya pendapatan atau pencen itu ditahan dan dibayar kepada orang yang dinamakan oleh Mahkamah.

10. Pindaan-pindaan lain yang tidak disebut secara khusus adalah kecil atau berbangkit.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan.

[PN(U²)1529]