

Legal Protection of Children with HIV that Infected from Mother Transmission in Perspective on Human Rights (Case Study in Cianjur District)

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Abstract. More than 90% of children with HIV in Cianjur District due to maternal transmission died within three years (2015 to 2017). Local Government seeks to protect children and their families with the aim of improving the welfare of children. This paper examines how the objective condition of children with HIV/ AIDS in Cianjur District and the legal protection of children with HIV/AIDS in Cianjur District in the perspective on human rights. This research employs case approach method with research specification that is analytical descriptive. The result of this research is that the objective condition of children with HIV/ AIDS in Cianjur Regency has mostly died due to decreased immunity. The legal protection of children living with HIV/ AIDS in Cianjur Regency is by making various regional regulations such as local regulations on child protection, local regulations on HIV/ AIDS prevention and control. The Ministry of Health has a Prevention Mother to Child Transmission program to prevent of HIV infection through the transmission of HIV in pregnant woman to her fetus.

1. Introduction

Child may also describe a relationship with a parent (such as sons and daughters of any age) or, metaphorically, an authority figure, or signify group membership in a clan, tribe, or religion; it can also signify being strongly affected by a specific time, place, or circumstance, as in "a child of nature" or "a child of the Sixties". There are many social issues that affect children, such as childhood education, bullying, child poverty, dysfunctional families, child labor, hunger, and child homelessness. Children can be raised by parents, by fosterers, guardians or partially raised in a day care center. [1]

Children are the next generation of nation and state, need attention and protection in child growth. Article 28 B Paragraph (2) of the 1945 Constitution, affirms that the child has a strategic role, and the state guarantees the rights of every child. Therefore, the best interests for children should be respected as the best interest for the survival of mankind. [2] The issue of legal protection and children's rights is one of the approaches to protecting Indonesian

children. In order for Indonesian children to be protected regularly, orderly and responsibly, it is necessary law or rules that are in harmony with the development of Indonesian society and animates the Pancasila and the 1945 Constitution of the Republic of Indonesia. The protection shows the government's serious attention to children.

Child abuse is widespread and can occur in any culture, ethnic, or income group. Child abuse can be physical, emotional, verbal, or sexual. It can be also a result of neglect. Abuse can result in serious injury to the child and possibly even death. Physical abuse involves non-accidental harming of a child by, for example, burning, beating, or breaking bones. Verbal abuse involves harming a child by, for example, belittling them or threatening physical or sexual acts. Emotional trauma can result from several forms of abuse.

Studies show that one in four girls and one in eight boys are sexually abused before the age of 18, and that approximately one in 20 children are physically abused each year. Child sexual abuse is the deliberate exposure of a minor child to sexual activity that the child cannot comprehend or consent to. This means a child is forced or talked into sex or sexual activities by another person. This behavior includes acts such as inappropriate touching of a child's breasts or genitalia, someone exposing their genitalia to a child, fondling, oral-genital contact, genital and anal intercourse, as well as exhibitionism, voyeurism, and exposure to pornography.

Child neglect occurs when someone does not provide the necessities of life to a child, either intentionally or with reckless disregard for the child's well-being. This can include physical neglect, such as withholding food, clothing, shelter, or other necessities. Emotional neglect includes withholding love or comfort or affection. Medical neglect occurs when medical care is withheld.

Religious freedom has become a point of contention — some states allow for medical neglect due to religious objections. There are also examples of some extreme religious acts that are considered child abuse that are acceptable in other countries. [3]

The Regional AIDS Commission (KPAD = Komisi Penanggulangan AIDS Daerah) of Cianjur, West Java noted that until September 2017 found 60 new cases of HIV/ AIDS infants, including HIV in children by one percent. Transmission of HIV to children occurs partly through the placenta of women with HIV/ AIDS, through mucus in the vagina at delivery and through breast milk. For a child with HIV/ AIDS, the child still has the right to live as little as possible for her to survive. The state of the child with HIV / AIDS is not a reason for the right of life seized by anyone.

Acquired Immune Deficiency Syndrome (AIDS) was first reported in 1981 in the United States, and to date has spread throughout the world including Indonesia, and has killed around 25 million people and infected more than 40 million others. Every day about 2,000 children aged 15 and under are infected with HIV from mother-to-child transmission, about 1,400 children under 15 die of AIDS, while about 6,000 people at 15-24 years of age are HIV-infected. In Southeast Asia, there are 5 largest countries contributing 99% of cases of HIV infection, namely India, Indonesia, Myanmar, Nepal and Thailand. Of these five countries, Indonesia is the only country with the largest increase in new cases.

In addition to obtaining the rights of children in general, children affected by HIV / AIDS are entitled to special rights because of the special conditions that the child suffers as a person with HIV/ AIDS including receiving health care and social security according to physical, mental and spiritual needs.

The Regulation No. 39/ 1999 on Human Rights Article 52 paragraph (1) states that: "The right to protect from within the womb". Arranges that child protection should be done by parents, family, community, and country. [4] While Article 58 paragraph (1) affirmed that the existence of: "The right of legal protection".[5] Provide assurance to every child to obtain legal protection from all forms of physical or mental violence, neglect, ill-treatment and

sexual harassment during the upbringing of a parent or guardian, or any other party responsible for a nanny. With regard to the legal protection of children living with HIV/AIDS in Article 62, it is clear that every child is entitled to health services and social security.

2 Problem Formulation

This paper discusses the objective condition of children living with HIV/AIDS in Cianjur District and the legal protection of children living with HIV/AIDS in Cianjur District in the perspective on human rights.

3 Methodology

The type of research used is normative juridical with case approach method through analytical descriptive research specification. The location of the research was conducted in Cianjur district. The types and sources of data used are primary data sourced from interviews with related parties and secondary data as the main data source in the form of legislation, namely Law No. 23 of 2002 on Child Protection amended by Law Number 35 Year 2014 and the last amended by Law Number 17 Year 2016 regarding the stipulation of Government Regulation Number 1 Year 2016 regarding the second amendment of Law Number 23 Year 2002 regarding Child Protection.

Research techniques are using data that taken from library and field data (KPAD, Health Office and Office of Population Control, Family Planning, Women Empowerment and Child Protection in Cianjur District), then conducted a qualitative data analysis using triangulation method.

4 Discussion

4.1 The objective condition of children living with HIV/AIDS in Cianjur District

The preamble of 1945 in paragraph IV explains the national objective of Indonesia. One of the fundamental changes after the amendment of the 1945 Constitution in a series of four stages from 1999 to 2002 is an affirmation espoused principles of the law ". The 1945 Constitution of the State of the Republic of Indonesia and a number of rules of law provide the basis for reasons of child protection. In the 1945 Constitution (vide article 28B verse 2) it is affirmed that every child has the right to survival, growth and development, and protection from various forms of violence and discrimination. Children as buds, potential, and the younger generation successor ideals of the nation's struggle has a strategic role, features, and special properties that must be protected from all forms of inhuman treatment that resulted in human rights violations. National Unity Republic of Indonesia ensures the welfare of each citizen, including the protection of the rights of the child which is a basic human right. Indonesia embraces the principle and the concept of Pancasila contained in the preamble of the Constitution of 1945.

Child is one of the parties objects vulnerable to right violation. Definition of vulnerable groups are not defined explicitly in the legislation, as stated in Article 5(3) of The Regulation No. 39 of 1999 which states that everyone, including vulnerable groups are entitled to treatment and protection with regard to specialization.

Children is a potential human resource to continue the ideals of the Indonesian nation in the future, the child needs guidance in ensuring the growth physically, socially, mentally in

a gradual and balanced way. As a very unique person, the child can act on his or her own feelings, thoughts and wishes, in addition to his or her own will, the actions or behaviors of the child may also be influenced from the surrounding environment, a child may engage in actions or such actions that are out of control or can commit a criminal offense so as to violate the law.

Table.1. Data of the last 3 years of HIV/ AIDS in Cianjur Regency are as follows:

No	Kecamatan	2015	2016	2017
1	Cianjur	17	45	18
2	Pacet	4	2	8
3	Bojongpicung	3	2	2
4	Campaka	3	5	1
5	Cipanas	7	16	-
6	Cikalongkulon	2	4	1
7	Mande	2	5	2
8	Cugenang	1	4	1
9	Ciranjang	6	16	2
10	Sukaresmi	4	-	-
11	Haurwangi	2	6	-
12	Cilaku	2	4	1
13	Karangtengah	7	7	3
14	Gekbrong	1	1	-
15	Tanggeung	1	4	-
16	Warungkondang	7	11	1
17	Sukaluyu	7	2	2
18	Cibinong	2	1	1
19	Cibeber	2	4	3
20	Pagelaran	2	1	3
21	Cikadu	2	-	-
22	Naringgul	1	-	-
23	Cijati	2	-	-
24	Sindangbarang	2	-	-
25	Sukanagara	1	-	2
26	Cidaun	-	2	2
27	Agrabinta	-	-	1
28	Gabungan beberapa kecamatan.	-	-	99
	Total	90	147	153

Source: Dinas Kesehatan 2017

In 2017 children with HIV / AIDS in Cianjur regency are 25 (twenty five) people and in 2018, 23 (twenty three) people have died due to fever illness, diarrhea that does not heal due to decreased body power.

4.2 Legal Protection for Children Living with HIV/ AIDS in Cianjur District in the perspective on Human Rights.

Within the provisions of Article 28 B Paragraph (2) of the 1945 Constitution it is affirmed that: "Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination", the provision has provided a strong foundation that the child shall have the right living, growing and developing and entitled to protection from violence, exploitation and discrimination.

Children according to Indonesian Dictionary has some meanings. A *child* means a second offspring. Understanding the child is still general (neutral) and the understanding will be different if viewed from the aspects of sociological, psychological and juridical. Jurisdictionally, for example, in many laws and regulations, the term *child* connotes to the human age. *Children* is defined as certain age groups of people. [6]

Child protection is the obligation and responsibility of all elements of the nation, not only applicable to certain groups that can be seen in the Regulation No. 39 of 1999 on Human Rights. The State, the Government and the Regional Government shall be responsible and responsible for respecting the fulfillment of the Rights of the Child without discrimination as provided in Article 21 of Law Number 23 Year 2002 regarding Child Protection. The implementation of child protection based on Pancasila and based on the Constitution of the Republic of Indonesia Year 1945 and the basic principles of the Convention on the Rights of the Child. An affirmative step is needed for the protection of children as vulnerable and vulnerable groups.

Educating children is essentially being a concrete effort by the parents to develop the totality of potential in a child; the future of a child hereafter will depend on the experience gained by children, including education factors and parental care. Currently not a few parents pursue their own interests as a pretext for the welfare of children, so sometimes their role as a parent that is to educate the children, instead they neglect them. Furthermore, the needs and rights of children that are accommodated in Regulation Number 23 Year 2002, *juncto* Regulation Number 35 Year 2014, *juncto* Regulation Number 17 Year 2016 include: [7]

1. The right to live, grow, develop and participate fairly in accordance with human dignity and dignity, and be protected from violence and discrimination (Article 4);
2. The right to a name as an identity and citizenship (Article 5);
3. The right to worship according to his religion, thinking and expression according to his level of intelligence and age in parental guidance (Article 6);
4. The right to know his or her parents, and to be raised and cared for by his or her own parents (Article 7 paragraph (1));
5. The right to health care, social security in accordance with physical, mental, spiritual and social needs (Article 8 paragraph (1));
6. Especially for children with disabilities are entitled to extraordinary education, while for children with exceptional advantages are entitled to special education (Article 8 paragraph (2));
7. The right to express and hear his opinion, to receive, to seek and to provide information according to his or her level of intelligence and age for the sake of his / her development in accordance with moral and propriety (Article 10);
8. The right to rest and to use spare time, to associate with children of the same age, to play, to recreate and be creative in accordance with their interests, talents and intelligence levels for the sake of self-development (Article 11);
9. The right to rehabilitation, social assistance and maintenance of social welfare for persons with disabilities (Article 12).

Cianjur District Regulation No. 2 of 2016 on HIV/ AIDS Prevention and Control explains that HIV/ AIDS prevention and prevention policy need to be done in an integrated and sustainable manner. Furthermore, Article 10 asserts that the Cianjur local government is protecting the human rights of people living with HIV/ AIDS including the protection from the confidentiality of HIV status, so that children exposed to HIV may live like other normal children. The development of human rights thinking in the field of health as one of the elements of general welfare, begins with the birth of the concept of sovereign state thinking which has the goal of promoting the general welfare as stated in the Preamble of the 1945 Constitution. The concept of advancing public welfare is in line with the thought of protection human rights in the field of health which is the recognition of the right of everyone to obtain high standards of physical and mental health. Child rights are part of human rights contained in the 1945 Constitution and the UN Convention on the Rights of the Child. In terms of national and state life, the child is the future of the nation and the future generation of the nation's ideals, so that every child has the right to survival, growth and participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms.

The values, beliefs, and rules of discipline that exist in the ideology of Pancasila should be instilled into the child from an early age. Of course, the planting is in line with the child's cognitive development and is carried out consistently. Thus, the values taught will bear fruit into behaviors and habits in their daily lives. One of the ideals of state defense is the protection of children.

Whereas The Regulation Number 39 Year 1999 on Human Rights explicitly guarantees and protects the child from neglect. Article 52 paragraph (1) provides that "every child has the right to the protection of his parents, family, community and state." Article 58 paragraph (1) provides that "every child has the right to legal protection from all forms of physical and mental violence, neglect, ill-treatment and sexual harassment during the upbringing of a parent or guardian or any other party responsible for the care of the child. "

The Convention on the Rights of the Child (CRC) adopted by the United Nations under Resolution 44/ 25 of 1989 has been generally accepted and adopted by almost all nations of the world. Within the CRC, there are 3 (three) main values, namely the value of protection (protection), the value of survival (survival), and the value of child development (development).

Indonesia ratified the Convention on the Rights of the Child by Presidential Decree No. 36 of 1990 dated August 25, 1990. Thus, Indonesia is obliged to implement such agreements and fulfill the rights of the child in accordance with the convention points. Then as the implementation of the Indonesian government ratified the Regulation on Child Protection. In Article 1 number 12 determines the definition of the right of the child that is a part of human rights which must be guaranteed, protected and fulfilled by parents, family, community, government and state. Unreasonable acts against children can hamper a child's growth. Thus, the community has an obligation to guarantee the rights of the child, not only limited to parents and family but also the community has an important role in ensuring the protection and fulfillment of children's rights.

In the Declaration of the Rights of the Child, there are 10 (ten) principles of protection of children, including the following:

The child shall be entitled to enjoy all of his rights in accordance with the provisions contained in this declaration, namely:

1. Obtain special protection and shall have the opportunity guaranteed by law and other means;
2. Name and nationality;

3. Socially guaranteed for healthy growth;
4. Especially for children who are physically disabled, mentally and socially disadvantaged by certain circumstances should receive special education, care and treatment;
5. Compassion and understanding;
6. Compulsory education is free at the primary school level;
7. Receive protection and help under any circumstances;
8. Protected from all forms of neglect, violence, exploitation;
9. Not subject to trade, work before a certain age, be engaged in work that harms them;
10. Be protected from acts that lead to forms of social discrimination, religion or other forms of social discrimination

Health services are part of every human's rights. Every human being is entitled to an adequate standard of living for the health and well-being of himself and his family. One of the programs of the Ministry of Health for the prevention of HIV transmission from pregnant women to the fetus is the *Prevention Mother to Child Transmission (PMTCT)* program by testing HIV against pregnant women. This program is very strategic in preventing HIV transmission from mother to fetus it contains, so that if the mother has HIV, it is strived that the unborn fetus is not infected by HIV by performing maternal HIV pregnancy management. Government targets HIV testing for pregnant women reaches 90%. This program has been implemented in 15 (fifteen) of 45 (forty-five) Community of Health Centers in Cianjur in order to prevent HIV transmission.

5 Conclusions

1. Most of the data to the objective condition of children living with HIV/ AIDS in Cianjur district have been recorded from 2015 to 2017 that 25 (twenty-five) people have died, and 23 (twenty-three) people have died due to the decreased endurance body;
2. Legal protection for children living with HIV/ AIDS in Cianjur district refers to the concept of human rights, namely the creation of regional regulation number 06 of 2015 on child protection and regional regulation number 2 of 2016 on prevention and control of HIV / AIDS.

References

1. <https://en.wikipedia.org/wiki/Child> (accessed in 7/14/2018. 7:48 PM)
2. 1945 Constitution
3. <https://www.psychologytoday.com/us/conditions/child-abuse> (accessed in 7/14/2018. 7:49 PM)
4. Law Number 39 Year 1999 concerning Human Rights
5. Law Number 39 Year 1999 concerning Human Rights
6. Purwadarminta, 1997, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, hlm. 29.
7. Law Number 23 Year 2002 jo Law Number 17 Year 2016