

Legal Protection for Children Affected by HIV/AIDS in Indonesia

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Abstract- The assumption underlying this paper is that there are many challenges faced by those who try to fulfill the rights of children, since what stipulated in the regulations are not separated with those implementation. Regulation and implementation are not closed and separated. Society and government are in strategic position in the implementation of fulfill children's right especially for children living with HIV/AIDS. Protection and fulfillment of children's right are not only the responsibility of parents., the role of society and government are also needed. The role of the community needs to be increased in terms of providing protection for children, because the community also has an important role in providing protection for children.

Keywords- *Legal Protection, Children's Rights, Affected HIV/AIDS*

I. INTRODUCTION

Here are so many discriminatory treatments committed by citizens against ODHA (People with HIV/AIDS). Until now there are still many people who think that PLWHA are not fit to get along and live with the community. Please note that not only adults but also children. It is very worrying because these children are innocent but must be born with the status of HIV/AIDS. Although the number of reported cases of HIV/AIDS in children is still low, children are very susceptible to contracting HIV/AIDS, among others because these groups of children have started to be sexually active, use of injecting narcotics, sex violence, lack of knowledge about reproductive health including HIV/AIDS.

As for what is meant by discrimination treatment based on article 1 paragraph (3) of the Law on Human Rights (HAM) is as follows:

Discrimination is any restriction, harassment, or exclusion that is directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, resulting in reduction, deviation or elimination of the recognition, implementation or use of human rights and basic freedoms in the life of both individuals and collectives in the political, economic, legal, social, cultural, and other aspects of life. [1]

Discriminatory treatment cannot be avoided by children who have HIV/AIDS. They become not free in hanging out with their peers because parents forbid their children to play with children who have HIV/AIDS, some are even expelled by residents and many other discriminatory treatments.

The 1945 Constitution of the Republic of Indonesia and a number of legal regulations form the basis for the need to protect children. In the 1945 Constitution (vide article 28B paragraph 2) it is emphasized that every child has the right to survival, growth and development, and protection from various forms of violence and discrimination. Whereas Law No. 39/1999 concerning Human Rights explicitly guarantees and protects children from neglect. Article 52 paragraph (1) stipulates that "every child has the right to protection of parents, family, community and state." [2] Article 58 paragraph (1) provides that "every child has the right to obtain legal protection from all forms of physical and mental abuse, neglect, ill-treatment and sexual harassment while in the care of a parent or guardian or any other party responsible for the care of the child ". [2]

The Convention on the Rights of the Child (CRC) which has been ratified by the United Nations based on Resolution 44/25 of 1989 which has generally been accepted and adopted by almost all nations in the world which includes three main values, namely the value protection (protection), the value of survival (survival), the value of child development (development). [3] Indonesia ratified the Convention on the Rights of the Child with Presidential Decree Number 36 of 1990 dated August 25, 1990. As such, Indonesia is obliged to implement these agreements and fulfill children's rights in accordance with the provisions of the convention. Then as an implementation the Indonesian government ratified Law Number 23 of 2002 concerning Child Protection. Article 1 number 12 determines the definition of children's rights, which is a part of human rights that must be guaranteed, protected and fulfilled by parents, family, community, government and country. [4] Various actions that are not natural against the child can inhibit the growth and development of a child. Thus, the community has an obligation to guarantee the rights of children, not only limited to parents and families but the community also has an important role in ensuring the protection and fulfillment of children's rights.

Children are a jewel for the family, as prospective future generations of the nation who will continue leadership in the future. Therefore, a child should be given more special treatment or attention, because it is with them that the black and white of a nation is determined. This is illustrated by the purpose of protecting children as regulated in article 3 of the Child Protection Act as follows:

Child protection aims to ensure the fulfillment of children's rights to be able to live, grow, develop and participate optimally in accordance with human dignity and dignity and get protection from violence and discrimination, for the realization of quality Indonesian children with noble and prosperous character [4]

Various forms of improper actions against children can hinder children's development, especially because their rights are not guaranteed well. Currently, protection has been sought for the rights of children, both in the family, community and government in accordance with the duties and functions of each party. Although various efforts have been made to provide protection for children's rights, in reality the condition and level of child welfare in Indonesia is still in a serious stage for further attention.

In the provisions of article 4 of the Child Protection Act stipulates: "Every child has the right to be able to live, grow, develop and participate properly in accordance with human dignity and dignity, and get protection from violence and discrimination" [4]. This is an implementation of the basic principles of the Convention on the Rights of the Child which include (1) non-discrimination, (2) the best interests of children, (3) the right to life, survival and development, (4) respect for the opinions of children [3].

Children are classified as people who are weak and have not been able to make decisions which are good and not good or not good. The situation is still dependent on adults, both spiritually, physically and socially do not have the ability to stand alone, it becomes an obligation for parents, family, community and government/country to guarantee, preserve and secure the interests of children. This is in accordance with the provisions in article 20 of the Child Protection Act which sets forth the following: "The state, government, community, family and parents are obliged and responsible for the implementation of child protection" [4]

II. FINDINGS AND DISCUSSION

1. *Scope of the Definition of Children and Children's Rights*

Children as part of the younger generation are the successors of the ideals of the struggle of the nation and human resources for national development, so that

continuous coaching is needed for physical, mental and social survival and protection from all possibilities that will endanger them and the nation in the future.

In Law Number 23 Year 2002 concerning Child Protection, children's rights are regulated, including the following:

- a. Article 4 provides that every child has the right to be able to live, grow, develop, participate, and be reasonable in accordance with human dignity and dignity, and to be protected from violence and discrimination. [10]
- b. Article 8 stipulates that the right to obtain services, health and social security is in accordance with physical, mental, spiritual, social needs according to physical, mental, spiritual and social needs. [11]

In the Declaration of the Rights of the Child there are 10 (ten) principles of protection for children, including the following: Children have the right to enjoy all their rights in accordance with the provisions contained in this declaration, namely [12]:

- a. Obtain special protection and must obtain opportunities guaranteed by law and other means;
- b. Name and nationality;
- c. Guaranteed community for healthy growth and development;
- d. Especially for children who are physically, mentally disabled and have a weak social position due to a certain condition of life, they must obtain education, care and special treatment;
- e. Affection and understanding;
- f. Free compulsory education is minimal at the elementary school level;
- g. Receive protection and assistance in any situation;
- h. Protected from all forms of neglect, violence, exploitation;
- i. Must not be subject to trade, work before a certain age, be involved in work which is detrimental to him;
- j. Protected from acts that lead to forms of social discrimination, religion or other forms of social discrimination.

In the principles contained in the Declaration of the Rights of the Child it is implied that humanity is obliged to provide the best for children. The principles in the Declaration of the Rights of the Child are then affirmed in a convention called the Convention on the Rights of the Child, which is legally and politically binding for those who ratify it. Indonesia is one of the countries that ratified the convention, namely on August 20, 1990 with the issuance of Presidential Decree of the Republic of Indonesia Number 36 of 1990 and followed up with the issuance of the Child Protection Act on October 22, 2002. In the Convention on the Rights of the Child there are 4 (four) basic rights of children that must be fulfilled, namely:

- a. The right to survival (survival rights); his form includes the right to preserve life and pay attention to life and good health and care.
- b. The right to protection (protection rights); protection against discrimination, violence and neglect.
- c. Right to development (development rights); the right to get formal and non-formal education and to achieve physical, mental, spiritual, moral and social development.
- d. The right to participate (participation rights); the right to express opinions in all matters.

The basic thoughts of child protection law are: a) Because children are the buds, the potential and the younger generation to succeed the ideals of the national struggle; b) Because it has a strategic role and has special characteristics and characteristics that guarantee the continued existence of the nation and state in the future; c) So that children can grow and develop optimally, both physically, mentally and socially and with good character; d) Because maintenance of children's welfare cannot be carried out by the child itself, so it is necessary to fulfill children's rights. [3]

Children as the next generation of the ideals of the nation's struggle have a very strategic role, but due to their conditions that are vulnerable to violence, protection is needed so that children can grow and develop properly both physically, spiritually and socially.

In connection with the understanding of child protection, in article 1 number 2 of the Child Protection Act, it stipulates that: "Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with the dignity and human dignity, and get protection from violence and discrimination "[4].

Arif Gosita argues that child protection is: "A joint activity aimed at securing, procuring and fulfilling the spiritual and physical well-being of a child or adolescent in accordance with their interests and rights" [5]. In connection with Arif Gosita's opinion above, that child protection activities are a joint activity, joint activities in this case means that child protection is not only the responsibility of one party but is the responsibility of the parties. Regarding the involvement of the parties in implementing legal protection for children in Article 20 of the Child Protection Act, determine as follows: "The state, government, community, family and parents are obliged and responsible for the implementation of child protection". 16 The three parties (parents, community, state) have the obligation to protect children in their respective portions. For countries, for example, implementing obligations by broadcasting child protection laws. However, if it is not supported by law enforcement officers, then the law has no function. So, the implementation cannot run well so there are many violations in the community. Then for parents or family as

the smallest living space where the child first knows the world, growing and developing must be able to provide good initial education while providing physical and mental protection for the child. In addition, the community also has a role, namely to be able to condition an environment conducive to the growth and development of children.

In connection with the issue of protection for children, Arif Gosita argues that: "Protection of children of a society, the nation is a benchmark of human civilization as a whole and civilized, so we strive for child protection in accordance with ability, for the benefit of the homeland and the nation" .17 Therefore, child protection is an obligation and responsibility of a nation so that the nation can be regarded as a civilized and humane nation.

2. *Protection for Children with HIV/AIDS*

The level of welfare of Indonesian children is still very alarming. There are still many people whose rights to live and grow into healthy, intelligent, cheerful, virtuous children have not been fulfilled. Indonesia still has the complexity of children's problems which until now has not been resolved thoroughly and comprehensively [5]. It can be seen how many children are experiencing malnutrition, children living with HIV/AIDS, children with disabilities, children who have to work day and night, children who become prostitutes and objects of pornography, children who live in prisons slums, dirty and jostling, and a number of other child problems that are very easily encountered.

Therefore, there must be a genuine commitment to reduce the child's problem, commitment is not enough but also accompanied by the implementation of the commitment. Therefore, several important recommendations to consider in an effort to provide comprehensive child protection in Indonesia include building a child protection system and mechanism that must work neatly and transparently in a community that is supported by a system of social welfare and health and law enforcement. [6]

At present the number of children in difficult situations is still very large. Children who are in this difficult situation also include children who are displaced, children who are exploited and children who need special protection including children with disabilities, children who are in prison, children who are in orphanage and also children who work in the formal and informal sectors. Not to mention the problem of children who are alienated and discriminated against because they have the disease due to HIV / AIDS transmission from their parents. The lack of public knowledge about methods or techniques for transmitting and spreading the HIV/AIDS virus, further adds to the problem of discriminatory treatment of children who have HIV/AIDS.

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The lack of public knowledge about HIV/AIDS (Human Immune Deficiency Virus/Acquired Immune Deficiency Syndrome) can cause the community to stay away from PLWHA (People with HIV AIDS). People who have low knowledge always assume that a person with HIV/AIDS is someone who behaves badly, tends to have free sex. It's not easy to get people to accept people with HIV/AIDS. There are still many members of the community who are a priori about people living with HIV/AIDS. The public's bad perception of people with HIV/AIDS is not all true, a review needs to be done and it should not be immediately beaten equally to all people with HIV/AIDS. Though people can be infected accidentally, for example due to blood transfusions or syringes. So not all people with HIV/AIDS have bad behavior and tend to have sex, because not a few people who become victims of HIV/AIDS due to accidental.

Many people think the HIV/AIDS virus is contagious if we talk to sufferers, eat and drink with the same glass and plate, swim together, use the same towel or item. That is why many people stay away from PLWHA. When they hear the word HIV/AIDS, it seems like something that is very frightening and must be shunned by sufferers. Therefore, it is not justified to exclude HIV/AIDS sufferers, because after all they are human beings who have the same rights and obligations. When in fact the spread of the HIV/AIDS virus is not the case. The HIV/AIDS virus can be transmitted through blood transfusion, intimate contact, babies who drink breast milk from a mother who has HIV. So the transmission of HIV/AIDS is not through the air, it is not true if close to or talk to PLWHA (People with HIV/AIDS) can get HIV/AIDS. Therefore, it is not justified to exclude HIV/AIDS sufferers, because after all they are human beings who have the same rights and obligations [8].

Acts of discrimination against children with HIV/AIDS include emotional violence and economic neglect. Of course, this violates the applicable laws and regulations. Regarding sanctions as stipulated in article 80 paragraph (1) of the Child Protection Act, it stipulates that the sanction is a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp. 72,000.0000, (seventy-two million rupiah).

III. CONCLUSION

The role of the community needs to be increased in terms of providing protection for children, because the community also has an important role in providing protection for children. Parties that are obliged to provide protection for children are not only parents and families but the state and society are also obliged to guarantee the fulfillment and protection of children's rights. In addition, counseling about HIV/AIDS is needed because the public's knowledge about HIV/AIDS is still low, so there are still many people who do not know and understand what HIV is and what it is AIDS and how it is transmitted.

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