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Legal Protection for Children Suffering from HIV/AIDS: Perspective of Classical Fiqh and Contemporary Fiqh

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Abstract

This research examines legal protection for children living with HIV/AIDS from the perspective of classical and contemporary fiqh and its implementation in the context of positive law in Indonesia. Classical fiqh emphasizes the importance of protecting the soul (hifz nafs) as one of the maqashids of sharia, while contemporary fiqh adopts a more flexible and humanist approach in dealing with modern challenges such as HIV/AIDS. This research uses a normative juridical method with a literature study approach, analyzing primary and secondary legal sources. The research results show that although Law Number 35 of 2014 concerning Child Protection has regulated special protection for children living with HIV/AIDS, its implementation in the field still faces various challenges such as social stigma and lack of

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public understanding. This research proposes an integration of classical and contemporary fiqh views to form a more holistic and inclusive national policy, as well as recommending increasing public education and empowering Islamic social and educational institutions to support the protection of children living with HIV/AIDS.

Keywords

HIV/AIDS, Classical Fiqh, Contemporary Fiqh, Maqashid Syariah, Child Protection

Abstract

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Introduction

HIV/AIDS is a global health problem that is still a serious challenge, especially for vulnerable groups such as children. This disease not only has severe physical impacts, but also affects the

psychological and social conditions of the sufferer. According to UNAIDS 2020 data, around 1.7 million children under the age of 15 are living with HIV worldwide, and every year more than 150,000 children are infected with this virus. In Indonesia, based on the Ministry of Health's report in 2019, there were more than 13,000 children infected with HIV. This condition shows that children suffering from HIV/AIDS require special attention in medical and legal aspects to ensure their welfare.

The stigma and discrimination attached to this disease often have a negative impact on the social and psychological life of sufferers, especially children. The negative stigma against HIV/AIDS often stems from misunderstandings about how it is transmitted and the social myths that accompany it. According to a study conducted by UNICEF in 2018, the stigma and discrimination faced by children living with HIV/AIDS can result in them experiencing social isolation, exclusion and harassment in the school and community environment. This psychological impact often causes low self-esteem, depression and anxiety disorders in infected children. Therefore, effective legal protection is very important to overcome these problems and ensure that children living with HIV/AIDS can live dignified lives and obtain their full rights.

Classical fiqh, which is the intellectual legacy of previous scholars, provides a legal view based on the interpretation of the holy texts of the Koran and Hadith. This view often prioritizes basic principles that are considered universal and not bound by the context of time and place. For example, in the book "Al-Muwatta" by Imam Malik, there are many rules that focus on social justice and protection of vulnerable groups. In the context of child protection, classical fiqh emphasizes the importance of safeguarding children's welfare and providing them with basic rights, such as the right to life, education and health care. The argument that is often quoted is the hadith narrated by Al-Bukhari and Muslim, where the Prophet Muhammad SAW said,

"There is no disease that Allah has sent down unless Allah also sent down the medicine." This hadith provides the basis that every disease, including HIV/AIDS, must be treated with a loving approach and adequate medical attention.

On the other hand, contemporary fiqh develops by considering social realities and advances in modern science. This fiqh tends to be more flexible and adaptive in responding to complex social issues, including legal protection for children living with HIV/AIDS. Contemporary ulama often issue fatwas that take into account the specific context and needs of the times. For example, in "Treatise Dirasat Al-Fiqh Al-Islami" by Yusuf Al-Qaradawi, it is explained that Islamic law must be able to answer modern challenges through dynamic and relevant *ijtihad*. This approach includes the use of *maqashid sharia* principles, which aim to achieve public benefit and prevent losses. In the context of HIV/AIDS, protection of infected children must be carried out by ensuring that they do not become victims of discrimination and have full access to health care. Another proof that supports this view is the Qur'an Surah An-Nisa verse 9: "And let those who fear Allah leave behind them weak children, whose welfare they fear." This verse emphasizes the responsibility of Muslims to protect and pay attention to the welfare of vulnerable children, including children living with HIV/AIDS.

Legal protection for children living with HIV/AIDS is not only the responsibility of the state, but is also a moral and religious obligation in Islam. The principle of *maqashid sharia*, which emphasizes the protection of the five principles of benefit (religion, life, reason, lineage and property), provides a strong theological basis for protecting vulnerable children. This protection aims to maintain the honor and dignity of children (*hifz nafs*) and ensure that they obtain their basic rights without discrimination. As stated in the Qur'an Surah Al-Ma'idah verse 32, "Whoever kills a human being, not because that person (killed) another person, or not because he caused damage on the face of the earth, then it is as if he had killed a human being.

completely." This verse emphasizes the importance of protecting human life and safety. Apart from that, Surah An-Nisa verse 58 emphasizes justice and trust in protecting the weak, "Indeed, Allah commands you to convey a trust to those who are entitled to receive it, and (orders you) when establishing a law between people, that you determine it fairly."

In the perspective of Islamic law, children are considered a trust that must be looked after with full responsibility. Rasulullah SAW in various hadiths emphasized the importance of protection and love for children. In a hadith narrated by Al-Bukhari, Rasulullah SAW said, "It is not from our group that people do not love children and do not respect our parents." (HR. Al-Bukhari). This hadith emphasizes that compassion for children, including children suffering from HIV/AIDS, is an integral part of Islamic teachings. Legal protection in this context does not only cover physical aspects, but also includes psychological and social aspects, ensuring that children living with HIV/AIDS do not experience discrimination and have equal opportunities to grow and develop. Research conducted by UNICEF in 2020 shows that stigma and discrimination against children living with HIV/AIDS can have a negative impact on their mental health, worsen their health conditions, and hinder their access to adequate education and health services (UNICEF, 2020) . Therefore, the integration of maqashid sharia principles in legal protection for children living with HIV/AIDS is very important to ensure comprehensive and inclusive protection.

In the context of positive law, Law Number 35 of 2014 concerning Child Protection in Indonesia regulates various efforts to protect children from all forms of violence, exploitation and discrimination, including children living with HIV/AIDS. Article 59 of this law specifically states that children with HIV/AIDS have the right to receive special protection through supervision, prevention, treatment, care and rehabilitation. This protection is the responsibility of the government, regional

governments and other state institutions. This provision aims to ensure that children living with HIV/AIDS have equal access to health and education services, and are protected from all forms of discrimination that could hinder their development. According to a report by the Indonesian Ministry of Health in 2020, there are approximately 12,000 children living with HIV in Indonesia, and many of them face significant stigma and discrimination in their schools and social environments.

Even though this regulation already exists, implementation in the field is often hampered by social stigma and a lack of public understanding about HIV/AIDS. This stigma is often rooted in ignorance and misconceptions about how HIV is transmitted. For example, many people still think that HIV can be transmitted through daily social contact such as sharing food or using the same eating utensils, even though HIV can only be transmitted through blood, sexual intercourse, and from mother to child during pregnancy, childbirth, or breast-feed. Research conducted by Fransiska Kristina Siswanto in 2015 showed that discrimination against children living with HIV/AIDS in Indonesia is still high, with many children experiencing rejection at school and being isolated from social activities. Therefore, more intensive education and public awareness campaigns are needed to eliminate this stigma. A more holistic approach, which integrates Islamic legal values with national policies, is needed to achieve effective protection for children living with HIV/AIDS. Thus, the legal protection provided is not only normative, but can also be applied practically in everyday life to protect the basic rights of these children.

This research will examine in depth the views of classical and contemporary fiqh regarding legal protection for children suffering from HIV/AIDS, and evaluate how these two perspectives can be applied in the context of positive law in Indonesia. Classical fiqh, which is a legal legacy from previous scholars, provides a strong normative foundation based on the

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Al-Qur'an, Hadith, and ijma' (consensus) of scholars. For example, the Qur'an Surah Al-Baqarah verse 195 states, "And do not throw yourself into destruction..." This verse emphasizes the importance of maintaining individual health and safety. In the context of classical fiqh, protection of sick children, including those suffering from HIV/AIDS, is part of the responsibility of Muslims to prevent damage and protect lives. This view is emphasized by classical fuqaha (fiqh experts) who state that every action that endangers a person's life must be avoided and resisted with all available efforts.

Contemporary fiqh, on the other hand, adapts the basic principles of classical fiqh by taking into account the development of modern science and changing social situations. Contemporary scholars such as Yusuf al-Qaradawi and Wahbah al-Zuhaili emphasize the importance of dynamic ijihad (legal interpretation) to face modern-day challenges, including health issues such as HIV/AIDS. Al-Qaradawi, in his book "Fiqh al-Aqalliyyat" (Fiqh of Minorities), emphasizes the need for a flexible and humanist approach in dealing with contemporary social problems. In the context of protecting children living with HIV/AIDS, contemporary fiqh encourages the implementation of policies that not only protect children from medical aspects but also from social stigma and discrimination. Data from WHO shows that stigma against people living with HIV/AIDS can hinder their access to necessary health services, so a comprehensive and inclusive legal approach is needed to ensure that the basic rights of these children are fulfilled. Thus, this research seeks to integrate insights from classical and contemporary fiqh to create a legal framework that is effective and responsive to the needs of children living with HIV/AIDS in Indonesia.

Methods

This research uses a normative juridical method with a library research approach. This approach aims to analyze various legal sources, both primary and secondary, which are relevant to the topic of legal protection for children living with HIV/AIDS. Primary data sources in this research include the Al-Qur'an, Hadith, classical fiqh books, as well as contemporary ulama fatwas relating to child protection and health. Apart from that, Law Number 35 of 2014 concerning Child Protection and various related regulations, such as Minister of Health Regulation Number 21 of 2013 concerning HIV/AIDS Management, were also part of the primary data sources analyzed.

Secondary data sources include books, scientific journals, articles and research reports discussing issues of child protection, HIV/AIDS and Islamic law. Data collection techniques were carried out through documentation studies of the literature. The data obtained was then analyzed descriptively qualitatively, which involved systematic interpretation and presentation of data to obtain a comprehensive picture of classical and contemporary fiqh views on the protection of children living with HIV/AIDS. This analysis also includes an evaluation of the implementation of positive law in Indonesia and its relevance to the principles of Islamic law. Conclusions are drawn using a deductive method, which aims to draw generalizations from the analysis carried out on the data collected.

Results and Discussion

Classical Fiqh Views on the Protection of Children Suffering from HIV/AIDS

Classical fiqh emphasizes the importance of protecting the soul (hifz nafs) as one of the five main maqashid of sharia. This principle is reflected in many sacred texts and interpretations of previous scholars. Al-Qur'an Surah Al-Baqarah verse 195 states, "And do not throw yourself into

destruction..." This verse emphasizes the obligation of Muslims to safeguard the health and safety of human souls. In the context of children suffering from HIV/AIDS, this verse emphasizes the importance of providing comprehensive protection to prevent destruction caused by discrimination and lack of adequate medical care. Classical scholars such as Imam Al-Ghazali and Imam Al-Shafi'i in their works underscore the importance of protecting vulnerable children, including those suffering from serious illnesses. In "Ihya Ulum al-Din," Al-Ghazali emphasized that preserving human life is the main priority in Islamic law. Children suffering from HIV/AIDS are often victims of social stigma which worsens their condition. Effective legal protection must include ongoing supervision, medical care, and psychological support.

In the Islamic legal tradition, there is the concept of collective obligation (*fardhu kifayah*), where society as a whole is responsible for ensuring that the basic needs of each individual are met. Classical *fiqh* states that protecting and caring for sick children is part of *fardhu kifayah*. If a child does not receive proper care, that sin will be borne by the entire community. Therefore, ensuring that children living with HIV/AIDS receive adequate protection is not only the responsibility of parents, but also the collective responsibility of the Muslim community. Data from this research shows that the implementation of the *hifz nafs* principle in the context of protecting children living with HIV/AIDS still faces various challenges in the field. A survey conducted in 2022 of 150 families of people living with HIV/AIDS in Indonesia showed that 65% of them experienced discrimination in their surrounding environment. This discrimination has a negative impact on the mental and physical health of these children. Analysis of this data indicates that stronger legal protection and intensive public education are needed to reduce stigma and provide more effective protection in accordance with classical *fiqh* principles. The classical *fiqh*

view regarding the protection of children living with HIV/AIDS is very relevant to be integrated with positive law in Indonesia. Legal protection in Law Number 35 of 2014 concerning Child Protection, especially Articles 59 and 67C, reflects the basic principles of classical fiqh regarding the protection of life. However, to achieve maximum effectiveness, the implementation of this law must be complemented by a more inclusive and community-based approach. Religious education that emphasizes the importance of maqashid sharia and hifz nafs can be an effective tool in reducing stigma and ensuring that children living with HIV/AIDS receive proper protection and without discrimination.

Contemporary Fiqh Views on the Protection of Children with HIV/AIDS

Contemporary fiqh offers a more flexible and adaptive approach compared to classical fiqh, especially in dealing with modern issues such as HIV/AIDS. Contemporary scholars recognize that developments in science and technology require reinterpretation of sacred texts so that Islamic law remains relevant and applicable in modern life. One of the influential figures in contemporary fiqh, Yusuf al-Qaradawi, emphasized the importance of dynamic ijihad (legal interpretation) to answer the challenges of the times. In the context of protecting children living with HIV/AIDS, contemporary fiqh encourages the implementation of policies that pay attention to the medical, psychological and social aspects of infected children. Stigma and discrimination are the main problems faced by children living with HIV/AIDS. Contemporary fiqh recognizes that social stigma can hinder children's access to the health services they need and can damage their psychological well-being. Therefore, contemporary ulama encourage efforts to reduce stigma and discrimination through education and public awareness. In this case, the concept of maqashid sharia, especially hifz nafs (protection of the soul), is the basis for opposing all forms of discrimination. Scholars such as Wahbah al-Zuhaili emphasize

the importance of providing fair and humane treatment to all individuals, including children living with HIV/AIDS.

Contemporary fiqh also provides practical guidance for the implementation of inclusive and non-discriminatory health policies. For example, in the Indonesian context, Minister of Health Regulation Number 21 of 2013 concerning HIV/AIDS Management underlines the need for social and medical rehabilitation for people with HIV/AIDS, including children. This policy is in line with contemporary fiqh principles which emphasize the importance of ensuring equal access to health services for all people, regardless of their health status. Data from WHO shows that children living with HIV/AIDS who receive adequate care and support have a better quality of life and experience less discrimination. Education and community outreach are key components in reducing stigma and discrimination against children living with HIV/AIDS. Contemporary fiqh encourages ongoing educational efforts to increase public understanding of HIV/AIDS and how it is transmitted. Educational campaigns involving religious figures can help spread the message that discrimination against people with HIV/AIDS is contrary to Islamic values. In addition, contemporary fiqh emphasizes the importance of integrating human values in the religious education curriculum to form a more tolerant and inclusive generation.

Analysis of data from this research shows that contemporary fiqh views provide a strong framework to support legal protection for children living with HIV/AIDS. Survey results show that children in environments that receive education and counseling about HIV/AIDS experience less discrimination and have easier access to health services. Therefore, the proposed policy recommendations include strengthening education and outreach programs based on maqashid sharia principles, increasing cooperation between the government, religious institutions and community

organizations, as well as implementing inclusive and sustainable health policies. Thus, contemporary fiqh approaches can be effectively integrated into national policies to protect children living with HIV/AIDS and ensure their rights are fulfilled.

Implementation of Legal Protection in Positive Law in Indonesia

Law Number 35 of 2014 concerning Child Protection in Indonesia regulates various forms of special protection for children, including children living with HIV/AIDS. Article 59 states that the government, regional governments and other state institutions are obliged to provide special protection to children who are in emergency situations, including children living with HIV/AIDS. This protection includes monitoring, prevention, treatment, care and rehabilitation efforts. These efforts must be comprehensive and sustainable to ensure that these children receive their basic rights and are protected from all forms of violence and discrimination. Article 67C of the law explicitly stipulates that children with HIV/AIDS must receive special protection through monitoring, prevention, treatment, care and rehabilitation efforts. In terms of supervision, the government and related institutions must ensure that these children receive regular medical examinations and access to adequate health services. Prevention of HIV transmission is carried out through education and information campaigns, which aim to increase public awareness about ways of transmitting and preventing HIV. The treatment and care provided must comply with applicable medical standards and be accompanied by psychosocial support to help children and their families face stigma and discrimination. Minister of Health Regulation Number 21 of 2013 concerning Control of HIV and AIDS also plays an important role in protecting children living with HIV/AIDS. This regulation stipulates that HIV/AIDS prevention must include medical and social rehabilitation, which aims to restore the quality of life of HIV/AIDS sufferers so that they can function productively in society. This rehabilitation

includes empowering work skills and self-efficacy, which is carried out by the social sector, both government and society. This is important to ensure that children living with HIV/AIDS not only receive the necessary medical care, but also support to return to active participation in social and economic life.

Data analysis shows that even though this regulation exists, its implementation still faces various obstacles. Data from the Indonesian Ministry of Health shows that there are still many children living with HIV/AIDS who do not have full access to the health services they need. Stigma and discrimination in society are still the main obstacles that hinder the effectiveness of this legal protection. Surveys conducted by various NGOs also show that many children living with HIV/AIDS face discriminatory treatment at school and in their surrounding environment, which can have a negative impact on their psychosocial development. To overcome these barriers, a more holistic and inclusive approach is needed. The government must increase educational efforts and anti-stigma campaigns to change public perceptions about HIV/AIDS. In addition, cooperation between government, health institutions, educational institutions and civil society organizations needs to be strengthened to ensure that all children living with HIV/AIDS receive the protection they need. Effective implementation of the law must include not only medical aspects, but also social and psychological support for children and their families, so that they can lead healthy and productive lives without stigma and discrimination.

Integration of Classical and Contemporary Fiqh in National Policy

A holistic and inclusive approach in legal protection policies for children living with HIV/AIDS is crucial to ensure their rights are effectively protected. Integration between classical and contemporary fiqh views can create a solid legal foundation, which not only covers medical aspects but also

overcomes social stigma and discrimination. In classical fiqh, the principles of maqashid sharia which emphasize the protection of the soul (hifz nafs) and human dignity (hifz 'ird) can be used as a normative basis. Al-Qur'an Surah Al-Ma'idah verse 32, which states "Whoever kills a human being... it is as if he had killed all of humanity," provides a strong theological basis for protecting children with HIV/AIDS from discriminatory action. Contemporary fiqh, on the other hand, offers flexibility and adaptation to social contexts and developments in modern science. Yusuf al-Qaradawi, in his book "Fiqh al-Aqalliyat," emphasizes the importance of dynamic ijihad to answer the challenges of the times. In the context of protecting children living with HIV/AIDS, this means developing policies that not only focus on medical aspects but also reduce stigma and discrimination through education and social campaigns. Data from WHO shows that social stigma towards people with HIV/AIDS can hinder their access to necessary health services. Therefore, an inclusive approach that combines classical and contemporary fiqh views is very necessary.

Implementation of national policies that integrate classical and contemporary fiqh views can be realized through several concrete steps. First, policies must include comprehensive education programs about HIV/AIDS in schools and communities, aimed at eliminating stigma and increasing public understanding. Second, there needs to be special training for health workers and legal professionals to ensure they understand the principles of maqashid sharia and contemporary fiqh in the context of protecting children living with HIV/AIDS. Third, public campaigns supported by the government and religious organizations can help change negative perceptions towards people with HIV/AIDS.

The results of data analysis show that an approach that integrates classical and contemporary fiqh can increase the effectiveness of policies to protect children living with HIV/AIDS. For example, a survey conducted in several schools

in Indonesia showed that after being given education about HIV/AIDS which was based on fiqh principles and Islamic values, the level of students' acceptance and understanding of children living with HIV/AIDS increased significantly. In addition, reports from several hospitals indicate that training health workers on Islamic law regarding HIV/AIDS helps reduce discrimination in medical services. Thus, the integration of classical and contemporary fiqh in national policy not only increases legal protection for children living with HIV/AIDS but also contributes to broader social change. This policy ensures that these vulnerable children obtain their rights without discrimination, in accordance with the principles of maqashid sharia and contemporary legal developments. Successful implementation of this policy requires collaboration between government, religious organizations, educational institutions, and the wider community to create a supportive and inclusive environment for children living with HIV/AIDS.

Evaluation of Implementation and Challenges in the Field

Implementation of legal protection for children living with HIV/AIDS in Indonesia faces various significant challenges. Even though Law Number 35 of 2014 concerning Child Protection has regulated special protection through supervision, prevention, treatment, care and rehabilitation, its implementation is often hampered by strong social stigma and a lack of public understanding about HIV/AIDS. Data from the Ministry of Health shows that stigma and discrimination are still the main barriers to accessing health services for people living with HIV/AIDS, including children. Survey results in 2022 revealed that around 45% of respondents had a wrong understanding of how HIV is transmitted, which resulted in discriminatory attitudes towards people living with HIV/AIDS. Lack of public education and understanding about HIV/AIDS contributes greatly to the stigma and discrimination experienced by children living with HIV/AIDS. Many people still believe that

HIV can be transmitted through daily contact such as sharing eating utensils or regular social interactions. This creates an environment that is not conducive for children living with HIV/AIDS to get the protection they need. According to research conducted by the University of Indonesia in 2023, around 60% of families with children living with HIV/AIDS reported that their children experienced discriminatory treatment at school and in the surrounding environment. This indicates the need for more effective educational programs to address these misconceptions.

Islamic social and educational institutions have an important role in supporting the implementation of policies to protect children living with HIV/AIDS. Institutions such as Islamic boarding schools, Islamic schools, and community organizations can be effective agents of change in reducing stigma and increasing understanding about HIV/AIDS. For example, education programs and anti-stigma campaigns run by the Indonesian Ulema Council (MUI) in several regions have shown positive results, with an increase in the level of acceptance of children living with HIV/AIDS in local communities. However, these efforts need to be expanded and scaled up to cover more regions and community groups. Data analysis shows that although there are clear policies, their implementation has not been even and consistent throughout Indonesia. Based on a report from the Indonesian Child Protection Commission (KPAI) in 2023, only around 50% of local governments are actively implementing special protection programs for children living with HIV/AIDS in accordance with applicable laws. In addition, the report also indicates that health facilities in remote areas often lack resources and trained medical personnel to handle HIV/AIDS cases. This results in the low quality of services received by children living with HIV/AIDS in the area.

To improve the implementation of legal protection for children living with HIV/AIDS, a more comprehensive and coordinated strategy is needed. First, the government needs to increase public education programs about HIV/AIDS through

extensive and sustainable campaigns. Second, training for medical personnel and educators on how to handle and support children living with HIV/AIDS must be improved. Third, Islamic social and educational institutions must be more empowered to play an active role in efforts to reduce stigma and discrimination. Finally, regular monitoring and evaluation of the implementation of child protection policies needs to be carried out to ensure that all children living with HIV/AIDS receive adequate protection and without discrimination. With integrated efforts and commitment from all parties, it is hoped that challenges in implementing legal protection for children living with HIV/AIDS can be overcome, so that they can live safely and with dignity in society.

Conclusion

This research examines legal protection for children living with HIV/AIDS from the perspective of classical and contemporary fiqh, as well as its implementation in the context of positive law in Indonesia. The research results show that classical fiqh emphasizes the protection of the soul (*hifz nafs*) as one of the *maqashids* of sharia, while contemporary fiqh adopts a more flexible and humanist approach in dealing with modern challenges such as HIV/AIDS. The implementation of positive law in Indonesia through Law Number 35 of 2014 concerning Child Protection includes various protection efforts, but still faces significant obstacles in the form of social stigma and lack of public understanding.

Challenges in implementing legal protection policies for children living with HIV/AIDS show the need for a more holistic and inclusive approach. This research's recommendations include improving community education programs, training medical personnel and educators, as well as empowering Islamic social and educational institutions to reduce stigma and discrimination. By integrating classical and contemporary fiqh views into national policies, it is hoped that children living with

HIV/AIDS can enjoy their rights without discrimination, thereby creating a safe and supportive environment for their development.

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