

JURIDICAL REVIEW ACT NO. 36 YEAR 2009 ABOUT HEALTH RELATED IN PREVENTING THE SPREAD OF HIV/AIDS IN BATAM CITY

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Abstract

The main goal to be achieved through this undergraduate final project research is to determine the level of health prosperity or welfare in the city of Batam related HIV/AIDS disease which must be one part of the implementation of Indonesia's national development. In an effort to advance the general welfare, health aspect is one of main aspect of implementation which become the main focus in national development effort. This research was conducted based on normative and empirical research with Non-Judicial Case Study. Data source used is primary data source and secondary data source. Data were collected by field study and literature study. After the data is collected, the Author processes and analyzes the data. Qualitative analysis is used to classify data based on the aspects studied. The conclusions illustrated relate to this study, then presented by the author descriptively. At the end of this study, after providing data related HIV / AIDS in Batam City. Of course, the author will explain the importance of making the Regional Regulations to increase legal awareness that can be a reference act in handling and tackling HIV / AIDS in the city of Batam.

Keywords: HIV/AIDS, Health, Regional Regulation, Batam City

A. Background

Health is one of the main foundation in the human rights that are a basic human right. Health is one form of Human Rights (hereinafter referred to as human rights) and one of the elements of welfare. The National Goal of the State of Republic Indonesia is to protect the entire nation of Indonesia and the whole of Indonesia's blood sphere and to promote the common prosperity, to educate the life of the nation, and to carry out the world order based on freedom, eternal peace and social justice.² To achieve the goals in the life of society, nation and state, the nation of

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² Preamble, paragraph 4, 1945, *The Constitution of the Unitary State of the Republic of Indonesia Year 1945*, State Secretariat, Jakarta.

Indonesia to implement national development. In an effort to advance the general welfare, health aspect is one of the main aspects that become the main focus in national development effort.

Many people are still struggling in fulfilling the right to health that should be given by the state as the stakeholder of state responsibility. Because the Unitary State of the Republic of Indonesia is a state of law.³ Everything related to the implementation of government relating to the purpose of community life must be in accordance with the law. Included in the protection of human rights of its citizens. Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation.⁴ Health is also one of the basic human needs, in addition to clothing, food and shelter. To achieve the national objectives, a sustainable development effort is created which is a comprehensive and focused set of development.

Furthermore, the authors are interested in analyzing how to prevent the *human disease viruses* caused by HIV/AIDS in Batam City. Every year the number of people living with HIV/AIDS in Batam continues to increase. The first quarter of 2016 alone was noted there are 113 people with HIV/AIDS.⁵ Although people with HIV/AIDS in the city of Batam is quite high, but until now there has been no Regional Regulation which serves as a legal protection to the sufferer.

Based on the description above, it can be seen that the spread of HIV/AIDS is still common and quite harmful to society. The law enforcement process for possible perpetrators to or of the spread HIV/AIDS must be done in order to provide true knowledge and the prevention of serious deterrent effects. Development of law in the field of health, aims to create order, legal certainty and facilitate development in the field of health, so that it can regulate health services performed by both the government and the private sector.

B. Research Metodology

This research was conducted with normative juridical and empirical juridical research. This type of normative and empirical research using qualitative analysis i.e. by explaining the existing data with the words or statements, not by the numbers. As for the juridical approach to empirical field research is carried out by either directly or indirectly to seek vindication through the society, in this type of research the author uses a category i.e. by studying the *Non-Judicial Case Study*, which is the legal case study approach without any conflict so that there is no interference with the courts.

³ Article 1 verse (3), 1945, *The 1945 Constitution of the Republic of Indonesia Year 1945*, State Secretariat, Jakarta.

⁴ Explanation, 2009, *Law No. 36 Year 2009 about Health*, State Gazette RI No. 144 of 2009, State Secretariat, Jakarta.

⁵ Batam Pos, "*HIV/AIDS Patients in Batam High*", <http://batampos.co.id/2016/04/27/penderita-hiv-aids-di-batam-tinggi-menkes-minta-ada-perda/>, accessed 30 Oktober 2017.

Normative legal research is a study conducted by reviewing the laws and regulations applicable or applied to a particular legal problem. Legal research conducted to solve legal issues proposed. The desired result is to provide prescriptions of what should be.⁶ Empirical legal research is performed by looking at the fact that there is in practice field. This approach is also known with a sociological approach that is made directly to the reality ground field.

Therefore, the method of legal research normative and empirical is basically a merger between normative legal approach with the addition of various empirical elements. The normative and empirical research methods concerning implementation of the normative provisions of law (legislation) in action on any particular legal events that occur in a society.

Data types used in this study are primary data and secondary data. The data types is first, *primary data*, from interview and observation to Lintas Nusa Foundation and company workers. *Secondary data*, include primary legal materials, *i.e* The Constitution State of the Republic of Indonesia Year 1945 and Law No. 36 of 2009 about Health; Secondary legal materials, *i.e* all legal publications that are not official documents; Tertiary legal materials, *i.e* Big Indonesian Dictionary (KBBI) and Law Dictionary.

More detailed, data analysis in this study using qualitative analysis, which means to describe the data processed in detail into the form of sentences that describe an event, event or case (*descriptive*). Qualitative analysis is done starting from the empirical analysis, which in deepening is equipped with normative analysis. Based on the results of the analysis, deductive conclusions are made, namely the way of thinking based on general facts and then drawn a specific conclusion.

C. Research Findings and Studies

1. Legal Certainty of the Right to Health of the people who live with HIV/AIDS in Batam City

The legal certainty of the right to health of the people who live with HIV/AIDS (hereinafter referred to as PLWHA) in Batam City is already good enough, but it needs to be improved. With evidence that, in some cases Batam City on HIV/AIDS has been handled. All possibilities for HIV/AIDS are very open opportunities, both from women and men who are active in sexual function. Transmission of HIV occurs mostly in high-risk groups such as injecting drug users (IDUs), hetero and homosexuals (WPS, transvestites).

In addition, everyone is no exception to those who have HIV/AIDS have the same health rights in Batam City, including the right to prevent and treat HIV/AIDS, the right to the highest standard of health care, and the right to be treated with respect and dignity. It is protected by **Law No. 39 Year 1999 - Human Rights - Article 9** "Everyone has the right to an adequate and healthy

⁶ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana, page 89.

environment” and Law No. 36 Year 2009 – Health – Article 152 “Government, local government and the people responsible for doing prevention, control, and eradication of infectious diseases and the consequences thereof.”

Regarding HIV/AIDS sufferers in Batam City, there is good effort from KPA institution protected by the **Decree of the Mayor of Batam Number 35 of 2002 on the Establishment of the HIV/AIDS Commission - Article 1**, a *“Establish regional strategies and policies for the prevention of HIV/AIDS and Drugs in the areas of Planning, Implementation, Prevention and Monitoring, Control, HIV/AIDS and Drugs.”* This KPA institution (targeting HIV/AIDS as a whole by embracing BKKBN institution to target HIV/AIDS especially on husband and wife partner), the institution is represented by Lintas Nusa Foundation. By doing activities such as:

1. SUM2 Program (Scaling up for Most at Risk Population) in cooperation with USAID.
2. Global Fund Program - GP8 (Indonesia's Response to HIV: "Reducing Mortality and Deaths from HIV/AIDS in Batam City") cooperation with Global Fund.
3. HIV/AIDS prevention in the form of guidance counseling service to get HIV test and right to health of PLHIV (giving information related to handling through RS Awal Bros, Batam Authority Hospital, Embung Fatimah Hospital Batu Aji, RS Budi Kemuliaan Kampung Seraya, RS Santa Elisabeth Block 2 Lubuk Baja, Lubuk Baja Public Health Center, Batu Aji Puskesmas).

In the authors' research, HIV/AIDS is closely related to narcotics so according to the Law No. 35 Year 2009 - Narcotics – Explanation of Article 56 *“[...] to prevent transmission among others, HIV/AIDS transmission through needle syringe with strict supervision of the Ministry of Health”* can be done prevention in this side. Then especially related to commercial sex workers, Batam City government has provided free condoms in every night entertainment place. This minimizes the movement of HIV/AIDS among couples.

In Batam City is also to target the workers have been given regulations on Ministerial Decree Labor and Transmigration Republic of Indonesia Number: KEP. 68 / MEN / IV / 2004 About Prevention and Countermeasures HIV/AIDS In Workplace, Article 2 - 4 to test HIV and socialization of STOP HIV/AIDS campaign.

However, outreach to targeting PLHIV as a whole can be difficult because the Batam City government does not have clear rules that require that the Batam City area should be checked for early prevention. Can be seen through Law of the Republic of Indonesia Number 23 of 2014 about Local Government - Article 1, point 2 *“Local Government is the implementation of government affairs by the local government [...] as defined in the Constitution of the*

Republic of Indonesia Year 1945.” The city of Batam has the right to regulate how the right to health for the people of Batam City run effectively. Especially on Law of the Republic of Indonesia Number 23 of 2014 about Local Government - Article 36, point (1) “*The basic requirements Regional capacity referred [...] based on the parameters: [...] g. governance capabilities; (8) Parameter governance capabilities as referred to in paragraph (1) letter g includes: [...] b. accessibility of basic health services;.*”

Based on the matters above, it is better to use the theory of Legal Certainty according to Utrecht, legal certainty contains two element: first, making the individual know what deeds may or may not be done, and secondly, in the form of legal security for the individual from the authority of the government because with the existence of a general rule the individual can knowing what the State can charge or do to individuals. That this Batam City could improve the legal valid that make the Batam City people could easily claims their rights.

By theory of Progressive Law. Batam City government need to make ‘new’ draft of Local Regulation that contains the progressive legal criteria are:

1. Has a great purpose in the form of human welfare and happiness.
2. Contains a very strong humanitarian morality.
3. Progressive law is a liberating law covering a vast dimension that not only moves in the realm of practice but also theory.
4. Critical and functional.

Which progressive law theory needs a very strong humanitarian morality including the Rights to Health this leads to it that could legalized then by Local Regulation of Batam City by the protection of Laws No. 53 Year 1999 about Establishment of District of Pelalawan, District Rokan Hulu, Regency of Rokan Hilir, Siak Regency, Karimun Regency, Natuna District, District Quantan Singingi, and Batam City, Article 1 & 17 “*Batam Municipality was established based on Government Regulation No. 34 of 1983*”.

This could be arrange clearly and logically so as not to cause any doubts. Because in this case the Local Government of Batam is less in providing assurance of certainty to the people of Batam City related to the Right to Health of PLWHA and its prevention.

2. Legal Consequence of the Failure to Fulfill the Right to Health in Preventing the Spread of HIV/AIDS

What is worrisome is that the behavior of this sodom in Batam is a big contributor to HIV/AIDS transmission. Batam City Health Office noted,⁷ the number of gays who checked into the clinic Voluntary Counseling Test (VCT) in Batam in 2016 there are 386 people. Of that number, 194 people or 50

⁷ Batam Pos, “*Kaum Gay Dominan Penderita HIV/AIDS di Batam tembus 8.101 orang dan 698 meninggal*”, <https://batampos.co.id/2017/12/04/kaum-gay-dominan-penderita-hiv-aids-batam-tembus-8-101-orang-698-meninggal/>, accessed 28 December 2017.

percent are HIV positive. When compared with female sex workers (WPS) in the same year, out of 935 people with health checks, only 90 were HIV positive. Likewise with high-risk couples, of 435 people who checked in 2016, only 89 were HIV-positive. Compare also with sex worker customers (PPS) of 820 people who followed the examination, only 170 people were HIV positive. Others from 7,179 people, HIV positive only 127 people. Still higher that HIV positive among gays. Likewise when compared with the transvestites. Of the 386 who tested health in 2016, there were 16 people who were HIV positive. Prisoners of the prison (WBP) of 557 who took the test, only 9 were HIV positive. Injecting Drug Users (IDUs) who are infected with HIV are small. Of the 10 people who checked themselves only one was HIV positive.

Similar conditions also occur in 2017. Data from the Health Service and AIDS Prevention Commission of Batam City said the transmission of HIV/AIDS from among men same-sex enthusiasts also dominate. January through September alone, of the 271 gay men who checked in VCT, in both hospitals and first and advanced health facilities, nearly half (129 people) or 47.6 percent were HIV positive.

While transsexuals who tested from 60 people, 12 were HIV positive. Female sex worker (CSW) of 1,280 who tested, 41 HIV positive. Customers of 721 tested sex workers, 91 HIV positive, others from 4,960 tested, 52 HIV positive. High risk couples from 403 who were examined, 47 HIV positive. The targeted prisoners 71 are tested, none of which are HIV positive. Transmission from fellow men is the highest, according to Head of Batam Health Office, Didi Kusmarjadi.

The number is still smaller than the real conditions in the field. Because, there are still many men like men who are reluctant to check for fear of identity revealed. There are still many who feel themselves safe, even though never do same-sex relationships. Therefore, Didi asked the people of Batam to stay away from homosexual behavior. Besides being prohibited by religion, it is also very risky in HIV/AIDS transmission. Behave normal and faithful to a legitimate partner.

The 21-year-old HIV/AIDS counselor handling HIV/AIDS (PLWHA) patients, Dr. Francisca L Tanzil,⁸ also confirmed that trends in HIV/AIDS over recent years have been more prevalent among men. ODHA in Batam is currently the majority of gays, followed by housewives, and minors, said the doctor who was familiarly called Sisca, when met at the Clinic and Testing Kasper HIV Kasper, Paviliun Anyelir, Budi Kemuliaan Hospital (RSBK) Batam .

⁸ Batam Pos, "Kaum Gay Dominan Penderita HIV/AIDS di Batam tembus 8.101 orang dan 698 meninggal", <https://batampos.co.id/2017/12/04/kaum-gay-dominan-penderita-hiv-aids-batam-tembus-8-101-orang-698-meninggal/>, accessed 28 December 2017.

In terms of transmission, although women are more vulnerable than men because of the position and form of genital anatomy, but in Batam, many findings of cases of people living with HIV due to same sex, including bisexual. In the gay world, based on the acknowledgment of her patients, Sisca's doctor reveals, this same male couple have a role as men and women. Generally the role of women (bottom) is most vulnerable to HIV/AIDS. Those who are sodomized, are vulnerable to infection, said Sisca's doctor again. However, both of these couples can be affected because of the alternating role and mutually couples between gay fellow.

Generally there are counseling members of the police, TNI, bank employees, and various professional backgrounds. But most of the gyms. Not a few also married and have children. But their personal identity remains mandatory secret. Doctor Sisca also mentioned, the longer Batam residents who come counseling more and more. In addition to the information that has been more and more easily accessible on the internet, awareness of vulnerable people are also higher for self-examination and counseling. According to her this month a lot, its around 30-40 new patients per month and this is only the examination itself in RSBK course, not elsewhere.

He also showed data for the last 10 months. The number of Batam residents who are counseling to RSBK are 4,145 people. Of these, 4,123 of them followed rapid tests or rapid diagnostic tests through blood checks to identify positive or negative HIV/AIDS. Of the 4,123 people who tested the blood, 294 people tested positive for HIV. Most men, 182 people, the remaining 103 women, called Sisca. Unfortunately, of the 294 HIV-positive patients, nine of them are still under the age of 14 and are already at the stage of AIDS. Still under age and school age already stage AIDS, really sad.

Special patients who have reached the current stage of AIDS recorded 250 patients. The details, 175 men and 66 women and nine minors. Especially for these underage children, some are still junior high school and on average because free sex is not due to derivatives from parents. This junior high school patient is all citizens of Batam. It was Sisca's obviously advanced patient. Student age in Batam is vulnerable to HIV/AIDS transmission. The development of information technology that can not and can not be dammed to make the age of students more technologically literate and connect the outside world as without limit. Age-age school that search efforts identity, become more dominant to follow the flow, said doctor Sisca.

This condition is exacerbated by the lack of supervision of parents and the school, so that more and more underage children plunge into promiscuity and drugs. This year alone it says there are three men and five school-age women who have been affected by AIDS, not just exposed to the virus again. In addition, there are also some minors who become victims of human trafficking. New menstruation has been ordered to serve in localization. There are some cases, Sisca said at length.

Not only that, pregnant women are also vulnerable to HIV/AIDS this. From the data obtained, as of January-October this year, from 1,438 pregnant women who were counseling and testing HIV, 17 were HIV positive and 15 were AIDS. While there are 19 babies born to HIV positive mothers. The percentage is already 1.18 percent. This amount has been included in the high category of total population of the general public, explained Sisca.

Meanwhile, judging from the age, HIV/AIDS patients in Batam, dominated by productive age. Data from the Health Service of Batam City stated that in 2016 there were 694 HIV positive, 304 AIDS, and 82 people died. Of 694 HIV-positive, 549 HIV-positive individuals were 25-49 years old. Following the age of 20-24 years as many as 76 people. Age 15-19 years 5 people. Age 5-14 years four people, less than 4 years 20 people, and above 50 years 40 people.

While in 2017 from January to September, people with HIV 423 people, AIDS 259 people, died 36 people. Of the 259 who reached the stage of AIDS, there were 215 people in the productive age category with the age range 25-49 years. Then 16 people aged 20-24 years. Age 5-14 years old there are 9 people, less than 4 years 4 people, and above 50 years 16 people.

The data is still smaller than the actual data. Because, there are still some VCT, both in first and advanced health facilities that have not submitted the latest data. In fact, people who are not HIV/AIDS in the city of Batam from 1992 to June 2017 reached 8,101 people. The details, 5,303 HIV, 2,100 AIDS, and 698 died.

Various efforts to prevent HIV/AIDS by Batam City Health Office. Starting from counseling and socialization to the general public, school children, to the companies. Including port workers with cooperation and coordinated AIDS Commission (KPA) of Batam City and Batam Mayor, Muhammad Rudi. Special teenagers in Batam have been established by KPA Young Care about AIDS (YCAA). Its members are almost all OSIS chairmen in Batam City.

Prevention efforts are also assisted by counseling and outreach by people concerned about the Batam HIV case. Among other forums community HIV care Batam (FOMPAB), Forum citizens care HIV (FORWAPHI). Both are in the Head of Health Department of Batam and also a member of KPA BATAM. Especially for the education and outreach of MSM (men like gay / gay / homo), Batam City Health Office with KPA involves a number of parties. Among others are Embun Pelangi Foundation, Gaya Batam, and HIWABA. ARV drug costs for both general and BPJS patients are fully covered by the Ministry of Health.

Through the explanation above, the legal consequences caused by the failure to the fulfillment of the Right to Health in Preventing the Spread of HIV/AIDS because it is a rights, there is no legal consequences for the people who don't want to receive their rights. Only have a legal consequences (administration or criminal sanction) to the health officer.

This failure also resulted in socially disadvantage that can reach economic losses and reduce the welfare of the people of Batam City as stated in the **1945 Constitution State of the Republic Indonesia, Article 28H**; “(1) Every person shall have the right to live [...] healthy environment, and shall have the right to obtain medical care. (2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness. (3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.” **Article 34**, “(2) The state shall develop a system of social security for all of the people [...] in accordance with human dignity. (3) The state shall have the obligation to provide sufficient medical and public service facilities.” **Law Number 36 Year 2009 about Health, Article 153**, “Government ensure availability of safe immunization materials, quality, effective, affordable, and equitable for the community to infectious disease control measures through immunization.”

The researcher present the evidence in the form of comparative data obtained through the Batam City Disease and Environmental Sanitation Program (P2P-PL) 2016 released as of December 31, 2017. That the patient of HIV/AIDS in Batam is increasing through times.⁹

From the above comparison data can be seen that HIV/AIDS in the city of Batam is not declining, while the achievements of Batam City itself to Batam 2030 free from HIV/AIDS, by:

1. Reduce the number of new HIV cases.
2. Reduce death rate.
3. Reduce stigma and discrimination.
4. Improving the quality of life of PLWHA.

The funding objectives funded also by the Global Fund for Batam City in preventing the spread of HIV/AIDS, referring to the UNAIDS declaration, Getting Three Zeroes namely:

1. Zero New Infection.
2. Zero AIDS related death.
3. Zero Stigma and Discrimination.

All this aims to improve the quality of life of people living with HIV. Mixed theory could be used because, in all problems there is cause and effect, it must be done law enforcement either criminal, civil or administrative sanction which is comprehensive related to legal aspect in health service in Batam City based on Law of the Republic of Indonesia Number 23 of 2014 About Local

⁹ Health Departement, “Profile Kesehatan Kabupaten/Kota”, http://www.depkes.go.id/resources/download/profil/PROFIL_KAB_KOTA_2015/2171_Kepri_Kota_Batam, accessed 30 January 2018.

Government Article 1, 11, 12, and 31, Batam must have Mandatory Government Affairs as an implementation of the Regional Decentralization.

Public law can certainly reach out to protect the Right to Health of PLWHA and can make effective efforts to prevent HIV/AIDS disease transmission. Required the formation of Regional Regulations that is not contradiction with Decree of the Minister of Health of the Republic of Indonesia Number 131 / Menkes / SK / II / 2004 on National Health System which is a change from Minister of Health Number 99A / Menkes / SK / III / 1982 on the National Health System to fill the legal void in Batam City.

Using Mixed Theory according to Mochtar Kusumaatmadja, in addition to the order of other purposes of the law is the achievement of justice of different contents and sizes according to society and times. It would be must more effective to make a basis for legal protection that could be legal that based on justice and usefulness to eradicate HIV/AIDS in the future.

D. Conclusions

1. Legal certainty of the Right to Health of the people who live with HIV/AIDS in Batam City

The legal certainty of the right to health of the PLWHA in Batam City is already good enough, but it needs to be improved. Since everyone is no exception to those who have HIV/AIDS have the same health rights, including the right to prevent and treat HIV/AIDS, the right to the highest standard of health care, and the right to be treated with respect and dignity.

2. Legal consequences of the failure to fulfill the Right of Health in Preventing the Spread of HIV/AIDS

The legal consequences of failure to fulfill the 'rights' is none for the society because it is a rights not an obligation. Nonetheless, this failure also resulted in socially disadvantage make the result of low awareness to the Right of Health in Preventing the Spread of HIV/AIDS. Because there must be a better achievement, it must be done law enforcement either criminal, civil or administrative sanction which is comprehensive related to legal aspect in health service in Batam City. Public law can certainly reach out to protect the Right to Health of PLWHA and can make effective efforts to prevent HIV/AIDS disease transmission. Required the formation of Regional Regulations to fill the legal void in Batam City.

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