

JURIDICAL ANALYSIS OF CHEMICAL CASTRATION CRIME IN HUMAN RIGHTS PERSPECTIVE AND KODEKI

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Abstract

The Government in Law of Republic Indonesia Number 17 of 2016 concerning Determination of Substitute Government Regulations in Law of Republic Indonesia Number 1 of 2016 concerning the second amendment of Law Number 23 of 2002 Regarding Child Protection where there are sanctions for chemical castration against perpetrators considered violating to the article 33 paragraph 1 of Law Number 39 of 1999 Regarding Human Rights, and if a doctor is appointed as the executor, this could also violate the Indonesian Medical Code of Ethics (KODEKI) which is a guideline for Indonesian doctors who are members of the Ikatan Dokter Indonesia (IDI) or Indonesian Doctors Association in their medical practice. Legal conflicts occur between the aforementioned laws, so the type of research is normative using statutory approach. This research aims to examine and outline the main points of the legal basis for the regulation of chemical castration against paedophiles. The results showed that the government was completely unprepared in determining the stages of execution for convicted paedophiles. Determination has a double sanction, whereby the perpetrator becomes more brutal even though he is castrated. Psychological problems can be disturbed by the anti-androgen chemical injected into the body. Revenge takes on different forms.

Keywords: Chemical Castration, Human Rights, Indonesian Medical Code of Ethic

1. INTRODUCTION

Law and society are like coins that cannot be separated from one and another. Law plays an important role in every group of individuals in regulating any existing interests so that conflicts between one another can be minimized. The complexity of life can cause crime to increase. Crime in human life is a social phenomenon that is always faced by every human being, society and country. The fact has proven that crime can only be prevented and reduced, but it is difficult to eradicate completely. Anticipation of these crimes includes the functioning of legal instruments (criminal) effectively through law enforcement. Through legal instruments, efforts to prevent unlawful behavior are tackled in a preventive or repressive manner.

On May 26th, 2016, President Jokowi signed Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection with the consideration that cases of sexual violence against children are increasing day by day. The House of Representatives of the Republic of Indonesia (DPR) finally enacted the Government Regulation in Lieu of Law (Perppu) into law through the ratification of Law Number 17 of 2016 concerning Stipulation of Perppu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of

2002 concerning Child Protection. Additional sanctions on pedophiles include announcing their identities, imposing chemical castration sanctions and installing electronic detection devices to track and find out the whereabouts of these former convicts.

Legal conflicts occur when dealing with Law Number 39 Year 1999 Article 33 Paragraph 1 concerning Human Rights where “everyone has the right to be free from torture, punishment or cruel, inhuman, degrading treatment and dignity of humanity. Everyone has the right to be free from enforced disappearances and disappearances of life.” It has not been stated who will be the executor of this chemical castration sanction, but if a doctor becomes the executor then this also has the opportunity to violate the Indonesian Medical Code of Ethics (KODEKI) in the general obligations of Articles 7A and 7D which state that a doctor must in every medical practice provide a competent medical service with full technical and moral freedom, accompanied by compassion and respect for human dignity and doctors must always remember the obligation to protect human life.

According to Wikipedia, Castration (also known as orchiectomy or orchidectomy) is any action, surgical, chemical, or otherwise, by which an individual loses use of the testicles: the male gonad. Anti-androgen fluid is injected into the body of pedophiles with the effect of not only reducing sexual function but also triggering a reaction to reduce bone density and causing osteoporosis, then premature aging occurs in the body, people who receive this injection are also at risk of obesity or bones become weak and may break. According to Dr. Boyke, in general, the side effects that will be caused are the character of the body like a woman, the hair will fall out, the skin on his hands is smooth and gynecomastia occurs, a condition where male breasts grow large. The regulation of chemical castration sanctions against pedophiles is stated in Law Number 17 of 2016 concerning Stipulation of Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Article 81 Paragraph 7th that "against the perpetrator as referred to in paragraph (4th) and paragraph (5th) may be subject to measures in the form of chemical castration and installation of electronic detectors."

Children are the future generation of the Nation, so they need to be guaranteed their rights and protected by the Government. The position of chemical castration from a child protection perspective can also have a deterrent effect on these pedophiles. Law Number 35 Year 2014 Article 15th states that "every child has the right to receive protection from abuse in political activities, involvement in armed disputes, involvement in social unrest, involvement in violent incidents, involvement in wars and sexual crimes". Based on what was reviewed above, the formulation of the main problems in this study were: 1) How to regulate the criminal sanctions for chemical castration against pedophiles in Law Number 17 of 2016 concerning the Establishment of Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Protection Child?; 2) What is the position of the chemical castration sanction from the perspective of child protection ?; The objectives to be achieved in this research are specifically to describe the main points of the legal basis for regulating chemical castration for convicted pedophiles and the position of chemical castration from a child protection perspective.

This normative research is practically useful to open our paradigm in seeing the law itself. The legal conflicts that occur should be able to make all parties involved in creating better legal products. In particular, it is able to describe juridically normative about additional sanctions for chemical castration as regulated in Law Number 7 of 2016 concerning the Stipulation of Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Article 81 Paragraph 7 which is contrary to the Law Number 39 of 1999 Article 33 Paragraph 1 concerning Human Rights and if a doctor is appointed as the executor it has the potential to violate the Indonesian Medical Code of Ethics.

The author uses several concepts in his theoretical foundation, including the concept of castration law, the concept of a rule of law, namely Indonesia is a rule of law where a fair and good legal basis is the foundation used in exercising power, then the concept of Criminal Law where Criminal Law is part of the law in general. Constitute norms in this case legal norms which are special in nature because they have sanctions that can be enforced. Finally, the concept of overcoming crime, namely all the power and efforts made by any person or government or private institution with the aim of seeking security, control and welfare of life in accordance with existing human rights.

Apart from using the above concepts, this study also analyzes the problem by using absolute or retaliation theory which views that punishment is retribution for wrongdoing so that it is action-oriented and lies in the occurrence of the crime itself. The next theory is the relative theory or objective theory which views that punishment is not as retaliation for the perpetrator's wrongdoing but a means of achieving a useful goal to protect society. The last theory is a combined theory which views that the purpose of punishment is plural because it combines the relative (objective) and retributive principles as a unit. There are two efforts in overcoming this crime, namely by using preventive or repressive (prevention) methods. This preventive or preventive effort is carried out to prevent the occurrence of a crime for the first time, while repressive measures are a way to overcome the handling of crimes that have occurred and are carried out by law enforcement officers, namely the police, prosecutors and courts.

The sanction of chemical castration against pedophiles is considered cruel and incompatible with the principle of humanity, when viewed from the effect it causes. Law Number 17 of 2016 concerning of Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Article 81 Paragraph 7 must be studied more deeply and involve all relevant lines. Convinced that anything that is contrary to Law Number 39 Year 1999 Article 33 Paragraph 1 concerning Human Rights definitely requires more efforts in order to find common ground.

2. METHOD

This writing uses a normative juridical approach. The author uses a comprehensive legal analysis in examining the legal substance associated with the discussion, including the statue approach that deals with the issue of chemical castration criminal sanctions in the perspective of Human Rights and the Indonesian Medical Code of Ethics. The next is the case approach. The author tries her best to describe the results of this research comprehensively not only in terms of shortcomings, weaknesses,

disadvantages but also reveals advantages and shows the best solution that legislators need to do in relation to the existence of a conflict of norms. Conflict of norms that occurs between Law Number 17 of 2016 concerning the Stipulation of Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection relating to the criminal sanction of chemical castration as a result of the MUKERNAS of Medical Ethics III of 2001 Articles 7 A and 7 D

The source of the legal materials used in this study comes from primary data, which consists of legal principles and principles in the form of statutory regulations and court decisions. Next is secondary data that uses literature relevant to the topic discussed, both legal literature, text books written by influential experts, opinions of scholars, legal journals and non-literary literature law and articles obtained via the internet, primary legal materials, secondary legal materials and tertiary legal materials. The third source of legal material is the source of tertiary legal material, which is obtained from non-legal sources and the data obtained comes from third parties. In this normative study, the authors use legal material collection techniques obtained from libraries, internet and e-journals. Everything that is presented is based on all existing and related relative data, so that this writing can be objective, rational and factual. Some of the techniques that the author uses to overcome the legal materials that have been collected can be used analytical techniques. The description technique from the author will describe the legal conditions frankly and as they are as contained in Law Number 17 of 2016 concerning the Stipulation of Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection relating to the criminal sanction of chemical castration which is specifically regulated in Article 81 Paragraph 7 of the Law 39 of 1999 article 33 paragraph 1 concerning Human Rights. I also linked it to KODEKI Articles 7A and 7D which could potentially lead to legal conflicts with one another.

3. RESULTS AND DISCUSSION

3.1 Regulations for the Criminal of Chemical Castration Against the Convicted Pedophilia

The castration sanction given to human pedophiles is not a new phenomenon in human life. In the 20th century, this sanction of castration was carried out as a form of sanction against perpetrators of rape or adultery abuse. The operation is relatively simple, a small incision in the scrotum is made and the testicle is removed. A chemical liquid injected into child sex offenders in the form of medroxy progesterone acetate (MPA). This MPA injection can disrupt the function of the reproductive organs of the perpetrator besides that it will also cause more serious problems that are difficult to predict as the implication of this MPA injection.⁶ Surgical castration causes permanent side effects such as excessive sweating, loss of both body and facial hair, weight gain and skin softening, loss of protein, augmentation of pituitary function, augmentation of creatine found in urine, reduction of calcium in bones over a period of time . Psychological side effects are depression, suicidal tendencies, emotional instability, and indifference to life.

In Indonesia, chemical castration sanctions are still relatively new, when cases of sexual violence against children are increasing, the Government has stipulated Law Number 17 of 2016 concerning the Stipulation of Regulation in Lieu of Law Number 1 of

2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Article 81 paragraph 7 technically regulates that those who will be given the sanction of castration are those who are alluded to in Article 81 paragraphs 3, 4, and 5, while they are child educators, child caregivers, child protection officers, family members, and civil society who commit gang rape or gang sexual harassment.

Then in addition to being subject to the criminal sanctions as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator. Pedophilia is paraphilia that involves abnormal interest in a child. Pedophilia also means a psychosexual disorder in which the act of fantasy or actually engaging in sexual activity with children before puberty is likable or exclusive means of achieving sexual arousal and gratification. Some are interested only in children, while others are attracted to both adults and children.

Indonesian doctors (IDI) still refuse to be involved as executors in imposing chemical castration sanctions because it is against the Indonesian Medical Code of Ethics (KODEKI). The Indonesian Doctors Association (IDI) sees that there are serious problems that must be resolved among doctors who collaborate with legal experts regarding this chemical castration sanction. It can be seen that this chemical castration sanction is solely an effort of revenge and is given based on biological considerations only and on behalf of the interests of the victim so that it does not cause further victims, but this does not think about the future effects and seems to be a boomerang that can cause many. New victims and became like the pedophile offenders. We can see from the theory of Criminal Law Policy, in addition to carrying out a political (policy) criminal law or other terms often called a penal policy, also holding elections in making and formulating in order to achieve the best results of criminal legislation in the future such as what we aspire to (*ius constituendum*) by reforming the law, which means fulfilling the requirements of justice and efficiency. The use of criminal law as an effort to overcome social problems (crimes), including in the field of law enforcement (especially criminal law enforcement). Therefore it is often said that politics or criminal law policies are part of law enforcement policies. Revising criminal law, it cannot be justified that a reform of criminal law is essentially an effort to make law enforcement effective by renewing its legal substance, if the idealized value orientation of criminal law remains the same as the value orientation of the previous criminal law.

The stage of chemical castration sanction is an act of violence and is considered contrary to the Constitution of the Republic of Indonesia, namely Article 28 G paragraph 2 which states that every person has the right to be free from torture which degrading human dignity and is entitled to obtain political asylum from another country. As well as Article 33 paragraph 1 of Law No. 39 of 1999 concerning Human Rights which states that every person has the right to be free from torture, punishment, or cruel, inhuman, degrading treatment and dignity.

The chemical castration sanction that is applied only has implications for the purpose of retaliating and torturing the perpetrator. Quoting the opinion of Founder Inspirasi Indonesia, Helga Worotiji, that the government should focus more on dealing with victims. Because patterns of sexual violence are like a chain. On the other hand, the government must also break the chain by providing rehabilitation to victims until they

fully recover. On the other hand, the criminal sanction for the perpetrator is the same as pouring water during a fire. The fire can be extinguished, but the source of the fire can still appear again at any time without realizing it. Law is often understood by the community as a set of rules made by the State and binding its citizens with the mechanism of the existence of sanctions as an enforcer to enforce the law. The state has the right to force the imposition of sanctions for acts that violate the law where the perpetrator is found guilty by a court decision that has permanent legal force.

National Commission of Human Rights is of the view that the application of chemical castration sanctions for perpetrators of sexual violence, namely sanctions through chemical castration, can qualify as a cruel and inhuman sanction which ultimately is not in accordance with the constitution and Indonesia's commitments in the field of Human Rights. The provisions of Article 28G paragraph (2) of the Indonesian constitution state that "everyone has the right to be free from torture and treatment that degrading human dignity". The above rights are constitutional and promotion, protection and fulfillment are constitutional commitments as well. Additional sanctions given through castration (either chemical or medical surgery) can qualify as a form of violation of rights, namely violating the right to consent to medical treatment and the right to protect one's physical and mental health. Doctors gave a lot of input as well as legal experts and criminologists said that the causes of sexual violence are not only medical but also psychological and social. An act of sexual violence is not just genital penetration. In addition to sanctions based on the existing law, recovery efforts through rehabilitation are also well carried out comprehensively, both medically, psychologically and socially, while still adhering to human rights.

The Government Regulation in lie of Law on the stages of giving chemical castration sanctions should be reconsidered. National Commission of Human Rights sees that the handling of sexual crimes against children, in this case women also asks for a consistent and comprehensive action and not only focuses on imposing sanctions but also rehabilitation and preventive measures such as the development of a social protection system for children (for example child-friendly communities and also women, disclosure of information about the perpetrators) or through education and increased understanding of the reproductive system. This can be done by implementing Executive Order Number 5 of 2014 concerning the National Movement Against Sexual Crimes Against Children, other existing things to strengthen it. It is hoped that this can become his main concern that any sexual violence is caused not only medically but also psychologically and socially. Sexual violence does not only damage the genitals. Because of that the sanctions that apply based on the law must still pay attention to recovery efforts through comprehensive rehabilitation, both medical, psychological and social, while still guided by human rights.

3.2 The Position of Chemical Castration Sanctions from a Child Protection Perspective

Children are God's gifts to humans to preserve civilization. Children are assets to maintain and advance a nation. The Big Indonesian Dictionary explains the etymological understanding of children which is defined as humans who are still small or immature humans. According to R.A. Kusnan Children are young people who are young in their soul and life journey because they are easily influenced by their surroundings. Children

are the nation's next generation and the successor of development, namely the generation that is prepared as the subject of implementing sustainable development and the holder of the future control of a country, including Indonesia. Protection of Indonesian children means protecting the potential of human resources and developing the whole Indonesian people, towards a just and prosperous society, materially, spiritually, based on Pancasila and the 1945 Constitution. Especially in children who are often victims of sexual harassment, they are often victims and mistreatment of adults. The exploitation of sexual deviations, one of which is mistreatment by adults of children, is often referred to as pedophilia. Both boys and girls can become victims of this crime. However, not a few of the victims were neighbors or relatives of the perpetrators of this sexual deviation.

The child is not the object of arbitrary action from anyone or any party. Based on this, protection efforts are needed to realize children's welfare by providing guarantees for the fulfillment of their rights such as the right to survival, growth and development and the right to protection from violence and discrimination. The issue of protecting the law and rights for children is one of the approaches to protecting Indonesian children. This protection is necessary because children are part of a society that has physical and mental limitations, therefore they need special protection and care". Article 15 of Law Number 35 Year 2014 states that, every child has the right to receive protection from:

- a. Pervert political activities;
- b. Involvement in armed disputes;
- c. Involvement in social unrest;
- d. Involvement in events that contain elements of violence;
- e. Involvement in war
- f. Sexual crimes.

The state guarantees that every child has the right to live, grow and develop and the right to protection from violence and discrimination. Currently, there are many cases of sexual violence against minors. The government understands that the problem of sexual crimes against children has reached an extraordinary point and understands that extraordinary steps need to be taken to overcome this problem, therefore the government issued new regulations which are expected to provide a deterrent effect to the perpetrators. In 2016, the Government issued Government Regulation in lie of Law Number 1 of 2016 concerning Establishment of Government Regulation in lie of Law Number 1 of 2016 regarding the Second Amendment to Law Number 23 of 2002 concerning Child Protection, this Perpu makes it worse for perpetrators of sexual crimes in which the regulation provides legal sanctions for chemical castration for the perpetrators. The execution of chemical castration sanctions on convicted rape of nine children, Muh. Aris bin Syukur, technical difficulties in the stages that should be regulated in a Government Regulation. Until now, the Government Regulation has not been completed as well because it is still being deliberated by the government. This chemical castration sanction will be imposed on the perpetrator after the convict has served a basic criminal sanction of at most two (2) years. Minors (who are under 18 years old) are exempted from the chemical castration sanction. This regulation also applies the death penalty as a form of punishment for sexual crimes against children in aggravating situations.

According to the President's idea of imposing additional sanctions on perpetrators of sexual crimes or pedophilia by castrating the perpetrator's libido nerves (castration) is the President's right. This right of the President is guaranteed by the 1945 Constitution, especially Article 5 paragraph (1) and Article 20 paragraph (2), namely that the President has the authority to submit a draft law to the Indonesian Legislative Assembly (DPR). and the authority to approve the Draft Law discussed with the DPR. The President has the authority that is likely to be approved by the DPR, it's just that in realizing this idea the President still has to pay attention to the limits desired by the 1945 Constitution.

In accordance with the provisions of Article 8 paragraph (2) of Law Number 48 of 2009 concerning judicial power, it is stipulated that in considering the severity of the punishment, the judge is obliged to also pay attention to the good and evil characteristics of the defendant. Based on these provisions, in determining the severity of the offense that can be released, the judge is obliged to pay attention to the good or evil nature of the defendant so that the verdict released is appropriate and fair with known errors. In law enforcement, there are many factors that influence it, one of which is the law enforcement factor, namely the parties who form or implement the law. According to S. Soekanto, there are several factors that influence law enforcement, namely:

- a. The legal factor itself
- b. Law enforcement factors, namely the parties who form or implement the law.
- c. Facility and facilities factors that support law enforcement.
- d. Community factors, namely the environment in which the law must apply or apply.

According to Article 183 of Law Number 8 of 1981 concerning Penal Law (KUHAP) it is determined that a judge may not impose a sentence on a person unless there are at least two valid pieces of evidence. The defendant was guilty of doing it. This provision is to ensure the upholding of truth, justice and legal certainty for a person. Criminal sanctions decided by the judiciary are not intended as an act of state revenge against the convicted person. Laws are enforced to ensure public justice. For that reason, perpetrators of extraordinary crimes must be given severe sanctions to fulfill public justice. The sanction of castration for perpetrators of extraordinary sexual crimes should be understood in that context. The Perppu was issued in an effort to protect children from perpetrators of sexual crimes.

4. CLOSING

4.1 Conclusion

Legal arrangements in Indonesia in terms of criminology are based on regulations regarding child protection as amended by Law Number 17 of 2016 concerning Stipulation of Perpu 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Law Article 81 Paragraph 7 includes new sanctions in the form of chemical castration and the installation of detection devices for perpetrators of sexual violence against children, where this creates a conflict of norms against human rights as regulated in Law Number 39 of 1999 Article 33 Paragraph 1 concerning Human Rights. The executor, in this case if his profession is a doctor, could also be linked to violating their professional code of ethics contained in KODEKI Articles 7A and 7D. The author reviews from the point of view of criminology that studies the cause and effect of

the occurrence of a crime, there are several theories to analyze the actions of the perpetrator such as theories that explain crime in biological, sociological and other prefective.

We can see the position of chemical castration from a child protection perspective in Article 15 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection, it is clear that children are protected by the state and uphold children's human rights, so that in implementing efforts to protect the rights of children, the government will take any form of sanctions for the convicted offender who contradicts him. Adding new sanctions to Law Number 17 of 2016 concerning Stipulation of Perpu 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law Article 81 Paragraph 7 includes new sanctions in the form of chemical castration and the installation of detection devices for perpetrators of sexual violence against children is expected to be able to reduce the rate of sexual crimes, especially phedophilia.

4. 2 Suggestion

The author provides suggestions for justice, benefit and legal certainty for the government when determining the stages of the execution of chemical castration against pedophiles in making laws and regulations that must be sharper and involve all relevant lines, such as the Indonesian Doctors Association (IDI), National Commission of Human Rights, the community, the families of the victims. The families of the perpetrators and including the former perpetrators. The government must also compare the stages of execution in other countries that have implemented it and evaluate the success rate of this chemical castration penalty from both the perpetrator and the victim's point of view.

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