

The Chemical Transmitted Crime Of Child Rape

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Abstract

The purpose of this study is to examine and analyze the substance the law in regulating chemical castration punishment for perpetrators of child raping crimes. This study uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the results of the study, it was concluded that in the context of the content of the Perppu which constitutes changes, especially changes to articles 81 and 82 of Act No. 23 of 2002, is viewed from the aspect of the legal style in accordance with the progressive or responsive legal paradigm, where the basis for determining the law is not only what is stated in the law. In other languages, it can be said that the law is not only fixed on the positivistic adigium, the law is contained in the law. However, the interesting thing is that the issuance of Perppu Number 1 of 2016 shows that despite the pros and cons, the paradigm used by President Jokowi's government tends to use a progressive or responsive legal paradigm, not only aspects of legal certainty that are considered legal considerations.

Keywords: Chemical; Castration; Child; Rape; Crime.

1. Introduction

Children are buds, potentials and future generations of the nation's ideals, have a strategic role in ensuring the existence of the nation and state in the future. In order for them to be able to assume that responsibility later, they need to get the widest opportunity to grow and develop optimally, physically, mentally, socially and spiritually.¹ They need to get their rights, need to be protected and prospered. Therefore, all forms of violence against children need to be prevented and overcome.²

Children are an inseparable part of the survival of human life and the sustainability of a nation and state. With this important role of children, children's rights are expressly stated in the constitution Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that the State guarantees every child has the right to survival, growth and development and the right to protection from violence

¹Dudu Wawan Setiawan and Bambang Tri Bawono, "Disparity of Judge's Decision on Children Of Narcotics Crime Actors Study on Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps", dalam *Jurnal Daulat Hukum Volume 2 Issue 4, December 2019*, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8434/3906>, p. 579

²Abu Huraerah, 2007, *Child Abuse (kekerasan terhadap anak)*, Bandung, Penerbit NUANSA p. 11

and discrimination. Therefore, all of us always try not to let children become victims of violence, or children fall into evil deeds or other despicable acts.³

According to criminal law, the understanding of children is prioritized on understanding children's rights that must be protected, because by nature they have weak substance and in the legal system they are seen as legal subjects who are transplanted from the form of responsibility as befits a normal legal subject.⁴ Understanding children in the aspect of criminal law raises positive legal aspects of the normalization process of children from deviant behavior to form personalities and responsibilities which ultimately make the child entitled to decent welfare and a good future.

The problem of legal protection for children is not only a human rights problem, but more broadly is a law enforcement problem, especially law enforcement against children as victims of violence.⁵ Lately, we often hear cases related to sexual exploitation of children which are also accompanied by violence, as if the perpetrators are really not afraid of the existing law and view children only as satisfying sexual desires by forgetting the true nature of a child.

Basically, sexual crimes are the result of human or group interactions with their environment, the results of these interactions begin with the emergence of impulses which can then develop into negative intentions to do evil in order to meet their needs. With the facilities and opportunities, the negative intention causes the crime to become manifest. The existence of an understanding of rape as a matter of morality causes sexual violence to be seen as less important than other crime issues such as murder or torture. In fact, the experience of women victims of sexual violence shows that sexual violence can destroy the entire integrity of the victim's life so that she feels unable to continue her life anymore.

This is of course very concerning, considering the various kinds of impacts it can have on children who are victims of sexual violence and abuse. such as the psychological impact, namely trauma, physical impact such as contracting a disease, the impact of bodily injury in which there is damage to internal organs, as well as social impacts such as being ostracized in the surrounding environment. This kind of impact then robs a child of the future life. Children who are supposed to be the nation's next generation have an important role in national development, they must get protection from the state.⁶

³ Nur Hafizal Hasanah and Eko Soponyono, "Kebijakan Hukum Pidana Sanksi Kebiri Kimia Dalam Perspektif HAM Dan Hukum Pidana Indonesia", dalam *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol.7.No.3, 2018, p.305–17

⁴ Indra Narotama and Lathifah Hanim, "Investigation Action Against Children Who Are Circulating Pharmaceuticals Stocks That Does Not Have Permission In Jurisdictions Police Resort (Polres) Kudus", dalam *Jurnal Daulat Hukum*, Volume 2 Issue 1, March 2019, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4205/2911>, p. 46

⁵ Maidin Gultom, 2014, *Perlindungan Hukum Terhadap Anak dan Perempuan*, Bandung, PT Refika Aditama, p. 13

⁶ Yuriswanto, Adam Mahyani, Ahmad, "Hukuman Kebiri Sebagai Pidana Tambahan Dalam Tindak Pidana Kejahatan Seksual", in *DiH: Jurnal Ilmu Hukum*, Vol. 14 Nomor 2, 2018

The problem of sexual violence in Indonesia, especially against children, needs more intensive and serious attention. This is in accordance with the mandate of Article 28G

Paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not to do or not to do something that is a human right.

The view of the weakness of the law and its enforcement can be one of the factors that can be used as a gap for these child predators to continue to make guerrillas to make children as objects to satisfy their sexual desires. Whereas Act No. 17 of 2016 concerning the Second Amendment to Act No. 23 of 2002 concerning Child Protection has regulated quite severe sanctions against perpetrators of sexual crimes against children. As stated in Article 81 paragraph (1) which states that "everyone who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah)",

Based on the facts related to the increasing number of cases of sexual crimes against children, the Indonesian Minister of Social Affairs, Khofifah Indar Parawansa, suggested that additional punishments be given, namely chemical castration for pedophiles. This is because the criminal threats contained in Article 81 and Article 82 of Act No. 35 of 2014 concerning Child Protection, namely imprisonment for 15 (fifteen) years is considered not to provide a deterrent effect for pedophile perpetrators, because after completing their sentence and getting out of prison The perpetrator's correctional institution may repeat his actions again because he already knows the description of the sentence he will receive again and feels capable of undergoing it.

To protect the human rights of children from victims of rape, the government through Perppu Number 1 of 2016 JO Law No. 17 of 2016, concerning Child Protection, especially in Article 81 paragraph (7) regulates castration punishment which reads "Against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices". This means that Indonesia has legalized the castration penalty for perpetrators of sexual crimes.

From the things described above, a research was carried out with the aim of reviewing and analyzing the substance the law in regulating chemical castration punishment for perpetrators of child raping crimes.

2. Research Methods

This study uses a normative juridical approach. The research specification is descriptive analytical. The type of data used in this study is secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The data

collection technique in this research is literature study. The data collected were analyzed using qualitative descriptive analysis⁷.

3. Results and Discussion

According to the Big Indonesian Dictionary, castration is the removal of the testicular glands that are sterile so they don't produce semen or sperm. According to the Health Dictionary, castration or what can be referred to as castration is the surgical removal of the testes as a reproductive organ, to reduce or eliminate a person's sexual urge.

Castration punishment is a system of legal rules (punishment) in the form of heavier punishment for perpetrators of sexual crimes, especially against children as victims. With the consideration and various reasons for the application of castration as an additional crime, it is considered that it can reduce the sexuality of perpetrators of crimes against children through genetic cutting or can also inject drugs in the form of chemical substances.⁸

In the Big Indonesian Dictionary, Rape comes from the word "rape" which means forced, brave, strong, mighty. To rape means to subdue by force, to crush, to violate (attack, etc.) by force.⁹ Meanwhile, rape is defined as the process, method, act of raping; violated by force. So, rape in this study is an act of coercion or subjugation with violence by a man against a woman. Based on this description, the definition of rape is a prohibited sexual relationship with a woman without her consent. Illegal intercourse by a man against a woman carried out by force and against the will or will of the woman concerned. Sexual intercourse by a man against a woman who is not his wife or without her consent, is committed when the woman is frightened or under other conditions of threat.¹⁰

Regarding the regulation of child protection, with reference to their opinion, Philippe Nonet and Philip Selznick describe the typology of the legal character in society as a legal model for regulating castration punishment, namely, (1) repressive law is a tool of power because it is enforced by pressing or coercing (repressive) for power. (2) autonomous law, as an institution capable of taming repression (oppression) and protecting its own integrity. (3) responsive law, is a means of responding to the reality of the needs and phenomena of people's aspirations.¹¹

In the relationship between law and politics, the type or model of repressive law shows that the characteristics of the law are subject to politics/power. Law is subordinate to power. However, the autonomous legal model shows that the

⁷ A Chuasanga, Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia Dan Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

⁸ Martin P Golding, 1984, *Legal Reasoning*, Alfreda A Knoff Inc., New York, p.1

⁹M. Munandar Sulaeman, 2010, *Kekerasan terhadap Perempuan*, Bandung: PT Refika Aditama, p. 28

¹⁰Abdul Wahid and Muhammad Irfan, 2001, *Perlindungan terhadap Korban Kekerasan Seksual*, Bandung: PT Refika Aditama p. 40.

¹¹ Philippe Nonet and Philip Selznick, "Law and Society Transition: Toward Responsive Law", in Satya Arinanto, 2001, *Politik Hukum 2*, Collection of Political Law Lecture Papers, Postgraduate Program FH UIEU, Jakarta.

characteristics of law are separate from politics/power, in the sense that the law has independence, is independent, or is not intervened by a more coercive power in the application of the law. While the legal model is responsive, it shows that the characteristics of the law are more responsive to the political needs and aspirations of the community.

The regulation of castration punishment by referring to Nonet and Selznick's legal typology is strengthened by the research results shown by Moh. Mahfud MD. According to him, the character of legal products always develops in sync with the development of political configurations. Although the capacities vary, democratic political configurations are always followed by the emergence of responsive/autonomous legal products, while authoritarian political configurations are always accompanied by the emergence of conservative/orthodox laws.¹²

The government of President Jokowi, as part of the government in the reform era whose typology of the government system tends to be democratic, participatory and progressive/responsive to the political needs and aspirations of the community, including when responding that crimes of sexual violence against children are increasing sharply, thus threatening and endangering lives child. The Jokowi government considers that the criminal sanctions imposed on perpetrators of crimes of sexual violence against children have not provided a significant deterrent effect, with the indicators of these crimes not decreasing, but actually increasing significantly.

Based on these considerations, President Jokowi issued Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 concerning the second amendment to Act No. 23 of 2002 concerning Child Protection. Now the Perppu has become Act No. 1 of 2016.

The main change in the contents of Act No. 23 of 2002 concerning Child Protection which later became Perppu Number 1 of 2016 is that the provisions of Article 81 are amended, so that it reads Article 81, which contains:

First, every person who violates the provisions as referred to in Article 76D (everyone is prohibited from committing violence or threats of violence forcing a child to have intercourse with him or with another person) shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years. and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

Second, the criminal provisions as referred to in paragraph (1) also apply to any person who intentionally commits a trick, a series of lies, or persuades a child to have intercourse with him or with another person.

Third, in the event that the criminal act as referred to in paragraph (1) is committed by parents, guardians, people who have family relations, child caretakers, educators, educational staff, officers who handle child protection, or is carried out by more than one person individually together, the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph (1).

¹²Moh. Mahfud MD, 1990, *Pergulatan Politik dan Hukum*, Jogjakarta, Gama Media, p. 17-18.

Fourth, in addition to the perpetrators as referred to in paragraph (3), the addition of 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted of committing a crime as referred to in Article 76D.

Fifth, in the event that the criminal act as referred to in Article 76D causes more than 1 (one) person to die, causes serious injury, mental disorder, infectious disease, reproductive function is disturbed or lost, and/or the victim dies, the perpetrator is sentenced to death, for life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.

Sixth, in addition to being subject to the punishment 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.

Seventh, the perpetrators as referred to in paragraphs (4) and (5) may be subject to actions in the form of chemical castration and installation of electronic detectors.

Eighth, the action as referred to in paragraph (7) shall be decided together with the main punishment by specifying the time period for the implementation of the action and ninth, additional penalties and excluded actions for child perpetrators.

In addition, between Article 81 and Article 82, 1 (one) article is inserted, namely Article 81A which reads as follows;

- 1) The action as referred to in Article 81 paragraph (7) (subject to additional punishment in the form of announcing the identity of the perpetrator) is imposed for a maximum period of 2 (two) years and is carried out after the convict has served the main sentence;
- 2) The implementation of the actions as referred to in paragraph (1) is under regular supervision by the ministry that administers government affairs in the fields of law, social and health;
- 3) The implementation of chemical castration is accompanied by rehabilitation;
- 4) Further provisions regarding the procedure for implementing the action and rehabilitation shall be regulated by a Government Regulation.

Meanwhile, the provisions of Article 82 are amended to read as follows:

- 1) Anyone who violates the provisions as referred to in Article 76E (everyone is prohibited from committing violence or threats of violence, coercing, committing tricks, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out) shall be punished with imprisonment of at least 5 (five) years.) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah)
- 2) In the event that the criminal act as referred to in paragraph (1) is committed by parents, guardians, people who have family relationships, child caretakers, educators, education personnel, officers who handle child protection, or is committed by more than one person jointly. The same, the penalty is added 1/3 (one third) of the criminal threat as referred to in paragraph (1);

- 3) In addition to the perpetrators as referred to in paragraph (2), the addition of 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted of committing a crime as referred to in Article 76E;
- 4) In the event that the criminal act as referred to in Article 76E results in more than 1 (one) person being killed, causing serious injury, mental disorder, infectious disease, disruption or loss of reproductive function, and/or the victim dies, the penalty is increased by 1/3 (one third) from the criminal threat as referred to in paragraph (1);
- 5) In addition to being subject to the punishment as referred to in paragraph (1) to paragraph (4), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator;
- 6) The perpetrators as referred to in paragraphs (2) to (4) may be subject to action in the form of rehabilitation and installation of electronic detection devices;
- 7) The action as referred to in paragraph (6) shall be decided together with the principal punishment by specifying the period of execution of the action. Eighth, additional penalties are excluded for child perpetrators.

Castration is correlated to a theory of punishment in the form of a theory of objectives. Based on this theory, punishment is carried out to provide the intent and purpose of a punishment, namely to improve public dissatisfaction as a result of the crime. In this case, this theory can also be interpreted as a prevention of crime and as a protection for society. The proponent of this theory is Paul Anselm van Feurbach who argues "only by imposing a criminal penalty will not be sufficient, but it is necessary to impose a criminal sentence on the criminal".¹³ Regarding these goals, there are three theories: to frighten, to ameliorate, and to protect.

4. Closing

In the context of the contents of the Perppu which are changes, especially changes to articles 81 and 82 of Act No. 23 of 2002, viewed from the aspect of the legal style in accordance with the progressive or responsive legal paradigm, the basis for determining the law is not only what is stated in the law. In other languages, it can be said that the law is not only fixed on the positivistic adigium, the law is contained in the law. However, the interesting thing is that the issuance of Perppu Number 1 of 2016 shows that despite the pros and cons, the paradigm used by President Jokowi's government tends to use a progressive or responsive legal paradigm, not only aspects of legal certainty that are considered legal considerations. The facts on the ground show that the crime of sexual violence against children is increasing sharply, thus threatening and endangering the lives of children, disturbing the comfort, peace and order of society. The Jokowi government considers that the criminal sanctions imposed on perpetrators of crimes of sexual violence against children in the existing law have not provided a significant deterrent effect. Therefore, the policy of issuing Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 concerning the second

¹³ Erdianto Efendi, 2011, *Hukum Pidana Indonesia*, Refika Aditama, Bandung, p.142

amendment to Act No. 23 of 2002 concerning Child Protection is the right step and is legally justified.

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