Implementation Of Children Criminal Addition To The Criminal Follow Up Children (Case Study At The Mojokerto District Court)

Raynaldi Fauzan Akbar¹, Hariyo Sulistiyantoro²

¹ Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, E-mail: raynaldifzn@gmail.com
² Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, E-mail: haryoprawiro1962@gmail.com

Abstract

Positive law in Indonesia is now beginning to want to specifically regulate forms of protection for the prevention and control of sexual violence against children. But to make it happen requires the efforts of all parties involved in it. We don’t just burden it with the government, but we need support from law enforcement and the community. In addition to realizing legal protection for victims of sexual violence, it is necessary to hold a renewal of criminal law. Efforts to reform the Criminal Code in the case of pedophilia criminal cases is to provide castration punishment as a legal effort to provide a deterrent effect for the perpetrators. In addressing this action, the government enacted Law Number 17 of 2016 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2016 concerning the second Amendment to Law Number 23 of 2002 concerning Child Protection. In this Law amend two articles from the previous Law, namely Article 81 A. These Articles regulate castration punishment for perpetrators of sexual violence.

Keywords: Sexual Violence, Child

I. Introduction

The problem of sexual violence in Indonesia, especially against children, needs more intensive and serious attention. Moreover, today the community is familiar with acts of sexual violence, especially to minors or what we often refer to as pedophilia. Pedophilia is a sexual satisfaction obtained by someone from sex with children - children. In other words, pedophilia is a sexual act committed by an adult with children in which the category of children here is every child under the age of 15 in accordance with Indonesian rules.¹ Judging from the characteristics of pedophiles act can be said to children - children are exploited as victims. Child - the child victim is supposed to protect and acquire special services, especially in the field of law.

The regulation of sexual violence is not specifically regulated in Indonesian laws and regulations. During this time to ensnare the perpetrators one of them is to use the provisions contained in the Criminal Code, namely on the 290 KUHP and Article 292 of the Criminal Code. The criminal conviction is certainly not balanced with the impact it has. Whereas on the other hand, the perpetrators also violated Law Number 35 of 2014

¹ Koes Irianto, Memahami Seksologi, Sinar Baru Algainsindo, Bandung, 2010, hlm. 101
concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely article 81, it states that people who deliberately committed violence or threats of violence forced children to have intercourse with him, in this article the perpetrators were sentenced to fifteen years in prison.

The problem of sexual violence against children has reached an extraordinary point and understanding also needs extraordinary steps to overcome the problem. However, Komnas HAM reminded that the development of civilization led to the punishment carried out humanely and strived to become a rehabilitation mechanism so that a person could return to being a full human being and be ready to return to social life. Punishment through castration can be qualified as a cruel and inhuman punishment which is thus incompatible with the Constitution and Indonesia's commitment in the field of human rights. The provisions of Article 28A paragraph (2) state that everyone is free from torture and degrading treatment of human dignity. Thus, the punishment of both the method and the objective must still be guided by human rights.

II. Method

The research method used by the author is empirical juridical research that is a type of sociological legal research and can be referred to as field research, which examines the applicable legal provisions and what happens in reality in society. Legal research to find the process of occurrence and regarding the process of working of law in society by examining the relationship between law and other social institutions using social science research techniques.

In Data collection techniques are carried out by means of literature study, namely the collection of legal materials by studying books, papers, journals, newspapers, articles, internet, research results and legislation related to research. The author did an interview with several parties that relate to research this.

III. Main Heading of the Analysis or Results

---

3 Bambang Waluyo, Penelitian Hukum dalam Praktek, Jakarta: Sinar Grafika, 2008, hlm. 15
4 Masruhan, Metode Penelitian Hukum, Surabaya: Hilal Pustaka, 2013, hlm. 128
In contrast to other acts of violence, cases of sexual violence against children have a far more serious impact on children, both directly and long term. One of the efforts made to deter perpetrators and to anticipate the increase in perpetrators of sexual crimes against children is by providing additional criminal sanctions in the form of chemical castration. Chemical castration is an act of injecting anti-testosterone into a man’s body to reduce levels of the hormone testosterone. Testosterone is a hormone that plays a role in a variety of functions, one of which is sexual function. That is, the hormone testosterone affects a man’s sexual arousal.5

Chemical castration is given chemical compounds that can weaken or eliminate the function of sex hormones. Pathophysiologically, chemical castration is performed by injecting the hormone anti-testosterone into the body of the convicted person. The hormone works by suppressing production and testosterone activity so it does not cause libido racing as long as the person is under the influence of the drug.6

To reduce the increasing number of perpetrators, the government issued a Government Regulation in lieu of the Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. This Perppu regulates the weighting of penalties for sex offenders, especially for children. Government Regulations Regulations Government Regulations in lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection was then officially ratified into Law Number 17 of 2016.

So the granting of additional crimes in the form of chemical castration is regulated in Article 81 paragraph (7) of Law Number 17 of 2016 concerning the Establishment of Government Regulations in lieu of the Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. For further clarification regarding additional chemical castration criminal offenses, it is further explained in Article 81A.

5 Nur Hafizal Hasanah, Kebijakan Hukum Pidana Sanksi Kebiri Kimia dalam Perspektif HAM dan Hukum Pidana Indonesia, Jurnal Magister Hukum Udayana, Universitas Udayana vol.7 hlm. 308
6 Soetodjo, Tinjauan Etika Dokter Sebagai Eksekutor Hukuman Kebiri, Jurnal Etika Kedokteran Indonesia, Vol. 2 No. 2, 2018, hlm. 68
There are a number of conditions for perpetrators of sexual violence against minors who will be subject to additional criminal castration. General conditions for perpetrators of sexual violence against minors who will be subject to additional crimes in the form of castration include:

1. Defendants who will be neutered are sentenced to a minimum of 5 years and a maximum of 20 years;
2. The judge’s decision is absolutely given to the defendant;
3. Castration punishment is given if the offender is an adult or is over 18 years old.
4. As for the special conditions for perpetrators who will be sentenced castration include:
   a. Castration penalties are given if the principal is a minimum of 5 years and a maximum of 20 years;
   b. Castration punishment is given if the defendant does it more than once or the victim is more than one;
   c. Castration punishment is given if the defendant’s act causes damage to the victim’s genitals, or the victim suffers from a sexually transmitted disease and mental disorders resulting in the victim being exposed to an infectious disease, as well as damage to the reproductive organs.

Based on the results of interviews conducted by the author in the implementation of execution of chemical castration injections, before convicted on chemical castration there are several stages that must be passed by the convicted person. Terrpidana must undergo several health tests in advance to find out his physical condition and undergo psychological tests. The convicted in serving his sentence at LAPAS obtained rights one of which is the health right regulated in Law Number 12 of 1995 Concerning Corrections. In this case because the convict will be injected with castration chemistry, the convict concerned will be given special treatment. The entire test that was carried out by the convicted was carried out at Dr. General Hospital Wahidin Sudiro Husodo and an examination by a specialist doctor to ensure that the convicted person is in good health and ready to undergo chemical castration liquid castration. This aims to avoid the side effects caused after the chemical castration liquid enters the body.
One of the side effects that can arise due to chemical castration liquid injection is that the prisoner can be affected by seizures, the effect of the seizure occurs because the prisoner's body cannot accept the substances contained in the castration chemical injection. If after the injection of liquid for the chemical castration the prisoner becomes a seizure, then it must be immediately handled by experts. In this case the doctor must act quickly to deal with prisoners because if it is too late to be handled it can have serious effects on the prisoner.

The implementation of chemical castration injections on inmates was carried out 2 months after the verdict was read by the judge. Chemical castration liquid injection procedure is carried out in a hospital that has been appointed by the Attorney General's Office of the Republic of Indonesia, in this case the hospital must prepare the need for chemical castration injection to avoid errors during execution. At the time of injection of chemical castration fluid, the prisoner is accompanied by a Class IIB LAPAS officer in Mojokerto. The prisoner’s family is not permitted to attend, visit or visit either during the execution or after the prisoner has finished the execution. Families can visit the prisoners concerned if the prisoners have returned to the prison. This was done in order to maintain the psychological condition of the families of the prisoners concerned, but the executor and the Class IIB LAPAS Mojokerto continued to inform the prisoners’ families that they would inject chemical castration to the prisoners on that day. The family is also given a question by the executor about the history of prisoners' illnesses if the prisoner has a history of previous illnesses.

The process of injecting castrated liquid into prisoners is carried out by a doctor who has been appointed by the Attorney General's Office of the Republic of Indonesia. In this case

---

7 Hasil wawancara dengan Bapak Erhammudin, Hakim Anggota Pengadilan Negeri Mojokerto, hari Senin 6 Januari 2020 pukul 10.00 WIB
8 Hasil wawancara dengan Bapak Erhammudin, Hakim Anggota Pengadilan Negeri Mojokerto, hari Senin 6 Januari 2020 pukul 10.00 WIB
the doctor appointed by the Attorney General’s Office of the Republic of Indonesia is the
doctor from the police. The process of injecting castrated liquid is supervised by
representatives from the Regional Office of Law and Human Rights in East Java Province,
representatives from the Social Service, representatives from the Health Service,
representatives from BAPAS (Penitentiary Center), and Class IIB LAPAS officers in
Mojokerto. After the chemical castration is carried out, the executor as well as the
LAPAS Class IIB Mojokerto are required to check the physical and psychological health
of prisoners periodically, the LAPAS Class IIB Mojokerto is required to supervise the
prisoners. This is important because the side effects caused by the chemical castration
liquid is not directly visible, but it takes a long time to see the reaction of the chemical
liquid. The Mojokerto Class IIB prison and the executors and those who oversee the
execution of the chemical castration syringe must keep a secret about the process of
injecting the chemical castration that has been undertaken by these inmates to all
prisoners of Class IIB LAPAS residents in Mojokerto. It is intended that prisoners who
are castrated with psychological chemistry are not depressed and avoid other prisoners
interfering with prisoners who have been castrated chemically.⁹

If after the chemical castration injection is done the detainees’ health condition worsens,
the related parties such as Class IIB LAPAS Mojokerto, the executor and the
participating parties are obliged to provide appropriate treatment to the prisoners.
Although inmates receive additional crimes in the form of chemical castration, prisoners’
rights must still be fulfilled, one of which is the right to obtain proper health services in
prison. In this case, because the prisoners were given chemical castration injections, the
health services they obtained were certainly different from those of other prisoners. In
the technical instructions for chemical castration injections issued by the Attorney
General’s Office of the Republic of Indonesia, prisoners will undergo rehabilitation after
the castration injection. The effects arising from chemical castration injections made to
prisoners will appear after 2-3 weeks after injection, one of which is the sexual desire of
prisoners will decrease over time. Substances contained in liquid castration chemicals

⁹ Hasil wawancara dengan Bapak Erhammudin, Hakim Anggota Pengadilan Negeri Mojokerto, hari Senin
6 Januari 2020 pukul 10.00 WIB
make prisoners unable to have the ability to erect so that the urge to engage in sexual activity decreases. Other effects include breast growth and weight gain.\textsuperscript{10}

The most important obstacle in the implementation of additional chemical castration penalties is the absence of a barometer in the implementation of chemical castration against prisoners who are entangled in cases of sexual crimes against children, because the imposition of additional crimes in the form of chemical castration injections can be classified as new in Indonesia so that the implementation requires a relatively long time. Time is needed to conduct a coordination meeting related to the technical instructions for implementing chemical castration. Efforts that can be made to overcome these obstacles include routine outreach to prisoners, a deeper study of chemical castration, regular health checks on prisoners, as well as completing hospital facilities and infrastructure.

IV. Conclusion

1. In the implementation of chemical castration injection, before inmates on the chemical castration there are several stages that must be passed by the prisoner. Prisoners must undergo several medical tests in advance to find out their physical condition and undergo psychological tests. The implementation of chemical castration injections on inmates was carried out 2 months after the verdict was read by the judge. Procedure for injecting castrated liquid is carried out in a government hospital that has been appointed by the Attorney General’s Office of the Republic of Indonesia. At the time of injection of chemical castration fluid, the prisoner is accompanied by a Class IIB LAPAS officer in Mojokerto. The process of injecting castrated liquid into prisoners is carried out by a doctor who has been appointed by the Attorney General’s Office of the Republic of Indonesia. In this case the doctor appointed by the Attorney General’s Office of the Republic of Indonesia is the doctor from the police. The process of injecting castrated liquid is supervised by representatives from the Regional Office of Law and Human Rights in East Java Province, representatives from the Social Service, representatives from the Health Service, representatives from BAPAS (Penitentiary Center), and Class IIB LAPAS officers in Mojokerto. obligations.

\textsuperscript{10} Hasil wawancara dengan Bapak Erhammudin, Hakim Anggota Pengadilan Negeri Mojokerto, hari Senin 6 Januari 2020 pukul 10:00 WIB
2. In the implementation of the penal additional gelding chemical found various constraints among others lack of socialization of the inmates were concerned, the rarity of the imposition of criminal additional gelding chemistry in Indonesia, the health of prisoners has not been guaranteed, the facilities were less than adequate at home sick. Efforts that can be made to overcome these obstacles include routine outreach to prisoners, a deeper study of chemical castration, regular health checks on prisoners, as well as completing hospital facilities and infrastructure.

Acknowledgments

1. Mr. Dr. H. Sutrisno, S.H., M. Hum as the dean of the Law Faculty of National Development University ‘Veteran’ East Java.
2. Mrs. Mas Anienda Tien F., SH, MH. As Vice Dean I Faculty of Law of National Development University ‘Veteran’ East Java
3. Mrs. Dra. Ec. Nurjanti Takarini, M.Si as Vice Dean II Faculty of the National Development University ‘Veteran’ East Java.
4. Mr. Fauzul Aliwarman, SHI., M. Hum as Vice Dean III of Law Faculty of National Development University ‘Veteran’ East Java.
5. Mr. Eko Wahyudi, S.H., M.H. as the Coordinator Program of legal Sciences Faculty of National Development University ‘Veteran’ East Java,
6. Mr. Hariyo Sulistiyantoro, S.H., M.H. as a mentor lecturer who has guided and directed the author in the making of this thesis.
7. Mr. and Mrs. Lecturer of the Law Faculty of National Development University ‘Veteran’ East Java.
8. Head of Administration of the Faculty of Law and administration staff of the Faculty of Law, National Development University ‘Veteran’ East Java.
9. Thanks to both my parents who have provided moral support as well as prayers, blessing and always give encouragement so far.
10. Friends of the Faculty of Law UPN ‘Veterans’ of East Java who have provided support and assistance.

References

Books:
Bambang Waluyo, Penelitian Hukum dalam Praktek, Jakarta: Sinar Grafika, 2008
Koes Irianto, Memahami Seksologi, Sinar Baru Algainsindo, Bandung, 2010
Masruhan, Metode Penelitian Hukum, Surabaya: Hilal Pustaka, 2013

Legislations:
Kitab Undang-Undang Hukum Pidana
Undang-Undang Nomor 17 Tahun 2016 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak
Undang – Undang Nomor 35 Tahun 2014 Tentang Perubahan atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak
Peraturan Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak
Implementation Of Children Criminal Addition To The Criminal Follow Up Children (Case Study At The Mojokerto District Court)

Raynaldi Fauzan Akbar, Hariyo Sulistiyantoro

Others:
Nur Hafizal Hasanah, Kebijakan Hukum Pidana Sanksi Kebiri Kimia dalam Perspektif HAM dan Hukum Pidana Indonesia, Jurnal Magister Hukum Udayana, Universitas Udayana vol.7
Soetodjo, Tinjauan Etika Dokter Sebagai Eksekutor Hukuman Kebiri, Jurnal Etika Kedokteran Indonesia, Vol. 2 No. 2, 2018
Hasil wawancara dengan Bapak Erhammudin, Hakim Anggota Pengadilan Negeri Mojokerto, hari Senin 6 Januari 2020 pukul 10.00 WIB