Chemical Castration Sanctions On Perpetrators Of Sexual Violence For The Children (Preview Of Literature NO 69 / PID.SUS / 2019 /PN.MJK)

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Abstract

This study was aimed at determining and analyzing the basic considerations of judges in imposing additional criminal rulings in the form of chemical castration acts against perpetrators of sexual violence against children and the provision of chemical castration sanctions as an implementation of the Mojokerto District Court Number 69 / Pid.Sus / 2019 / Pn.Mjk. Normative Juridical Approach was employed in this study. Besides, this study was based on data sources in the form of literature studies, applicable laws and regulations, journals or articles and theories and legal concepts and views of legal experts, with notes in order to find answers and then analyze the verdict. The results of this study denote that the judge in imposing an additional castration sentence saw the actions that incriminated the perpetrators causing deep feelings towards the victims’ families and his actions were very disturbing to the community and the judges classified the perpetrators as child predators because of the perpetrators’ confession that they raped 9 (nine) children others and castration sanctions as an implementation of the Mojokerto will still be carried out after the main sentence is completed in accordance with the regulations governing.

Keywords: Crimes of sexual violence, children, additional sanctions castration

I. Introduction

Sexual violence that is rife in Indonesia does not only suffer a lot of adult women, but also women whose age is categorized as underage (termed as children). Children who should be the generation of change bearers for the better, should get adequate rights and needs from the State and the surrounding environment. Children should not be the object of sexual love and negativity associated with sexuality by adults. Children who are considered so easy to be victims of violence and persecution by adults resulting from lack of supervision and attention should receive more attention and understanding from those around them so as not to a victim of sexualism from adults.

In Indonesia there are various kinds of sexual crimes that occur to women and children. Form of sexual violence against children crimes that often occur in Indonesia committed by adults against children is a crime caused by pedophilia disorders. Pedophilia refers to adults who have deviant sexual behavior in children. The word is originally from Greek, which means paedoyang meaning children and philia which means love. Lately many cases have been reported regarding sexual exploitation of adults against children and

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accompanied by violence that is increasingly crowded as if the perpetrators are no longer afraid of the law and consider children as tools that satisfy sexual desires that are not fulfilled to people their age by forgetting the nature of an actual child.1

Crimes of sexual violence that happen to minors not only can arise in the corporate environment, offices, and other locations that provide opportunities for adult humans to communicate directly with children of different types, but can occur in a family environment that should be protective for them due to lack of sexual knowledge.

Some time ago Indonesia had ratified a new Law, namely Law Number 17 of 2016 concerning the Establishment of Government Regulation in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law number 23 of 2002 concerning Child Protection. The law contains new sanctions that will aggravate perpetrators of sexual crimes against children, namely additional sanctions for chemical castration. Chemical castration punishment has been carried out in many countries in the world, but in Indonesia this punishment is very new and seems sensitive because many parties who do not approve of the existence of the punishment see from various views the impact and consequences of chemical castration for the perpetrators. Castration addition arises as a result of the many sexual cases against children, the government explains in the points considering Law No. 17 of 2016 the reason for the implementation of castration sanctions is to remember that sexual violence against children increases each year and can threaten the psychological child to grow and develop properly without there is a deep traumatic feeling due to what he has experienced.

II. Method

The legal research method that the author uses in this study is Normative Juridical legal research or termed doctrinal legal research which is a scientific research mechanism in finding whether or not a thing is based on legal scientific logic from normative aspects. In this study, the author conducts his research with statutory regulations and various legal literatures on the core issues raised. For the sake of producing accurate research carried out by means of legal analysis in which the reference is in the doctrines and norms whose provisions are contained in the legal system of analysis of the primary and

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secondary materials. In this paper the authors apply three primary data sources in the form of Law Number 17 of 2016 concerning Determination of Government Regulation in Lieu of Law (Perpu) Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning child protection, District Court Decision Mojokerto Number 69 / Pid.Sus / 2019 / PN. Mjk, secondary data from books related to this issue, including journals and related tertiary arteries, namely from material used as a guide from primary or secondary legal material obtained from dictionaries, encyclopedias, magazines, and others.

III. Main Heading of the Analysis or Results

A. Case Disposition

Sexual violence is a crime that never recedes despite many technological advances. That which should bring about a better change actually causes a lot of people to do negative things because they misuse the existing technology such as watching inappropriate movies / porn films online, finally venting their desires for children. Negative human thought is the root of crime which is a frightening specter for the people of Indonesia, especially for adult women and children who are many victims. In reality sexual violence always appears repeatedly and is continuous in the middle of society, both upper and middle class, but there are not many communities or families of victims or perpetrators who understand and are sensitive about this issue because for children who are victims but their nature tend to be quiet and afraid to talk then he will always cover up the problem but will damage the psychological for the future because he feels traumatized and haunted by the shadow of the scary past and for the perpetrators still feel free to do these heinous things. Events like this are very detrimental to women and children and have an impact on their future.

A lot of news circulating provides information that child predators, especially sexual crimes, are very easy to find. Given the victims who are still young and innocent even many victims who do not understand what it is about sex and the like, so that makes the perpetrators so easy to carry out the action, by giving a promise to be given something after committing such inhumane acts. Pedophilia, that is the term for sex offenders against children we know that the offender has a sex disorder so that they have more
interest in having sex with children. And usually the perpetrators are the closest people to the victim so they know the right time to do the act.

B. Basic Analysis of Judges' Considerations on Mojokerto Court's Decision No 69 / Pid.Sus / 2019 / PN.Mjk

The clever way that is mostly done by the perpetrators begins with a gradual approach to children, those who claim to be the messenger of the victim's child and invite the victim to somewhere, then then carry out the action and are usually carried out continuously by the culprit because it becomes a habit to channel his sexual desires. As is the case with one case that had gone viral, namely the news about Muh. Aris is from Mojokerto and is the perpetrator of a sexual crime against a child who has been sentenced in an additional sentence in the form of chemical castration.

In this writing the authors review ‘Imposition of chemical castration sanctions against perpetrators of criminal acts of sexual violence against children (Study of Decision Number 69 / Pid. Sus / 2019 / PN. Mjk). The author analyzes the decision that the author can convey from the study of the decision, the Prosecutor The public demanded that the defendant have committed a crime as referred to in the Primair indictment namely Article 76D Jo Article 81 paragraph (2) of the Republic of Indonesia Law Number 17 of 2016 concerning Establishment of Government Regulation in Lieu of Law No. 1 of 2016 concerning the second amendment to the Law R.I. Law Number 23 of 2002 concerning Child Protection.

However, the judge has his own consideration which is seen from the testimony of the defendant who admitted his actions had committed sexual violence on about 9 (nine) children, so that made the judge categorize the defendant as a sexual predator on children which made the panel of judges not only impose the basic crime but also additional crimes according Criminal provisions Article 81 paragraph (2) of Law Number 23 Year 2002 concerning child protection as amended several times, most recently by Law No. 17 of 2016. In convicting the Defendant as referred to in Article 76D, the Panel of Judges pays attention to the provisions in Article 81 paragraph (5), paragraph (6), and paragraph (7) of Law No. 17 of 2016, but specifically the castration law is written in paragraph (7) which reads:

2 Fitriyani Nurliza, ‘Chemical Castration for Actors of Sexual Crimes Against Children according to the Perception of Law Enforcement Officials and Islamic Law’, Thesis Journal of the Faculty of Law, 2017, p.1
Article 81 paragraph (7): Actors as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of chemical castration and the installation of electronic detection devices.

From the two considerations according to the prosecutor and the judge himself the opinion of the judge's decision that imposed additional castration sentences is not appropriate when viewed from the applicable health law in Indonesia. The sentence violates the medical code of ethics and the applicable penal theory. The act of giving castration punishment physically and chemically has violated the Oath of Doctors and KODEKI (Indonesian Medical Ethics Code) which explains that each doctor attempts to uphold the oath and or doctor's promise (Article 1 KODEKI). The practice of castration chemistry which will be intended for perpetrators in Mojokerto is not in line with Law No. 29 of 2004 concerning Medical Practice. Article 2 states, 'Medical practice is carried out based on Pancasila and is based on scientific value, benefits, justice, humanity, balance, and patient protection and safety', while Article 3 reads, 'Medical practice arrangements aim to provide protection to patients, maintain and improve the quality of medical services provided by doctors and dentists and providing legal certainty to the public, doctors and dentists'.

C. Giving Chemical Left Sanctions As Implementation Mojokerto State Court No 69 / Pid.Sus / 2019 / PN. Mjk

In the court's decision the implementation of castration law should be carried out very strictly because medical side effects that affect the perpetrators are very serious for a short period of time. Castration additional castration itself should not be limited to stimulating the emergence of fear for perpetrators of sexual violence. Because when viewed in terms of castration health is very ineffective, this castration has a certain period of time and if done will cause side effects.

Not only in terms of health, castration is also not suitable to be applied when viewed from the perspective of punishment, there are 3 (three) theories of the purpose of criminal punishment in Indonesia, namely ethanol or theories that only emphasize crime as retaliation against criminals (vergeldings theorieen), relative or criminal conviction

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which also see the purpose of the conviction (doel theorieen) and the combined theory that combines the two previous theories (verenings theorieen). Additional castrated criminal penalties in Indonesia essentially refer to the arena of retaliation against the perpetrators or can be explained castration penalties more focused on the absolute theory without looking at the purpose of the castration additional penalties in Indonesia. giving castration itself. In other words castration is carried out as a basis for revenge in accordance with the perpetrators of sexual crimes against children. Perpetrators can not lead a normal life due to castration law which causes social sanctions from the surrounding community which ultimately triggers the emergence of stress that is so strong and even causes the action to repeat itself due to unstoppable desires. Whereas the goal of Indonesian punishment should now be based on a combined theory (relative and absolute) or in other words imposing sanctions for imprisonment or additional sanctions (in this context additional chemical castration sanctions) in addition to making perpetrators do the same thing again, but also in order to provide protection including educating convicts.

Judged from the health side of the perpetrators who will later be injected castration has a lot of adverse effects in the human body. As explained in National Geographic Indonesia, the anti-androgen hormone that is injected into the offender is a male anti-hormone drug. The injection of the drug will not provide a transformation of behavior in men, namely from masculinity to femininity. In fact the chemical castration has a bad effect, that is, the body experiences aging rapidly. Giving anti-androgenic fluid can trigger a decrease in bone density until eventually the bones become porous (increased osteoporosis). In addition, the muscle mass is reduced, which eventually accumulation of fat becomes a consequence and lead to heart disease including blood vessels.4

Castration injections carried out on the offender might actually make the offender feel his sexual freedom was snatched and make the offender worse, feel lost of self-confidence, more unable to control emotions and become more aggressive and cannot guarantee a repeat of the crime. Moreover, in this case the perpetrators to be executed for castration are still young. If the basic criminal and his left injection have been carried

4 Undang-Undang Nomor 17 Tahun 2016 Tentang Perubahan Kedua Undang-Undang No 22 Tahun 2003 Tentang Perlindungan Anak.
out, it is feared that his sexual desire will become even worse because the sexual memory in the perpetrator’s mind is still attached even though the perpetrator’s testosterone hormone has decreased due to the castration injection, so that it is feared that it may even lead to a new criminal act when the effects of the castration injection already lost.

Apart from the various health effects as well as the psychological impact of castration, we will also certainly talk about the medical profession as the executor of the chemical castration decision. In the Mojokerto District Court Decision Number 69 / Pid.Sus / 2019 / PN.Mjk not explained in detail the medical role of how to implement castration sanctions in the Act was only given an explanation that the technical castration will be contained in the PP but until now the governing PP has not yet there are new problems arising regarding the technicalities which are still ambiguous. As explained by the Indonesian Doctors Association who should have been the executing party because this action was related to human health, they through the appointed representatives said they did not agree if they became parties to the castration executor. This is because these actions have violated KODEKI. In accordance with the explanations of Article 5 and Article 11 of KODEKI, it is regulated that any actions or doctor’s advice which might weaken psychic or physical endurance must obtain the patient’s / family’s approval and are only given for the benefit and good of the patient whereas for chemical castration there is no guarantee of certainty that it will make the patient better.

Therefore, on this basis, IDI has a reason in expressing its refusal to become the chemical castration executor to the convicted person. If the action is carried out by medical officers, especially doctors, the doctor is suspected of violating the prevailing ethical norms of the medical profession. If a doctor or medical officer who has violated the Indonesian Medical Code of Ethics violates, it will also relate to the doctor profession he has.

However, what remains a lot of questions for the public is what if the Doctor or other Medical Team if refuse to carry out the Mojokerto District Court Decision Number 69 / Pid.Sus / 2019 / PN.Mjdik because doctors consider these actions have violated the code of ethics. In this case doctors who refuse to become castration executors cannot be categorized as obstruction of justice (obstructing justice) because in Indonesian law there are no specific rules regarding this matter. The Child Protection Act and its changes
do not regulate obstruction of justice. Therefore, the actions of a doctor like what happened later in the news and the reality of refusing to be the executor of a chemical cast against perpetrators of sexual violence in Mojokerto cannot be categorized as obstruction of justice. If later the doctor who took this action then the doctor should be suspected of violating the medical code of ethics. In this case, because of the many polemics of disagreement with chemical castration actions, the prosecutor’s office could not officially appoint the executor. Technical matters for the case of castration are still delegated to the Attorney General’s Office and the perpetrators still carry out the basic punishment first and then carry out additional punishment in the form of chemical castration after the basic sentence has been completed.

Furthermore, Mojokerto District Court Decision Number 69 / Pid.Sus / 2019 / PN.Mjk is not suitable to be applied in Indonesia. Castration sanctions are sanctions that are applied so that they can entrap child sexual offenders. However, castration sanctions do not stipulate clearly who is the executor in the implementation of castration. In addition, castration sanctions are also not recommended in terms of medicine, this is because it violates the medical code of ethics, as well as endangering the health of the body and psychologically. So that the Indonesian Doctors Association can refuse to carry out the execution even though it is already natural. Therefore, given that the castration process in the implementation of chemical castration execution cannot be carried out by a doctor, it means that it can be carried out by other officers outside the medical team who are trained and know how to implement it.

IV. Conclusion

The granting of additional punishment in the form of chemical castration in the decision of the Mojokerto District Court No.69 / Pid.Sus / 2019 / Pn.Mjk is not suitable to be implemented in Indonesia because it is oriented only as a venue for retaliation to the perpetrators, whereas Indonesia has not used the theory of retaliation anymore. Indonesia is currently oriented towards a criminal goal so that the personality of the perpetrators can be improved. Castration will only be carried out after the main sentence is over and for the implementation of the injection, it is still ambiguous because the prosecutor’s office has not been able to appoint the executor because the medical party who should have been the executor does not agree with the castration action which violates the oath and medical code of ethics.
Castration sanctions are sanctions that are used in order to be able to entrap child sexual offenders. However, castration sanctions do not stipulate clearly who the executor is in the implementation of castration. In addition, castration sanctions are not recommended in terms of medicine. This is because it violates the medical code of ethics, as well as endangering the health of the body and psychologically. So that the Indonesian Doctors Association can refuse to carry out the execution even though it is already natural. Therefore, given that the castration process in the implementation of chemical castration execution cannot be carried out by a doctor, it means that it can be carried out by other officers outside the medical team who are trained and know how to implement it.

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