

RESEARCH ARTICLE

A DISCOURSE OF CHEMICAL CASTRATION PUNISHMENT: HOW WE PROTECT OUR CHILDREN FROM THE RAPIST?

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ABSTRACT

The crime of rape against children is a serious problem that must be resolved by the government. The increase in cases of rape against children proves that the existing regulations have not provided a deterrent effect for the perpetrators. The state here has a role in dealing with victims of rape, the role of the state can be realized through the rehabilitation process as a step to restore the psychological condition of victims as a result of crimes that have occurred. In addition to rehabilitation, the state also issued regulations to prevent these crimes from recurring by issuing Law Number 17 of 2016. Several questions arise from the author that the issuance of this law can fulfil the rights of children as victims of rape and be able to prevent the crime of rape from recurring. The research indicated that the existence of Law Number 17 of 2016 does not guarantee protection for child victims of rape. The law focuses on the punishment of perpetrators not on the rehabilitation process that should be carried out by the state and the rights of children who are victims of rape have not been fulfilled.

Keywords: *Chemical Castration; Sexual Crime; Child Protection*

INTRODUCTION

Crime itself is a phenomenon that occurs in society and is as if it is something we commonly hear everyday, for example murder, theft, rape, raiding, gambling and so on. The perpetrators of crime themselves usually appear from those closest to us who we think are good and are unlikely to do things like that. Rape is one of the crimes that we hear a lot about these days, and the victims are countless, ranging from children to adults. Many ways were done by the perpetrators of this crime to deceive the victims, sometimes even with violence that resulted in the victim's life.

The government in responding to the many cases of rape and sexual abuse against children in 2016 was so fast and responsive, that it issued a government regulation in lieu of a law whose sanctions were much heavier than the previous regulations. The government issued Perppu Number 1 of 2016, the second amendment to Law Number 23 of 2002 which later changed to Law Number 17 of 2016. With the birth of this Law it is hoped that it will be able to narrow the space for perpetrators of sexual crimes against children, so think twice to carry out its action. Where in Law Number 17 of 2016 contains castration sanctions for perpetrators of sexual crimes against children.

The issue of castration sanctions for perpetrators of sexual crimes in Indonesia has recently become a hot topic to discuss, especially after the case of child rape in Mojokerto district, East Java, which was carried out by a welder with the initials MA with a total of nine victims ([Kompas, 2020](#)). In that case the perpetrator was sentenced to chemical castration and a prison sentence of 12 years and a fine of 100 million subsidiary to six months in prison by the judges of the Mojokerto District Court who had been strengthened by High Court of Surabaya. However, the application of chemical castration punishment for perpetrators of sexual crimes is not as easy as turning the palm of the hand, where in this case there are groups who are pro and contra. The group that agrees with the application of the castrated sanction thinks that the punishment has a deterrent effect on the perpetrator. Meanwhile, those from the contra group, especially human rights activists, considered this method less humane and not the right way to solve problems. However, the human rights committee also understands this that sexual crimes against children are a serious and extraordinary problem so that strong regulations are needed. However, the National Human Rights Commission reminds us that in imposing punishment, human rights must also be considered, both in terms of the objectives and methods of implementing these rules in order to achieve justice.

Several studies related to chemical castration both in Indonesia and several countries show that this discourse has many pros and cons. On the one hand, some think that this punishment is contrary to the basic concept of human rights, but on the other hand, some others argue that sexual crimes against children are a form of extraordinary crime, so chemical castration is the

right sanction as a form of protection for children and prevention of similar crimes (Ratkoceri, 107; Nour, 2020; Zhuang, 2018; Krismiyarsi, 2018; Puteri, et. al, 2020; Mardiya, 2017; Hasanah & Soponyono, 2018; Windari & Syahputra, 2020; Tunggal & Naibaho, 2020).

Law Number 17 of 2016 regarding the second amendment to Law No. 23 of 2002 already has a clear objective, is to prevent the fall of victims again. However, the role of the state in ensuring child victims of rape is still a conflict between the rights of the victims and the rights of the perpetrators. Where the rights of children who have been victims of rape and sexual crimes must receive special treatment from their family environment, playmates, place of residence, even the State should restore the psychological condition of the child. The state must be at the forefront as a bulwark of initial protection so that child victims of rape can return to have bright hopes and can realize the ideals of the nation.

METHOD

This research uses qualitative methods, qualitative research is research that intends to understand the phenomena experienced by research informants such as behavior, perceptions, motivation, actions, etc. holistically and by means of descriptions in the form of words and language. a special context that is natural and by utilizing various natural methods (Moleong, 2013: 6). This type of research uses juridical empirical which in other words is a type of sociological legal research and can also be referred to as field research. This research was carried out in various related institutions (Police, Attorney General's Office, Courts), Child Protection Institutions, and Human Rights Activists. The focus of this research is chemical castration as an effort to protect the rights of children who are victims of the crime of rape. The main data sources in qualitative research are words and actions, the rest is additional data (Lofland in Moleong 1988: 112). The respondent referred to in this study is a team involved in the problem of protecting children from the crime of rape. The data analysis technique uses an interactive model which is carried out by collecting data, reducing data, and presenting data.

CURRENT CAPTURE OF SEXUAL CRIMES IN INDONESIA: HOW THE CRIMINALS BE PUNISHED?

Protection for the children especially in the sexual crimes has been stipulated and clearly stated on Article 81 paragraph (7) on Indonesian Child Protection Law which regulate the imposition of additional penalties for perpetrators of sexual violence against children. The additional punishments were in the form of announcing the identity of the perpetrator, chemical castration, and installing

chips. Castration (*kebiri*) is a surgical procedure and or chemical use that aims to eliminate testicular function in males or ovarian function in females. Castration can be done on both animals and humans (Hello Sehat, 2020).

The regulation of castration in Indonesia emerged after its birth Law Number 17 of 2016, where the government feels the need to adjudicate changes to laws related to the rampant cases of sexual violence against children. With this regulation, it is hoped that it will be able to prevent sexual violence against children or as a preventive measure from the government. The regulation of castration itself is contained in Article 81 and Article 82 of the second amendment to Law Number 23 of 2002.

Until now, the implementation of castration still reaps pros and cons in society, there are those who support it but also others who oppose it because of human rights reasons. Based on the results of an interview with Police Commissioner Sulityowati, SH, at the Central Java Regional Police said: "The castration has not been passed because it is still in the process of being further discussed. In fact, if the punishment for castration is true, the police agree, because after all, the punishment for child crimes must be strictly enforced". It needs to be implemented immediately to provide a deterrent effect on perpetrators, given the record from the National Commission for the Protection of Children and Women in 2016 that the number of violence against women and children has increased. Monitoring results from the National Commission on Violence Against Women and Children show that there are 15 types of sexual violence experienced by women in Indonesia, namely rape, intimidation / attacks with sexual nuances including threats or attempted rape, sexual harassment, sexual exploitation, trafficking of women for sexual purposes, forced prostitution, slavery. sexual abuse, forced marriage, forced pregnancy, forced abortion, forced contraception/sterilization, sexual torture, inhuman and sexual punishment traditional practices of sexual nuances that endanger or discriminate against women, and sexual control including discriminatory rules based on morality and religion. Sexual violence has a specific impact on women.

Women victims of sexual violence are often silenced because they reveal that the violence they experience is considered a disgrace to themselves, their families and their communities. As a symbol of the sanctity of their community, women victims of sexual violence are often the ones to blame, accused of instigating the violence. Because of the people's perspective on the symbol of holiness, victims also often get the stigma from society that they are "damaged goods". As a result, the recovery of the victim is not only related to the criminalization of the perpetrator, but also very much depends on the acceptance and support of the family and the surrounding environment (Komnas Perlindungan Perempuan dan Anak, 2016).

The commission monitoring results found that in the last 4 years (2012-2015) an average of 3000 to 6500 cases of sexual violence occurred each year, in the personal/household and community sphere. In the sphere of household /

personal relationships, sexual violence increased to the second highest after physical violence, in the last 1 year. Both in the realm of household / personal relations and in the realm of the community, the highest type of sexual violence is rape ([Catatan Tahunan Komnas Perempuan dan Anak, 2016](#)). On the other hand, the narrow definition of rape in the Criminal Code and the bias of law enforcement officials in handling cases rape, causing women victims of rape to not get the legal protection they should. Results of a study by the Service Provider Forum (FPL), only 50% of reported rape cases have legal proceedings, and only 10% of these cases reach court decisions, another 40% stop halfway through. Seeing the above notes regarding the number of cases of sexual violence, it is necessary to arrange a proper and correct arrangement even though it is contrary to the rights of the perpetrators. Based on the results of an interview with Kompol Sulityowati SH, on May 29 2017 said: "Actually it is against the rights of the perpetrators (HAM) is clearly contradictory but back again to the actions they have committed is far more inhuman so in our opinion if it is applied it is fine but until now it has not been carried out and the police are still waiting for the results of the decision later".

Apart from the rights of the perpetrators who are rehabilitated or castration, we must also pay attention to the rights of children who are victims of the crime of rape because that is the main thing. For the problem, the perpetrator is deemed worthy of receiving a harsh punishment because it is in accordance with what they have done. Law, like polis, is a vehicle needed to direct humans to rational moral values. In this philosophical construction of rational moral beings, Aristotle compiled his theory of law. For her, law as a human guide to rational moral values, then it must be fair. Legal justice is identical to general justice where justice is characterized by a relationship between one another, not self-condemning, but also not prioritizing other parties, and the existence of equality. Here again appears what is the basis of Aristotle's theory, namely social-ethical feelings. It is not surprising, if his formulation of justice rests on the three essence of natural law which he considers to be the main principle of law. The principles in question are: *Hineste viver, alterum non leadere, sunum quique tribure* (Living respectfully, not disturbing others, and giving to everyone its share) ([Raharjo, 2010: 45](#)).

This principle of justice is the benchmark of what is right, good and right in life, and because it binds everyone, both society and the authorities. Law is a self-twin of justice, this is the most practical way to achieve a good, just and prosperous life. According to Aristotle, without a good socio-ethical concern for citizens, there is no hope of achieving the highest justice in the country even though those who govern wise people even with quality laws ([Raharjo, 2010: 45](#)).

Apart from relying on rules, to achieve justice requires a wise way, namely practical ratios. In the criminal justice system, there are legal and social aspects. The legal aspect focuses on operational legislation in an effort to tackle crime and aims to achieve legal certainty ([Utari, 2012: 32](#)).

Therefore, in the implementation of castration punishment, if it is seen from the understanding of the theory of justice, it is considered correct because at first it does not only look at one aspect or its own interests (the perpetrator) but also at the interests of others (the victim). In connection with the fulfillment of victims' rights carried out by the state, the state has a role towards child protection as stipulated in the 1945 constitution. Then also the protection specifically for the rights of children as part of human rights, is included in Article 28B paragraph (2) that "every child has the right to survive, grow and develop, and receive protection from violence and discrimination" (Djamil, 2013: 27). Protection of children's rights in Indonesia in Law No. 4/1979 on child welfare, which coincides with the stipulation of 1979 as the "international child year".

This child protection law is then complemented by including the principles of children's rights in Law no. 20/2003 concerning the national education system, Law No. 23/2006 concerning Population Administration, Law No. 23/2004 concerning the Elimination of Domestic Violence, Law No. 21 of 2007 concerning the eradication of criminal trafficking in persons, Presidential Decree No. 59 of 2002 concerning the National Action Plan for the Elimination of Commercial Sexual Exploitation of Children, Presidential Decree No. RI. 88 of 2002 concerning the National Action Plan for the Elimination of Trafficking in Women and Children (Djamil, 2003: 28).

Based on the convention on children's rights which was later adopted in Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection, there are four general principles of child protection which are the basis for every country in implementing child protection (Djamil, 20-13: 28-31), among others:

1. Principles of Non-Discrimination
2. Best Interest of The Child Principle
3. The principle of the right to life, survival and development (The Right to Life, Survival and Development)
4. The Principle of Appreciation for Children's Opinions (Respect for the views of The Child). This principle confirms that children have personality autonomy.

Therefore, he can not only be seen as a weak, accepting, and passive position, but in fact he is an autonomous person, who has experiences, desires, imaginations, obsessions, and aspirations that are not necessarily the same as adults. aimed at developing the maximum potential or certainty (Siahaan, 2009: 4), not limited to the government as an accomplice to the state but must also be done by parents of families and the community to be responsible for maintaining and maintaining these human rights (Pramukti & Primaharasya, 2015: 5). Based on the results of an interview with Police Commissioner Sulistyowati, SH, as the Head of Central Java Police PPA said: With the issuance of Law Number 17 of 2016, it is said that it has not fulfilled the rights of children as victims because it has not been carried out until now, but the rights of children as newspapers have

been regulated by the previous law, although not yet maximized. There needs to be a new law specifically related to the rehabilitation of child victims of rape, which has yet to exist”.

On the basis of extracting data related to the rights of victims, Law Number 17 of 2016 does not regulate the rights of victims that must be fulfilled by the state but puts forward the process of convicting the perpetrators. Meanwhile, the rights of victims that must be fulfilled have been stated in previous statutory regulations, although they are not yet maximized.

CONCLUSION

This research emphasized and concluded that the application of castration in Law Number 17 of 2016 clearly has pros and cons related to human rights, where there is a right for a person to be a perfect being of God. In the Articles of Law Number 17 of 2016 which confirm the application of the sanction of castration in the context of human rights, it does not fulfil the basic rights of citizens and human rights, as citizens must be guaranteed their rights by the state. However, it is seen from the context of child protection that the rights of children also need protection to realize the best interests of the child. The implementation of castration rehabilitation is aimed at deterring perpetrators of sexual crimes against children, with the hope that after the implementation of this regulation it will be able to reduce the number of crimes and also fulfil the rights of children as victims of rape. However, this regulation does not regulate the rights of victims that must be fulfilled but instead focuses on the process of convicting the perpetrator.

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