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UDC 34

DISCOURSE OF CHEMICAL STARING MEASURES TO OVERCOME SEXUAL VIOLENCE AGAINST CHILDREN IN INDONESIA

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ABSTRACT

Sexual violence against children is increasing day by day and threatens the growth and development process of children as the nation's next generation who should be physically and psychologically healthy and prosperous. In this case, the state is obliged to protect children from sexual violence. Protection from sexual violence is regulated in Law No. 35 of 2014 concerning Child Protection, which was later amended by Law No. 17 of 2014. In 2016, repressive protection was implemented with the sanction of chemical castration for perpetrators of sexual violence against children. Technically, implementation is regulated in Government Regulation No. 70 of 2020. This normative legal research using a statutory and conceptual approach concludes that the discourse on the imposition of witnesses to acts of chemical castration is seen from the perspective of the purpose of the action, the perspective of ethics, human rights, legality of the executor, leaving a critical note that the use of sanctions for acts of chemical castration needs to be reviewed. With the enactment of Law No. 1 of 2023 concerning the Criminal Code which determines the types of criminal sanctions in the form of basic penalties, additional penalties, and special penalties for certain criminal acts specified in the Act, while there is no mention of chemical castration, it is possible a material test was carried out regarding the imposition of chemical castration measures.

KEY WORDS

Chemical castration, sexual violence, children, law.

Children are the next generation of the nation and within each child there is inherent dignity and worth as a human being created by God. Children are also the shoots of the nation who have the potential to realize the nation's ideals. Children have a strategic role in ensuring the survival of the nation and state, as well as achieving the country's goals in the future. In order to be able to carry out their responsibilities, children must have the opportunity for optimal growth and development, physically, psychologically, mentally and socially. Children must have their rights fulfilled, equal treatment without discrimination, and receive guaranteed legal protection from the state.

Children must receive adequate protection, because apart from being physically weak, they are also less able to understand the situation and conditions around them. This factor causes children to often become objects of crime, with various and increasing modes and motives. Sexual violence is a type of crime whose object is children. Data from the Online Information System for the Protection of Women and Children from the Ministry of Women's Empowerment and Child Protection, in 2022 there will be 11,686 cases of sexual violence that will occur in Indonesia. Quoted from the same source, women are the most victims compared to men.

The term sexual violence against children can be found in Article 17 paragraph (2) of Law No. 23 of 2002 concerning Child Protection, which is formulated: "Every child who is a victim or perpetrator of "sexual violence" or who is in conflict with the law has the right to confidentiality." This term is emphasized within UU No. 17 of 2016, the term sexual violence



against children was spread in general explanations. In the explanation, sexual violence against children is categorized as a serious crime (*serious crimes*).

The seriousness of the Indonesian government in dealing with the issue of sexual violence against children is proven by making two changes to Law No. 23 of 2002. First change with implementation UU No. 35 of 2014, and then changed with Law No. 17 of 2016. The Child Protection Law actually regulates criminal sanctions for perpetrators of sexual violence against children. However, these criminal sanctions have not been able to reduce the occurrence of criminal acts of sexual violence against children. The government deems it necessary to add criminal sanctions beyond the basic ones in the form of the death penalty and life imprisonment, with additional penalties in the form of announcing the identity of the perpetrator, chemical castration, installation of electronic detection devices, and rehabilitation. These additional penalties are listed in Article 81 paragraph (7) of Law No. 17 of 2016.

At a practical level, sanctions for chemical castration have been imposed on perpetrators of sexual violence against children by the Mojokerto District Court, East Java, as stated in Decision No.69/Pid.Sus/2019/PN.Mjk, the chemical castration action was carried out after the perpetrator completed serving the principal sentence, and carried out within a period of 2 (two) years. Likewise in the Decision Surabaya District Court No. 2627/Pid.Sus/2019/ Surabaya District Court, the perpetrator was sentenced to 12 years in prison, a fine of 100 million and chemical castration for 3 years. This legal research concerns the discourse on the execution of sanctions for chemical castration to tackle sexual violence against children.

METHODS OF RESEARCH

This research is normative legal research, namely legal research that focuses on the study or analysis of positive legal norms relating to additional criminal sanctions in the form of chemical castration against perpetrators of sexual violence against children. Furthermore, legal scholarship includes layers of legal dogmatic, legal theory, and also legal philosophy.

RESULTS AND DISCUSSION

The Nature of Sexual Violence against Children as a Criminal Offense. The term sexual violence essentially relies on the word violence, or *violence*. If associated with the word "sexual", it can be interpreted as an attack or invasion (*assault*) on a person's physical and mental psychological integrity, and is related to a person's sexual activity. Sexual violence can consist of physical violence, sexual organs, and also psychological, and can also be defined as any act of degrading, insulting, attacking, and/or other acts against a person's body, sexual desires, and/or reproductive function, by force, against someone's will. World Health Organization (WHO), menyebut sexual violence as an action done with the purpose of obtaining action sexual or other actions directed at a person's sexuality using coercion regardless of their relationship status with the victim. Sexual violence is an attack of a sexual nature, whether sexual intercourse occurs or not, regardless of the relationship between the victim and the perpetrator. Sexual violence against children is generally influenced by various factors, including perpetrators who are generally people who have a close relationship with the victim. The victim and perpetrator know each other, either through family ties, friendships or other relationships [1].

The juridical understanding of sexual violence can also be understood through the provisions of Article 1 number 1 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, which is formulated: "Criminal acts of sexual violence are all acts that fulfill the elements of a criminal act as regulated in this law and other acts of sexual violence as regulated by law to the extent specified in this Law".

The scope of criminal acts of sexual violence as regulated in Article 4 of Law no. 12 Yr. 2022 Concerning Crimes of Sexual Violence, are crimes of sexual violence, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced



sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Apart from criminal acts of sexual violence as referred to in the paragraph above, criminal acts of sexual violence also include: rape; obscene acts; intercourse with Children, obscene acts against Children, and/or sexual exploitation of Children; an act of violating decency that goes against the will of the victim; pornography involving children or pornography that explicitly contains violence and sexual exploitation; forced prostitution; the crime of trafficking in persons aimed at sexual exploitation, sexual violence in the domestic sphere, the crime of money laundering whose original crime is the Crime of Sexual Violence; and other criminal acts which are expressly stated as Crimes of Sexual Violence in various statutory provisions.

The definition of a child according to the Child Protection Law is every human being under 18 years of age, including children who are still in the womb. Meanwhile, sexual violence is any form of behavior that has sexual content carried out by a person or a number of people, but which is not liked and not expected by the person who is the target, resulting in negative consequences such as feeling embarrassed, offended, humiliated, angry, losing self-esteem, losing purity, and so on for the person who is the victim. The aim of law is to integrate and coordinate various interests in society because in traffic of interests, protection of certain interests can only be done by limiting the interests of other parties".

Pay attention to the explanation above, that the essence of the crime of sexual violence is an act by a person against the human body, sexual desire and a person's reproductive function. This act is prohibited by statutory legal norms, and violators are subject to criminal sanctions. The crime of sexual violence can basically happen to anyone, whether male or female, old or young, big or small, and they become victims. However, to date, victims of violent crimes are generally women and children. One reason is because women and children have relatively weak physical conditions.

Discourse on Imposing Sanctions for Chemical Castration in Overcoming Sexual Violence against Children in Indonesia. Sexual violence against children is a serious threat that must be addressed immediately. The increase in sexual violence in Indonesia requires high vigilance for parents, the community, and law enforcement officials, because sexual violence against children can destroy a child's future and really disrupt the child's growth and development, especially the child's psychological or mental aspects. Violence against children is abuse or mistreatment of children in the form of physical, emotional, sexual harm, neglect of care and exploitation for commercial interests which can actually or indirectly endanger their health, survival, dignity or development, acts of violence obtained from the person responsible, trusted or authorized to protect the child [2].

The Child Protection Law is basically a form of preventive and repressive effort in providing legal protection for children. Preventive legal protection is a form of legal protection that is preventive of the possibility of concrete events occurring [3].

In this sense, in relation to preventive legal protection against sexual violence against children, the Child Protection Law aims to protect children by preventing the occurrence of sexual violence against children. Meanwhile, repressive protection, the Child Protection Law, provides a means for perpetrators of criminal sexual violence to be brought to court to be subject to criminal sanctions.

According to the absolute theory or retribution theory, criminal sanctions are imposed solely because a person has committed a criminal act or crime. Immanuel Kant views crime as a "categorical imperative", that a person must be punished by a judge because he has committed a crime, so that crime shows a demand for justice [4]. Absolute justice according to Immanuel Kant states that "crime is never carried out solely as a means of promoting other goals/goods, either for the perpetrator himself or for society, but in all cases it must be imposed because the person concerned has committed a crime [5]. Apart from this theory, there is also the theory of retribution, according to Andi Hamzah, that punishment is not for practical purposes, such as correcting criminals. The crime itself contains the elements of a criminal sentence. There is no need to think about the benefits of criminal punishment [6]. The theory of retribution does not care about the development of criminals, even though criminals have the right to be developed and to become useful human beings in accordance



with their dignity and dignity. Relative theory adherents view that something that can be used to achieve benefits, whether related to the guilty person or related to the outside world, for example by isolating and correcting criminals or preventing potential criminals, will make the world a better place.

The government's seriousness in dealing with criminal acts of sexual violence against children is based on the reason that this criminal act continues to increase in number from time to time. The increase in criminal acts is a real threat to children's growth and development, children's psychology, damaging children's personal lives, and disturbing the comfort, peace and security of society. The increase in sexual violence shows that the use of legal instruments through Law No. 23 of 2002 concerning Child Protection is considered ineffective. Therefore, through Law No. 17 of 2016, the fundamental change in this law is in the provisions of Article 81 paragraph (7), which includes additional penalties in the form of chemical castration and the installation of electronic detection for perpetrators of criminal acts of sexual violence against children, and so on.

Further reflection on the imposition of sanctions for chemical castration cannot guarantee a reduction in child victims of sexual violence, because based on data from the Ministry of PPPA there continues to be an increase so that chemical castration is considered ineffective. Apart from that, the law stipulates that the person carrying out chemical castration is a competent person. The interpretation of this provision refers to the profession of a doctor, but there is opposition because the chemical castration act is not in accordance with the doctor's oath and the Indonesian Medical Code of Ethics. This is reinforced by a fatwa from the Honorary Council for Medical Ethics. From the perspective of the Doctor's oath, the act of chemical castration is clearly not in accordance with the Doctor's oath, human values, and the Doctor's obligation to respect and protect human life since the time humans were still in their original form, fetus in the womb, even during fertilization [7]. Chemical castration from a bioethical perspective is unethical [8]. The biomedical ethics perspective requires that a doctor must not carry out actions that harm someone in their health service duties, serving the nobility of human dignity.

Interpretation of action sanctions should be oriented towards rehabilitation, recovery and character improvement (forward looking) of criminals (daa-dader straff rechts) Hiarej, Eddy OS Principles of Criminal Law: Revised Edition (Yogyakarta: Cahaya Atma Pusaka, 2016). Meanwhile, chemical castration is technically aimed at the function of the body's organs (corporal punishment). Chemical castration can cause a temporary loss of sexual desire which can cause suffering and headaches, changes in body character resembling a woman's, hair loss, weakening of vital organs, depression, and when finished serving a sentence has the potential for new victims to emerge due to the perpetrator's renewed sexual desire [9]. The hegemonic dialectic of patriarchal culture raises the question of gender bias regarding female perpetrators of sexual violence, whether there is also the same chemical castration.

Criticism at the level of implementation or implementation/execution is carried out after the convict has served the principal sentence, namely after leaving prison. The problem is if the convict at the time of the sentence is over 55 years old or more, while the principal sentence imposed is 12 years or more, so that after the end of the prison sentence he is already 67 years old or more, whether at the age of a person who is already 67 years old or more. Moreover, chemical castration is carried out considering that when a person is in old age, his body organs, including his sexual organs, have begun to fail to function properly. Therefore, the question is whether the use of criminal sanctions of chemical castration and/or the installation of electronic detection is effective for perpetrators of criminal acts of sexual violence against children.

The use of additional criminal sanctions in the form of chemical castration and/or installation of electronic detection devices for perpetrators of sexual violence against children is also inconsistent with human values. Because eliminating sexual desires and/or installing electronic detection devices does not respect and honor the dignity of humans as creatures created by God. The action and/or installation of electronic detection devices is a form of action that degrades human dignity. The installation of electronic detection positions humans



on a par with animals, as is done with certain animals in experiments or experiments for certain purposes.

Actions of chemical castration and/or installation of electronic detection are certainly not in accordance with Pancasila as the philosophy and spirit of the nation which contains values of human dignity. In this case, Notonagoro said that: "Based on Pancasila, humans are placed in their entire dignity as creatures of God Almighty with the awareness to develop their nature as personal and at the same time social creatures. A rounded and complete Pancasila gives confidence to the people and nation of Indonesia that happiness in life will be achieved if it is based on harmony and balance, both in human life and nature, in relationships with other nations, in the relationship between humans and their God, as well as in the pursuit of progress and birth, spiritual happiness [10].

The other side of the act of chemical castration is related to the end of the 2 (two) year sentence, in this case if the condition of sexual desire and/or nervous conditions due to the installation of electronic detection, then cannot function again, the problem is who should be responsible. Is it possible that the doctor as the executor is to be blamed, considering that the doctor only carries out orders, which from a theoretical perspective, the doctor's authority is only to carry out the mandate. Theoretically, the implementer of mandate authority (mandataris) is not burdened with responsibility, but is the responsibility of the mandate giver (mandan) [11]. Based on the theory of authority, doctors as executors of chemical castration and installation of electronic detection cannot be burdened with responsibility for the risks that occur to convicts.

From the perspective of authority theory, the person given the authority to carry out chemical castration and install electronic detection devices is the prosecutor. This authority is based on Article 30 of Law No. 16 of 2004 concerning the Prosecutor's Office. This type of authority is attributional, namely authority granted directly by law. As the attribution authority, the prosecutor must be responsible if there are consequences or risks that are detrimental to perpetrators of sexual violence against children. Prosecutors are only tools of the state as implementers of legal orders. In terms of carrying out chemical castration from a due process of law perspective, of course they must receive legal protection from the state. Of course, it is impossible to impose this responsibility on the Prosecutor, because the Prosecutor only carries out the orders of the legislator (the President and the DPR), even though the law is an order from the authorities that must be obeyed.

Paying attention to various problems related to the execution of additional crimes in the form of castration and/or installation of electronic detection devices, it is necessary to think about forms of legal protection for the execution of these additional crimes. In this case, the perpetrator of chemical castration and/or the installation of electronic detection are legally protected, while the convict who is chemically castrated and/or fitted with electronic detection is also not harmed, so it is necessary to think about providing compensation to convicts who suffer losses as a result of the execution of this additional sentence. Therefore, considering various things, especially the health condition of the convict, of course the imposition of additional criminal sanctions in the form of chemical castration and/or the installation of electronic detection for perpetrators of sexual violence would need to be considered, because it is very risky for convicts of sexual violence.

The act of chemical castration and/or installation of electronic detection also needs to pay attention to the development of the theory of the purpose of punishment, which has now shifted from retribution as stated by adherents of the retributive theory considers that the punishment given to the perpetrator of a criminal act is fair retribution for the losses caused. The punishment is basically that suffering on criminals is justified, because criminals have done so suffering for others. Subsequently, it developed into a deterrent theory, which aims to deter perpetrators of criminal acts and not repeat their actions, but this deterrent theory is no longer widely adopted as a goal of punishment.

The theory of the purpose of punishment then developed into restoration which aims to restore the condition of the convict to the way he was before committing the criminal act. The theory of the purpose of punishment then shifts to the theory of restoration which aims to restore the perpetrator of the crime. This theory is based on the fact that the perpetrator and



victim are not involved in the decision-making process in resolving criminal cases. In fact, the resolution of a case should provide a fair contribution for those involved in the case. If we look closely at the theory of deterrence, then the use of chemical castration sanctions and/or the installation of electronic detection only aim to create a deterrent, so that the perpetrator does not repeat his actions, or other people do not take action.

Meanwhile, if you pay attention to the latest developments in the theory of the purpose of punishment, it is that the imposition of a crime is not merely to deter the convict, but rather is an effort to raise awareness for the perpetrator of a criminal act so that they do not repeat their actions and can be accepted again by society. As Roeskan Saleh said, that: "criminal contains other things, namely that crime is expected to be something that will bring harmony and as an educational process to make people accepted back into society. So, the aim of criminal law should be to shape the welfare of the state and society which does not conflict with the norms of decency and humanity in accordance with Pancasila" [12].

Execution of Chemical Castration. The use of sanctions for chemical castration in the Mojokerto District Court decision and verdict The Surabaya District Court gave rise to prolonged discussions and debates, especially regarding the execution or implementation of chemical castration. Article 30 paragraph (1) point b of Law No. 16 of 2004 concerning the Prosecutor's Office, regulates that: "In the criminal field, the prosecutor's office has the task and authority: "to carry out the judge's determination and court decisions which have obtained permanent legal force." The prosecutor's authority is the authority to carry out court decisions related to criminal acts in general, but the problem is that decisions regarding chemical castration are related to human health problems, in this case perpetrators of sexual violence.

Article 2 paragraph (3) PP No. 70 of 2020, determines: "The implementation of the Court's decision as referred to in paragraphs (1) and (2) is carried out on the orders of the Prosecutor after coordinating with the ministry that carries out government affairs in the health sector, the ministry that handles government affairs in the legal field, and the ministry that handles government affairs in the social sector.". Furthermore, in Article 9 paragraph (2) it is formulated: "within a period of no later than 7 (seven) working days from the receipt of the conclusion as referred to in letter a, the Prosecutor orders the doctor to carry out Chemical Castration Actions on the Sexual Offender". The enactment of Law No. 1 of 2023 in Article 64 which formulates the imposition of criminal sanctions including basic punishment, additional punishment, and special punishment for certain criminal acts specified in the Law, even though there is no mention of chemical castration, it is possible to carry out a material test regarding the imposition of chemical castration.

It should be a consideration to make criminal sanctions the *ultimum remedium*, in the last position after other criminal sanctions. This is based on the philosophical consideration that the dignity of humanity as a whole of body and soul must be upheld. Turning off sexual desire, even if only temporarily, has an impact that is not in line with the aim of punishment in the form of actions oriented towards restoration and harmonization of life.

CONCLUSION

Paying attention to the description of the discussion of the problems raised in this research, it can be concluded that the use of additional criminal sanctions in the form of chemical castration from various perspectives, such as human values related to human dignity, human rights, the doctor's professional oath of office, the perspective of authority theory, goal theory punishment, and the theory of legal objectives, parental supervision and community concern, as well as the negative consequences it causes, seem to need to be reconsidered by the judge as the imposition of these sanctions. The imposition of sanctions is not based on emotional considerations and is retaliatory and for deterrence, and merely pursues certainty, but ignores the benefits and justice that should be prioritized. Considering various philosophical, juridical and sociological problems, the imposition of sanctions for chemical castration needs to be reconsidered.



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