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Chemical castration an additional punishment based on human rights and medical perspective

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Abstract

Sexual violence experienced by children will be affected to their growth and development. The impact experienced by children as victims can be in the form of physical, mental and social disabilities. In response to the increasing prevalence of sexual violence, it is necessary to intensify additional sanctions and punishments against perpetrators which has been regulated in Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. This study aims to determine the perspective of Human Rights and Medical regarding chemical castration as an additional punishment for perpetrators of sexual violence against children. This study uses normative juridical research subsequently studied through a conceptual and comparative approach and uses secondary data sources and primary data as supporting materials. The result of this study indicate that castration is a form of cruel, dignified, inhuman treatment and violation of human rights. However, doctors are required to relieve and maintain a person's life, not the other way around, so tasks that are contrary to healing are not the duty of the doctor's profession and the medical side insists that acting as an executor can violate the code of ethics.

Keywords: Chemical castration, human rights, medical

Introduction

The state guarantees that every part of society can be protected whether it is parents/ adults or children without exception. Protection is an activity to guarantee and protect every citizen in which in this case the author focuses on children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination ^[1].

In the future, children are very valuable assets for nation whose rights must be protected. Children are the hope of the nation who will revive the older generation in continuing the wheels of the country's life, every child who will take on this responsibility needs to get the widest possible opportunity to grow and develop mentally, physically and socially. Therefore, every government and non-government has the obligation to pay attention to the growth and development of children such as parents, families, and communities and also the government who must foster and protect children so that unwanted actions do not occur in children ^[2].

Sexual violence is also associated with violence against adult women and underage women (children), which consists of physical, psychological, and sexual violence as well as the use of threats, physical force, or intimidation in order to obtain sexual relations with the will of others that contrary to the will of other person. Sexual violence experienced by children will be affected to their growth and development, the impact experienced by children as victims can be in the form of physical disability and dependence on others, psychological trauma, difficult to communicate with other people due to the trauma their experienced and physically will grow into adults but cannot play an optimal role as adults who have emotional maturity and ways of thinking ^[3]. This sexual violence crime is not only take place in the company environment, offices, or in certain places that provide opportunities for people of different sexes to communicate with each other, but also occur in the family surroundings ^[4].

Advances in technology and globalization as well as the negative impact of current technological and information developments have led to an increase in crimes against children, especially with regard to sexual violence. Responding to this, it is necessary to intensify criminal sanctions against perpetrators. Therefore the President of Indonesia issued a Government Regulation in Lieu of Law no. 1 in 2016 and subsequently upgraded to Law,

no. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the second amendment to Law no. 23 of 2002 concerning Child Protection into Law^[5]. The law is contained of 81 articles which discusses the weighting of punishment for perpetrators who commit sexual violence against children, additional penalties are also imposed in the form of announcing the identity of the perpetrator, actions in the form of chemical castration accompanied by rehabilitation and installation of electronic detection devices. And in Article 82 A, the action in the form of rehabilitation and installation of an electronic detection device is carried out for a maximum period of 2 years and is carried out after the convict has served the main sentence. Chemical castration is not carried out for all perpetrators of sexual violence against children but is given to perpetrators who commit sexual violence against more than 1 victim, resulting in serious injury, mental disorders, infectious diseases, disruption or loss of reproductive function and/or the victim to death. For the imposition of chemical castration actions are given together with the installation of detection equipment and rehabilitation for perpetrators^[6].

This is also a pro and contra that makes the existence of chemical castration seen as a cruel punishment, some parties who do not agree with the existence of chemical castration are caused because the imposition of chemical castration as a punishment for perpetrators of sexual crimes against children is an act that violates human rights, as well as the medical authorities who are ordered to do so. As the executor in the implementation of the chemical castration action against carrying out the given task, this would violate the professional oath/code of medical ethics. However, the actions of perpetrators of sexual crimes when committing such acts against victims (children) are also considered human rights violations, this is what should be the focus in the implementation of chemical castration itself^[7].

Human rights practitioners consider that this punishment will not completely solve the problem, in addition, regarding the executor in chemical castration, the prosecutor ordered the doctor to carry out the chemical castration action against the perpetrator, but the medical side will not take medical action on the basis of punishment and the doctor will not take any medical action which has an impact on lowering the degree of physical and psychological health. Therefore, from this description, researchers will examine more deeply whether the act of chemical castration violates human rights and the oath of the medical profession as an executor.

Research Method

This study examines the regulations that concern or apply to legal issues to be studied to examine the application of rules or norms in positive law, therefore in this journal researchers use normative legal research (normative juridical)^[8], the approach used in this research is a statutory approach (*Statue approach*) by reviewing all laws and regulations related to the legal issues in question that researchers want to research, a conceptual approach (*Conceptual approach*) analyzing scientific works that have to do with the problems being studied and legal principles that can be found in the views of previous legal scholars or existing legal doctrines, and a *Comparative approach* comparing the law/legal system of one country with the law/legal system of another country aims to obtain

similarities and separate it's legal^[9].

The data-source in the form of legal materials consisting of primary legal materials such as: basic norms or rules, legislation, official records or minutes in the making of laws and judges' decisions. Secondary legal materials such as publications on law that are not official documents of legal publications are meant text books, legal journals or previous research by legal experts. Last, tertiary legal materials as explanations related to primary legal materials and secondary legal materials, such as legal dictionaries and major Indonesian dictionaries as well as English dictionaries and encyclopedias. From the secondary materials, researchers obtained the data through direct and textual activities from paper provided by resource persons with several subjects that the researchers chose, such as: Head of the National Human Rights Commission of the Republic of Indonesia Aceh Representative and Head of the Legal Bureau, Development and Defense of Members at the Indonesian Doctors Association (IDI) in Aceh, This interview has fulfilled and helped theoretically and factually in writing this research and was used as a support to clarify the primary material, and the collection technique was carried out by studying literature and reviewing and collecting the three legal materials above (primary, secondary and tertiary)^[10].

Results and Discussion

The issuance of Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection In order to overcome the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators and prevent sexual violence against children. The Government needs to add to the main crime in the form of capital punishment and life imprisonment, announcing the identity of the perpetrator and adding provisions regarding chemical castration, installation of electronic detection equipment, and rehabilitation^[11].

Chemical castration according to Government Regulation No. 70 of 2021 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation and Announcement of the Identity of Perpetrators of Sexual Violence against Children has been clearly explained in article 1 number 2 which states:

“Chemical castration is the administration of chemical substances through injection or other methods carried out on perpetrators who have been convicted for committing violence or threats of violence forcing a child to have sexual intercourse with him or with another person, causing more than 1 (one) victim, resulting in serious injury, mental illness, infectious disease, impaired or loss of reproductive function, and/or pass away, to suppress excessive sexual desire accompanied by rehabilitation.”

The implementation of chemical castration is handled by doctors and carried out in government-owned hospitals or hospitals that have been determined. This chemical castration will go through several stages such as:

- 1) Clinical assessment that conducted by officers who have expertise in medical and psychiatry carried out: clinical and psychiatric interviews, physical examination of the perpetrator, and supporting examinations related to medical examinations for certain indications to obtain complete clinical conclusions.

- 2) In conclusion, the results of the clinical assessment examination in order to determine whether or not the perpetrator deserves the punishment.
- 3) Implementation, the execution is done if the results of the previous examination are complete and the perpetrator deserves to be executed, the implementation is also carried out after the perpetrator has served the principal crime.

After the chemical castration is carried out, the perpetrator performs recovery such as: psychiatric recovery, social recovery, medical recovery, so that optimal functional abilities can be achieved in society ^[12].

The meeting was held on 06 November 2018 which was attended by the Indonesian Ministry of Women's Empowerment and Child Protection, Ministry of Social Affairs, Ministry of Health, Indonesian Child Protection Commission (KPAI), Ministry of National Development Planning of the Republic of Indonesia/National Development Planning Agency, Ministry of State Secretariat of the Republic of Indonesia, Ministry of Law and Human Rights, the Ministry of Education, Culture, Research, and Technology, and the Coordinating Ministry for Human Development and Culture of the Republic of Indonesia discussed and agreed that those who carried out chemical castration (injections or other methods) were doctors. However, the Ministry of Health conveyed its input for adding the phrase "prosecutor as executor" with the consideration that doctors are not labeled as executor ^[13]. The existence of strict laws that are binding and coercive in nature is expected to be able to suppress human behavior that acts arbitrarily against other people which makes the human rights of other people which become human dignity that maintained and peace occurs in life of society and the state ^[14]. The existence of a regulation regarding castration has made several communities express their opinion, some agree and others disagree with the issuance of this rule. Therefore, in this discussion, researchers will examine the action of chemical castration in terms of human rights and medical.

Chemical Castration Based on Human Rights

The formation and power administration within the state must not reduce the meaning of freedom and human rights, the protection and respect for human rights as an important basis in every State which is called a State of Law. The existence of strict laws that are binding and coercive in nature that applied in society hopefully suppress human behavior that acts arbitrarily towards other people, which makes the human rights of other people who become human dignity are maintained and peace occurs in social life and patriotic ^[15].

Indonesia as a country that has ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which is commonly referred to as ICCPR and CAT, has an obligation to respect, protect and comply with the prohibition against acts of torture, inhumane treatment, and all forms of treatment and sanctions that degrade human dignity. The application of chemical castration sanctions in Indonesia without the consent given by perpetrators of sexual violence to children is practically against the rules that contained in the ICCPR and CAT conventions ^[16].

Chemical castration is imposed for perpetrators of sexual crimes against children, but from a human rights perspective, this sanction is contrary to human rights because it is considered as depriving a citizen of human rights or in other words being convicted of sexual crimes against children ^[17]. In the context of human rights, punishment by means of chemical castration can be qualified as a form of torture and punishment that is cruel, inhuman and degrading to human dignity. Although the definition of torture does not include punishment or pain and suffering arising or resulting from applicable legal sanctions, basically legal sanctions should refer to legal actions that are widely accepted by the international community, and corporal punishment can lead to cruel punishments, inhumane and degrading to a person's dignity. The National commission on human rights or Komnas HAM's disapproval does not ignore cases of sexual violence against children, according to that, in order to provide a deterrent effect and prevent repeated incidents, the perpetrators can be sentenced to a maximum sentence of life imprisonment. Even though it rejects chemical castration, Komnas HAM understands that the background to the application of chemical castration as an additional punishment under positive law is to anticipate and provide repressive measures against sexual crimes to children. Regarding the protection of children who become victims is the responsibility of the government, regional governments and other state institutions, as regulated in Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection in Article 59 and Article 69A ^[18]. Furthermore, regarding the issue of child sexual violence, the human rights practitioners ask the government to focus on the interests of children comprehensively, where the child as a victim must be ensured by the state to have protection and access to physical and mental recovery, as well as other matters aimed at the interests of the victims ^[19].

Regarding the view in terms of human rights, chemical castration violates human rights, where the castration punishment is intended as a form of torture and violations of human rights in Article 6 of Law No. 12 of 2005 concerning the Ratification of the International Convention on Civil and Political Rights which discusses the prohibition of torture, cruel, degrading and inhumane treatment or punishment, and is also said to violate Article 28 G paragraph (2) of the 1945 Constitution regarding everyone the right to personal protection, honor and dignity, and to be free from torture and degrading treatment of human dignity.

Chemical Castration Action Based on Medical

From the medical science perspective, castration is a surgical procedure or the use of chemicals aimed at eliminating the function of the reproductive organs of the testes in men and ovaries in women. There are two type of castrations, such as physical castration and chemical castration. In the past, castration used more physical castration, which is a surgical procedure that removes all male and female reproductive organs, while chemical castration is the administration of chemical compounds that can weaken or eliminate the function of sex hormones, or injecting anti-testosterone hormone into the perpetrator's body with the aim of to suppress the production of the hormone testosterone so that it can reduce a person's libido (the perpetrator) while under the influence of the drug.

The chemical castration action that will be applied later is in the form of inserting anti-androgen substances into the male reproductive organs which will cause a decrease in testosterone hormone production, so that the male sexual arousal will decrease, while the drugs used such as *Medroxyprogesterone* and *Cyproterone acetate* have an effect of up to 40 hours up to 3 months. In order to remain within human values, the use of chemical substances must be avoided for permanent use, these chemicals is not working forever and there is a period of time, the effect of injecting chemical substances on chemical castration actions will gradually disappear and people who are under the influence of chemical drugs or injections chemicals to suppress hormones can function normally again. Regarding the impact that will actually arise as a consequence of the execution of the convict, there are positive and negative impacts, there are losses, damage, even death^[20].

The MKEK fatwa agrees that sexual violence/rape against children is an extraordinary crime because children who are still weak should receive protection by the government and society, and perpetrators of sexual violence against children also need to get the maximum punishment with a deterrent effect so as not to repeat it, Meanwhile, victims must get maximum attention in protecting by the state such as maximum rehabilitation, but this fatwa suggests that the government needs wisdom in making laws so as not to cause problems in the future. In. The fatwa stipulates that doctors are very bound by their oath, so they cannot accept or act as executor of chemical castration punishment and expect the government so that doctors can always hold fast to their professional oath as an executor of chemical castration^[21].

The medical also emphasized that acting as an executor could violate their code of ethics contained in Article 5 and Article 11 of the 2012 Indonesian Medical Ethics Code (KODEKI) which states "Every act or doctor's advice that may weaken physical or psychological resistance, must obtain approval patients and their families and is only given for the benefit and good of the patient. Furthermore, "Every doctor must always remember his duty to protect the life of human beings." A doctor must be the protector of life for everyone and must use his abilities to relieve suffering and care for the life of his patient. The implementation of this castration procedure involves the risk of pain and other complications, therefore doctors are considered the right profession to be used as executor of castration because of their competence, compared to other professions. However, weakening the psychic and "physical" endurance is contrary to the task of medical science^[22].

Law No. 16 of 2016 made an opportunity as a legal method, and before the regulation was enacted it had been considered based on the procedures that have been regulated, so if there is a regulation regarding chemical castration in general it must be implemented and also considered whether this is the only way to reduce the number of cases of sexual violence or not. Problems that often arise between medical and law are often contradictory, such as the medical party may not damage or hurt someone while the written law is ordered. For example, in the death penalty, the medical team was asked to determine the shooting point for the perpetrator because the doctor had studied the anatomy of the human body in the same way as chemical castration, the doctor was also not willing because he considered things that violated the code of ethics, but

what we know is why there are still doctors who willing to determine the shooting point or handle chemical castration later, in fact it is not the context of being willing but the scope of work of those who must carry out the established rules (doctors who work in the police, army, judiciary, and others)^[23].

The medical side still refuses to be the executor of chemical castration because in handling chemical castration the doctor must be directly involved in handling the surgery on the perpetrator, while in the death penalty the doctor is not directly involved as an executor, they only determine the shooting point which immediately kills the perpetrator without having to repeatedly shoot and perform shooting is not a doctor but other law enforcement. So for the case of chemical castration, if you want to carry out later, you have to look at what kind of perpetrators can be subject to this additional punishment of chemical castration because according to the rules, not all perpetrators of sexual violence can be given this punishment in terms of the cases committed, the number of victims, and other things that can increase the punishment of the perpetrator. For the executor, it is possible if there are certain institutions such as the police or similar institutions that have doctors who have been trained and devoted to chemical castration.

Conclusion

Chemical Castration Based on Human Rights (HAM) the punishment is a violation of human rights, where the castration punishment is intended as a form of torture or cruel, degrading and inhumane treatment and a violation of human rights. However, doctors are required to relieve and maintain a person's life and not vice versa, so tasks that are contrary to healing are not the duties of the doctor's profession and the medical side asserts that being an executor can violate their code of ethics contained in articles 5 and 11 of the Indonesian Medical Code of Ethics (KODEKI) in 2012. If chemical castration is to be carried out later, the executor is handed over to certain institutions such as the police or similar institutions that have doctors who have been trained and devoted to doing this chemical castration.

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