

Reconstruction in Regulation of Castraction Punishment for Children Protection as Sexual Victim Based on Value Justice

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Reconstruction in Regulation of Castration Punishment for Children Protection as Sexual Victim Based on Value Justice

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Abstract

The regulation of castration criminal sanctions for the protection of children as victims of sexual violence is not based on the value of justice. Castration punishment can only be imposed on perpetrators of child sexual violence who fall within the criteria determined by Article 81 paragraph (7). If it does not meet the existing criteria, castration cannot be imposed. This discriminatory attitude shows the government's lack of seriousness in making policies for child protection. Sexual violence against children is a very fatal crime, damaging the future of children and causing disgrace to this nation. For this reason, it is necessary to reconstruct the regulation of castration criminal sanctions in order to protect children as victims of sexual violence based on the value of justice. The reconstruction includes the reconstruction of values and the reconstruction of legal norms. The reconstruction of castration regulations aims to protect all children in Indonesia, especially children who are victims of sexual violence. So that children do not become victims of sexual violence again.

Keywords: Reconstruction, Castration, Protection, Justice.

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A. Introduction

Children are an integral part of the sustainability of a country. Children have rights expressly stated in Article 28B paragraph (2) of the 1945 Constitution, namely the state guarantees that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. Currently, children are often victims of violence, even sexual violence, perpetrated by irresponsible adults. One of the factors that is considered to be causing an increase in sexual violence against children is the rule of law that cannot provide protection for children, especially when children are victims.

When crimes occur, many people want criminals to be punished with the maximum penalty, even the death penalty, as well as perpetrators of sexual violence against children. The current laws and regulations, namely Law Number 17 of 2016, provide threats in the form of chemical castration to perpetrators of sexual violence against children.

The essence of castration punishment, in the dimension of justice, is carried out with the provisions contained in Article 81 paragraph (7) of Law Number 17 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection namely "against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices".

Based on this, it is known that castration punishment can only be imposed on perpetrators who meet the criteria of Article 81 paragraph (7). In this context, the legislators of the Child Protection Act have acted discriminatory by applying different treatment in terms of protecting children as victims of sexual violence. Sexual violence tends to have a traumatic impact on children as victims, and will have an adverse effect on the emotional, social and psychological development of victims of violence, which will have an impact on the future of children and the future of this nation. The regulation of castration criminal sanctions for the protection of children as victims of sexual violence is not based on the value of justice. Therefore, it is necessary to reconstruct the regulation of castration criminal sanctions in order to protect children as victims of sexual violence based on the value of justice.

This study uses the constructivism paradigm, a paradigm that views law as not only dealing with statutory regulations, but also by looking at existing realities. Law as something that must be applied, but more likely to pay attention to the value of justice and its usefulness for society. This study uses the constructivism paradigm to analyze the reconstruction of castration regulations for the protection of children as victims of sexual violence based on the value of justice.

The approach in this empirical research is the socio legal approach, this approach requires several social and legal disciplines to study the existence of positive (state) law. Sources of data in this study were primary data with data collection tools in the form of interviews and secondary data obtained from documentation studies.

B. Discussion

1. The regulation of castration criminal sanctions to protect children as victims of sexual violence is not based on the value of justice

Castration as a form of punishment for perpetrators of sexual violence in Indonesia has been known since the enactment of Law Number 17 of 2016 concerning the Stipulation of Perpu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2022. However, previously in several countries, castration had been applied to perpetrators of violence. sex with children. Castration in Indonesia is chemical castration.

The chemical castration method is carried out by not only injecting the perpetrator once it is finished, like a person who is physically castrated. They have to get it constantly because the effects of anti-testosterone substances are only temporary. As with other chemical drugs, anti-testosterone substances depend on the time limit.¹

Chemical castration in practice has not yet been realized, this is because there are still pros and cons from various parties, the Indonesian Doctors Association (IDI) as a meeting place for doctors themselves still strongly refuses to carry out castration sentences against convicts. According to Faisal, the pros and cons are a natural thing in the world of law, to define what law is, legal scholars themselves are not one voice, so it is only natural that related to the castration law itself there are pros and cons, what is important is understanding the purpose of legal action. Castration of perpetrators is meant to provide protection to children, both children who are victims of sexual violence and children in general, so that the application of these sanctions must be carried out. IDI's rejection was due to referring to the rules of the Indonesian medical code of ethics, which in the Explanation of Article 11 of the KODEKI stated that a doctor must do all he can to preserve the natural life of his patient and not to end it. However, if the policy is stated in a law whose position is higher than the professional code of ethics regulations, then there is no reason to refuse to become executor, because the act of carrying out statutory orders cannot be criminalized.²

Indonesia upholds human rights, including children's rights which are marked by the guarantee of the protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations both national and international in nature. This guarantee is strengthened through the ratification of international conventions on the rights of the child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child).

One of the children's rights contained in the Child Protection Law regulated in Article 4, is³ Every child has the right to be able to live, grow, develop, and participate fairly in accordance with human dignity, and to receive protection from violence and discrimination.

The state, government, local government, community, family and parents are obliged to provide protection and guarantee the fulfillment of children's human rights in accordance with their duties and responsibilities.

¹ Dayani, R. J. "Penerapan Hukuman Kebiri Terhadap Pelaku Kejahatan Seksual Anak Sebagai Perlindungan Hukum Anak Selaku Korban Kejahatan Seksual". *Jurnal Hukum PRIORIS*, 7 No. 1, (2018): p. 42-56.

² Wawancara dengan Bapak Dr Faisal, SH., M. Hum Ketua Majelis Hukum dan HAM Pimpinan Muhammadiyah Sumatera Utara.

³ Nursariani Simatupang. *Hukum Perlindungan Anak*. Medan: Pustaka Prima, (2018): p. 56.

The protection of children that has been carried out so far has not provided guarantees for children to get treatment and opportunities according to their needs in various fields of life, so that in carrying out efforts to protect children's rights by the government must be based on the principles of human rights, namely respect, fulfillment and protection. on children's rights. As an implementation of the ratification, the Government has enacted Law Number 23 of 2002 concerning Child Protection.

Amendments to Law Number 23 of 2002 concerning Child Protection also emphasize the need for increasing criminal sanctions for perpetrators of crimes against children, to provide a deterrent effect, and to encourage concrete steps to restore the physical, psychological and social conditions of children, especially children as victims. This needs to be done to anticipate that children do not become victims again.

In order to aggravate criminal sanctions and provide action against perpetrators of sexual violence against children, Law Number 23 of 2002 concerning Child Protection has been amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and the Law Number 17 of 2016. This is due, among other things, to the fact that sexual violence against children has increased from year to year and threatens the strategic role of children as the next generation for the future of the nation and state.

Specifically, the regulation on chemical castration in Indonesia is contained in Law Number 17 of 2016 Article 81 paragraph (7), which refers to the rules contained in paragraphs (4) and (5).

Regulations regarding castration criminal sanctions to protect children as victims of sexual violence are not good enough to protect children optimally, even though cases of violence are very extraordinary crimes. The regulation of castration criminal sanctions for the protection of children as victims of sexual violence contained in these arrangements is not based on the value of justice.

Regulations regarding castration criminal sanctions to protect children as victims of sexual violence only prioritize perpetrators of sexual violence as stated in Article 81 paragraphs (4) and (5).

The regulation on chemical castration sanctions stipulates that perpetrators who can be subject to chemical castration are perpetrators who have been convicted for committing a crime as referred to in Article 76D. Namely perpetrators who have been convicted of violence or threats of violence to force children to have intercourse with them or with other people. In other words, regulations regarding criminal castration sanctions to protect children as victims of sexual violence only prioritize perpetrators who commit repeated acts of violence or threats of violence to force children to have intercourse with them or with other people.

Regulations regarding castration criminal sanctions to protect children as victims of sexual violence, in addition to prioritizing perpetrators who commit their actions repeatedly, also prioritize perpetrators who cause victims of more than 1 (one) person, resulting in serious injuries, mental disorders, infectious diseases, disturbed or loss of reproductive function, and/or the victim dies, the perpetrator is subject to death penalty, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.

The regulation on chemical castration sanctions in the Child Protection Law does not appear to provide the same justice to children as victims of sexual violence. In fact, as an extraordinary crime, sexual violence against children is a crime that violates children's human rights. Sexual violence against children is a very heinous act. The consequences are fatal and lead to the collapse of the child's future. The consequences are not only felt by the child for now, but can also be felt throughout his life. A child is a person who is still very young and should have a very broad opportunity to achieve a bright future.

Children who are victims often experience prolonged trauma as a result of these incidents. Most of them cannot forget the bad events they experienced.⁴

Castration is intended to protect children from sexual violence. The long-term goal is for children to avoid sexual violence, it should be supported, because we know that children are the nation's bud, have potential, and as a young generation to continue the ideals of the nation's struggle, their lives must be protected, both mentally and physically, soul in a physical sense. and their bodies must be protected from destruction, because if there is physical damage, how can they continue the ideals of this nation.⁵

⁴ Wahyuningsih, S. E. "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini". *Jurnal Pembaharuan Hukum*, 3 No.2, (2016): p. 172-180.

⁵ Wawancara dengan Bapak Dr Faisal, SH., M. Hum Ketua Majelis Hukum dan HAM Pimpinan Muhammadiyah Sumatera Utara.

So for this reason it is necessary to compile a legal reconstruction of regulations regarding castration criminal sanctions to protect children as victims of sexual violence by adding or replacing articles or paragraphs in Law Number 17 of 2016. Apart from that, it also protects all children as victims of sexual violence in the form of punishment or similar action against the offender.

The reconstruction carried out is inseparable from the equal rights of every child as a victim of sexual violence, and seeks to protect all children so they do not become the next victim of sexual violence.

Protecting children is a shared responsibility, not only for parents, but also for society and the state, as stated in Article 20 of the UUPA. The application of castration punishment can aim to protect children when the punishment is indeed a deterrent effect for perpetrators and for potential perpetrators as a preventive measure.⁶

Children are the hope and pillar of the nation's future that will bring this nation to compete and maintain the integrity of the national identity ordained by our predecessors. So, it's not an exaggeration if many people demand special attention for children. So that children as part of the younger generation as one of the human resources who are potential and successors to the ideals of the nation's struggle in carrying out coaching and providing protection for children, support is needed both regarding institutions and legal instruments that are more stable and adequate.⁷

2. Reconstruction of Regulations on Castration Criminal Sanctions to Protect Children as Victims of Sexual Violence Based on the Value of Justice

The high rate of sexual violence against Indonesian children should not be underestimated and considered as mere immoral cases. Because no country can deny that the biggest asset owned by a nation is the age group of teenagers and children who in the future will play a role in taking over the leadership of a nation. Therefore, in understanding the high rate of sexual violence against children, the government and society must have the same perception in tackling this sexual crime. This is important and must be a serious concern for the government, because sexual crimes that target children as victims can have a domino effect in the future, where based on the experiences experienced by victims of sexual violence, one day they have the potential to become perpetrators of sexual violence by targeting children. children in the surrounding environment as victims.⁸ This is because children are skilled at imitation.

Imitation in children is a process in which a child learns to imitate the behavior of others.⁹ For this reason⁶, so that sexual violence against children does not recur, the perpetrators must be sanctioned.

The facts show that the impact of sexual violence on victims is very serious and traumatic which can last a lifetime.¹⁰ Child sexual abuse is a tragic event that causes long-term psychological problems, including severe depression, guilt, anxiety, sleep problems, decreased academic achievement.¹¹ Sexual violence can cause children to lose their future and will easily become perpetrators of the next sexual violence.

The state as the highest and strongest organization also has a big role in protecting children's rights which is manifested by issuing regulations on providing protection for children so that there is a legal guarantee for child protection activities which will have an impact on the continuation of child protection activities.¹²

Every child has the same human rights as adults. Children have the right to obtain security and comfort in living their lives, and to be free from acts of sexual violence. Children have the right to obtain happiness all the time in their lives without any dark shadows of the past due to acts of sexual violence

⁶ Wawancara dengan Ibu Atikah Rahmi. SH., M.H. Pengurus LBH APIK Medan.

⁷ Mohammad Taufik Makarao dkk, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, Jakarta: Rineka Cipta, (2003): p 1.

⁸ Arake, L. "Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Perspektif Fiqh Siyasah". *Al-Adalah: Jurnal Hukum dan Politik Islam* 1 No. 1, (2020): p. 20-51.

⁹ Faisal, F., & Simatupang, N. "Kebijakan Nonpenal dalam Rangka Upaya Preventif Anak sebagai Korban Kekerasan Fisik dan Psikis di Sekolah". *Jurnal Ilmiah Kebijakan Hukum*, 15 No. 2, (2021): p. 287-304.

¹⁰ Ninik Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia*, Jakarta: Penerbit Buana Ilmu Populer Kelompok Gramedia, (2021): p. 15.

¹¹ Kitaef Jack, *Psikologi Forensik*, Yogyakarta: Pustaka Pelajar, (2017): p. 836.

¹² Nurjanah, S., & Sambas, N. "Penerapan Sanksi Pidana Kebiri Terhadap Pelaku Kekerasan Seksual Terhadap Anak Berdasarkan Undang-Undang Nomor 17 Tahun 2016 Tentang Perlindungan Anak". *In Bandung Conference Series: Law Studies*, 2, No. 1, (2022): p. 227-234.

they have experienced. The purpose of child protection in Indonesia is for children to grow and develop optimally. The challenge in child protection in Indonesia is realizing the fulfillment of children's rights but at the same time being able to provide protection to children from the dangers that lurk them. Among other things, by imposing criminal sanctions or punishment on the perpetrators. Punishment must be directed at maintaining and maintaining the unity of society, sentencing against perpetrators of criminal acts not only frees the perpetrators from sin, but also makes them truly noble in spirit.¹³

Sexual violence against children is a crime that violates children's rights. As a result of sexual violence experienced by children, children will be victims throughout their lives. For children who have experienced sexual violence, it will not be easy to eliminate the impact that arises as a result of the perpetrator's actions. Children will experience injuries both physically and psychologically. The psychological wounds experienced by children as victims of sexual violence are not comparable to the punishment given to the perpetrators. For the psychological recovery of children as victims, it takes a long time. So special policies are needed to tackle sexual violence against children. The policies formed should also fulfill the sense of justice that exists in society, especially children who are victims of sexual violence.

Chemical castration in Indonesia cannot be applied to all perpetrators of sexual violence against children. For this reason, it is necessary to reconstruct the regulation of castration criminal sanctions in order to protect children as victims of sexual violence based on the value of justice.

Reconstruction of regulations on castration criminal sanctions to protect children as victims of sexual violence based on the value of justice:

1) Value Reconstruction

Reconstructing the value of legal policy towards the regulation¹⁴ of castration criminal sanctions for the protection of children as victims of sexual violence is not based on the value of justice.

Article 81 paragraph (7) of Law Number 17 of 2016 stipulates that the perpetrators referred to in paragraphs (4) and (5) may be subject to action in the form of chemical castration and installation of electronic detection devices.

If the perpetrator has never been convicted for committing the act listed in Article 76D of the Child Protection Law or does not meet the criteria referred to in Article 81 paragraph (5), then the perpetrator of sexual violence against children cannot be subject to chemical castration.

The formulation of Article 81 of Law Number 17 of 2016 shows the lack of seriousness of the state in protecting children as victims of sexual violence. Apart from only prioritizing the criteria for perpetrators who have been convicted for committing the same crime or committing a repeat offence, it also shows discrimination against children as victims. Moreover, as we know that sexual violence against children certainly has the same consequences, has a very bad experience and damages their future. This is not easy to forget, even prolonged by children in their lives.

2) Reconstruction of Legal Norms

The formulation of Article 81 paragraph (7) of Law Number 17 of 2016 stipulates that the perpetrators referred to in paragraphs (4) and (5) may be subject to action in the form of chemical castration and installation of electronic detection devices.

After being reconstructed, the formulation of Article 81 paragraph (7) of Law Number 17 of 2016 is that everyone who violates the provisions referred to in Article 76D is subject to action in the form of chemical castration and installation of electronic detection devices.

Related to the absence of legal certainty regarding the regulation of parties carrying out executions of chemical castration convicts, it is necessary to emphasize that the prosecutor as the executorial party of law enforcement seeks assistance from the Indonesian Doctors Association. There needs to be an additional article in Law Number 17 of 2016 concerning parties who are given authority as¹² cutors of chemical castration.

The formulation of Article 81A paragraph (1) of Law Number 17 of 2016 stipulates that the actions referred to in Article 81 paragraph (7) are carried out during and/or after the convict has served his principal sentence. After being reconstructed, the formulation of Article 81A paragraph (1) is that

¹³ Ismail Koto. "Penegakan Hukum Terhadap Pelaku Penipuan Pembelian Secara Online (Studi di Polsek Simalungun)". *Pengabdian Pencerahan Bangsa*, 1 No. 1, (2021): p. 13-21.

the actions referred to in Article 81 paragraph (7) are carried out simultaneously with the convict serving the principal sentence.

3) Findings of New Legal Theory

The finding of the new legal theory is the theory of justice child protection, meaning that in order to provide legal certainty for the protection of children as victims of sexual violence as stated in Article 76D of the Child Protection Law, action is taken in the form of chemical castration so that the Pancasila and the 1945 Constitution are just.

Reconstruction of regulations on chemical castration criminal sanctions is carried out in order to fulfill the protection of children as victims of sexual violence, so that justice is realized for all children who are victims of sexual violence.

Chemical castration punishment is regulated to fulfill the sense of justice that exists for the victim. Efforts to create justice for children as victims of sexual violence apart from protecting children as victims, also prevent other children from becoming victims of sexual violence.

C. Conclusion

1. The regulation of castration criminal sanctions to protect children as victims of sexual violence is not based on the value of justice. The imposition of chemical castration in the Child Protection Law does not appear to provide the same justice to children as victims of sexual violence. Sexual violence against children is an extraordinary crime, and is categorized as a violation of children's human rights, which has a very fatal impact and ends in the collapse of the child's future, even dangerous for the future of the nation and the Republic of Indonesia, because children are the nation's buds which will become the pillars of the nation. the future of the nation and state of Indonesia.
2. Reconstruction of regulations on castration criminal sanctions in order to protect children as victims of sexual violence based on the value of justice needs to be carried out, which includes the reconstruction of values and the reconstruction of legal norms.

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