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RESEARCH ARTICLE

CHEMICAL CASTRATION AS PUNISHMENT FOR SEXUAL OFFENDER AGAINST CHILDREN (A DIGNIFIED JUSTICE PERSPECTIVE).

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Abstract

Efforts to combat sexual violence crimes are inevitably. They are aim at protecting the community to achieve public welfare. The existing criminal law taking a penal means. At the same time there has been other means, namely non-penal. Under the Dignified Justice Jurisprudence proposed by Professor Teguh Prasetyo, the philosophical basis for chemical castration sanctions is the issuance of Law Number 17 Year 2016 concerning the Establishment of Government Regulation in lieu of Law Number 1 Year 2016 concerning the Second Amendment to Law Number 23 Year 2002 concerning Child Protection Law. In it, it has been considered that sexual violence towards children from year to year is increasing and threatening the strategic role of children as the future generation of the Indonesian nation and state. Therefore there has been a need to aggravate criminal sanctions and provide action against perpetrators of sexual violence against children. To address the phenomenon of sexual violence against children the Law aims at a deterrent effect on the perpetrators, and preventing the occurrence of sexual violence against children. The Government needs to take some more optimal and comprehensive steps by not only providing criminal sanctions as well as implementing a form of prevention by giving actions in the form of chemical castration. With the principle of dignified justice, sanctions for chemical castration as an additional sanction for temporary imprisonment are still applicable. They are included in the normative provisions applicable in the Republic of Indonesia. Sanctions of chemical castration however must pay attention to the dignity of a better human being based on Pancasila. In the hope of the sexual offender is enable to return and accepted by the community.

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Introduction:-

The Indonesian Criminal Code (KUHP) as a governing criminal law in the Pancasila Legal System contained provisions as to make sexual violence as a crime. The contents of the Criminal Code do include sexual violence in

the Chapter on Decency Crimes. There is also a new (draft) reform¹ of 2017 Criminal Code Bill which also to include decency. Decency relates to the term good moral has its explanation in a book written by K. Sugandhi on “Criminal Code and their explanations”, as well as the book of R Soesilo.

According to R. Soesilo:

“the word 'decency' is interpreted as a sense of modesty related to sexual desire. Further as a feeling of shame associated with sexual desire. For example, intercourse, groping female breasts, groping female or male genitalia, kissing and so on. All of which are done by ‘deeds’. The destructive nature of the morality of the deed is sometimes very dependent on public opinion at that time and place”.²

From a normative methodological approach,³ this erroneous understanding will result in obscuring the fundamental problems of crime itself, namely the violation of the existence of human beings including autonomy, body integrity and selfhood. The most obvious example is legal refusal of a woman to have sex with her husband is not accepted as domestic rape (marital rape). This marital rape is an unsuitable viewed, it is not in accordance with cultural values which are also supported by religious teachings, which have positioned women as their “sexual servants”. One aspect which is described in this article is in the abovementioned view of morality the existence of children in the eyes of society is also still seen as a human being but dependent on parents so that children position becomes weak.

It is argued that crimes of sexual violence also conflict with human rights. This can be seen in the provisions of Article 4 of Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights. It states that:

The right to life, the right not to be tortured, the right to personal freedom, the mind of conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual and equality before the law, and the right human rights that cannot be reduced under any circumstances and by anyone.

It is clear that in the Article 4 of the Human Rights Law, women, men and children are protected. Moreover, the Criminal Code regulates the crime of sexual violence which is part of the crime of decency. Decency crimes in Indonesian criminal law do not explicitly regulate crimes against decency, but only regulate crimes against decency as stipulated in Chapter XIV Book II Article 281 to Article 303 of the Criminal Code.

Based on Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection (hereinafter abbreviated to Law Number 35 Year 2014, it is stated that there are two forms of violence against children, namely sexual violence and economic violence, whereas in practice that there is also the name of physical violence and psychological violence experienced by children. Law No. 35 of 2014 also regulates the protection of children and acts of violence and sanctions for perpetrators contained in criminal provisions.

Sanctions for violence perpetrators against children carried out by adults differ from sanctions for perpetrators of violence against children which are also carried out by children. Sanctions that must be accepted by adults are heavier than sanctions that must be accepted by children as violence perpetrators.

The more crimes of sexual violence that afflict victims, not only women but also children, it is time to reform the law by making new laws. The formation of national law means determining what actions are prohibited and threatened with criminality and determining what crimes are threatened, it must be understood that all of them are carried out in an effort to achieve a greater goal of achieving social welfare in this case with criminal law advice namely by preventing or overcome the occurrence of crime. According to Barda Nawawi Arief stated that:

Crime prevention policies or efforts are essentially an integral part of public protection efforts and efforts to achieve social welfare. Therefore it can be said that the ultimate goal or main objective of criminal politics is society

¹ Otto Yudianto, S.H., M. Hum., *Formulative Policy of Life Imprisonment for Indonesian Law Reform*, Cet, Pertama, Menuju Insan Cemerlang, Surabaya, 2015, p. 8.

² R. Soesilo, *Kitab Undang-Undang Hukum Pidana serta Komentar-Komentarnya*, Lengkap Pasal Demi Pasal, Politea, Bandung, 1983. p. 204.

³ Endang Prasetyawati, *Metode Penelitian Hukum*, Cet. Pertama, Untag Press, Surabaya, 2010, p. 62.

protection to achieve the society welfare⁴

Changes and developments in both actions and suggestions used. Changes and developments related to their actions are about the victims of sexual violence crimes. Victims of sexual violence crimes are not only about female sex but also men and can be about adults or children. There are sex offenders who are male or female. Crime of sexual violence is not only what is mentioned in Article 285 of the Criminal Code, namely only the relationship between marriage between male perpetrators and female victims.

The basic philosophy of chemical castration sanctions and the installation of electronic detection devices is the issuance of Law Number 17 of 2016 concerning the Establishment of Government Regulation in Lieu of Law Number 1 Year 2016 concerning the Second Amendment to Law Number 23 Year 2002 concerning Child Protection hereinafter referred to as Law Number 17 of 2016 being the Law is based on the consideration that sexual violence against children and year after year is increasing and threatens the strategic role of children as the future generation of the nation and state so that it needs to aggravate criminal sanctions and provide action against perpetrators of sexual violence against children. To respond to the phenomenon of sexual violence against children, giving a deterrent effect to the perpetrators and preventing sexual violence against children, the Government needs to take optimal and comprehensive measures by not only giving criminal sanctions or implementing forms of prevention by giving acts of chemical castration to sexual violence perpetrators against children.

Law Number 17 Year 2016 has imposed criminal sanctions for perpetrators of criminal acts of sexual violence against children. Regulated criminal sanctions are in the form of chemical castration as well as installation of electronic detection so that the movement of perpetrators can be detected after exiting and prison. Punishment is also made worse into a death sentence, a life sentence, a maximum sentence of 20 years and a minimum of 10 years in prison. Criminal sanctions for chemical castration are carried out by "injecting anti-androgen chemicals into the body through injections or pills taken. This anti-androgen function weakens the testosterone hormone so that the sexual desire of people who get injections or take drugs containing anti-androgens is reduced or will disappear altogether".⁵

Based on the positive law that applies in Indonesia so far the position of victims of crime has not received justice. More attention is only directed to the perpetrators of crime while for the victim suffers his own suffering. Even until the perpetrator is free from the punishment, it is not certain that the burden of suffering from the victim of sexual violence will immediately recover. Realistic forms of criminal regulation should pay attention to various interests that must be protected, among others, protecting the interests of the state, the public interest, the interests of individuals, the interests of the perpetrators and the interests of victims of crime. Especially the victims are children. All must be balanced.

This form of balance of interests also forms the basis for the Indonesian criminal justice system. The Criminal Procedure Code (KUHAP) regulates the whole process of proceedings in handling criminal cases by carrying out actions in accordance with the rights and authority of law enforcement officials, guaranteeing human rights for the accused/defendant and protecting witnesses/victims.

Sanctions For Chemical Castration Based On The Theory Of Justice:-

Chemical castration sanctions have been stipulated as sanctions for actions imposed along with the imposition of imprisonment. After the enactment of Law Number 17 of 2016, there is no reason for judges not to apply sanctions for such actions. Although it still has to consider special criteria so that chemical castration can be imposed on the offender who is fit to be charged in accordance with the relevant article. The application of chemical castration acts sanctions is not and will have to fulfill a sense of justice in addition to legal certainty.

Justice is one of the legal objectives which is a demand for equal rights in fulfilling obligations. This is in order to achieve happiness together. As a result to view justice, it must be looked at from the side of the perpetrators of crime and victims of crime.

⁴ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Prenada Media, Jakarta 2014, p. 4.

⁵ Supriyadi Widodo Ediyono, dkk. *Menguji Euforia Kebiri*, Gramedia Pustaka Utama Jakarta, p. 4.

Justice Based on Rights of the Offenders:-

If viewed from the human rights of the perpetrators. Article 33 paragraph (Law No. 39 of 2009 concerning Human Rights, which states that everyone has the right to be free from cruel, inhuman punishment, degrading the dignity and dignity of humanity but in the context of human rights subject to limitation theory (restriction) namely the right of the state to make restrictions on the human rights of its citizens. In Indonesia this limitation is regulated in the Constitution of the Republic of Indonesia as a result of amendments to Article 28 J paragraph 12) of the amendment: "In exercising the rights and freedoms of everyone must comply with the restrictions stipulated by law with the sole purpose of ensuring the recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society".

Sanctions for chemical castration are intended to provide a deterrent effect to sexual offenders against children, given that sexual violence against children is increasing significantly which threatens the lives of children, damages their personal lives and brain growth, and disturbs their sense of comfort, security and order. the community even said that Indonesia had experienced an emergency of sexual crimes against children.

Justice Based on Victim's Rights:-

The crime of sexual violence committed against children will have an impact on both the physical and psychological aspects of children who are victims of sexual violence crimes. Therefore the crime of sexual violence committed against children must get strict sanctions against the perpetrators. The strict sanctions are of course regulated in the laws and regulations in force in Indonesia especially criminal law. Understanding children according to Law No. 35 of 2014 concerning Child Protection is "every human who is not yet 18 years old, including children who are still in the womb".

While the understanding of children according to Law No. 39 of 1999 concerning Human Rights is "every human being under the age of 18 years and unmarried, including children who are still in the womb if it is in their interest". Children according to the understanding based on the Child Protection Act and the understanding of children according to the Law on Human Rights are the same. They must obtain legal protection, especially against crimes of sexual violence.

Many factors can cause the crime of sexual violence against children. The factor in the occurrence of the crime of sexual violence is motivated by various complex causes that are interrelated with each other. The existence of victims indirectly can also influence the occurrence of crimes of sexual violence against children. The linkages between victims and perpetrators as well as close relations and interactions that are often also one of the triggers for perpetrators of crimes against sexual violence against victims.⁶

The criminal acts of sexual violence on children have been given by law enforcement officials in accordance with their respective authorities in the criminal justice process must implement it explicitly, ranging from reports of sexual violence crimes that occur up to court decisions in law enforcement efforts. This law enforcement effort is not enough to help the child victims of sexual violence crimes, so besides enforcing it, it is imposed on the perpetrators who also carry out guidance and recovery efforts for the victims of sexual violence.

Related to Law No. 35 of 2014 concerning the protection of children. efforts to tackle the crime of sexual violence against children are considered to be still ineffective. The law ensnares the perpetrators of crimes against sexual violence against children is also an obstacle in providing legal protection. The threat of a light sentence, does not provide a deterrent effect on the perpetrator. This can be seen and the increase in the number of sexual violence crimes that occur in children.

If studied, the subsequent effects on children victims of sexual violence crimes cannot only be felt in the short term. The long-term effects of the crimes experienced by victims will also have the effect of making them perpetrators when they become adults, if the victims are not properly guided. Not only is he physically recovered but the psychology of children who are victims of sexual violence is very important. Children who are victims of sexual violence have a long future.

⁶ Yusnanik Bakhtiar, *Kekerasan Seksual Pada Anak-anak dalam Kajian Kriminologis dikaitkan dengan Implementasi Undang-Undang No. 23 Tahun 2002 tentang Perlindungan Anak*, Jurnal Perspektif Hukum, Vol. 14 No. 1 Mei 2014, p. 61-67.

The protection of the rights of victims with changes to Law No. 23 of 2002 concerning Child Protection namely Law Number 35 of 2014 as in the general explanation of the need for weighting of criminal sanctions and fines for perpetrators of crimes against children to provide deterrent effects and encouraging concrete steps to restore physical, psychological and social child victims and/or child offenders. Of course this needs to be done in anticipation of the child victims and/or child perpetrators of crime in the future not being the perpetrators of the same crime.

Child protection is any form of activity that guarantees and protects children and children's rights in order to live and grow and participate optimally in accordance with human dignity and to obtain protection and violence and discrimination. This is stated in Article 1 Paragraph (2) of Law Number 35 Year 2014. Every child must of course get protection both parents and guardians who care for him.

Child protection includes protection against discrimination, economic and sexual exploitation, neglect, cruelty, violence and abuse of injustice, and mistreatment. As a parent or guardian, of course, they must protect children who are their responsibility. But the crime of sexual violence is sometimes also carried out by people who are supposed to protect these children, such as father, uncle, brother and neighbor around the house.

Arrangements regarding victims are also listed in Article 18 of Law Number 23 of 2002 concerning Child Protection which states that every child who is a victim has the right to receive assistance and a legal advisor and other assistance. "It is the child's right to get legal assistance for criminal acts which happened to the court and also included assistance with other assistance such as psychology and doctors, parents, state, government and society also responsible for implementing article 18 of Law Number 23 of 2002 in providing protection for children.

Regarding the crime of sexual violence against this child as stipulated in article 59 of Law No. 35 of 2014 paragraph (2) letter j, namely special protection for children given to children victims of sexual crimes. In Article 59 paragraph also explained about "Government, Regional Government and other state institutions are obliged and responsible to provide Special Protection to Children. This protection is not only in the form of assistance by a legal advisor but also mentoring in the process of psychological recovery for children, so that the trauma experienced by children will not adversely affect their lives in the future.

Chemical Castration Sanctions On the Law Number 17 of 2016:-

Efforts to protect victims of sexual violence crimes include the protection and clear inclusion of identity in the mass media which is useful to avoid labeling victims. Providing guarantee of safety and protection for witnesses of victims both physically and mentally. Prevention efforts against physical and sexual violence can be carried out through efforts as stated in Article 69 of Law No. 35 of 2014. The escalation of crimes against sexual violence against children was allegedly due to the influence of social networks. Porn sites via the internet. Pornography, porno-action and hippislifestyle and all permissive lifestyle:

The lack of attention to the perpetrators of acts of violence against children and perpetrators who are still free to do their actions is proven to provide an opportunity for the rampant cases of sexual crimes against children. By implementing sanctions for chemical castration actions for perpetrators of child sexual violence, it is expected to provide a deterrent effect for the perpetrators. So that violent behavior involving children can be reduced to the lowest level in the social environment of our society.

Although the application of chemical castration sanctions also cannot guarantee the full extent of child sexual violence at the zero level. Therefore. community vigilance and the seriousness of the local authorities and social institutions to participate in the rehabilitation process and the supervision of perpetrators of crime are the main factors that must be considered. Especially strict and measurable supervision and families that play an important role in the process of preventing sexual crimes involving children.

Handling sexual violence on children who are oriented towards the victim (child) and it turns out that in the Children's Law Number 17 of 2010 there is no mention of the protection of victims and the restoration of their rights. Regulations that specifically provide the rights of victims of sexual crimes such as. Compensation, restitution, rehabilitation, medical, psychological and psychological assistance. Many parties consider that there is still a paradigm vacuum in the protection of the child itself. Where it should also strengthen psycho-social rehabilitation

for the perpetrators and victims so that they do not prey on other victims. This is also to ensure that children and other women do not become victims

Law No. 17 of 2016 must be complemented by various other efforts including integrated and sustainable prevention and treatment, including improving the quality of childcare models for every parent and family. The government should also improve legal processes such as handling cases that do not take a long time, then legal officers who have victim perspectives, friendly legal services for victims, and of course policies that use victim's point of view.

Sanctions for chemical castration that are in Law No. 17 of 2016 are not based as alternatives to criminal sanctions but as additional sanctions seen from the theory of Dignified Justice which according to Teguh Prasetyo states that Meanwhile, the law of creating a dignified society is a law capable of humanizing humans, meaning that the law treats and upholds human values according to the nature and purpose of their lives. This is because humans are noble beings as the creation of the Supreme Lord as stated in the second principle of Pancasila, namely just and civilized humanity, which has the value of recognizing human dignity and rights with all their rights and obligations and obtaining fair treatment for humans, towards yourself, the environment around and towards God.⁷

Sanctions for the act of chemical castration as an additional sanction for imposition of imprisonment sanctions that are temporary in nature are still applicable because they are included in the normative provisions that apply in the Republic of Indonesia. However, sanctions for chemical castration must pay attention to the dignity of a better human being. In the hope of being able to return to the community and be accepted by the community. The effort that must be made is the joint task of both law enforcement officials, the government and the community in accordance with the duties of their respective authorities.

The duty of law enforcers is to be careful with the responsibility to decide that the perpetrators can be sanctioned by chemical castration actions that are truly feasible and there is volunteerism from the perpetrators by hearing input and various experts especially and medicine both psychiatric and general medicine. Taking into account the perpetrators of crimes of sexual violence against children are not always perpetrators who suffer from pedophilia but also because of mere malice. The government in order to rehabilitate the perpetrator's mentality is the same as the effort to rehabilitate the victim, namely the need for adequate facilities and infrastructure in every region, including the legislation. For the community, it is necessary to change the views of both the perpetrators and victims of sexual violence. Their acceptance back to the community if the perpetrator has undergone criminal sanctions is the power to become a complete human being.

Conclusion;-

With the principle of justice, the sanction of chemical castration acts as an additional sanction for temporary imprisonment is still applicable because it includes normative provisions in force in the Republic of Indonesia, but sanctions for chemical castration must pay attention to the dignity as human beings better. With the hope of being able to return to the community and be accepted by the community The duty of law enforcement officials with the responsibility to decide that the perpetrators can be sanctioned by chemical castration actions is truly feasible and there is volunteerism from the perpetrator by hearing input from various experts, especially from medicine both psychiatric medicine and general medicine. Taking into account the perpetrators of crimes of sexual violence against children are not always perpetrators who suffer from pedophilia but also because of mere malice.

It is suggested here that the Government must see the importance of changes to Law No. 17 of 2016. The Law No. 17 of 2016 stipulates that those who decide on chemical castration sanctions are judges who should imposed sanction in the form of chemical castration based on the content of the perpetrators. If the offender choses to accept the chemical castration treatment, it will be count in reduction of their imprisonment criminal sanctions. The chemical castration sanction is an additional criminal sanctions. This is in line with the protection and regards of the perpetrators of human rights and also supported by the dignified justice: i.e., in accordance with the philosophy of the Pancasila

⁷ Teguh Prasetyo, *Hukum dan Sistem Hukum Berdasarkan Pancasila*, Media Perkasa, Yogyakarta, 2014, p. 93; See also Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum*, Cetakan Pertama, Nusa Media, Bandung, 2015.

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