

RELEVANCE OF PANCASILA JUSTICE VALUE IN THE IMPLEMENTATION OF CHEMICAL CRIMINAL SANCTIONS ON SEXUAL CRIMINAL PERSONS

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ABSTRACT

In its development every person in the country of Indonesia has the right to live free from torture and sexual crimes, therefore sexual crimes are damned and heinous acts which must be resisted. All this time, resistance to sexual violence has been carried out by all parties under the existing legal umbrella, including Perpu No. 1 of 2016, namely through the implementation of chemical castration sanctions, but in reality it has not been effective in eradicating sexual crimes. In addition, the existing castration chemical sanctions are also felt to have violated the human rights of perpetrators of sexual crimes, whereas the actual law only restores the social system of existing crimes by not violating the human rights of all parties, both victims and perpetrators.

The purpose of the research in this article is to analyze the formulation of castration sanctions policy policies on the perpetrators of the crime of child sexual violence in Indonesia at this time. to analyze castration criminal sanctions against child sexual violence offenders in Indonesia who have not met Pancasila values. To find the right formula for reconstructing criminal sanctions on perpetrators of child sexual violence in Indonesia based on Pancasila values. The method used in this article is sociological juridical.

From the results of the research carried out it can be concluded that the implementation of Article 81 PERPU Number 1 Year 2016 has not effectively protected and been able to recover victims of sexual violence. Then the factors that influence this are legal regulations that are still contrary to human rights respect as stipulated in the Pancasila and the 1945 Constitution of the Republic of Indonesia, then law enforcement factors that still do not pay attention to the recovery of children who are victims of sexual violence, and factors community culture that is still unable to effectively combat sexual violence against children due to a culture that considers sexual violence against children a family disgrace that no one should know.

Keywords: Crime, Pancasila Justice Values, Relevance, Criminal Crimes Chemistry

A. Background

In its development, children are the next generation of the nation which will become the development capital to maintain, maintain and develop the results of existing development. Therefore children need special protection and attention in order to guarantee physical, mental and social growth and development as a whole, harmonious and balanced. This special protection and attention should not only be given by the government and parents

but also all members of the society are also expected to be able to play an active role in protecting and protecting the rights of children.

Based on data from victims of sexual crimes against children, it has increased every year. Director of the Solo Kaka Foundation, Shoim Sahriyati, explained that this increase reached 15 percent every year. In 2017 there were 33 victims of 23 cases and from 2018 to November 2018 there were 37 cases. Victims of this

sexual crime, on average are still aged 13-15 years. Besides this the trend of sexual crimes is also shifting. Previously most victims of sexual crime were from high school (SMA) children, but now there are many victims who are still in junior high school.¹

In its development in order to eradicate sexual crimes in order to provide a deterrent effect to the perpetrators, President Joko Widodo has issued Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection. The increase in the amount of violence that led to the safety of children's lives was one of the reasons the president issued a Perppu. Although reaping the pros and cons of Government Regulation in Lieu of Law (Perppu) Number 1 Year 2016 concerning the Second Amendment to Law Number 23 Year 2002 concerning Child Protection (Perppu Kebiri) finally officially signed by President Jokowi.²

As appeared in the public sphere, that Kebpu Kebiri contains death penalty threats and announcements of the perpetrators' identity as well as chemical castration actions and the installation of a presence detection device (chip) against the perpetrators. Officially valid since it was signed by President Jokowi. In line with the enactment of Perppu Kebiri, it still cannot be separated from the accompanying problems.

The issue of the Perppu Procedure is a type of statutory regulation that constitutionally reflects executive power to overcome a condition of "compelling urgency". Constitutionally, 'coercive urgency' is regulated as a form (variant) of emergency conditions that are very

1 Labib zamani, Cases of Sexual Crimes Against Children Increases by 15 Percent, <http://solo.tribunnews.com/2016/12/04/kasus-kejUHAN-sexual-terhadap-anak-anak-meningkat-15-persen>, accessed December 29, 2016

2 Anonymous, castration turtle <https://m.tempo.co/read/news/2016/05/24/063773634/perpu-kebiri-hukum-k> Violence-sexual-tak-segalak-regular; accessed 29 December 2016

likely to be experienced by Indonesia, in addition to 'conditions of war' and 'other danger states'.

Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "In the case of compulsive matters of concern, the President has the right to stipulate government regulations in lieu of laws". This provision is a subjective right of the President in conditions of abnormal state administration (noodverordeningrecht) to act quickly, precisely, and measured so that the safety of the state can be guaranteed, but theoretically reminded, the expansion of the understanding of "coercive urgency" must be carefully considered because if done without restrictions, the Perppu will become an instrument of dictatorship in administering the country.³

The main subject to be regulated in the Perppu Kebiri is basically the imposition of criminal threats for perpetrators of sexual crimes against children on the empirical grounds that the conviction has not been able to provide a deterrent effect and has not been able to comprehensively prevent the occurrence of sexual violence against children, whereas in the Act Number. 35 of 2014 concerning the protection of children has set a specific minimum criminal threat and a one-third heavier burden in the event that the crime is committed by parents, guardians, child caregivers, educators, or education personnel so that based on Law Number 35 of 2014, the heaviest criminal which can be dropped by the judge against the perpetrators of sexual crimes against children is a maximum imprisonment of 20 years.

In the Perppu Kebiri the existing criminal threats want to be heavier so that the Perppu includes the threat of capital punishment, life imprisonment, as well as an increase in the specific minimum criminal threat from the previously 'maximum of 5 years in prison' to 'the maximum of 10

3 Anonym, this is the subject matter of perpu castration, <http://m.hukumonline.com/berita/acr/it5746c49a7e9de/ini-materi-pokok-perppu-kebiri>, accessed 29 December 2012

years in prison'. In addition, there are also additional criminal threats in the form of announcements of the perpetrators' identity and the most controversial is the idea of granting actions (maatregel) in the form of chemical castration and the installation of detection devices (chips) to the perpetrators.

Some of the potential problems that will arise based on the existing criminal concept in the Perpu are the first, the addition of the types of criminal offenses that can be threatened with capital punishment in legislation in Indonesia will certainly become the spotlight of the international community (particularly the Commission on Human Rights of the United Nations - Nations) which in each of its campaigns always encourages member states of the United Nations (including Indonesia) to eliminate or at least reduce the threat of capital punishment in its domestic legislation system. Second, the threat of imprisonment with a special minimum pattern (10 years imprisonment) will certainly be faced with the philosophy of the freedom of judges to drop the criminal. With the existence of a special minimum criminal threat (10 years imprisonment), Indonesia implicitly states that sexual crime against children is one of the crimes with the highest degree of reproach (*verwijtbaarheid*) as the gross violation of human rights as regulated in Law Number 26 of 2000 regarding Human Rights Courts, because other crimes in Indonesia (even including corruption, terrorism, and narcotics) do not include a specific minimum criminal threat that causes judges not to impose a sentence of less than 10 years imprisonment against perpetrators. Third, according to Ted Honderich, the regulation on chemical castration and the installation of a presence detection device (chip) to the perpetrators who are set as an action (maatregel) shows that the understanding of the separation between criminal concepts (*straf*) and actions (maatregel) in the sanctions system is 'two lane' (double track system). Castration (castration) with

any method if linked in the context of sanctions is very far from the philosophy of rehabilitation which is a justification of giving an action (maatregel) for the perpetrators of a criminal offense, but instead it is closer to one of the criminal justifications (*straf*) namely the concept of 'paralysis' (incapacitation) oriented to eliminate the ability or potential of the offender to repeat the crime. Likewise, the installation of chips that are carried out after the perpetrators undergo the crime will only cause the perpetrators to experience a 'double sentence' and instead become an implicit recognition of the state that the penal system for perpetrators of sexual crimes against children fails to 'cure' the perpetrators. Fourth, the position of chemical castration, both if it will be regulated as a type of criminal (*straf*) and action (maatregel), is also very vulnerable if it is 'dealing' with the principles of the constitution because even though Article 28J of the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia allows limitations Human Rights based on the law, but according to article a quo,⁴

In connection with the foregoing, the writer is interested in doing a legal reconstruction of the government policy that has produced the Perpu Kebiri. For this reason, the researcher will analyze the conception of law towards government policies comprehensively related to the things described above so that in this paper will contain the title "**RELEVANCE OF PANCASILA JUSTICE VALUE IN THE IMPLEMENTATION OF CHEMICAL CRIMINAL SANCTIONS ON SEXUAL CRIMINAL PERSONS**".

B. Issues To Be Discussed

The issue that will be discussed in this article is related to the implementation of castration chemical crimes at this time.

C. Research purposes

This study has the following objectives:

⁴ *Ibid.*

1. To analyze the formulation of castration criminal sanctions policy on the perpetrators of the crime of child sexual violence in Indonesia at this time.
2. To analyze castration criminal sanctions against child sexual violence offenders in Indonesia who have not met Pancasila values.
3. To find the right formula for reconstructing criminal sanctions on perpetrators of child sexual violence in Indonesia based on Pancasila values.

D. Research methods

The method used in this writing is the sociological juridical method, where the writing of this article besides using the analysis of legal regulations also uses the analysis of legal sociology.

E. Discussion

1. The Implementation of Chemical Castration Crimes in the Current Case of Sexual Violence Against Children in Indonesia

In its development Article 81 PERPU Number 1 Year 2016 Second Amendment to Law Number 23 Year 2002 concerning Child Protection is contrary to the mandate of the Pancasila. This can be seen from the various values behind the birth of Pancasila. The following will explain the disharmony between the value of Pancasila and Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection:

1) The Precepts of Godhead

The God Value that is contained in the first principle of Pancasila is basically a moral foundation in the life of the nation and state in order to realize the God morality in this country in the framework of the concept of mutual cooperation as what was first called out by Soekarno. This is consistent with the view of Yudi Latif who stated "God in the Pancasila framework is an attempt to find a common ground in the spirit of mutual cooperation

to provide a strong moral foundation for political life based on God morality."⁵This is realized by protecting the security of every human being in Indonesia regardless of a religious identity. Based on the various explanations above, it is clear that the imposition of sanctions as regulated in Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection has a great opportunity to violate the value of the first principle of Pancasila, This is because Article 81 paragraph (7) of PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection may cause chemical castration convicts to have health impacts and also have the potential to be subjected to perpetrators of sexual violence committed by children and teenagers. This clearly violates the inner or mental side as well as physical health, or violates the religious as well as the material side, or which is also called violating the ukhrawi and worldly aspects, by borrowing the term from Kuntowijoyo, it can also be stated that Article 81 paragraph (7) PERPU Number 1 Year 2016 violates the *loro-lorone atunggal* principle. So that the implementation of Article 81 paragraph (7) of PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection will only disrupt the principle of life balance, especially for those who are subjected to chemical castration sanctions.

2) The Precepts of Humanity Are Fair and Civilized

The concept of human responsibility in realizing the value of Fair and Civilized Humanity must also be based on fulfilling its obligations and responsibilities to human beings and to nature as explained earlier by Hatta. So it can be said also that the responsibility for fulfilling the values of Fair and Civilized Humanity is also carried out in the horizontal relationship of humans with fellow humans and nature. This in

⁵ Loc, cit.

Islam is known as the concept of *hablum minallah* and *hablum minannas*. *Hablum minallah* means human relationship with Allah SWT. While *hablum minannas* is the relationship between humans and fellow human beings.⁶The implementation of Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Protection of Children basically violates the value of humanity or human rights (HAM) from convicted castration chemists. This clearly also violates the mandate of the divine value. That is because Article 81 paragraph (7) PERPU Number 1 of 2016 is a form of failure of the implementation of God's mandate to carry out justice and protect the human rights of all groups and all aspects of the life of the Indonesian people. So it is clear that violating the second precepts is the same as violating the first precepts and vice versa also violating the first precepts are the same as violating the second precepts of Pancasila.

3) People's Precepts Are Led By Wisdom / Wisdom In Representative Consultation

Philosophical aspects can be seen that the Indonesian nation is a godly nation, it requires that the Indonesian people always have to carry out the mandate that comes from God, that mandate is to create justice by respecting and protecting human rights and the dignity and human dignity of all groups in Indonesia. This is done by strengthening the national spirit inside and outside the country, for this it requires the sovereignty of the people and family in the context of national and state life. In short, the value of God can run well if it is realized through the value of Civilized Humanity, the National Value is included in it through popular democracy based on the values of Family and Mutual Cooperation. Without the people's sovereignty and family values in Indonesia, the value of unity or nationality will not be

⁶ Mustari Mustafa, *Religion And Ethical Shadows* Shaykh Yusuf Al-Makassari, LkiS Cemerlang Printing, Yogyakarta, 2011, p. 161.

realized because the existing government based on the interests of a group alone is not based on the interests of the nation fairly and comprehensively. This clearly will result in violation of various human rights or human values in this country which will automatically violate many moral teachings of religion and the mandate of the value of God.⁷So, than that, a model of social democracy or popular sovereignty is needed, in which the greatest power of the state is under the people's hands, either directly or represented. Based on the various explanations above, it is also clear that Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection also has the opportunity to create a legal system that is not adaptable, it is not in accordance with the democratic system people who want the realization of social justice for all Indonesian people through a government that is able to realize a legal system that is socially just and humane.

4) Sila Social Justice For All Indonesian People

Based on the three precepts above, it can be seen that each precepts of Pancasila actually aims to give birth to justice for all groups of people in all aspects of their lives both socio-cultural, economic, political, and legal. In terms of the law itself, the Fifth Precepts of Pancasila requires that there is no selective legal treatment, the law is required to be fair to every class of Indonesian people, meaning that the law is demanded to be able to protect the rights of every person in his life as a member of the community. Related to the implementation of Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Protection of Children, the law has the opportunity to cause injustice to those convicted of cases of sexual violence against children, this can be seen from the health aspect as

⁷ Yudi Latif, *Plenary State, Historistas, Rationality, and Actuality of Pancasila*, PT. Gramedia Pustaka Utama, Jakarta, 2011, p. 56 and 414.

explained above. This problem can clearly potentially also violate the principle of 1) populist or people's sovereignty; and 2) deliberation or kinship as contained in the Fourth Precepts of Pancasila.

Based on the explanation above it is clear that Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection is contrary to the principles of public welfare, social justice, and the Godhead of the Almighty, Just Humanity and civilized, Indonesian Unity, and Democracy Led by Wisdom Wisdom in Consultative / Representative as concluded firmly in the Fourth Paragraph of the Opening of the 1945 Constitution of the Republic of Indonesia.

Furthermore besides contradicting the First, Second, Fourth, and Fifth Precepts of the Pancasila and the Fourth Paragraph of the Opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia, Article 81 paragraph (7) PERPU Number 1 Year 2016 concerning Second Amendment to Law Number 23 Year 2002 concerning Child Protection also violates Article 28D number 1, Article 28G number 1 and number 2, and Article 28I number 1 of the 1945 Constitution of the Unitary State of the Republic of Indonesia. Article 28D number 1 of the 1945 Constitution of the Unitary State of the Republic of Indonesia is declared that "everyone has the right to recognition, guarantees, protection and certainty of law that is fair and equal treatment before the law."

Furthermore Article 28G number 1 of the 1945 Constitution of the Unitary Republic of Indonesia states that:

Every person has the right to protect themselves, family, honor, dignity, and property under his authority, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right.

Then Article 28G number 2 of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that "everyone has the right to be free from

torture or treatment that demeans human dignity and is entitled to political asylum from other countries." Furthermore Article 28I number 1 of the 1945 Constitution of the Unitary Republic of Indonesia states that:

The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a retroactive law are non-human rights can be reduced under any circumstances.

Based on the various explanations above, it can be stated that the provisions as regulated in Article 81 paragraph (7) PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection violates the right to a reasonable life and the right to be free from torture. Chemical castration as regulated in Article 81 paragraph (7) PERPU Number 1 Year 2016 concerning Second Amendment to Law Number 23 Year 2002 concerning Child Protection can basically cause physical and mental torture due to side effects as explained above, this clearly has violated the right to life and the right to be free from torture.

2. Factor-Factor Which Affects the Effectiveness of the Implementation of the Chemical Castration Criminal in Combating Sexual Violence in Indonesia

Based on the various explanations above, it is clear that the effectiveness of the implementation of a legal regulation is based on factors in the form of 1) Legislation; 2) Law enforcement; and 3) community culture. This also applies to the implementation of PERPU Number 1 of 2016 jo. Law Number 17 of 2016. The following will be discussed further related to various factors that influence the implementation of PERPU Number 1 of 2016 jo. Law Number 17 of 2016. The factors that influence the effectiveness of the implementation of PERPU Number 1 of 2016 jo. Law Number 17 of 2016, namely:

1) Law Enforcement Factors

When looking at the law enforcement factors, it can be seen that PERPU Number 1 Year 2016 jo. Law Number 17 Year 2016 Regarding the Second Amendment to Law Number 23 Year 2002 concerning Child Protection experiences one of them due to various weaknesses in PERPU Number 1 of 2016 jo. Law Number 17 Year 2016 Regarding the Second Amendment to Law Number 23 Year 2002 concerning Child Protection. In addition, human resources and the facilities and pre-facilities of law enforcement also affect the ineffectiveness of PERPU Number 1 Year 2016 jo. Law Number 17 Year 2016 Regarding the Second Amendment to Law Number 23 Year 2002 concerning Child Protection.

Furthermore, based on data obtained by researchers in the field, it appears that some law enforcers disagree with the existence of Article 81 PERPU Number 1 of 2016 jo. Law Number 17 Year 2016 Regarding the Second Amendment to Law Number 23 Year 2002 concerning Child Protection on the grounds of adverse health effects for chemical castration convicts. The following is a table related to data on law enforcement views on the implementation of Article 81 PERPU Number 1 Year 2016 jo. Law Number 17 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Protection of Children in terms of the health of perpetrators of sexual violence crimes:⁸

Table 1: Law Enforcement Views on Chemical Castration Sanctions in the Health Aspect of Sexual Violence Actors

No	Law Enforcement Officials	Yes	Not	Etc	amount
1	Judge	3	1	1	5
2	prosecutor	4	2	-	6
3	Police	5	-	3	8
4	Advocate	5	2	3	10

⁸ Quantitative Research Results in the Central Java Prosecutor's Office, the Central Java High Court, and the Semarang District Police Station, the study was conducted on 20 June 2018.

Based on the table above, it can be seen that 17 out of 29 law enforcement officers who are respondents in this paper are of the view that chemical castration actions can adversely affect the health of the perpetrators, because the perpetrators will feel the impact of chemical castration injections in the form of early bone loss (osteoporosis), up to the risk of heart disease. And the perpetrator will lose his future just like the victim. While the other 5 people are of the view that the chemical castration action does not risk having a bad impact on the health of the offender because the effect of the chemical castration injection is only valid for a moment and when the injection is eliminated then the effect of the injection can also be lost. And the rest 7 respondents have their own views on this matter.

2) Community Culture Factors

The culture of victims who are afraid to report to law enforcement because they consider the issue of sexual violence is a shame or a family problem that is taboo known to the general public, resulting in Article 81 PERPU Number 1 of 2016 jo. Law Number 17 Year 2016 Regarding the Second Amendment to Law Number 23 Year 2002 concerning Child Protection cannot run properly. In addition, an increase in cases of sexual violence against children arises due to economic problems.

F. Conclusion

Based on the various explanations above, it is clear that the implementation of Article 81 PERPU Number 1 Year 2016 has not effectively protected and been able to restore children victims of sexual violence. Then the factors that influence this are legal regulations that are still contrary to human rights respect as stipulated in the Pancasila and the 1945 Constitution of the Republic of Indonesia, then law enforcement factors that still do not pay attention to the recovery of children who are victims of sexual violence, and factors community culture that is still unable to effectively combat sexual violence against children due to a culture that considers

sexual violence against children a family disgrace that no one should know.

G. Suggestion

Need for reconstruction from PERPU Number 1 Year 2016 jo. Law

Number 17 Year 2016 related to the provisions on chemical castration sanctions, both in terms of the formulation of legal regulations and the system of imposing sanctions that must be more just as explained above.

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