

The Right for Victims and Sexual Offender: A Comparative Study

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ABSTRACT--Article 10 of the Indonesian Criminal Code, explains the types of sanctions. However, Article 103 of the Indonesian Criminal Code provides space for regulations governing the types of sanctions outside it. One type of sanctions that is relatively new in Indonesia is the castration chemical sanctions. These sanctions are regulated in Law Number 17 of 2016. The first case that imposed chemical castration sanctions in Indonesia was a case committed by Muh. Aris (20 years), he committed the crime of rape of 9 children in the Mojokerto, East Java, Indonesia. The prosecutor charged with imprisonment and fines, but by the judge the sanctions were added to the chemical castration sanctions. The problem that arose later was according to the Indonesian Doctors Association violated the code of ethics, so that no one doctor who joined the Association wanted to carry out the execution of the judge's decision. On the other hand problems also arise because law number 17 of 2016 does not yet have government regulations. This unclear regulation can result in the right to justice both for victims and Offender. Therefore, this paper uses normative juridical studies to raise the issue of how the implementation of the controversial the chemical castration sanction. And using a comparative study of chemical castration sanction from several countries.

Keywords: sanction, controversial, sexual and chemical castration

I. INTRODUCTION

Sanctions are an attempt by the state to achieve the objectives of the law. With the existence of a sanction it shows the nature of the Law that is having a forced power. Based on Black's Law Dictionary *Seventh Edition*, sanction are: "A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)". In criminal law sanctions are called penalties, according to R. Soesilo, Punishment is "An uneasy feeling (miserable) which is imposed by a judge with a verdict on someone who has violated the criminal law laws".

Sanctions apply to any crime. An important part of the penal system is to set sanctions. As an effort to uphold the norm, the existence of a sanction needs to be based on criminal considerations. However, the criminal system is not an easy thing, because a criminal system has a

complex relationship to the involvement of various parties in this case many people and many institutions.

Criminalization can be interpreted as the stage of determining sanctions and the stage of giving sanctions in criminal law. As Sudarto's opinion that the granting of criminal sanctions in abstracto is to establish a set of criminal sanctions related to the formation of the law. Whereas the granting of criminal acts in concreto concerns various bodies which all support and implement the legal sanction set.

With regard to the implementation of a sanction, the judge giving the decision needs to consider the implementation of the sanction, so that inequality will not occur in the case of the implementation of the sanctions provided.

Regarding sanctions, G.P Hoefnagels even gives broad meaning. It is said that sanctions in criminal law are all reactions to violations of the law that have been determined by the law, starting from the detention of the suspect and the prosecution of the defendant until sentencing by the judge. Hoefnagels saw the criminal as a time process in which the whole process was considered a crime.

The opinion of Sudarto and Hoefnagels emphasized that the problem of sanctions in criminal law is a set of policies that are in a system. As a system it cannot be said that each stage of criminal giving can stand alone, but are interrelated and cannot even be separated at all.

So when it is connected with all criminal systems, the determination of sanctions which is essentially the authority of several agencies. So it can be analogized that the fall of the stage of punishment from one institution to another, must be like mountain water that flows in an orderly manner that is beautiful despite disparities.

Criminal disparity is inevitable at all, because it involves the issue to the extent to which it is an inevitable obligation of judges to consider all elements relevant to an individual's case regarding his conviction. Because disparity does not automatically bring an unfair gap, neither does equality in criminal justice, nor does it automatically bring the right criminal.

The elaboration of the concept of sanctions as described previously when related to the Case that occurred in Aris (20) Youth from Mengelo Hamlet, Sooko Village, Sooko District, Mojokerto Regency, East Java,

based on the Surabaya High Court's decision number: 695 / PID.SUS / 2019 / PT SBY dated July 18, 2019 in which the perpetrators must undergo a sentence that has been inkrah namely 12 years imprisonment and chemical castration.

For the 12 year sentence, this sanction is not a new type of sanction in Indonesian criminal law. Even the existence of these sanctions is also regulated by Article 10 of the Criminal Code. However, what is interesting about this decision is another type of sanction set by the judge and must be served by Aris, namely the Chemical Castration Penalty.

Chemical castration sanctions are one of the new types of sanctions in Indonesia, by which they are not included in the types of sanctions in article 10 of the Criminal Code, as it is known that the existence of the Criminal Code in Indonesia adopted from Weetboek Van Strafrech has more than a century old. Chemical castration sanctions are indeed a new thing in Indonesia. Regulations that include chemical castration as a type of sanction are Government Regulations in lieu of Law (Perppu) Number 1 of 2016 concerning Child Protection.

At a glance this sanction seems like there is no problem, in fact many support the need for chemical castration sanctions on perpetrators of sexual violence against children. It must be understood that the implementation of a sanction starts from the existence of the principle of legality which justifies the sanction can be implemented. Then the guidelines for implementing the sanctions. As explained earlier that sanctions are a unit of the criminal system, the execution of sanctions will naturally require collaboration with related units.

Back to the case of Aris, a 20-year-old young man who committed a crime of sexual violence against children, not just one person but 9 children, which prosecutors demanded confinement and fines, but by the judge was decided with a 12-year jail sentence and a fine of Rp. 100 million Rupiah and chemical castration.

An interesting sanction to discuss is the judge's decision to impose chemical castration sanctions on Aris, which also does not have implementing regulations.

The decision has been inkrah, so it must also be implemented. The chemical castration imposed by the judge was the first time this sentence was applied in Indonesia. Hopes for a deterrent effect on the actions of rape 9 children inojokerto are certainly very expected. With the fall of chemical castration, it makes the state's seriousness to tackle the crime of sexual violence against children, which has been judged to be equivalent to other extraordinary crimes such as drugs, terrorism and corruption.

The courageous action taken by the judge handed down the chemical castration decision needs to be appreciated. The Mojokerto District Court was later also strengthened by the Surabaya High Court expressly carrying out the mandate of this Law. As it is known that in addition to the death penalty and life imprisonment, also additional punishment is castration chemical.

However, a problem then arose, namely with the attitude of the Indonesian Doctors Association (IDI) East Java who refused to run the chemical castration should be considered a way out. One-sided castration of chemical castration must be implemented because it is an order of the law, even the status of the decision has been Inkrah and castration of chemical is one of the state's efforts to provide real protection for children.

Since the emergence of castration chemical sanctions, not only raises the pros but also raises the cons of various parties. Some parties agree because it can create a deterrent effect for the perpetrators but on the other hand those who refuse for humanitarian reasons. castration chemical law already has a legal umbrella regulated in Article 81 Paragraph (6) and Paragraph (7) of Law Number 17 of 2016 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes a Law.

The judge's verdict regarding chemical castration on inmates of molestation in Mojokerto was highlighted by the National Commission on Human Rights (Komnas HAM). The National Commission on Human Rights even said that the sentence indicates a setback in criminal governance in Indonesia. Even the notion that castration punishment does not guarantee the offender will be deterred. He gave an example, if in the past why did it continue to change from such physical punishment to a prison sentence, because it was previously thought to not cause a deterrent effect. In fact, according to the National Human Rights Commission in the past there were even people committing crimes in the sun, slashed, given salt water. Did crime also go down, no. In fact we have to learn, instead we have to learn a lot in other parts of the country where law enforcement is more advanced, for example in Europe. People in Europe also have reduced prisons, why is it because the criminal punishment model has changed and legal awareness has also changed? The issue of legal awareness is not a matter of governance or punishment.

The controversy arising in the community as well as prominent figures such as Minister Yohana, the House of Representatives who supported the Chemical Castration Penalty, while from the IDI and Komnas HAM contra against this sentence, need to be remembered that the Aris (20) case court ruling has been invalid then it is obligatory to implement the ruling. Consideration of legal certainty to provide justice to victims and perpetrators of the outcome of the decision must still be carried out, but once the obstacle is that the method of implementing the decision becomes polemic, it is not wrong to compare with several countries as a form of seriousness in handling and implementing the criminal justice system. against chemical castration sanctions. Therefore, in this article focus on International Comparative Study : The Right To Justice For Victims And Sexual Offender Of Controversial Sanction focus on the issue of legal justice

obtained by perpetrators and victims of the implementation of controversial sanctions namely castration chemical sanctions.

II. RESEARCH METHOD

This research uses the normative juridical method, the concept approach uses library legal materials. The concept of justice in question is the existence of legal certainty, so that legal certainty for perpetrators and victims of sexual violence can give them status. The normative juridical approach processes literary concepts and theories. In addition, an international study was carried out through a comparative legal approach in several countries towards the object of study, namely the implementation of chemical castration sanctions.

III. FINDINGS AND DISCUSSION

Sexual violence is all forms of sexual threats and coercion. In other words, sexual violence is unwanted sexual contact by one party. The source of the emergence of sexual violence against children according to Sigmund Freud that every human being has a libido (lust) which always demands to be acted upon. However, the demand to release libido which is lodged in the human body cannot always be realized by humans, the cause is due to the existence of social norms, such as religious norms, decency and law. Within these social norms, what conditions apply to channel libido that always demands to be released are regulated.

Legal norms regulate how old people can have sexual relations or in the norms of decency and politeness regulated by people not to show their lust through body language in front of others who are not their wives, or in religious norms it is regulated that new people can have sexual relations if he has officially married a partner. who is already an adult.

Libido is thus trapped in the human body, and he is always struggling to vent. Because humans cannot bear to imprison libido that is always struggling, the action taken by humans is to compensate for it in the form of other social interactions, for example doing sports, learning, working, entering into political organizations, making associations and other activities which is oriented to divert or compensate / channel libido that always demands to be acted upon. A transfer like this that does not have intercourse is called a positive transfer.

To shift libido in a positive direction, social norms alone are not enough, there must be a strict collective control of the community over the behavior of all people in the local environment. This is accompanied by strict and strict control over the implementation and compliance of existing social norms. If this strict control is not done, it will open up the possibility of negative libido transfer

can occur. This type of negative transfer is referred to as sexual violence. If this happens then it is children who are very vulnerable to sexual violence from adults.

Departing from Sigmund Freud's thought, it can be understood that the source of sexual violence is rooted in the absence of collective control over individual actions, enforcement and compliance with social norms that already exist or have been created by local communities.

The rise of acts of violence against children, especially sexual violence in the year 2000, prompted the community to give impetus to the phenomenon. Cases of sexual violence such as rape by the victim's family or close victims, sodomy, pedophilia, child trafficking to be exploited as commercial sex workers until the killings are publicized through the electronic and print media made the community furious and asked the state to act.

In response to the reaction from the community, in 2002, the Indonesian state issued Law Number 23 of 2002 concerning Child Protection. Sexual violence against children is a serious crime (serious crimes) that is increasing from time to time and significantly threatens and endangers the lives of children, damages the child's personal life and growth and development, as well as disrupts a sense of comfort, peace, security, and public order. Law Number 23 Year 2002 concerning Child Protection as amended by Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection has provided criminal sanctions for perpetrators of sexual violence against children, but the conviction has not provided a deterrent effect. and have not been able to comprehensively prevent the occurrence of sexual violence against children.

To overcome the phenomenon of sexual violence against children, give a deterrent effect on perpetrators, and prevent sexual violence against children, the Government needs to add to the main penalties in the form of capital punishment and life imprisonment, as well as additional penalties in the form of announcing the identity of the perpetrator. In addition, it is necessary to add provisions regarding actions in the form of chemical castration, installation of electronic detection devices, and rehabilitation. Based on the above considerations, the Government needs to immediately stipulate Government Regulation in Lieu of Law on the Second Amendment to Law Number 23 of 2002 concerning Child Protection.

Law Number 23 Year 2002 concerning Child Protection has been amended through Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection, which one of the changes focuses on the imposition of criminal sanctions against perpetrators of sexual violence against children. However, changes to the law have not significantly reduced the level of sexual violence against children. Therefore, the State needs to take optimal and comprehensive steps by not only providing criminal sanctions, but also implementing preventive measures by providing chemical castration, installing electronic detection devices, and rehabilitation for perpetrators of sexual violence against children. To address the phenomenon of sexual violence against children, provide

a deterrent effect on perpetrators, and prevent sexual violence against children, the President has enacted Government Regulation in Lieu of Law Number 1 Year 2016 concerning Second Amendment to Law Number 23 Year 2002 concerning Child Protection May 25, 2016.

The birth of this regulation presents one of the new sanctions in the world of criminal justice system in Indonesia. One of the sanctions that were born was chemical castration sanctions. With regard to several cases of sexual violence in Indonesia, one case that occurred in Mojokerto, East Java in 2019 has practiced the use of sanctions. A 20-year-old man on behalf of Aris who was determined by both the District Court and the High Court to undergo castration criminal sanctions. This sanction was born on the consideration of a judge in which the perpetrators raped 9 children.

The meaning of castration sanctions is as follows, that criminal sanctions are characteristic of criminal law, which is a means to maintain or restore human values and a sense of justice. Sanctions are a legal consequence (*rechtgevolg*) due to violation of a norm and a guarantee for compliance with a norm.

While castration namely castration (also called castration or castration) is a surgical procedure and / or use of chemicals that aim to eliminate testicular function in males or ovarian function in females. Castration can be done either on animals or humans. Castration is usually done by physical surgery that is by cutting the genitals permanently. As knowledge increases castration action is done by injecting chemicals that are injecting anti-testosterone or anti-androgen substances into the male body to reduce levels of the hormone testosterone, which is mostly produced by *lydig* cells in the testicles, the entry of anti-testosterone causes arousal sex of a man decreases.

From the example of the application of castration chemical action in the state of California, United States, as explained above. Proven chemical castration is indeed effective in providing a deterrent effect for offenders who commit sexual violence against children. But in Indonesia itself since the first PERPPU No. 1 of 2016 was published, related to this chemical castration action until now there are still many controversies, especially for the executor in the implementation of chemical injections. Because in the process of castration chemical action must also involve the medical profession in the medical field. The Indonesian Doctors Association (IDI) has also issued a statement not willing to carry out the execution of chemical castration actions. IDI also appealed to its members not to carry out the process of chemical castration actions against a pedophile, even if it was a legal order. IDI believes that the chemical castration process is an act that damages human organs and is

clearly contrary to doctor oaths and is a violation of medical ethics.

From the perspective of human rights themselves, they postulated that the chemical castration process was an act of physical torture and reduced the function of human organs, and that was clearly a form of violation of human rights. According to Komnas HAM Commissioner Natalius Pigai, the right to life of a person must not be reduced or limited by law. He even said that the reason was not merely pro against the perpetrators who had intercourse with children, but rather emphasized the humanitarian aspects in human rights. He also continued to give empathy to victims who were targeted by perpetrators of sexual violence against children. Some legal experts also argue that PERPPU No. 1 of 2016 as stipulated in Law No. 17 of 2016 was born is a reactive attitude of government, without conducting a comprehensive study or study. Before the policy making, our government should conduct a deeper study or study, so that it is a rule. In spite of this debate, regulations on chemical castration sanctions have been imposed, even in the case of Aris (20) in Mojokerto having received an invalid verdict. So the government should no longer be in the sphere of the chemical castration debate or not, but rather on how the process of implementing this chemical castration.

Barda Nawawi Arief also explained that based on the aspect of community protection, a crime is said to be effective if the crime as far as possible can prevent or reduce crime. So the effectiveness criteria can be seen from how far the frequency of crime can be suppressed. Viewed from the aspect of improvement of the offender, the effectiveness measure lies in the aspect of special prevention from the criminal.

Sanctions in the law imposed on perpetrators of crime must also be based on 3 basic legal values namely; the value of certainty, fairness and expediency. Because if the sanctions are not based on 3 basic values, then in the settlement of cases of sexual abuse of children committed by the perpetrators who have intercourse with children will be in vain.

The view that must be underlined that the certainty value of the chemical castration criminal is: the need for procedures for the implementation of chemical castration criminal conduct by the government. Do not let the threat of castration crime in PERPPU No. 1 of 2016 as stipulated in Law No. 17 of 2016 only became a symbol to frighten. The case of Aris (20) in Mojokerto should be the initial proof of the seriousness of the order to carry out chemical castration criminal penalties.

Legal certainty is not only whether there is a regulation or regulation, but it also regulates how the legal process is carried out. When viewed at the time of the verdict of the Aris Case (20) in Mojokerto, the result of the implementation of castration sanctions which are still confusing and there is no certainty then it can be said that castration sanctions on the case have not fulfilled legal certainty. Some models of implementing castration sanctions, which have been and still apply in various countries can be seen in the table below:

Table 3.1 Chemical Castration Sanction Model

No	Country	Chemical Castration Sanction Model	Year To Be Implemented	Sanction Status
1	Amerika Serikat (state California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas dan Wisconsin)	injection	1997	applicable
2	German	surgical	1969	not applicable
3	Denmark	surgical	1929	not applicable
		injection	1973	
4	Norwegia	surgical	1977	Applicable
5	Ceko	injection	1966	applicable
6	Polandia	injection	2009	not applicable
7	Finlandia	surgical	1970	not applicable
8	Swedia	surgical	1944	Applicable
9	Argentinian (Mendoza)	injection	2010	applicable
10	Moldova	injection	2012	applicable
11	Rusia	injection	2011	applicable
12	Korea Selatan	injection	2011	applicable

From a number of countries that have and still apply chemical castration sanctions, Indonesia should be able to emulate or at least be able to make a comparative

reference to the process of implementing castration chemical sanctions.

Implementation of these sanctions must really pay attention to the procedures for its implementation, the time of its implementation, who is executing it, the model of its implementation. This aims as previously explained namely to achieve legal certainty in convicts and victims of sexual violence, especially children.

It should also be noted that chemical castration has an extraordinary effect on the subject. Side effects that arise are :

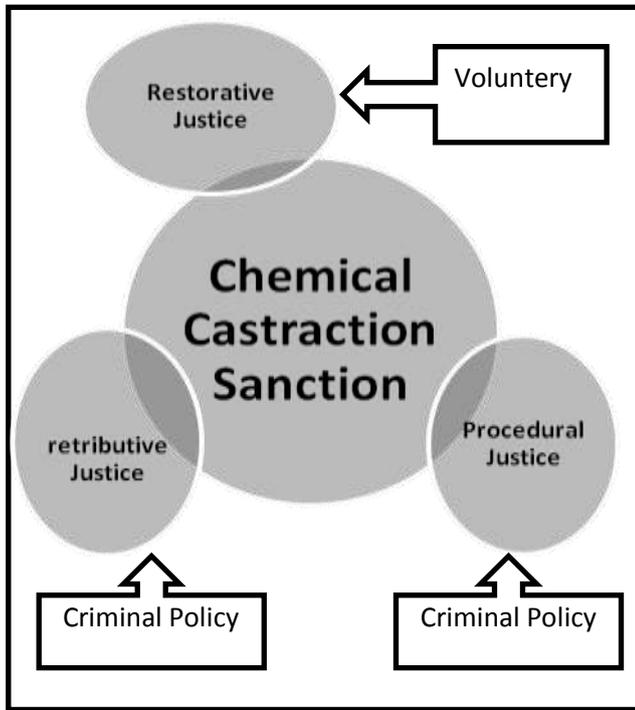
1. Increase Anxiety, Stress, Depression, and Frustration;
2. Easily Tired;
3. Reduced Body Fat;
4. Enlarge Breast Glands in Men;
5. Reducing Muscle Mass;
6. Increase body weight, which results in increasing the risk of heart disease and blood vessels;
7. Reducing bone density, which results in an increased risk of osteoporosis;
8. Hypertension;
9. Migraine;
10. Increase blood sugar levels;
11. Minimize the size of the testes;
12. Unable to Erect and Reduce Sperm Cells

The above discussion discusses the importance of legal certainty in the implementation of chemical sanctions. So that the perpetrators who know will undergo punishment can prepare mentally and physically. This form of legal certainty towards the implementation of castration criminal sanctions is a process of upholding justice.

Next is from the value of justice. Understanding justice in general are matters relating to attitudes and actions in human relations that contain a demand so that fellow can treat according to their rights and obligations. Justice can be seen from three aspects namely retributive justice, restorative justice and procedural justice.

Retributive justice means suppressing justice against retaliation. While restorative justice is to provide opportunities for all parties to solve problems together, in general justice like this is pursued by deliberation. The musyawah system in Indonesia is no longer a new thing. Therefore, it should restorative justice, the culture of the Indonesian people is no stranger to this justice. Procedural Justice is justice that occurs when a person performs an action in accordance with the expected procedures. So if the type of justice mentioned above is associated with the implementation of chemical castration sanctions then:

Figure 3.2: Justice Scheme on Chemical Castration Sanctions



Restorative justice to be achieved in this chemical castration sanction is, how a perpetrator realizes his boundaries are an abnormal act, so there is a willingness to change even knowing that the action taken against sexual violence against children is an illness so as an effort to save many children, the perpetrators voluntarily cast a chemical castration on him. This kind of justice is difficult to obtain, but that does not mean that it cannot, it needs hard efforts made by all parties including the government to provide a view that sexual disorders are part of a disease, so that the perpetrators want to do castration chemically voluntarily.

Retributive justice, where justice is a form of law itself, namely the existence of retaliation for the behavior or action taken. As an offender of sexual violence against children, a person must naturally undergo punishment in accordance with the actions taken. As in Aris's case (20) in Mojokerto, acts committed against 9 children which according to the judge need to be given additional sanctions namely chemical castration crime, because what is done by Aris is very detrimental to various parties, especially against the young generation of the nation.

Procedural Justice, is someone carrying out something in accordance with the expected procedures. This is also a criminal law policy, it's just that with this justice, chemical castration sanctions in Indonesia have not been implemented, because castration sanctions

implementation procedures in Indonesia do not yet exist, so if it is established but there is no criminal code that follows it, of course procedural justice cannot be found in sanctions chemical castration.

In addition to legal certainty and justice, it is also necessary to understand the value of the usefulness of the law. The value of the benefits of the presence of chemical castration sanctions against sexual violence against children is very useful, other than as an effort to prevent, these sanctions actually indirectly break the bad habits of the perpetrators. Channeling libido that is negative will unsettle many parties. With the presence of chemical castration, even though the perpetrator has served his sentence and has paid a fine and then completely free from his sentence, then the actual citizens will not be troubled by his existence. As in the case of Aris (20) Mojokerto, where the perpetrators were sentenced to 12 years imprisonment, but there would be public unrest when he was released, fears of new victims could have occurred. Therefore, through chemical castration sanctions there is no longer anything to worry about the safety of the children around him.

If Aris is now 20 years old, is imprisoned for 12 years, then when he is free, Aaries is more than 32 years old. This age is still in the productive age category with a fairly high sexual level, there is no guarantee that the disease of sexual disorders or habits of sexual violence against children can be lost. Therefore, to prevent this, chemical castration should be carried out. If chemical castration sanctions have been stipulated in the laws and regulations, it is appropriate that there is a need for collaboration of all legal elements and the Indonesian Doctors Association to formulate a model of implementing castration chemical offenses.

IV. CONCLUSION

Referring to the verdict handed down by PN Mojokerto that there is a principal sentence of 12 years in prison. This means that the convict will only be castrated after undergoing a 12-year prison sentence. "12 years is enough time for us to draft implementing regulations. For him there is no reason for any party to reject the judge's verdict that is based on the law. "The implementation of the law and the court's decision does not depend on implementing regulations," the polemic that was reappeared became unproductive because castration sanctions themselves are legal in Indonesian criminal law. It is precisely this moment of decision that should encourage law enforcement and the government to immediately complete the required implementation guidelines. "It could be tomorrow there is a verdict of judges who impose castration sanctions for just one year imprisonment. It must still be prepared immediately, "the role of the doctor cannot be eliminated in the implementation of castration sanctions. An agreement with the flow of medical doctors was immediately reached

to produce a proper way of implementing castration sanctions.

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