

The Problem of Chemical Castration Criminal Sanction Execution in Law Certainty Perspective

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Abstract— The problem departs from Court’s Verdict Number 69/Pid.sus/2019/PN.Mjk imposing chemical castration sanction. Thus, pros- and cons- arise related to who the executor of chemical castration is. This study was a normative research, with statute approach. The problem of research was the existence of chemical castration sanction implementation and institution authorized to do execution. The result of research showed that to ensure law certainty, the court’s verdict having had permanent legal power should be executed. To ensure the law certainty and society orderliness, a rule is required to implement the execution of chemical castration. As the executor of criminal verdict, the public prosecutor has no competency of doing chemical castration execution. Therefore, there should be coordination and cooperation with other institutions, i.e. health institution/medical workers or other relevant institutions as having been conducted in some states that have implemented chemical castration against the perpetrator of sexual abuse. **Keywords—** Politic, Law, Fishermen, Indonesia
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I. INTRODUCTION

The high rate of sexual abuse case against child encouraged the government to amend child protection law, by ratifying the Perpu No.1 of 2016 as the second amendment to Law No.23 of 2002 about Child Protection. To this Perpu criminal sanction was added in the form of chemical castration, chip or electronic detector installation, and disclosure of perpetrator identity. The ratification of Perppu resulted in pros and cons within society and among health practitioners. *Ikatan Dokter Indonesia* (Indonesian Clinician Association) declined this additional criminal punishment, as it will result in side effect leading to health disorder and even breaking Human Rights. [1]

Chemical castration action sanction was applied for the first time by the Judge in a verdict in Mojokerto District Court No.69/Pid.sus/2019/PN.Mjk against Muh Aris proved committing 9 (nine) rapes with children being the victims, decided to be guilty according to Article 76 D Jo. Article 81 clause (2) of Law No.23 of 2002 about Children Protection and was punished with 12-year imprisonment, fine of IDR 100 millions with the option of 6-month imprisonment and chemical castration being additional punishment. The Judge’s rationale in deciding on chemical castration is because Muh Aris...[2]

The decision results in a problem in the implementation of chemical castration criminal sanction execution, in relation to the existence of and the executor of chemical castration sanction.

II. RESEARCH METHOD

This article was a normative study using statue and theoretical approaches, the ones studying all Laws and regulations related to legal issue.[3] As a normative legal study, the author inventory law material including primary and secondary law materials corresponding to the theme of research, the problem of chemical castration criminal sanction execution in law certainty perspective. Then, analysis was conducted using deductive method.

III. RESULT AND DISCUSSION

The execution of Chemical Castration Sanction in Law Certainty Perspective

Basic philosophy and concept of the objective of punishment in Indonesia has basic idea of criminality confirming the understanding on the characteristic of criminal law as the subject of law’s responsibility for criminal action and public authority to the state based on law to undertake the punishment. [4]

The controversy of chemical castration punishment execution can be solved with law certainty theory approach. It is very desirable to ensure the tranquility and orderliness of society because law certainty has the following characteristics: 1) there is an external compulsion (sanction) from the officer in charge of maintaining and building the society’s order by means of its instruments, and 2) the nature of law applying to anyone. [5]

Law certainty refers to human’s physical attitude not questioning an individual’s mental attitude, either good or bad, but it questions the physical deed. The law certainty does not share sanction with an individual with bad mental attitude, but the sanction is given to the manifestation of bad mental attitude, thereby making the deed more concrete. Utrecht explained two definitions of law certainty: firstly, a general rule making an individual knowing the deed may or may not be done, and secondly, an individual’s legal security from the government’s arbitrariness due to general rule, i.e. an individual can know what may be imposed or done by the state against individual.[6]

Analyzed using Gustav Radbruch’s law certainty theory, there are two types of law certainty, i.e. law certainty

because law certainty inside or from law. The first is the law successfully ensuring many law certainties inside or from law. The second is that the law successfully ensuring many law certainties within society is the useful law.[6]

The function of law also ensures the existence of law certainty in the relation within society. If there is no clear law certainty, the members of society will treat their fellows arbitrarily, because it will result in an assumption that law is unclear and uncertain. It underlies an assumption that law certainty is the manifestation of legality principle. To ensure law certainty, all court verdicts have had legal power remaining to be implemented. Law certainty within society is a useful law. There are two other duties related to law certainty by law: law should be useful and law should ensure law fairness.

The presence of chemical castration criminal sanction in the world is not new. Some states have governed and implemented such punishment. The followings are state to implement chemical castration as well as their executor [7]: a. Moldova, with police officer as the executor, b. United Kingdom with police officer as the executor, c. Alabama with medical workers as the executor under the supervision of Alabama People Health Department, and d. Kazakhstan, with medical workers as the executor under the direct supervision of Kazakhstan Ministry of Health.

Recalling that the regulation of chemical castration is new in Indonesia and only one Judge verdict did impose the sanction, in the execution practice of which has not been conducted yet until today due to declination from many parties that should have authority and competency, some states aforementioned can be the reference in developing derived rule, either government regulation or Minister's Regulation or Attorney General's regulation, meaning that the presence of derived rule of Perpu No.1 of 2016 can be the legal protection for the execution of Court verdict that has had legal power in relation to the execution of chemical castration sanction.

Executor of Chemical Castration Action Sanction

Chemical castration is defined as injecting drugs containing anaphrodisiac functioning to lower sexual passion and libido. Therefore, it can be interpreted that the ones that can do this are those with authority of taking medical action, i.e. medical workers/paramedics. Article 11 clause (2) of Law No. 36 of 2014 defines that "medical workers as intended in clause (1) letter a consists of clinician, dentist, specialist, and dental specialist, while paramedic is a professional in health area in charge of helping clinicians deal with and treat the patients, for example: midwife, nurse, nurse practitioner, and ambulance technician.

The presence of medical workers/paramedic in addition to Public prosecutor in the execution of chemical castration is considered as very desirable, because its implementation needs certain expertise in dosing and deciding the way of taking certain medical action and those competencies belong to Medical Workers/Paramedics only. IDI (Indonesian Clinician Association)'s declination to be the executor of chemical castration is based on Article 5 of Medicine Ethical Code (*Kode Etik Kedokteran* or KODEKI) of 2012 stating that "each of clinician's deed/advice likely

attenuating either psychical or physical resistance should be approved by their patient/family and it should be given for the patient's goodness only." It implies that any form of medical action is intended for patient's goodness only and in the attempt of improving patients' health degree. IDI's declination is presented through *fatwa* of *Majelis Kedokteran Etik Kedokteran* (Medicine Ethic Chamber or MKEK) No.1 of 2016 stating that:

- 1) The task in contradiction with healing is not a clinician's professional task
- 2) It is a task in contradiction with clinician profession that should heal the patient.
- 3) The principle of medicine in practicing its science is considered as highly exalting anyone's health as human rights, because medical profession should be aware of its task of healing disease, preventing, and diagnosing.
- 4) For that reason, medical profession respects all legal decisions existing without the need for breaking its professional oath.
- 5) If the judge actually decides additional punishment in the form of chemical castration, the duty should be executed by those authorized to be executor like the usual.

On the other hand, there is a controversial statement from Dr. Wayan Maha Putra stating that "every action requiring a clinician's competency should remain to be executed despite his collegiums (IDI)'s declination), so that if it is not executed by Clinician, it means breaking the rule of competency". Considering IDI's opinion that chemical castration is in contradiction with humanitarian law, the author gives an example of abortion action taken by clinician. It refers to Articles 31 and 39 of Government's Regulation Number 61 of 2014 about Reproductive Health explaining the indication of medical emergency and raping as the exception of abortion prohibition or in other words the allowance of abortion based on medical emergency indication or due to the victim of rape.

Utrecht said that law is a compilation of life guidance (usually called norm or rule), instructions, and prohibitions governing a society's order and should be obeyed by members of corresponding society, because the infringement of life instructions can lead the some actions to be taken by government and the ruler of society. For something to be life instruction, it should be equipped or confirmed by means of compulsive element (*element van dwang*). Norm is a compulsive life instruction.[8] As a constitutional state, the implementation of chemical castration is in the attempt of enforcing the law, enforcing the Act and implementing the Court's Verdict.

Chemical castration is a form of criminal sanction, and each criminal sanction can be said as giving sorrow and misery. In line with this, Roeslan Saleh suggests that:[9]

- 1) Punishment is essentially an imposition of sorrow or misery or other unpleasant effects.
- 2) Punishment is given intentionally by an authorized individual or body
- 3) Punishment is imposed to an individual or legal body (corporation) committing crime according to the law.

In line with a penal theory, Pompe adheres to a mix theory emphasizing on revenge element. Pompe said that "People do not close their eyes against revenge. Indeed, sentence is different from other sanction, it has distinctive

characteristics. But sentence is a sanction and bond to the objective of sanctions. Therefore, it is applied if only it is favorable to the fulfillment of norms and useful to public interest[10]. In line with Pompe, Van Bemmelen said that sentence aims to reply the guilt and to secure the society. The action is intended to secure and to maintain the objective. So sentence and action both aim to prepare for returning the condemned to the society life.[9] Similarly, Grotius is an expert developing mixed theory emphasizing on absolute justice manifested into revenge but useful to the society. The foundation of each sentence is severe misery corresponding to the severe deed committed by the condemned. But the severity of sentence and deed committed by the condemned is determined by what is useful to society. This theory is continued by Rossi and Zenvenbergen, stating that each of sentences is intended to protect the law order. Sentence restores the respect to the law and government.[9]

Considering the mixed theory emphasizing on revenge, basically the sentence has never abandoned the presence of element of reply to the deed committed by perpetrator. Therefore, to create the society order and to exert deterrent effect on the perpetrator of crime, and to ensure law certainty, the chemical castration additional sentence should be executed. In its execution, the Attorney as the executor of sentence should cooperate with institution or profession with competency of taking medical action recalling that chemical castration needs professional expertise.

IV. CONCLUSION

1. The execution of chemical castration sanction is something no longer needing to be debated, because for the sake of justice and to ensure law certainty, each of Court Verdicts with legal power should be executed. The execution of chemical castration sanction in Indonesia needs derived rule that will provide legal foundation concerning the executor and the procedure of execution, so that it should be governed further in a

rule as the implementing regulation or the derived rule of Perppu No.16 of 2016 as an imperative to create the society order and to ensure the law certainty.

2. The executor of chemical castration should be the one with competency and authority. The execution of chemical castration action sanction is a medical action; therefore, Attorney as the executor of criminal case should cooperate/coordinate with other institutions with such competency, Medical Workers/Paramedics.

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