

Chemical Castration Penalty for Sex Offenders in Indonesia

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Abstract: There have been so many sexual crimes in Indonesia lately and several of the perpetrators are even police officers themselves who are actually law enforcement officials that have to protect people from criminal acts. Therefore, IPW (the Indonesian Police Watch) insists that sex offenders have to be punished maximally and castrated. Castration penalty is a type of punishments imposed upon perpetrators of sexual crimes; it is formulated in PERPU No. 1/2016 which is not found in the Criminal Code. Castration penalty which is formulated in PERPU will be implemented after a convict has been imprisoned for 2 years. Therefore, this castration penalty is a supplementary punishment for convicts who have undergone 2 year-imprisonment as his principal punishment. The objective of this research is first to find out the types of punishment stipulated in legal provisions concerning sexual crimes prior to the issuance of PERPU No. 1/2016; secondly to find out people's perception on the formulation of castration penalization imposed upon sex offenders; thirdly to find out which institution/agency that should be the executor of this castration penalty. The research used normative sociological approach. A normative research uses legal provisions and comparison approaches. Sociological research was done in Medan. The research population was the inhabitants who Dwelled in Medan, taken by using cluster random sampling technique. The groups of people who were studied were religious group, adolescents and women, medical group (Indonesian Doctors Association) and legislative group (Regional Representative Council) by using questionnaires. The data were analyzed qualitatively. The result of the research showed that, first, sexual crimes have been regulated in the Criminal Code and in the other legal provisions outside of the Criminal Code. The penalty which is formulated in this law is imprisonment there has been no castration penalty in it so far. Secondly in general, the Indonesian people oppose to castration penalty imposed on sex offenders even though it is imposed after the convicts have undergone principal imprisonment. Thirdly, if the castration penalty is imposed on sex offenders, people suggest that the executors be doctors or specialists who are professional in their field.

Key words: Castration penalty, sexual crimes, sexual crimes, punishments, criminal code, population

INTRODUCTION

Sex crimes have occurred rampantly in these days in Indonesia. In North Sumatera, the Chairperson of KPAIDSU (the Indonesian Child Protection Commission of North Sumatera) pointed out that sexual crimes on children became the biggest issue in 2016. Some of the perpetrators are even police officers who are actually law enforcement officials that have to protect people against crimes so that IPW (the Indonesian Police Watch) insists that sex offenders be punished maximally and castrated (Harian Nasional Waspada, 2016).

The government then issued Government Regulation as the Amendment of Law (PERPU) No. 1/2002 on Child Protection which regulates Chemical Castration as one of the criminal sanctions of sexual crimes against children. Some scientific articles have talked about and analyzed this castration penalty both in chemical castration and surgical castration. Throughout, history castration has

been used to punish sex offenders so that some people say that formulating castration penalty in law is the same as that we go back to the dark ages. Therefore, vasectomy like castration was held to be cruel and unusual punishment because "the humiliation, degradations and mental suffering are always present and known" (Helm, 1998). The surgical castration can be produce side effects such as hot flushes, softening of the skin, lethargy and decrease in muscle mass. Some report side effects of the chemical castration include weight gain, migraine headaches, gallstones, the formation of blood clots, depression including suicidal thoughts, hypoglycemia, insomnia, etc. (Harrison, 2007). Some other people argue whether these legislative efforts have struck the appropriate balance between sex offender's rights and society's rights to be free of their criminal behavior (Scott and Holmberg, 2003). But in Malaysia, counselling and psychotherapy aid on the psychological poverty of the juvenile sex offenders (Bavani et al., 2013).

This study is written based on the results of researches in Indonesia, particularly in the capital of North Sumatera, Medan. The objective is to find out people's perception on chemical castration penalty (which has been formulated in the PERPU No. 1/2016) against sex offenders who commit their sexual crimes toward children.

Objective: The objective of the research is to find out:

- Legal provisions in Indonesia which regulate sexual crimes and their penalization prior to the issuance of PERPU No. 1/2016
- People's perception on the formulation of castration penalty imposed on sex offenders
- Institutions or agencies should act as the executioners of castration penalty

Literature review: Dogmatically, it can be said that in the criminal case there are three subject matters: prohibited action, those who commit prohibited action and penalty imposed on those who commit prohibited action (Sudarto, 1983). In this case, prohibited action is sexual crimes which are committed by a person (legal subject) and the penalty is castration as it is regulated in PERPU No. 2016 (on the Second Amendment of Law on Child Protection). Every criminal act which is formulated in law, its penalization also has to be formulated, whether it is death penalty, imprisonment or other types of punishment. In general in the Criminal Code (Book One), the penalty consists of Principal Punishment and Supplementary Punishment as they are regulated in Article 10 of the Criminal Code. After that, the process of its implementation/execution (punishment) is determined after the ruling is handed down by the judge. If the punishment is concerned with imprisonment, it will be dealt with Penal Institution (Penitentiary) as it is regulated in Law No. 12/1995 on Penitentiary. If the ruling handed down by the judge is death sentence, the executor is the Police Force (Brimob or Mobile Brigade) as it is regulated in the Presidential Decree No. 2/1964.

It is generally acknowledged that the policy on handling crimes can be done by using criminal law application and prevention without punishment (Peterl, 1972). Criminal law application is of course by applying criminal sanction on perpetrators which has been regulated in law. However, when the criminal case has not yet been regulated or formulated in law, it has to be formulated in the law. This is in accordance with the principle of legality which states that "criminal sanction cannot be imposed on a certain act when the act is not found or formulated in law". "Based on this case, handling crimes by using criminal sanction has to be

through three stages of policy (Nawawi, 2001) formulation stage (the policy of legislative which is the stage of formulation of criminal case in law), the stage of application (the policy of Judicative which is the stage of the implementation of criminal sanction by judges) and the stage of execution (the policy of executive which is the stage of the implementation of execution from the ruling handed down by a judge).

The handling of sexual crimes by using the policy on criminal case which is being done now has been formulated in some laws and its criminal sanctions have been implemented. However, none of them has formulated castration penalty, let alone its implementation which is never realized. Therefore, the prevailing laws in Indonesia today do not recognize castration penalty as a type of punishment, along with its implementation and its institution/executor. Therefore, criminal sanction in the form of chemical castration for convicted pedophiles (sex offenders on children) which has been formulated in PERPU No. 1/2016 should be studied and analyzed based on the theories of criminalization and people's perception on the chemical castration penalty. It is acknowledged that criminal sanction which is imposed and implemented on sex offenders has some purposes which are known as the theory of the purpose of criminalization.

Basically, there are three theories of punishment: retributive theories, utilitarianism theories and mixed theories (Wilson, 2003). According to Retributive theory, every criminal act committed by someone has to be paid back for what he has committed "the eye for the eye, the tooth for the tooth" without any consideration about what will happen to him in the future. Retributive point of view considers that ever individual takes the responsibility for what he has done. Every action has its own consequence to obtain positive or negative response. Meanwhile, according to the theory of utilitarianism, criminal sanction is not merely for doing "revenge" or being paid back for a person who has committed a crime but it has other purposes which are more beneficial. Punishment, under utilitarianism, offers to reduce crime in a number of different ways: it may deter the individual offender (individual deterrence) it may deter others who might be minded to commit a similar offence (general deterrence), etc. Mixed theories are the combination of both theories. They are emphasized on the balance between revenge and protection against people's interest. Recognition of the limitations in both theories has resulted in the development of mixed theories of punishment which attempt to combine the best of both.

MATERIALS AND METHODS

This research used normative and sociological research method. Normative research is done by using

two approaches (Johnny, 2007) they are legal provision and legal comparison approaches concerning sexual crimes along with their penalization which is formulated in that law. Sociological research is a field research conducted in Medan, North Sumatera Province by distributing questionnaires directly to groups of people as the research respondents, taken by using cluster random sampling technique (Bambang, 1997). Closed and open questionnaires were distributed to 100 respondents that consisted of groups of people as the samples.

RESULTS AND DISCUSSION

Legal provisions regulating sex crimes: From the result of the research, it is found that sexual crime case has been regulated in some legal provisions, either it is stipulated in the Criminal Code in general or stipulated in other laws outside of the Criminal Code in particular. They are:

- From Article 281 until Article 303 of the Criminal Code
- In Law No. 23/2002 in conjunction with Law No. 35/2014 on Child Protection, Article 78, Articles 81-82 and Article 88
- From Article 44 until Article 53 of Law No. 23/2004 on the Abolition of Violence in Household
- From Article 2 until Article 18 of Law No. 21/2007 on the Eradication against Human Trafficking
- From Article 29 until Article 41 of Law No. 44/2008 on Pornography

From all of the laws above, it is found that any types of crime which are concerned with sexual abuse (rape, adultery, sexual harassment, woman trafficking for being used as prostitutes, pornography, etc.) is legally prohibited and the perpetrators will be punished. However, all the penalties which are regulated in the legal provisions are concerned with imprisonment; the difference is only in the light and severe sentences. Therefore, there is no formulation of castration penalty either as a principal punishment or as a supplementary punishment after the convicts have completed their sentences as it is regulated in the PERPU No. 1/2016. In short, prior to the issuance of PERPU No. 1/2016, there was no law or regulation which regulated castration punishment as penalization in Indonesia, either as a light sentence or a severe one.

People's perception on castration penalty: The respondents who were used as the samples in this research consisted of some groups of people, taken by using cluster random sampling technique. They were from

religious groups (which were recognized in Indonesia) a group of adolescents and women, a group of medical and health personnel and 10 people from legislative group. There were 100 respondents all together.

From this research, it is found that according to the respondents, the penalty stipulated in laws concerning sexual crimes today (in laws which have been mentioned above) does not make offenders scared or hesitate to commit sexual crimes. Therefore, it can be concluded that penalty which is formulated in legal provisions does make those (or other people who are potential) feel afraid to commit moral offenses. In addition, according to some respondents, the punishment imposed on sex offenders is not maximal as it is regulated in law. Nevertheless, it does not mean that not all people want sex offenders to be punished by castration. It is also found in this research that the majority of the respondents (60%) point out that the accurate punishment for sex offenders is maximal imprisonment as it is regulated in law. Some of them suggest death sentence; only some of them want sex offenders to be punished with castration and sentence to stoning to death for sex offenders. However, if sex offenders kill their victims, the majority of the respondents want the perpetrators to be sentenced to death or life imprisonment since their criminal acts are categorized as sadistic. Therefore, people want an equitable retaliation to be imposed on sex offenders that is accordance with retributive theories.

Besides that when a moral offense is done toward children or young girls (in other words, the victims are minors) the majority of the respondents of this research point out that the best way to punish sex offenders is by imposing on them sentence for life. Some of the respondents even state that the perpetrators are sentenced to death while only a small number of respondents want sex offenders to be punished by castration.

Even though the majority of the people argue that the penalty and punishment imposed on sex offenders is not maximal so that it does not make them discouraged, it does not mean that they want sex offenders to be punished by castration. Therefore, it can be concluded that most of the people do not agree on the castration penalty to be used as the punishment for sex offenders. They, of course have various kinds of reason or argumentation. The majority of the people argue that castration punishment is contrary to religion and to HAM (human rights) while it does not have benefit and so on. However, some of them agree on castration penalty imposed upon sex offenders only as supplementary punishment which is permanent and not ephemeral, only 2 years imprisonment as it is regulated in PERPU

No. 1/2016. Therefore, according to them, it can still be used to decrease crimes. In this case, it seems that some of the people agree on the mixed theory (retributive theory and utility theory).

Institution/agency as the executor of castration penalty:

Execution means the implementation of judge's ruling because the executor executes court's decision which is final and conclusive. It means that there will be no more legal remedy (which is used) to change the ruling. This is regulated in the Indonesian KUHAP (Criminal Code Procedure). It has been acknowledged that in our country the process of criminal jurisdiction is a system which involves some institutions/agencies as its sub-system; they are the police force, district attorney's office, court of Justice and Penitentiary or Penal Institution with their own tupoksi (Syaiful, 2015).

In general, Law Enforcement Institution which has the authority to do the execution or the implementation of judge's ruling is district attorney's office. If the judge imposes a death sentence, the executor will be the Police Force in this case, Brimob (Mobile Brigade) unit. The execution is done by shooting the convict to death. If the judge imposes the sentence with imprisonment, the Prosecutor turns in the convict to the Penitentiary to be imprisoned according to the length of time mentioned in the verdict. If the judge imposes the sentence with castration sentence, it is unknown who will be the executor (what institution or agency) for this type of punishment.

CONCLUSION

From the result of this research, it is found that the respondents of the research want doctors who are members of IDI (Indonesian Doctors Association) to be the executors. However, some of the respondents want the Police Force to be the executors for sex offenders, provided that they are medical professionals.

Closing remarks: Sexual crime is regulated in the Criminal Code and in the other legal provisions outside of the Criminal Code. These legal provisions were issued prior to PERPU No. 1/2016 and all of them regulate the penalty of imprisonment for sex offenders; none of them regulates

castration penalty. In general, people do not agree on castration penalty imposed upon sex offenders because this type of punishment is contrary to religion and to human rights. If castration penalty is imposed upon sex offenders, the executor for this punishment should be doctors or police officials who are also medical professionals

REFERENCES

- Bambang, S., 1997. [Legal Research Methodology]. Raja Grafindo Persada, Jakarta, Indonesia, (In Indonesian).
- Bavani, V.S., R. Mohan and S. Sorooshian, 2013. Counselling and psychotherapy aid on the psychological poverty of the juvenile sex offenders in Malaysia. *Soc. Sci.*, 8: 220-223.
- Harian Nasional Waspada, 2016. [Police Officers so Many Sex Predators]. *Harian Nasional Waspada*, Medan, Indonesia, (Indonesian).
- Harrison, K., 2007. The high-risk sex offender strategy in England and Wales: Is chemical castration an option?. *Howard J. Crime Justice*, 46: 16-31.
- Helm, S.L., 1998. Florida's 1997 chemical castration law: A return to the dark ages. *Florida State Univ. L. Rev.*, 25: 117-139.
- Johnny, I., 2007. [Theory and Methodology Normative Legal Research]. Bayumedia Publishing, Malang, Indonesia, (In Indonesian).
- Nawawi, A.B., 2001. [Law Enforcement Issues and Crime Prevention Policy]. PT Citra Aditya Bakti, Bandung, Indonesia, (In Indonesian).
- Peter, H.G., 1972. *The other Side of Criminology*. Kluwer-Deventer, Deventer, Netherlands,.
- Scott, C.L. and T. Holmberg, 2003. Castration of sex offenders: Prisoners rights versus public safety. *J. Am. Acad. Psychiatry L.*, 31: 502-509.
- Sudarto, 1983. [Criminal Law and Community Development]. Sinar Baru Publisher, Bandung, Indonesia, (In Indonesian).
- Syaiful, B., 2015. [Indonesian Criminal Justice System]. Pustaka Pelajar, Yogyakarta, Indonesia, (In Indonesian).
- Wilson, W., 2003. *Criminal Law: Doctrine and Theory*. Pearson Longman Publisher, London, England, UK., ISBN: 9780582473010, Pages: 640.