

## CASTRATION PUNISHMENT FOR PERPETRATORS OF CRIMINAL OFFENSES OF SEXUAL VIOLENCE AGAINST CHILDREN

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### Abstrak

Kebiri resmi ditetapkan sebagai pidana tambahan untuk memberikan efek jera bagi pelaku kekerasan seksual terhadap anak. Tahun 2019 sudah ada hakim yang menjatuhkan sanksi pidana ini, yaitu di Pengadilan Negeri Sidoarjo dan Pengadilan Negeri Surabaya. Dua putusan hakim tersebut menarik untuk dianalisa tentang efeknya dalam membuat jera pelaku, juga efek pencegahannya bagi masyarakat. Penelitian hanya dilakukan dengan mengumpulkan data dari kepustakaan yang dianalisis dan kemudian disimpulkan. Hasil penelitian, belum nampak efek jera bagi pelakunya karena kebiri baru akan dilakukan bila terpidana selesai menjalani pidana pokoknya. Juga efek pencegahannya bagi masyarakat, terbukti saat ini angka kejahatan tersebut masih tinggi, sehingga anak belum aman dari kejahatan tersebut.

### Abstract

*The castration sentence that has been imposed as an additional punishment to provide a deterrent effect for perpetrators of sexual violence against children in mid-2019 by judges at the Sidoarjo District Court and the Surabaya District Court is interesting to examine. The research objective was to determine the effect of the nut on the perpetrator, as well as the effect of its prevention on society. This type of juridical normative research is descriptive in nature, with qualitative analysis. The results of the research show that the judge's decision has only had a panic effect on the perpetrator, it is not possible to see a deterrent effect for the perpetrator because castration will only be carried out when the convict has finished serving imprisonment. While the preventive effect for the community has not yet been seen, it is proven that currently the crime rate is still high.*

## INTRODUCTION

The fact that criminal acts of sexual violence against children increased very significantly in 2015-2016 made President Jokowi very uncomfortable. This condition prompted the issuance of PERPPU number 1 of 2016 which was later passed by the parliament into Undang-Undang Number 17 of 2016 concerning the second amendment to Undang-Undang Number 23 of 2002 concerning Child Protection, which had previously been amended for the first time by Undang-Undang Number 35/2014. The most notable change of Undang-Undang Number 17/2016 is the inclusion of additional penalties for perpetrators of sexual crimes against children in the form of castration. The threat of castration punishment is expected to discourage potential perpetrators so that the number of sexual violence against children decreases. When castration is really imposed, it will have a deterrent effect on the perpetrators of the crime. Based on the data from Komisi Perlindungan Anak Indonesia (KPAI)- Indonesian Child Protection Commission, it is known that in 2015 there were 218 cases of sexual violence against children. In 2016, 120 cases were recorded. And in 2017 there were 116 cases. Meanwhile, Lembaga Perlindungan Saksi dan Korban (LPSK), Witness and Victim Protection Agency, recorded there were 25 cases of sexual violence against children in 2016. It increased to 81 cases in 2017, and it peaked to 206 cases in 2018. Meanwhile, until June 2019 it was recorded 78 cases.<sup>1</sup>

The reality is still far from the expectation. Crimes of sexual violence against children were still high until the end of 2019, even though there had been a court ruling that imposed a fairly severe sentence, namely the main sentence in the form of imprisonment and fines, added with additional sentence in the form of castration for perpetrators of criminal acts of sexual violence against children. For the first time, this was carried out at Mojokerto District Court on May 2, 2019 with the case verdict number 69 / pid.sus / 2019 / pn.mjk, sentencing the defendant Muhamad Aris bin Syukur to 12 years imprisonment and a fine of Rp. 100 million subsidies of 6 months imprisonment, and additional punishment in the form of chemical castration. On July 18, 2019, this verdict was reinforced by the sentence of the East Java High Court, and had permanent legal force. This was followed by a judge from the Surabaya District Court who similarly sentenced Rahmat Santosa Slamet the main punishment in the form of 12 years imprisonment and a fine of one hundred million rupiah subsidiary to three months imprisonment, and additional punishment in the form of castration for three years.

Moreover, President Jokowi put this issue as special topic in a limited meeting held in early 2020, precisely on January 9, 2020 with an agenda to discuss the handling of cases of violence against children. This indicates that this problem is very serious and need immediate solution. Likewise, violence against children became daily Solo Pos headline, January 10, 2020, entitled *Ironi Kota Layak Anak*, which contained the increase of violence against women and children in cities throughout Soloraya that have obtained the status of *Kota Layak Anak*.

Based on those facts, the author are interested in examining, particularly, the deterrent effect after judges sentence additional penalties on perpetrators of sexual violence against children in the form of castration.

The main objective is to determine the effect of the judge's sentence to impose additional punishment in the form of castration, which will be able to provide a deterrent effect on the perpetrators, and be able to prevent public or potential perpetrators from committing the crime, which also means protecting children to be victims of the crime. In other words, the urgency of this research

<sup>1</sup>Jurnal hukum & pembangunan vol 50 no 2/2020 / p.330

is to seek and find logical reasons for the importance of additional penalties in the form of castration in giving a deterrent effect to the convicted, a preventive effect for people who have the potential to become criminal offenders who are expected to contribute to reduce the number of sexual crimes against children, which ultimately guarantees protection of Indonesian children from crimes of sexual violence.

## LITERATURE REVIEW

The first published Undang-Undang on child protection is Undang-Undang Number 23 of 2002, which was later amended by Undang-Undang Number 35 of 2014, and underwent a second amendment in the form of Peraturan Pemerintah Pengganti Undang-Undang (Perppu) number 1 of 2016 which was later defined as Undang-Undang Number 17 of 2016. The main amendment is to increase criminal sanctions, especially the inclusion of additional criminal sanctions as regulated in Law Number 17 of 2016 which includes castration as an additional punishment for perpetrators of crimes of sexual violence against children.

Sexual violence against children is a criminal act as regulated in article 76 D, namely "Every person is prohibited from committing violence or threats of violence to force children to have intercourse with him or with other people". Violations of the provisions of this article, which is punishable by castration, can be imposed if the perpetrator has been convicted of committing the same crime, the victim is more than one person, resulting in serious injuries, mental disorders, infectious diseases, disturbed or loss of reproductive function, and / or the victim passes away (articles 81 paragraphs 4,5, and 7). The punishment of castration can only be imposed for a maximum period of two years and is carried out after the convict has finished serving the primary punishment (article 81 A (1)). The implementation of chemical castration is accompanied by rehabilitation (article 81 A (3)). And this punishment of castration cannot be imposed on the child offender (article 81A (9)).

This change was made because criminal act of sexual violence against children has significantly increased which has created great concern in people's lives, so that it is necessary to deter the perpetrator by giving the judge the possibility to impose additional criminal punishment that will be considered severe by perpetrator.

President Jokowi finally followed up on the significant increase of crime against children, especially sexual violence by issuing three orders, as follows:

1. First, to prioritize violence prevention by involving families, schools and communities.
2. Second, the reporting system and services for complaints of violence against children must be easily accessible by community, and the most important thing is to get a quick response.
3. Third, reforming the management of case handling. Handling the case is carried out quickly, integratedly and comprehensively. If necessary, one stop service, starting from complaint services, assistance, and getting health services is provided. Meanwhile, concerning law enforcement, perpetrators of violence against children are given punishments that can deter them, especially in relation to cases of pedophilia and sexual violence against children<sup>2</sup>.

The increasing number of violence against children in Soloraya was also an issue that was raised as headlines by the daily Solo Pos. It was reported that based on the data released by Spekham (Solidaritas Perempuan untuk Kemanusiaan dan Hak Asasi Manusia), an independent organization that

<sup>2</sup>Ishomuddin, Kuku S, 26 Agustus 2019, "Vonis Kebiri Kimia, Hakim PN Mojokerto : Perbuatan Terdakwa Sadis", di website <https://nasional.tempo.co/read/1240505/vonis-kebiri-kimia-hakim-pn-mojokerto-perbuatan-terdakwa-sadis>

focuses on women and children with legal problems in Soloraya, that in 2019 there were 208 cases of violence against women and children where cases of child abuse were the number is higher. Meanwhile, data from PT PAS (Pelaksana Teknis Pelayanan Terpadu Perempuan Anak dan Pemberdayaan Masyarakat), an official institution from the Solo municipal government, announced that cases of violence against women and children that occurred and were handled during 2019 reached 67 cases, of which 46 cases were violence against children<sup>3</sup>

The party that most responsible for providing protection for children from the threat of crime is the government, with the help of the community. Therefore, when the President as the head of government has stated the steps that will and must be taken, all components of the nation must support in order to achieve the stated goals. One of the most competent parties in this matter is the judge. That the only law enforcer who has the authority to sentence the perpetrators of crimes is the judge. President Jokowi orders to provide deterrent punishment for perpetrators of violence against children, especially perpetrators of sexual violence against children and pedophiles. Although judges cannot / may be influenced by anyone in making decisions or imposing crimes, president orders that is intended as an effort to protect children who will become the nation's next generation must also be considered by judges handling cases of sexual violence against children.

The duties and powers of judges are carried out based on Undang-Undang Number 48 of 2009 concerning Judicial Powers, among others, Article 8 paragraph 2 stipulates that judges, in considering the severity of the sentence, must also consider the good and bad character of the defendant. The freedom and authority of judges in imposing crimes is also regulated in KUHAP article 197 paragraph 1 letter f, which states that judges are obliged to accommodate matters which alleviate and incriminate the accused. Criminal guideline that can be referred by judges are also regulated in the RUU KUHP, article 52 paragraph (1) that states as follows:

- a. The guilt of the criminal
- b. The motive and purpose of committing a criminal act.
- c. The inner attitude of the criminal.
- d. Whether it is a planned crime
- e. The way of committing the crime.
- f. The attitude and actions of the criminal after committing a criminal act.
- g. Life history and socio-economic conditions of the criminal.
- h. Effects of punishment on the criminal future.
- i. The effect of the crime on the victim or the victim's family, and / or
- l. Forgiveness from the victim and / or his family, and / or
- m. The public's opinion of the criminal act committed.

The purpose of imposing criminal or criminalization, theoretically, is known as three theories of punishment, namely:

1. Absolute theories or retaliation, where wrong actions should be rewarded accordingly. This view does not consider the purpose of punishment for its benefit, except for retaliation and satisfying the victim.
2. Relative or objective theories, in which crime is a means to prevent crime. With the imposition of criminal punishment, it is hoped that potential criminals will cancel their intentions (general prevention), while for the criminal, he does not relapse (special prevention).

<sup>3</sup>Ginanjar Saputra, 10 Januari 2020, "Ironi Kota Layak Anak", di website <https://www.solopos.com/solopos-hari-ini-ironi-kota-layak-anak-1040904> halaman 1

3. Mixtheories, in which the severity of crime is globally determined by the perpetrator's guilt, but it needs to be adjusted and linked to the needs of special and general prevention.<sup>4</sup>

The concept or draft of KUHP which was compiled in 2004 has also stipulated that the purpose of punishment is directed for community protection, in which community welfare is the main objective of public protection, which is implied from the provisions of Article 51. That punishment aims at:

- a. preventing the committing of a criminal act by enforcing legal norms for the protection of society;
- b. socializing the convict by providing guidance so that he becomes a good and useful person;
- c. resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society;
- d. releasing the guilt of the convict.

Furthermore, in verse 2 it is emphasized that punishment is not intended to distort and humiliate human dignity.

A judge's decision in the form of a criminal imposition can only be made after the judge has firstly considered a number of things, both juridical considerations based on the uncovering of the facts of the trial, namely the evidence of the elements of the article being accused, at least two pieces of evidence, as well as evidence, as well as sociological considerations related to the subjective condition of the offender which can lighten or even burdensome punishment, such as helping the smooth running of the trial or vice versa, instead of being convoluted when answering, regretting his actions and promising not to repeat it or even insisting that he is not guilty, is still young or even old. All of which must be complemented by the judge's conviction that the perpetrator deserves to be sentenced to crime.

## RESEARCH METHODS

This type of normative juridical research was in accordance with Soerjono Soekanto's opinion that normative juridical research is legal research conducted by examining library materials or secondary data<sup>5</sup> Secondary data collection tool was books related to the theory and concepts of research objects, related articles, literature, scientific papers, and so on through literature studies.<sup>6</sup> In this case Undang-Undang, judges' decisions and journals, as well as text books are the data used in this study.

This research was descriptive. According to Sanapiah Faisal, descriptive analytical research is about to reveal the laws and regulations related to legal theory which is the object of research.<sup>7</sup> In this study, the aim of this research was to analyze the judge's decision, the child protection law, the judiciary law, KUHP, and other laws related to the object of research.

Data analysis used was qualitative analytical techniques, through categorization based on the problems studied and the data collected.<sup>8</sup>

<sup>4</sup>P. Soemitro and Teguh Prasetyo, 2002, pages 13-15

<sup>5</sup>Soerjono Soekanto and Sri Mamudji, 2011, pages 13,14,24

<sup>6</sup>Maria SW, Sumardjono, 2014, pages 16-25

<sup>7</sup>Sanapiah Faisal, 2003, page 106

<sup>8</sup>Suharsini Arikunto, 2018, page 205

## DISCUSSION

The first case is the Panel of Judges at the Mojokerto District Court sentenced Muhammad Aris (20) to a sentence of 12 years imprisonment and a fine of Rp. 100 million subsidiary 6 months in prison. They also provides additional punishment, chemical castration. This decision is lighter when compared to the demands of the Public Prosecutor (JPU) who demanded 17 years in prison and a fine of Rp. 100 million subside 6 months imprisonment, at which time the prosecutor did not include castration in his indictment.

According to Erhammadin, Public Relations of Mojokerto District Court, the decision was based on the following considerations:

The crimes committed are classified as very serious, which based on the facts it was revealed at the trial that 9 victims were mostly kindergarten students. Therefore, there must be a deterrent effect;

- This becomes a warning for the community;
- It is to prevent similar cases from occurring in Indonesia;
- and a fair judgment is a court effort to provide protection to children.

Against this verdict, the convict, Aris, filed an appeal. However, Surabaya High Court judges upheld the verdict of the Mojokerto District Court<sup>9</sup>.

The castration sentence imposed by the Mojokerto District Court is the first since the enactment of Undang-undang number 17 of 2016, in which this verdict has legally binding or increment so that it must be executed. However, the execution will not be carried out in the near future because the rules for the punishment of castration will only be carried out when the convict has finished serving his principal sentence.

From a juridical perspective, this case has become a jurisprudence to be emulated by other judges in order to follow the lead in making decisions in cases of sexual violence against children as mandated by Undang-undang, in order to deter the perpetrators, as well as prevent community members from committing crimes of sexual violence against children, so as to prevent and suppress the emergence of similar cases which have implications for protecting children from sexual violence. In practice, this law enforcement can be said to be somewhat different from usual, where the judge makes a decision beyond the prosecutor's demands, even though this does not violate the law. The judge gave an additional punishment in the form of castration which was actually not the prosecutor's demands with juridical considerations, including that in the facts of the trial the number of victims revealed that there were nine children, the average of all Kindergarten students. This fulfills the element required by legislation that the punishment can be given an additional sentence of castration if the victim is more than one child. Meanwhile, the non-juridical consideration that is in accordance with the general view of society is that the crime of sexual violence against children is a crime that has a very serious impact on the future of this nation. The trauma experienced by the victim is not easily eliminated, even if the victim is not handled properly. Many psychologists claim that those who are victims of sexual violence have the potential to take revenge by becoming a perpetrator. For this reason, the judge's decision must be fair, both from the perspective of the perpetrator, victim, and society in general.

<sup>9</sup>Moh Syafii, 26 Agustus 2019, "Ini Alasan Pemerkosa 9 Anak di Mojokerto Dijatuhi Hukuman Kebiri Kimia", di website: <https://regional.kompas.com/read/2019/08/26/16362011/ini-alasan-pemerkosa-9-anak-di-mojokerto-dijatuhi-hukuman-kebiri-kimia>, diakses pada...



The sociological perspective of the judge's decision on this case proves that the judge in imposing a crime is not only intended to provide a deterrent effect. The decision of the judge who casts castration on perpetrators of sexual violence against children this time will provide awareness for the community not to commit crimes as perpetrated by the perpetrator. and the judge makes a fair decision by taking into account the interests of the crime victim, in this case enforcing law to guarantee protection to children. Castration is a medical procedure for the purpose of suppressing and even eliminating sexual libido. A person who is castrated will lose his sexual desire, which causes a man to lose his masculinity. Although the castration sentence is only temporary, which is a maximum of two years, for men losing masculinity is more of a burden than imprisonment. In fact, in this case the perpetrator objected to the imposition of an additional sentence of castration, and stated that he chose to be sentenced to death only.

This case the judge decided a quite serious verdict in the form of twelve years imprisonment accompanied by an additional punishment, castration. Viewed from philosophical perspective, the child protection law has to be changed several times because one of the reasons is the high number of cases of sexual violence. The punishment of it has not provided a deterrent effect to the perpetrators. With the official imposition of additional criminal punishment in the form of castration since 2016, it is appropriate that in 2019 a judge started implementing it. It is expected that there will be deterrent effect so that cases of sexual violence against children will be significantly reduced and protection of children will truly be realized.

The second case was the imposition of an additional sentence in the form of castration. The second was imposed by the panel of judges at Surabaya District Court against Rahmat Santosa Slamet (30), who was charged with molesting 15 of his students, in addition to the primary sentence of 12 years imprisonment and a fine of Rp. 100 million subsidiary 3 months in prison. In this case castration sentence is a demand from the Public Prosecutor, in which the main criminal charge is 14 years imprisonment and a fine of Rp. 100 million subsidiary 3 months in prison<sup>10</sup>

According to Asep Mariono, Assistant of General Crimes at High prosecutor office of East Java, this demand is based on many considerations, including:

- one of them is because the perpetrator is an educator who is supposed to direct and protect;
- the defendant's behavior towards his students has been carried out for a long time from 2017 to 2019;
- more terribly, from the results of psychological assistance, some victims indicated that they would do the same thing or become perpetrators<sup>11</sup>

Both examples of judges who have sentenced castration as an additional punishment for perpetrators of criminal acts of sexual violence against children provide an illustration of how a law that has been painstakingly drafted until its enactment because of strong pros and cons, but even after being officially enforced. has no immediate actual evidence of the application of the provisions of these rules.

After three years since the enactment of Undang-undang No. 17 of 2016, almost mid-2019 there was a panel of judges from the Sidoarjo District Court, who for the first time sentenced castration as an additional punishment in addition to imprisonment and fines as the primary punishment for the accused perpetrator of child rape. This becomes a question for the author: after three years of being officially valid the punishment was implemented? whether the judge disagree with the president's view that he considered the need for detention of perpetrators of crimes of sexual violence against children

<sup>10</sup>Enggran,26 Agustus2019,“ *Ini Alasan Hakim Tambah Vonis Kebiri Kimia Ke Predator Anak Di Mojokerto*”,diwebsite: <https://news.detik.com/berita-jawa-timur/d-4681082/ini-alasan-hakim-tambah-vonis-kebir-kimia-ke-predator-anak-di-mojokerto>

<sup>11</sup>Achmad Faizal,20 November 2019,“*Aturan Teknis Kebiri Kimia Belum Terbit, 2 Terpidana Sudah Antre*”,di website: <https://surabaya.kompas.com/read/2019/11/20/07373901/aturan-teknis-kebir-kimia-belum-terbit-2-terpidana-sudah-antre>

by being sentenced to an additional sentence of castration in addition to the basic sentence of imprisonment; And the reason only few judges implement similar sentence in imposing crimes for similar cases.

The additional punishment, castration, in the first case was an initiative of the panel of judges, because the prosecutor only demanded that the defendant be sentenced to the primary criminal punishment in the form of imprisonment and a fine, despite castration as an additional punishment. This is not common in law enforcement practice. Normally, judge makes a decision based on the prosecutor's demands. In this case the judge decided to impose a sentence which according to his belief provided justice in accordance with the value of justice in society today. It was quite surprising for the defendant when the judge sentenced the verdict, where in the end the convict rejected it, so he filed an appeal, where the decision from the Surabaya High Court actually strengthened the Sidoarjo District Court's decision. According to news sources from various media, it was revealed that the convict stated that he preferred to be sentenced to death instead of having to be castrated. This indicates that castration is actually reducing the courage of the convicted person. This could be because (at that time) the convict might think that the castration would immediately be imposed on him. He did not know that castration would only be carried out when he finished serving the primary sentence of 12 years imprisonment plus 6 months substitute imprisonment if he could not pay a penalty imposed, such as the provisions of Article 81 paragraph 7. Perhaps after knowing that castration would not immediately be executed, it is possible that the fear of castration would disappear, changing in the hope that it may not be implemented because of the change in the law. This is not impossible because there is a sufficiently balanced number of parties who agree and disagree on castration as an additional form of punishment for perpetrators of sexual violence against children.

The second case example is the imposition of a sentence of castration which has indeed been filed as a charge by the prosecutor with a request that the judge in addition to imposing a sentence of imprisonment and a fine as the principal punishment, also imposes an additional punishment in the form of castration to a scout coach who is accused of molesting 15 students from 2017 to 2019. Thus this time the prosecutor initiated castration. It is possible that this time the prosecutor learned from the first case, and dared to file a charge to impose imprisonment as a primary punishment with additional punishment, castration, to the perpetrator because of his profession as a teacher, the number of victims that was higher than the first case, and the length of committing the actions (for years). Based on the facts of the trial, evidence, and the judge's conviction that the perpetrator was guilty, the judge complied with the prosecutor's demands by passing the verdict as mentioned above.

In principle, the two case examples above have the same basic reasons why the judge finally sentenced castration as an additional punishment in addition to the elimination of the primary punishment in the form of imprisonment and fines for perpetrators of sexual violence against children, namely: that the great number of victims of the crime. This is one of the juridical considerations in accordance with the provisions of Article 81 paragraph 5 stating that if the victim is more than one victim, additional punishment in the form of castration can be imposed. In addition based on sociological considerations, the convict who did not act as adults should have the obligation to protect and help victims who are still children, especially in the second case, where the perpetrator was an educator. As well as the judge's conviction that the defendant was guilty and needed to be punished accordingly so that there was justice, not only for the perpetrator, but also for the victim and his family, as well as for peace for the community. Thus the imposition of this punishment has an effect of deterrence, there is also an element of prevention, especially for the perpetrators and general deterrence for the community, in accordance with the mix theory.

Hopefully those two examples of verdicts will soon be followed by other judges who handle similar cases so that it is hoped that it will be sufficient to provide a deterrent effect on the perpetrators, as well as to discourage other potential perpetrators so that they can reduce the number



of crimes of sexual violence against children, which in the end children can undergo life safely and protected.

## CONCLUSION

Recently, cases of sexual violence against children can be said to be still high, as evidenced by the intensive coverage of the mass media, local, regional and national. Therefore, it can be concluded that even though there has been a verdict to impose a sentence of castration, it is hardly to be expected to have a deterrent effect on the perpetrators or in preventing other perpetrators, neither can guarantee protection for children from sexual predators. This is, more or less, influenced by the absence of execution of convicts who have been sentenced to castration, because the law stipulates that executions will only be carried out after the convict has finished serving imprisonment as the main criminal.

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