JURIDICAL STUDY OF CASTRATION SHOT ON PEDOPHILIA OFFENDER
BASED ON THE PURPOSE OF CRIMINALIZATION

By:

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Abstract

The Penalization of castration since the issuance of Perppu No. 1 of 2016 known as Perppu of Castration emerges the pros and cons in its implementation. Until it was legalized into Law No. 17 of 2016, there is still not fix mechanism of castration shot for sexual child abusers and pedophilia offenders. Thus, it is necessary to study the suitability of this penalty based on the purpose of criminalization apart from the effort to build legal protection for child victims of pedophilia and the cost charged on the state related to the castration.

This research used the juridical normative method with philosophical, legal, and comparative approaches. Legal data used in this research was primary, secondary and tertiary legal materials. Then, the data was analyzed normatively through deductive-inductive thinking patterns to formulate a whole description for the answer of research questions.

The result of this research indicated that castration shoot on pedophilia offender is suitable based on the purpose of criminalization and as a form of retaliation, prevention, improvement or rehabilitation for pedophilia offenders as well as society protection.

Key words: Castration Shot, Purpose of criminalization.

A. INTRODUCTION

1. Background

Since the last two decades, the world’s attention on children cases and legal has increased. Several cases happened in many parts of the world cause much concern from parents particularly on abuse cases with victim children.

Based on the data gained, social media shows pedophilia case involving internet users where the perpetrator made a group containing photos and video with pedophile content distributed to group members in some countries including Indonesia\(^1\).

Abuse on children is differed of psychological and physical abuses. One of sexual abuses on children is pedophilia. Pedophilia happens when an adult has sexual disorientation on children.

\(^1\)KPAI asked Facebook to be responsible to the existence of pedophile group, March 21\(^{st}\), 2017 edition m.republika.co.id/berita/nasional/hukum/17/03/21/on 5cn330-kpai-minta-facebook-ikut-tanggung-jawab-adanya-grup-pedofil-loli-candy. Retrieved on May 20\(^{th}\), 2017.
The penalization of castration has considered some factors such as according to the explanation of Law No. 17 of 2016 which is based on Law No. 23 of 2002 concerning on Children Protection. It has been revised through the Las No. 35 of 2014 as the alteration of Law No. 23 of 2002 concerning on Children Protection. The revision concerned on the addition of sanction to children sexual abusers. However, the revision on the Law has not decreased the rate of children abuse significantly. It is important to emerge the prevention effort through chemical castration, electronic detection device, and rehabilitation given to children sexual abusers.

The penalization of castration shot since the issuance of Perppu No. 1 of 2016 known as Perppu of Castration emerges the pros and cons in its implementation. Until it was legalized into Law No. 17 of 2016, there is still not fix mechanism of castration shot for sexual child abusers and pedophilia offenders. Thus, it is necessary to study the suitability of this penalty based on the purpose of criminalization apart from the effort to build legal protection for victims of pedophilia and the cost charged on the state related to the castration.

2. Research Question
Has castration shot on pedophilia offenders fulfilled the purpose of criminalization?

B. RESEARCH METHOD
1. Research Design
This research used normative juridical method by reviewing and interpreting theoretical things such as principles, conception, doctrines or legal norms related to Law No. 17 of 2016.

2. Research Approaches
Some approaches used in this research such as philosophical, legal, and comparative approaches by loading the description of the research object based on the precise and in depth literature reviews.

3. Sources
a. Primary legal data: the 1945 Constitution of the Republic of Indonesia; Law No. 12 of 2011 concerning Formulating Legislation; Criminal Code and Criminal Code Procedures; Law No 17 of 2016 concerning on The Penalization of

Government Regulation in Lieu of Law (PERPPU) No 1 of 2016 on the second amendment of Law No. 23 of 2002 concerning on Formulating Children Protection Law.

b. Secondary legal data: *Buku Hukum Pidana; Buku Pembahasan dan Permasalahan dan Penerapan KUHAP; Buku Asas-Asas Hukum Pidana di Indonesia dan Penerapannya; Buku Perbuatan Pidana dan Pertanggungjawaban; Buku Penelitian Hukum Normatif*.


4. Data Collecting Methods

The secondary data was done through the literature study by analyzing and reviewing books and literatures with relevant topic and current research problem.

5. Data Analysis Methods

The obtaining data was listed systematically and classified based on the themes. Then the data was analyzed normatively through the deductive-inductive thinking pattern to gain the whole picture for the answer of the research problem.

C. RESULT AND DISCUSSION

Juridical study of castration shot on pedophilia offender based on the purpose of criminalization

The purpose of criminalization is not at all regulated in Criminal Code, but it clearly regulated in Article 54 of Draft of KUHP. Therefore, in this research the study was concerned on the sanction of castration shot based on the purposes of crime mentioned as the follow:

1. Retaliation
2. Prevention
3. Rehabilitation
4. Society Protection

In Chapter II, Researcher has explained several theories of criminalization experts which all agree that the purpose of criminalization is not singular, such as for retaliation only or for prevention only.

1. Castration Shot as retaliation

Government holds the major role on legal protection for children victims of pedophilia. The sanction or repressive action on the perpetrator of pedophilia is done through court mechanism. Basically, criminal and action are the same, they mean suffering. The difference is that the action is smaller or lighter than the suffering coming from criminal sanction.
Criminal can be defined as the suffering deliberately imposed by the government to one person or persons as the sanction for breaking the criminal law. Castration shot is kind of suffering or hardship imposed to pedophile perpetrator as the retaliation for his crime to his victim.

Castration shot as the retaliation for his crime as it is stated in absolute theory suggest seeking the foundation of punishment based on the crime itself. Since the crime brings harmful to its victim then the doer shall get through the suffering as the retaliation. Immanuel Khan as philosopher stated that the legal foundation of criminalization shall be based on the crime itself which has caused suffering to others, while the punishment is the absolute lawsuit of Morality Law. Thus, the punishment is ethic retaliation.

The objectives of a punishment as it is stated in absolute theory in criminal code are:

a. Criminal detention is basically the retaliation given to the criminal doer to bring suffering (subjective view of retaliation)

b. Proposed to fulfill the satisfactory of vengeance from society (objective view of retaliation)

Before the formulation of Law No. 17 of 2016, there were many parties stating that castration shot breaks the human right (HAM), however the reason behind the castration shot as the hardest sanction cannot be associated as violating human right. The criminal doer has violated the human right as well. It means that someone’s basic right is restrained by others’. Criminal victim also has his human right protected by the state, thus castration shot can be used as shock therapy since it could bring right amount of suffering to criminal doer apart from the imprisonment sanction. Therefore castration is merely retaliation from government.

2. Castration Shot as Prevention

As the prevention action, castration shot stands as the additional sanction to the perpetrator which later explained as part of relative theory. Sanction given to prosecute the goal of the punishment itself namely to improve the satisfactory of society towards the harmful resulted by the crime. The purpose of the punishment shall be

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4Adami chazawi, Loc. Cit, P. 154.
reviewed ideally. Besides, the purpose of punishment is to prevent the crime. However there are some differences in prevention such as:

a. Prevention is proposed generally as the common prevention (algemenepreventie). This can be done through punishment thread, sanction given, and execution of punishment;

b. Prevention is proposed to the criminal doer only (specialepreventie).

The purpose of criminalization or punishment means not just as bring suffering or shock therapy to the criminal doer as well as to scare and to revenge upon his crime. Besides, the punishment shall be reviewed from the broader view, it also means as the cure form criminal doer to contemplate all his mistakes and repent wholeheartedly not to commit the crime in the future.

Castration as criminal sanction has been given in several countries as a mean to protect the society. In criminalization theory, castration shot is proposed to castrate or paralyze the pedophile to commit his action. The purpose is to prevent or decrease the opportunity for any law breaking in the future.

There are some opinions related to criminal sanction according to Richard D. Schwartz and Jerome H. Skolnick:\(^5\):

1. To prevent the recidivism
2. To deter other from the performance of similar acts
3. To provide a channel for the expression of retaliatory motives.

The sanction of castration shot for the perpetrator will prevent others to perform the similar crime.

3. Castration Shot as Rehabilitation

The improvement through castration shot is part of compound theory of absolute and relative theories. Basically, compound theory is the combination of absolute and relative theories. The combination of those two theories shows the punishment as the effort to maintain the law structure in society as well as to help the criminal doer.

P.A.F. Lamintang states three purposes of criminalization namely to improve the character of the criminal doer, to give therapy shock to commit the crime, and to ensure certain criminals not to commit their acts where other ways fail to stop them. In line with the P.A.F. Lamintang’s opinion, punishment given is not only

to stop the criminal doer to commit his act but also to improve his character in the future. This also support the purpose of social system (imprisonment) of Article 2 of Law No 12 of 1995 concerning on the purpose of imprisonment is to make the prisoners realize their mistakes and improve them to be the better persons with decent personality.

The punishment given to pedophiles is not only criminal sanction but also rehabilitation or treatment to cure his pedophilia. It is hoped that through the rehabilitation the pedophiles will not perform the same acts.

There is opinion from Sandra Moniaga, member of National Commission of Human Rights (Komnas HAM), who believes that castration shot violate the human rights. The castration shot violates the human rights as it is mentioned in Article 28 G point (2) of the 1945 Constitution, Article 33 point (1) of Law No. 39 of 2009 concerning on Human Rights which states that everyone has the right to freedom from torture, or cruel, inhuman and degrading punishment or treatment.

Towards this opinion, researcher agrees that the castration shot could impact unexplained scientific effects, it could result the subject not to have offspring and other uncertain things. However it is hoped that as the rehabilitation effort, castration shot could help the criminals.

Pedophilia is classified as special crime such as drugs. It could qualify the perpetrator as the victim or doer. Thus, government shall sort out the child sexual abuser whether he is subjected as pedophilia or not. The abusers with tendency of pedophilia should be properly punished and get rehabilitation to treat his sexual disorientation.

4. Castration Shot as for Society Protection

Castration shot is proposed to protect the society from the pedophile that could harm society and to guide and as well as to give treatment the pedophile.

The purpose of criminalization as society protection as it is suggested by Muladi which combine the absolute and relative theories called integrative theory are:

1. General and specific prevention: the main purpose

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7Muladi, Lembaga Pidana Bersyarat, Alumni Cetakan Ketiga, Bandung, 1984, pp. 81-86.
of criminalization is to prevent the recidivism and other individuals perform the similar acts or further crime.

2. Society protection: the purpose of criminalization has broad dimension which fundamentally as the purpose of criminalization. In small scale it is described as court’s wisdom to solve the problem through criminalization to protect society from the repetition of crime.

3. Maintain society solidarity, criminalization is proposed to strengthen the custom laws in society and to prevent the individual revenge.

Castration shot and imprisonment to pedophiles will protect society, and if it is added with electronic detection device could help to identify the doer location which could help to stop recidivism in the society.

As the consideration, researcher will explain other countries that have implemented castration shot, and these countries. There are total 20 countries that apply castration penalty, 9 countries in Europe and 9 states in America, 1 country in Latin America and 1 country in South East Asia. The 9 European countries are England, Poland, Russia, Germany, Ceko Republic, Denmark, Sweden, and Spain. The 9 states in America are California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin. One country in Latin America with castration shot punishment is Argentina and one country in South East Asia is South Korea.

Besides, there are some European United countries that include castration article in criminal law in form of chemical castration to sexual abuser. Norway is the only European united country that bluntly includes castration as one of punishments for sexual abuse in its criminal Law in 2010.

Poland just applies chemical castration as part of treatment for pedophile. Australia also includes the castration in its criminal law for sexual abuse and rapist. Russia applies the chemical castration in its criminal law for child sexual abuser with the victims of 12 years or under 12 years old. While Turkey is still considering the castration cost for rapist. India and Taiwan give castration shot specifically to pedophile and recidivists.

In some states in America such is Louisiana and Iowa has adopted castration as part of treatment and not as punishment. Di United State of America,
the long debate on castration has been taking place since 1980\(^8\). However in the state where this policy applied, the protest and critic come from many parties not only from paramedic but also law expert and criminologist. Ryan Cauley from Iowa University said that though castration is included in part of treatment but the perpetrator sees that as a punishment. He believes that chemical castration has law problem not only from material but also from the procedural sides\(^9\). Academically and criminologically, the causes of sexual abuse are power and violence not sexual desire. Thus it is important to decrease the violence motive rather than the sexual desire motive. The expert suggests that the therapy is more appropriate given to child sexual abuse rather than treatment of castration shoot. Psychological therapy will much help the child sexual abuser since the problem faced by the perpetrator is psychological problem not medical problem. Through psychological treatment, the impact of drug addiction can be decreased and the negative image of castration can also be minimized.

Pedophilia cases mostly involve men, the cases are classified into two kinds, homosexual pedophilia where the sexual objects are boys and heterosexual pedophilia where the sexual objects are little girls. Pedophilia cases happen in Indonesia are explained as the following:

a. Pedophile Case of Robot Gedek Siswanto also known as Robot Gedek is 44 year old homeless who earns his living as ragpicker. He was caught by the police in Tegal Rail Station on Saturday 27 of July 1996 for his crime of sodomy to several street kids and killed eight of his victims in age of 11 – 15. He persuaded his target by luring the kids some money (Rp. 1000,-) and asking them to play ding-dong game. For this case in 21 of May 1997 the District Court of Jakarta Pusat sentenced him death penalty.\(^10\)

b. Pedophile Case of Babe Baekuni also known as Babe is a homeless living in Jakarta and works as cigarette huckster or street singer. He killed 9 year old boy named Ardiansyah by strangling his neck with

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10*Jurnal Update Indonesia* Volume IV, No. 10-March 2010 The Indonesia Institute, ISSN 1979-1984, jakarta.
plastic rope and sodomised him. The victim’s body was also mutilated into 4 pieces and threw out the pieces in different places. The psychiatrist also got the perpetrator testimony of killing and sodomizing the other seven kids. Four of them were mutilated while the rest just killed. All of the victims were identified as male. In October 2010 District Court of Jakarta Timur sentenced the penalty of a lifetime imprisonment\(^\text{11}\).

c. Pedophile Case of Emon

District Court of Sukabumi sentenced 17 year imprisonment to sexual abusers on dozens kids, Adri Sobari also known as Emon. He was convicted to do immoral things to dozens kids in Sukabumi, he abused, sodomised the under aged kids. The perpetrator committed his action consciously and realized the consequence which later caused him to threatened his victims to remain silent. The victims were threatened to be killed, voodooed, or broken legged. He also lured his victims some money (from Rp. 10,000,-) or toys like mini motor bike; he even fooled the kids to learn magical power such flying in the air, running fast, martial arts of monkey, weasel, and *Kian Santang* steps if they agree to be fulfill his desire.

Based on the Law No. 23 of 2002 concerning on Children Protection which revised through Law No. 35 of 2014 where the revision concerns on the additional penalty of child sexual abuser. However the revision of such Law has not decreased the number of child abuse cases significantly.

The main law in Perpuuu No. 1 of 2016 includes the additional sanction of maximum imprisonment of 20 years. Nowadays, in Law No. 35 of 2014 concerning on Children Protection the maximum sanction for child sexual abuser is 15 year imprisonment.

Besides the main sanction of imprisonment there are also additional sanction of castration, chip attached, and perpetrator identity publication. Chemical castration aims to eliminate the sexual desire that could be given to the perpetrator while he was in jail or before he is released. It is also possible to attach the chip detector to his tarsus to supervise his movement. On the implementation later there are also main sanction and additional sanction. This has been approved by Yasonna as the Minister of Law and Human Rights of

\(^{11}\text{The Verdict of Supreme Court No. 493 K/PID/2011 of April 21\textsuperscript{st} 2011.}\)
the Republic of Indonesia. However the weaknesses of this regulation is that there are not detail explanation related to the cost, the producer, mechanism of attachment of electronic chip detector as well as the chemical castration.

Law No. 17 of 2016 concerning on The Penalization of Government Regulation in Lieu of Law (PERPPU) No 1 of 2016 on the second amendment of Law No. 23 of 2002 concerning on Formulating Children Protection into formal Law, states the punishment as the effort to bring suffering to the criminal doer for breaking the law and as the way to protect children from sexual abuse of pedophilia.

The implementation of Castration may be seen as an inhuman sanction. However, to let the pedophile wander around freely in the society means to give opportunity to commit another sexual abuse on children. Researcher in this point indicates the second principle of Pancasila, Just and Civilized Humanity.

Law No, 17 of 2016 could later be formulated as a comprehensive tool to handle the sexual abuse on children if it could fulfill: the principle on protection for victims and his/her family; principle of law enforcement, transparent and just law; and principle of prevention to ensure another case will not happen in the future. In the other words, additional sanction of castration can be approved with the purpose of criminalization from the aspects of preventive, repressive, absolute, relative or compound theories.

D. CLOSING

1. Conclusion

Castration shot on pedophile can be approved with the purpose of criminalization as retaliation, prevention, improvement or rehabilitation for pedophilia perpetrator and as the society protection.

2. Suggestion

For the government that penalizes pedophilia as extraordinary case, it is suggested to as well handle the case with extraordinary ways. After penalization Law No. 17 of 2016, it is necessary to regulate the clear rules related to the needs of protection to pedophilia victims in the society.
Daftar Pustaka


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m.republika.co.id/berita/nasional/hukum/17/03/21/on5ncn330-kpai-minta-facebook-ikut-tanggung-jawab-adanya-grup-pedofil-loli-candy Diakses pada 20 Mei 2017