

ABSTRAK

KEBIJAKAN PENJATUHAN PIDANA KEBIRI KIMIA (*CHEMICAL CASTRATION*) KEPADA PELAKU TINDAK PIDANA KEKERASAN SEKSUAL TERHADAP ANAK (Studi Putusan Nomor 858/Pid.Sus/2022/PN Bjm)

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Kekerasan seksual terhadap anak merupakan kejahatan luar biasa yang menimbulkan dampak jangka panjang bagi korban dan keresahan bagi masyarakat. Untuk menanggulangi dan memberikan efek jera kepada pelaku, pemerintah Indonesia menerapkan kebijakan pidana tambahan berupa kebiri kimia sebagaimana diatur dalam Peraturan Pemerintah Nomor 70 Tahun 2020. Perbedaan pemikiran atau pandangan menjadi persoalan dalam proses berjalannya hukuman kebiri kimia di Indonesia yang dinilai bertentangan dengan Hak Asasi Manusia. Contoh kasus pada putusan nomor : 858/Pid.Sus/2022/PN Bjm dalam putusannya korban hanya 1 (satu) orang yaitu anak kandungnya dan sebelumnya terdakwa tidak pernah dipidana karena melakukan kekerasan seksual terhadap anak. Hakim Menjatuhkan pidana penjara 18 (delapan belas) tahun dan pidana tambahan kebiri kimia 2 (dua) tahun, bertentangan dengan Peraturan Pemerintah Nomor 70 Tahun 2020 Pasal 1 Angka (2) dijelaskan pemberian tindakan kebiri kimia dilakukan kepada pelaku yang pernah dipidana karena melakukan kekerasan atau ancaman kekerasan memaksa anak melakukan persetubuhan dengannya atau dengan orang lain, sehingga menimbulkan korban lebih dari 1 (satu) orang. Permasalahan yang diteliti oleh penulis adalah penjatuhan kebiri kimia ditinjau dari kebijakan hukum pidana dan perspektif Hak Asasi Manusia (HAM) dan dasar pertimbangan hakim dalam menjatuhkan sanksi kebiri kimia kepada pelaku kekerasan seksual terhadap anak.

Penelitian ini menggunakan pendekatan masalah yakni pendekatan yuridis normatif. Sumber data penelitian ini adalah data primer dan didukung wawancara sesuai dengan pernyataan dari narasumber penelitian yang terdiri atas Dosen Bagian Hukum Pidana Universitas Lampung dan Dosen Bagian Hukum Tata Negara Universitas Lampung dan data sekunder diperoleh dari hasil literatur atau sumber bacaan. Prosedur Pengumpulan data dan pengolahan data yang dilakukan penulis melalui studi kepustakaan yang memberikan penjelasan terkait penelitian yang diteliti. Data yang dipergunakan dalam penelitian ini dianalisis secara kualitatif.

Hasil Penelitian dan Pembahasan dalam penelitian ini menunjukkan bahwa Pemerintah Indonesia telah mengeluarkan Peraturan Pemerintah No. 70 Tahun 2020 ini merupakan reaksi dari banyaknya kasus seksual terhadap anak, dikarenakan penjatuhan pidana penjara terhadap pelaku kejahatan seksual dianggap kurang efektif dalam mengurangi kasus kekerasan seksual terhadap anak. Peraturan Kebiri Kimia tidak melanggar Hak Asasi Manusia karena Negara diberi ruang untuk membatasi Hak Asasi Manusia dengan pertimbangan moral, nilai-nilai agama, keamanan, dan ketertiban umum yang tercantum dalam Undang-Undang Dasar tahun 1945 Pasal 28J Ayat (2). Pertimbangan Hakim dalam

menjatuhkan putusan pidana kepada terdakwa kekerasan seksual terhadap anak berdasarkan putusan nomor: 858/Pid.Sus/2022/PN Bjm dengan mempertimbangkan secara filosofis dijatuhkannya pidana tambahan kebiri kimia kepada terdakwa merupakan upaya untuk memperbaiki perilaku, diharapkan untuk memperbaiki dirinya dan tidak melakukan kejahatan lagi, dan Terdakwa melakukan kekerasan seksual terhadap anaknya secara berulang kali hingga 4 (empat) kali yang membuat hakim menjatuhkan pidana tambahan kebiri Kimia. Hakim yang menjatuhkan pidana tambahan kepada terdakwa diperbolehkan mengambil sikap berbeda dengan rumusan Undang-Undang, mendapatkan kebebasan dan kemandirian untuk mengambil keputusan demi kelayakan dari putusan tersebut. Terakhir pertimbangan sosiologis dalam hal memberatkan dan meringankan pada perkara nomor: 858/Pid.Sus/2022/PN Bjm tersebut sudah sesuai karena akibat perbuatan terdakwa menimbulkan dampak negatif bagi anak korban seperti mengganggu tumbuh kembang anak korban serta trauma berkepanjangan dan meresahkan masyarakat.

Adapun saran yang dapat diberikan, Seharusnya sebelum dijatuhinya kebiri kimia dilakukan penilaian dari segi psikologis, jadi penjatuhan pidana tambahan kebiri kimia dilakukan jika pelaku mempunyai kecenderungan untuk mengulangi perbuatannya. Hendaknya Hakim memberikan hukuman yang sesuai dan setimpal dengan perbuatan terdakwa yang mana ayah kandung tega memperkosa anaknya dijatuhi dengan pemberatan maksimal dalam Undang-Undang Nomor 35 Tahun 2014 Tentang Pelindungan Anak.

Kata Kunci: Kebijakan Hukum Pidana, Kebiri Kimia, Kekerasan Seksual, Anak

ABSTRACT

CHEMICAL CASTRATION CRIMINAL POLICY TO PERSONS OF CRIMINAL ACTS OF SEXUAL VIOLENCE AGAINST CHILDREN (Study Decision Number 858/Pid.Sus/2022/PN Bjm)

By

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Sexual violence against children is an extraordinary crime that has long-term impacts on victims and unrest in society. To overcome and provide a deterrent effect to perpetrators, the Indonesian government has implemented an additional criminal policy in the form of chemical castration as regulated in Government Regulation Number 70 of 2020. Differences in thinking or views are a problem in the process of implementing chemical castration in Indonesia, especially regarding Human Rights. One example of a case in decision number: 858/Pid.Sus/2022/PN Bjm in its decision, the victim was only 1 (one) person, namely his biological child and previously the defendant had never been convicted of committing sexual violence against children. The judge sentenced him to 18 (eighteen) years in prison and an additional sentence of 2 (two) years of chemical castration, contrary to Government Regulation Number 70 of 2020 Article 1 Number (2) which explains that chemical castration is given to perpetrators who have been convicted of committing violence or threats of violence forcing children to have intercourse with him or with other people, resulting in more than 1 (one) victim. The problem studied by the author is the imposition of chemical castration from the perspective of criminal law policy and Human Rights (HAM) and the basis for judges' considerations in imposing chemical castration sanctions on perpetrators of sexual violence against children.

This study uses a problem-solving approach, namely a normative legal approach. The data source for this study is primary data and is supported by interviews in accordance with statements from research sources consisting of Lecturers in the Criminal Law Department of the University of Lampung and Lecturers in the Constitutional Law Department of the University of Lampung and secondary data obtained from literature or reading sources. The procedure for collecting data and processing data carried out by the author through a literature study that provides an explanation related to the research being studied. The data used in this study were analyzed qualitatively.

The results of the research and discussion in this study indicate that the Indonesian Government has issued Government Regulation No. 70 of 2020 as a reaction to the many cases of sexual violence against children, because the imposition of prison sentences on perpetrators of sexual crimes is considered effective in reducing cases of sexual violence against children. The Chemical Castration Regulation does not violate Human Rights because the State is given space to limit Human Rights with considerations of morality, religious values, security, and public order as stated in Article 28J Paragraph (2) of the 1945 Constitution. The Judge's consideration in imposing a criminal sentence on the defendant of sexual violence against children based on decision number:

858/Pid.Sus/2022/PN Bjm by considering philosophically the imposition of additional chemical castration penalties on the defendant is an effort to improve behavior, it is hoped that he will improve himself and not commit crimes again, and the Defendant committed sexual violence against his child repeatedly up to 4 (four) times which made the judge impose additional chemical castration penalties. The judge who imposed additional punishment on the defendant is allowed to take a different stance from the formulation of the Law, getting the freedom and independence to make decisions for the sake of the appropriateness of the decision. Finally, sociological considerations in terms of aggravating and mitigating in case number: 858/Pid.Sus/2022/PN Bjm are appropriate because the defendant's actions have a negative impact on the victim's child, such as disrupting the victim's child's growth and development as well as prolonged trauma and disturbing the community.

As for the suggestions that can be given, Before chemical castration is imposed, a psychological assessment should be carried out, so that additional punishment of chemical castration is imposed if the perpetrator has a tendency to repeat his actions. The judge should give a sentence that is appropriate and commensurate with the defendant's actions where the biological father who had the heart to rape his child was sentenced with the maximum penalty in Law Number 35 of 2014 concerning Child Protection.

Keywords: Criminal Law Policy, Chemical Castration, Sexual Violence, Children