

ABSTRAK

ANALISIS DASAR PERTIMBANGAN HAKIM PENGADILAN NEGERI DAN PENGADILAN TINGGI DALAM PENERAPAN SANKSI KEBIRI KIMIA TERHADAP PELAKU KEKERASAN SEKSUAL ANAK

**(Studi Putusan Nomor : 287/Pid.Sus/2020/PN Sdn dan
Putusan Nomor : 42/PID/2021/PT TJK)**

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Hukuman kebiri merupakan pemberian zat kimia melalui penyuntikan kepada pelaku kekerasan seksual anak. Kasus yang mendapatkan hukuman kebiri kimia adalah Putusan Nomor 287/Pid.Sus/2020/PN Sdn, namun dibatalkan dalam Putusan Nomor 42/PID/2021/PT Tjk. Sehingga terdapat perbedaan antara Putusan Nomor 287/Pid.Sus/2020/PN Sdn dengan Putusan Nomor 42/PID/2021/PT Tjk terkait dengan penjatuhan kebiri kimia. Berdasarkan isu hukum tersebut maka permasalahan yang akan dibahas adalah dasar pertimbangan hakim Pengadilan Negeri dan Pengadilan Tinggi dalam penerapan sanksi kebiri kimia terhadap pelaku kekerasan seksual anak dan aspek keadilan substantif dalam penerapan sanksi kebiri kimia terhadap pelaku kekerasan seksual anak.

Metode pendekatan yang penulis gunakan ialah Pendekatan Yuridis Normatif dan di dukung dengan Yuridis Empiris menggunakan pendekatan peraturan perundang-undangan yang berlaku serta studi kepustakaan dan didukung wawancara dengan narasumber pada penelitian ini terdiri dari Hakim Pengadilan Negeri Sukadana, Hakim Pengadilan Tinggi Tanjung Karang, Advokat Lembaga Bantuan Hukum Kota Bandar Lampung, Dosen Bagian Hukum Pidana Fakultas Hukum Universitas Lampung. Analisis data secara kualitatif.

Berdasarkan hasil penelitian dapat disimpulkan bahwa pada Putusan Nomor 287/Pid.Sus/2020/PN.Sdn hakim menjatuhkan sanksi kebiri kimia berdasarkan keadaan dan kondisi terdakwa serta korban yang dilecehkan berulang kali dan dikaitkan dengan terdakwa yang merupakan anggota P2TP2A. Sedangkan pada Putusan Nomor 42/PID/2021/PT.Tjk hakim mempertimbangkan Pasal 81 Ayat (5) UU Perlindungan Anak yang pada pokoknya terdakwa tidak memenuhi syarat-syarat diterapkannya kebiri kimia. Putusan Nomor 287/Pid.Sus/2020/PN Sdn tidak berdasarkan keadilan substantif karena hakim hanya mempertimbangkan keadaan dan perbuatan terdakwa sehingga tidak menyelaraskan dengan aspek hukum terkait

dengan pelaksanaan kebiri kimia yang terdapat pada UU Perlindungan Anak. Sedangkan Putusan Nomor 42/PID/2020/PT Tjk telah berdasarkan keadilan

Yudi Pratama

substantif karena telah mempertimbangkan UU Perlindungan Anak dan menjadikan dasar dalam penerapan kebiri kimia sehingga menghapuskan tindakan tersebut dari terdakwa.

Adapun saran dalam penelitian ini, diharapkan Hakim dalam menerapkan jenis pidana harus mempertimbangan secara yuridis, filosofis dan sosiologis agar tidak terjadi perbedaan pertimbangan hakim dalam sebuah perkara. Diharapkan Hakim melakukan pertimbangan yang matang dan memperhatikan segala aspek penting terutama pada aspek objektif, jujur, imparial dan rasional sehingga dapat memenuhi keadilan substantif.

Kata Kunci : Pertimbangan Hakim, Kebiri Kimia, Kekerasan Seksual

ABSTRACT

ANALYSIS OF THE CONSIDERATIONS OF DISTRICT COURT & HIGH COURT JUDGES IN THE APPLICATION OF CHEMICAL CASTRUST SANCTIONS AGAINST PERPETRATORS OF CHILD SEXUAL VIOLENCE

(Studi Putusan Nomor : 287/Pid.Sus/2020/PN Sdn dan Putusan Nomor : 42/PID/2021/PT TJK)

By

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Chemical castration is the administration of chemical substances through injection to perpetrators of child sexual violence. The case that received chemical castration was Decision Number 287/Pid.Sus/2020/PN Sdn, but was overturned in Decision Number 42/PID/2021/PT Tjk. So there is a difference between Decision Number 287/Pid.Sus/2020/PN Sdn and Decision Number 42/PID/2021/PT Tjk regarding the imposition of chemical castration. Based on these legal issues, the problems that will be discussed are the basis for consideration by judges at the District Court and High Court in applying chemical castration sanctions to perpetrators of child sexual violence and aspects of substantive justice in applying chemical castration sanctions to perpetrators of child sexual violence.

The approach method used by the author is the Normative Juridical Approach and supported by Empirical Juridical using the applicable legal regulations approach and literature studies and supported by interviews with sources in this study consisting of Sukadana District Court Judges, Tanjung Karang High Court Judges, Advocates of the Bandar Lampung City Legal Aid Institute, Lecturers in the Criminal Law Department of the Faculty of Law, University of Lampung. Qualitative data analysis.

Based on the research results, it can be concluded that in Decision Number 287/Pid.Sus/2020/PN.Sdn the judge imposed chemical castration sanctions based on the circumstances and conditions of the defendant and the victim who were repeatedly abused and associated with the defendant who was a member of P2TP2A. Meanwhile, in Decision Number 42/PID/2021/PT.Tjk the judge considered Article 81 Paragraph (5) of the Child Protection Law which in essence the defendant did not meet the requirements for the application of chemical castration. Decision Number 287/Pid.Sus/2020/PN Sdn was not based on

substantive justice because the judge only considered the circumstances and actions of the defendant so that it did not align with the legal aspects related to the implementation of chemical castration contained in the Child Protection Law.

Yudi Pratama

Meanwhile, Decision Number 42/PID/2020/PT Tjk was based on substantive justice because it had considered the Child Protection Law and made it the basis for the application of chemical castration so that it eliminated the action from the defendant.

As for the suggestions in this study, it is expected that Judges in applying the type of criminal offense must consider it legally, philosophically and sociologically so that there are no differences in the judge's considerations in a case. It is expected that Judges will make mature considerations and pay attention to all important aspects, especially the objective, honest, impartial and rational aspects so that they can fulfill substantive justice.

Keywords : Judge's Consideration, Chemical Castration, Sexual Violence