

JURIDICAL ANALYSIS OF ELEMENTARY PERFORMED BY A UROLOGICAL DOCTOR ON THE REQUEST OF THE COURT

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ABSTRACT; Law No. 17/2016 has emphasized that perpetrators of sexual crimes can be castrated, but this is a polemic for medical personnel who are appointed as executor in this action, because eliminating the patient's normal body functions is very contrary to the duties of a doctor. This study aims to obtain answers to legal protection for urology doctors who perform castration and to find out whether the actions taken by urologists at the request of the court were against medical ethics or not. The approach method used in this research is a library research approach with secondary data collection. The results of further research were analyzed qualitatively. Based on the research that has been done, it can be concluded that the urologist who performs castration at the request of the court, means that the action is an order that must be carried out, but this is contrary to professional standards because castration can have a bad impact on the patient and this is very contrary to professional standards and doctor's code of ethics so that it can be concluded that legal protection cannot be provided because the doctor acts contrary to professional standards and doctor's code of ethics. Castration performed by a urologist is against the code of medical ethics even though it is an order from the court. On the other hand, the doctor does not have the authority to act as a direct executor, while the executor himself is actually a public prosecutor, so that the doctor can refuse the action if it is considered contrary to the code of ethics and conscience.

Keywords: Castration; Urologist; Court Decision.

INTRODUCTION

The crime of sexual violence is a form of crime in society whose development is increasingly diverse in terms of motives, nature, form, intensity and modus operandi. As a social fact, the problem of crime is unavoidable and has always existed, causing unrest because crime is considered a disturbance to the welfare of society and the environment. Pedophilia is a mental disorder that is owned by perpetrators of sexual crimes. Articles in the Criminal Code concerning criminal acts that fall into the category of crime always contain an element of error from the perpetrators of the crime, namely intentional or culpable. Pedophile crimes should be a special concern for the government in ensuring the protection of children.

Perpetrators who have intercourse with children (pedophilia), will receive a prison sentence for the criminal act they have committed, namely in accordance with Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. However, if viewed from the facts, imprisonment alone is not enough to deter perpetrators who have intercourse with children (pedophilia), because in the judicial process the verdict received by

a pedophile is still light and a pedophile is also a person suffering from a psychosexual disorder whose cure is very difficult to do. In legal politics, it is explained that the law is used to express what is contained in society and to achieve what is aspired (*ius constituendum*). So that the stipulation of a law is a historical event which is the result of a series of facts that can be determined socially.

In this modern era, castration is carried out with the aim of being a criminal sanction against perpetrators of sexual crimes such as rapists and pedophiles in various countries. After the establishment of the law governing castration punishment, it raises pros and cons in people's lives. On the one hand, the implementation of castration is expected to be able to provide a deterrent and preventive effect to perpetrators, and can reduce the level of sexual crimes against children. On the other hand, the implementation of chemical castration is considered a violation of human rights. Human rights are essentially the most basic rights possessed by all human beings as the highest gift from God Almighty, wherever humans live, because with these rights humans can become dignified creatures. The Constitution states that the State must not punish humans by degrading human rights and human values. However, chemical castration is considered an act of violence and is considered contrary to the Constitution of the Republic of Indonesia, namely the right not to be tortured, and the right to be free from torture or treatment that degrades human dignity. In addition, the implementation of chemical castration only focuses on retaliation for perpetrators, not on repairs.

Considering the emergency of the Indonesian state regarding sexual crimes against children, the Government finally passed Law no. 17 of 2016 concerning Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law. Where is Law No. 17 of 2016 is the second amendment to the previous Child Protection Act (Law No. 23 of 2002 in conjunction with Law No. 35 of 2014). In Law no. 17 of 2016 regulates more broadly in the weighting of criminal sanctions for perpetrators who have intercourse with children (pedophilia). One of the weighting of criminal sanctions is chemical castration. Chemical castration has also been widely applied in various countries. This chemical castration is a chemical injection (chemical emasculation) that functions to eliminate the sex hormones in pedophiles which are the most important factors for causing sexual arousal.

Castration is a surgical procedure and/or use of chemicals with the aim of eliminating the function of the reproductive organs in the form of the testes in males. In chemical castration, the action as above is not carried out, but is replaced by giving chemical compounds that are able to weaken or eliminate the function of sex hormones. Pathophysiologically, chemical castration is done by injecting the hormone anti-testosterone into the convict's body. This hormone works by suppressing the production and activity of testosterone so that it does not trigger a libido race as long as the person is under the influence of the drug. Castration itself is considered very effective in the government's efforts to reduce and even eliminate the crime of sexual harassment which is increasing every day. It is hoped that castration can make someone who is about to commit sexual harassment think again before committing the act because if it is proven and there is a report, they are prepared to lose their sexual appetite.

A legal review of the contents of the law is contained in the Constitutional Journal, which was published in March 2017. The castration sentence is considered as an answer to the high public demands against perpetrators of sexual crimes in addition to the non-optimal implementation of child protection laws so far in Indonesia. However, various other approaches such as in terms of social sociology and psychiatry need to be considered so that castration is not the only solution to this problem.

In practice, the castration procedure involves the risk of pain and other complications to the convict. For this reason, doctors are considered the right profession to be used as executor of castration sentences because of their competence, compared to other professions. On the other hand, the medical profession that adheres to the principles of evidence-based medicine considers that the true effectiveness of chemical castration is still a question because there are no adequate double-blind studies to prove its effectiveness. This later became the basis for the attitude of the Indonesian Doctors Association which rejected the involvement of doctors as castration executors. Indonesian Doctors Association's rejection was conveyed through the fatwa of the Medical Ethics Council of Medicine Number 1 of 2016 concerning Chemical Castration. In addition to the effectiveness of castration, various other reasons also underlie the rejection of the Indonesian Doctors Association, such as the various unwanted side effects of castration, the possibility of psychological problems that cause sexual crimes, and opportunities for convicts to commit more extreme crimes. Medical science highly respects anyone's health as a human right, therefore doctors must realize their duty to prevent, diagnose, and treat disease. So that the regulation that allows the castration punishment creates a polemic for doctors who are appointed as executor, because this is very contrary to the ethics of the medical profession.

Problem

Based on the background described above, the formulation of the problem in this study is as follows:

1. How is the legal protection for urology doctors who perform castration at the request of the court.
2. Does the castration performed by the urologist at the request of the court violate medical ethics.

Research Methods

The approach method used in this study is a library research approach with secondary data collection obtained through the literature related to the research title. Researchers chose to do this method with considerations because it was constrained by funds and also time if the research was carried out with an empirical approach or in the field. The data obtained from this study were then analyzed qualitatively, namely to answer the formulation of the problem. Researchers use qualitative methods because there is very little information about the law on castration carried out by medical personnel. This method is a method used to obtain prior knowledge of an event.

Discussion

1. Legal Protection for Urology Doctors Who Perform Castration at Court's Request

Satjipto Raharjo stated that legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. According to Soedikno Mertokusumo, legal protection is a guarantee of human rights and obligations in order to fulfill their own interests and in human relations.

According to Muktie, A. Fadjar, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case that is owned by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to take legal action.

The concept of legal protection is an entity of various legal remedies in protecting human rights as well as rights and obligations arising from legal relations between human beings as legal subjects. In other words, the concept of legal protection as an illustration of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace. The concept of legal protection for the people is based on the concepts of recognition, protection of rights. The application of the conception as a framework of thought with Pancasila as the ideology and philosophical basis, so that the principle of legal protection for doctors is the principle of recognition and protection of human dignity based on Pancasila and the principle of the rule of law based on Pancasila.

From the explanation above, it can be concluded that legal protection is an entity of various legal efforts in protecting human rights and rights and obligations arising from legal relations between human beings as legal subjects. In other words, legal protection is an illustration of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace.

Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to fair recognition, guarantees, protection, and legal certainty and equal treatment before the law. This is similar to Article 5 paragraph (1) of Law no. 39/1999 on Human Rights which also states that everyone is recognized as an individual human being who has the right to demand and receive the same treatment and protection in accordance with his human dignity before the law.

Legal protection for doctors in principle has the following objectives:

1. Legal protection in order to ensure the fulfillment of doctors' rights.
2. Legal protection in order to prevent the occurrence of actions of doctors that harm the rights of patients.
3. Legal protection provides access for doctors to stop actions that violate the code of ethics or violate the law.
4. Legal protection in ensuring the availability of compensation assistance or remedial action for violations committed to the patient.

Article 50 of Law no. 29/2004 concerning Medicine states that doctors in carrying out medical practice have the right, one of which is to obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures. Based on this article, if it is related to castration performed by a urologist at the request of the court, it means that the action is an order that must be carried out, but this is contrary to professional standards because castration can have a bad impact on patients and this is very contradictory. with the medical profession so that it can be concluded that legal protection cannot be provided because the doctor acts contrary to professional standards.

Article 57 of Law no. 36/2014 concerning Health Workers states that health workers have the right to refuse the wishes of recipients of health services or other parties that are contrary to professional standards, codes of ethics, service standards, standard operating procedures, or provisions of legislation. Although based on the Decision of the Constitutional Court Number 82/PPU/XIII/2015, medical personnel are not included as health workers, but the article can actually still be applied because the rights of doctors to provide services are very broad, not only from formal sources but also material sources.

2. Ethical Review of Urology Doctors Who Perform Castration at Court's Request

The executor of the chemical castration act in Article 81A paragraph 2 states that the management of the chemical castration act in paragraph (1) is carried out direct and gradual supervision by the implementing ministry in the social, legal, and health sectors,

in that article it is not explained that the profession medicine is appointed to carry out this chemical castration, but the action to be taken is a form of medical action which is actually also the authority of medical personnel. The actual executor's authority is the prosecutor's authority as described in Article 1 number 6 letter a of Law no. 8 of 1981 concerning the Criminal Procedure Code, it is clear that the prosecutor's profession acts as the executor of court decisions that have permanent legal force and in this case the prosecutor delegates this authority to doctors to carry out chemical castration executions in the provisions of the Law. Criminal Procedures, the role of execution lies with the prosecutor. So, ideally, the execution of chemical castration is carried out on the orders of the prosecutor after the decision is final and binding. That is, the prosecutor is called the executor because he gave an order to carry out chemical castration in accordance with the implementation instructions. In criminal construction, doctors are not the executor, but only become the technical team for implementing the sentence.

In the 2012 Code of Medical Ethics Article 5 it is stated that "every act/advice of a doctor that may weaken psychological or physical endurance, must obtain the consent of the patient/family and only given for the benefit and benefit of the patient." In the explanation of the article, it is explained that weakening the patient's psyche and physique is contrary to the nature of medical science unless there is a justification for the action, such as procedures for removing nerve function used in preoperative anesthesia and administering pain medication to patients with unbearable pain.

Referring to this, apart from actions aimed at curing the patient, depriving the patient of normal bodily functions is against the duty of a doctor. This then applies to the castration punishment procedure. Although the aim is for the good of the wider community and controlling excessive sexual hormone urges in perpetrators of sexual crimes, in essence harming the normal functions of the patient's body cannot be said to be free from violations of medical ethics.

From this it is clear that castration performed by general practitioners and urologists is against the medical code of ethics even though it is an order from the court. On the other hand, the doctor does not have the authority to act as a direct executor, while the executor himself is actually a public prosecutor, so that the doctor can refuse the action if it is considered contrary to the code of ethics and conscience.

However, if the urology doctor is hands off in this case, then there must be a separate executor who is able to replace the role of the urologist as a profession with competence that is able to understand the physical and psychological health of the patient in order to reduce the pain that must be suffered by the perpetrator. This is because a prosecutor who is not actually from the health sector will also not be able to carry out this action. So that an appointed executor must have received special competency training for castration which can then be implemented directly so that it becomes one of the answers to mediate interests between law and medical ethics.

Conclusion

Based on the results and discussion described above, it can be concluded that:

1. A urologist who performs castration at the request of the court, means that the action is an order that must be carried out, but this is contrary to professional standards because castration can have a bad impact on patients and this is very contrary to professional standards and codes of ethics doctor so that it can be concluded that legal protection cannot be provided because the doctor acts contrary to professional standards and the doctor's code of ethics.

2. Castration performed by a urologist is contrary to the medical code of ethics even though it is an order from the court. On the other hand, the doctor does not have the authority to act as a direct executor, while the executor himself is actually a public prosecutor, so that the doctor can refuse the action if it is considered contrary to the code of ethics and conscience.

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