

Policy Evaluation Of Handling Of Sex Violence Crime Against Children In Indonesia

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Abstract

This study aims to evaluate policies for handling crimes of sexual violence against children implemented in Indonesia and to analyze the effectiveness of Government Regulation in Lieu of Law (Perppu) No. 1 of 2016 as a public policy process and legal product. This study uses a qualitative approach. The results of the study show that the policy for handling crimes of sexual violence against children that has been implemented has not been effective and the Perppu stipulation seen from the formulation process and legal products (basic and additional punishment rules) is not effective because it is not supported by comprehensive research related to the effectiveness and long-term impact of the Perppu implementation and tends to raise issues such as the technical mechanism for applying additional penalties. Therefore, policy reformulation needs to be carried out through: (1) periodic policy evaluation and based on research evidence and (2) establishment of legal regulations that are oriented towards aggravation and enforcement of punishments. Background The large number of cases of sexual violence against children that have occurred has made Indonesia in a state of emergency, the crime of sexual violence against children, even the President declared it as an extraordinary crime that must be handled in extraordinary ways¹

Keyword: Public Policy, Law, Crime Of Sexual Violence Against Children

INTRODUCTION

The large number of cases of sexual violence against children that have occurred has put Indonesia in an emergency situation of child sexual violence crimes, even the President declared it an extraordinary crime that must be handled in extraordinary ways.¹ According to the National Commission for Child Protection (Komnas PA) from 2015 to April 2016 there were 312 cases of violence against children of which 51% (150 cases) were in the form of sexual violence.

The culmination of the child sexual violence case that came to the public's attention, including the President, was the case of sexual violence accompanied by the murder of a 14-year-old child named Yuyun in Bengkulu which occurred in May 2016 with the perpetrators being dozens of teenage boys and students.

Related The number of cases of sexual violence against children is relatively high and has the potential to continue to increase with an even distribution in both urban and rural areas². Meanwhile, data from the Indonesian Child Protection Commission (KPAI) shows that the number of child victims of sexual violence (rape, sexual abuse, sodomy/pedophilia, etc.) from 2011-2016 tends to fluctuate every year.

In this case, the President asked that the perpetrators be caught and punished as severely as possible⁴. This condition was considered by the government as an urgent condition, so the President instructed several Ministries to immediately draft a Government Regulation in Lieu of Law (Perppu) which contained aggravating sentences for perpetrators and was stipulated in Perppu No. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection or better known as the Castration Perppu. However, the problem is that the Perppu is deemed ineffective in dealing with the problem of sexual violence against children. According to the Chairperson of the National Commission on Violence against Women, the weighted castration penalty applies after the perpetrator has served the main sentence, while not many cases of sexual violence reach the courts and receive the maximum sentence, so it is feared that the Perppu will only respond to public emotional pressure without considering weak law enforcement⁵.

In addition, the Alliance of 99, a network of 99 civil society organizations concerned with child victims of sexual violence crimes, categorically rejects the Perppu because the government's efforts are seen as an attempt to take revenge on behalf of the interests of the victims by placing more emphasis on criminal penalties for perpetrators rather than thinking about repetition of crimes and bail. recovery for victims. The process of establishing a Perppu is also considered to be closed and does not involve community participation².

In its development, the Perppu has received approval from the majority of members of the DPR and passed into law at the plenary session on 12 October 2016 without any changes to the contents. However, this ratification was accompanied by a note where the Prosperous Justice Party faction agreed with notes that among others the Perppu was revised according to a clearer data base while the Gerindra Party faction remained in a position of refusing because the government's explanation regarding the implementation of the additional punishment was not clear.

Based on this background, the research questions can be formulated: (1) How is the policy for handling crimes of sexual violence against children implemented in Indonesia? and (2) How effective is the Perppu as a public policy process and legal product in efforts to deal with crimes of sexual violence against children in Indonesia?

¹ Eddyono, Supriyadi Widodo, and Dkk, *Menguji Euforia Kebiri: Catatan Kritis Atas Rencana Kebijakan Kebiri (Chemical Castration) Bagi Pelaku Kejahatan Seksual Anak Di Indonesia* (Jakarta: Institute for Criminal Justice Reform (ECPAT) Indonesia, 2016).

² Budiman Rusli, *Kebijakan Publik Membangun Pelayanan Publik Yang Responsif* (Bandung: CV. ADOYA Mitra Sejahtera, 2015).

RESEARCH METHODE

Castration in efforts to deal with crimes of sexual violence against children in Indonesia. Qualitative approaches are methods for exploring and understanding the meaning shared by a person with social or humanitarian issues⁸. Descriptive research is research that describes a phenomenon situation in detail and places more emphasis on answering the questions "how" and "who" which begins by defining the subject and then describing it accurately³.

The unit of analysis for this research is the policy analysis for handling sexual violence against children in Indonesia which is regulated in the Criminal Code (KUHP), UU no. 23 of 2002 concerning Child Protection, Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002, Perppu No. 1 of 2016 (Perppu of castration) and and Presidential Instruction No. 5 of 2014 concerning the National Movement Against Sexual Crime Against Children (GN-AKSA). This study uses documentation study as a data collection technique in qualitative research¹⁰ by collecting public documents such as laws and regulations, news in electronic mass media, textbooks, journals/research results, reports and documents relevant to the problem under study.

Data analysis was carried out by describing the results of policy analysis and then drawing conclusions and recommendations for further policies. Children for both sexual and commercial purposes have a negative influence on child development⁴. Common characteristics of children who experience sexual violence include signs of behavior, cognition, social emotional and physical.

According to WHO, child sexual violence is the involvement of children in sexual activities that they do not understand, which can be in the form of indecent treatment from other people, activities that lead to pornography, pornographic words, and involving children in the prostitution business¹³. According to Law No. 35 of 2014 violence is any act against a child (a person who is not yet 18 years old, including a child who is still in the womb) which results in physical, psychological, sexual and/or neglect of misery or suffering, including threats to commit acts⁵, coercion, or unlawful deprivation of liberty. Furthermore, what is meant by sexually exploited is all forms of using sexual organs or other organs of a child to gain profit, including but not limited to all activities of prostitution and obscenity.

RESULT AND DISCUSSION

The problem of child sexual violence is a form of crime in which sexual behavior involving children for both sexual and commercial purposes has a negative influence on child development⁶. General characteristics of children who experience sexual violence include signs of behavior, cognition, social emotional and physical ⁷. According to WHO, child sexual violence is the involvement of children in sexual activities that they do not understand, which can be in the form of indecent treatment from other people, activities that lead to pornography, pornographic words, and involving children in the prostitution business⁸.

³ John W Creswell, *Research Design, Pendekatan Metode Kualitatif, Kuantitatif Dan Campuran Edisi Keempat* (Yogyakarta: Pustaka Pelajar, 2016).

⁴ Muchsin and Fadillah Putra, *Hukum Dan Kebijakan Publik Analisis Atas Praktek Hukum Dan Kebijakan Publik Dalam Pembangunan Sektor Perekonomian Di Indonesia* (Surabaya: Universitas Sunan Giri Surabaya bekerjasama dengan Aveross Press, 2015).

⁵ Suradi, 'Problema Dan Solusi Strategis Kekerasan Terhadap Anak', *Informasi*, 18.02 (2013).

⁶ Uhar Suharsaputra, *Metode Penelitian Kuantitatif, Kualitatif Dan Tindakan* (Bandung: Refika Aditama, 2012).

⁷ Muhammad Zainuddin, *Kebijakan Hukum Pidana Dalam Rangka Penanggulangan Kejahatan Pedofilia* (Semarang: Universitas Diponegoro, 2007).

⁸ Budi Winarno, *Kebijakan Publik (Teori, Proses Dan Studi Kasus)* (Jakarta: CAPS, 2012).

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According to Dye, basically policy formulation is an attempt by the government to intervene in public life to find solutions to problems¹⁵. The formulation of public policy is the essence of public policy because here the boundaries of the policy itself are formulated so that it is necessary to understand that public policy is always aimed at intervening in public life to improve public life itself so that the core of public policy is "intervention". As part of the policy process, public policy formulation consists of several stages. The three main activities in the policy process are (1) setting the agenda-can be a problem, can be an issue for the future-policy, (2) conducting policy analysis and (3) making decisions¹⁷. The stages of public policy formulation consist of:

(1) the stage of formulating the problem, (2) the stage of the policy agenda, (3) the stage of selecting alternative policies to solve the problem, and (4) the stage of establishing a policy that has binding legal force which can take the form of laws, jurisprudence, presidential decrees, ministerial decisions, and others so on¹⁸. In relation to the formation of Perppu, according to Law no. 12 of 2011 concerning Formation of Legislation, Perppu is a statutory regulation stipulated by the President in matters of compelling urgency.

The preparation of the Perppu is regulated in Article 52 and further in terms of the procedure for preparing the Perppu it is regulated in Presidential Regulation No. 87 of 2014 concerning Regulations for Implementing Law No. 12 of 2011 Articles 59-61. Perppu stipulation can be understood as a public policy process and as a legal product. Theoretically, to see the relationship between law and public policy is the understanding that basically public policy generally has to be legalized in the form of law and basically a law is the result of public policy.

From this basic understanding it can be seen that the relationship between law and public policy is that in fact at the practical level the two cannot be separated and both go hand in hand with the principle of complementarity. The notion that in general all public policies must be legalized in the form of legal provisions is to ensure their legality in the field¹⁹.

To find out the effectiveness of the Perppu, it is necessary to evaluate its formulation. Evaluation of public policy formulations regarding whether the formulation has been implemented: (1) using an appropriate approach to the problem to be solved, (2) addressing the core issues, (3) following optimally accepted procedures, and (4) utilizing resources exist optimally. One of the evaluation techniques can refer to the policy content that is relevant to the problem to be solved with the basic criteria, namely the suitability of the content with the problem, strategic problem, and the goal to be achieved²⁰. Results of Study and Analysis of Problems a.

Evaluation of Policies for Handling Sexual Violence Against Children in Indonesia that Have Been Implemented Policies for handling crimes of sexual violence against children in Indonesia initially referred to the criminal law policies in the Criminal Code and then developed through special policies on child protection, namely Law No. 23 of 2002, then Law No. 35 of 2014. In addition, Presidential Instruction No. 5 of 2014 concerning GN-AKSA.

Meanwhile, according to a criminal law expert from Parahyangan University, Agustinus Pohan found facts from the results of his student's final research that increasing sentences were not

⁹ Riant Nugroho, *Policy Making* (Jakarta: Elex Media Komputindo, 2015).

followed by imposing maximum sentences in court against perpetrators. A light court sentence will cause the perpetrator or those who have the potential to commit the same violation to think that the sentence for a crime of sexual violence is indeed light even though the threat of punishment is very severe so that law enforcement needs to pay more attention²³. Thus, the policies for dealing with crimes of sexual violence against children that have been implemented in Indonesia still tend to be ineffective both in terms of prevention and law enforcement against the perpetrators of these crimes.

□ Effectiveness of the Perppu of Castration as a Public Policy Process and Legal Product

The nature of the pressing importance of the Perppu as an appropriate policy taken by the President in handling crimes of sexual violence against children can be analyzed based on the formulation process and also the contents of the Perppu formulation. In the context of the public policy process, the formation of a Perppu is carried out through several stages. First, the preparation of the Perppu draft was preceded by a Limited Meeting at the President's Office on January 20 2016 where according to the Cabinet Secretary, the President had approved the legal umbrella in the form of a Perppu in the implementation of castration sentences and asked to immediately investigate this matter because there were still pros and cons¹⁰. Furthermore, according to the Minister of Women's Empowerment and Child Protection (Menteri PPPA), the drafting of this Perppu is a Presidential instruction as an effort to suppress acts of sexual violence which was completed in February and has been submitted to the Coordinating Minister for Human Development and Culture (Kemenko PMK) for review. Second, the discussion of the Perppu at the ministerial level which was coordinated by the Coordinating Ministry for PMK and sparked debate around castration had been completed and mutually agreed upon in mid-May. Furthermore, the draft Perppu by the Minister of Social Affairs was signed on 19 May 2016 and then awaiting approval from a number of related institutions, namely the Minister of Law and Human Rights, Minister of Health, Minister of Religion, Police, Minister of PPPA and the Attorney General's Office to also sign it²⁶. And third, the stipulation of the Perppu on May 26 2016, the President accompanied by a number of officials finally announced the issuance of the Perppu which was signed through Perppu No.1 of 2016 and came into effect on the date promulgated by the Minister of Law and Human Rights on May 25 2016.

The most important thing and the core of the process of formulating the Perppu policy is regarding determining the problem of crimes of sexual violence which are considered as an emergency condition to be dealt with immediately through aggravating penalties that create a deterrent effect and are able to reduce the number of perpetrators, the conditions and complexity of sexual crimes. requires legal certainty through Perppu.

Regarding the reason for the issuance of the Perppu, according to several studies that have been conducted, the effectiveness of the use of castration in reducing the number of sexual crimes is still questionable because it has not been scientifically proven, so that the proposed submission of the Perppu is not relevant to be followed up and any decision making regarding the handling of sexual crimes in Indonesia must be based based on scientific reasons, supported by valid data and evidence, and not solely emphasizing emotion²⁸. In line with this, because the process of formulating Perppu was carried out in a relatively short time, it seems that it is not supported by comprehensive studies/research related to the effectiveness and long-term impact of implementing Perppu so that it is often seen as a reactive policy as stated by Clara Siagian, a researcher at the Center for Child Protection Studies at the University of Indonesia that the various punishments contained in the Perppu are reactive and bombastic and should be based on careful consideration in formulating punishments considering that it will have a long-term impact.

¹⁰ Zainuddin.

Furthermore, as a legal product, because the Perppu has received approval and ratification by the DPR, the Perppu has become a binding legal product and has legal certainty or guaranteed legality to be implemented in the field by law enforcers as a reference, especially judges when imposing sanctions or punishments on the perpetrators.

The content of the Perppu regulates several main materials related to sanctions against perpetrators contained in the amendments to Article 81 Law No. 23 of 2002, namely the main punishment in the form of imprisonment ranging from the shortest of 5 years to a maximum of 20 years, life imprisonment and death penalty and additional penalties in the form of announcement of the perpetrator's identity, action in the form of chemical castration and installation of electronic detectors. The main punishment set tends to be more severe than the provisions of the sentence applied to the previous policy. Meanwhile, additional penalties can be imposed on perpetrators who have committed similar acts and perpetrators who have caused more than one victim, resulted in serious injuries, mental disorders, infectious diseases, disturbances or loss of reproductive function, and/or death victims as well as chemical castration are specifically excluded for child offenders.

However, the stipulation of the Perppu raises various problems, including those related to the technical mechanism of applying additional punishments such as procurement, installation of electronic detectors and monitoring of perpetrators as well as the application of castration punishment which are considered not in accordance with the Indonesian context, both of which require a lot of resources, both budgetary and financial resources, human resources and other supporting infrastructure. Regarding the installation of electronic detectors, according to the Chief of Police of the Republic of Indonesia, the installation of chips to monitor the movements of criminals in the context of Indonesia, which has a large population and minimal infrastructure, still needs further study¹¹. Meanwhile, with regard to the plan to implement chemical castration, this policy is not in accordance with the Indonesian context for various reasons including inadequate medical management and treatment practices, human resources and costs, the impact on the prevalence and behavior change of perpetrators is not significant, the capacity of professional staff at monitoring of the effects of chemical castration treatment is insufficient, and harmful to individual rights and the integrity of the body¹². On the other hand, the implementation of the chemical castration penalty was also rejected by the involvement of the Indonesian Doctors Association (IDI) as the executor³². Thus, the evaluation results of existing policies and the effectiveness of the Perppu show that the policy has not provided strong legal guarantees in handling crimes of sexual violence against children in Indonesia. World Rape Statistics or world statistics on rape in various countries in the world prove that the death penalty or castration punishment is not effective, it has an effect where countries that apply death penalty or castration punishment actually occupy the top 10 positions, as countries that have the highest cases in the world. Problems such as the technical mechanism of applying additional sentences.

CONCLUSION

The conclusions of this study are: (1) the policies for handling crimes of sexual violence against children that have been implemented in Indonesia still tend to be ineffective both in terms of prevention and law enforcement and (2) the Perppu of Castration both in terms of the formulation process and legal products (rules of principal punishment and additional) is less effective in efforts to deal with crimes of sexual violence against children in Indonesia because it is not supported by comprehensive studies/research related to the effectiveness and long-term

¹¹ Nugroho.

¹² Riant Nugoho, *Public Policy* (Jakarta: PT. Elex Multimedia, 2014).

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