Siyasah Dusturiyah Review Of Legal Politics Of The Formulation Of Article 81 (7) Of Law Number 17 of 2016 Regarding The Establishment Of Perppu Number 1 Of 2016 Regarding Amendment To The Second Law Child protection

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Abstract: This study examines Siyasa Dusturiyah's review of the Legal Politics of the Formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 concerning the Stipulation of Perppu Number 1 of 2016 concerning the Second Amendment to the Child Protection Law. Perppu No. 1 of 2016 is a regulation stipulated by the President because of pressing urgency. The matter of urgency is forcing here which is the increasing cases of sexual violence against children which can threaten the next generation of the Indonesian nation. Perppu Number 1 of 2016 was passed into Law No. 17 of 2016 which in the law there are changes to several articles including Article 81 Paragraph (7). So from these problems, the questions arise: 1. How is the legal politics of the formulation of Article 81 Paragraph (7) of Law No. 17 of 2016, 2. What is Siyasah Dusturiyah's review of the formulation of Article 81 Paragraph (7) of Law No. 17 of 2016? This research is a normative juridical research, the data in this study are based on books, scientific papers, and laws which are processed deductively and analyzed qualitatively. The legal politics of the formulation of Article 81 Paragraph (7) of Law No. 17 of 2016 which was approved by the Government is correct. In a review of Siyasah Dusturiyah, the formulation of Article 81 Paragraph (7) of Law NO. 17 of 2016 contradicts the Qur'an and Sunnah. 17 of 2016 which was approved by the Government is correct. In a review of Siyasah Dusturiyah, the formulation of Article 81 Paragraph (7) of Law NO. 17 of 2016 contradicts the Qur'an and Sunnah.

Keywords: Siyasa Dusturiyah, Legal Politics, Child Protection Act
INTRODUCTION

Children are the next generation of the nation who should be able to obtain and enjoy their rights without exception to help their growth and development so that in the future they become useful human beings for the nation and state. However, in reality, not all children can obtain and enjoy their rights in full. This is because there are still many cases of sexual violence against children. Sexual violence is an intentional act that can cause harm and harm to children, both emotionally and physically by using threats, coercion, bribes, and other things. (Sri, 2006: 25). Even though children's rights have been regulated in the Indonesian state constitution Article 28B Paragraph (2) of the Constitution of the Republic of Indonesia that relates to the right to survival, the right to growth, and develop, and the right to get protection from discrimination and violence (the Basic Law), 1945).

The increase in sexual violence against children has also led to increased public attention to the regulation and handling of cases of sexual crimes against children. Based on published dataThe Online Information System for the Protection of Women and Children (Symphony), the Ministry of Women's Empowerment and Child Protection recorded a significant increase in 2016 compared to the previous year. In 2015 there were 1,975 cases of sexual violence against children, but in 2016 there were 6,820 cases of sexual violence against children. The increase in cases of sexual violence against children is still happening.

To ensure the survival of children from threats of sexual violence, the Order established Law Number 23 of 2002 concerning Child Protection. Over time, these regulations have not been effective enough because, after the birth of these regulations, crime in society is still growing. Therefore Law Number 35 of 2014 concerning the First Amendment to the Child Protection Law was born which further emphasizes criminal sanctions and fines for perpetrators of sexual violence against children to have a deterrent effect for perpetrators of sexual violence against children. (Inayah, 2021: 3).

The increase in cases of sexual violence against children made the President issue Perppu Number 1 of 2016 due to a pressing urgency. As stipulated in Article 22 Paragraph (1) of the 1945 Constitution "in the event of a compelling urgency, the President has the right to issue Government Regulations instead of Laws". The Perppu was later ratified to become Law Number 17 of 2016 concerning the Stipulation of Perppu Number 1 of 2016 concerning the Second Amendment to the Child Protection Act (UU Protection of Children) which regulates aggravating penalties for perpetrators of sexual crimes against children, namely the death penalty, life imprisonment, and a maximum of 20 years in prison and additional punishment(Wahidullah, 2016: 197)

One of the sanctions given to perpetrators of sexual violence against children is contained in Article 81 Paragraph (7) of the Child Protection Law "against the perpetrators referred to in Paragraphs (4) and Paragraphs (5) may be subject to action in the form of chemical castration and installation of electronic detection devices". Changes to the articles contained in the Child Protection Law, one of which is Article
81 Paragraph (7), contain pros and cons in society.

Related to officers authorized to carry out chemical castration against perpetrators of sexual violence against children, the Indonesian Doctors Association (IDI) refuses to become executors because it is contrary to the articles in the Indonesian Medical Code of Ethics and there is no sufficient clinical research evidence regarding the effectiveness of chemical castration in preventing repeated sexual offenses. The chemical castration procedure involves a risk of pain, side effects, and complications and requires supervision which is the competence of the doctor. Doctors are considered the right profession as executors of chemical castration sanctions because of their competence, but IDI rejects the involvement of doctors as executors of castration as conveyed through the fatwa of the Indonesian Medical Ethics Council Number 1 of 2016. (Efiyanti & Widjaja, 2021: 329)

IDI's rejection by issuing an MKEk fatwa stated that acting as an executor of chemical castration made doctors legally risky with unclear technical rules for further action. The Medical Practice Law Number 29 of 2004 concerning Medical Practice states that consent must be obtained for every treatment that is the patient's right. (Efiyanti & Widjaja, 2021: 329)

In 2020 the Government of Indonesia issued Government Regulation Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children as a derivative of Law Number 17 of 2016. This regulation provides authority to the state to be able to impose chemical castration on perpetrators of sexual violence against children. However, until now there has been no execution of chemical castration against perpetrators of sexual violence against children, even though the judge has rendered his decision.

Judging from the pros and cons of Article 81 Paragraph (7) of the Child Protection Act, the author intends to examine how the legal politics of the formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 and how Siyasa Dusturiyah reviews the formulation of Article 81 Paragraph (7) of the Law -Law Number 17 of 2016 concerning Child Protection.

RESEARCH METHODS
The type of research used in this research is normative juridical research. Legal research includes legal principles, reviewing and researching laws and regulations (Effendi, 2019). Namely the Child Protection Act and analyzing from the perspective of vinyasa dusturiyah the legal politics of the formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 concerning the stipulation of Perppu Number 1 of 2016 concerning the Second Amendment of the Child Protection Law which is then narrated descriptively so that can answer the problems under study.
RESULTS AND DISCUSSION

Legal Politics of the Formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 Concerning Child Protection

As a country that ascribes its legal system to the positivist school, Indonesia establishes the concept of a rule of law state as its hallmark. So everything in the running of a country must be regulated by the constitution (Farhan, 2020). Because the positivist school emphasizes that law should be hierarchically real and verifiable (Efendi et al., 2022) Starting from the direction of legal formation or politics, it is state policy through state institutions authorized to set the desired regulations, which are expected to achieve what is aspired to. (Dr. Isharyanto, SH, 2016). In the formation of laws and regulations, there are two main things, namely the activities of forming the contents of regulations on the one hand and activities related to fulfilling the form of regulations on the other. The law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation explained regarding the process of forming laws and regulations starting from the stages of planning, drafting, discussing, ratifying, and enactment. (Roni Efendi, 2021), including the Law on Child Protection, but in several articles the law has caused controversy.

The controversy includes discussions regarding the formation of the Child Protection Law. In forming Article 81 Paragraph (7) of the Child Protection Law which was carried out by the Regional Government Council (DPR). During the session, discussions regarding decision-making regarding the Draft Law (RUU) regarding the Stipulation of Perppu Number 1 of 2016 concerning Amendments to the Child Protection Law were discussed. (RIS Bill 17/2016)

At the meeting there were differences of opinion between the factions, seven factions agreed that the Bill on the Establishment of Perppu become law, and two factions disagreed. The factions that agreed were the PDI, Golkar, Democrat, National Mandate, United Development Party (PPP), Nasdem, and Hanura. The factions that disagreed included the Gerindra Party and the National Awakening Party (PKS).

The Gerindra faction (Rahayu Saraswati) stated in court that after receiving and taking input from various parties, none other than Komnas Perempuan, Komnas HAM, the Indonesian Doctors Association, Alliance 9109, NGOs, and other organizations all stated that they rejected the ratification of Perppu No. 1 of 2016 become law. So with careful consideration, the study of the Perppu that has been received by the Gerindra faction from the Government can give false hope to Indonesian children and solutions that are not effective but still with the hope that the National Movement Against Sexual Violence Against Children can be carried out as well as possible and can provide a comprehensive solution. The Gerindra faction hereby declares that it refuses Perppu Number 1 of 2016 to be ratified. (RIS Bill 17/2016)

The PKS faction (Hj. Ledia Hanifa Amaliah), stated in the session that after the DPR-RI Commission VIII conducted discussions related to this,
several substances still needed to be debated and still required explanation, namely regarding the data that became the basis for establishing this Perppu which was considered unclear. About how massive the sexual violence that occurred to children, the clause on increasing penalties that caused infectious diseases or mental disorders, or also damage to the reproductive organs could not be determined when the defendant was undergoing legal proceedings, resulting in being unable to provide comprehensive protection to the victim. Seeing that many things needed to be fixed, the PKS faction stated that instead of making a Perppu, they should make changes to the Child Protection Law, therefore the PKS faction rejected the proposal for Perppu Number 1 of 2016 to be ratified. (RIS Bill 17/2016)

During the trial period because there were factions that agreed and disagreed with establishing Perppu No. 1 of 2016 became a Law, then by the Rules of Procedure and the MD3 Law, the DPR carried out a lobbying process. After the lobbying process was carried out, it was decided that the majority of the factions agreed, but there were still 2 factions that did not agree. The factions that did not agree were asked to convey their decision. In its decision, the Gerindra faction stated that whatever was passed by the DPR-RI could be implemented as well as possible. The agreement and commitment of each faction that after the ratification there will still be revisions to the Law on Child Protection so that it can be more comprehensive and can be implemented effectively. (RIS Bill 17/2016)

The PKS faction in its final statement stated that even if it agrees to follow the opinion of the majority of the factions, it must be agreed that this Perppu will be revised again later. And this must also become a mutual agreement. If it can be agreed upon to protect women honestly, protect children honestly, and make regulations more comprehensive and implementable, then the PKS faction can agree that this Draft Law is passed to be accepted for later revision and completion. existing deficiencies. (RIS Bill 17/2016)

After conveying the opinions of each faction along with their notes, all factions agreed to the Bill on the stipulation of Perppu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. The Child Protection Law became a Law passed by President Joko Widodo in Jakarta on November 9, 2016, and came into effect after being promulgated by Menkumham Yasonna H. Laoly into the State Gazette of the Republic of Indonesia Year 2016 Number 237 stipulated by the President in terms of compelling urgency based on Article 22 Paragraph (1) of the 1945 Constitution wherein in cases of compelling urgency, the President has the right to issue Government Regulations instead of Laws.

In the formation of the Child Protection Law, there were changes to several articles, including Article 81 Paragraph (7) "The perpetrators as referred to in Paragraph (4) and Paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices". The Government’s policy in establishing Article 81 Paragraph (7) is
due to the increase in cases of sexual violence against children while the sanctions given to perpetrators of sexual violence are not perfect. Children are the next generation of the nation which has the right to be protected by the government. Therefore, to protect these children's rights, the Government made a policy to establish Article 81 Paragraph (7) of the Child Protection Act.

After the passing of the Child Protection Law, Article 81 Paragraph (7) in its implementation there are still pros and cons. Regarding officers or officials authorized to carry out chemical castration of perpetrators of sexual violence against children, the Indonesian Doctors Association (IDI) refused to become the executor because it contradicted the articles in the Indonesian Medical Code of Ethics and there was no sufficient clinical research evidence regarding the effectiveness of chemical castration in preventing recurring sexual crimes (Efiyanti & Widjaja, 2021). IDI's rejection by issuing an MKEk fatwa stated that acting as an executor of chemical castration made doctors legally risky with unclear technical rules for further action. The Medical Practice Law Number 29 of 2004 concerning Medical Practice states that consent must be obtained for every treatment that is the patient's right (Efiyanti & Widjaja, 2021).

Furthermore, in 2020 the Government of Indonesia issued Government Regulation Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children as a derivative of Law Number 17 of 2016. This rule authorizes the state to impose chemical castration on perpetrators of sexual violence against children. However, until now there has been no execution of chemical castration against perpetrators of sexual violence against children, even though the judge has rendered his decision.

The establishment of Article 81 Paragraph (7) of the Child Protection Law aims to reduce the number of sexual crimes against children. The government issued this policy to overcome the compelling crisis. Parameters of urgency that must be considered by the Government in forming regulations include:

1) There is a situation, namely an urgent need to resolve legal issues quickly based on the law
2) The required law does not yet exist so it becomes a legal vacuum or there is a law but it is not sufficient
3) This legal vacuum cannot be overcome by making laws in the usual way because it will take a very long time, while this urgent situation requires certainty to be resolved.

Judging from the consideration of the urgency of forcing above, in the formation of Article 81 Paragraph (7) was formed due to an urgent situation to resolve the problem of sexual violence against children where the law made previously was not sufficient for the sanctions given to perpetrators of sexual crimes against children which has led to an increase in crime rates. It can be understood that the legal politics of the formation of Article 81 Paragraph (7) of Law No. 17 of 2016 is appropriate because children are the nation's generation where the state guarantees the child's right to survival.
and is entitled to protection from sexual violence. This is based on the nation's philosophical foundation, namely Pancasila as staatsfundamentalnorm (Sayulita & Efendi, 2022) must be internalized within all elements of the nation and Legal Politics Article 81 Paragraph (7) of the Child Protection Law is a concrete manifestation of the nation's presence to provide guarantees and place humans in civilization and social justice for all Indonesian people.

**Siyasa Dusturiyah's Review of the Formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 Concerning Child Protection**

In the formation of Law No. 17 of 2016, there is an amendment to the article in the previous law. The law discusses sanctions against perpetrators of sexual violence crimes. In Article 81 Paragraph (7) The perpetrators referred to in Paragraph (4) and Paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices. Under Islamic law, chemical castration has never been carried out. Hadith of the Prophet saw:

أَبُو حُدَّنَةَ: الْهَمَذَانِيُّ لمَّن يُمِّنَّ بنِ اللهِ عِبْدٍ مُّحَمَّدُ حَدَّنَةَ
فَلَأَلْفَ قَبْسَ عَنْ إِسْمَأْعِيلَ، عَنْ رَبِّي، عَنْ وَاَلِدِّ وُوَكَيْعُ
لِنَّ اللهِ رَسُولٌ مَّعَ نَزْرٍ كَأَنَّهُ يَقُولُ اللهَ عَبْدُ مَعْتَبِعَ
ذَلِكَ، عَنْ فِيْضَانَا نَسْخُهُ؟ أَلَا أَتّنَاسِبَ بِنَاسِهَ؟ أَلِنَّ

Muhammad bin 'Abdullah bin Numair Al-Hamadani has told us: My father, Waki', and Ibn Bisyr told us, from Isma'il, from Qais, he said: I heard 'Abdullah say: We once went to war with the Prophet sallallaahu' alaihi wasallam and we did not take the wives with us. We asked: Can we castrate ourselves? But he forbade us from it,..."(HR. Muslim number 1404)

Understandably, chemical castration had never been carried out during the time of the Prophet Muhammad, but the Prophet Muhammad strictly prohibited his people from carrying out acts of castration. Therefore the formation of Article 81 Paragraph (7) in Law Number 17 of 2016 when viewed from the siyasa dusturiyah is not correct. The formation of a law by the caliph must be by the constitution of Islamic law, the Qur'an, and Sunnah. However, in the formation of Article 81 Paragraph (7) it is contrary to the constitution of Islamic law.

Seen in Islam, studies that discuss matters of state rules or legislation are called fiqh siyasa dusturiyah. vinyasa dusturiyah discusses the concept of the constitution (the constitution of the state and the history of the birth of legislation in a country), democratic institutions, and shura which are an important part of a country's legislation and the people who implement these laws, legislation (procedures for formulating laws). Siyasa dusturiyah is part of vinyasa fiqh which discusses laws and regulations including in terms of legislation (Emrizal, et. all, 2022: 88). Legislation is the authority of the Islamic government to make and stipulate laws that will be enforced and
implemented by the community based on provisions that have been revealed by Allah SWT in Islamic law. So it can be understood that the highest authoritarian holder in establishing law is Allah SWT, while the authorities and the people are only given the mandate to resolve public affairs that originate from revelation and the rest is determined by humans through ijtihad based on the principles that have been regulated. (Princess, 2021)

Of course, the law that is created must not conflict with the sources of Islamic law, namely:

1) Sharia , Sharia is everything that is commanded by Allah SWT which relates to human behavior outside of morals. Sharia can be interpreted as the name for Allah's law which is aliyah. According to Farouk Abu Zeid, sharia is what Allah swt ordained through His Prophet. Allah swt is the creator of laws concerning religious life and world life(syarifuddin, 2008).

2) Fiqh Fiqhetymologically means deep understanding. Meanwhile, according to the term, fiqh is the science of sharia laws that are aliyah in nature which are explored and found from the arguments of tafsir. Thus, fiqh in a nutshell can be interpreted as a strong suspicion that a mujtahid achieves in his efforts to find the law of Allah SWT(syarifuddin, 2008). 3) Ijma'. Ijma'is the agreement of the mujtahids to establish a law for the benefit of the people by way of deliberation within a certain time after the death of the Prophet Muhammad. Ijma' must be agreed upon by all mujtahids, if in the deliberation there are several mujtahids who do not agree with the decision of the majority of the deliberation participants, then the ijma' is declared a failure(Rusdaya, 2020: 63). 4) Qiyas. QiyasIn siyasa fiqh it is used to find illat or legal equality. Qiyas is connecting or equating a case that does not yet have a text in the Qur'an with a case that already has a text in the Qur'an because of the similarity of illat(syarifuddin, 2008: 1)

The verse states that exceptions are for emergency reasons to protect lives from death, to rule out any danger which is the reason for the prohibition. Because, in a state of hunger, the stomach becomes strong from food attacks without feeling sick, which is different from normal conditions.

Emergencies often encourage people to do things that are prohibited by the Shari'a. Actions that are contrary to the norm can occur because they are based on efforts to save lives or property owned(nurhakim, 2020). In the formation of Article 81 Paragraph (7) which was established by the government, regarding castration sanctions are not regulated in Islamic law. Abu Zahrah explained that among the objectives of the Shari'a are first, to purify humans (tahdzib al-fard), so that every Muslim can be a source of good for society; second, to uphold justice (iqamah al-'adl) both among Muslims and with non-Muslims; third, to realize the benefit for Muslims, especially in safeguarding religion (hifzh addin), safeguarding the mind (hifzh al-'aql), safeguarding the soul (hifzh an-nafs).
safeguarding wealth (hifzh al-mal), and safeguarding offspring /honor (hifzh an-nasl) (Nurhakim, 2020, 238). If seen from the Government's policy in forming Article 81 Paragraph (7) which brings harm. As it is known that the act of castration contained in Article 81 Paragraph (7) can damage the soul and offspring.

In the view of the Indonesian Ulema Council (MUI) it thinks that chemical castration for perpetrators of sexual violence against children is prohibited. There are several MUI opinions regarding chemical castration, namely: (Fitang, 2021)

1) MUI wants pedophilia to be punished according to the article on adultery, not chemical castration
Muhyiddin is of the opinion that the punishment for perpetrators of sexual violence against children is subject to articles relating to adultery or the MUI fatwa regarding lesbian, gay, bisexual, and transgender. The government is asked to continue to increase vigilance and enforce strict laws so that there is a deterrent effect. 2) The MUI believes that castration does not solve the problem. According to Muhyiddin, most of the perpetrators of sexual violence against children usually experience psychiatric disorders that require special therapy. It is considered that castration for perpetrators of sexual violence against children will not solve sexual problems against children. 3) MUI regrets that the government did not consult before making chemical castration regulations for pedophiles Islam prohibits chemical castration as an alternative solution for perpetrators of sexual violence against children. The Prophet Muhammad once refused a request for kebiri from his best friend before leaving the family because he was waging war.

In Islam, the punishment given to the perpetrators of sexual immorality or rape has been regulated. Allah swt says in the Qur'an Surah An-Nur Verse 2, namely:

"A woman who commits adultery and a man who commits adultery, then lash each one of them a hundred lashes, and let no compassion for them prevent you from (carrying) the religion of Allah, if you believe in Allah, and the Hereafter, and let (the execution of) their punishment witnessed by a group of people who believe."

From the verse above, it has been explained that the perpetrators of rape are punished by stoning for those who are married and 100 times lashing for those who have never been married. In the formation of law, it must not conflict with the sources of Islamic law. The formation of Article 81 Paragraph (7) issued by the Government is contrary to Islamic law. In Islamic law, the act of castration is prohibited in a hadith. In establishing a law, based on siyasa dusturiyah fiqh, it must be by the provisions that have been set by Allah SWT. The authority of the caliph or leader in Islam who obeys Allah SWT's legal rules must be by the corridors of Allah SWT's provisions.
CONCLUSION
Based on the discussion above, it can be concluded that the legal politics of the formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 concerning Child Protection is a non-penal policy. Article 81 Paragraph (7) concerning sanctions against perpetrators of sexual violence against children in the form of chemical castration was formed due to the increase in cases of sexual violence against children and the criminal sanctions imposed on perpetrators of sexual violence against children have not provided a deterrent effect and have not been able to prevent sexual violence against children. Paragraph IV of the 1945 Constitution states that the state aims to protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life, and carry out world order based on freedom, eternal peace, and social justice. Children are the next generation of the nation that must be protected by the state. Therefore, to protect children from crime, the government established an article to guarantee the child's right to survival, growth and development of the child.

The siyasa dusturiyah review of the formulation of Article 81 Paragraph (7) of Law Number 17 of 2016 concerning Child Protection is incorrect. As stipulated in siyasa dusturiyah, the caliph has the authority and is allowed to issue ijtihad to make rules as long as they do not contradict the Al-Qur'an and Hadith for the benefit of the people. However, the Government's policy in establishing Article 81 Paragraph (7) concerning sanctions given to perpetrators of sexual violence against children in the form of chemical castration is contrary to the sources of Islamic law.

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