

The Urgency of Chemical Castration Regulation in the Sexual Violence Criminal Act Law



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ABSTRACT: This study aims to determine the urgency of chemical castration in the Law on Sexual Violence, to examine the ideal arrangement of chemical castration in the Law on Sexual Violence in sexual violence against minors committed by the victim's biological parents. And can provide an adequate description of the scope and application of additional criminal law in the form of chemical castration against perpetrators of sexual violence.

In this research, the type of research used is normative juridical. Normative juridical research is a procedure used to solve problems from the legal issues at hand. This research focuses on the statute approach, conceptual approach, discussion of rules and norms in positive law. The author looks at the applicable legal rules, especially the regulation of chemical castration in Indonesia Child Protection Law 17 2016, PP No. 70 of 2020 concerning chemical castration.

The author finds that it is important to emphasize the need for a thorough review of chemical castration sanctions in the Child Protection Law in Indonesia. Although aimed at preventing sexual violence and providing a deterrent effect, this policy has drawn pros and cons related to human rights violations and its effectiveness has not been proven. Practical challenges such as the sustainability of the punitive effect and offender recovery are also important. A comprehensive approach is needed, prioritizing law enforcement, crime prevention, and victim recovery, with a focus on the best interests of the child and a broad dialogue on human rights, medical ethics, and technical implementation.

KEYWORDS: urgency, chemical castration, sexual violence crime, legal protection.

INTRODUCTION

Sexual violence in this century is very prevalent. Sexual violence also includes any act of degrading, humiliating, harassing, and attacking a person's body and reproductive function. Because there is an imbalance in power relations and gender that results in psychological or physical suffering, including those that interfere with a person's reproductive health and the loss of the opportunity to carry out daily activities of victims of sexual violence. According to Yulaelawati, sexual violence is various forms of indecent touching and inappropriate social behavior.¹ The existence of sexual violence indicates a serious problem in society. According to the WHO, sexual violence includes sexual acts, comments, or behaviors that can occur either intentionally or unintentionally, as well as acts that violate a person's rights in sexual relations by force. Sexual harassment occurs regularly in the lives of women who are victims of violence, and they often have few options to avoid it or are forced to accept the situation without being able to take much action.

Sexual harassment does not only happen to women, but also to men, although the highest incidence rate shows that sexual harassment is more commonly experienced by women. According to data from the National Commission for the Protection of Women in its 2019 annual report, there were 406,178 cases of violence reported and handled against women during 2018. These cases included 13,568 incidents handled by 209 service partner organizations spread across 34 provinces, as well as 392,610 cases adjudicated by religious courts. This indicates that the level of violence against women is still high. In conclusion, sexual harassment is universal, and all women, from all social strata, experience sexual harassment at varying levels and types.

There are many factors that drive individuals to commit acts of sexual violence, and each case has factors that vary in type, degree, and influence on the act. This is because the motivations behind acts of sexual violence vary from case to case. Acts of

¹ Yulaelawati, *Pendidikan Keluarga*, Direktorat Pembinaan Pendidikan Keluarga Direktorat Pendidikan Anak Usia Dini dan Pendidikan Masyarakat, Jakarta, 2015, hlm. 111.

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sexual violence cannot be separated from the factors that influence them, which can be grouped into two categories: internal factors and external factors.²

Internal factors refer to aspects of crime that originate from within the offender. These include psychological factors relating to a person's mental state that affects how they feel about certain situations. These psychological factors can be influenced by the individual's background related to sexual crimes, such as experiences of childhood sexual abuse or other traumatic experiences. Physiological or biological factors also play an important role in physical health-related behaviors. When a person experiences prolonged chronic pain, his or her psychological state may be disrupted. One such disturbance is difficulty in fulfilling biological needs, which may increase sexual urges as it is difficult to fulfill such needs in a state of illness.

External factors, on the other hand, refer to factors that are outside the perpetrator. These include sociocultural factors, such as social and cultural aspects, as well as advances in science and technology that continue to develop over time. There is a lot of entertainment that is easily accessible, including entertainment in cyberspace or the internet. The internet is a vast source of information, covering various types of information, both positive and negative. This negative information, such as inappropriate pornographic or sexual content, can affect one's thinking patterns, especially if exposed to too much.

In CATAHU 2020, Komnas Perempuan classified various types of sexual violence based on applicable laws and regulations. In 2021, Komnas Perempuan documented 2204 cases of sexual violence that included rape, sexual abuse, sexual harassment, sexual exploitation, sexual slavery, forced abortion, and forced contraception. These cases occurred both in the domestic or personal environment and in the public sphere. Komnas Perempuan pays particular attention to sexual violence that occurs in educational settings, against persons with disabilities, and against women and girls who are vulnerable to various levels of vulnerability by family members.³ Sexual violence can be classified into sexual violence committed by: 1). Non-physical sexual harassment; 2). Physical sexual harassment; 3). Forced contraception; 4). Forced sterilization; 5). Forced marriage; 6). Sexual torture; 7). Sexual exploitation; 8). Sexual slavery; and 9). Electronic-based sexual violence.

Chemical Castration can be interpreted and applied and carried out by giving chemical substances through injections or other methods. Chemical castration is carried out to perpetrators who have been criminalized for committing violence or threats of violence to force minors to have intercourse with him or with other people so that it can cause more than one victim. These acts of sexual violence can result in mental disorders, serious injuries, infectious diseases, loss or disruption of reproductive function and cause the victim to die.

As a follow-up to the eradication of sexual violence, guidelines have been passed regarding the implementation of aggravation as stipulated in Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children (PP 70/2020). This guideline explains the procedure for announcing the identity of perpetrators of sexual violence against children as follows:

1. The Ministry of Law and Human Rights (Kemenkumham), which has jurisdiction over the perpetrator while serving the main sentence, must send a notification to the prosecutor at least 14 working days before the perpetrator of sexual violence against children finishes serving the main sentence;
2. The prosecutor, as the executor, must announce the identity of the perpetrator of sexual violence against children no later than 7 working days after the perpetrator completes his/her basic punishment;
3. The announcement of the identity of the perpetrator of sexual violence against children is carried out for 1 calendar month through various channels, including announcement boards, the official website of the prosecutor's office, as well as print, electronic and social media; and
4. The announcement of the identity of perpetrators of sexual violence against children through print, electronic, and/or social media must be carried out in collaboration between the ministry authorized in the field of communication and informatics, the ministry responsible for child protection, and local governments.

A number of countries around the world have implemented chemical castration as a form of sanction in cases of sexual violence crimes. Although this approach to punishment is often controversial and criticized, some countries still maintain this practice as part of their criminal law system. Countries that threaten castration in cases of sexual violence include Iran, Malaysia, and Indonesia. However, the use of this penalty is highly questionable in the context of human rights and has been a topic of extensive debate in the international community. Many human rights organizations and advocates have urged to stop the use of castration as a criminal punishment and seek alternatives that are more in line with universally accepted human rights standards.

In Indonesia, this sanction is a medical action and therapy by injecting synthetic hormone substances into the human body which is the competence and authority of doctors. In Indonesia, there is an issue of rejection regarding who is the executor of

² I Putu Agus Setiawan & I Wayan Novy Purwanto, "Faktor Penyebab dan Upaya Penanggulangan Kekerasan Seksual Terhadap Anak dalam Lingkup Keluarga", Jurnal Universitas Udayana, 2019, hlm. 9

³ Komnas Perempuan (2022b), "Press Release IWD dan CATAHU 2022" Available at: <https://komnasperempuan.go.id/download-file/728>.

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chemical castration. The Indonesian Medical Association (IDI) refuses to be the executor because it contradicts articles in the Indonesian Medical Code of Ethics and there is no adequate clinical research evidence regarding the effectiveness of chemical castration in preventing repeated sexual crimes. The chemical castration procedure involves the risk of pain, side effects, and complications and needs supervision which is the competence of doctors. Doctors are considered as the right profession as the executor of chemical castration sanctions because of their competence, but IDI rejects the involvement of doctors as castration executors conveyed through the fatwa of the Indonesian Medical Ethics Council Number 1 of 2016.⁴

In accordance with the definition of prisoners in Article 1 number 7 of Law Number 12 of 1995 concerning Corrections, it is stated that "Prisoners are convicts who are serving a sentence of loss of independence in correctional institutions." Article 14 paragraph (1) letter d mentions the rights of prisoners, among others, to obtain health services. Based on this understanding, the inmates in terms of getting patient services then apply the rights as a patient. But in the provision of chemical castration, which is actually a medical therapy action that is used as a punishment, it creates a dilemma because in the procedure of medical action, the rights as a patient, among others, regarding informed consent (approval of action) cannot be implemented in accordance with the Indonesian Medical Association's refusal to carry out Chemical Castration sanctions in Law Number 17 of 2016 other laws and regulations. Based on this situation, there is no rule that states that as a prisoner who received chemical castration sanctions, the rights as a patient listed in the Medical Practice Act do not apply.

The legal implementation of medical practice of a doctor and dentist in Indonesia in accordance with Article 51 point a of the Medical Practice Act states that "Doctors or dentists in carrying out medical practice have the obligation to provide medical services in accordance with professional standards and standard operating procedures and the medical needs of patients." Article 52 point a on the rights and obligations of patients states "Patients in receiving services in medical practice, have the right to get a complete explanation of medical actions as referred to in Article 45 paragraph (3). Article 45 explains that every medical action performed by a doctor on a patient must obtain consent given in writing or orally after the patient has received a complete explanation, at least including the diagnosis and procedure for medical action, the purpose of the medical action performed, other alternative actions and their risks, risks and complications that may occur, the prognosis of the action performed." (Article 45 paragraph (3)).⁵

In the context of the above law, it means that doctors have service obligations with clear rules to patients, namely according to professional standards, medical service standards, patient medical needs and must provide explanations and obtain informed consent. In this case, there are no clear rules on the position of convicted sex offenders who receive chemical castration sanctions following the rules of medical practice even though the actions taken are medical actions. There is no clear operational definition whether inmates who receive chemical castration sanctions can be aligned as patients. The doctor's obligation to the patient is not to serve legal action to this inmate which triggers a lot of controversy and debate from the medical world.

One of the cases found in Indonesia can be seen in Decision Number 858/Pid.Sus/2022/PN Bjm. The case of rape committed by Agung Saputro against his own biological child aged 12 (twelve) years or at least not yet 18 (eighteen) years old and still categorized as a child up to 4 (four) times committing acts of copulation against child victims. The defendant was legally and convincingly proven guilty of committing the crime of "Intentionally committing violence or threat of violence to force a child to have intercourse with him/her or another person, committed by a parent, guardian, caregiver, educator, or education personnel" as regulated and punishable in Article 81 paragraph (3) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The defendant was sentenced to imprisonment for 20 (twenty) years, deducted as long as the defendant is in detention and a fine of Rp. 1,000,000,000, - (one billion rupiahs) in subsidiarity of 1 (one) year of confinement with additional punishment of Chemical Castration for 2 (two) years. (Based on Article 5 of Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for Implementing Chemical Castration Measures, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children).

Moving on to one of the cases above, sexual crimes against children are serious crimes and violations of human rights. One of the government's efforts to anticipate the increase in sexual crimes against children is by stipulating Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection (Perpu 1/2016) as the second amendment to the Child Protection Law. Perpu 1/2016 which was later passed into Law Number 17 of 2016 concerning the stipulation of Perpu 1/2016 into Law (Law 17/2016). The background of the issuance of the Perpu is to overcome the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators, and prevent sexual violence against

⁴ Sundoro J. Soetedjo, A. Sulaiman, Tinjauan Etika Dokter sebagai Eksekutor Hukuman Kebiri, *Jurnal Etika Kedokteran Indonesia*, 2018;2(2):67-71.

⁵ Republik Indonesia, Undang-Undang Praktik Kedokteran, Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran, Lembaran Negara Republik Indonesia Tahun 2004 Nomor 116

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children, so the government feels the need to increase the main punishment in the form of the death penalty and life imprisonment, as well as additional punishment with chemical castration.⁶

In Article 1 paragraph 2 of PP No. 70 of 2020, it is notified that chemical castration is the administration of chemical substances through injection or other methods. With the existence of Article 1 paragraph 2 of PP Number 70 of 2020, this castration punishment is carried out to perpetrators who are punished for committing acts of violence or threats of violence to force children to have intercourse with the perpetrator or with other people. With this event, it can cause more than one victim, which results in serious injuries, infectious diseases, mental disorders, impaired or loss of reproductive function until the victim dies. Referring to Article 5 in Government Regulation Number 70 of 2020, chemical castration punishment is imposed for a maximum period of 2 years. Chemical castration must be carried out by officers who have competence. Then in its implementation, chemical castration can be carried out in three stages, through the stages of clinical assessment, conclusion, and implementation as regulated in Article 6 of PP No.70 of 2020 concerning chemical castration.

Law 17/2016 as the stipulation of Perpu 1/2016 has adopted the additional punishment of announcing the judge's decision, namely the additional punishment of announcing the identity of the perpetrator listed in Article 81 paragraph 6 and Article 82 paragraph 5. However, the Identity Announcement as intended is deemed insufficient to achieve the purpose of aggravation even though it has the same interpretation, namely to publish the identity of the perpetrator so that it is known by the public. The embodiment of this thought requires a new idea, namely the inclusion of a unique identity for perpetrators of serious sexual crimes against children in a personal document that will be worn by the perpetrator. Based on the explanation contained in paragraph 5 of the article, it seems that the Identity Announcement in question is not considered adequate to achieve the purpose of aggravation, namely to provide a deterrent effect and prevent perpetrators of serious sexual crimes against children.

In achieving the goal of aggravation, it is important to consider how we set goals in the punishment process. Thus, it can be concluded that the formulation of punishment objectives must have the ability to distinguish and measure the extent to which the types of sanctions, including criminal sanctions and measures, that have been determined in the drafting stage of the law can effectively achieve the desired objectives. This is necessary given that each type of crime may require different sanctions, but it remains important that the application of sanctions in criminal law must be centered on achieving the purpose of punishment itself.⁷

Based on the above background, the problem formulation in this study is as follows: how is the urgency of chemical castration regulation in the Sexual Violence Crime Law?

RESEARCH METHODS

The research method used is normative juridical. Normative juridical research is a procedure used to solve problems from the legal issues at hand. This research focuses on the discussion of rules and norms in positive law.

This research uses a normative juridical approach, namely by studying/analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials, by understanding the law as a set of positive rules or norms in the legislative system that regulates human life.

Based on its nature, this research is descriptive, which is research intended to provide data that is as accurate as possible about humans, circumstances or other symptoms. The purpose is mainly to confirm hypotheses in order to help in strengthening old theories, or in the framework of compiling new theories. Therefore, this research is intended to provide clear data on the provision of additional criminal sanctions of chemical castration against sexual violence. So that the approach used to this problem cannot be separated from a policy-oriented approach. The policy approach includes notions that are intertwined between goal-oriented approaches, rational approaches, economic and pragmatic approaches, and value-oriented approaches.

DISCUSSION

Urgency of Chemical Castration Regulation in Sexual Violence Crime Law

The urgency of regulating chemical castration sanctions in the Child Protection Law Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection (Child Protection Law) regulates sanctions against perpetrators of sexual violence, one of which is chemical castration as stipulated in Article 81 paragraph (7) which states that "The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of chemical castration and installation of electronic detection devices".

The amendment to the Child Protection Law was made due to several considerations:

⁶ Penjelasan Umum Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

⁷ M. Solehuddin, *Sistem Sanksi Dalam Hukum Pidana Ide dasar Double Track system dan Implementasinya*, Jakarta: Raja Grafindo Persada, 2003, hlm. 7.

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- a. That the state guarantees children's right to survival, growth, and development and the right to protection from violence and discrimination as stated in the 1945 Constitution of the Republic of Indonesia;⁸
- b. That sexual violence against children is increasing significantly which threatens and endangers children's lives, damages children's personal lives and growth and development, and disrupts a sense of comfort, peace, security, and public order;⁹ and
- c. The criminal sanctions imposed on perpetrators of sexual violence against children have not yet provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children.¹⁰

The imposition of chemical castration sanctions for sex offenders raises pros and cons in society. Those in favor agree that chemical castration sanctions are a preventive measure and as a deterrent effect for perpetrators who repeat their actions. On the other hand, those who refuse assume that the implementation of chemical castration which is amputating and making human organ dysfunction has violated the fulfillment of basic human rights, namely the right not to be tortured and the right to be free from torture or degrading treatment as a human being as guaranteed in the 1945 Constitution of the Republic of Indonesia.¹¹

In various countries, there are two types of castration applied, namely physical castration and chemical castration. Physical castration, as applied in the Czech Republic and Germany, is carried out by amputating the testicles of pedophiles so that the perpetrators lack the hormone testosterone which affects their sexual drive.¹⁴ Meanwhile, chemical castration, in contrast to physical castration, is not done by amputating the testicles. The executor will insert antiandrogen chemicals that can weaken the testosterone hormone. The method can be through pills or injections. If the testosterone hormone is weakened, then a person's erectile ability, libido, or sexual desire will decrease or even disappear completely.¹²

Some of the countries that have implemented castration laws are Denmark (1929), Sweden (1944), Finland (1970), Norway (1977), Poland (2009), the US state of California (1996) and several other states, Argentina (2010), Australia, Israel, New Zealand, South Korea (2011), and Russia (2011), Moldova (2012), and Estonia (2012).¹³

Chemical Castration is the administration of chemical substances through injection or other methods, which is carried out to perpetrators who have been convicted of committing violence or threats of violence to force a child to have intercourse with him or with another person, resulting in more than 1 victim, causing severe injuries, mental disorders, infectious diseases, disruption or loss of reproductive function, and/or death of the victim, to suppress excessive sexual desire, accompanied by rehabilitation.¹⁴

Chemical castration is carried out based on a court decision that has permanent legal force¹⁵ which is imposed for a maximum period of 2 (two) years. Chemical castration is carried out through the stages of clinical assessment, conclusion and implementation. So that in its application to the perpetrators of sexual crimes depends on the results of clinical assessment conclusions that ensure the perpetrator is feasible or not feasible to be subject to chemical castration from a team consisting of officers who have competence in the medical and psychiatric fields.¹⁶ In its application, there is also a possibility of delaying the implementation of chemical castration against sex offenders if the offender is declared unfit based on the conclusion of clinical trials and there is a possibility of delay if the offender escapes.

Countering the crime of sexual violence against children is an important issue that must continue to be of concern to the government as well as a complicated matter in handling and preventing it where the crime of sexual violence is one form of crime in society whose development is increasingly diverse in terms of motive, nature, form, intensity and modus operandi which can be seen from 3 aspects, namely:¹⁷

- 1) The crime of sexual violence against children is seen from the social aspect;

⁸ Lihat Konsideran menimbang huruf a Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

⁹ Lihat Konsideran menimbang huruf b Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

¹⁰ Lihat Konsideran menimbang huruf c Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

¹¹ Nuzul Qur'aini Mardiyah, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual", Jurnal Konstitusi, Vol 14 No. 1, Maret 2017, hlm. 217

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Lihat Pasal 1 angka 2 Peraturan Pemerintah Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak

¹⁵ Lihat Pasal 2 Peraturan Pemerintah Republik Indonesia Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak.

¹⁶ Lihat Pasal 2 Peraturan Pemerintah Republik Indonesia Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak

¹⁷ Nuzul Qur'aini Mardiyah, *Op. Cit.*, hlm. 214.

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The increase in cases of sexual violence against children has caused fear and concern in the community. The loss of security in family and community life results in a safe and peaceful atmosphere that cannot be felt not only in the neighborhood where the crime of sexual violence occurred. However, it can also have a systemic impact on all communities in Indonesia because sexual violence is a form of crime that also violates social norms that live in society.

- 2) The crime of sexual violence against children from a political perspective;
The crime of sexual violence against children, which until now is a problem that cannot be prevented by the government. Judging from the increasing number of cases of violence against children from year to year, children are in a vulnerable position wherever they are. The rape case committed by Agung Saputro against his own biological child aged 12 (twelve) years or at least not yet 18 (eighteen) years old and still categorized as a child up to 4 (four) times committing acts of copulation against child victims. There are several viral cases related to criminal acts of sexual violence against children, namely in early December the public was shocked by the rape of 13 female students aged 13-16 years at an Islamic boarding school in Bandung, West Java. Followed by the emergence of a case of a 14-year-old child in Bandung who was raped and made a sex slave by a gang of perpetrators she knew through Facebook who disappeared since December 15, 2021 and was only found on December 22, 2021 at a boarding house in the Bandung area. In this case the victim was forced to become a sex slave if she did not then the victim was beaten, dragged and threatened with death and many other cases of criminal acts of sexual violence including cases that are unknown or have not been reported. According to the 2020 Gender Equality Barometer Quantitative Study report, the majority of sexual violence problems in Indonesia end without certainty where 57% of victims of sexual violence admit that there is no resolution in the case due to the lack of adequate legal instruments and existing legal instruments are still not in favor of victims which causes the emergence of thoughts in the community, especially victims of sexual violence, that the law enforcement system in Indonesia is not going well.
- 3) The crime of sexual violence against children is seen from a cultural aspect;
Roos Diana Iskandar, Assistant Deputy for the Fulfillment of Rights, Protection and Empowerment of Women, Coordinating Ministry for Human Development and Culture (Kemenko PMK) stated that the problem of sexual violence is a scourge in human development and Indonesia.¹⁸ Where sexual violence crimes often occur in places of learning such as schools and even boarding schools. With the rampant crime of sexual violence against children, this can affect the morality of the nation's generation. Where each child has an independent assessment of nature and characteristics, because each child has a different personality from the psychological and physical side which is unique because the level of development of one child is different from the level of development of another child since the child is born in infancy, adolescence, adulthood, old age in accordance with the conditions of the family and the surrounding environment.

The phases of a child's growth are based on the parallelity of the child's physical development with the development of the child's psyche. The classification is divided into 3 (three) phases, namely:¹⁹

- a. The first phase begins at the age of 0 years to 7 (seven) years which can be referred to as the period of childhood and the development of mental abilities, the development of bodily functions, the development of emotional life, infant language and the meaning of language for children, the first critical period (trozalter) and the growth of early sexuality in children.
- b. The second phase, starting at the age of 7-14 years, is referred to as childhood, which can be classified into two periods, namely:
 - i. The period of primary school children from 7-12 years old is an intellectual period.
This intellectual period is the initial learning period starting with entering society outside the family, namely the school environment, then the theory of child observation and the life of the child's feelings, will and abilities in various kinds of potential, but still stored or latency period (hidden period).
 - ii. Adolescence/pre-puberty or early puberty is known as the puerperal period.
In this period, there is a maturity of physical functions characterized by the development of abundant physical energy which causes the behavior of children to look rough, awkward, bratty, impolite, wild and others. In line with the development of physical functions, intellectual development also takes place very intensively so that interest in new knowledge and experiences in the outside world is very large, especially those that are concrete, hence pubescent children are referred to as fragmatists or small utilities, where their interests are directed at technical uses.

¹⁸ KEMENKO PMK, The importance of the TPKS Bill to be passed immediately <https://www.kemenkopmk.go.id/importance-ruu-tpks-to-be-passed-immediately>, Accessed April 02, 2024, at 10.00 WIB

¹⁹ Wagiaty Soetedjo dan Melani, *Hukum Pidana Anak*, Refika Aditama, Bandung, 2013, hlm. 7-8.

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- c. The third phase begins at the age of 14-21 years, which is called adolescence, in the true sense of puberty and adolescence, where there is a period of connection and transition from child to adult. This third phase is a major change experienced by children that has an influence on attitudes and actions towards more aggressive so that in this period many children in acting can be classified into actions that show symptoms of child delinquency.

What makes these psychological effects short-term or long-term depends on a number of factors:²⁰

1. Perpetrators. Sexual violence against children can occur anywhere, and is committed by anyone, even the perpetrators are generally the closest people known well by the victim, it could be family, such as uncles, aunts, biological or step parents and cousins or acquaintances of the victim, such as neighbors and playmates. The closer the relationship between the perpetrator and the victim, the higher the risk of the victim experiencing psychological problems.
2. The type of sexual violence experienced by the victim. Individuals who were sexually assaulted as children tend to be at high risk of psychological disorders in adulthood. The more severe the sexual assault, the greater the risk of psychological problems.
3. How the sexual violence was perpetrated. Sexual violence perpetrated against children is often accompanied by other forms of violence, both physical and mental. Victims who experience sexual violence as children are twice as likely to experience physical violence simultaneously during childhood. Physical abuse can take the form of punches, slaps, and force that can hurt the victim physically or mentally. Verbalized mental abuse can include threats, yelling, and insults that can make children fearful, embarrassed, humiliated and angry.
4. Openness. Many victims choose to keep their abuse to themselves. Victims feel guilty, ashamed of being dirty, or afraid so they don't want the sexual violence they experienced to be known by several people. Especially if the people who know about the sexual violence use the incident as a joke, threat, or the incident is disseminated to many people.
5. Social support. The higher the social support received by victims of sexual violence, the higher the victim's psychological well-being, meaning that social support will make it easier for victims of sexual violence to make peace with themselves. Conversely, these long-term psychological effects can also get worse if the environment in which the child grows up does not support the child's recovery after experiencing sexual violence.

From these phases, the events experienced by children as victims of sexual violence will affect the mindset of children in shaping their character and personality coupled with the rapid development of technology and information which is also a supporting factor but greatly affects the culture of thinking of the nation's next generation today. So that with the increasing and increasing number of children who are victims of sexual violence, it is possible to change the culture and mindset of the nation's generation away from the religious order and philosophy of the nation, namely Pancasila and the 1945 Constitution of the Republic of Indonesia.

Although additional penalties in the form of chemical castration have been enforced since May 25, 2016 with the passing and promulgation of the Child Protection Law, the number of cases of sexual violence against children has continued to increase throughout 2019-2021, where the Ministry of Women's Empowerment and Child Protection (Kemen PPA) recorded the number of reported cases of violence against children in 2019 at 11,057 which increased to 11,278 cases in 2020 and to 14,517 cases in 2021 with details of 45% of these cases being cases of sexual violence against children.²¹ This proves the ineffective implementation of regulations related to the protection of children in the presence of criminal acts of sexual violence as well as proving the ineffectiveness of law enforcement in Indonesia against the prevention and prevention of criminal acts of sexual violence against children.

Law enforcement is a policy in terms of crime prevention, in this case the crime of sexual violence against children. There are several factors that influence law enforcement, namely:²² Statutory factors in providing criminal sanctions (law); Law enforcement factors in carrying out their duties as law enforcers; Factors of facilities or facilities that support law enforcement; Community factors, namely the environment where the law applies or is applied.

In practice, the application of chemical castration sanctions against sex offenders has not been implemented effectively in law enforcement in Indonesia even though there are rules governing it. One of the factors is due to the pros and cons of the application of chemical castration sanctions against perpetrators of sexual violence against children supported by the unissued procedures for the implementation of chemical castration against perpetrators of sexual violence against children. Where the new chemical castration implementation regulations were established and promulgated by the government 4 years later, namely on December 7, 2020 through Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical

²⁰ Rini, Dampak Psikologis Jangka Panjang Kekerasan Seksual Anak (Komparasi Faktor: Pelaku, Tipe, Cara, Keterbukaan Dan Dukungan Sosial), Jurnal IKRA-ITH Humaniora, Vol. 4 No. 3, 2020, hlm 157-158

²¹ Kompas, Laporan Kasus Kekerasan Terhadap Anak Dan Perempuan Meningkat 3 Tahun Terakhir, <https://nasional.kompas.com/read/2022/01/20/12435801/laporan-kasus-kekerasan-terhadap-anak-dan-perempuan-meningkat-3-tahun>, Akses 02 April 2024, Pukul 09.00 WIB

²² Anastasia Hana Sitompul, "Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia", Lex Crimen, Vol IV No. 1, 2015, hlm. 1

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Castration Measures, Installing Electronic Detection Devices, Rehabilitation, and Announcing the Identity of Perpetrators of Sexual Violence Against Children. So that against this, making ineffective prevention of criminal acts of sexual violence against children.

An example of a case in Indonesia can be seen in Decision Number 858/Pid.Sus/2022/PN Bjm. The case of rape committed by Agung Saputro against his own biological child aged 12 (twelve) years or at least not yet 18 (eighteen) years old and still categorized as a child up to 4 (four) times committing acts of copulation against child victims. The defendant was legally and convincingly proven guilty of committing the crime of "Intentionally committing violence or threat of violence to force a child to have intercourse with him/her or another person, committed by a parent, guardian, caregiver, educator, or education personnel" as regulated and punishable in Article 81 paragraph (3) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The defendant was sentenced to imprisonment for 20 (twenty) years, deducted as long as the defendant is in detention and a fine of Rp. 1,000,000,000, - (one billion rupiahs) in subsidiarity of 1 (one) year of confinement with additional punishment of Chemical Castration for 2 (two) years. (Based on Article 5 of Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for Implementing Chemical Castration Measures, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children).

When viewed from the purpose of punishment as stated by Herbert L Packer, there are 2 conceptual views related to the purpose of punishment, each of which has different moral implications from one another, namely first, Absolute/retributive theory which states that punishment is a negative punishment for deviant behavior committed by citizens so that this view sees only as retaliation for mistakes made on the basis of their respective moral responsibilities, second, relative/utilitarian theory which states that punishment in terms of its benefits or usefulness, where what is seen is the situation or condition that wants to be produced by the imposition of punishment.²³

From the theory of the purpose of punishment, when viewed from the purpose of punishment in the imposition of chemical castration against perpetrators of sexual violence against children is to provide a deterrent effect and as a form of optimal and comprehensive steps by not only providing aggravation of criminal sanctions but also applying a form of prevention (preventive) against the occurrence of sexual violence.²⁴

In this case, in practice, the provision of additional sanctions in the form of chemical castration as a form of prevention and providing a deterrent effect for perpetrators of sexual violence is considered less effective for several reasons, namely:

1. In reality, from the enactment and promulgation of the Child Protection Law until now, the number of cases of criminal acts of violence has increased from 2016 to 2021. It can be said that by regulating the legal action of chemical castration in reality does not reduce the number of cases of children who are victims of sexual violence.
2. The application of chemical castration as a punishment has met with a lot of resistance. Especially from human rights organizations that basically rely on several reasons, namely:²⁵ First, castration punishment is not justified in the national criminal law system or the purpose of punishment adopted by the Indonesian legal system. Second, castration punishment violates human rights as stated in various international conventions that have been ratified in our national law including the Covenant on Civil and Political Rights (ICCPR), Convention Against Torture (CAT), and also the Convention on the Rights of the Child (CRC), corporal punishment, in any form must be interpreted as a form of torture and degrading human dignity, especially if it is intended for retaliation with the main reason of deterrent effect which is scientifically doubtful. And third, all forms of violence against children, including sexual violence, are basically a manifestation or operationalization of the desire to control, control and dominate children, thus, castration law does not target the root causes of violence against children.
3. The effect of chemical castration is not permanent where when the liquid administration is stopped, libido and erectile ability will return to function. One of the important factors that cause sexual drive or sexual arousal is the hormone testosterone. In addition, even though the sexual drive will drop drastically, it can still return when the chemical treatment injection is stopped, because there are still psychological factors that can cause sexual drive to return. Castration can also lead to the possibility of the perpetrator becoming more aggressive due to psychological and social factors, negative feelings, such as hurt, anger, and resentment, have been formed since the perpetrator felt victimized.²⁶

Anthony Allott (Allot) who is famous for his theory of Effectiveness of Law is a jurist from the University of London. With his book entitled, "Essays in African Law: (1960), Allot became the first pioneering jurist to assess the impact of the acceptance of European law on local legal systems. This condition is the result of his research in Africa. In his 1981 paper entitled "The Effectiveness of Law" published by Valparaiso University Law Review, Allot stated "The purpose of the laws is to regulate or shape

²³ Novia Devy Irmawanti, "Urgensi Tujuan Dan Pedoman Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana", *Jurnal Pembangunan Hukum Pidana*, Vol. 3 No. 2, 2021, hlm. 220.

²⁴ Lihat Penjelasan Undang-Undang Nomor 17 Tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

²⁵ Nurul Qur'aini Mardiyah, *Op. Cit.*, hlm. 222-223.

²⁶ *Ibid.*

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the behavior of the members of the society, both by prescribing what is permitted or forbidden, and by enabling them, through the establishment of institutions and processes in the law, to carry out functions more effectively".²⁷ Legal effectiveness according to Anthony Allot is how the law can realize its purpose or in other words how the law can fulfill its purpose.²⁸

Against this, in overcoming criminal acts of violence against children is optimizing law enforcement against perpetrators of criminal acts of sexual violence against children and the important thing that must also be seen is the best interests of the child, where the importance of rules governing the interests of children as victims of sexual violence is comprehensive not only limited to providing protection but also related to the recovery of the physical and mental recovery of children.

In the development of criminal law and punishment, the legal protection of victims of crime is that the victim is only a reporter or victim witness where in Indonesia adheres to the service model system, the participation of victims of crime in the justice system is seen as "nothing more than a piece of evidence" whose position is outside the system (outsider), not a very interested party and involved in the system (insider). Victims are not required to actively participate in the criminal justice process, in other words, they are not included in the legal standing, so the legal standing is taken over by the state in the police and prosecutors.

CONCLUSION

This research highlights the urgency of setting chemical castration sanctions in the Child Protection Law based on Law Number 17 Year 2016 in Indonesia. This sanction is regulated in Article 81 paragraph (7) as a legal remedy against perpetrators of sexual violence against children. The amendment of this law is motivated by several main considerations: protection of children's rights, a significant increase in cases of sexual violence that endanger children's lives, and criminal sanctions that have not been effective in providing a deterrent effect or preventing these crimes as a whole. The implementation of chemical castration sanctions has sparked pros and cons in the community; supporters see it as a preventive measure and deterrent, while opponents consider that chemical castration violates human rights because it is considered a form of torture that degrades human dignity. Internationally, several countries have implemented chemical castration with various methods and mixed results. In Indonesia, chemical castration is carried out based on a legally sound court decision and involves a clinical evaluation to ascertain the suitability of the offender. However, the effectiveness of this sanction in law enforcement is still questionable, given the increasing number of cases of sexual violence against children. Social, political and cultural factors contribute to the complexity of handling sexual crimes against children. On the social side, this violence creates fear and insecurity in the community. Politically, there is a gap between existing regulations and their implementation, which is compounded by viral cases of sexual violence that often do not receive adequate legal remedies. Culturally, child sexual abuse affects the morality and character development of the younger generation. The growth phase of children affected by sexual violence can also change their mindset and culture in the future. Chemical castration, which is imposed as an additional punishment, has not been effective in reducing the number of cases, because its application still draws rejection from various parties including human rights organizations who consider this punishment is not in accordance with the principles of human rights and the purpose of punishment adopted in Indonesia. In addition, the non-permanent effect of chemical castration also poses its own challenges in ensuring that offenders do not re-offend after the sentence period ends. According to Anthony Allot's theory of legal effectiveness, the law should be able to regulate and shape people's behavior effectively. Therefore, it is important to optimize law enforcement and involve a comprehensive approach that focuses not only on aggravating sanctions but also on prevention and victim recovery. In addition, the justice system should take into account the best interests of child victims of sexual violence, including their physical and mental recovery, as well as increasing the active participation of victims in the justice process to ensure their rights are protected.

REFERENCES

- 1) Anastasia Hana Sitompul, "Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia", Lex Crimen, Vol IV No. 1, 2015, hlm. 1
- 2) Diana Tantri Cahyaningsih, "Mengurai Teori Effectiveness of Law Anthony Allot", Jurnal RechtsVinding, Maret 2020, hlm 1.
- 3) I Putu Agus Setiawan & I Wayan Novy Purwanto, "Faktor Penyebab dan Upaya Penanggulangan Kekerasan Seksual Terhadap Anak dalam Lingkup Keluarga", Jurnal Universitas Udayana, 2019, hlm. 9
- 4) KEMENKO PMK, Pentingnya RUU TPKS untuk segera disahkan <https://www.kemenkopmk.go.id/pentingnya-ruu-tpks-untuk-segera-disahkan>, Akses 02 April 2024, Pukul 10.00 WIB
- 5) Komnas Perempuan (2022b), "Press Release IWD dan CATAHU 2022" Available at: <https://komnasperempuan.go.id/download-file/728>.

²⁷ Diana Tantri Cahyaningsih, "Mengurai Teori Effectiveness of Law Anthony Allot", Jurnal RechtsVinding, Maret 2020, hlm 1.

²⁸ *Ibid.*

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- 6) Kompas, Laporan Kasus Kekerasan Terhadap Anak Dan Perempuan Meningkat 3 Tahun Terakhir, <https://nasional.kompas.com/read/2022/01/20/12435801/laporan-kasus-kekerasan-terhadap-anak-dan-perempuan-meningkat-3-tahun>, Akses 02 April 2024, Pukul 09.00 WIB
- 7) Lihat Konsideran menimbang huruf a Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak
- 8) Lihat Konsideran menimbang huruf b Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak
- 9) Lihat Konsideran menimbang huruf c Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak
- 10) Lihat Pasal 1 angka 2 Peraturan Pemerintah Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak
- 11) Lihat Pasal 2 Peraturan Pemerintah Republik Indonesia Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak.
- 12) Lihat Pasal 2 Peraturan Pemerintah Republik Indonesia Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak
- 13) Lihat Penjelasan Undang-Undang Nomor 17 Tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.
- 14) M. Solehuddin, *Sistem Sanksi Dalam Hukum Pidana Ide dasar Double Track system dan Implementasinya*, Jakarta: Raja Grafindo Persada, 2003, hlm. 7.
- 15) Novia Devy Irmawanti, "Urgensi Tujuan Dan Pedoman Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana", *Jurnal Pembangunan Hukum Pidana*, Vol. 3 No. 2, 2021, hlm. 220.
- 16) Nuzul Qur'aini Mardiyah, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual", *Jurnal Konstitusi*, Vol 14 No. 1, Maret 2017, hlm. 217
- 17) Penjelasan Umum Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak
- 18) Republik Indonesia, *Undang-Undang Praktik Kedokteran*, Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran, Lembaran Negara Republik Indonesia Tahun 2004 Nomor 116
- 19) Rini, *Dampak Psikologis Jangka Panjang Kekerasan Seksual Anak (Komparasi Faktor: Pelaku, Tipe, Cara, Keterbukaan Dan Dukungan Sosial)*, *Jurnal IKRA-ITH Humaniora*, Vol. 4 No. 3, 2020, hlm 157-158
- 20) Sundoro J. Soetedjo, A. Sulaiman, *Tinjauan Etika Dokter sebagai Eksekutor Hukuman Kebiri*, *Jurnal Etika Kedokteran Indonesia*, 2018;2(2):67-71.
- 21) Wagiaty Soetedjo dan Melani, *Hukum Pidana Anak*, Refika Aditama, Bandung, 2013, hlm. 7-8.
- 22) Yulaelawati, *Pendidikan Keluarga*, Direktorat Pembinaan Pendidikan Keluarga Direktorat Pendidikan Anak Usia Dini dan Pendidikan Masyarakat, Jakarta, 2015, hlm. 111.



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