



## Chemical Castration Sanctions in an Ethical Perspective

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### Abstract

Chemical castration is an additional sanction imposed on perpetrators of sexual violence against children. This sanction was imposed as an implementation of the child protection law. This additional sanction is threatened with the consideration that every act of sexual violence leaves a psychological trauma for the child that affects the child's growth and development in his life. This study is normative legal research with a statutory approach, a conceptual approach, and a philosophical approach to analyse the Child Protection Act and the PP Chemical Castration. A philosophical approach is used to examine ethical and legal aspects as the implementation of the protection of human dignity. The results of the research from the ethical perspective concluded that the imposition of chemical castration sanctions is unethical (unethical), this is a paradox with the aim of restorative justice theory as a new vision in criminal law enforcement. With a legal, conceptual, and scholastic approach to the Implementation Regulations for Chemical Castration with ethical perspective parameters, the imposition of additional sanctions is unethical and in line with restorative justice that prioritizes human values for perpetrators, victims, and implementers of chemical castration. The imposition of sanctions must pay attention to the principle of respect for human values as a whole person (respect for person) and the principle of access to justice (justice for all).

## I. Introduction

Indonesia guarantees children's constitutional rights to survival, the right to grow and develop with quality, as well as protection from violence and discrimination. Stipulation of Law Number 17 of 2016 concerning Stipulation of Government Regulation in Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law (Child Protection Law). Children are an inseparable part of human survival and the sustainability of a nation and state. With this important role of children, children's rights are expressly stated in the constitution Article 28 B paragraph (2) of the 1945 Constitution, that the State guarantees every child has the right to survival, growth and

development and the right to protection from violence and discrimination. Therefore, we all always try not to let children become victims of violence, or children fall into evil deeds or other inappropriate actions. Based on the consideration that violence Sexual abuse of children from year to year is increasing and threatens the strategic role of children as the future generation of the nation and state.

According to the deputy chairman of KPAI Santoso, Maximum application of punishment is made so that people who commit criminal acts will think again if they will commit such criminal acts. However, legal developments at this time are very influential in the development of the era where someone commits a violation not because of the weakness of the existing government but because of several laws that do not regulate and do not carry out the development of the law itself and also the absence of strict sanctions in the legislation. -The law. The criminal sanction does not lie in a punishment given whether it has been maximized or not, but the criminal sanction lies in the purpose of the punishment, namely the effectiveness of the punishment given itself, so that the community obeys, and does not commit the crime.

These considerations are used as the basis for intensifying criminal sanctions by providing action against perpetrators of sexual violence as an additional crime. Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration Actions (PP Kebiri Kimia), as an implementing regulation of the Child Protection Act. According to the PP of Chemical Castration, what is meant by action is the installation of electronic detection devices, rehabilitation, and announcement of the identity of perpetrators of sexual violence against children. In PP Kebiri Kimia it is emphasized that the aim is to prevent and overcome acts of sexual violence against children, provide a deterrent effect to perpetrators, and prevent sexual violence against children, as well as to implement the provisions of Article 81A paragraph (4) and Article 82A paragraph (3) Child Protection Act.

According to the Child Protection Law, violence against children can take the form: sexual violence, sexual harassment, and sexual exploitation. Violence against children currently to continue to increase. This trend is reflected in the 2016 data, recorded that sexual violence in the personal realm was 321, 752, 72% (2399 cases) were in the form of rape, 18% (601 cases) were in the form of obscenity, and 5% (166 cases) were criminal acts. Sexual harassment. Meanwhile, sexual violence in the public domain was 31% (5002 cases), with the highest details of violence cases being sexual violence (61%). Sexual violence occurs across ages, including those perpetrated by children.<sup>1</sup>

The increase in cases of sexual violence is still happening, even though the Mojokerto District Court and the Surabaya District Court have decided to impose chemical castration sanctions on perpetrators of sexual violence. During the 2020 pandemic, sexual violence, such as rape and child molestation, still dominates. Based on data from the Indonesian Child Protection Commission (KPAI), there are 419 cases of children in conflict with the law (ABH), for being victims of sexual violence. In 2020, physical violence occurred, namely 249 cases, and 119 children became victims of psychological violence. There were 20 cases of child victims of sodomy/pedophilia and kidnapping each, while 12 cases of child victims of murder and possession of sharp weapons.<sup>2</sup>

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<sup>1</sup> Komnas Perempuan, "Pernyataan Sikap Komnas Perempuan Atas Kasus Kekerasan Seksual," *Komnas Perempuan*, 2016.

<sup>2</sup> "Kasus Kekerasan Seksual," n.d.

Cases of sexual violence against children are an iceberg phenomenon, because usually these cases of violence are not known to the public, and only become domestic cases whose resolution tends to be closed. The impact of this incomplete case settlement causes traumatic experiences that have an impact on social and legal issues, including: loss of confidence in children in adults (betrayal), feeling powerless (powerless), sexually (traumatic sexualisation), children getting labelled or stigmatized (stigmatization). The child no longer has psychological well-being. Handling and healing trauma due to sexual violence should be the concern of all parties concerned, such as families, communities, and the state. This is supported by paying attention to efforts to overcome sexual violence.

Criminal law is essentially a sanction law, which has elements of reform, restraint, retribution, and deterrence. Reformation means that criminal sanctions aim to make criminals good. Restraint means that criminal sanctions aim to alienate criminals from society so that society becomes safe and peaceful. Retribution means that criminal sanctions are a form of retaliation for committing a crime, while deterrence means deterring or preventing so that no one commits a crime.<sup>3</sup>

In its development, the purpose of punishment is a modification between deterrents that are intended for perpetrators and the community for improvement (reform). This is done by looking for other alternatives that are more humane in achieving restorative justice. Crime should prioritize the benefit of society.<sup>4</sup>

An additional penalty imposed for perpetrators of sexual violence against children is chemical castration. Chemical castration is an act of giving chemical substances through injection or other methods carried out as a result of acts of violence or threats of violence against children, where the victim is more than 1 (one) person, resulting in serious injuries, mental disorders, infectious diseases, mental disorders, loss of life. Reproductive function and/or the victim dies. Chemical castration aims to suppress excessive sexual desire, which is accompanied by rehabilitation.

Chemical castration is new in Indonesia, there are pros and cons related to the implementation of this action. On the one hand, the implementation of castration is expected to be able to provide a deterrent and preventive effect to perpetrators, as well as to reduce the level of sexual crimes against children. But on the other hand, the implementation of chemical castration is considered a violation of human rights. Human rights are essentially the most basic rights possessed by all human beings as the highest gift from God Almighty, wherever humans live, because with these rights humans can become dignified creatures.<sup>5</sup> The Constitution states that the State must not punish humans by degrading human rights and human values. However, chemical castration is considered an act of violence and is considered contrary to the Constitution of the Republic of Indonesia, namely the right not to be tortured, and the right to be free from torture or treatment that degrades human dignity. In addition, the implementation of chemical castration only focuses on retaliation for perpetrators, not on repairs.

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<sup>3</sup> Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008).

<sup>4</sup> Andi Istiqal Assaad, "Hakikat Sanksi Dalam Perspektif Hukum Pidana Indonesia Dan Hukum Islam," *Al-Ishlah: Jurnal Ilmiah Hukum* 9, no. 2 (2017).

<sup>5</sup> Artidjo Alkostar, *Korupsi Politik Di Negara Modern* (FH UII Press, 2008).

Chemical castration as an additional form of punishment is not new as an effort to combat violence in several countries, including the European Union and the United States. In Russia, the chemical castration procedure was carried out after the court requested a forensic psychiatrist's report to follow up medical steps against the perpetrator. Then the court will inject the *depoprovera* substance containing synthetic progesterone into the patient's body. By injecting more female hormones into the male body it will decrease sexual desire. After undergoing chemical castration, perpetrators of pedophilia crimes will serve a prison sentence. They can only apply for parole after serving 80 percent of the sentence. The castration punishment in force in Russia must be carried out by every offender found guilty by a court.<sup>6</sup>

World Rape Statistics and notes that currently, chemical castration is applied to cases of sexual violence against children, England, Poland, Russia, Germany, Czech Republic, Denmark, Sweden, and Spain, as well as the American states, namely California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas and Wisconsin. One of the Latin American countries that enforce castration is Argentina and one country in Southeast Asia is South Korea, all of which are considering giving this castration injection specifically to pedophiles and recidivist child sex offenders.<sup>7</sup>

### **Problem Statement**

Additional sanctions are essentially implemented after the main sentence is imposed. Additional sanctions for chemical castration are set with the consideration that every act of sexual violence leaves trauma that affects the child's growth and development. However, the imposition of paradoxical castration sanctions leaves ethical and legal (ethic legal) problems, considering that in achieving restorative justice, aspects of human rights between victims, perpetrators, and chemical castration executors have ethical and legal interests that must be protected. The focus of the study in this paper is how to impose chemical castration sanctions from an ethic legal perspective.

### **2. Method**

Research on "Chemical Castration for Perpetrators of Sexual Violence in Children Viewed from Criminal Law Policy is a normative legal research. Normative legal research is research that refers to legal norms that are appropriate or related to statutory regulations, court decisions and legal norms that exist in society,<sup>8</sup> such as those contained in the Criminal Code (KUHP) and Law No. Law Number 17 of 2016 concerning the Stipulation of Perpu No. 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. This research was conducted with the intention of providing legal arguments as a basis for determining whether an event was right or wrong and how otherwise the event was according to law. This normative legal research was conducted using a statutory approach (Statute Approach). The statutory approach (Statute Approach) is a study of all laws and regulations related to the legal issue being handled,<sup>9</sup> namely Chemical Castration. For Perpetrators of Sexual Violence in Children Judging from Criminal Law Policy".

This paper is normative legal research with a statutory approach, a conceptual approach, and a philosophical approach to analyze the Child Protection Act and the PP Chemical

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<sup>6</sup> <http://jateng.tribunnews.com/2016/05/17/apa-itu-hukum-kebiri-dan-apa-bedanya-kebiri-fisik-dan-kebiri-kimiawi-ini-penjasannya?page=3>

<sup>7</sup> Ayu Febri Wulanda, *Biologi Reproduksi* (Jakarta: Salemba Media, 2011).

<sup>8</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

<sup>9</sup> Peter Mahmud Marzuki, "Penelitian Hukum Empiris," *Jakarta: Kencana Prenada Media Group*, 2009.

Castration. A philosophical approach is used to examine ethical and legal aspects of the implementation of the protection of human dignity.

### **3 Result and Discussion**

#### **3.1 Indonesian Criminal Law Policy**

Efforts to reform law in Indonesia, which have been started since the birth of the 1945 Constitution, cannot be separated from the foundation and goals to be achieved by the Indonesian people as formulated in the Preamble to the 1945 Constitution, namely, "To protect the entire Indonesian nation and to realize the general welfare based on Pancasila.

Protecting the entire Indonesian nation and promoting the general welfare based on Pancasila are the goals of the founding fathers of the Republic of Indonesia contained in the 1945 Constitution of the Republic of Indonesia. The means of protecting these citizens can be achieved by law enforcement. The mandate of the Constitution of the Republic of Indonesia in Article 1 Paragraph (3) which states that the State of Indonesia is a state of law. Thus, the law is the supreme supremacy of the Republic of Indonesia in protecting all citizens of the Indonesian nation.

The purpose of national development contained in the Preamble to the 1945 Constitution is solely for the sake of creating prosperity for the Indonesian people and to achieve all of this, development is carried out. Development is basically a positive change. This change is planned and driven by an optimistic view that is oriented towards the future which has the aim of progressing and improving the standard of living of the community in a better direction. In other words, the essence of development is a process of continuous and continuous change to improve people's lives. These developments or changes directly or indirectly affect human life, society, and the environment.<sup>10</sup>

In order to build the basic framework of national law, it is necessary to understand and live it so that every form of law and legislation is always based on the morals, soul, and nature contained in the way of life of the Indonesian people, namely Pancasila and the 1945 Constitution and must also be adapted to the demands of the times. Especially in line with the demands for reform in the field of law.<sup>11</sup>

The politics of criminal law is not only directed at the establishment of statutory regulations (*ius constituendum*), but also makes good and relevant legal regulations, namely criminal law that is responsive to developments (*ius constitutum*) and non-discriminatory law enforcement (*ius operatum*).

Some other things that we must pay attention to are the opinion of Teguh Prasetyo which states that politics or criminal law policies are basically how criminal law can be formulated properly and provide guidelines to lawmakers (legislative policies), application policies (judicial policies) and implementation criminal law (executive policy).

Based on the above dimensions, it is clear that the scope of criminal policy is actually wider than criminal law reform. This aspect is oriented towards the fact that criminal law policies

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<sup>10</sup> Muhammad Zainuddin, "Kebijakan Hukum Pidana Dalam Rangka Penanggulangan Kejahatan Pedofilia" (program Pascasarjana Universitas Diponegoro, 2007).

<sup>11</sup> Tuty Budhi Utami, "Kebijakan Hukum Pidana Dalam Menanggulangi Tindak Pidana Illegal Logging" (Program Pasca Sarjana Universitas Diponegoro, 2007).

are implemented based on the stages of concretization/operationalization/functionalization of criminal law which consist of:

- The formulation stage, namely the law enforcement stage in abstracto by the legislature. This stage is called the legislative policy stage.
- Application stage, namely the stage of applying criminal law by law enforcement officers from the police to the courts. This stage is called the judicial policy stage
- Execution stage, namely the stage of concrete implementation of criminal law by criminal implementing officers. This stage can be called the executive or administrative policy stage.

According to Teguh Prasetyo, legislative policy is a very decisive stage for the next stages, because when criminal legislation is about to be made, the objectives to be achieved have already been determined. In other words, what actions are deemed necessary to be used as acts that are prohibited by criminal law. Legislative policies are indeed based on clear objectives, namely:

- Support towards realizing the rule of law, especially the replacement of the colonial legacy legislation and national laws that are no longer in accordance with the development of society;
- Improving the existing laws and regulations, but not in accordance with the demands and needs of the community
- Forming new laws and regulations that are in accordance with the demands of, and meet the legal needs of the community

In essence, criminal law policy (penal policy, criminal law policy, strafrechtspolitik) is a comprehensive or total criminal law enforcement process. Therefore, it is hoped that the three stages are a correlated link in a system. Thus, legislative policy is the most strategic initial stage of the entire process of functionalization/operationalization/concretization of criminal law and is the foundation of the application stage and execution stage. According to Winosobroto, criminal law policies are actions related to the following matters:

- What are the government's efforts in tackling crimes with criminal law;
- How to formulate criminal law to suit the conditions of society;
- How is the government's policy to regulate the community in order to achieve a bigger goal.

### **3.2 Sexual Violence against Children**

Violence against children is an intentional act that causes harm or harm to children (both physically and emotionally). Forms of violence against children can be classified into physical violence, psychological violence, sexual violence and social violence. Sexual violence against children according to End Child Prostitution in Asia Tourism (ECPAT) International is a relationship or interaction between a child and an older person or adult such as a foreigner, sibling or parent where the child is. Used as an object to satisfy the sexual needs of the perpetrator. This act is carried out using coercion, threats, bribes, deception and even pressure. Sexual violence against children does not have to involve bodily contact between the perpetrator and the child as a victim. The forms of violence themselves can be in the form of rape or obscenity. (Ricard J. Gelles in Hurayrah)

Sexual violence against children is when someone uses a child to get sexual pleasure or satisfaction. Not limited to sex, but also acts that lead to sexual activity against children such as: touching the child's body sexually, whether the child is wearing clothes or not, all forms of sexual penetration, including penetration into the child's mouth using objects or objects. body parts, making or forcing children to engage in sexual activities, intentionally engaging in sexual activities in front of children, or not protecting and preventing children from

witnessing sexual activities carried out by others, making, distributing and displaying pictures or films containing scenes of children in indecent poses or actions, and showing children pictures, photos, or films that show sexual activity.

According to Lyness as quoted by Maslihah, sexual violence against children includes the act of touching or kissing the child's sexual organs, sexual acts or rape of children, showing pornographic media/objects, showing the genitals of children and so on. Sexual abuse is a type of abuse that is usually divided into two categories based on the identity of the perpetrator, namely:

- Familial Abuse, which in this case includes incest, namely sexual violence in which the victim and perpetrator are still related by blood, being part of the nuclear family. This includes someone who is a substitute for a parent, for example a stepfather, caregiver or person who is trusted to take care of the child. Mayer mentions the category of incest in the family and relates violence to children, namely the first category of abuse (sexual molestation), this includes noncoitus, petting, fondling, exhibitionism, and voyeurism interactions, all things related to stimulating the perpetrator sexually. The second category is rape (sexual assault), in the form of oral or sexual intercourse, masturbation, oral stimulation of the penis, and oral stimulation of the clitoris. The last, most fatal category, called forced rape, includes sexual contact.
- Extra Familial Abuse, which in this case is sexual violence committed by someone other than the victim's family. In the pattern of sexual abuse outside the family, the perpetrator is usually an adult who is known to the child and has built a relationship with the child, then lures the child into a situation where the sexual abuse was committed, and often by giving certain rewards that the child does not get in the family his house. Children usually remain silent because if they find out they are afraid of triggering anger from their parents. In addition, some parents sometimes care less about where and with whom their children spend their time.<sup>12</sup>

### **3.3 Chemical Castration (Chemical Castration) Based on Criminal Law Policy**

The policy of establishing a criminal sanction as a means of tackling crime is one of the choices from several alternatives. The 1945 Constitution. In such conditions, it is the obligation of the State to protect and make the community prosperous, especially from the possibility of disturbances due to criminal acts that occur.

Issuing Government Regulation in Lieu of Law Number 1 of 2016 is a Government policy, in this case the President, in responding to the rise of cases or crimes of sexual violence against children. PERPPU No. 1 of 2016 has been mutually agreed upon by members of the House of Representatives (DPR) to become a law, in this case Law Number 17 of 2016 concerning Stipulation of PERPPU No. 1 of 2016.

The consideration for the issuance of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection is that sexual violence against children is increasing significantly which threatens and endangers the child's life, damages personal life and child development and disturbing the sense of comfort, peace, security and public order. The government views that the criminal sanctions imposed on perpetrators of sexual violence against children have not

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<sup>12</sup>Muhamad Yusuf Hasyim, "ANALISIS PENDAPAT ULAMA NU KUDUS TERHADAP HUKUMAN KEBIRI KIMIA BAGI KEJAHATAN SEKSUAL TERHADAP ANAK" (STAIN Kudus, 2017).

provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children.<sup>13</sup>

PERPPU No. 1 of 2016 is a very appropriate moment in the midst of rampant sexual violence against children. Still fresh in memory when the public was shocked by the death of Eno (18 years). Eno was found dead horribly after being raped and killed by his girlfriend and his own office mates in a very sadistic way. Prior to Eno's death, there had also been several deaths due to sexual violence, such as that of Yuyun (14 years old), who was also brutally murdered after being gang-raped by a group of young men under the influence of alcohol.<sup>14</sup>

Chemical castration sanctions are not a new punishment because several countries have implemented chemical castration sanctions or punishments for perpetrators of sexual violence against children. namely 9 (Nine) European Countries and 9 (Nine) American States, one Latin American Country and one Southeast Asian Country. The nine European Countries are England, Poland, Russia, Germany, Czech Republic, Denmark, Sweden and Spain. While the nine American states are California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas and Wisconsin. One Latin American country that enforces castration is Argentina and one country in Southeast Asia is South Korea.<sup>15</sup>

Chemical castration sanctions are inseparable from the history of human civilization, which in this case castration is carried out for various purposes. According to Victor T Cheney in *A Brief History of Castration* 2nd, 2006 stated that castration was carried out in the Eastern Mediterranean between 8000-9000 years ago. The goal, so that more female cattle than males. There is no exact record of when castration was performed on humans. However, in Egypt in 2600 BC, slaves who were castrated were valued higher because they were considered more diligent and obedient to their masters. Similar acts were found in slaves in Greek circa 500 BC, keeper of the king's harem in Persia, as well as treasurer and a number of Chinese imperial officials.

In modern times, the purposes of castration are more diverse, ranging from efforts to get soprano voices in boys in Italy to efforts to prevent immorality in some religions. Castration is also carried out to reduce people with physical and mental disorders and certain population groups.

Now, in a number of countries castration is a punishment for sexual criminals, both rapists and pedophiles. The process that is encouraged is generally known as castration by injecting certain chemicals, called castration injection or chemical castration. At least two drugs are commonly used: the drug cyproterone acetate, which is commonly used for chemical castration throughout Europe, while medroxyprogesterone acetate (MPA, the base ingredient now used in DMPA) is the drug used in America.

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<sup>13</sup>Sekretariat Kabinet Republik Indonesia, "Inilah Materi Pokok Perppu Nomor 1 Tahun 2016," *Yang Sering Disebut Perppu Kebiri, Diambil Dari: Wwww. Setkab. Go. Id,(28 Oktober 2019), 2016.*

<sup>14</sup> Arrista Trimaya, Pengganti Undang-Undang Nomor, and Pengundangan Perppu Nomor, "Mencermati Pengaturan Hukuman Kebiri Di Indonesia," *Jurnal Rechtsvinding, Media Pembinaan Hukum Nasional* 24 (2016).

<sup>15</sup> TERHADAP RENCANA PEMBERLAKUAN HUKUMAN KEBIRI, "PERNYATAAN KOALISI PEREMPUAN INDONESIA TERHADAP RENCANA PEMBERLAKUAN HUKUMAN KEBIRI 'HUKUMAN KEBIRI AKAN MENIMBULKAN EFEK JERA, HANYA MITOS,'" n.d.



By injecting antiandrogen drugs, such as medroxyprogesterone acetate or cyproterone acetate, which are drugs that suppress the function of the testosterone hormone, to lower the level of testosterone, the male hormone responsible for libido.<sup>16</sup>

The provisions for sanctions or punishments formulated in the provisions of Law Number 17 of 2016 adhere to the provisions of the double track system, which annuls the provisions for criminal sanctions and actions in one statutory regulation, namely the formulation of criminal sanctions consisting of the main punishment and additional penalties and provisions for sanctions against perpetrators of sexual violence against children. Criminal sanctions originate from the basic idea of why a punishment is held, while action sanctions start from the basic idea of what the punishment is for. Criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory towards the perpetrator of the act. If the focus of criminal sanctions is on someone's wrongdoing through the imposition of suffering so that the person concerned becomes a deterrent, while action sanctions are focused on efforts to provide help so that the perpetrator changes.

Thus, criminal sanctions emphasize the element of retaliation. Criminal sanctions are suffering that is intentionally imposed on the violator, while action sanctions originate from the basic idea of protecting the community and fostering or caring for the violator. Or as J.E. Jonkers, criminal sanctions are focused on the penalties applied for the crimes committed, while action sanctions have a social purpose.

Based on the objectives, criminal sanctions and action sanctions also depart from different basic ideas. Criminal sanctions aim to provide special suffering (*bijzonder leed*) to violators so that they feel the consequences of their actions. In addition to being aimed at imposing suffering on the perpetrator, criminal sanctions are also a form of denunciation of the perpetrator's actions. Thus, the principle difference between criminal sanctions and action sanctions lies in the presence or absence of an element of reproach, not in the presence or absence of an element of suffering educational.

### **3.4 Imposition of Chemical Castration Sanctions in Indonesia**

#### **3.4.1 Legality and Consequences of Imposing Chemical Castration Sanctions The imposition of chemical castration**

Sanctions in Indonesia are legally based on Law Number 17 of 2016 concerning Stipulation of Government Regulation in place of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 on Child Protection. (Child Protection Act). In the provisions of Article 81 of the Child Protection Law, it stipulates that against violence carried out by deceit, lies, persuading children to have intercourse by people who have close relationships with families, child caretakers, educators, education staff, officers who handle child protection, either alone or together, in addition to being sentenced to a criminal sentence with a weighting.

If due to the sexual relationship the child is seriously injured, mentally disturbed, infectious disease, disturbed or loss of reproductive function, and/or the victim dies, then the perpetrator will be sentenced to imprisonment in the range of 10 (ten) to 20 (twenty) years. And added sanctions for chemical castration and installation of electronic detection devices. The additional punishment of chemical castration is carried out for a maximum of 2 (two)

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<sup>16</sup> Supriyadi Widodo Eddyono et al., "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.

years, after the convict has served the main criminal sentence, and is accompanied by rehabilitation. This additional penalty is excluded for child offenders.

The Child Protection Law is further regulated in 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 (PP Chemical Castration). In Article 2, the act of chemical castration is imposed in conjunction with the installation of electronic detection devices and the rehabilitation of perpetrators of sexual intercourse. Its implementation is based on court decisions that have permanent legal force. As the executor or executor of chemical castration is a doctor on the orders of the prosecutor (Article 9b PP Chemical Castration).

The action of chemical castration, according to Wimpie Pangkahila, the Head of the Andrology and Sexology Department of the Faculty of Medicine, Udayana University, Denpasar, can be done through the administration of pills or injections of anti-androgen hormones. Chemical castration can damage and even undermine organ function, namely the wasting of muscle function, osteoporosis, reducing the number of red blood cells, and disrupting the function of other cognitive organs. However, so far there is no data to support if the application of chemical castration can provide a deterrent effect more than the existing punishment. These negative consequences should have been taken into consideration before the chemical castration sanction was imposed, considering that the impact was very detrimental to the defendant.

### **3.4.2 Ratio Decidendi of Chemical Castration Judges in Indonesia.**

Ratio Decidendi of Chemical Castration Judges in Indonesia is the reasons or the basis for judges' considerations that underlie court decisions, in this case, The ratio decidendi of Mojokerto District Court Decision Number 69/Pid.Sus/2019/PN. Mjk, in punishing on Muh. Aris bin Syukur for committing a crime "intentionally committing violence forcing a child to have intercourse with him or with other people". The sanction imposed is imprisonment for 12 (twelve years) and a fine of Rp. 100,000,000.00 (one hundred million rupiahs) with the condition that if it is not paid, it is replaced with imprisonment for 6 (six) months, and additional punishment in the form of chemical castration.

The ratio decided (the judge's considerations) in the decision are: first, based on the facts of the trial: the defendant had sexual intercourse 9 times with the victim, all of whom were children of the female gender, the act of sexual intercourse and obscenity was carried out after watching pornographic films, the defendant did not have intercourse with commercial sex workers, for fear of being arrested by the police, and up to the time the verdict was handed down the defendant did not have a female friend. For this action, the defendant fulfilled the elements of Article 76D in conjunction with Article 81 paragraph (2) of the Child Protection Law, namely: whoever intentionally commits violence or threats of violence force the child to have intercourse with him or with other people.

Second, This decision also considers the jurisprudence of the Supreme Court No. 552 / K / Pid / 1994, dated September 28, 1994, elements of the offense of "violence or threats of violence" should be interpreted broadly, that is not only of physical violence (born) but also included violence in a psychic sense (psychological), that psychological coercion is such that the victim becomes no longer free according to his will, which in the end the victim complies with the will of the coercion. c). that what is meant by "copulation", according to Arrest Hooqe Raad February 5, 1912, is a contest between male and female genitalia, which is

usually carried out to obtain children, so the male genitalia must enter the female genitalia, thereby releasing semen, Such intercourse is not a form of crime, but is a human act because it is commonplace to do it even as a natural need, the evil nature of sexual activity is then attached, if it is done not by the law, so the act is called a sexual crime.

### **3.4.3 Aspect Ethic legal**

Aspects Ethical aspects in law (ethic legal) are very important to understand because ethics serves as a moral standard of behavior for everyone in their nature as individual beings and social beings. Nature as an individual being in the perspective of human rights gives the right to life, the right to self-determination, which is then described as the constitutional rights of citizens. Nature as a social being, one must live together in the community, and only in this community, one becomes meaningful and one exists.

Ethics is universal. In the study of the imposition of criminal sanctions, ethics is not only a parameter to determine the good and bad of the perpetrator, but also ethics as a standard of behavior for judges in imposing sanctions and society. The universal nature of ethics is intended to protect human behavior to create a harmonious civilization in every field of life. The deontological ethical perspective requires judges to carry out their obligations as mandated by law to examine, try, and decide cases of sexual violence behavior.

When it is true that the elements of a criminal act of sexual violence are proven, the judge has a moral obligation to make decisions following ethical obligations. Perpetrators of sexual violence crimes have an ethical obligation to carry out decisions in the obligations imposed by law. On the other hand, chemical castration executor is faced with ethical issues. An executor is a doctor by profession, and this profession is bound by the oath of a doctor's profession, that he must treat others according to his dignity as a human being.

The ethical dilemma faced by doctors as executors who, based on deontology, must carry out the obligation to perform chemical castration, but on the other hand, are bound by a professional oath to maintain human dignity, and the legal obligation to practice medicine is for patient safety. The defendant is not a patient. The sociological/teleological ethical perspective emphasizes the urgency of behavioral guidelines to prevent sexual violence. Not only does it need a guarantee that the perpetrator will be deterred, but the problem is how when he returns to society he can live as a society that upholds moral norms. Sociological/teleological ethics also emphasizes that victims must be protected from psychological trauma and stigma formed from socio-cultural constructions that tend to look down on victims of violence as a family disgrace.<sup>17</sup>

Ethic legal perspective is required by law that stems from the mono-pluralist nature of human beings, and the synthesis of body and soul. Ethics has a point of contact with a law, that law is a crystallization of ethical values that are codified and stipulated as positive law. Law is in the ocean of human ethics, thus ethics is the basis for the formation of legal norms.

Legal thought that specifically stems from human nature and humanity, is commonly referred to as progressive law. This progressive legal doctrine shifts the legal paradigm as a tool of power towards the law as an instrument of human benefit, the law serves human interests. The progress of the law is seen from how the law is responsive to the development of the needs of human life.

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<sup>17</sup> Mathieu Deflem, *POPULAR CULTURE , CRIME AND SOCIAL CONTROL SOCIOLOGY OF CRIME , LAW AND DEVIANCE Series Editors : Mathieu Deflem ( Volumes 6 – 14 )*, n.d.

Progressive legal terminology is interpreted from the English vocabulary "progress", which means progress. Progressive Law means advanced law. The term progressive law, introduced by Satjipto Rahardjo, is based on the basic assumption that law is for humans. Satjipto Rahardjo's progressive legal ideas are based on his concern about the low contribution of legal science in enlightening the Indonesian nation, in overcoming crises, including the crisis in the legal field itself.

The Progressive legal theory that carries the theme of law for humans, not humans for law, is a turning point that the law is not solely a product of the ruler, but for something broader, namely for human dignity, happiness, welfare, and human glory.<sup>18</sup>

The view that criminal sanctions are a combination of reform, restraint, retribution, and deterrence, and that sanctions must be useful, has moral implications for laws that are not value-free. The utilitarian ethical perspective argues that crime has a positive purpose, while the retributive view presupposes that punishment is a negative reward for any deviant behavior committed by members of the community. Adherents of this retributive theory assume that everyone is responsible for their actions, so the retributions focus their arguments on norming, meaning that abstract moral rules are embodied in the form of positive law, which was originally a standard of behavior understood as an abstraction of values, which was concretized through norms in law.

Legal norms in the view of the positivist, are the orders of the rulers. Ethics and law (law), do not negate one another. When a legal norm violates ethical parameters, the quality of the legal norm will decrease, and it has the potential to become a norm invalid and its validity is graded as a legal norm. When it is asked which one will be won when there is friction between ethics and law, then the ethics of virtue in a judge will decide to the form of his independence and impartiality, in deciding the case brought to him.

The sanctions, which are formulated in several articles in the Child Protection Law, contain basic criminal sanctions and additional penalties, namely fines and chemical castration. In the perspective of normalization, chemical castration sanctions are an alternative that is optional and not an imperative norm (a command that requires).

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<sup>18</sup> Satjipto Rahardjo, *Ilmu Hukum; Pencarian, Pembebasan Dan Pencerahan* (Surakarta: Muhammadiyah Press University, 2004).

Orchestration of ethics and law is to include ethical rules in the application of positive law which must meet the following requirements: a) moral validity, b) juridical validity; and c) sociological behavior. Moral enforceability requires that the enactment of the law must not violate the morals of the community that is used as a role model, while the juridical application concerning vertical harmonization does not conflict with higher legal norms; and the application of sociology requires public acceptance of legal norms.

### **3.5 The Principle of Respect for Human Values Based on The Principle of Justice**

The currently developing theory teaches that criminal sanctions are a no longer deterrent. this can be seen in utilitarian teachings, criminal sanctions aim to improve the attitudes and behavior of criminals, so as not to repeat their actions (special prevention), and also to prevent others from the possibility of committing similar acts (general prevention). Therefore, the utilitarian view is futuristic-oriented.

The severity and lightness of the physical punishment handed down to the accused were not significant to eliminate violence. The 2012report World Rape Statistics shows that the death penalty or castration for rapists in various countries around the world is not effective in creating a deterrent effect. No evidence guarantees that the use of chemical castration sanctions has reduced the number of violence against women and children.

The principle of bioethics (biomedical ethics), becomes an important ethical foundation related to chemical castration because this sanctioned form of corporal punishment is packaged in a modern way. In terms of imposing sanctions, according to the author, judges should rely on the principle of respect for human values and the principle of justice.<sup>19</sup> Humans have intrinsic and extrinsic values that are complex in body and soul. This intrinsic value is given and cannot be taken away by anyone including the state in any way. This value is dignity, whole body and soul, and protected ethically and legally. Meanwhile, external values, which are the result of social construction, reflect human dignity. Extrinsic values may decrease in quality due to actions taken in social life. Behavior that injures the dignity of humanity towards others, by itself causes the extrinsic value to be lowered and humiliated.

Due to this intrinsic value, the principles of respect for a person, autonomy rights, and protection of human dignity emerge, starting from the beginning of human life. Humans are creatures born with a desire, instinct and, the ability to think. Humans as biological beings have sexual desires, which must be controlled as social beings. Turning off sexual desire is the same as turning off half of identity because by nature humans are whole body and soul. Thus, the imposition of chemical castration sanctions is a form of deprivation of human dignity as a gift from the Creator.

If chemical castration is applied only as a form of voluntary medical treatment, and with the consent of the perpetrator of sexual violence, this is more honorable. Perpetrators can do this based on the analysis and recommendations of medical experts, not under positive legal coercion which is essentially the same as robbing human biological rights as a gift from the Creator.

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<sup>19</sup> CB Kusmaryanto and Umar Anggara Jeni, *Bioetika Dan Harkat Atau Martabat Manusia* (Jakarta, 2012).

The act of castration as a sanction, even though it is an additional sanction, is very far from the philosophy of progressive law and restorative justice. Although this castration act is accompanied by rehabilitation measures, the community's justification for giving action for perpetrators of criminal acts has become one of the criminal justifications with the concept of which is oriented towards eliminating the ability or potential of the perpetrator to repeat the crime. Likewise, the installation of chips that are carried out after the convict is serving a sentence will cause the convict to experience a 'double sentence' and become the state's implicit acknowledgment that the penitentiary system for perpetrators of sexual crimes against children has failed to 'cure' the perpetrator.

The principle of justice has not been achieved with the imposition of chemical castration. Instead, this sanction has the potential to create new problems. Control of sexual desire under the influence of drugs will certainly recover without drugs, and this does not solve the problem of child protection, because child protection covers a broad aspect of life, involving the social environment and social relations with the people around them. Injustice, for those who have been victims of crime in any form, will cause trauma for them. Defensive, self-defense, aggressive behavior, easily emerges as a reaction to pressure and does not achieve individual psychological well-being.

Perpetrators of sexual violence, including pedophiles, make children the object of their sexual orientation. Perpetrators of sexual violence pedophilia are divided into 2 types, namely: exclusive pedophilia, which only has an interest in children. While the other type is facultative pedophilia, which has a heterosexual orientation in adults, but does not find its distribution, thus choosing children as a substitute or an outlet for their sexual needs. Pedophilia is not just an act of deviant behavior or behavior, but rather an attitude deviant.

In general, pedophiles are caused by: a) there is a history of trauma to past events, where the perpetrator has been a victim, b) is asocial due to the inability to build relationships with the child's environment so that people become introverted and close themselves, c) feelings of low self-esteem, are not appreciated, feel like a failure compared to their friends, mental disorders, depression and anxiety that are very difficult to get rid of. The pedophile will do the same thing as a manifestation of what he got in his past as a victim.

Sexual violence against children has a biological impact where before puberty, a child's vital organs are not prepared for intercourse, especially for organs that are not intended for intercourse. If forced, then the action will damage the child's vital organs. On the other hand, there is also a social impact where the perpetrator does not want his actions to be known by others, then the perpetrator will intimidate and force the victim with threats not to tell anyone so that the victim will feel pressured and withdraw from his social environment.

The principle of justice in terms of access to advocacy for victims is far more important than the issuance of additional sanctions in the form of chemical castration.<sup>20</sup> Rejection of past events will cause a retaliatory reaction and make someone a criminal. On the other hand, the same thing will happen to the victim in the future. Advocacy for victims from an early age should be the state's concern so that the pedophile chain does not continue to grow prolonged.

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<sup>20</sup> Fitriyani, *Menganalisis Hukuman Kebiri Terhadap Pelaku Kekerasan Seksual Pada Anak* (Lampung: Universitas Lampung, 2016).

The act of chemical castration, namely by temporarily destroying sexual desire and even having a continued impact in the form of actions unethical, and contrary to law and human rights, with the argument that: first, castration is not justified in the national criminal law system or the purpose of punishment adopted by the system Indonesian law; second, castration violates human rights as stated in various international conventions that have been ratified in national law, including the Covenant on Civil and Political Rights (Civil Rights Covenant/ICCPR), the 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 acts of degrading human dignity, especially if it is aimed at retaliation with the main reason being that the deterrent effect is scientifically doubtful; Third, all forms of violence against children, including sexual violence, are manifestations of the desire to control, control and dominate children, thus, castration law does not target the root causes of violence against children. The castration punishment is only oriented to the interests of the state which deters the perpetrators, but the fate of the victims remains the same.

The ethical perspective as an interdisciplinary study of ethics and law views that the issue of violence against children is not solely caused by the presence of an offender in the community, but cultural factors, including the legal culture that supports violence occurring throughout the year. Economic, political, social issues have become so complex that they influence the growth of various modes of sexual violence. The development of science and technology is undeniable as a medium of socialization of deviant culture.<sup>21</sup> Significance of comprehensive child protection is needed. Children are vulnerable people, and the state must ensure that victims receive protection, as well as access to physical and mental recovery, as well as other actions that focus on the interests of child victims.

The standardization of the process for handling perpetrators and child victims must be balanced. Focusing on deterring perpetrators, but not protecting children in a conducive environment will trigger the emergence of new modes of crime. Vulnerable people, especially children, need access to justice. The process of achieving justice within the framework of the Integrated Criminal Justice System is an inseparable link from the making of legislation (law-making process), to the settlement of cases. Perpetrators of violence, which are also perpetrated by children, are a setback not only in law enforcement but in the functioning or not of social agents in society as an instrument of legal culture transformation.

Access to justice for children, stems from verbal processes in the police and prosecution of prosecutors, or lawsuits in civil cases, and then ends with a verdict judge's that has permanent legal force (*inkracht van gewijsde*).

According to Harold J. Laksi citizen will voluntarily submit to the obligation to obey the law if the law satisfies his sense of justice.<sup>22</sup> The imposition of chemical castration as an unethical behaviour should not lead to prolonged grudges and create new types of crimes upon the return of the perpetrators to society.

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<sup>21</sup> Chris Jenk, *Culture Studi Kebudayaan* (Yogyakarta: Pustaka Pelajar, 2013).

<sup>22</sup> Sabiant Ustman, *Anatomi Konflik Dan Solidaritas Masyarakat Nelayan* (Yogyakarta: Pustaka Pelajar, n.d.).

#### **4. Conclusion**

The ethicolegal perspective concludes that the imposition of chemical castration sanctions is unethical, both from the perspective of the perpetrator and the executor. Protection of victims' rights is not done by depriving the perpetrators of human values. The crime committed by the perpetrator is not solely because of evil, but because of the inability to overcome abnormal psychological conditions in sexual desire. It is more appropriate for perpetrators to be given additional sanctions in the form of psychiatric rehabilitation, placing them under intense care and treatment due to behavioural disorders or deviant culture. Medications can be given in addition to psychological rehabilitation under a special institution for the development of perpetrators of sexual violence that prioritizes educational and socio-religious aspects. Perpetrators can be fostered and employed as social workers, resulting in the transfer of affective, cognitive, and psychomotor aspects which are expected to restore the function of emotional control and rational reasoning of the perpetrators. This is done not as an additional crime but as a principal crime. Castration can be carried out only at the consent of the perpetrator. Therefore, reconstruction is needed in the form of a new regulation at the level of the law.

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The 1945 Constitution of The Republic of Indonesia

Law Number 17 of 2016 concerning Stipulation of Government Regulation in Law Number 1 of 2016 concerning Second Amendemen to Law Number 23 of 2002 concerning Child Protection into Law

Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration Actions