

## **The Effectiveness of Implementing Additional Criminal Punishments in the Form of Chemical Castration Against Perpetrators of Child Sexual Intercourse in the Criminal Justice System in Indonesia**

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**Abstract.** *Sexual violence against children is a serious crime that has increased over time and can significantly threaten and endanger the lives of children, damage the personal lives and development of children, and disrupt the sense of comfort, peace, security, and public order. The problem of how to regulate additional criminal acts in the form of chemical castration and the effectiveness of the implementation of additional criminal acts in the form of chemical castration against perpetrators of child sexual intercourse in Indonesia. The approach method used in this study is sociological juridical, the specifications of this study are descriptive analytical, the data sources used are primary data and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. While secondary data is obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The research problems above are analyzed by the author using the Theory of Punishment, Theory of Legal Purpose and Theory of Legal Effectiveness. The results of the study indicate that the regulation of additional criminal acts in the form of chemical castration is stated in Perppu Number 1 of 2016 in conjunction with Law No. 17 of 2016, Concerning Child Protection, specifically in Article 81 paragraph (7) which regulates the action in the form of chemical castration which reads "Against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices". Then for the effectiveness of the application of additional punishment in the form of chemical castration against perpetrators of child sexual intercourse, until now there has been no data found that shows the effectiveness of the application of additional punishment in the form of chemical castration.*

**Keywords:** *Castration; Children; Effectiveness.*

## 1. Introduction

The increasing number of cases of sexual violence against children has encouraged the government to adopt a policy aimed at protecting children from sexual violence by providing punishments that can provide a deterrent effect to perpetrators of sexual violence. The aggravation of the sanctions is not only with the main criminal witness, but also with additional criminal penalties, one of which is Chemical Castration.

Chemical Castration is the administration of chemical substances through injection or other methods, which is carried out on perpetrators who have been convicted of committing violence or threats of violence to force a child to have sexual intercourse with them or with another person, resulting in more than 1 (one) victim, resulting in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or death, to suppress excessive sexual desire, accompanied by rehabilitation.<sup>1</sup>

The imposition of additional penalties in the criminal law system must be imposed together with the main penalty, meaning that additional penalties cannot stand alone. Additional penalties are used to resolve social problems, especially in this case the problem of pedophilia which is considered a social disease that can threaten the sustainability of social order.<sup>2</sup>

Indonesia adheres to an integrated law enforcement system (Integrated Criminal Justice System) which is the legal spirit of the Criminal Procedure Code.<sup>3</sup> Law enforcement is necessary in any condition, especially with the rapid development and progress of science and technology which is also followed by an increase in crime rates.<sup>4</sup> Law enforcement is not only to punish the perpetrators but also as a manifestation of justice for victims of crime and to humanize humans.<sup>5</sup> In the context of law enforcement, if an incident occurs that

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<sup>1</sup>Provisions of Article 1 number 2 of 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.

<sup>2</sup>Hariyono, Didi., Suhartono, Slamet., and Steyorini, Eray Herlin., "Legal Analysis of Decision Number 69/Pid.Sus/2019/PN.MJK against Perpetrators of Sexual Violence at the Mojokerto District Court", *Akrab Pekanbaru Foundation, Akrab Juara Journal*, Vol.4 No.5 December 2019, p. 45.

<sup>3</sup>Teguh Prihmono, Umar Ma'ruf, Sri Endah Wahyuningsih, 2020, *The Role of the Indonesian Police Forensic Laboratory as a Supporter of Scientific Investigations in the Criminal Justice System in Indonesia*, *Khaira Ummah Law Journal*, Vol. 15, No. 14, p. 185.

<sup>4</sup>Sapto Winengku, Umar Ma'ruf, 2020, *Undercover Purchase Techniques in Narcotics Crime Investigations*, *Khaira Ummah Law Journal*, Vol.15 No.1, p. 27.

<sup>5</sup>Harahap, Irwan Safaruddin, 2016, "Legal Protection for Child Victims of Crime *sexuality in a progressive legal perspective*", *Journal of Legal Media*, Vol.23 No.1 June 2016, P. 43.

is suspected or can be suspected of being a criminal act, then law enforcement officers are obliged to take various actions in accordance with their respective authorities as determined by applicable laws and regulations.<sup>6</sup>

The imposition of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse can be seen in Decision of the Mojokerto District Court Number: 69/Pid.Sus/2019/PN.Mjk dated May 2, 2019 which was later strengthened by the Decision of the Surabaya High Court Number: 695/Pid.Sus/2019/PT SBY dated July 18, 2019. Therefore, the author considers it important to raise the issue related to the effectiveness of the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse in Indonesia.

Based on the description above, the author is interested in studying and researching in a Thesis entitled "The Effectiveness of Implementing Additional Criminal Punishment in the Form of Chemical Castration Against Perpetrators of Child Sexual Intercourse in the Criminal Justice System in Indonesia". This study aims to determine and analyze the regulation of the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse in the Criminal Justice System in Indonesia and the effectiveness of the implementation of additional criminal penalties in the form of chemical castration.

## **2. Research Methods**

The approach method used in this study is sociological juridical, the specification of this study is descriptive analytical, the data sources used are primary data and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. While secondary data is obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials.

## **3. Results and Discussion**

### **3.1. Regulations for the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse in the Criminal Justice System in Indonesia**

The enactment of Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 into Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection which aims to provide a deterrent effect on perpetrators of sexual crimes against children. Then for the regulation of the implementation of additional criminal penalties in the form of chemical castration is regulated in Government Regulation of the Republic of

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<sup>6</sup>Kusfitono, Umar Ma'ruf, Sri Kusriyah, 2020, Implementation of Constitutional Court Decision Number 130/PUU-XIII/2015 Regarding the Investigation Process of Aggravated Theft at the Kendal Police Criminal Investigation Unit, Khaira Ummah Law Journal, Vol.15 No.1, p.36.

Indonesia 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. According to the author, the regulation of the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse in the Criminal Justice System in Indonesia has accommodated the objectives of criminal punishment in Indonesia based on the Combination / Combined Theory (Verenigings Theorieen), namely the existence of retaliation imposed on the perpetrator as a result of the crime of sexual violence committed in the form of a criminal sentence against the defendant with a prison sentence of 12 (twelve) years and a fine of Rp. 100,000,000.00, - (one hundred million rupiah) with the provision that if it is not paid it will be replaced with imprisonment for 6 (six) months.

Then there is the purpose of deterrence and providing a sense of security and order in society with the additional criminal decision in the form of chemical castration to the Defendant MUH. ARIS Bin SYUKUR, to curb the Defendant's tendency (Desire) in committing acts (criminal acts) related to sexual crimes against children as well as optimal and comprehensive steps by not only providing increased criminal sanctions, but also implementing a form of prevention (preventive) by providing Actions in the form of chemical castration for perpetrators of sexual violence against children.

### **3.2. The effectiveness of implementing additional punishment in the form of chemical castration against perpetrators of child sexual intercourse in Indonesia**

In the process of implementing chemical castration, the prosecutor's office cannot carry out chemical castration itself, because chemical castration is a medical area of competence. However, the Indonesian Doctors Association clearly issued a statement rejecting the chemical castration penalty through the fatwa of the Medical Ethics Council (MKEK) Number 1 of 2016 concerning Chemical Castration. Then the author analyzes the effectiveness of the implementation of additional punishment in the form of chemical castration against perpetrators of child sexual intercourse using the Theory of Legal Effectiveness, which is a theory that is the basis for studies to determine whether a regulation that is already in effect has been implemented or not. According to the author, so far the implementation of additional punishment in the form of chemical castration has not been effective, this can be proven by the absence of data showing the effectiveness of the implementation of additional punishment in the form of chemical castration, in fact in the field there are obstacles in its implementation related to who will be the executor of the implementation of chemical castration.

Then the author also analyzes the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual

intercourse using the Theory of Legal Objectives consisting of Justice, Benefit and Legal Certainty. Based on this, the author assesses that the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse has not accommodated the objectives of the law, namely that it has not provided legal certainty because certainty is a matter (condition) that is certain, namely when a regulation is made and enacted with certainty and is regulated clearly and logically, while in this case the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse there are no clear rules regarding its implementation and who is the executor. So that it has not provided legal certainty for victims, perpetrators and the community. With the unclear implementation of additional criminal penalties in the form of chemical castration and the executor of the additional criminal penalty in the form of chemical castration, the author assesses that this has not accommodated the objectives of the law, namely legal benefits because with the implementation of additional criminal penalties in the form of chemical castration not yet being implemented, the community has not felt the benefits of implementing additional criminal penalties in the form of chemical castration.

#### **4. Conclusion**

Additional criminal provisions in the form of chemical castration against perpetrators of child sexual intercourse in the Criminal Justice System in Indonesia are regulated in Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law, in Article 81 paragraph (7) states that "The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to chemical castration and installation of electronic detection devices". Meanwhile, the regulation of the implementation of additional criminal provisions in the form of chemical castration against perpetrators of child sexual intercourse in the Criminal Justice System in Indonesia is regulated in Government Regulation of the Republic of Indonesia 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. Then the implementation of additional criminal penalties in the form of chemical castration against perpetrators of child sexual intercourse is considered ineffective, because there is no party that is the executor of the implementation of chemical castration because the Prosecutor's Office cannot carry out chemical castration executions themselves, chemical castration is an area of medical competence, but the Indonesian Doctors Association (IDI) refused to become the executor of additional criminal penalties in the form of chemical castration with considerations contained in the Fatwa of the Medical Ethics Council (MKEK) Number 1 of 2016 concerning Chemical Castration. So that this becomes an obstacle in the implementation of

additional criminal executions in the form of chemical castration.

## 5. References

### Journals:

Harahap, Irwan Safaruddin, 2016, "Legal Protection for Child Victims of Crime *sexuality in a progressive legal perspective*", Journal of Legal Media, Vol.23 No.1 June 2016.

Hariyono, Didi., Suhartono, Slamet., and Steyorini, Eray Herlin., "Legal Analysis of Decision Number 69/Pid.Sus/2019/PN.MJK against Perpetrators of Sexual Violence at the Mojokerto District Court", Akrab Pekanbaru Foundation, Akrab Juara Journal, Vol.4 No.5 December 2019.

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Sapto Winengku, Umar Ma'ruf, 2020, Undercover Purchase Techniques in Narcotics Crime Investigations, Khaira Ummah Law Journal, Vol.15 No.1.

Teguh Prihmono, Umar Ma'ruf, Sri Endah Wahyuningsih, 2020, The Role of the Indonesian Police Forensic Laboratory as a Supporter of Scientific Investigations in the Criminal Justice System in Indonesia, Khaira Ummah Law Journal, Vol. 15, No.14.

### Regulation:

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.