



# THE IMPOSITION OF CHEMICAL CASTRATION SANCTIONS AGAINST PEDOPHILIA PERPETRATORS: LEGAL PHILOSOPHY PERSPECTIVE

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## Abstract

Sexual violence against children is a violation of moral norms and is an extraordinary crime. Then the government provides legal protection efforts by passing Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the second amendment. regarding Law Number 23 of 2002 concerning Child Protection. Contained in article 81 paragraph 7 of Law Number 17 of 2016 are measures in the form of chemical castration, installation of electronic detection devices and rehabilitation. Type study used in study This ie study law normative. Approach problem Which used on research following is approach legislation (*statute approaches*), is approach Which done with method examine rule Constitution Which relate to issues in this research. The aim of this research is to examine in more depth the ratio and sense of justice in imposing chemical castration sanctions on pedophiles.

**Keywords: Chemical Castration; Sexual Violence; Legal Philosophy**

## INTRODUCTION

In widespread cases of sexual violence, the target victim is a child and the perpetrator is from the child's immediate environment. The crime of sexual violence against children or what is called pedophilia is an adult human who has deviant sexual behavior with children. Sexual abuse of children not only has physical consequences, but also causes traumatic effects, such as betrayal or loss of the child's trust in adults, sexual trauma, feelings of helplessness and stigmatization.

The Online Information System for the Protection of Women and Children (Simfoni-PPA) has released data showing that, between January and February of 2024, there were 1,993 recorded occurrences of violence against children. This figure might go up in the future. in contrast to violent incidents that took place in 2023. As per the National Commission for Child Protection (Komnas PA), there were 3,547 reports of child abuse incidents in 2023. In the meantime, there were 2,355 instances of child protection violations from January to August 2023, according to the Indonesian Child Protection Commission (KPAI). 861 of these occurrences took place in the educational division.(Fahham, 2024)

Pancasila is the official state philosophy of the legal state of Indonesia. The Indonesian State is founded on Pancasila philosophy, which serves as the cornerstone and ideals of national life. This is particularly evident in the way state life is implemented, which is through a government process that is invariably predicated on Pancasila values, such as faith in God, human values, unity values, democratic values, and justice values.(Chariansyah, 2023)

This is as stated in the "Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia)" in paragraph IV which states: "Then, to form an Indonesian government that protects the entire Indonesian nation and all spilled Indonesian blood and to advance general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice, the Indonesian National Independence was formulated which was formed in the structure of the Republic of Indonesia with the sovereignty of the people based on the Godhead. Almighty One, Just and Civilized Humanity, Indonesian Unity and Democracy, which is led by wisdom in Representative Deliberations, and by realizing social justice for all Indonesian people."(1945 Constitution of the Republic of Indonesia)

In addition, chemical castration is covered by Law Number 17 of 2016 concerning the Determination of Perpu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which has become a law, as well as Article 81A paragraph 4 and Article 82A paragraph 3. Greetings. 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 must be specified by the government in order to carry out the provisions of this article. When used, criminal sanctions serve only as a tool to accomplish the purpose of punishment; they are not the main objective of criminal law. The purpose of the criminal sanctions found in every order or restriction found in the criminal code is to deter potential lawbreakers and to prosecute those who have already committed these crimes.(Rif'an, 2022)

Every person has rights that the state must respect and defend, as explained in Article 1(Law No. 39 of 1999 concerning Human Rights (HAM))"A set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the state, law, government and every person for the sake of honor and protection of human dignity."

Then, in the preamble to the general statement on human rights at the UN regarding human rights, it is explained as follows: "Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." ("Recognition of the total natural dignity of human beings and the equal and intransferable rights of all members of the family, humanity is the basis of freedom and peace in the world")

The right to sexual and reproductive health is also derived from human rights, which are fundamental freedoms that each and every person has. Human rights, including those related to sexual and reproductive health, are unalienable and universal, meaning that no one must take action to achieve them since they are an integral part of the individual. According to the World Health Organisation (WHO), sexual rights are defined as rights that encompass certain human rights that have been acknowledged in national and international human rights treaties, as well as other consensus texts.(Puteri, 2020)

The implementation of chemical castration is often considered to be in conflict with Article 33 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which states that every person has the right not to be tortured, to be free from torture or treatment that degrades human dignity. Regarding justice and injustice, of course it will be carried out on a voluntary basis. This volunteerism includes attitudes and actions. When someone performs an action involuntarily, the action cannot be categorized as unfair or fair, except in some special ways. One may be willing to suffer injustice, but no one expects to be treated unfairly. (Salsabila, 2023) Based on the explanation above, researchers will examine in more depth the ratio and sense of justice in the chemical castration sanctions for pedophiles.

## **RESEARCH METHODS**

Type study used in study This ie study law normative. Study Law normative is study law Which study law written from various aspect, that is aspect theory, history, philosophy, comparison, structure And composition, scope And material, consistency, explanation general And chapter sake chapter, formality And strength tie something Constitution, as well as Language law Which used, but No study aspect applied or its implementation. (Tan, 2021) In the following research, the problem approach used is the statue approach, which is used to look at the legal regulations that are relevant to the problem or legal problem being discussed.

## **DISCUSSION**

### **I. Chemical castration sanctions against pedophiles**

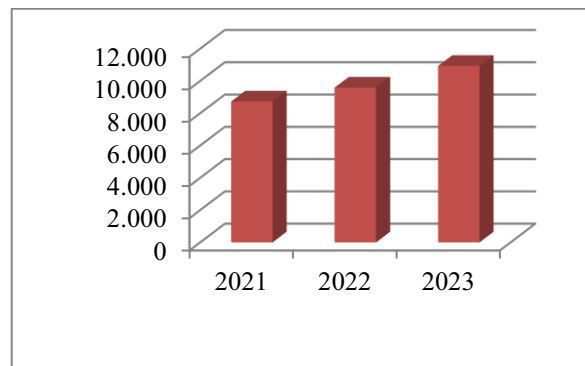
Criminal politics is considered a very effective effort in preventing crime in society. Then the State is also present as a resolution of cases in the community, so that most of the laws themselves always include criminal sanctions or penalties, including Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 The government as an institution has the obligation to protect its citizens, especially citizens under the age of 18 (children). As a society that is still vulnerable to bad acts in its environment, the government has created special institutions to safeguard children's rights. (Andreas Adhitya, 2021)

The Ministry of Women's Empowerment and Child Protection (KPPPA) has its own application for recording cases of violence experienced by women and children, namely through SIMFONI PPA. The data contained in SIMFONI was obtained through the results of recording and reporting carried out by violence handling service units with various names, such as the Women's Crisis Center, Integrated Service Center, and Integrated Service Center for Women and Child Protection (P2TP2A), which is a team providing services. with related OPD elements, hospitals or medical services, Law Enforcement Officials, Non-Governmental Organizations, Child Protection Institutions and Religious Organizations throughout Indonesia. (Government, 2020) From 2021 to 2023, the number of cases of violence against children is increasing every year. It is recorded in the Online Information System for the Protection of Women and Children (Simfoni PPA) as follows:

**Table 1****Number of Cases of Violence against Children in 2021-2023**

Types of Violence	2021	2022	2023
Sexual	8,730	9,588	10,932

(Source: Online Information System for the Protection of Women and Children (Simfoni PPA), KPPPA 2021-2023)

**Graph 1:****Number of Cases of Sexual Violence against Children in 2021-2023**

(Source: Online Information System for the Protection of Women and Children (Simfoni PPA), KPPPA 2021-2023)

Today's high rate of child sexual assault creates fear in society. Both the government and the community have worked very hard to find a solution to this issue. Until the government enacts laws in an attempt to safeguard the future generation of the country. It is anticipated that the existence of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection will offer children who are sexual assault victims legal protection. According to Article 76D of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is forbidden for anyone to coerce a child into engaging in sexual activity with them or with him by using violence or threats of violence.

Then, chemical castration can be applied to those who have engaged in sexual intercourse based on a court ruling that has permanent legal force, according to Government Regulation Number 70 of 2020 concerning the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. Chemical castration has a two-year maximum duration and is followed by a government-funded rehabilitation program.(Chairi, 2020)

In Article 1 number 2 (Government Regulation Number 70 of 2020 concerning Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children) states that *"Chemical Castration is the act of administering chemical substances through injection or other methods, which are given to perpetrators who have been convicted of committing violence or threats of violence that force children to have sexual intercourse with themselves or with other people, resulting in more victims than one person, resulting in serious injuries, mental disorders, sexually transmitted diseases, loss or disruption of reproductive organs, the victim dies, to suppress excessive sexual desire, accompanied by rehabilitation"*

## **II. Ratio and Sense of Justice in Imposing Castration Sanctions on Pedophilia Perpetrators**

Legal philosophy has various legal schools, one of which is the legal school of positivism. This school states that there must be certainty regarding what is considered legal or not. Hans Kelsen said that law basically contains concepts drawn from the content of positive legal norms. So that what cannot be found in positive legal norms cannot enter legal concepts. Meanwhile, John Austin, Austin is a positivist who firmly says that the source of law is the highest authority in a state. Law is command of the law giver. According to him, law is an order from sovereign political power in a country. Legal positivism holds the view that there needs to be a strict separation between law and morals. Between the applicable law and the law that should be (*das sein* and *das sollen*). (Darmini Roza, 2021)

The theory of legal positivism is known for the importance of separating law and morals. Apart from that, for positivists even merciless legal norms can be accepted as law provided that the formal criteria that must exist regarding law are met. In Indonesia, there is still application of Legal Positivism, although not absolute. That in essence there is not a perfect and ideal flow in law enforcement in society. Basically, a certain flow of law can override the values of justice, and a just law is not necessarily certain. (Darmini Roza, 2021)

Through their rulings, judges hold the most strategic position in the administration of justice. This supports the assertion made by George F. Cole that the judge is the most significant individual in the criminal court. Judges, decisions, and sentencing guidelines have a significant impact on the decisions made by the police, defence attorneys, and prosecutors. The most significant person in criminal justice is the judge. Consequently, a judge's primary responsibility is to adjudicate, or to consider and determine a matter. (Rivaldianto, 2023)

As in (Banjarasin District Court Decision Number 859/Pid.Sus/2023/PN.Bjm, 2023) According to the panel of judges, the defendant was legally and convincingly proven guilty of committing the crime of "intentionally committing violence or threatening violence by forcing a child to have sexual intercourse with him, which was done by an educator or education worker." Sentenced to prison for 18 years and a fine of Rp. 1,000. 000,000.00 (one billion rupiah) if the fine is not paid, it will be replaced by 4 months imprisonment. Imposing an additional sentence on the Defendant in the form of Chemical Castration for 2 years based on Article 5 of the 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 considering the goals of punishment, Herbert L. Packer argues that there are conceptually two distinct goals of punishment, each with distinct moral ramifications. These goals are as follows: first, the retributive theory, which holds that punishment is a form of negative reinforcement for deviant behaviour by community members; thus, this perspective only views punishment as retribution for wrongdoings committed in accordance with their individual moral responsibilities. The second is the relative or utilitarian theory, which holds that punishment should be evaluated in terms of its advantages or practicality, taking into account the context or circumstances that the crime is meant to create. (Irmawanti, 2021)

Retributive justice is justice that is related to the occurrence of errors. Sanctions or punishments given to guilty people must be fair. This justice states that when someone commits a crime, the punishment received by the perpetrator is a punishment intended to repay the crime that the perpetrator has committed. Where law enforcement seeks to provide punishment that is appropriate to the mistake and in accordance with applicable legal provisions. (Apriyani, 2020)

So the ratio and sense of justice in imposing chemical castration sanctions on pedophilia perpetrators, which aims to be a deterrent effect on the perpetrator in the hope of not committing the crime again, so that the perpetrator admits his evil actions that are suspected of being against him. Then it is important to ensure that victims of sexual violence receive proper justice. The ratio and sense of justice in cases of child sexual violence is very important, because justice can help victims feel heard and appreciated, and provide a sense of security in the future and can ensure that victims have access to a fair justice system, while also receiving adequate support and protection. .

## CONCLUSION

Additional sanctions of chemical castration against pedophiles if viewed from the perspective of justice towards victims. According to Aristotle, he said that justice is giving everyone what is their right. by providing equal treatment to all in accordance with applicable law. Therefore, everyone has the right to legal protection and impartial adherence to the law. By enacting Law Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning the second modification to Law Number 23 of 2002 concerning Child Protection, the government offers legal protection for children who have been sexually abused. Article 81, paragraph 7 of Law Number 17 of 2016 lists measures including chemical castration, electronic detecting device installation, and rehabilitation. The provisions of Law Number 17 of 2016 concerning the Determination of Perpu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which has become law, also reference chemical castration in paragraphs 4 and 3. 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 must be specified by the government in order to carry out the provisions of this article. The provisions of Law Number 17 of 2016 concerning the Determination.

**REFERENCE**

- Nature, Nature. (2022). Chemical Staring Execution Model Through The Administration Of Police Medical Operation (Dokpol) Chemical Castration Execution Model through The Administration of Police Medical Operation. *Journal of De Jure Legal Research*, 22(1).
- Andreas Adhitya, d. M. (2021). Implementation of Chemical Castration Regulations for Perpetrators of Sexual Violence Against Children. *Kertha Senaya* .
- Apriyani, AA (2020). Application of Additional Criminal Sanctions for Chemical Castration Viewed from a Justice Perspective. *Law Treatise*, 16(2), 111.
- Bediona, Kornelis Antonius Ada, et al. (2024). Analysis of the Theory of Legal Protection According to Philipus M Hadjon in Relation to the Imposition of Castration Punishments on Perpetrators of Sexual Crimes. *Das Sollen: Journal of Contemporary Studies in Law and Society*. 02 (01).
- Chairi, AA (2020). Application of Additional Criminal Sanctions for Chemical Castration Viewed from a Justice Perspective. *Law Treatise*, 16(02), 112.
- Chariansyah, H. (2023). Implementation of Chemical Castration Punishment for Perpetrators of Sexual Crimes Against Children as a Reform for Child Protection. *Begawan Abioso* , 14 (01), 32-33.
- Chariansyah, H. (2023). Implementation of Chemical Castration Punishment for Perpetrators of Sexual Crimes Against Children as a Reform for Child Protection. *Begawan Abioso* , Vol.14 (No. 01).
- Darmini Roza, GT (2021). Hans Kelsen's Positivism Theory Influences Legal Development In Indonesia. *Lex Journalica*, 18(01), 22-25.
- Fahham, AM (2024). VIOLENCE AGAINST CHILDREN IN EDUCATIONAL UNITS. Center for Parliamentary Analysis, Expertise Body of the Secretariat General of the DPR RI.
- Irmawanti, ND (2021). The Urgency of Goals and Guidelines in the Context of Reforming the Criminal Law Sentencing System. *Journal of Criminal Law Development*, 3(2), 220.
- Monica, M.S. (2021). The Sanction Of Chemical Castration In The Crime Of Child Abuse Is Based On Law Number 17 Of 2016 Concerning Child Protection As Wise As The Purpose Of Crimination And The Perspective Of Human Rights. *e-Journal of the Justisia Community, Ganesha Education University, Legal Studies Study Program*, 4 (2).
- Government, LA (2020). Performance Report of the Ministry of Women's Empowerment and Child Protection 2020. Jakarta: Ministry of Women's Empowerment and Child Protection.
- Government Regulation Number 70 of 2020 concerning Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. (n.d.).
- Government Regulation Number 70 of 2020 concerning Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. (n.d.).
- Puteri, DS (2020). Chemical Castration From Criminal Law And Human Rights. *Cepalo*, 4(1), 73.
- Banjarmasin District Court Decision Number 859/Pid.Sus/2023/PN.Bjm.* (2023).
- Rif'an, MR (2022). Infringement Sanction: How Is The Legal Setup In Indonesia? *Kertha Semaya Journal*, 10 (6), 1397.
- Rivaldianto, MS (2023). Morality of Judges in Indonesia in Realizing Justice according to Aristotle's Perspective. *Nusantara: Journal of Education, Arts, Sciences and Social Humanities*, 1 (1), 12-13.
- Salsabila, CA-I. (2023). Concepts of Law and Justice in Aristotle's Perspective. *Nusantara: Journal of Education, Arts, Sciences and Social Humanities*, 1 (1), 5-7.

Tan, D. (2021). Legal Research Methods: Exploring and Reviewing Methodology in Carrying Out Legal Research. *Journal of Social Sciences*, 01(08).

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2003 concerning Child Protection. (n.d.).

Constitution of the Republic of Indonesia of 1945. (n.d.).

Law no. 39 of 1999 concerning Human Rights (HAM). (n.d.).

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