

The Effectiveness of Law Enforcement Application of Castration Penalties for Perpetrators of Sexual Harassment Crimes

Saefullahnur^{*)}

^{*)} Attorney General of the Republic of Indonesia, E-mail: brother_IX@yahoo.com

Abstract. *The aim of the research is to examine and analyze the effectiveness of law enforcement in the application of castration punishment for perpetrators of sexual harassment crimes. The research method used is normative juridical, research is conducted by examining literature or secondary data. The research results show that there are problems with the Ethics Council's fatwa regulations and the Medical Ethics Code (MKEK) Number 1 of 2016 concerning Chemical Castration regarding Procedures for carrying out chemical castration actions. The Code of Medical Ethics stipulates that a doctor must be a protector of life. In relation to the issue of chemical castration, there is conflict between several ethics listed in the Medical Ethics Code.*

Keywords: Castration; Chemical; Effectiveness.

1. Introduction

Children are the next generation for the future of a nation and have a strategic role in the sustainability of the nation in the future. In the provisions of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the state guarantees that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. The existence of violence against children threatens and damages the child's soul, the child's personal life, and disturbs the child's sense of comfort, peace and security. Violence that occurs against children is in the spotlight from various groups, such as cases of rape committed by the victim's family or someone close to the victim, sodomy cases, trafficking of children to be exploited as commercial sex workers.¹ So that providing protection for children will never stop throughout life.

¹M. Arief Mansur and Elisatris Gultom. 2008. *The Urgency of Crime Victim Protection Between Norms and Reality*. Jakarta: PT. Raja Grafindo Persada, p.122

Children are the nation's next generation who are prepared as objects of implementing sustainable development as well as controlling the future of a country.² So that in the future they are able to be responsible, children need to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to carry out protection efforts to realize children's welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment.³

Most victims of violence are women and children. In crisis situations, both economic crises and political crises, it is women and girls who are the victims of violence the most.⁴ Rape is synonymous with sexual violence against women. The definition of rape is part of violence against women which consists of physical, psychological and sexual violence.⁵ Meanwhile, how to do it with threats, physical force, or intimidation in order to obtain sexual relations. However, the perpetrators intended not only to vent their sexual desires, but wanted to humiliate and humiliate women victims by using sex as a weapon to express violence and strength.⁶

The high rate of crime against children is a concern for the State, the presence of pornography and pornography involves many children. As a result of the weak position of women and children, they do not receive enough information about the risks that must be borne by women, especially as a result of sexual intercourse. Not only physical risks such as pregnancy, but also psychological, something that every woman never expects.⁷ This makes the aspect of morality and the spirit of improvement almost every day voiced in order to prevent further damage to the nation's morale.⁸

Regulations regarding the handling of sexual violence against children have been updated considering that the previous laws and regulations were considered inadequate to prevent and punish perpetrators of sexual crimes against children.

²Nasriana, 2011, *Criminal Law Protection for Children in Indonesia*, Raja Grafindo, Jakarta, p.12

³ Lailatul Nur Hasanah and Sri Endah Wahyuningish. *The Application Of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati)*. *Journal of Sovereign Law* Volume 2 Issue 4, December, 2019, h.3

⁴Sri Santuti hariadi, 2000, *Acts of Rape Against Girls "in Vulnerable Children: Anthology About Children Requiring Special Protection*, cet. 1, Lutfansah Mediatama, Surabaya, p.3

⁵Agus Purwadianto, 2003, *Rape as a Human Rights Violation*, Gramedia Utama, Jakarta, p.65

⁶Dhermawan Oka, 2005, *Abortion Protection for Women Victims of Rape*, Language Development, Jakarta, p.20

⁷Bagong Suyanto and Karnaji, ed., 2000, *Girls Victims of Sexual Violence: A Study of Patterns of Sexual Harassment and Rape Crimes Against Girls in East Java*, Lutfansah Mediatama, Surabaya, p.10

⁸Mukhlis R. *Legal Protection for Children from Sexual Harassment Crimes in Pekanbaru*. *Journal, Legal Issues*, Diponegoro University, Volume 45, No. 4, October, 2016, p.27.

In the Criminal Code (KUHP) it is contained in Article 290 of the Criminal Code paragraphs (2) and (3) with a maximum imprisonment of seven years, Article 292 of the Criminal Code with a maximum imprisonment of five years, Article 293 of the Criminal Code paragraph (1) with a maximum imprisonment of five years, Article 294 of the Criminal Code paragraph (1) with a maximum penalty of seven years. This study aims to examine and analyze the effectiveness of law enforcement in the application of castration for perpetrators of sexual harassment.

2. Research Methods

Approach method using juridical normative juridical, meaning that it focuses on the rules or norms in Indonesian positive law (laws and regulations). Normative juridical research is legal research conducted by examining library materials or secondary data as the basic material for research by conducting searches and literature on regulations related to the problem under study.⁹ Namely, Act No. 17 of 2016 concerning Child Protection. The specifications used are analytical descriptive, provide systematic, logical explanations, analyze them in order to review literature, legislation, applicable legal norms and analyze them to draw conclusions.¹⁰ The data source used by secondary data consists of primary legal materials in the form of legislation relating to legal research conducted. The data collection method with the main activities carried out is library research, reviewing, studying and processing literature, laws and regulations, judges' decisions and articles or writings related to the issues to be studied. The method of data analysis was carried out qualitatively with data analysis methods by grouping and selecting data obtained from library research.

2. Results and Discussion

3.1. Implementation effectiveness additional punishment in the form of chemical castration for perpetrators of criminal acts of sexual harassment in Law no. 17 of 2016 concerning Child Protection

Protection of children is a basic right that must be obtained by every child, because every citizen has a position before the law and the government is obliged to uphold the law and government without exception.¹¹ That way child protection can be said that: "An effort to protect children so that they can carry out their rights

⁹Soerjono Soekanto and Sri Mamudji, 2016, Normative Legal Research-A Brief Overview, Rajawali Press, Jakarta, p.14

¹⁰ Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

¹¹ Roswati Devi, Sri Endah Wahyuningsih and Umar Ma'ruf. Law Enforcement Of Giving Restitution For Victims Of Trafficking In The State Court Of Central Jakarta. *Journal of Sovereign Law Volume 2 Issue 4, December, 2019*, h. 8

and obligations. The protection of children's rights is in essence directly related to the regulation in the law.¹²

That everyone has the right to recognition, guarantees, protection and fair legal certainty, as well as equal treatment before the law. Everyone has the right to protection for himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right. From the explanation it can be understood that the State guarantees protection for every citizen in the form of protection for themselves, their families, honor, dignity and property. Legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness.¹³

According to Article 330 of the Indonesian Civil Code, the definition of a child or immature person is someone who has not reached the age of 21 (twenty one) years and has not married before. If a person who has not reached the age of 21 (twenty one) years has been married, and the marriage is dissolved before the age of 21 (twenty one) years, then he will not return to the status of a minor. A person who is not yet an adult and is not under guardianship on the basis and in the manner stipulated in the third, fourth, fifth and sixth chapters before coming of age and guardianship.

Article 45 of the Criminal Code, a person who is underage or categorized as immature is if he is not yet 16 (sixteen) years old, but this Article has been revoked by Article 67 of Act No. 3 of 1997. Article 283 of the Criminal Code determines the limit of maturity when he has reached 17 (seventeen) years. Meanwhile, according to Article 287 of the Criminal Code, the legal age limit for a woman is 15 (fifteen) years.

Act No. 35 of 2014 concerning Child Protection, what is meant by a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. While the definition of a child dealing with the law based on the provisions in Article 1 point 3 of Act No. 11 of 2012 concerning the Juvenile Justice System states that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years who are suspected of committing a crime, so for the imposition of a crime on a child who commits a crime is limited to the age of 12 (twelve) to 18 (eighteen) years. If more than 18 (eighteen) years of age has entered into the adult category.

¹² Maidin Gultom, 2014, *Legal Protection of Children (In the Indonesian Child Criminal Justice System)*, Refika Aditama, Bandung, p.42

¹³Alfi Nur Fata, Sri Endah Wahyuningsih, "Law Enforcement in Criminal Cases by the Attorney General's Office based on Restorative Justice", *Journal of Daulat Hukum* Vol 4, No 2, 2021, p.9

The existence of mass media and electronic media is busy talking about sexual violence with child victims. According to dataThe Ministry of Women's Empowerment and Child Protection (PPPA) noted that there were at least 11,952 cases of child violence recorded by the Online Information System for the Protection of Women and Children (Symphony) throughout 2021. Of these, the form of violence that is most often experienced by children is sexual violence, namely as many as 7,004 cases. Based on the same data, the PPPA Ministry also noted that there were 8,478 cases of violence against women in 2021, of which 15 percent, or 1,272 cases, were cases of sexual violence. Meanwhile, the Women's Life Experience Survey conducted by the Ministry of PPPA in 2021 also shows an increase in the prevalence of cases of sexual violence against women aged 15-64 years committed by non-partners.¹⁴

In order to overcome the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators, and prevent sexual violence against children from occurring, the Government needs to add to the main punishment in the form of death penalty and life imprisonment, as well as additional punishment in the form of announcing the identity of the perpetrator. In addition, it is necessary to add provisions regarding actions in the form of chemical castration, installation of electronic detection devices, and rehabilitation. Responding to the phenomenon of crime against children above, the Government issued a Government Regulation in Lieu of Law concerning the Second Amendment to Act No. 23 of 2002 concerning Child Protection (PERPU) Number 1 of 2016. In PERPU it is not half-hearted that the threat of minimum punishment is applied as prescribed mentioned explicitly in Article 81 paragraph (1) which states that:

Everyone who violates the provisions referred to in Article 76D shall be subject to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiahs)", paragraph (3) "In the event that the crime referred to in paragraph (1) is committed by parents, guardians, people who have family relations, babysitters, educators, education staff , officers who handle child protection, or are carried out by more than one person jointly, the penalty is added to 1/3 (one third) of the criminal threat as referred to in paragraph (1)", paragraph (4).

Apart from the perpetrators as referred to in paragraph (3), an additional 1/3 (one third) of the criminal penalty is also imposed on perpetrators who have been convicted for committing a crime as referred to in Article 76D", paragraph (5) "In the case of a crime as referred to in Article 76D causing more victims than than 1 (one) person, resulting in serious injury, mental disorder,

¹⁴Ministry of PPPA: Cases of Violence against Children Occur throughout 2021, the majority of which are sexual violence. <https://nasional.kompas.com>, accessed January 3, 2023.

infectious disease, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum 20 (twenty) years", paragraph (6).

In addition to being subject to punishment as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional sanctions in the form of announcement of the identity of the perpetrator", as well as in paragraph (7) "Against the perpetrator as referred to in paragraph (4) and (paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices".

The reason why PERPU is needed is that there is an urgent need to resolve legal issues. The number of victims of child sexual crimes is increasing, while the perpetrators are not deterred and often the perpetrators repeat their actions without pity. In addition, the content of the criminal article for perpetrators of sexual violence against children in Act No. 35 of 2014 concerning Child Protection is still relatively light. Because the maximum age is only 15 years and it is not yet effective in suppressing sexual crimes against children. The emergence of the complexity of sexual crimes requires even more legal capacity, so a PERPU is needed.¹⁵

Government Regulation Number 70 of 2020, Article 1 point 2 states that Chemical Castration is an act of administering chemical substances through injection methods or other methods, which are given to perpetrators who have been convicted of having committed violence or threats of violence that forced children to have intercourse with themselves or with other people, causing more than one victim, resulting in serious injuries, mental disorders, sexually transmitted diseases, loss or disruption of reproductive organs, death of victims, to suppress excess sexual desire, accompanied by rehabilitation. If previously Act No. 17 of 2016 only regulated chemical castration sanctions without any implementation procedures, then Government Regulation No.

In general, chemical castration is carried out by means of chemicals in the form of anti-androgens into a person's body so that the production of the hormone testosterone decreases, so that sexual desire decreases. In the world of medicine, the hormone testosterone is a hormone that has a sexual function in the male genitalia, so that if anti-androgen is inserted into the male genitalia, the substance will block the glands in the brain from producing the hormone testosterone, so

¹⁵Sri Endah Wahyuningsih. "Legal Protection of Children as Victims of Decency Crimes in Current Positive Criminal Law". Unissula Law Renewal Journal Volume III No. 2 May-August 2016.

that sexual arousal decreases.¹⁶ So that the imposition of additional sanctions in the form of castration for perpetrators of sexual crimes against children reaps many pros and cons. Besides that, legal changes also affect social change, this is in line with one of the functions of law, namely law as a means of social change or social engineering. As a legal process, punishment is related to the principles and functioning of the elements of the criminal justice system and the effectiveness of the implementation of the irregularities control agency in overcoming existing problems.

Law enforcement is an attempt to realize the ideas of justice, legal certainty and social benefits into reality. So law enforcement is essentially a process of embodiment of ideas. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guide for actors in traffic or legal relations in the life of society and the state. Law enforcement is an attempt to realize the ideas and legal concepts expected by the people to become reality. Law enforcement is a process that involves many things.¹⁷The success of law enforcement is influenced by several factors that have a neutral meaning, so that the negative or positive impact lies in the content of these factors. These factors have a close interrelated relationship, which is the essence and benchmark of the effectiveness of law enforcement.

The effectiveness of law according to Soerjono Soekanto is that whether or not a law is effective is determined by 5 (five) factors:

- a. The legal factor itself (law).
- b. Law enforcement factors, namely the parties that form and apply the law.
- c. Facility factors or facilities that support law enforcement.
- d. Community factors, namely the environment in which the law applies or is applied.
- e. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.¹⁸

The five factors above are closely related to each other, because they are the essence of law enforcement, they are also a benchmark for the effectiveness of

¹⁶Nurhidayat, Taufik. "Application of Castration Law for Perpetrators of Sexual Crimes in Indonesia (Legal Review of the Implementation of Law Number 17 of 2016)". *Social and Political Journal* 24, No.1 of 2019, p.77

¹⁷ Dellyana, Shant, 1988, *The Concept of Law Enforcement*, Liberty, Yogyakarta, p.32

¹⁸Soerjono Soekanto, 2008, *Factors Influencing Law Enforcement*, PT. Raja Grafindo Persada, Jakarta, p.8

law enforcement. In the first element, what determines the functioning of the written law properly or not depends on the rule of law itself. The theory of law enforcement put forward by Soerjono Soekanto is relevant to the theory put forward by Romli Atmasasmita namely that the factors hindering the effectiveness of law enforcement do not only lie in the mental attitude of law enforcement officials (Judges, Prosecutors, Police and Legal Counsels) but also lie in factor of legal socialization that is often overlooked.¹⁹

Its relation to the system of weighting sanctions that is regulated in the form of chemical castration and the installation of electronic detection devices is considered the most effective punishment and provides a deterrent effect on perpetrators of sexual crimes against children. So that the movements of the perpetrators can be detected after leaving prison. The main criminal punishment in the content of the article against child sex offenders is also aggravated to the death penalty, a maximum life sentence of 20 years and a minimum of 10 years in prison.²⁰

However, in practice there are problems with the Ethics Council's fatwa and Medical Ethics Code (MKEK) Number 1 of 2016 concerning Chemical Castration contained in article 9 letter c of Regulation Number 70 of 2020 concerning Procedures for carrying out chemical castration, installing electronic detection devices, rehabilitation, and announcing the identity of perpetrators of sexual violence against children, it is explained that the executor is a doctor on the order of the prosecutor to carry out the Castration Act. Chemical to the perpetrator of intercourse in a government-owned hospital or designated regional hospital. This is an obstacle for doctors because the doctor who will execute chemical castration is a violation and there is a code of ethics sanction. If chemical castration injections are not given by experts, then of course it can be dangerous for the health and even the lives of perpetrators of sexual violence against children.

The Code of Medical Ethics stipulates that a doctor must be a protector of life. In relation to the problem of chemical castration, there is a conflict between several ethics listed in the Code of Medical Ethics, namely in Article 5 it says that any doctor's actions/advice that might weaken psychic endurance or physical, must obtain the consent of the patient/family and only be given for the benefit and good of the patient. The elucidation of the article explains that weakening the patient's psychological and physical state is contrary to the nature of medical science. For them to carry out an act that hurts the patient, general practitioners who comply

¹⁹Romli Atmasasmita, 2001, Legal Reform, Human Rights & Law Enforcement, Mandar Maju, Bandung, p.55

²⁰Sri Endah Wahyuningsih, "*Model for the Development of Criminal Law Principles in the Criminal Code Based on the Values of Belief in the One and Only God*", Journal of Sovereign Law Vol 2, No 2, 2018, p. 8

with the code of ethics are not allowed to perform castration.²¹ Whereas the execution of the chemical castration verdict was in conflict with the Doctor who was assigned as the executor which would result in a norm conflict, namely between the judge's decision and the Fatwa of the Ethics Council and the Medical Code of Ethics.²²

The provision of additional punishment (*Bijkomende Straf*) is intended as a development of criminal measures and patterns of prevention against lawbreakers that are expected to develop effectively in order to prevent and create a deterrent effect (deterrent effect) from various types of crime in society, so as to create social control mechanisms that are dynamic. It is hoped that the additional punishment given to perpetrators of sexual crimes against children will be more able to deter the bad intentions of the perpetrators, considering that they are binding, firm and cause great losses and the severity of the punishment.²³ The change in punishment in the penal system considers the act to be a serious violation of law because the perpetrators of sexual crimes are more dominated by those closest to the victim who are often met and known to them, so that children as victims do not have the slightest suspicion of the behavior of those closest to them, so that sexual crime.

4. Conclusion

The Effectiveness of Law Enforcement the Implementation of Castration Punishment for Perpetrators of Sexual Harassment is experiencing problems with the Ethics Council's fatwa and Medical Ethics Code (MKEK) Number 1 of 2016 concerning Chemical Castration about Procedures for carrying out chemical castration, installing electronic detection devices, rehabilitation, and announcing the identities of perpetrators of sexual violence against children. The executors are doctors on the order of the prosecutor. The Code of Medical Ethics stipulates that a doctor must be a protector of life. In relation to the issue of chemical castration, there is conflict between several ethics listed in the Medical Ethics Code. While the success of law enforcement is influenced by several factors that have a neutral meaning, so that the negative or positive impact lies in the content of these factors. These factors have a close interrelated relationship, which is the essence and benchmark of the effectiveness of law enforcement. Thus there is overlap between existing laws and regulations.

²¹ Rike Novia Dewi, "Criminal Law Enforcement Against the Execution of Castration Sentences is Connected to the Mojekerto District Court Decision", *Scientific Journals*, 2020, p.5

²² Asyari Amir, "Juridical Review of Chemical Castration for Perpetrators of Sexual Violence Against Children in a Human Rights Perspective", *Dynamics of the Scientific Journal of Law*, Volume 26, Number 2, 2020, p.12

²³ Sri Endah Wahyuningsih. Legal Protection for Children as Victims of Decency Crimes in Current Positive Criminal Law. *Journal of Legal Reform* Vol 3, No 2, 2016, h. 6

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