
Reformulation of Chemical Castration Sanctions for Perpetrators of Sexual Crimes in Review from the Relative Theory of Punishment

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Abstract

This research aims to see whether or not chemical castration sanctions are applied to sex offenders when viewed from the Relative Theory of Punishment and is associated with several examples of decisions. From the research results. The application of chemical castration sanctions against sex offenders has not been implemented effectively in law enforcement in Indonesia because there is still a discrepancy between the provisions of additional punishment determined by the legislator with the facts or circumstances that occur. The Relative theory of punishment views the provision of punishment not as retaliation for the wrongdoing committed by the perpetrator, the justification of punishment lies in its purpose, namely to reduce the frequency of crime. Therefore, it is necessary to reformulate the sanction of chemical castration from various aspects, including socio-philosophical, socio-political, and socio-cultural aspects. The need for a legal breakthrough to provide therapeutic/treatment effects to perpetrators of sexual crimes through psychiatric rehabilitation efforts. Because basically, punishment is no longer solely as retaliation, but to re-educate the person who committed the criminal act to become a useful member of society.

INTRODUCTION

Cases of sexual violence are serious crimes that have violated children's human rights and often occur in Indonesia, this can cause trauma for the victims themselves and their families. One of the government's efforts to reduce the occurrence of sexual violence against children is by issuing Legislation Number 1 of 2016 which is subsequently enacted into law through Law Number 17 of 2016 concerning Legislation Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. This law

contains protection for minors and additional sanctions for people who commit sexual crimes against children. One of which is the implementation of chemical castration.

The implementation of Chemical Castration is a new punishment applied in Indonesia, there are pros and cons related to the implementation of these actions. on the one hand, the implementation of castration is given with the hope that the suspect recognizes his evil deeds, as a punishment for the convicted person who has been proven to commit a crime and as a deterrent effect for the convicted person¹, also can 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.² As emphasized in Article 33 of Law Number 39 of 1999 concerning Human Rights that everyone has the right to be free from torture, punishment or treatment that is cruel, inhumane, degrading and human dignity. In addition, the implementation of chemical castration must also pay attention to the high cost aspect and the informed consent of the perpetrator of sexual violence for the chemical castration action carried out to the perpetrator.³

Castration is carried out with the aim of criminal sanctions against sex offenders such as rapists and pedophilia in various countries. Each country applies various castration methods. Some countries that apply castration sanctions against sex offenders include the following:

1. South Korea, which became the first country in Asia to legalize castration in 2011. The law was passed in July of that year and allows castration injections to sex crime defendants over the age of nineteen;
2. The UK, where currently convicted pedophiles in the UK voluntarily undergo castration injections. They really don't want the crime to happen again. A total of 25 inmates volunteered for these injections in 2014;
3. The United States, where there are nine states, including California, Florida, Oregon, Texas, and Washington that implement castration;
4. Russia, where sex offenders who commit crimes against children under the age of fourteen are targeted. However, one must be declared a true pedophile by a doctor;

¹Munir Fuady, Sylvia Laura L. Fuady, *Hak Asasi Tersangka Pidana*, (Jakarta:Prenada Media Group, 2015), 180.

²Nur Hafizal Hasanah, "Kebijakan Hukum Pidana Sanksi Kebiri Kimia Dalam Perspektif Ham Dan Hukum Pidana Indonesia", *Jurnal Magister Hukum Udayana*, Vol. 7 No. 3 (2018): 307

³Nuzul Qurani Mardiya, "Penerapan Hukum Kebiri Kimia Bagi Pelaku Kekerasan Seksual", *Jurnal Konstitusi*, Volume 14 No. 1 (2017): 201

5. Poland, where since 2010 the country has implemented castration punishment for child rapists. However, convicts must be accompanied by a psychiatrist before serving this sentence.⁴

From several countries that apply chemical castration sanctions to perpetrators of sexual violence crimes, the average action is based on voluntary or request from the perpetrator, and the perpetrator is actually declared a pedophile by a doctor. Meanwhile, when viewed from 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 does not provide specific provisions for perpetrators of sexual violence crimes who will be sanctioned with chemical castration.

According to the World Rape Statistic or world statistics on rape in various worlds prove that the death penalty or castration punishment is not effective in causing a deterrent effect or prevention of sexual crimes. World statistics on sexual crimes published every two years show that countries that apply the death penalty and castration penalties actually show the top ten positions as countries that have the highest cases of sexual crimes in the world.⁵

The argument that is built in the imposition of chemical castration is the provision of Article 81 paragraph 7 of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection which states that the perpetrator can be subject to sanctions in the form of chemical castration. Rejection of the application of chemical castration came from ICJR, Komnas HAM, and advocacy organizations who considered that chemical castration by injecting chemicals into the body of perpetrators of sexual violence did not provide healing for perpetrators and did not provide guarantees for the recovery of perpetrators of sexual violence against children.⁶ In addition to being considered a violation of human rights, chemical castration is also not in line with the purpose of punishment relating to a protection of the public and repairing the perpetrator. So if examined further, chemical castration only focuses on the orientation of the perpetrator and not on the protection of the public and repairing the perpetrator.

⁴Andika Wijaya, Wida Peace Ananta, *Darurat Kejahatan Seksual*, (Jakarta Timur: Sinar Grafika, 2016), 161.

⁵"Hukum Kebiri : Indonesia Latah atau Tanpa Solusi?", Institute For Criminal Justice Reform, diakses 5 Februari, 2023 <https://icjr.or.id/hukum-kebiri-indonesia-latah-atau-tanpa-solusi/>

⁶Irene Widyaningrum Dan Irwansyah, "Politik Hukum Pemidanaan Kastrasi: Perspektif Hak Asasi Manusia (The Political Crime Of Castration A Human Rights Perspective)". *Jurnal Ius*, Volume 5, Nomor 3(2017): 381

Castration contains elements of torture, this is contrary to Indonesia's commitment to protect citizens to be free from the threat of cruel, inhuman and degrading punishment. This prohibition is clearly stated in the Covenant on Civil and Political Rights as well as the Convention against Torture and other cruel treatment or punishment, both acts that cause pain, physical or mental.⁷

Chemical castration, as normed in the law and actualized through the verdict of the legal panel, does not seem to be implemented and suspended by the prosecutor's office for the time being. This is not only because the execution will have to wait until after the convicted person has completed all of the main punishments imposed, but also because of who the prosecutor intends to appoint to carry out the execution. Moreover, the opportunity for the doctor profession to be the executor of chemical castration is further clarified in Article 9 of Government Regulation Number 70 of 2020 regarding the implementation of the chemical castration process carried out by medical personnel on the orders of the prosecutor's office. However, in reality this is rejected both personally and institutionally. In a virtual discussion, Tuesday (28/12/2021), Chairman of the Executive Board of the Indonesian Doctors Association (IDI) Daeng M Faqih revealed that "Professional doctors are not set to become executioners of punishment. So, if the executioner is punishing, the medical professional is the opposite".

In giving a punishment to the perpetrator, paying attention to the purpose of punishment is very important. Because the judge must reflect on the aspects of punishment within the framework of the purpose of punishment by paying attention not only to the sense of justice in the hearts of the community, but also must be able to analyze the reciprocal relationship between the perpetrator and the victim.⁸ Therefore, if the type of sanction has been chosen and determined in the form of punishment, basically the goal to be achieved is to improve the person of the perpetrator of the crime in order to make the perpetrator of the crime a deterrent and other people will not do the same thing.

According to Leonard, relative theory of punishment aims to prevent and reduce crime. Criminal punishment must be intended to change the behavior of criminals and other people who have the potential or tendency to commit crimes. The purpose of punishment is community order, and to uphold the community order, punishment is needed. Criminal

⁷Rhona K.M, *Hukum Hak Asasi Manusia, Cetakan Pertama*, (Yogyakarta:Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia, 2008), 154.

⁸Usman, "Analisis Perkembangan Teori Hukum Pidana", *Jurnal Ilmu Hukum*, Vol. 2 No. 1 (2011): 75

punishment is not just to carry out retaliation or compensation to people who have committed a criminal offense, but has certain useful purposes. Retaliation itself has no value, but only as a means to protect the interests of society. The basis of criminal justification lies in its aim to reduce the frequency of crime. Criminal punishment is imposed not because people make crimes, but so that people do not commit crimes. Therefore, this theory is often called utilitarian theory.

Understanding chemical castration in its conception is wrong when qualified as an action sanction, because the philosophy of the basic idea of action sanctions is to protect the community as well as repair or recovery to the perpetrators of criminal acts rather than providing suffering. In contrast to the witness of punishment whose purpose is to retaliate, suffering to the perpetrator and prevent crime.⁹ The consequences of this castration sanction are then questioned, whether this chemical castration is aimed at providing recovery or suffering, if this chemical castration provides suffering to sex offenders then this sanction has gone out of the purpose of the sanction itself.

The implementation of chemical castration punishment is not an easy activity as implementing punishment in general. It requires an organized and executed implementation to foster a just law enforcement and certainly does not violate human rights. Several cases of chemical castration sentences have been imposed. Some of the decisions that the author has completed include the decision that has been imposed with Article 81 of Law Number 17 of 2016 concerning Child Protection, as well as criminal action in the form of chemical castration, including: first, Banjarmasin District Court Decision Number.444/Pid.Sus/2021/PN.Bjm, which has sentenced the defendant to imprisonment for 19 (Nineteen) years and an additional sentence of Chemical Castration for 2 (two) years. Second, the Banjarmasin District Court Decision Number. 363/Pid.Sus/2021PN.Bjm, which sentenced the defendant to 20 (twenty) years of imprisonment and an additional sentence of Chemical Castration for 2 (two) years. Third, Banjarmasin District Court Decision Number 5/Pid.Sus/2022/PN.Bjm, which sentenced the defendant to 15 (fifteen) years of imprisonment, as well as an additional punishment of Chemical Castration for 2 (two) years.

However, there are also some of these judges' decisions that have similar cases, namely child crimes, but have different decisions, namely not subject to chemical castration

⁹Ahmad Jamaludin, "Kebiri Kimia Sebagai Sanksi Tindakan Dalam Double Track System", *Adliya Jurnal Hukum Dan Kemanusiaan*, Vol. 15 No. 2 (2021): 182

sanctions, including: First, Surabaya High Court Decision Number 1271/Pid.Sus/2020/PT.Sby, which sentenced the defendant to imprisonment for 13 (thirteen) years, Second, Tanjungkarang High Court Decision Number 42/PID/2021/PT.Tjk which sentenced the defendant to imprisonment for 20 years. Third, Bandung District Court Decision Number. 989/Pid.Sus/2021/PN.Bdg which sentenced the defendant to life imprisonment.

The six court decisions show that there is still a lack of uniformity in the sentencing of judges in cases of sexual crimes against children due to the many pros and cons of providing chemical castration to perpetrators. This reflects a common phenomenon in Indonesia lately, especially in cases of sexual violence and cases involving children, that the state only focuses on the punishment of harsh punishment for the perpetrators, without seeing what should have been the focus of the case from the beginning, namely recovery for victims.

The provision of chemical castration sanctions is still a matter of debate whether it will indeed be effective in reducing and overcoming sexual crimes or only have a temporary impact on sexual offenders. The nature of chemical castration is only temporary, and the many side effects of chemical sanctions make some parties disagree with the implementation of chemical castration sanctions. The legalization of chemical castration sanctions is considered as an act of violating human rights and inhumanity and can cause torture for sex offenders, whereas according to the development of criminal punishment today. that criminal law already has the basic principles of humanity, so that criminal law must be social welfare not torture and human rights for all.¹⁰

Chemical Castration is applied to sex offenders when viewed from the Relative theory of Punishment referring to several examples of court decisions so that reformulation is needed to be carried out on the child protection law. In fact, until now the prisoners are waiting for the sentence period to be completed to face the execution of chemical castration. Because this chemical castration action can only be implemented if the prisoner has completed the main punishment. Although until now the doctor refuses to be the executor of chemical castration, the court decision must be implemented because it is legally binding.

¹⁰Teguh Prasetyo, *Hukum Pidana*, (Depok: Rajawali Pers, 2013), Hal. 9.

DISCUSSION

The Application Of Chemical Castration Sanctions For Perpetrators Of Sexual Crimes Against Children In Review Of The Relative Theory Of Punishment

Sanctions mean in the form of a criminal threat and have a duty so that the norms that have been established in law and legislation are obeyed as a legal consequence for violating norms.¹¹ In general, sanctions in criminal law can be divided into criminal sanctions and action sanctions. Both come from different basic ideas. Criminal sanctions originate from the basic idea of "why punishment is held" while action sanctions are based on the basic idea of "for what punishment is held". When viewed against an act, criminal sanctions are reactive. While action sanctions are anticipatory. Wrongdoing committed by someone becomes the focus of criminal sanctions by providing the imposition of suffering with the intention that he becomes a deterrent. While the sanction of action is more directed at efforts so that the perpetrator can change both his actions and his mentality.¹²

Article 81 paragraph (7) of Law Number 17 Year 2016 on Child Protection explains that the position of chemical castration punishment in the existing punishment system in Indonesia is used as an action sanction against perpetrators of sexual crimes against children. But when referring to Article 10 of the Criminal Code which regulates the types of punishment, there is no action sanction found in the article. Regarding the procedures for implementing chemical castration, it has been regulated in Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. Which in it explains that this chemical castration action is imposed for a maximum period of two years. The implementation of chemical castration is carried out through three stages including clinical assessment, conclusion and implementation. After the author concludes that the implementation of chemical castration sanctions is carried out after the perpetrator has served the main punishment. In the imposition of the main punishment against the perpetrator of this sexual crime, the maximum limit is 20 years. In Indonesia, the implementation of chemical castration is not based on the voluntariness of the perpetrator.

¹¹Hambali Thalib, *Sanksi Pidana Dalam Konflik Pertanahan Kebijakan Alternatif Penyelesaian Konflik Pertanahan Di Luar Kodifikasi Hukum Pidana*, (Jakarta: Prenada Media Group, 2009), 11

¹² Agus Salim, Sudarno, Muhadar, *Aspek Kriminologi Sanksi Pidana Kebiri Kimia Pelaku Kekerasan Seksual Terhadap Anak*, (Yogyakarta: Karya Bakti Makmur, 2023), 163

This is in contrast to other countries such as South Korea, the United Kingdom, Argentina, Australia, and Russia that apply chemical castration voluntarily from the perpetrators themselves because the perpetrators consider that this chemical castration is a form of guidance for themselves. Among others, it is described as follows:

1. South Korea, the government uses the chemical castration method only if health experts give the results of the examination that sex offenders are likely to repeat their actions. The chemical castration procedure will be carried out after a diagnosis from a psychiatrist, then the prosecutor's office will carry out the castration process.
2. In the UK, child sex offenders can be sentenced to a maximum of life imprisonment. However, child sex offenders and repeat offenders can choose to be chemically castrated for same-sex sex offenders or children.
3. Argentina has only been enforced in one province, Mendoza, since 2010, and it is done voluntarily so as not to violate international law or Argentina's constitution. In addition, by being willing to undergo castration punishment, sex offenders also receive a reduction in the prison sentence they have to serve. Australia, tindakan kebiru kimia diberlakukan di beberapa bagian saja termasuk Western Australia, Queensland, dan victoria. Pada tahun 2010 lalu, seorang pelaku kejahatan seksual anak yang berulang kali terjerat hukum di North Queensland kembali diadili karena meraba dan mencium gadis di bawah umur. Pria ini telah menjalani hukuman kebiru kimiawi sebelumnya, dengan secara sukarela mendapat pengobatan untuk mengurangi libidonya. Lalu pada tahun 2012, dua pelaku kejahatan seksual di Victoria sepakat untuk menjalani hukuman kebiru kimiawi, melalui pengobatan untuk mengurangi libido mereka.
4. Russia, where sex offenders who commit crimes against children under the age of fourteen are targeted. Even so, one must be declared a true pedophile by a doctor ¹³

When understanding the concept of relative theory of punishment. The relative theory of punishment is based on the premise that punishment is a means to enforce order (law) in society. This theory is different from the absolute theory, the rationale for a crime to be punished means that the imposition of punishment has a certain purpose, for example

¹³Ari Purwa Kartika, *et.al*, "Reformulasi Eksekusi Kebiru Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter Dan Perlindungan Hukum Bagi Pelaku Pedophilia", *Jurnal Hukum Ius Quia Iustum*, Vol. No. 27 (2020): 355

improving mental attitudes or making the perpetrator no longer dangerous, a mental attitude coaching process is needed. Muladi argues that punishment is not a retaliation for the wrongdoing of the perpetrator but a means of achieving useful goals to protect society towards the welfare of society. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, so they are not aimed at absolute satisfaction of justice. The element of retaliation is a form of suffering that is deliberately given to the perpetrator through criminal sanctions, and the sanction of action emphasizes more on efforts to protect society and guidance or treatment of the perpetrator.¹⁴ Based on its purpose, criminal sanctions aim to provide special suffering to violators so that they feel the consequences of their actions. In addition to being aimed at the imposition of suffering on the perpetrator, criminal sanctions are also a form of statement of reproach for the perpetrator's actions. Thus the principle difference with the sanction of action lies in the presence or absence of the element of reproach, not in the presence or absence of the element of suffering. While this action sanction has a more educational purpose. When viewed from the theories of punishment, action sanctions are sanctions that do not retaliate. It is solely aimed at special prevention, namely the protection of society.

As for some examples of court decisions that impose criminal sanctions in the form of chemical castration, the author has compiled the following:

NO	PUTUSAN	AMAR PUTUSAN
1	Decision Number 363/Pid.Sus/2021/PN.B jm	- Sentenced to 20 (twenty) years imprisonment; - Fine in the amount of Rp. 1,000,000,000,- (one billion rupiah) in the form of 1 (one) year of imprisonment; - Impose additional punishment to Chemical Castration for 2 (two) years..
2	Decision Number 444/Pid.Sus/2021/PN.B jm	- Sentenced to a term of imprisonment of 20 (twenty) years. - Fine in the amount of Rp. 3,000,000,000,- (three billion rupiah) Subsidiary for 2 (two) years of confinement - Additional punishment in the form of Chemical Castration for 2 (two) years.
3	Decision Number 5/Pid.Sus/2022/PN.Bjm	- Sentenced to 20 (twenty) years imprisonment. - Fine amounting to Rp. 1,000,000,000,- (one billion rupiah) in the form of 1 (one) year

¹⁴ *Ibid.* Hlm 163

		imprisonment. - Additional punishment in the form of Chemical Castration for 2 (two) years.
4	Decision Number 989/Pid.Sus/2021/PN. Bdg	Sentenced to life imprisonment.
5	Decision Number 42/PID/2021/PT.Tjk	- Sentenced to a term of imprisonment of 20 (twenty) years; - Fined in the amount of Rp800,000,000.00 (eight hundred million rupiah) in subsidiarity with imprisonment for 3 (three) months. - Pay restitution to the child victim in the amount of Rp7,700,000.00 (seven million seven hundred thousand rupiah).
6	Decision Number 1271/PID.SUS/2020/ PT SBY	- Sentenced to 13 (thirteen) years of imprisonment; - Fine in the amount of Rp. 1.000.000.000,- (one billion rupiah) in the form of subsidized with 3 months imprisonment.

Sumber : Data Olahan Tahun 2023

Some of the judges' decisions that have imposed chemical castration sanctions as described in the decisions above do not pay further attention that a sentence imposed by the judge must be based on consideration of the compatibility between the additional criminal provisions determined by the legislator with the facts or circumstances that occur. This has been explained in Article 81 paragraphs (4) and (5) of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection determines the imposition of additional punishment in the form of chemical castration with criteria and conditions that are determined limitatively, namely: "In the event that the criminal offense as referred to in Article 76D is imposed on a perpetrator who has been convicted of committing a criminal offense (recidivist) as referred to and causing victims of more than 1 (one) person resulting in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and / or the victim dies. Meanwhile, in this decision the perpetrator was not a recidivist and only committed his criminal act against one person.

Furthermore, after the defendant is given an additional punishment in the form of chemical castration, there is still a need for intensive supervision. because in the author's opinion, the perpetrators of sexual crimes committed against children must have psychological problems when they see a child. Regardless of the number of victims or how many times the action has been carried out. Because, if we think as adults and have a good

mind, we must think that we must protect and keep small children or minors from all the bad things that might happen to them. So it is not possible for a person with a normal psychic and mental state to commit a sexual crime against a child that will harm the child's future.

Furthermore, the provision of additional punishment in the form of chemical castration emphasizes the element of retaliation. The absolute theory views that punishment is retribution for the wrong that has been done. This approach is also considered as a punishment approach carried out by primitive society and seems barbaric. The aggravated punishment of perpetrators by providing additional punishment in the form of chemical castration has almost no correlation with the reduction of sexual crimes against children. While the sanction of chemical castration in the regulation is said to be a form of treatment given to the perpetrators of sexual crimes. Previously, it has been explained that action sanctions are sanctions that do not retaliate. Action sanctions should have a more focused focus on efforts to provide help to the perpetrator so that he changes.

In the author's opinion, the imposition of chemical castration sanctions based on Law Number 17 Year 2016 which is carried out purely to deter the perpetrator by giving the view that the punishment is carried out as an element of imposition of suffering for the perpetrator's actions in general can be categorized as fulfilling one of the elements of the purpose of punishment. However, if the chemical castration sanction is said to be an action sanction, which should not be the imposition of suffering, this is not right because of the side effects of the chemical castration that makes the perpetrator suffer. Chemical Castration Sanction is a reflection of legal development that has not been well developed in the Child Protection Law.

As in the Law on Child Protection, the castration penalty method has been included in the form of anti-androgen chemical injection and aims to reduce the production of the hormone testosterone so that it temporarily reduces the sexual drive of the convict. Although in many studies the implementation of these sanctions can have a permanent impact on the perpetrator and cause other effects, such as heart disease, premature aging of the body, reducing bone density so that the risk of porous bones or osteoporosis increases, reducing muscle mass which increases the chance of the body accumulating fat and then increasing the risk of heart and blood vessel disease.¹⁵

¹⁵“Polemik Kebiri Kimia Bagi Pelaku Kekerasan Seksual”, Humas FH UI. 3 Februari, 2022. <https://law.ui.ac.id/polemik-kebiri-kimia-bagi-pelaku-kekerasan-seksual-oleh-nathalina-naibaho-dan-tunggal-s/>,

In the relative theory of punishment, sanctions are emphasized on their purpose. Sanctions are imposed not because people have committed criminal acts but so that people do not commit crimes.¹⁶ In many countries, retaliatory punishment for offenders is no longer popular, and has even led to many protests from the public and various human rights organizations. Ultimately it can only be achieved with sex offenders who really want to control their offending behavior and really want to change, and thus need help to do so. Like many probation-led rehabilitation programs, success is only really achieved with those who are motivated to change, and this can also be the case with chemical castration. This seems to be another reason why such treatment should only be offered on a voluntary basis.¹⁷

Thus, chemical castration regulated in the Child Protection Law is in the author's view a wrong and erroneous application that is not relevant to the purpose of punishment. So in this case, the interpretation of a rule of law should be done carefully in order to provide overall benefits and the interpretation of criminal law is not only as a means to take revenge between individuals but must provide a development to create overall goodness, in this explanation the elimination of castration should be abolished in Indonesia in terms of the concept of relative punishment. Because the main purpose in carrying out a punishment in the form of this action is to provide guidance to the perpetrator, not to provide a sense of retaliation.

Reformulation Of Chemical Castration Sanctions For Perpetrators Of Sexual Crimes Against Children That Are Relevant To The Relative Theory Of Punishment

Legal reform efforts in Indonesia that have been started since the birth of the 1945 Constitution cannot be separated from the foundation and at the same time the objectives to be achieved as formulated in the preamble of the 1945 Constitution. However, considering that legal issues touch on very broad aspects of people's lives so that they change every time, then reform cannot be done in an instant. As can be seen, the scope of criminal law reform includes:¹⁸

1. Substance reform of criminal law
2. Renewal of criminal law structure, and
3. Renewal of criminal law culture.

¹⁶ Ruben Achmad, "Hakekat Keberadaan Sanksi Pidana Dan Pemidanaan Dalam Sistem Hukum Pidana", *Jurnal Legalitas* Vol. V, No. 2 (2013): 93

¹⁷ Karen Harrison, "The High-Risk Sex Offender Strategy In England And Wales: Is Chemical", *The Howard Journal*, Vol. 46 No. 1 (2007): 25

¹⁸ Rahmanuddin Tomalili, *Hukum Pidana*, (Yogyakarta: CV Budi Utama, 2019), 21

In the reform of the substance of criminal law, Barda Nawawi Arief also argues that an effort to reshape (reorientation and reform) of criminal law in accordance with the socio-philosophical, socio-political, socio-cultural values of society. So this criminal law reform includes renewal of the concept of value, renewal of basic ideas and renewal of points of thought as well as renewal of the paradigm / insight.¹⁹

The basis of the establishment of Law No. 17 of 2016 concerning Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection is a form of attention from the government in overcoming sexual crimes so that later it can provide a deterrent effect on the perpetrators. The increasing number of violence that leads to the safety of children's lives is one of the reasons the government formed this law. As we can see, there is a new sanction that provides additional punishment in the form of chemical castration and the installation of a presence detection device (chip) against sex offenders. This additional punishment will be implemented if the perpetrator has carried out the main punishment and its implementation is further regulated in the implementing regulations.

Referring to the establishment of the relative theory of punishment, the relative theory of punishment views the provision of punishment not as retaliation for the wrongdoing committed by the perpetrator but as a means to achieve useful goals to protect the community towards welfare.²⁰ Retaliation in itself has no value, but only as a means to protect the interests of society. The basis of the justification of punishment lies in its purpose, which is to reduce the frequency of crime. Punishment is imposed not because people make crimes, but so that people do not commit crimes.²¹ It is expected that the end result of this theory of relative punishment is as a means of prevention, namely general prevention aimed at the community. Under this theory, the law is imposed to carry out the purpose of the punishment, which is to remedy the dissatisfaction of the community as a result of the crime. It is not the perpetrator who commits the crime. The purpose of punishment must be viewed ideally, other than that, the purpose of punishment is to prevent (prevention) crime.²²

In reformulating the criminal provisions for crimes of sexual violence against children, the author firstly argues that the meaning and essence of criminal law reform is related to the

¹⁹ Irsyad Dahri dan Ahmad Syahril Yunus, *Pengantar Restorative Justice*, (Jawa Barat: Guepedia, 2022), 98

²⁰ Zainal Abidin Farid, *Hukum Pidana I*, (Jakarta: Sinar Grafika, 2007), 4

²¹ Nashriana *et.al*, *Perkembangan Hukum Pidana*, (Bandung: Media Sains Indonesia, 2022), 67

²² Ibrahim Fikma Edrisy, *et.al*, *Penologi*, (Bandar Lampung: Pustaka Media, 2023), 23

background and urgency of criminal law reform.²³ The author reviews the background of the need for an update to the criminal provisions for crimes of sexual violence from the aspects of the sociopolitical, sociophilosophical, sociocultural value approach which will be explained as follows.

When looking at the sanctioning of chemical castration to the perpetrator on the aspect of sociopolitical values of society. That the provision of chemical castration is no guarantee in making the perpetrator deterrent. According to the World Rape Statistic or world statistics on rape in various worlds prove that the death penalty or castration is not effective in causing a deterrent effect or prevention of sexual crimes. World statistics on sexual crimes published every two years show that countries that apply the death penalty and castration penalties actually show the top ten positions as countries that have the highest cases of sexual crimes in the world.²⁴ Because it is proven that by giving chemical castration sanctions to perpetrators, it does not cause cases of sexual violence to decrease. Based on the records of the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia (KemenPPPA), cases of sexual violence against children reached 9,588 cases in 2022. This number has increased from 2021, which was 8,730 cases.

When looking at the sanctioning of chemical castration to the perpetrator on the aspect of socio-philosophical values. Basically, the purpose of criminal law is to provide improvements to the perpetrators, but by providing sanctions for chemical castration is in fact contrary to divine nature, Komnas HAM argues that the provision of punishment through castration can be qualified as cruel and inhumane punishment which is thus not in accordance with the constitution and Indonesia's commitment in the field of human rights. Article 28G paragraph (2) of the Indonesian Constitution states that "every person has the right to be free from torture and degrading treatment".²⁵ Thus, the right is constitutional and the promotion, protection and fulfillment become a constitutional commitment as well. The provision of punishment by chemical castration can be qualified as a violation of rights, namely the violation of the consent to medical action and the right to protection of a person's physical and mental integrity.

²³Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perlembangan Penyusunan Konsep KUHP Baru*, (Jakarta: Kencana, 2008), 29

²⁴ Fitri Wahyuni, "Hukuman Kebiri Kimia Terhadap Pelaku Tindak Pidana Perkosaan Anak Dan Kaiatannya Dengan Hak Asasi Manusia", *Jurnal Hukum Dan Peradilan* Vol 6, No 2 (2017): 296

²⁵Sofian Syaiful Rizal, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Anak Dalam Perspektif HAM", *Legal Studies Journal*, Vol 1 No 1 (2021): 62

When looking at the sanctioning of chemical castration to the perpetrator on the aspect of socio-cultural values. It can be seen that the purpose of giving a punishment to the perpetrator is resocialization to society. However, in their social life former prisoners often get stigmatized and treated unequally or discriminated against. The social environment is an area where various activities and social interactions take place between various groups and their institutions with symbols and values, and is related to the ecosystem (as a component of the natural environment) and spatial planning or spatial designation, as part of the built / artificial environment).²⁶

This sexual crime is basically not just a matter of genital penetration, the Commissioner of the Indonesian Child Protection Commission (KPAI) in the field of Education, Retno Listyarti assesses that chemical castration will not be effective if the motive of the perpetrator of the crime is due to psychological factors rather than the drive of libido or hormones in his body. Referring to the provisions of Article 81 paragraph (7) of the Child Protection Law which contains the sanction of chemical castration, as a medical action classified as a type of punishment against the body has not provided a deterrent effect and has not been able to comprehensively prevent the occurrence of sexual violence against children. In this case, the provision of additional sanctions of chemical castration looks as if it does not think about how the effect continues and can be a boomerang that will lead to new victims, in this case the pedophile perpetrator himself, and as if this is an attempt at revenge and is imposed based on biological considerations alone in the name of interest.²⁷

The doctor's involvement in the implementation of chemical castration sanctions against sex offenders is not only potentially neglecting the medical oath, but is also considered contrary to the ethics of the medical profession (KODEKI).²⁸ The doctor's profession exists to provide services or help to cure sick people who come to him, not people who are physically healthy are given something that will hurt their physical parts. This does not reflect the practice of a doctor in serving the community which places doctors as the main component of providing health services to the community aimed at increasing awareness,

²⁶Zainul Akhyar, *et al*, "Persepsi Masyarakat Terhadap Mantan Narapidana Di Desa Benua Jingah Kecamatan Barabai Kabupaten Hulu Sungai Tengah", *Jurnal Pendidikan Kewarganegaraan*, Vol. 4 No. 7 (2014): 549

²⁷ Luh Nia Sasmita, "Sanksi Kebiri Kimia Dalam Konteks Pembaharuan Hukum Pidana Di Indonesia", *Jurnal Kertha Semaya*, Vol. 9 No. 7 (2021): 1126

²⁸ Kodrat Alam, *Op.Cit*, hlm. 114

willingness, and ability to live healthy for everyone in order to realize optimal health status as referred to in Article 2 of Law Number 29 of 2004 concerning Medical Practice.

This is reinforced by the lack of uniformity and understanding of judges in the imposition of punishment in cases of sexual crimes against children. This is due to the fact that there are still many pros and cons in giving chemical castration to the perpetrators. Like some of the decisions that the author has completed as follows:

1. Decision Number 363/Pid.Sus/2021/PN.Bjm. The defendant has violated one of the articles of the Child Protection Law so that he is subject to imprisonment for 20 years and an additional sentence of chemical castration for two years. In this decision, the judge said that all actions committed by the defendant had fulfilled the provisions in Article 81 Paragraph (3) of the Child Protection Law. Supposedly, the imposition of chemical castration only applies to sanctions that have violated Article 81 Paragraph (4) and (5) of the Child Protection Law;
2. Decision Number 444/Pid.Sus/2021/PN.Bjm. The defendant has violated one of the articles of the Child Protection Law so that he was sentenced to imprisonment for 20 years and an additional sentence of chemical castration for two years. In this decision, the judge said that all actions committed by the defendant had fulfilled the provisions in Article 81 Paragraph (2) of the Child Protection Law. Supposedly, the imposition of chemical castration only applies to sanctions that have violated Article 81 Paragraph (4) and (5) of the Child Protection Law;
3. Decision Number 5/Pid.Sus/2022/PN.Bjm. The defendant has violated one of the articles of the Child Protection Law so that he was sentenced to imprisonment for 20 years and an additional sentence of chemical castration for two years. In this decision, the judge said that all actions committed by the defendant had fulfilled the provisions in Article 81 Paragraph (3) of the Child Protection Law. Supposedly, the imposition of chemical castration only applies to sanctions that have violated Article 81 Paragraph (4) and (5) of the Child Protection Law.

Article 81A paragraph (1) states that the measures referred to in Article 81 paragraph (7), namely chemical castration and the installation of electronic detection devices, are imposed for a maximum period of two years and carried out after the convict has served the main punishment. This is what complicates the implementation of the sanction itself. If based on this provision, the implementation of chemical castration against sex offenders requires or

waits for a very long time, considering that the implementation of the main punishment alone is at least 10 years of imprisonment.

This is what causes the implementation of chemical castration seems to cause double punishment against sex offenders. In addition to the term sanctioning action against the prisoner is not in accordance with the implementation of this chemical castration which should be after the perpetrator has served the basic punishment, the perpetrator is free and regains his human rights intact. But with the provision of chemical castration action is usually an injustice for the perpetrator. Because it will feel that his human rights are deprived twice.

Moreover, in Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration Measures, Installation of Electronic Detection Devices, Rehabilitation and Announcement of the Identity of Perpetrators of Sexual Violence Against Children also still makes opportunities so that chemical castration is not applied. Article 2 of this Government Regulation explains that chemical castration, installation of electronic detection devices, and rehabilitation are imposed on the perpetrator of sexual intercourse based on a court decision that has permanent legal force. This means that the judge in deciding a case and is supported by available evidence. Keep in mind that judges should not decide a case by solely relying on material evidence of facts or objective circumstances that occur in a case, but judges must compile and include their belief that the defendant is truly guilty and deserves a criminal punishment.²⁹

When looking at Article 6 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, this chemical castration is carried out through several stages, namely clinical assessment, conclusion and implementation. Furthermore, in Article 10 it is said that if in the case of the conclusion that the perpetrator of sexual intercourse is not feasible to be subjected to chemical castration, the implementation of chemical castration is postponed for a maximum of six months, and a re-clinical assessment and re-conclusion will be carried out to ensure whether or not it is feasible to be subjected to chemical castration. Whereas we both know, that if the judge has decided on a decision, the decision must have elements of justice, certainty and usefulness for both the victim and the perpetrator.

²⁹Triantono, Muhammad Marizal, "Parameter Keyakinan Hakim Dalam Memutus Perkara Pidana", *Jurnal Hukum Justitia Et Pax*, Vol. 37 No. 2 Desember (2021): 280

The difference between main punishment, additional punishment and action punishment can essentially be seen through the gradation of the punishment. The most severe punishment is the main punishment with the aim of providing a deterrent effect to the convicted person, such as deprivation of freedom rights (imprisonment), deprivation of basic rights in the form of life rights (death penalty), and property rights (fines). On the other hand, additional punishment provides suffering to the perpetrator as the main goal, but the legal gradation is lighter when compared to the main punishment, because usually additional punishment only deprives rights related to the interests of the State, not to the rights that are natural.³⁰ Additional punishment in Article 10 (b) of the Criminal Code can be an example of revocation of certain rights, confiscation or seizure of certain goods, and announcement of the judge's decision. In contrast to the action sanction which is based on the philosophy of care and recovery of the perpetrator, so that the level of sanctions is lighter than additional punishment. action sanctions are usually the perpetrator is only given education and teaching through government coaching institutions.

The imposition of prison sentences on perpetrators of violence is a fairness and obligation as part of efforts to retaliate and provide a deterrent effect to the perpetrators. Imprisonment or confinement is expected to be the last solution to overcome the number of violence that arises in society. However, the repetition of violence by the same perpetrators or new perpetrators is still very rampant with the modernization of the times and the demands of inner and physical needs. Imprisonment is considered irrelevant to the current times, especially in relation to several criminal offenses.³¹

The need for a legal breakthrough to provide therapeutic/treatment effects to criminal offenders (in addition to imprisonment) through medical rehabilitation efforts, namely in the form of psychiatric rehabilitation. The need to provide medical rehabilitation, namely psychiatric rehabilitation, for perpetrators of sexual violence in the Law can be carried out in conjunction with imprisonment or as an alternative punishment that can be carried out with the consideration of the judge by looking at the appropriate evidence including witness testimony from psychiatric medical experts (Psychiatrist).

³⁰Aditia Arief Firmanto, "Kedudukan Pidana Kebiri Dalam Sistem Pemidanaan Di Indonesia (Pasca Dikeluarkannya Perppu No. 1 Tahun 2016)", *Jurnal Hukum Novelty*, Vol. 8 No, 1 (2017): 9

³¹Guruh Tio Ibipurwo, *et.al*, "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restorative", *Jurnal Hukum Respublica Fakultas Hukum Universitas Lancing Kuning*, Vol. 21 No. 2 (2022): 161

Psychiatrists can provide consideration to judges based on psychiatric medical science that the perpetrator can be rehabilitated or not. Rehabilitation, according to the author's opinion, can be imposed simultaneously with imprisonment while still paying attention to the concept of relative punishment which prioritizes certain goals that are beneficial to the criminal. In other words, the punishment imposed on the perpetrator of violence is not to retaliate for his violence, but to improve and maintain public order. So from what has been explained above, according to the author, it is necessary to reformulate the law in the provisions of several articles in Law Number 17 of 2016 and indirectly also reformulate Government Regulation of the Republic of Indonesia Number 70 of 2020, so that it remains related and can create clear legal objectives, namely law that is just, certain and useful. Therefore, the reformulation of each article according to the author is as follows:

No	Before Reformulation	After Reformulation
1	Article 81 paragraph (7) of Law Number 17 Year 2016: "Against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of chemical castration and installation of electronic detection devices".	Article 81 paragraph (7) of Law Number 17 Year 2016: "Against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of medical rehabilitation".
2	Article 81A of Law Number 17 Year 2016: "Measures as referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 (two) years and shall be implemented after the convict has served the main punishment".	Article 81A of Law Number 17 Year 2016: "Measures as referred to in Article 81 paragraph (7) shall be implemented simultaneously when the convict is serving the main punishment".
3	Article 81A paragraph (3) of Law Number 17 Year 2016: The implementation of chemical castration is accompanied by rehabilitation	Article 81A paragraph (3) of Law Number 17 Year 2016: The content of article 81A paragraph (3) is omitted from the author's reformulated version

Source: Processed Data Year 2023

The purpose of the reformulation of the article regarding the sanction of chemical castration is none other than to overcome the phenomenon of sexual crimes against children which is increasingly massive every year. By reformulating Article 81 Paragraph (7) of Law

Number 17 Year 2016, the author's version where chemical castration is replaced with medical action. Because the problem of the perpetrator is psychological, as well as having trauma in the past. Article 81A of Law Number 17 Year 2016 is the author's version where the psychological rehabilitation action provided runs simultaneously when the convict is serving the main punishment. This refers to the purpose of relative punishment, which is that in addition to providing a deterrent effect to the perpetrator, it must prioritize certain goals that are beneficial to the criminal in the future. Furthermore, Article 81A paragraph (3) is eliminated from the author's reformulation version, because chemical castration is no longer used and focuses on providing medical rehabilitation.

By reformulating several articles regarding child protection above, the author hopes that this will provide legal certainty and justice for all parties, especially for the perpetrators themselves. Because the implementation of this rehabilitation will be carried out together with the main punishment. In addition to getting a deterrent effect from imprisonment, of course the perpetrator is also simultaneously preparing himself, namely medical rehabilitation in the form of psychiatric rehabilitation so that later he can recover his psychic so that he can return to normal activities and be accepted by the community.

CONCLUSIONS

In practice, the application of chemical castration sanctions against sex offenders has not been implemented effectively in law enforcement in Indonesia even though there are rules governing it. This is because there is still a discrepancy between the additional criminal provisions determined by the legislator with the facts or circumstances that occur. Moreover, chemical castration is not in accordance with the aspect of human rights as stated that everyone has the right to be free from torture, punishment or treatment that is cruel, inhumane, degrading and human dignity. The provision of additional punishment in the form of chemical castration emphasizes more on the element of retaliation. The provision of chemical castration has almost no correlation with the reduction of sexual crimes against children.

In the relative theory of punishment, the sanction is emphasized on its purpose. Sanctions are imposed not because people have committed criminal acts but so that people do not commit crimes. In providing criminal sanctions or actions to perpetrators of sexual crimes there must be a further goal than just imposing punishment. This goal must first be directed to

the perpetrator of sexual crimes so that in the future the crime committed will not be repeated (prevention). This relative theory of punishment sees that the imposition of punishment aims to improve the criminal to become a good person and will not commit crimes again.

The proposed reformulation of the chemical castration sanction is seen from various aspects. First, the sociopolitical value aspect of society. That the sanction of chemical castration is no guarantee in making the perpetrator deterrent. Because it is proven that the sanction of chemical castration does not cause cases of sexual violence to decrease. Second, on the aspect of sociophilosophical value. Basically, the purpose of criminal law is to provide improvements to the perpetrators, but by providing sanctions of chemical castration is in fact contrary to divine nature, Third, when looking at the provision of additional criminal offenses in the form of chemical castration to the perpetrators of the aspects of sociocultural values. It can be seen that the purpose of giving a punishment to the perpetrator is resocialization to society. But in fact, the social life of ex-convicts is often stigmatized and treated unequally or discriminated against.

The need for a legal breakthrough to provide therapeutic/treatment effects to criminal offenders (other than imprisonment) through medical rehabilitation efforts, namely in the form of psychiatric rehabilitation. Therefore, it is necessary to reform the law on the provisions of several articles in Law Number 17 Year 2016 and indirectly also reformulate PP No. 70 Year 2020, so that it remains related and can create clear legal objectives. The purpose of the reformulation of the article regarding the sanction of chemical castration is none other than to overcome the phenomenon of sexual crimes against children which is increasingly massive every year. By reformulating Article 81 Paragraph (7) of Law Number 17 Year 2016, the author's version where the chemical castration action is replaced with a medical action, Article 81A of Law Number 17 Year 2016, the psychological rehabilitation action provided runs simultaneously when the convict is serving the main punishment in the author's version. Furthermore, Article 81A paragraph (3) is omitted from the author's reformulation version, because chemical castration is no longer used and focuses on providing medical rehabilitation.

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