



## Criminal Law: Chemical Castration Against People Sexual Violence Against Children

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### ABSTRAK

Kasus kekerasan seksual terhadap anak setiap tahun mengalami peningkatan di Indonesia. Berdasarkan data Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, total anak korban kekerasan seksual mengalami peningkatan. Tahun 2019 hingga 2020 kasus kekerasan seksual terhadap anak meningkat menjadi 6.980 kasus, kemudian dari tahun 2020 hingga 2021 terjadi peningkatan 8.730 kasus. Penelitian ini bertujuan untuk mengetahui dan menganalisis tentang penjatuhan pidana penjara bagi pelaku persetubuhan terhadap anak di Indonesia; tentang kebiri kimia terhadap pelaku kekerasan seksual terhadap anak di Indonesia; tentang anak sebagai korban kekerasan seksual terhadap anak. Metode penelitian yang digunakan adalah yuridis normatif yang bersumber dari data sekunder, analisis hukum materiil bersifat kualitatif. Hasil penelitian menemukan bahwa penjatuhan pidana penjara bagi pelaku persetubuhan terhadap anak diancam dengan pidana penjara paling singkat 5 (lima) tahun sampai dengan pidana mati (dalam hal tertentu), serta berupa pidana tambahan kebiri kimia yang memenuhi syarat sebagai putusan yang belum dapat diterima dengan akal budi manusia. Hukuman berupa kebiri kimia merupakan putusan yang telah menjadi hukum positif, namun sejumlah pihak menilai hal tersebut tidak manusiawi, termasuk pernyataan Komnas HAM.



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### ABSTRACT

*Cases of sexual violence against children increase every year in Indonesia. Based on data from the Ministry of Women's Empowerment and Child Protection (Kempppa), the total number of children who were victims of sexual violence from 2019 to 2021 increased. From 2019 to 2020, cases of sexual violence against children increased to 6,980 cases, then from 2020 to 2021 there was another increase to 8,730 cases. This study aims to determine and analyze the imposition of prison sentences for perpetrators of sexual intercourse with children in Indonesia; about chemical castration for perpetrators of sexual violence against children in Indonesia; about children as victims of sexual violence against children. The research method used is normative juridical which is sourced from secondary data, the material legal analysis is qualitative. The results of the study found that the imposition of prison sentences for perpetrators of sexual intercourse with children is threatened with a minimum prison sentence of 5 (five) years to the death penalty (in certain cases), as well as how many additional chemical castration sentences meet the requirements as decisions that cannot be accepted by human reason. Sexual violence against children is a criminal act regulated in several Constitutions and other laws in Indonesia. The punishment of chemical castration is a decision that has become positive law, but several parties consider it inhumane, including the statement of Komnas HAM.*

#### 1. Introduction

Indonesia is one of the countries with case violence sexual to every child \_ year experience enhancement whereas the victim is women and children , This in accordance with Retno L. (FSGI) stated that 50% of cases violence sexual detected at the SD/MI level , 10 percent at the SMP level , and 40 percent at Pondok Islamic boarding school Out of 10 cases as much as 60% units education the under the Ministry of Religion (*Kementerian Agama Republik Indonesia*) and the remaining 40% under Ministry of Education and Culture.<sup>1</sup> The 1945 Constitution in Article 28b paragraph (2) states that "Each child entitled on protection from violence and discrimination ". Arrangement the declared mandatory give protection to every child from whole form violence nor discrimination .

Based on data collection carried out Ministry Empowerment Women and Child Protection (Kempppa) total child victims of violence sexual Still increase . From case violence sexual to child, threatened with punishment castration chemical, HW prosecuted punishment death and sentence castration chemistry Because raped 13 female students in Bandung. Muh Aris raped 9 children Woman under age in the region district / Mojokerto City. RSS teachers in Surabaya were sentenced punishment castration chemistry Because has raped 15 children he taught. Settings positive-law belonging new in Indonesia is application penalty castration chemistry. Castration chemistry is action medical For emphasize encouragement sexual. Castration chemistry is done with method include anti-androgenic (substance chemical) to the body someone for production hormone testosterone body they reduced .<sup>2</sup> This study formulate problem about Criminal Castration To Perpetrator Violence

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<sup>1</sup>Dian Ihsan, 10 *Kekerasan Seksual Terjadi di Sekolah pada 2023*, <https://www.kompas.com/edu/read/2023/02/21/060400271/10-kekerasan-seksual-terjadi-di-sekolah-pada-2023-86-anak-jadi-korban?page=all>. Diakses 26 Sept 2023

<sup>2</sup> Rachmawati, 4 *Kasus Kekerasan Seksual dengan Hukuman Kebiri Ada yang perkosa 15 Anak Laki-laki* <https://amp.kompas.com/regional/read/2022/02/15/144100378/4-kasus-kekerasan-seksual-dengan-vonis-hukuman-kebiri-ada-yang-perkosa-15> diakses 15 Februari 2024

sexual with child victims. Study This use type study law normative. According to Marzuki, research law normative is a process for find something rule law , principle law, as well doctrines law to use answer issue law encountered, in research type this, often law conceptualized as what is written in regulation legislation or law conceptualized as rules/norms that are man in behave in a manner deserve.<sup>3</sup> Furthermore with collect secondary data (library materials), for get information through search regulations/ legislation, as appropriate with problem research and then the data analyzed.<sup>4</sup>

## 2. Methods

This research is library research that uses descriptive methods, and the type of research used is Juridical Qualitative.<sup>5</sup> The problem approach itself is carried out by taking a normative approach based on existing rules or norms.<sup>6</sup> Furthermore, the formulation of this research problem is about how chemical castration is applied to perpetrators of crimes against children, which is more specifically related to sexual elements

## 3. Results and Discussion

### 3.1 Definition of Children as Victims

The legal aspect of the definition of a child in the eyes of positive Indonesian law is generally interpreted as someone who is not yet an adult (*minderjaring*/person who is not old enough) a person who is under age/underage condition (*minderjarigheid*/inferiority) who is often referred to as a child under supervision. They need to get ample opportunity to grow and develop optimally, both personally and socially, and efforts need to be made to protect the welfare of children by providing guarantees for the fulfillment of children's rights and treatment without discrimination.<sup>7</sup>

Article 1 number (2) of Law Number 13 of 2006 concerning Protection of Witnesses and Victims states that a victim is someone who experiences physical, mental, and/or economic suffering as a result of a criminal act. Children are very vulnerable to becoming targets/victims of sexual violence because children are often in a complex position characterized by high helplessness/dependence, with adults around them. The perpetrators are generally people who have dominance over the victim (people close to them), such as parents and teachers. Therefore, the scope of the definition of the perpetrator is still too broad, the specific characteristics/personality type cannot be seen. In short, anyone has the potential to become a perpetrator of child sexual violence or pedophilia. The perpetrator's ability to become a victim, either by deception of power or threats and violence, makes this type of crime difficult to handle/anticipate. Of the many cases of child sexual violence, most are revealed too late, and some have already had fatal consequences.<sup>8</sup>

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<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada, 2010) p.35.

<sup>4</sup> Aprinisa "Credit Saving Efforts Affected By Corona Virus Disease 2019 (Covid-19) Through The Credit Restructure Process". *Progressive Law Review*, 2.2 (2020), p.33 DOI: 10.36448/plr.v2i02.32.

<sup>5</sup> Hartanto, Kelik Endro Suryono, Erna Tri Rusmala Ratnawati, Restorative Justice Dalam Peradaban Hukum Modern (Refleksi Nilai-Nilai Agama Hindu), *BelomBahadat :Jurnal Hukum Agama Hindu*, 13.1 (2023), p.63 <https://doi.org/10.33363/bb.v13i1.967>

<sup>6</sup> Melinda Alfiani, Suriani Siagian, "Competence Of Courts Who Have The Authority To Judge Divorce Cases Between Different Religions", *Jurnal Hukum De'rechtsstaat*, 10.1 (2024) p. 97 <https://doi.org/10.30997/jhd.v10i1>

<sup>7</sup> Junaidi, "Perlindungan Hukum Terhadap Hak Anak di Indonesia", *Jolsic*, 8.1 (2021), p.2 <https://doi.org/10.20961/jolsic.v8i1.48698>

<sup>8</sup> Ivo Noviana, 2015, "Kekeerasan Seksual Terhadap Anak, dan Penanganan, *Jurnal Hukum*", *Sosio Informa*, Vol. 01/No.1/April Kementrian RI, p.14 DOI: 10.33007/inf.v1i1.87

The definition of sexual intercourse is: intercourse between male and female genitals, usually with the aim of having children (pregnancy). The male's (vital) body part must enter the female's body part and release semen.<sup>9</sup> A number of children who are victims of sexual violence experience things that need to be worried about, for example: psychological problems and depression so that they decide to commit suicide due to the suffering and shame caused by the sexual violence they experience.<sup>10</sup>

Enforced as a legal umbrella to protect children from sexual violence according to Law Number 23 of 2002 concerning Child Protection. However, in reality it has not been able to comprehensively prevent perpetrators of sexual violence against children. There was a change in the Child Protection Law in 2014 with the threat of increasingly severe criminal penalties, but in reality the number of perpetrators of sexual violence and the number of cases of sexual violence against children as victims is increasing.

### 3.2 Chemical Castration

The castration punishment adopted by Indonesia is a punishment given to pedophiles who commit acts of sexual violence against children, a fine in the form of touching the child's genitals, rubbing his genitals on the child's body, masturbating the child, partially or completely penetrating the child's genitals or forcing the child to undergo oral or anal genetics. The term castration in the Great Dictionary of the Indonesian Language is removing the testicles of a female animal. Further explanation, castration can also be done on humans. The implementation of castration has two methods that have been carried out by humans. Namely castration by removing the function of the testicles directly through surgery and chemical castration by injecting special drugs. Each method has different physical and psychological effects. The practice of castration punishment has been practiced by other countries and is special (specific). Castration in Indonesia was initially with circumcision, but in this criminal witness what is used is chemical castration (not physical).

### 3.3 Violence sexual Against Children

Sexual violence is any form of sexual threat and coercion, sexual violence can be said to be sexual contact that is not desired by one party. The essence of sexual violence is the existence of verbal "threats" or "coercion" of action.<sup>11</sup> It is an act that intentionally causes harm/loss, both physically and emotionally, to children. Forms of violence against children can be classified into physical violence, psychological violence, sexual violence and social violence. Sexual violence against children according to End Child Prostitution in Asia Tourism Int., is a relationship (interaction) between a child and an adult such as a sibling, parent, or stranger where the child is used as an object to satisfy the needs of the perpetrator of sexual violence.<sup>12</sup>

This act is accompanied by coercion, threats, deception and even pressure. Acts/behaviors that constitute sexual violence against children are not always accompanied

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<sup>9</sup> R. Soesilo, 1998, *Kitab Undang -Undang Hukum Pidana (KUHP) Serta Komentarny Lengkap Pasal Demi Pasal*, Bogor Politeia, p.209

<sup>10</sup> Dodi Suryandi, *et al*, Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan seksual Terhadap Anak, *Jurnal Darma Agung*, Vol 28, No 01, pp.87-88 <http://dx.doi.org/10.46930/ojsuda.v28i1.464>

<sup>11</sup> Irsyad, *et al*, 2010, *Panduan Bantuan Hukum Bagi Para Legal*, Yogyakarta, Lembaga Bantuan Hukum Yogyakarta, p.1-2

<sup>12</sup> Erny Yuniyanti, *Analisis Faktor Yang Mempengaruhi Kejadian Kekerasan Seksual Terhadap Anak Di Pusat Pelayanan Terpadu Kota Semarang, Unnes, Semarang*, 2020, p.17

by physical contact with the child as the victim. Forms of physical sexual violence can be in the form of rape or molestation.

Law number 35 of 2014 defines sexual violence as any act to end the suffering or misery of a child physically, psychologically, sexually, and/or neglect, including threats to commit unlawful acts, coercion, or unlawful deprivation of liberty. Law no. 12 of 2022 concerning criminal acts of sexual violence (hereinafter referred to as the TPKS Law). Article 1 paragraph (1) of the TPKS Law can cover all acts that have elements of sexual violence, namely all acts whose elements are criminal acts as stipulated in this Constitution and "other" acts of sexual violence as stipulated in this Constitution, even the TPKS Law regulates the scope of corporations as perpetrators.

### 3.4 Impact Violence sexual

The impact of sexual violence can occur such as bruising, pain, bleeding from the vagina or anus, blisters in certain areas, bleeding under the skin, possible lumps due to the victim's resistance. A number of more detailed general impacts experienced by victims of sexual violence are:<sup>13</sup>

1. Lack of self-motivation or self-esteem felt by the victim.
2. Problems that are likely to occur are mental health problems, for example: too worried, problems with eating, then difficulty sleeping.
3. Severe pain and serious injury, resulting in disability.
4. The risk of sexual violence is damage to the reproductive organs, infection with sexually transmitted diseases.
5. Developing aggressive behavior such as becoming angry, or even becoming quiet and not liking to socialize.
6. For children, they usually experience nightmares due to the harsh treatment from the perpetrator's memory that is embedded in the child.
7. Risk of death.

### 3.5 Regulation of Chemical Castration for Perpetrators of Rape Crimes Against Indonesian Children

Sexual violence targeting children increases every year, one example (early) case of HW sexual violence against minors that occurred in Bandung, the polemic demanded the death penalty for HW, for raping 13 female students. The accused of raping 13 female students, female students HW was demanded the death penalty. In the trial held at the District Court, Bandung, January 11, 2022, the prosecutor said that HW was proven guilty of raping 13 female students who were still children that he taught. The prosecutor assessed that HW was proven to have violated Article 81 paragraph 1, paragraph 3, and paragraph 5 in conjunction with Article 76D of Law Number 17 of 2016 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 65 paragraph 1 of the Criminal Code as the first indictment. Another case example is sexual violence against a girl committed by her biological father in Sidoarjo Regency, this incident has been going on for 4 (four) years since 2019.<sup>14</sup>

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<sup>13</sup> Bagong Suyanto, *Masalah Sosial Anak*, (Jakarta: Kencana, 2010) pp.105-106

<sup>14</sup> KemenPPPA. *Kawal Kasus Kekerasan Seksual Terhadap Anak Kandung Di Sidoarjo*, Kemenpppa: Keluarga Berperan Utama Dalam Perlindungan Anak, <https://www.kemenpppa.go.id/index.php/page/read/29/4522/kawal-kases-kekerasan-sexual-terhadap-anak-kandung-di-sidoarjo-kemenpppa-keluarga-berperan-utama-in-child-protection>, accessed Oct 24, 2023.

In the initial case of "HW", this demanded a chemical castration sentence for her crimes and her cassation was rejected by the Supreme Court, which was filed by the Deputy Attorney General for Corruption Crimes of West Java for the trial. The demand for the death penalty and castration for "HW", this has given rise to pros and cons from parties who support the castration sentence, but there are also those who reject it. One party that also rejected the demand for the death penalty for "HW" was Komnas HAM. Quoted from Kompas.tv, Komnas HAM opposes the death penalty for all types of crimes, including the rape case committed by "HW". The party that stated its rejection of the chemical castration sentence, based it on the principles of human rights, one of which is the right to health. Furthermore, the Commissioner of Komnas HAM stated that the right to life was already stated in Article 28 A of the 1945 Constitution, so he also did not agree with the demand for chemical castration.<sup>15</sup>

Chemical Castration Punishment creates disparity in legal perception in society, there are pros and cons. Parties who reject the implementation of chemical castration punishment because Indonesia uses the reason that there is the International Covenant on Civil and Political Rights (ICCPR) The International Covenant on Civil and Political Rights and CAT (Convention Against Torture) should not provide punishment that is amputating/dysfunctioning human organs, in this case violating the fulfillment of basic human rights, namely the right not to be tortured and the right to be free from torture or treatment that degrades human dignity and dignity guaranteed by the 1945 Constitution. The cost aspect is also a concern in the implementation of chemical castration punishment and the problem of the need for informed consent from the perpetrator of violence for the chemical castration action carried out on him.<sup>16</sup>

Non-sexual violence cannot be prevented, can be passed down, causing great unrest for society and academics. The violence was then responded to and resolved by the government so that the government formed Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection which means providing a deterrent effect and preventive efforts against criminal acts of sexual violence against children. This government regulation in lieu of the Basic Law is a response given by the government to increase (quantity and quality) cases of sexual crimes, especially against children in Indonesia.

In Indonesia, the application for chemical castration is stated in Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Child Protection. The changes made in Law Number 17 of 2016 are as follows:

Provisions of Article 81:

- a) Any person who violates the provisions of Article 76D shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 years and a maximum fine of Rp. 5,000,000,000,-;
- b) The criminal provisions as referred to in paragraph (1) shall also apply to any person who intentionally has sexual intercourse with himself or with another person;
- c) In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, person who has a family relationship, child caretaker,

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<sup>15</sup>Maulana Ramadhan, *Polemik Tuntutan Hukuman Mati HW*, Pemerksa 13 Santriwati, <https://www.kompas.com/Wiken/read/2020/01/15/074500581/polemik-tuntutan-hukuman-mati-Herry-Wirawan-pemerksa-13-santriwati> accessed 15 January 2024

<sup>16</sup> Nuzul Qur'aini Mardiyah, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual", *Jurnal Konstitusi*, 14.1, (2017), p.217 <https://doi.org/10.31078/jk14110>

- educator, education personnel, official in charge of child protection, or committed by more than one person together;
- d) In addition to the perpetrators referred to in paragraph (3), an additional penalty of 1/3 of the criminal threat is also imposed on every perpetrator who is convicted of committing a crime as referred to in Article 76D;
  - e) In the event that the crime as referred to in Article 76D causes more than 1 (one) victim, resulting in serious injury, mental disturbance, infectious disease, impaired or loss of reproductive function and/or the victim dies, the perpetrator shall be punished with the death penalty for life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years;
  - f) In addition to being subject to the penalties as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity;
  - g) The perpetrators as referred to in paragraphs (4) and (5) may be subject to actions in the form of chemical castration and installation of electronic detector devices;
  - h) The actions as referred to in paragraph (7) are decided together with the main penalty \_the period of implementation of the action;
  - i) Additional penalties and actions that are excluded for child perpetrators

The provisions of Article 82 are amended to read as follows:

- a) Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 years and a maximum fine of Rp. 5,000,000,000;
- b) In the case of a criminal act as referred to in paragraph (1) being committed by a parent, guardian, person who has a family relationship, child caretaker, educator, education personnel, officer tasked with protecting children, or committed by more than one person together, the punishment shall be increased by 1/3 of the criminal threat as referred to in paragraph (1);
- c) In addition to the perpetrator as referred to in paragraph (2), an additional 1/3 of the criminal threat shall also be imposed on any perpetrator who is convicted of committing a criminal act as referred to in Article 76E;
- d) In the case of a criminal act as referred to in Article 76E causing more than 1 (one) victim, resulting in serious injury, mental disturbance, infectious disease, impaired or loss of reproductive function, and/or death, shall be punished with an additional punishment increased by 1/3 of the criminal threat as referred to in paragraph (1);
- e) In addition to being punished as referred to in paragraph (1) to paragraph (4), the perpetrator may be given additional punishment in the form of announcing the perpetrator's identity;
- f) The perpetrator as referred to in paragraph (2) to paragraph (4) may be given punishment in the form of rehabilitation and installation of electronic detector devices.

Between Article 82 and Article 83, according to Law 17/2016, 1 (one) article is inserted, namely Article 82A which reads as follows:

- a) The actions as referred to in Article 82 paragraph (6) are carried out during and/or after the convict has served his sentence;
- b) The implementation of the actions as referred to in paragraph (1) is under periodic supervision by the ministry that organizes government affairs in the fields of law,

social, and health.

### 3.6 IDI's Consideration of Chemical Castration Sanctions

The Indonesian Doctors Association (IDI) stated that it disagrees with the castration sanction, that castration has many side effects, so IDI strongly disagrees with chemical castration. Where the unwanted side effects of castration, the possibility of mental (psychological) problems that cause sex crimes and opportunities for prisoners to commit more serious crimes.<sup>17</sup>

The Chairman of the Andrology Specialist Doctors Association, Prof. Wimble Pangkahlila explained that chemical castration also causes consequences such as heart attacks, osteoporosis, and cognitive brain damage. The chemical castration process will reduce testosterone hormones so that sexual desire is lost. If this pedophile is chemically castrated after serving a prison sentence, the perpetrator has the potential to find a gap to arouse his sexual desire again, namely by coming to the doctor to ask to be injected with a sexual desire that has reawakened.<sup>18</sup> The Indonesian Doctors Association (IDI) rejected the idea of not wanting to have a role as the executor of the crime, this is based on the 2012 Code of Medical Ethics (KODEK) article (5) which states that "every act/advice from a doctor that can weaken the body's resistance, both psychologically and physically, must obtain the consent of the patient/family and only be given attention to good patients. "In the explanation chapter" it is explained that weakening the patient's resistance, both psychologically and physically, is contrary to the essence of medical knowledge unless there is a justification for the action.<sup>19</sup>

In the provisions of Article 81 paragraph (8) of the Child Protection Law, it is determined that the criminal act of chemical castration is decided in the same way as the main crime. This action itself aims to provide benefits/improve the perpetrator, while the punishment of chemical castration is not a means of rehabilitation that can cure pedophilia, which is a deviation of individual sexuality.<sup>20</sup>

### 3.7 Type Type Chemical Drugs for Reduce Testosterone namely:

#### 3.7.1 Cyproterone Acetate (CPA)

Cyproterone Acetate is a competitive progesterone with dihydrotestosterone which is an intracellular androgen whose main function is to bind to androgen receptors. This drug works by reducing sexual desire and arousal to a minimum by drastically reducing testosterone (suppressing LH and FSH). The dose of this drug is 100mg per day. However, the effects of this drug are temporary, libido will disappear within two weeks after treatment begins and will reappear (recover) within two weeks. If treatment is stopped, sexual desire and arousal will return.<sup>21</sup>

#### 3.7.2 Medroxyprogesterone Acetate (MPA)

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<sup>17</sup> Assembly Honor ethics Indonesian Medicine (MKEK), *Kode Etik Kedokteran dan Pendomaan Pelaksanaan Kode Etik Kodokteran Indonesia*, Code of Ethics Medicine, Jakarta

<sup>18</sup> Atet Sumanto, "Tindakan Kebiri Kimia Bagi Pelaku Tindak Pidana Persetubuhan Dengan Menggunakan Kekerasan Terhadap Anak di Indonesia", *Perspektif*, Vol. 22, No. 2. 2017, pp.111-122 DOI: 10.30742/perspektif.v22i2.190

<sup>19</sup> (MKEK), Code of Ethics Medicine And Guidelines Implementation of the Code of Ethics Indonesian Medicine.

<sup>20</sup> Gusti Ngurah Yulio, dkk, dalam Sofian Syaiful R. "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Anak dalam Perspektif HAM", *Legal Studies Journal*, Vol. 1, No.1, 2021. p.62

<sup>21</sup> Muhammad Ilham Aldika Akbar, 2020, *SLE Dalam Kehamilan*, Surabaya, Airlangga University Pres, p.



Medroxyprogesterone Acetate or known as Depo Provera contains synthetic progesterone. Happy to sew more female hormones male body, male sexual desire will decrease. Depo Provera (medroxyprogesterone acetate) is usually used to control pregnancy in fertile women. So this is included in the class of contraceptive drugs that may be used for chemical castration. This drug is injected into a vein, with an active working time of 14-15 weeks.<sup>22</sup>

### 3.7.3 Leuprolide and Triptorelin

An effective testosterone synthesis inhibitor, triptorelin, is used as a treatment method with triptorelin, it is believed to reduce or even end sexual deviant behavior, but still has the potential for relapse. If this drug is given in the long term, then RH and testosterone levels will decrease, and eliminate sexual desire.

## 3.8 Consideration Komnas HAM

The basic human rights are something that is an effective testosterone synthesis inhibitor, namely triptorelin which is used as a treatment method with triptorelin, it is believed to be able to reduce and even end deviant sexual behavior, but still has the potential for relapse. If this drug is given in the long term, then the RH and testosterone levels will decrease, and eliminate the sexual desire that is very inherent in the nature and life of humans. Prosperous human rights can be traced back to the beginning of the story of human existence, namely the beginning of awareness of its position as a legal subject. The history of human rights began to develop when human rights began to be upheld and fought for from the emergence of the formation of public power itself, namely the state/government. So the basic thing about human rights is in the scope of human relations (individuals) with society.<sup>23</sup> See Komnas HAM regarding the application of chemical castration punishment for perpetrators of sexual violence, namely:

1. The imposition of criminal penalties using the castration method can be qualified as an inhumane punishment, so it is not in accordance with the constitution and Indonesia's commitment to human rights.
2. The imposition of additional punishment with castration (either chemical or by medical surgery), can also be qualified as a violation of rights, namely a violation of the right to medical treatment and the right to protection of a person's physical and mental integrity.
3. Doctors, legal experts and criminologists argue that sexual violence is not limited to medical impacts, but also psychological and social. Acts of sexual violence are not only in the form of genital penetration. In this case, in addition to punishment based on applicable laws and regulations, what must be given is an effort to restore through comprehensive rehabilitation, both medical, psychological, and social, while still being based on human rights.
4. The Perppu on castration punishment should be reviewed/not issued. Komnas HAM views that handling sexual crimes against children, in this case, is also a demand

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<sup>22</sup> Hendri Yulius, *Tidak Semua Seks Itu Jorok*, (Jakarta: Elex Media Komputon, 2020), p.135

<sup>23</sup> National Commission on Human Rights. *Keterangan Pers Pandangan Komnas HAM mengenai Hukuman Kebiri Bagi Pelaku Kejahatan Seksual*. <https://www.komnasham.go.id/files/20160215-keterangan-pers-pandangan-komnas-ŞUNYOCK.pdf>, accessed 3 March 2023

for children to take comprehensive and consistent action and not only in the form of punishment, but also rehabilitation and prevention.<sup>24</sup>

Because sexual violence is not only medical but also psychological and social. The crime of sexual violence is not just the destruction of genitals, the punishment for which can be enforced based on statutory regulations, but must take into account recovery efforts through comprehensive rehabilitation, both medical, psychological and social, while still being based on human rights.<sup>25</sup>

The castration law in Indonesia is regulated in Law No. 23 of 2002 concerning Child Protection (Law No. 23/2002) and its amendments and Government Regulation No. 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. What is new, in addition to chemical castration, the latest amendments to Law 23/2002 and Government Regulation 70/2020 also regulate the imposition of additional criminal penalties in the form of installing an electronic detector device or chip, with the aim of finding out the position of former convicts.

Those who can be subject to Chemical Castration and Chip Installation as previously explained, the imposition of chemical castration and chip installation is intended for:

1. The perpetrator commits a criminal act of child molestation, as regulated in Article 76E of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection (Law 35/2014):
2. Everyone is prohibited from committing violence or threats of violence, forcing, committing deception, telling a series of lies, or persuading a child to commit or allow indecent acts to be committed.
3. Perpetrators of the crime of sexual intercourse with a child as regulated in Article 76D of Law number 35 of 2014.

Everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with him or with another person. Of course it is true that perpetrators of child rape have also violated human rights, but criminalization efforts in law enforcement are the same as torture that violates human rights.

#### 4. CONCLUSION

The reduction of prison sentences for perpetrators of sexual violence against children is regulated in the Child Protection Law Number 35 of 2014 Article 81, there are also several articles that provide protection for children from perpetrators of sexual violence, protection of children is shown by the provision of criminal penalties (sanctions) for perpetrators, namely: In the Criminal Code Articles 287, 288, 291 which regulate sexual intercourse and the TPKS Law Article 4 paragraph (1) concerning forced marriage (against children), and paragraph (2) sexual intercourse and pornography that makes children the object. Chemical castration punishment can be qualified as a form of inhumane punishment because castration has many consequences, so the Indonesian Doctors Association strongly disagrees with chemical castration where the undesirable side effects of castration are damaging brain cognition and attacking the heart, which is thus not in accordance with the Indonesian constitution and commitments in the field of Human Rights.

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<sup>24</sup>Nur Kholis, 2016, *Keterangan Pers Pandangan Komnas HAM Mengenai Hukuman Kebiri Bagi Pelaku Kejahatan Seksual*, <https://www.komnasham.go.id/files/20160215-keterangan-pers-pandangan-komnas-SUNYOCK.pdf%0A>

<sup>25</sup>Hanafi Arief, "Rekonstruksi Hukum Tentang Hukuman Kebiri Bagi Pelaku Tindakan Pidana Pelecehan Seksual", *Jurnal Khazah*, 14.1 (2017), pp.110-133 <https://doi.org/10.18592/khazanah.v14i1.1052>

Victims of acts of sexual violence must have their rights fulfilled to receive medical assistance and psychosocial and psychological rehabilitation assistance. Suggestion: Should impose a prison sentence on perpetrators of sexual violence by looking at the condition of the victim, namely the child, how he/she was shaken by the incident that the perpetrator experienced. In other words, should give the heaviest sanctions to perpetrators of sexual violence in order to have a deterrent effect on the perpetrators and avoid cases of sexual violence against minors.

The government in particular should take a firm stance against sexual violence against children. One of them is by having additional penalties, so that the number of cases of sexual violence against children does not increase. Although on the other hand regarding chemical castration is still open to review/evaluation. Child protection can run well, what should be done is counseling to the public that there are laws and regulations regarding child protection where the Constitution as a law can be realized by providing counseling to the public that there are laws and regulations regarding child protection where the Constitution does not provide sufficient answers to parents, guardians, families, communities, governments, and also the State to participate in implementing child protection.

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