

# TRACING THE CRIMINAL POLICY ON CASTRATION AND COMMUNITY RESPONSE

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## Article Information

Submitted : June 04, 2021

Reviewed : August 05, 2021

Accepted : August 16, 2021

### Keywords:

castration; criminal policy;  
community responses

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## Abstract

The act of chemical castration is a new sanction in the positive law of Indonesia. However, it is limited to child protection based on Law Number 17 of 2016 imposed on perpetrators of sexual crimes against children. This law applies when the victim is more than one person, seriously injured, has mental and reproductive system disorders, suffers from infectious diseases, or loses their life. This study analyzes criminal policies and people's reactions to castration concerning the objectives of punishment. It is a doctrinal prescriptive study using a legal approach regarding castration, the relationship between rules, the difficulties arising. Furthermore, it predicts future developments on criminal policies regarding castration in positive law as a new sanction in the criminal system. The results show that the birth of chemical castration in criminal policy reform is based on a balance between the interests of child victims of sexual crimes and perpetrators. However, its existence in positive law does not necessarily make the community accept, though the pros and cons of castration are balanced regarding the purpose of punishment based on Pancasila. The study recommends the need for socialization of castration for society to balance the interests of child victims of sexual crimes and the interests of criminals. Moreover, it recommends increasing non-penal efforts, applying selective castration sanctions, and assisting child victims of sexual crimes.

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## I. Introduction

The development of world society involves changes according to the transformation process with a positive or negative impact. However, economic progress has not eliminated crime, and it is difficult to determine the relationship between crime and community development. As a result, various community development aspects are considered potential criminogenic factors. The IV UN Congress on "Crime Prevention and Development of Perpetrators" was held in Kyoto, Japan, in 1970. Since then, any dichotomy between a country's policies for social defense and its planning for national development was considered unreal. Furthermore, the fifth UN Congress in 1975 emphasized that criminal policy should be coordinated and integrated into each country's general social policy. Subsequent UN Congresses affirmed that development is not

criminogenic when the results are distributed relatively and reasonably to all people for social welfare. However, development is criminogenic when it is unbalanced and ignores cultural values when planned rationally. Moreover, it is considered criminogenic when it lacks a comprehensive community protection strategy (Arief, 2014). Criminological thinking that initially focused on crime, criminals, and public reactions was enriched by the study of victims, resulting in the act of castration in Indonesia (Yuningsiha, H., Nurjayab, I. N., Djatmikab, P., & Ruba'Ib, M., 2020).

Punishment and treatment originate from different ideas based on a double-track system. This is because punishment starts with 'why was punishment' while treatment starts from 'what was the punishment for.' The difference in these principles is that punishment dwells on reproach, not on suffering, while the treatment is educational or fostering. Theoretically, treatment is a non-retaliatory sanction to protect communities from threats that harm their interests. Furthermore, the difference in punishment and treatment originates from the philosophy of indeterminism, implying that humans have free will. Therefore, every punishment must be directed at moral condemnation and the imposition of suffering. Additionally, the differences between the two sanctions are based on the purpose of punishment. In this case, the fundamental or relative theory revolves around the difference in its basic ideas (Djauhari, 2017; Zedner, 2016).

Castration as a treatment is not new because several countries apply it to perpetrators of sexual crimes. World statistics show that criminal sanctions and castration against perpetrators of rape create a deterrent impact. Even countries that impose the death penalty and castration occupy the top ten positions as countries with the highest cases in the world. Furthermore, ten countries have imposed the death penalty, and 20 have imposed castration for perpetrators of rape. Countries imposing the death penalty are China, Afghanistan, United Arab Emirates, Egypt, Bangladesh, Iran, Saudi Arabia, India, Pakistan, and North Korea. The nine European countries that impose castration sanctions for rape are Britain, Poland, Russia, Germany, the Czech Republic, Denmark, Sweden, and Spain. Moreover, the nine American states that enforce castration are California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin. Argentina, as a Latin American country, and South Korea in Southeast Asia also impose castration (Eddyono et al., 2016; Ratkoceri, 2017).

Castration is still controversial, especially after a perpetrator of rape against nine children victims was sentenced to twelve years in prison by the Mojokerjo District Court, supported by the Surabaya High Court. Many people praised the Mojokerto District Court panel of judges for imposing a chemical castration after making this provision a positive law in Indonesia. Previously, the government considered that violence cases against children were very high and required more concrete steps. The cases required imposing heavier sanctions on the perpetrators (predators) for depriving the victims' rights. However, many human rights activists oppose castration, stating that it defies the purpose of punishment in the Indonesian legal system. Furthermore, it contradicts international instruments on human rights and does not remove the root causes of violence against children (Eddyono et al., 2016). The implementations of chemical castration are regulated in Law no. 17 of 2016 concerning the Stipulation of Government

Regulation in Law Lieu Number 1 of 2016. This law concerns the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law. The author found only one regarding castration in which the Supreme Court sentenced a rapist of nine children in Mojokerto Regency, East Java. Furthermore, the Mojokerto District Court on case No. 65/Pid.Sus/2019/PN. Mjk imposed a 12-year prison sentence and a fine of Rp. 100 million, a subsidiary of six months in prison and castration. Of the nine victims sexually assaulted in Mojokerto Regency, two were assaulted in the Mojokerto City area. Also, eleven victims were forcibly sexually assaulted between 2015 and 2018. However, in the trial, only two family representatives testified in court, including a victim in the cases in Mojokerto Regency and Mojokerto City.

During the trial, the defendant MA admitted to having sex with more than one victim. The defendant dragged and smothered the victim, tearing their genitals off with their (accused's) hand. Therefore, the decision by the judges' panel was praised for imposing the first chemical castration in Indonesia. The Surabaya High Court upheld the decision. However, researchers have difficulty accessing the decision because it includes excluded information based on SK KMA 1-144 of 2011 concerning Guidelines for Information Services in Courts. However, the decision is legally based on Article 76D of Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. It states that "everyone is prohibited from committing violence or threats of violence forcing children to have intercourse with them or with other people." Furthermore, Juncto Article 81 paragraph (2) of Law Number 23 2002 concerning Child Protection states that the criminal provisions in paragraph (1) shall apply to any person that intentionally commits a trick, lies, or persuades a child to have intercourse with them or with another person." According to the Mojokerto District Attorney's Office, castration could not be executed because there were no technical instructions. Therefore, the executor of the Mojokerto District Court could not execute the decision of the judge. There is no technical guidance from the Attorney General's Office, though chemical castration has been legalized in Lieu Government Regulation of Law (Perppu) Number 1 of 2016 concerning Child Protection (tempo.com, August 26, 2019). However, this gap was bridged on December 7, 2020, by the Government Regulation of the Republic of Indonesia Number 70 of 2020. The regulation concerned Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. It is one of the links in the criminal policy regarding chemical castration, based on Law no. 23 of 2002 Juncto Law no. 35 of 2014 Juncto Law no. 17 of 2016 concerning Child Protection.

This study explores the criminal policy on castration and public responses to distinguish it from previous research. First, Yuningsiha et al. (2020) conducted **the Philosophical Foundation of Chemical Castration for Offenders of Sexual Violence Against Children**. The study found that chemical castration in Article 81 paragraph (7) of the Child Protection Law contradicts Pancasila. This is especially the first and second precepts, Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 10 paragraph (1) of Law no. 39 on Human Rights. Second, Djauhari (2017) conducted **an Analysis of the Criminal Law Policy for Imposing Castration Sanctions on Perpetrators of Sexual Crimes Against Children**. The results

showed sociological and juridical coercion over the criminal policy on castration against perpetrators of sexual crimes. This is because the previously regulated sanctions have not had a deterrent effect, though the policy contradicts the principles of punishment, human rights, and medical ethics. Third, Firmanto (2017) conducted **The Position of the Criminalization of Castration in the Criminal System in Indonesia: After the issuance of Perppu No. 1 of 1946**. The study found that castration is the ultimum remedium for pedophile perpetrators. In this case, castration is a punishment with a deterrent effect and recovery for perpetrators according to the combined theory and prevention for the community. Fourth, Widiyaningrum et al. (2019) conducted **Castration of Sex Offenders: Indonesian Criminal Law Reform**. The results showed that criminal law enforcement requires a judge's decision on castration to create a comfortable environment for children's growth and development. Fifth, Sudirman (2020) conducted **Legal and Social Implications of Implementing Chemical Castration Sanctions for Perpetrators of Sexual Crimes Against Children in Indonesia**. The study found that chemical castration violates human rights according to Article 28I of the Constitution of the Republic of Indonesia. Chemical castration sanctions contradict the balance theory, in which they should aim to educate and protect the public, victims, and perpetrators of crime. Furthermore, chemical castrations are difficult to apply due to a lack of guidelines and the rejection of the Indonesian Doctors Association because they defy medical ethics. Sixth, Hasanah & Soponyono (2018) conducted **The Criminal Law Policy on Sanctions of Castration in the Perspective of Human Rights and Indonesian Criminal Law**. The study showed that chemical castration is vile, inhumane, and contrary to Indonesia's commitment to human rights guaranteed by the constitution. Also, it is against the objectives of the criminal law to maintain social solidarity. Seventh, Usfunan et al. (2017) examined the **Constitutionality of Castration Sanction**. It states that the castration to reduce the perpetrator's sexual arousal as a deterrent contradicts the 1945 Constitution of the Republic of Indonesia. The sanction advises the constitutionally disadvantaged to file a review of Perppu No. 1 of 2016. In comparison to these studies, the author explores criminal policy regarding chemical castration based on Pancasila in balance with the interests of children victims of sexual crimes using responses from the community and victims.

The study problem is applying criminal policy to respond to crime against castration and the communities' reaction as a treatment associated with punishment. This study helps understand the balance between the interests of child victims of sexual crimes and society with a criminal policy on chemical castration based on Pancasila values.

## II. Research Method

This study is legal as a process to find the rule of law, principles, and doctrines to answer the issues of the prescriptive character of legal science. It provides new arguments, theories, or concepts as prescriptions in overcoming the problems encountered. Furthermore, the study includes doctrinal research, which, according to Terry Hutchinson, systematically exposes the rules governing a particular legal category. It analyzes the relationship between rules, explains areas of difficulty, and predicts future development

(Marzuki, 2005:32 -35). Therefore, it hopes to systematically expose the rules regarding the legal category, the castration act, the rules relationship, and the difficulties arising. Additionally, this study is expected to predict future developments towards criminal policy and systematically expose the rules regarding castration in positive law. This could be a new sanction in the criminal system and public reactions to explain castration in the double-track system.

Legal issues arising from two interrelated legal propositions are functional, causal, or affirmation of the other. The birth of castration as part of the double-track system in criminology is a causal relationship from the reality in society about the many sexual crimes against children. This research seeks the answer using the statute approach of Marzuki (2005: 93, 94) by examining regulations related to the castration act. Finally, the consistency and conformity between the regulations are analyzed based on the ratio legis and ontological basis for the provisions of the castration act.

### III. Result and Discussion

#### A. Criminal Policy on Castration

Criminal sanctions have been accepted as efforts to overcome crime and change or improve the behavior of the perpetrators and protect the community. This implies that punishment and criminal law must protect the community from achieving social welfare (Arief, 2011; Rofiq, Disemadi, & Jaya, 2019). Furthermore, the use of criminal sanctions is one of the various means to achieve national goals.

It is not appropriate to only perceive criminal law with harsh sanctions only from retaliation for the perpetrator's actions. Instead, it is also important to consider the effect of the punishment on the perpetrator and the social impact surrounding the conviction. That is why it serves as *ultimum remedium* (ultimate weapon), though it sometimes acts as *primum remedium* in human life. Classical criminal law integrated with retaliation is increasingly developing to guide perpetrators and protect the community. Sudarto emphasized that criminal policy forms legal norms appropriate for the situation and conditions aspired to in the future (*ius constituendum*). It constantly questions whether legal reform is needed or should be renewed (Djauhari, 2017). However, the policy to determine the best criminal sanctions to achieve or approach the objectives of punishment is inseparable from determining the most appropriate and effective sanctions. The difficulty in imposing accurate criminal sanctions among the various options causes an increase in crime (Firmanto, 2017; Robert, 2013).

It is not only the perpetrators of the crime that deserve attention in law enforcement practice. This is because some victims of crime are not cared for in the criminal justice system. The reason is that laws and regulations over the past few decades have focused on protecting offenders. According to criminal law and criminology, crime is a conflict between individuals that impacts the victim, society, and the perpetrator. Additionally, the interests of the crime victim



constitute a significant part (Mulyadi, 2012; Michalowski, 2016). Law Number 8 of 1982 concerning *the Criminal Procedure Code* prioritizes crime perpetrators without sufficiently considering the victims' interests in seeking justice. The victims are neglected although they are the most disadvantaged in a criminal act (Yulia, 2012; Felson, 2014). Linking Criminal Choices, Routine Activities, Informal Control, and. *The reasoning criminal: Rational choice perspectives on offending*, 119.). In the criminal justice system, the victim is considered a witness that has personally seen, heard or experienced a criminal act. However, they cannot give their opinion on what they want in court against the perpetrator. Furthermore, public prosecutors representing the state in fighting for justice and truth are not allowed by law to ask victims what they want through sanctions on the perpetrators. Victims' rights to justice have been widely expressed globally in international instruments, including the Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power 1985 (Bambang & MM, 2019; Hidayat, 2015). The declaration states that protecting victims must include rights useful in criminal justice. This protection appreciates the contribution of the victim in criminal justice to seek and obtain material truth (Siku, 2012).

Protection of the rights of victims of crime in positive Indonesian law has not provided adequate guarantees. This is because the regulation and enforcement of the victims' rights are unevenly regulated in the *Criminal Code*, *Criminal Code Procedure*, and *Law*. Subsequently, there is no single mechanism for giving and protecting victims' rights. This weakness bars victims from obtaining protection for their rights. Therefore, it is necessary to reconstruct a protecting victims' rights (Lugianto, 2014; Barkworth & Murphy, 2016).

The prevalence of sexual violence against children has become a significant and emerging concern in Indonesia. Therefore, various groups were urged to prevent and overcome these crimes. This resulted in the idea that the prevention should be equipped with strict legal means and significantly affect the perpetrator in chemical castration. In this regard, the Government of the Republic of Indonesia has issued a Government Regulation instead of Law (*Perppu*) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Also, the People's Representative Council of the Republic of Indonesia passed "Peru" with Law Number 17 of 2016 concerning the Formation of Government Regulations to Change Law Number 1 of 2016 into Law. Subsequently, the positive law in Indonesia has regulated acts of chemical castration against perpetrators that deliberately commit tricks, lies, or persuade children to have intimate relationships with them or other people.

Chemical castration for perpetrators of sexual violence against children raises pros and cons among Indonesian society. The parties state that chemical castration is needed to protect society, especially children victims of sexual violence. However, contra-view chemical castration violates human rights because of cruel treatment even against *Rechtsidee*, the basis of the state *Pancasila*. This is because it contradicts the second principle of just and civilized humanity,

and Article 28I paragraphs (1) and (2), Article 28B paragraph (1), Article 28G paragraph (1), and Article 28 of the Republic of Indonesia State 1945 Constitution (Usfunan et al., 2017; Jaelani, Handayani, & Karjoko, 2020). Furthermore, the chemical castration contradicts The Political Law of the Constitutional Court in Canceling the Concept of the Four Pillars as a Pancasila as the State Foundation. *Talent Development & Excellence*, 12(2).). The group against chemical castration also based their reasons on Article 33 paragraph (1) of Law no. 39 of 1999 concerning Human Rights, which reads. The article states that every person has the right to be free from torture, punishment, or other cruel, inhuman, degrading treatment and dignity. Moreover, this is because Indonesia ratified the Convention against Torture and Other Treatment or Punishment, and Cruel, Inhuman or Degrading Human Dignity adopted by the General Assembly of the United Nations (UN) in Resolution No. 39/46 dated December 10, 1984 (Hafizal Hasanah et al., 2018; Nowak, Birk, & Monina, 2019). Therefore, castration is considered an unusual punishment. It is implemented through physical surgery by cutting the testicles (testicular pulpectomy) or injecting certain substances to reduce sex hormones and eliminate sexual desire (Yuningsih et al., 2020).

The primary considerations for determining chemical castration for perpetrators of sexual violence against children are regulated in Article 76D, 81 paragraph (7) and Article 81A of Law of the Republic of Indonesia Number 17 of 2016. First, they guarantee children's rights to survival, growth, and development and the right to protection from violence and discrimination. The second consideration is a significant increase in sexual violence against children that threatens or damages their personal life and development and disturbs comfort, peace, security, and public order. Also, sexual violence threatens the strategic role of children as the future generation of the nation and state. Third, imposing penalties for perpetrators of sexual violence against children has not provided a comprehensive deterrent effect and prevention of the crime. According to Elucidation of the Law, the 1945 Constitution states that the state guarantees children's rights to survival, growth and development, and protection from violence and discrimination. Sexual violence against children has increased sharply with the rapid flow of globalization and the negative impact of information and communication technology. Second, Law Number 23 of 2002 concerning Child Protection has been amended through Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. One of the amendments focuses on strengthening criminal sanctions against perpetrators of sexual violence against children. However, the amendment to the law has not significantly reduced sexual violence against children. Therefore, the state should take optimal and comprehensive steps by imposing criminal sanctions and implementing prevention. It should impose chemical castration, install electronic detection devices, and rehabilitate perpetrators of sexual violence against children.

The criminal policy through chemical castration is further outlined 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. It addresses and prevents sexual violence against children, provides a deterrent effect on perpetrators. Furthermore, the regulation implements Article 81A paragraph (4) and Article 82A paragraph (3) of Law no. 17 of 2016 concerning the Stipulation of the Perppu No. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection into Law. A severe threat that hinders the children's growth and development is sexual violence through intercourse or sexual immorality. It causes the child to experience severe injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and death. The reform of the law on child protection through chemical castration for perpetrators of sexual violence against children adds to the principal penalties. Also, it supports additional penalties, including announcing the perpetrator's identity, chemical castration, installing and removing electronic detectors, and rehabilitation. This criminal policy is based on the idea that children are the nation's hope and aims to maintain and preserve the nation and state. Therefore, children need to be protected and guarded against threats that hinder their growth and development.

A legislative policy that enforces the law must be adjusted to community values of Pancasila, which comprise divinity, justice, propriety, harmony, unity, peace, humanity (humanism), orderliness, and kinship or cooperation (Fuady, 2003:58,59). Criminal law enforcement begins with formulating legislation (legislative policy) in material and formal criminal law and enforcement (and actions). It is performed by law enforcement officers based on the noble values of Pancasila. According to Pancasila, religious and humanitarian approaches are signs for law enforcement within the National Legal System (Nawawi Arif, 2009:6). The use of "justice" to "apply and enforce the law" shows that the national legal system is not based on the principle of legal certainty (certainty of written law, formal/legal) formulated rigidly. Article 1 paragraph (1) of the Criminal Code fully imitates *Wetboek van Strafrecht's* formulation (Nawawi Arief, 2008:12,13). It states that the principle of balance appears in religious values and justice based on Pancasila. Therefore, the philosophical reasons for castration in the child protection law in Indonesia are understood. According to Law no. 17 of 2016 concerning the Stipulation of Perppu No. 1 of 2016 on the Second Amendment to Law no. 23 of 2002 concerning Child Protection into Law, criminal sanctions against perpetrators of sexual violence against children have not provided a deterrent effect. Furthermore, they have not prevented sexual violence against children comprehensively.

In responding to the victimization of victims, including children, the state must protect victims because of the many problems that require comprehensive measures (Setyabudhi & Ritonga, 2014:74). Additionally, the Child Protection Act shows how a child has the right to live, grow, develop and participate based on human dignity. The child also has the right to protection from all parties,



including parents, the government, the state, and the entire society, even when they become victims of crime (Angkasa, 2020).

Regulations regarding chemical castration according to 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 include:

1. Chemical castration, installing electronic detection devices, and rehabilitation are imposed on perpetrators of copulation and obscenity based on a court decision with permanent legal force. The decision is carried out on the prosecutor's order in coordination with the ministries of health, law, and social affairs (Section 2). However, child offenders cannot be subjected to chemical castration and the installation of electronic detectors (Article 4);
2. Chemical castration is imposed for a maximum of two years (Article 5);
3. Competent officers implement chemical castration, the installation of electronic detectors, and rehabilitation at the behest of the prosecutor (Article 3);
4. The stages of castration consist of (Article 6-9):
  - i. Clinical assessment (provided the perpetrator is serving the major crime) is carried out by officers with competence in medicine and psychiatry. It involves clinical and psychiatric interviews, as well as physical and supporting examinations. Clinical interview obtains information about the perpetrator's physical and mental health condition for preliminary decisions about the convict's health problem. A psychiatric interview assesses the psychology of the convicted person using structured and unstructured questions without assistive devices. Physical examination determines whether the convict is physically abnormal. The investigation involves medical examination processes for specific indications to obtain a complete clinical conclusion;
  - ii. Conclusion (provided the perpetrator is serving the main sentence) contains the clinical assessment results to ensure the perpetrator of intercourse is appropriate or unfit for chemical castration. The castration is submitted to the prosecutor no later than 14 (fourteen) working days from the receipt of notification from the prosecutor;
  - iii. Implementation is carried out after the conclusion states that the perpetrator of intercourse is eligible for chemical castration. The prosecutor orders the doctor to conduct chemical castration on the perpetrator within seven working days from the receipt of the conclusion. This happens as soon as the convict completes their sentence and leaves the correctional facility.

5. Chemical castration is implemented at a government or a designated regional hospital, attended by prosecutors and representatives from the ministries of law, social affairs, and health;
6. The chemical castration implementation is stated in the minutes, and the prosecutor informs the victim or their family of the incident (Article 9 f and g);
7. When the conclusion states that the perpetrator is not eligible for chemical castration, the act is postponed for 6 six months. After that, when a re-clinical assessment and re-conclusions show that it is appropriate or unfit for chemical castration, or when the perpetrator is not feasible, the prosecutor notifies the court in writing. The court decides the case at the first level by attaching the clinical assessment results and re-conclusions (Article 10);
8. Rehabilitation restores the perpetrator's physical, psychological, social, and spiritual conditions for them to carry out their daily activities naturally. It is given to the intercourse perpetrator subjected to chemical castration and takes three forms. The first form is psychiatric rehabilitation, which restores mental health and increases skills to carry out daily life activities. Second, social rehabilitation is a functionalization and development process to enable a person to carry out their social community functions reasonably. Third, medical rehabilitation involves comprehensive, coordinated medical, social, educational, and vocational service efforts to achieve optimal functional community abilities. Rehabilitation is carried out by order of the prosecutor in a coordinated, integrated, comprehensive, and sustainable manner (Article 18);
9. Rehabilitation is given no later than three months after implementing the chemical castration action. This period is the same as implementing the chemical castration procedure and could be extended three months after the last chemical castration.

The regulation could be compared with the castration in the countries that apply it and granting more severe corporal punishment to the rapist. However, there are difficulties in the procedural law governing the mechanism because a diagnosis was first made before implementation. This is because the perpetrator must be checked for health and medical implications (Mardiya, 2017; Cannon, Hamel, Buttell & Ferreira, 2016).

#### **B. Community Reaction to Castration**

Questionnaires about people's responses to chemical castration as a treatment were distributed to 32 community members from January to March 2021, where 62.5% were men and 37.5% were women. Based on education level, 9.4% of the informants had Senior or Vocational High School/*Madrasah Alyah*, 3.1% had diplomas, 53.1% had SI, 34.4% had S2. Furthermore, the informants consisted of State Civil Apparatus, private employees, household caretakers,

teachers or lecturers, students, pharmacists, and retirees. The respondents stated that 40.6% of sexual violence cases were caused by perpetrators that could not control themselves, while 21.9% were due to lack of supervision. The percentage of children as the weak party was 18.8%, of which only 12, 2% answered that the violence was due to lack of sexual education for children. The remaining percentage thought it was due to parental negligence. Furthermore, most informants stated that sexual violence is prevalent due to media broadcasts, lack of children protection, and parents not associating with their children. Moreover, the prevalence is caused by many evil perpetrators and very few individuals answering consumerism among the younger generation. Of all the informants, 53.1% knew the castration act, while 46.9% did not know. Moreover, 53.1% of informants had read the child protection law, while 46, 9% had less information. As a result, only 31.2% knew about the act of castration in the Child Protection Law, while 68.8% stated they did not know. Among the informants, 50% agreed that castration was used to punish perpetrators of sexual violence against children for several reasons. For instance, the perpetrator's actions destroy the future generation of the nation's children. Therefore, castration instills fear in the perpetrators and makes them aware not to repeat the act. This means that severe punishment should be carried out to reduce sexual violence.

About 34.4% of the informants disagreed with castration because it is against human rights, it is uneducated and inhuman, and causes mental health problems. The remaining 15.6% agreed with castration with doubtful reasons because the impact was not clear. Only 37.5% approved castration, 21.9% did not approve of its method, and the remaining 40.6% answered that it is possible.

The Child Protection Law provides for castration as a treatment against, first, the perpetrator previously convicted of committing the same criminal act of intercourse with a child. Second, the treatment is imposed when the criminal act involves more than one victim, resulting in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and death. In line with this, 71.9% of informants stated that castration as a treatment was adequate for perpetrators of sexual crimes against children was. This is because it deters the perpetrator from repeating the crime and is a severe sanction considering the impact on child victims of sexual crimes. The child experiences physical, psychological, and social problems and prolonged trauma, negatively affecting their life. Castration is based on the constitution and provisions concerning victims of crime, and its imposition must be careful. It should be imposed on the perpetrator of multiple sexual crimes without being deterred, apart from physical punishment. Also, it is a heavy social sanction and must be implemented because it has been promulgated. More stringent child protection laws are needed. However, 28.1% of informants disagreed with castration because it contradicts human rights and the nature of punishment. Instead, they recommended imprisonment of a minimum of 20 years because sexual crimes against children are extraordinary. Additionally, castration is not

the best solution for perpetrators of sexual crimes against children because their psychology must be corrected.

About 43.8% of informants' answered no to whether chemical castration contradicts human rights. According to them, the punishment given to the perpetrator must consider the rights of the child victims, and the crime damages their generation. Therefore, the law must be implemented even when it intersects with human rights because the perpetrator's actions are also inhuman and deserve to be repaid in the same manner. Furthermore, castration is necessary to give a deterrent effect because the perpetrators commit their evil deeds consciously. Since their actions have damaged the victim's reproductive and psychological organs, they deserve legal consequences. However, 31.3% of informants answered that castration contradicts human rights. This is because the perpetrator also has the right to self-improvement, meaning that the sanction must contain guidance, not merely punishing. Moreover, depriving the perpetrator of sexual needs is equivalent to a death penalty, in which they are not tortured for the rest of their life. The remaining 25% answered may be based on the perpetrator's history, implying the need for humanitarian considerations.

About 57.6% of informants stated that chemical castration for perpetrators of sexual crimes against children brought justice to child victims. They based their reasoning on the severity of the suffering that hit the child victims of sexual violence. Therefore, chemical castration restores the victim's self-confidence and deters the perpetrator, whose depravity must be rewarded accordingly. It is still possible for the victim and the perpetrator to meet again after the discourse of castration cases of sexual violence against children has drastically decreased. This fulfills some of the rights to justice for the victim's child. In line with this, 42.4% of victims of sexual crimes claim that there is no sense of justice for child victims. As long as a perfect balance cannot be obtained globally, the child victim receives nothing and needs to be fought for help. The sanction only retaliates the acts and does not erase traces of violence and trauma for victims. Therefore, the crime of deprivation of liberty needs to be heavier, and the castration sentence has no correlation with justice for victims of sexual crimes.

About 69.7% of informants stated that the castration act does not fulfill the needs of child victims of sexual crimes. The balance does not restore the child's condition, especially when the victim's child dies. On the contrary, the child and the victim's parents need physical healing and mental and assistance to continue living positively. Therefore, these sanctions are not sufficient to erase the victim's trauma and experience mental injuries. Furthermore, the trauma cannot be replaced with anything, and chemical castration is not a victim's need and is unproportional to the perpetrator's actions. Conversely, 30.3% of the informants stated that the sanction had met the needs of child victims of sexual crimes. This is because when children victims of sexual crimes did not return, the perpetrators were deterred and did not repeat their crimes. Consequently, it slightly reduces the mental burden of the victims, meaning that justice had been

upheld as a warning to the perpetrator. Although castration violates human rights, it is similar to the perpetrator's act, which violates the victim's human. Therefore, the perpetrator has met the legal standards applicable in Indonesia and feels the suffering they have caused to the victim.

The need for child victims of sexual crimes and their families to receive compensation from perpetrators was disclosed by 84.8% of the informants. The compensation covered a deterrent effect and physical and psychological recovery for the victim's child. Also, it comprised the perpetrator's socio-economic compensation to the victim and their family and assistance costs. It is natural to recover the child's condition for the sake of their future, meaning that the perpetrator must provide compensation regulated in the Child Protection Law. However, 15.2% of the informants stated that compensation is unnecessary because the value of money given materially is never commensurate with the victim's health and recovery from suffering and destruction of their future. Moreover, it would not solve the problem because it allows the perpetrator to repeat their actions. Instead, compensation should be replaced by heavy sanctions, the conversion of the main perpetrator, and the child's psychological recovery. In this regard, the chemical castration is sufficient to entice the perpetrator. However, it is uncertain that the victim and their family would accept compensation, especially when it is still possible to reconnect with the perpetrator.

The informants were also asked whether the state should compensate children victims of sexual crimes and their families. About 84.8% of informants stated that the state neglects to protect the child victims of sexual crimes, adding that compensation is necessary. Furthermore, the state is responsible for the future of the younger generation that are victims of sexual crimes. However, it cannot always be present to protect child victims of sexual crimes. For this reason, there are facilities and assistance for child victims, citizen rights, and state responsibilities to provide security for all people. UU no. 35/2014 on Child Protection allows the state to respect the fulfillment of children's rights regardless of ethnicity, religion, race, class, sex, culture and language, legal status, birth order, and physical and mental conditions. Conversely, 15.2% of informants do not need compensation from the state. This is because there are many state affairs and providing compensation is not always the primary need of child victims of crime.

Sudarto stated that criminal law tackles crime using negative sanctions against actions unwanted by society related to life views, religious morals, and the nation's interests. Therefore, a nation's criminal law is a mirror of its civilization. Philosophically, in disciplinary action (*maatregel*), the element of pain in criminal sanctions focuses on improving the perpetrator and protecting the community. Furthermore, Muladi stated that the purpose of punishment must accommodate the community's aspirations for revenge. However, there should be a balance based on the perpetrator's mistakes and maintaining community solidarity (Hafizal Hasanah & Soponyono, 2018; Spasov, 2019).



Based on the Draft Criminal Code, punishment is not intended to degrade human dignity. Instead, it aims to prevent criminal acts by upholding legal norms for community protection and socializing the convicted person by guiding. Subsequently, the convicted individual becomes an excellent and valuable person. Moreover, punishment restores balance, brings peace to society, and frees the guilt of the convicted (Directorate of Legislation, Directorate General of Law and Human Rights, 2019).

Victims of sexual crimes have not received attention during the criminal justice process because the settlement of cases is primarily aimed at imposing sanctions on perpetrators for retaliation without restoring losses to victims. According to Sudarto, implementing criminal policy means realizing criminal legislation based on the circumstances at one time and in the future. This is accomplished through reorientation and reform of criminal law according to central socio-political, socio-philosophical, and socio-cultural values. Indonesian society is based on social, criminal, and law enforcement policies. Therefore, the use of chemical castration in tackling sexual crimes against children must be pursued through policy- and value-oriented approaches (Arief, 2014).

The research observations show a lack of public understanding of chemical castration in child protection law reform. This is due to the lack of knowledge and understanding 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. Additionally, non-penal efforts in preventing sexual crimes against children have not focused on dealing with factors causing crime. They have improved social policy by cultivating community mental health and child welfare. Furthermore, the non-penal efforts have not enhanced the social, healthy living environment and technology such as mass media to educate the public (Arief, 2014). Various things are felt to be necessary for children victims of sexual crimes. These include assisting the children by restoring their physical, psychological, and social conditions and providing restitution as compensation from the perpetrator for their recovery. It is a form of accountability of the perpetrator and compensation as a manifestation of public concern for the victim (Angkasa, 2020; Utami, 2020). Therefore, in response to the criticism over chemical castration as a system in criminal law reform, the victimological aspect should not only consider the perpetrators' human rights according to Pancasila and the 1945 Constitution of the Republic of Indonesia. However, it must also be understood and balanced between the interests of child victims of sexual crimes, the community, and the perpetrators that deserve guidance and deterrence based on the purpose of punishment.

#### IV. Conclusion

As the basis of the state and the nation's ideology, *Pancasila* references the Indonesian legal system with its values. First, *non-penal* means must accompany

crime prevention through *penal* means within the criminal law politics. This would achieve the best possible outcome of criminal legislation and fulfill the requirements of justice and effectiveness using policy and value approaches. Second, the informants' reactions show the pros and cons of castration, although many agreed that it has been regulated by positive law and given the impact on the victim and their future. Furthermore, castration deters perpetrators and prevents similar crimes, enhances security, and increases the interests of victims.

It is necessary to increase the socialization of castration to all levels of society. This should be balanced between the interests of child victims of sexual crimes and the interests of the perpetrators. Also, there is a need to increase non-penal and penal efforts by selectively applying chemical castration as crime prevention and assisting child victims of sexual crimes.

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