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## Legal Review of Normative Sanctions of Castration for Perpetrators of Sexual Violence Against Minors

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### Abstract

In recent years, the number of cases of violence against children in Indonesia has increased. This is certainly a concern, especially for parents who have children, especially underage. Criticism from various parties urged the Government to issue regulations that could prosecute the perpetrators in the strictest sense. This study aims to find out what is behind the birth of Law Number 17 of 2016 concerning Child Protection and to find out how castration sanctions are from the perspective of Human Rights (HAM). This research is a normative research in the nature of literature (Library Research). The results of the research show that Law No. 17 of 2016 concerning Child Protection is the government's effort to resolve the problem of sexual violence against children in Indonesia. In Article 81 Paragraph (7) there is chemical castration for perpetrators of sexual violence. "against the perpetrators as referred to in paragraph (4) and paragraph (5), may be subject to action in the form of chemical castration and chip installation". After the issuance of Law No. 17 of 2016 concerning Child Protection, there has been much controversy regarding the parties who have the authority to carry out chemical castration executions for convicts. The Indonesian Doctors Association is one of the parties that refuses to be the executor for convicts, this is because it would violate the Medical Code of Ethics. So that until now there is still debate regarding who is the party authorized to carry out the execution of convicts by chemical castration. The chemical castration punishment referred to in Article 81 paragraph (7) is an inhumane act, so that the punishment violates human rights. Provisions of Article 28G paragraph (2). It is also emphasized in Article 33 paragraph (1) of Law no. 39 of 1999 concerning Human Rights. All of these regulations condemn all actions that demean human dignity, so chemical castration for perpetrators of sexual violence is a violation of human rights.

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### 1. Introduction

The Republic of Indonesia is a country of law that highly upholds the law in every aspect of social and state life. The Republic of Indonesia is based on law (Rechtstaat), not on mere power (Machtstaat). This means that the Republic of Indonesia is a democratic country of law based on Pancasila and the 1945 Constitution that upholds Human Rights and guarantees the rights of all citizens with equal standing in law and government.

In recent years, cases of sexual violence against children have increased. Even cases of sexual violence that occur where the perpetrators are from the victim's closest family. One case of sexual violence against children that was revealed in February 2023 was a father in Cianjur Regency, West Java, who had the heart to rape his own underage biological child. The despicable actions of the man with the initials DM have been carried out for the past 3 years. Sadly, the suspect raped his biological child not only a few times, but hundreds of times. Not only that, the Buol District Court (PN), Central Sulawesi decided to sentence Baharudin Kasim to 16 years in prison and castration. Baharudin Kasim is the defendant in the case of raping his biological child. This case was revealed in May 2023 (<https://regional.kompas.com/>).

Sexual violence against children is considered very worrying because of the impact it has on victims, both physically and psychologically. The psychological impact of victims of violence and sexual harassment will experience deep trauma, in addition, the stress experienced by victims can interfere with the function and development of their brains. The physical impact of violence and sexual harassment on children is a major factor in the transmission of Sexually Transmitted Diseases (STDs). In addition, victims are also at risk of experiencing internal injuries and bleeding. In severe cases, damage to internal organs can occur. In some cases, it can cause death. Social impact, victims of sexual harassment are often ostracized in their lives, something that should be avoided because victims definitely need motivation and moral support to get back on their feet and live their lives.

Due to the many cases of sexual violence against children that have occurred, the Government has issued a replacement regulation for Law (Perpu) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which was then amended to become Law Number 17 of 2016. The latest Law includes additional sanctions in the form of castration for perpetrators of sexual violence against children. This is regulated in Article 81 paragraph (7) which states that "The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to chemical castration and the installation of electronic detection devices.

Many parties have different opinions regarding the imposition of castration punishment on perpetrators of sexual violence. There are parties who agree but many also reject both academics and practitioners of this government policy. The DPR together with the Government still ratified the Perpu then after 2 years it was ratified into Law Number 17 of 2016 concerning Child Protection because the Perpu can only be valid for 2 years. If it is not ratified into Law then it will be revoked.

The implementation of castration sanctions is a relatively new punishment applied in Indonesia. Therefore, there are pros and cons regarding the implementation of this action. On the one hand, the implementation of castration is expected to provide a deterrent effect and prevention to the perpetrators, and can minimize the level of sexual crimes against children. However, on the other hand, the imposition of this punishment is inhumane and in the form of torture against the perpetrators which violates Human Rights (HAM).

This study aims to find out what is the background to the birth of Law Number 17 of 2016 concerning Child Protection and to find out how castration sanctions are from a Human Rights (HAM) perspective.

## 2. Literature Review

### 1) Review of Castration Sanctions

Throughout the history of human civilization, castration has been carried out for various purposes. Victor T Cheney in *A brief History of Castration* 2nd Edition, 2006, stated that castration had been carried out in the Eastern Mediterranean 8,000-9,000 years ago. The goal was to have more female livestock than males. There is no definite record of when castration was carried out on humans, however, in Egypt, in 2,600 BC, castrated slaves were valued higher because they were considered more diligent and obedient to their masters. Similar actions were found on slaves in Greece around 500 BC, the king's harem guards in Persia, and treasurers and a number of imperial officials in China (Wahid, et al., 2013) <sup>[9]</sup>.

Castration as a form of punishment or treatment has recently become a symptom in several countries including the European Union and the United States. Based on World Rape Statistics or world statistics on rape in various countries in the world. Currently there are 20 countries that enforce castration, namely 9 European countries and 9 American states, one American country and one country in Southeast Asia. The nine European countries are England, Poland, Russia, Germany, Czech Republic, Denmark, Sweden and Spain. While the nine American states are California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas and Wisconsin. One Latin American country that enforces castration is Argentina and one country in Southeast Asia is South Korea (Wahid, 2013) <sup>[9]</sup>.

The imposition of increased punishment on perpetrators of child sexual crimes by castrating them through chemical injections, shows a way of thinking of revenge which is a punishment approach that has long been abandoned. This approach is also considered an approach to punishment carried out by primitive societies and seems to be marching. The imposition of increased punishment has almost no correlation with the lack of sexual crimes against children.

In the article pro-contra castration of criminals published in the ABA journal in July 1992, Douglas J. Besharov's opinion in favor of castration for the protection of society, was refuted by Andrew Vachhs as stupidity because it was based only on biological considerations. There is data that castration does not eliminate sexual libido, because sexual urges are not eliminated by castration (Yuwono, 2015) <sup>[13]</sup>.

### 2) Overview of Human Rights

Human Rights (HAM) are rights inherent in the individual and these rights are the most fundamental for every individual to stand and live freely in the community. With and in the name of anything, that the intimate basics of humanity must be protected, maintained, and not allowed to exist at all in social spaces that alienate them (Wiyono, 2006) <sup>[12]</sup>. The essential and natural nature of human rights inherent in every person cannot be revoked or removed by anyone including the rulers of the State. Removing and revoking human rights is the same as eliminating the existence of humans as creations of God Almighty (Renggong, 2014) <sup>[6]</sup>.

In Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, human rights are defined as a set of rights inherent in the essence of human existence as a Creature of God Almighty and are His gift which must be respected, upheld and protected by the State, law, government and every person for the sake of honor and protection of human dignity and honor.

Human rights cannot actually be separated from the philosophical views about humans that underlie them. According to Pancasila as the foundation of the Indonesian nation, the essence of human beings is composed of body and soul, the natural position as God's creatures and personal creatures, and the nature of their nature as individual creatures and social creatures. In this sense, human rights cannot be separated from the nature of human nature. Consequently, in its realization, human rights always have a correlative relationship with human obligations because of the nature of human nature as individuals and social creatures.

### 3) Review of Sexual Violence Against Children

Sexual violence against children is when someone uses a

child to gain sexual pleasure or satisfaction. It is not limited to sexual intercourse alone, but also actions that lead to sexual activity against children, such as: touching a child's body sexually, whether the child is wearing clothes or not; any form of sexual penetration, including penetration into the child's mouth using objects or body parts; making or forcing a child to engage in sexual activity; intentionally engaging in sexual activity in front of a child, or not protecting and preventing a child from witnessing sexual activity carried out by others; making, distributing and displaying images or films containing scenes of children in indecent poses or actions; and showing children, images, photos or films that display sexual activity. Actions, such as touching a child's body sexually, whether the child is wearing clothes or not; any form of sexual penetration, including penetration into the child's mouth using objects or body parts; making or forcing a child to engage in sexual activity; intentionally engaging in sexual activity in front of a child can be said to be acts that are close to adultery.

Sexual violence tends to have traumatic effects both in children and adults. However, cases of sexual violence often go unsolved because of denial of the sexual violence that occurred. Even more difficult is if this sexual violence occurs in children, because children who are victims of sexual violence do not understand that they are victims. Victims find it difficult to trust others so they keep their sexual violence a secret. In addition, children tend to be afraid to report because they feel threatened that they will experience worse consequences if they report it, children feel ashamed to tell about their sexual violence, children feel that the sexual violence occurred because of their fault and the sexual violence makes children feel that they are embarrassing the family name. The impact of sexual harassment that occurs is characterized by powerlessness, where victims feel helpless and tortured when revealing the sexual harassment.

Sexual violence against children has emotional impacts and physical to the victim. Emotionally, children as victims of sexual violence experience stress, depression, mental shock, feelings of guilt and self-blame, fear of relating to others, images of the child receiving sexual violence, nightmares, insomnia, fear of things related to abuse including objects, smells, places, doctor visits, self-esteem problems, sexual dysfunction, chronic pain, addiction, suicidal ideation, somatic complaints, and unwanted pregnancies.

### 3. Research Methods

This type of research is normative research, meaning a study that contains a description of the problem being studied based on written legal materials (Mamudji, 2015). This research is also library research, namely with books and other supporting materials. The author studied and reviewed the main legal material, namely Law Number 17 of 2016.

To complete this research, the author needs some data. In normative research, the data used is secondary data. The secondary data can be grouped into 3, namely: 1) primary legal material is the main material used as a discussion in this research, namely Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. 2) Secondary legal material is material that provides an explanation of the explanation of primary legal material in the form of previous research, literature books, opinions of experts related to this research. 3) Tertiary Legal Material is

material that can provide guidance on primary and secondary legal materials in the form of dictionaries, journal articles, articles and others.

## 4. Results and Discussion

### 1) Background to the Enactment of Law Number 17 of 2016 Concerning Child Protection

Based on the considerations of the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection, that children are a mandate and gift from God Almighty who have inherent dignity and honor as a whole human being. Children are shoots, potential and the next generation of the nation's struggle ideals and have strategic tasks and special characteristics or traits that guarantee the continued existence of the Indonesian nation and state in the future. Children in Law Number 23 of 2002 concerning Child Protection, Article 1 (1) states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Children are considered to have their own position in the eyes of the law. This is because children are not yet able to defend their rights due to the psychological and biological limitations of the child.

In recent years, cases of sexual violence involving minors have occurred frequently and tend to increase in Indonesia. The Ministry of Women's Empowerment and Child Protection (Kemen PPPA) noted that the number of cases of violence and criminal acts against children in Indonesia reached 9,645 cases. This occurred throughout January to May 28, 2023. Of the 9,645 cases of violence and criminal acts against children, female victims reached 8,615 cases. Meanwhile, the number of male victims was 1,832 cases (metrotvnews.com).

Sexual violence can be interpreted as coercion against a child that has sexual nuances, whether or not intercourse occurs. The perpetrator usually does not care about his relationship with the victim, such as an uncle to his own nephew, or even more sadly, a biological father to his own child. This condition requires the government to issue policies to emphasize the handling of this case. Some laws that have been implemented to protect children from sexual violence are:

#### a. Criminal sanctions in the Criminal Code

Article 287 paragraph (1): "Anyone who has sexual intercourse with a woman outside of marriage, even though he knows or should suspect that she is not yet fifteen years old, or whose age is unclear, that she is not yet ready to be married, is threatened with a maximum prison sentence of nine years."

Article 292: "If the act of sexual intercourse causes injury or death, the perpetrator shall be sentenced to fifteen years in prison, as stipulated in Article 291 of the Criminal Code. An adult who commits an indecent act with a person of the same sex, who he knows or should reasonably suspect is a minor, shall be subject to a maximum prison sentence of five years."

#### b. Criminal sanctions in Law Number 23 of 2002 concerning Child Protection

Article 81: "Any person who intentionally commits violence or threatens violence to force a child to have sexual intercourse with him or another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a fine of a maximum of Rp. 300,000,000.00 (three hundred million rupiah) and a

minimum of Rp. 60,000,000.00 (sixty million rupiah)."

Article 82: "Any person who intentionally commits violence or threats of violence, forces, commits trickery, a series of lies or persuades a child to commit or allow indecent acts to be committed, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah)."

After the Criminal Code, the Child Protection Law was formed specifically in order to provide guarantees for the protection of children's rights so that they can live, grow, develop and participate in building the nation optimally in accordance with human dignity, and receive government protection. The punishment in this law has been specifically regulated in the form of imprisonment and fines, but this law has not been able to overcome sexual violence against children that occurs. Because, for victims, imprisonment and fines are not enough to fulfill a sense of justice.

### c. Criminal Sanctions in Law Number 35 of 2014 concerning Child Protection

Article 76E: "Everyone is prohibited from committing violence or threats of violence, forcing, using trickery, telling a series of lies, or persuading a child to commit or allow indecent acts to be committed."

Article 82 paragraph (1): "Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah)."

Article 82 paragraph (2): "In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator or education personnel, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1)."

Law no. 35 of 2014 with Law nomor 23 of 2002 concerning Child Protection, there is no difference, namely the same threat of a sentence of 15 years in prison and an additional penalty in the form of a fine. This means that the law has not been able to reduce and prevent perpetrators of sexual violence crimes.

Furthermore, to overcome the phenomenon that occurs in Indonesia, especially against children, therefore, on June 11, 2014 President Susilo Bambang Yudhoyono issued Presidential Instruction Number 5 of 2014 concerning the National Movement Against Sexual Crimes Against Children. Regarding matters that have not been regulated in this Instruction, they are refined again in Law Number 35 of 2014 concerning Child Protection. This is proven that it has not been able to overcome it comprehensively. It is felt by the community that it has not been able to reduce the number of violence and has even increased. In response to this, with the main reason of overcoming the sexual emergency in Indonesia, Perpu No. 16 of 2016 was quickly issued by the government.

In Government Regulation in Lieu of Law Number 1 of 2016, there is an additional principal criminal penalty, namely a maximum prison sentence of 20 years. Article 81 paragraph (5): "In the event that the criminal act as referred to in Article 76D results in more than 1 (one) victim, results in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be punished with death, life imprisonment,

or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years."

Additional Criminal Procedure in Article 81 paragraph (6) and paragraph (7) of Perppu Number 1 of 2016 regulates the imposition of additional criminal penalties, one of which is chemical castration.

Article 81 paragraph (6): "In addition to being subject to the criminal 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."

Article 81 paragraph (7): "The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to chemical castration and chip installation." Meanwhile, the provisions of Article 82 paragraph (5) and paragraph (6) regulate:

Article 82 paragraph (5): "In addition to being subject to the criminal penalties as referred to in paragraphs (1) to (4), the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity."

Article 82 paragraph (7): "The perpetrators as referred to in paragraphs (2) to (4) may be subject to action in the form of rehabilitation and chip installation."

For the imposition of castration punishment, there are several specific categories that are carried out, because not all perpetrators receive this punishment, namely: First, "sexual violence where the perpetrator has been convicted of committing sexual violence (*recidive offender*)". Second, "sexual violence that causes more than 1 (one) victim, results in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or death" (Wibowo, 2017) <sup>[11]</sup>.

The castration penalty is carried out no later than 2 years after the convict has served the main sentence and is under periodic supervision. The implementation of the castration penalty is further regulated in Article 81 A, namely:

1. "The actions 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 sentence."
2. "The implementation of the actions referred to in paragraph (1) is under periodic supervision by the ministry that administers government affairs in the legal, social and health fields."
3. "The implementation of chemical castration is accompanied by rehabilitation."
4. "Further provisions regarding the procedures for implementing actions and rehabilitation are regulated by Government Regulation."

The purpose of sanctions is to deter perpetrators and so that in the future the perpetrators change and do not repeat it again. It is explained in the consideration of letter C that "the punishment imposed on perpetrators of sexual violence against children has not provided a deterrent effect and has not been able to prevent it effectively. comprehensively the occurrence of sexual violence against children". Based on the considerations of the Perpu as stated above, it can be seen that the increase in criminal penalties in Perpu No. 1 of 2016 aims to provide a deterrent effect to perpetrators of violent crimes against children. This policy concerns 2 interests that are to be protected, namely the interests of society, one of which includes a sense of security and the interests of children, including the growth and development of the child.

After carrying out the castration sentence, the perpetrator will

receive rehabilitation to restore social dysfunction and restore the perpetrator's condition. The announcement of the perpetrator's identity aims to ensure that after being released from prison, the public knows the perpetrator so that it is difficult for the perpetrator to integrate directly and socialize in society. The castration punishment contained in Perpu Number 1 of 2016 is in the form of chemical castration, namely by injecting anti-androgen chemicals into a person's body so that testosterone hormone production is reduced. The goal is to kill/reduce sexual desire for perpetrators of sexual violence.

With the existence of severe sanctions accompanied by additional punishment that is quite severe in the form of chemical castration is intended to overcome the phenomenon of sexual violence crimes against children. With the existence of increased sanctions, it is expected to be able to provide a deterrent effect and efforts to prevent sexual violence against children. The government is considered very reactive so that it is wrong to think that increasing punishment is the most effective way to reduce criminal acts.

The government needs to immediately stipulate a replacement regulation for Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning child protection. In fact, what is stated in Government Regulation in Lieu of Law Number 1 of 2016 concerning castration punishment has accommodated various regulations concerning the form of sanctions against perpetrators of sexual violence against children.

## 2. Castration Sanctions from a Human Rights Perspective

According to Martin P. Golding as quoted by Hadjon (Hadjon, 2005) Castration punishment is a system of legal rules (punishment) in the form of increasing sanctions for perpetrators of sexual crimes, especially against children as victims. With consideration and various reasons for the implementation of castration punishment as an additional punishment, it is considered to be able to reduce the sexuality of perpetrators of crimes against children through genetic cutting or can also inject drugs in the form of chemicals. In Indonesian, Human Rights (HAM) can be interpreted as basic rights in humans. Although liberally the terms are different, they have the same meaning. For example, haqqul insan (Arabic), human right (English).

The definition of Human Rights is also explained in Law No. 39 of 1999 concerning Human Rights in Chapter 1 Article 1 paragraph (1) which states "human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are protected by the state of law, government, and every person for the sake of honor and protection of human dignity and honor." Thus it is clear that human rights are universal, applicable to all human beings regardless of social strata and level, economic status, religious differences, gender and so on.

The National Human Rights Commission's view regarding the application of chemical castration punishment for perpetrators of sexual violence is as follows (Hasanah, 2018) [2].

a. The imposition of punishment through castration can be qualified as a cruel and inhuman punishment which is therefore not in accordance with the constitution and Indonesia's commitment in the field of human rights. The provisions of Article 28G paragraph (2) of the Indonesian constitution state that "everyone has the right to be free from torture and treatment that degrades

human dignity". Thus, this right is constitutional and its advancement, protection and fulfillment are also constitutional commitments.

- b. The imposition of additional punishment by castration (either chemical or by medical surgery) can be qualified as a violation of rights, namely a violation of the right to consent to medical treatment and the right to protection of a person's physical and mental integrity.
- c. Input from doctors, legal experts and criminologists stated that the cause of sexual violence is not only medical but also psychological and social. Acts of sexual violence are not just penetration of the genitals. In this case, in addition to punishment based on existing laws, what must be given is an effort to restore through comprehensive rehabilitation, both medical, psychological, and social, while still adhering to human rights.
- d. The Perpu on the imposition of castration punishment should be reconsidered and not issued. Komnas HAM views that handling sexual crimes against children, in this case also women, requires comprehensive and consistent action and not only focuses on punishment but also rehabilitation and preventive measures such as the development of a social protection system for children (for example, child-friendly communities and also women, openness of information about perpetrators) or through education and increasing understanding through reproduction. This can be implemented through Presidential Instruction Number 5 of 2014 concerning the National Movement against sexual crimes against Children, other existing instruments or those that strengthen it. Hopefully this can be its main concern.

The castration sentence imposed on perpetrators of rape of children, when linked to human rights (HAM), then the castration sentence violates two principles that are the mandate of reform, namely the principles of human rights and democracy. In substance, the punishment of castration will result in the loss of a person's right to continue their lineage and the fulfillment of basic needs guaranteed in the 1945 Constitution.

### We can see the contents of Article 28 G of the 1995 Constitution as follows:

1. Everyone is obliged to respect the human rights of others in orderly life in society, nation and state."
2. "In exercising and protecting his human rights and freedoms, every person is obliged to comply with the restrictions stipulated by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people, and to fulfill fair demands in accordance with moral considerations and values. - religious values, security and public order".

This of course contradicts human rights as contained in the 1945 Constitution. As the highest law, the 1945 Constitution is a reference for laws below it and does not allow any laws that conflict with the Constitution as per the principle of *Lex superior derogat lex inferiori*, which means that higher law defeats lower law (Sukat, 2012) [8]. In addition, until now there has been no study showing that castration sanctions are able to effectively suppress acts of sexual violence against children. In addition, if castration punishment is applied, there will be a conflict with the principles of punishment, and

it also conflicts with the types of punishment in the Criminal Code. Because the Criminal Code only recognizes two punishments, namely principal and additional punishments and in it there is no regulation of the type of corporal punishment or corporal punishment (Wahyuni, 2017) <sup>[10]</sup>.

From a human rights perspective, castration is considered a human rights violation because sexual desire is something inherent in humans that cannot be eliminated. Therefore, there should be a more humane punishment, namely by law enforcement. Law enforcement is still weak so that the crime is still repeated and the role of society is needed for early prevention (Ilyas, 2015) <sup>[3]</sup>.

As explained in article 1 of the general provisions number 4 of Law No. 39 of 1999 concerning human rights, torture is any act carried out intentionally, resulting in severe pain or suffering, both physical and mental. The implementation of castration punishment can actually make the perpetrator not become better, but rather make the perpetrator lose self-confidence and be more emotional, health experts reject the existence of castration punishment because castration punishment makes the perpetrator more aggressive and cannot guarantee the recurrence of sexual crimes because the sexual memory is still attached to the perpetrator's mind, even though his testosterone hormone decreases, so it is feared that it can cause new sexual crimes that are even more sadistic.

## 5. Closing

Law No. 17 of 2016 concerning Child Protection is the government's effort to resolve the problem of sexual violence against children in Indonesia. In Article 81 Paragraph (7) there is a chemical castration penalty for perpetrators of sexual violence. "Against the perpetrators as referred to in paragraph (4) and paragraph (5), can be subject to action in the form of chemical castration and chip installation". After the issuance of Law No. 17 of 2016 concerning Child Protection, there was a lot of conflict regarding the party that had the authority to carry out chemical castration executions for convicts. The Indonesian Doctors Association is one of the parties that refused to be the executor for convicts, this is because it would violate the Code of Medical Ethics. So that until now there is still debate regarding who is the party authorized to carry out the execution of convicts with chemical castration.

The chemical castration punishment referred to in Article 81 paragraph (7) is an inhumane act, so that this punishment violates human rights. The provisions of Article 28G paragraph (2). It is also emphasized in Article 33 paragraph (1) of Law No. 39 of 1999 concerning Human Rights. Several of these regulations all condemn all actions that degrade human dignity, so that chemical castration sanctions for perpetrators of sexual violence constitute a violation of human rights.

## 6. References

1. Hadjon PM. Introduction to Indonesian Administrative Law. Yogyakarta: Gadjah Mada University Press; c2005.
2. Hasanah NH. Criminal law policy of chemical castration sanctions in the perspective of human rights and Indonesian criminal law. Udayana Master of Law Journal; 2018:7.
3. Ilyas S. Chemical castration sanctions for pedophiles in the perspective of law in Indonesia. Al-Mursalih. 2015;1(2):25.
4. Mamudji S. Research Methods and Legal Research. Jakarta: Publishing Agency of the Faculty of Law, University of Indonesia; c2005.
5. Kumkelo M, Kholis MA, Ali FVA. Fiqh on Human Rights Orthodoxy and Liberalism of Human Rights in Islam. Malang: Setara Press; c2009.
6. Renggong R. Criminal Procedure Law (Understanding Human Rights Protection in the Detention Process in Indonesia). Jakarta: Prenadamedia Group; c2014.
7. Sari AP. Causes of sexual violence against children and the relationship between perpetrators and victims. Jakarta. Accessed 2023 Aug 1. Available from: <http://kompas.com/index.php/read/xml>.
8. Saikat F. The authority of the constitutional court in testing laws against the basic law and its implications for the constitutionality of a law. Jurnal Konstitusi; c2012.
9. Wahid A, et al. Legal Protection for Victims of Sexual Violence. Bandung: Refika Aditama; c2013.
10. Wahyuni F. Castration punishment for child rape criminals and its relation to human rights. Jurnal Hukum Progresif. 2017;6(2):279-296.
11. Wibowo A. Policy on increasing sentencing for perpetrators of sexual violence against children in the perspective of sentencing objectives. Jurnal Juridical; 2017:4(1).
12. Wiyono. Human Rights Court in Indonesia. Jakarta: Prenada Media Group; c2006.
13. Yuwono ID. Application of Law in Cases of Sexual Violence Against Children. Yogyakarta: Pustaka Yustisia; c2015.
14. The 1945 Constitution of the Republic of Indonesia Criminal Code
15. Law Number 23 of 2002 concerning Child Protection
16. Law Number 35 of 2014 concerning Child Protection
17. Law Number 17 of 2016 concerning Child Protection
18. Law Number 39 of 1999 concerning Human Rights
19. Law Number 5 of 1998.