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Submission date: 11-Apr-2021 01:08PM (UTC+0700)

Submission ID: 1555767337

File name: 328107931.pdf (639.18K)

Word count: 10827

Character count: 58870



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

Editorial Office: Faculty of Law, Sriwijaya University, Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.

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Website: <http://journal.fh.unsri.ac.id/index.php/sriwijalayawreview>

Ratio Legis of Chemical Castration to the Perpetrators of Sexual Violence against Children

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Article	Abstract
<p>Keywords: Castration; Children; Juridical Foundation; Human Rights; Sexual Crime.</p> <p>Article History Received: Jun 15, 2020; Reviewed: Jul 25, 2020; Accepted: Jul 28, 2020; Published: Jul 31, 2020.</p> <p>DOI: 10.28946/slrev.Vol4.Iss2.652.pp285-303</p>	<p>The government responds to the increasing number of cases of sexual crimes against children by legalizing Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. This regulation emphasises on increasing the severity of criminal sanctions and the imposition of an additional penalty for perpetrators of sexual violence against children. It is effective to give deterrent effects, to prevent future crimes, and to provide rehabilitation. Furthermore, Government Regulation in Lieu of Law No. 1 of 2016 has been amended into Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law. The juridical foundation will be used as a legal basis for the new law, namely the Draft Bill concerning amendments to Law No. 23 of 2002 concerning Child Protection. Cases of sexual violence against children are increasing, threatening children's strategic role as the nation's future. Hence, the state needs to increase the severity of criminal sanctions and to take action against perpetrators of sexual violence against children.</p>

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INTRODUCTION

The rate of sexual violence against children in Indonesia is very alarming. Cases of paedophilia become society's point of discussion. One of the most discussed cases is the case of Robot Gedek who sodomised and mutilated 12 victims, all under the age of 14, from 1994 to 1996. For his actions, Robot Gedek was sentenced to death.¹ Perpetrators of sexual violence against children are usually adults close to the victim, such as family members or neighbours.

¹ Ismantoro Dwi Yuwono, *Penerapan Hukum Dalam Kasus Kekerasan Seksual Terhadap Anak* (Jakarta: PT. Buku Seru, 2015).

In 2016, there is a case, which, once again, stirred controversy in society. It was the case of a 14-year-old, YN, who died after being raped by 14 youths when they returned home from school. YN was a junior high school student in Padang Ulak Tanding Village, Rejang Lebong Subdistrict, Bengkulu. In another place, specifically in Hulu Sungai Selatan Regency, South Kalimantan, the Panel of Judges of the Kandangan District Court sentenced 27-year-old Marzuki to a life sentence after raping 7-year-old Siti Aisyah, who died as the result of the act.²

Children often become victims of crime or violence committed by people they know. The provision of Article 1 Number (16) of Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection states: "violence is every act against a child which results in physical, psychological, sexual, and/or neglectful misery or suffering, including threats to commit acts, coercion, or deprivation of liberty against the law."

Concerning cases involving children as victims of sexual crimes, Arist Merdeka Sirait (Chairperson of the National Commission for Child Protection) said that according to the data collected and analysed by the National Commission for Child Protection's Data and Information Center, in Indonesia, there are 21,869,797 cases of violations of children's rights throughout all provinces in Indonesia. 42-58% of violations of children's rights include sexual crimes against children. Every year, cases of sexual crimes against children continue to rise, in which: 1) In 2010, there were 2,046 cases, 42% of which were sexual crimes; 2) In 2011, there were 2,426 cases, 58% of which were sexual crimes; 3) In 2012, there were 2,637 cases, 62% of which were sexual crimes; 4) In 2013, there was a significant increase of 3,339 cases, 62% of which were sexual crimes; 5) In 2014 (January-April) there were 600 cases/876 victims, of whom 137 were child perpetrators.³

The government shows a severe response to the increasing number of cases of sexual crimes against children by amending Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. The emphasis of this Government Regulation in Lieu of Law lies on the increase of the severity of punishments and the provision of additional punishments for perpetrators of sexual crimes against children as prevention and rehabilitation efforts and to give deterrent effects. Government Regulation in Lieu of Law No. 1 of 2016 has been ratified into Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning the Protection of Children into Law. One of the changes to the provisions in Law No. 17 of 2016 is in Article 81 paragraph (7) which states "that the perpetrators referred to in paragraph (4)⁴ and

² Media Indonesia, 'Kasus Yuyun Picu Kesadaran RUU Penghapusan Kekerasan Seksual', *Media Indonesia Official Website*, 2016 <www.mediaindonesia.com/news/read/43682/yuyun-pdan-ruu-penghapusan-kerasanseksual/>.

³ www.komnasham.go.id/kabar-latuharhar/komnas-ham-perppu-tentang-penghukuman-kebiri-untuk-tidak-terbitkan, accessed on April 24, 2017.

⁴ Article 81 paragraph (4) of Law No. 17 of 2016 states that "In addition to the offender as referred to in paragraph (3), the addition of 1/3 (one third) of the threat of criminal penalty is also imposed on the perpetrator who has been convicted of a criminal offence as referred to in Article 76D" (Article 76D of Law No. 23 of 2002 states that "Everyone is prohibited from committing violence or threats of violence forcing the child to have sexual intercourse with him or with other people.")

¹ paragraph (5)⁵ can be subjected to acts of chemical castration and installation of the electronic detector."⁶

It is necessary to examine further the rationale of the legislators in stipulating chemical castration in statutory regulation. Hence, the ¹ problem in this research is what is the *ratio legis* in the regulation of chemical castration in Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law?

¹ RESEARCH METHODE

This research is normative legal research. According to Soerjono Soekanto and Sri Mamuji, "normative legal research is legal research carried out using methods that examine library materials or secondary data only."⁷ This research used the Statute Approach, Conceptual Approach, and Historical Approach. The sources of data for this research are primary legal material, secondary legal materials, ¹ and tertiary legal materials, collected from library studies and the internet. The technique of analysis in this research was "prescriptively analytical, which aims to produce prescriptions about the essence of legal research that adheres to characteristics of legal studies as applied science."⁸

ANALYSIS AND DISCUSSION

Criminal Policy

The penal policy includes the act of choosing values and applying these values in reality. To be more specific, the penal policy is the selection of values to prevent delinquency and crime. Efforts and policies to make an excellent criminal regulation, in essence, cannot be separated from the purpose of preventing crime. As part of criminal policy, the penal policy is associated with the notion of "policy for preventing crimes with criminal law."

Indonesia does not have a problem with using criminal law ⁸ to deal with crimes. It is evident from the legislation practice ⁷ in which the application of criminal law is ⁸ part of the legal policy adopted in Indonesia.⁹ Therefore, it is often said that penal policy is part of the law enforcement policy. It is carried out through the criminal justice system, which consists of the policy subsystem, the prosecutor subsystem, the court subsystem, and the correctional facility subsystem.

The targeted legislated environment is citizens and law enforcers, all of whom aim to protect the public. Besides, efforts to fight crime through the formulation of criminal laws are necessarily an integral part of social defence efforts. Therefore, it is natural that penal policy is also an integral part of social policy.

⁵ ¹ Article 81 paragraph (5) of Law No. 17 of 2016 states that "In the case of a criminal offence as referred to in Article 76D causing victims of more than 1 (one) person, resulting in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or death, perpetrators sentenced to death, for life, or imprisonment of at least 10 (ten) years and a maximum of 20 (twenty) years."

⁶ The installation of electronic ¹ detectors in this provision aims to determine the whereabouts of a former convict (see the explanation of Article 81 paragraph (7) of Law No. 17 of 2016)

⁷ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif* (Jakarta: Rajawali, 1985).

⁸ Purnadi Pubacaraka and Soerjono Soekanto, *Perihal Kaedah Hukum* (Bandung: Alumni, 1978).

⁹ Siswanto Sunarso, *Filsafat Hukum Pidana Konsep, Dimensi, Dan Aplikasi* (Jakarta: PT. Raja Grafindo Persada, 2015).

Social policy is all reasonable efforts to achieve community welfare, including protection of the community. So, the term "social policy" includes elements of "social welfare policy" and "social defence policy." In short, the ultimate goal of criminal policy is the protection of the community to achieve social welfare.¹⁰

In addition to having to adjust to the world social order as a civilised nation, the penal policy cannot be separated from the characteristics of a nation. At the internal level, cultural pluralism cannot be eliminated. Instead, it must be maintained and developed as long as it adheres to the ideas of national law. Pancasila and Indonesia's official motto Unity in Diversity, both of which contain the characteristics of the Indonesian people, are the aspirations that underlie the establishment of the national legal system.

Legal policy, especially in formulating a Bill, includes the determination of criminal sanctions, including the death penalty, imprisonment, fines, and additional penalty. In determining criminal sanctions, there are several things to put into consideration, such as the understanding of criminalisation and decriminalisation of certain acts as well as research and thoughts on criminal policy. On determining the criminalisation of individual acts, Sudarto reminded that:¹¹

"1) The application of criminal law must adhere to national development goals, which is to realise a just, materially and spiritually prosperous society based on Pancasila and hence (the application of) criminal law aims to fight crime and impose a limitation on the countermeasure itself the community welfare and protection; 2) Acts attempted to be prevented or subdued by criminal law must be "desired actions," namely actions that bring harm (material and or spiritual) to the citizens; 3) The application of criminal law must also take into account the principle of "cost and benefit"; and 4) The application of criminal law must also consider the capacity or capability of the law enforcement agencies to prevent overloading of duties."

According to Teguh Prasetyo, the formulation stage is very significant in deciding the next stages because when criminal legislation is about to be made, its objectives must already be determined. It means that the process of determining the objectives must also include the determination of actions prohibited by criminal law. The formulation stage is undoubtedly based on clear objectives as follow:¹²

"1) Supporting the realisation of legal supremacy, especially in terms of replacing the regulations from the colonial era with national law as the former no longer correspond to the development of the society; 2) Improving the existing laws and regulations that do not meet the demands and needs of the society; and 3) Establishing new laws and regulations that meet the demands and the legal needs of the society."

In essence, penal policy (criminal law policy or *strafrechtspolitik*) is a comprehensive process of criminal law enforcement. Therefore, the three stages (formulation, application, and execution stages) are expected to become a correlated chain in a complete system. Of the whole process of criminal law enforcement, the formulation stage is the most strategic initial stage and, at the same time, becomes the foundation for the application and the execution stages. According to Winosobroto, the penal policy is an action related to¹³ the government's efforts in fighting crime with criminal law, the establishment of criminal law that suits the society; and the government's policy to oversee society to achieve higher goals.

¹⁰ narso.

¹¹ Sudarto, *Hukum Dan Hukum Pidana* (Bandung: Alumni, 1983).

¹² Aziz Syamsudd, *Tindak Pidana Khusus* (Jakarta: Sinar Grafika, 2011).

¹³ Lilik Mulyadi, *Komplikasi Hukum Pidana Dalam Perspektif Teoritis Dan Praktik Peradilan* (Bandung: Bandar Maju, 2010).

Legislators always say that one way to prevent crime is to use criminal law and its punishment. However, there is no consensus among scholars regarding the purpose that people want to achieve with the punishment. Seeing the imposition of punishment in Indonesia, it is evident that people's thought about this matter is still more or less influenced by the perception from the past few centuries (retributive view). However, people's thought is starting to change following the passage of time, the advance of science, especially in criminology, and renewal of the criminal system in various countries.¹⁴

Basically, punishment is intended to inflict suffering or misery to the perpetrators of crimes for their wrongdoings. The element of misery in punishment results in criminal law obtaining a place separated from other laws as *ultimum remedium* or the last resort to improve human behaviour.¹⁵ Van Bemmelen stated that criminal law has its place because the state has the power to cause suffering intentionally.¹⁶ Thus, it is natural for people wanting the formulation and the application of criminal law to be accompanied by strict restrictions, in a rational and proportional sense.

Considering criminal law's status as *ultimum remedium*, the legislators do not only pay attention to the rational and proportional sense of the application of criminal law but also the actions that will be branded as criminal acts and the sanctions imposed on the perpetrators. When the legislators establish a criminal sanction in law, the policy of determining the criminal offence is inseparable from the policy of removing a person's independence and rights, which is directly related to legalised human rights. The matter of determining punishment cannot be separated from the formulation of a law, which is basically the state political policy or legal policy formulated by the People's Representatives Council and the President. Here, the law is not all about imperative articles or necessities that are *das sollen*. Rather, it is subsystems which grow and develop in reality (*das sein*) and are very likely to be determined by politics, both in the formulation of the material and the Article and in its implementation and enforcement.

From the public's perspective, policy means the general principle by which a government is guided in its management of public affairs or in the establishment of law.¹⁷ The criminal policy is a principle used by legislators in determining punishment with rational, proportional, and functional grounds. Still, it adheres to the principles in general conventions, including those specified in the first book of Indonesian Criminal Code and general precepts that guide the establishment of the existing law. Peter Hoefnagels argued that criminal policy covers a broad scope, including the implementation of criminal law, prevention efforts without punishment, and the influence of people's views on crime and criminalisation through mass media.¹⁸

The criminal policy defines in narrow and board senses. In a narrow sense, it is the whole principles and methods that form the basis of the reaction to violations of the law (criminal acts). Meanwhile, in a broad sense, the criminal policy is the whole function of law

¹⁴ Mulyadi.

¹⁵ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Sinar Baru, 1968).

¹⁶ Helbert L Packer, *The Limits of The Criminal Sanction* (California: Stanford University Press, 1968).

¹⁷ Anthony and Duff and David Garland, *A Reader on Punishment* (New York: Oxford University Press, 1994).

¹⁸ Barda Nawawi Arief, *Bunga Ramai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana Prenadamedia Group, 2014).

enforcement agencies, including the way the court and the police work.⁷ The definition of criminal policy can be even broader, in which it refers to the whole policy carried out through legislation and official bodies that aim to enforce the norms in society when a violation occurs.¹⁹

Based on the scope of criminal policy, there are two approaches to prevent crime: penal approach (criminal law), and non-penal approach (non-criminal law). The non-penal approach includes prevention without punishment and the influence of people's views on crime and criminalisation through mass media. Meanwhile, the penal approach means the implementation of criminal law, which people refer to as repressive measures. Besides the repressive meanings, the penal approach also has preventive meanings. On the one hand, the punishment intends to change the convict's attitude or behaviour. On the other hand, punishment aims to prevent others from committing similar acts. Therefore, the preventive meaning of penal approach is considered to be more forward-looking.²⁰

The legislators in Indonesia now only need to choose between retributive view and utilitarian view. The retributive view assumes punishment as a negative reward for the citizens' wrongdoings. Meanwhile, the utilitarian view focuses on the benefit and purpose of punishment, believing that punishment should aim for improvement and prevention. It means that punishment aims to change the convicts' behaviour so that they will not repeat their wrongdoings on the one hand, and to prevent other people from committing similar acts on the other hand. In the implementation of criminal law, the utilitarian view is seen as more ideal than the retributive view. The utilitarian view is also considered more modern and hence, influences criminal policy in various countries.

There is also another view called the behavioural view proposed by Packer. Packer believed that this view is also forward-looking as it assumes that punishment is not retribution to criminals but a means of improving their behaviour. However, unlike the utilitarian view, this view is based on extreme determinism. It assumes that humans have no free will and therefore, cannot be held accountable for moral responsibility. Factors outside humans' power cause every antisocial act.²¹

Muladi's view also needs to be considered in determining punishment since Muladi attempted to integrate the three views into a theory called the purpose of integrative punishment. This theory is seen to have the ability to deal with the damage caused by criminal acts (humanity in Pancasila).²² Additionally, this theory is chosen due to its multi-dimensional approach, which is fundamental to the impacts of punishment (individual and social impacts).

About determining punishment, Anselm von Feuerbach argued that the vital principle in giving threats of criminal penalty is that every sentence imposed by a judge must be a legal consequence of a provision in the law intended to protect the individuals' rights. The law must give a threat of criminal penalty in the form of misery to everyone who violates the law.²³

¹⁹ Ibid.

²⁰ Suhariyono, 'Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan', *Jurnal Perspektif*, XVII.1 (2012), 20.

²¹ Ibid.

²² Muladi, *Lembaga Pidana Bersyarat* (Bandung: Alumni, 1992).

²³ Lamintang.

The purpose of punishment formulated by the drafters of the Criminal Code Draft Bill seems to be a combination of several theories namely the general prevention (*generale preventie*), psychological prevention theory (*psychologische dwang*), and special prevention (*speciale preventie*) which aim to prevent the criminals from repeating their actions. The expectation is that the perpetrators of criminal acts refrain from committing crimes again because they know that punishment means suffering. Thus, punishment functions to educate and improve people's behaviour.

In the Criminal Code Draft Bill, the purposes of punishment are to prevent criminal acts by enforcing legal norms for community protection; to help convicts to return to society by providing coaching so that they become excellent and helpful people; to resolve conflicts caused by criminal acts, restore balance, and bring peace to society; and to free the convicts from guilt. Moreover, punishment must not demean human dignity or cause humiliation.²⁴

The sentencing system used so far generally refers to the Criminal Code. The term 'system' means something that can be used as a model, reference, or guideline to construct something else. Here, the sentencing system means a reference or a guideline for constructing a system of criminal sanctions or opinions of criminal law experts, who have made a classification of criminal acts. Thus, the sentencing system is a guideline for constructing punishment while the sentencing guideline is a guideline for the imposition of a punishment. In other words, the sentencing system is the legislative guideline for legislators, while sentencing guideline is the legal guideline for judges.²⁵ Based on this understanding, a comprehensive and ideal sentencing system must exist before the legislation is made, or even before the Criminal Code is made. So, to say 'according to the sentencing system in the Criminal Code' is not quite right. However, because the Criminal Code is seen as the umbrella of criminal regulations, the legislative practice uses the sentencing system in the Criminal Code as a reference in making other criminal legislation.²⁶

Ratio Legis of the Chemical Castration Penalty

Ratio legis is the rationale for a law or a particular provision in the law. In a broad sense, *ratio legis* is the basis of philosophical thought, meaning that its study is based on scientific studies in philosophy, especially legal philosophy. The law can also be approached with legal studies, especially in philosophical, theoretical, juridical, or dogmatic aspect.²⁷

²⁴ Article 54 of the Criminal Code Draft Bill, Ministry of Law and Human Rights, 2006/2008.

²⁵ Arief.

²⁶ Arief.

²⁷ Peter Mahmud Marzuki argued that in legal research, there is a statutory approach in which researchers not only look at the form of legislation but also examine the content material. Researchers also need to study the ontological basis (which is the reason for) of the creation of laws, the philosophical foundation of laws, and the *ratio legis* of the provisions of the law. The study was carried out on laws, not other forms of legislation because laws are made by people's representatives, and hence, are supposedly made by the people, while regulation is nothing but a delegation of what the people wanted. Marzuki also explained that the ontological basis and philosophical foundation are related to one of the provisions of a law that was referenced in answering legal issues faced by researchers. *Ratio legis* can simply be interpreted as the reason for the existence of a provision. Discussing the *ratio legis* of a statutory provision cannot be separated from the ontological basis and the philosophical foundation of the law that contains it (Peter Mahmud Marzuki, p 142).

¹ Government Regulation in Lieu of Law No. 1 of 2016 is the policy of the government in response to the rise of sexual violence³ against children. Members of the People's Representative Council have agreed to make Government Regulation in Lieu of Law No. 1 of 2016 a law, which is known as Law No. 17 of 2016 concerning the⁴ stipulation of Government Regulation in Lieu of Law No. 1 of 2016. The government issued Government Regulation in Lieu of Law No. 1 of 2016 concerning⁴ the Second Amendment to Law No. 23 of 2002 concerning Child Protection because sexual violence against children increases significantly, which endangers the lives of children, damages their personal life, hinders their growth and development, and dis⁴rupts the sense of comfort, peace, security, and public order. The government considers criminal sanctions imposed on perpetrators of sexual violence against children do not give a deterrent effect and do not comprehensively prevent sexual violence against children.²⁸

Sexual violence is not solely due to hormonal imbalances. Other factors cause sexual violence against children, such as personality disorder. Individuals with antisocial personality disorder do not like to follow the standard rules. They like to harm other people. They also do not like it when people are happy. Other disorders that trigger sexual violence include narcissistic personality disorder, intermittent explosive disorder, or abuse of substance, such as narcotics, psych³otropics, and alcohol. Thus, including the individual's mental condition, many things trigger sexual violence against children.²⁹

Enactment of Government Regulation in Lieu of Law N^o 1 of 2016 is motivated by the increase of sexual violence against children. Year by year, sexual violence against children keeps increasing, threatening children's strategic roles as the nation's successor. Of the 50 judge's verdicts in Indonesia last year, 52.9% of the judges gave 5 to 7-year sentence for Article 81, while the other 44.4% gave the same sentence for Article 82. It means that the judge's verdict revolves around minimum verdicts. As for the 7 to 10-year sentence, there are 35.5% sentences for Article 81 and 37% for Article 82. For the 10 to 12-year sentence, there are only 11% for Article 81 and 18% for violation of Article 82.³⁰

Children are⁶ the mandate of God the Almighty, who must be taken care of and treated correctly. They are an inseparable part of the continuity of humanity, nation, and state civilisation. They also need to get the opportunity to grow in physical, mental, and social as⁶pects. Therefore, their happiness and welfare must be protected by ensuring the fulfilment of their rights without discriminatory treatment.

The state upholds human rights, including children's rights, which is marked by the guarantee of the protection, recognition, and fulfilment of their rights in the 1945 Constitution and the provisions in national legislation, including Law No. 23 of 2002 concerning Child Protection which was subsequently amended into Law No. 35 of 2014 concerning

²⁸ Inilah Materi Pokok Perppu Nomor 1 Tahun 2016 yang Sering Disebut Perppu Kebiri, setkab.go.id/inilah-materi-pokok-perppu-nomor-1-tahun-2016-yang-sering-disebut-perppu-kebiri/ accessed on April 01, 2017.

²⁹ Minutes of the Meeting of Commission VIII of the People's Representatives Council on July 25, 2016. A meeting to hear input on the Draft B^{ill} concerning Government Regulation in Lieu of Law No.1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection.

³⁰ Minutes of the Meeting of Commission VIII of the People's Representatives Council on July 25, 2016. A meeting to hear input on the Draft Bill concerning Government Regulation in Lieu of Law No.1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection.

Amendment to Law No. 23 of 2002 concerning Child Protection, Law No. 11 of 2012 concerning Child Criminal Justice System, and others.

In international society, the state's guarantee is highlighted in the ratification of international conventions on child rights through Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. The state, government, regional government, community, family, parents, community organisations, religious organisations, and other components of society must provide recognition and protection and ensure the fulfilment of children's rights under their responsibility to protect children. However, the efforts in protecting children that have been done so far are not enough to provide children with proper treatment in every aspect of life.

The philosophical foundation for Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law is that everyone, children included, is born independent with equal dignity and rights. Hence, the rights inherent in them are part of human rights. Under the principles in the Charter of the United Nations, children's rights are children's fundamental rights, an acknowledgement of inherent dignity which cannot be revoked by anyone. Children have the right to live, to pursue an education, to receive access to health, to get protection, and to express their views freely regarding all matters that affect their lives. Based on Article 28B paragraph (2) of the 1945 Constitution, which states that "every child has the right to survival, growth, and development and the right to protection from violence and discrimination," it is inevitable that a child has constitutional rights and the state must guarantee and protect the child's rights.³¹

Respect and protection of human rights are essential things that do not know the boundaries of space and time. It is evident in the long history of the protection of human rights, starting from Magna Charta in 1215, which was a reaction to King John's arbitrary actions, to Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Court in Indonesia. Various forms of universal regulations have also been issued to support human rights protection in the world. Most countries, including Indonesia, also address issues regarding fundamental rights into their respective constitutions. Protection and law enforcement has a strong relationship because protection is one of the purposes of law enforcement. Indonesia is a country based on the rule of law, so protection of human rights is certainly a consistent goal of law enforcement.³²

One area of human rights that becomes a concern both in international society and in Indonesia is children's rights. Problems concerning children's lives should be a primary concern for the community and the government. At present, Indonesia needs many ideal conditions to protect the children but is unable to realise them. This problem occurs because of the failure of various social institutions in carrying out their functions. Various parties have made various efforts to protect children, such as the adoption of children. However, the problem is that adoption continues to be prevented from being implemented yet; it is expected to be one realisation of child protection efforts.

³¹ Academic Manuscript for the Draft Bill of Law No. 23 of 2002 concerning Child Protection.

³² Academic Manuscript for the Draft Bill of Law No. 23 of 2002 concerning Child Protection.

Just like adults, children also have rights that need to be protected by the state. The state must ensure the rights of its citizens by upholding the principles of the fulfilment of human rights. First, the state must respect human rights. Second, the state must protect human rights from any threats. It can be done by making legal devices sensitive to human rights. Third, the state has to make efforts to fulfil human rights, such as by taking legislative, administrative, budgetary, legal, and other actions to ensure the implementation of the fulfilment of human rights.

Pancasila, the State ideology of Indonesia, also finds child protection necessary. The first principle of Pancasila explains that children protection is the core of every religion as it deals with matters of faith. Every believer must realise that, for all individuals and all families, children are the priority. Children must receive the best things in all aspects of life. Moreover, as members of society, children must be taught religious beliefs and knowledge from an early age to create a healthy and inclusive religious tradition, which, in turn, will create ethical and moral values that act as a guide to living a tolerant religious life.³³

Meanwhile, the second principle explains that as individuals and members of society, every family member must regard children as human beings with absolute rights. Every child has social, political, economic, and cultural rights, all of which complement each other and build a human self-image. Then, the third principle emphasises unity because it brings this diverse nation together, from Sabang to Merauke. Although Indonesia consists of different groups, the foundation of this country focuses on Indonesia as a whole with the value of unity as the priority. Children need to learn these values from an early age.

The fourth principle provides the main foundations for the consensus in diversity. The consensus is a formula that unites rather than questions the minority and majority groups in society that are created by differences in religion, descent, et cetera. The consensus is a keyword to cross-cultural boundaries and reduces primordialism, which can destroy unity. In short, the deliberative consensus is the formula to create a happy, prosperous, and democratic family. This fourth principle, 'democracy, led by the wisdom of the representatives of the People,' also emphasises trust in people's representatives to prioritise deliberative consensus in carrying out their constitutional duties, especially concerning the best needs for children. Finally, the fifth principle places justice as an essential element for the stability and defence of a country. A country cannot function without justice for its people.

Concerning that, one of the main substances in child protection is that children as rights owners need to be encouraged to play an active role in providing input throughout the process of drafting policies, programs, activities, and even budgeting. They should be able to get proper access and information suitable for their age. Furthermore, they must have the skills to channel and convey their expressions. That way, they will be heard, valued, and acknowledged by decision-makers.

The sociological foundation for Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law is that children are not small

³³ Henny Yuningsih Et.al, 'Philosophical Foundation Of Chemical Castration For Offender Of Sexual Violence Against Children', *Sriwijaya Law Review*, 4.1 (2020), 62.

adults, but humans who grow and develop maturity until they are 18 years old. It also includes a child still in the womb. Children have a strategic role because they comprise 38% of Indonesia's total population. They are essential to the survival and glory of the nation. Thus the government needs to make children the top priority in development by creating an environment that prioritises protection for children.

The Convention on the Rights of the Child is an instrument that contains universal principles and provisions on legal norms concerning children. It is an international treaty on human rights that includes civil and political rights, economic rights, and social and cultural rights. It also emphasises the affirmation of children's rights, children protection by the state, and the roles of various parties (the government, society, and private sector). Indonesia also has a regulation focusing on a similar matter, namely Law No. 23 of 2002 concerning Child Protection. It regulates various issues, such as children facing legal problems, children from minority groups, children suffering from economic and sexual exploitations, trafficked children, children victims of riots, children refugees, and children in armed conflict. Children protection knows no discrimination, respects children's interests, opinion, and the right to life and growth ¹

Case of violence against children in Indonesia is increasing at an alarming rate. Violence against children includes sexual, physical, psychological, and social violence. Cases of paedophilia in Indonesia are the highest in Asia with 92 cases in just four months. Cases that received attention from the public include sexual violence against kindergarten students at Jakarta International School (JIS) and the Emon Case in Sukabumi. In another case, 10-year-old Renggo Khadafi died after being persecuted by his senior, SY, in the classroom at SD Negeri 9 Makassar. Other regions such as North Sumatra, West Sumatra, East Java, Sulawesi, Riau, and South Kalimantan are not exempt from cases of violence. Cases of violence against children are like the tip of an iceberg. Cases that people know are just a few among many others. ¹

The juridical foundation of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law refers to the consideration or reason behind the establishment of the law. The law exists to resolve legal problems and to fill the legal vacuum by considering existing regulations, regulations that soon will be changed, or regulations that will be revoked to ensure legal certainty and justice. The juridical foundation concerns legal matters related to substances or materials that are in need of new legislation.

Some of these legal issues include outdated regulations, overlapping regulations, weak regulations due to their position being lower than Laws, inadequate regulations, or there is no regulation at all.³⁴ The juridical foundation also acts as a substance review of a Law related to the Academic Manuscript by paying attention to the hierarchy of laws with the 1945 Constitution at the top.³⁵ The juridical foundation will be used as a legal foundation for the

³⁴ Appendix I of Law No. 12 of 2011 concerning Establishment of Legislation Regulations.

³⁵ Akhmad Aulawi, Arrista Trimaya, and Et.al Atisa Praharani, *Modul Perancangan Undang-Undang* (Jakarta: The People's Representatives Council Secretariat General, 2008).

new legislation. The legal foundation contains³⁶ regulations that become the guidelines for the establishment of other laws, and law which instructs the establishment of legislation.

The guidelines for Law No. 17 of 2016 as a regulation proposed by the People's Representatives Council are the provisions in Article 20 and Article 21 of the 1945 Constitution.³⁷ This new law is the result of a change to Law Number 23 of 2002 concerning Child Protection.

The regulation concerning children is contained in the 1945 Constitution. Article 28B paragraph (2) states that every child has the right to survival, growth, and development and the right to protection from violence and discrimination. This Article explicitly states that the state must provide guarantees for children, and, the government, as an extension of the state, must make various efforts in realising child protection. Meanwhile, Article 34 paragraph (1) states that the poor and neglected children must be taken care of by the state. This Article emphasises the state's responsibility to protect the weak and neglected children. For this reason, the government must be able to reach all areas of Indonesia, even the remote areas, so that children, including neglected children, are protected in all aspects of life.

The state needs a legal instrument that regulates child protection, especially protection from violence and discrimination. It is specifically regulated in **Law No. 23 of 2002 concerning Child Protection**. The **law** explains that children, **as** mandate and gift of God the Almighty, have inherent dignity and rights that must be respected. Child rights are part of human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. Children are the future of the nation who will inherit its ideas. Therefore, they have the rights to survival, growth, development, participation, freedom, and protection from violence and discrimination as well as civil rights.

Although Law No. 39 of 1999 concerning Human Rights has included children's rights in detail, parents, families, communities, the government, and the state still need to protect children. Parents, families, and communities are responsible for protecting children's rights under the obligations imposed by law. Meanwhile, the government and the state are responsible for providing facilities and accessibility for children to ensure their growth and development. This law also emphasises that the responsibility of parents, families, communities, the government, and the state constitutes a series of activities carried out continuously under proper direction to ensure the protection of children's rights and their growth and development in physical, mental, and social aspects.

Even though the state has separate law regarding child protection, its implementation is not sufficient.³⁸ Some people consider several provisions in Law No. 23 of 2002 have multiple interpretations, ambiguous, and even create conflict.³⁹ The ineffectiveness is evident in a large number of cases concerning exploitation, discrimination, and violence against

³⁶ Appendix II Number 28 of Law No. 12 of 2011 concerning the Establishment of Legislation Regulations.

³⁷ Appendix II Number 29 of Law No. 12 of 2011 concerning the Establishment of Legislation Regulations.

³⁸ Based on the **data** collection report carried out by the Law Preparation Team for Amendment to Law No. 23 of 2002 of the **People's Representatives Council Secretariat General** in East Java, West Nusa Tenggara, and South Sulawesi on November 21-25, 2011.

³⁹ Apung Herlina, *Academic Manuscript for the Revision of Law No. 23 of 2002 Concerning Child Protection, Delivered during a Discussion with the Team on Amendment to Law No. 23 of 2002 Concerning Child Protection in the Secretariat General of the People's Representatives C*, 2011.

children. The implementation of children's rights, obligations, and protection is also flawed. Furthermore, the National Commission for Child Protection is considered ineffective in carrying out their duties. Many substances regarding children also need refinements, such as children's dignity, parenting, guardianship, adoption, and community's participation. Regulations concerning psychological violence also do not have clear criteria, making the examination at the trial difficult.⁴⁰

Considering that sexual violence against children is increasing year by year, threatening children's strategic role as the nation's future generation, the state needs to increase the severity of criminal sanctions and provide treatment to the perpetrators of sexual violence against children. 2014 saw a prevalence of cases of sexual against children, especially in educational institutions. To show their commitment to protect children, Commission VIII of the People's Representative Council submitted the Draft Bill of Law No. 23 of 2002 concerning Child Protection, which has subsequently been ratified into Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection on October 17, 2014.

Concerning Law No. 35 of 2014, there are several things that need to be corrected and included, such as issues of child fostering and alternative care. Another issue concerning the imposition of punishment for offenders who violate children's rights also needs refinement. The punishments in Article 81 and 82 are still considered too light and do not provide resolution to the condition where the crime is committed by children. Even though Law No. 35 of 2014 has been promulgated, it turns out that the number of sexual crime increased in 2015 and 2016. As for Article 81 of Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection, it states that:

"1) Any person who violates the provisions referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5.000.000.000,00 (five billion rupiahs); 2) The penal provisions as referred to in paragraph (1) also apply to Any Person who intentionally commits deception, a series of lies, or persuades the child to have intercourse with him/her or with other people; 3) In the case of a criminal offence as referred to in paragraph (1) carried out by Parents, Guardians, Caregivers, educators, or education personnel, the penalty shall be added 1/3 (one third) of the threat of criminal sanction as referred to in paragraph (1)."

Article 82 of Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection states that:

"1) Any person who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5.000.000.000,00 (five billion rupiahs); 2) In the case of a criminal offence as referred to in paragraph (1) carried out by Parents, Guardians, Caregivers, educators, or education personnel, the penalty shall be added 1/3 (one third) of the threat of criminal sanction as referred to in paragraph (1)."

Criminal sanctions contained in Article 81 and Article 82 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection does not give deterrent effects for the perpetrators. Therefore, the state needs to impose more severe punishment by giving the perpetrators additional punishment and treatment in addition to primary punishment.

Due to the severity of sexual violence in Indonesia, the government on May 26, 2016, has enacted a Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second

⁴⁰ Herlina.

Amendment to Law No. 23 of 2002 concerning Child Protection. This Government Regulation in Lieu of Law aims to give a deterrent effect for perpetrators of crimes and to prevent other people from committing crimes.

Although there are sufficiently strict sanctions imposed on the perpetrators who committed violence against children as contained in Law No. 35 of 2014, these sanctions do not give a deterrent effect. It is evident in the significant increase in violence against children, which threatens and endangers their lives, damages their personal life, hinders their growth and development, and disrupts a sense of comfort, peace, security, and public order.

For those reasons, the government decided to make a second amendment to Law No. 23 of 2002 concerning Child Protection by issuing a Government Regulation in Lieu of Law No. 1 of 2016, which changes the articles concerning sanctions for perpetrators of sexual crimes contained in Article 81 and Article 82. The issuance of this Government Regulation in Lieu of Law also shows the government's commitment to protecting and enforcing children's rights to survival, growth, and development and keeping the children safe from violence.

The issuance of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection is an effort to increase the severity of criminal sanctions to give a deterrent effect for perpetrators of sexual violence against children. This Government Regulation in Lieu of Law also stipulates the forms of prevention efforts, which include chemical castration, installation of electronic detectors, and rehabilitation for perpetrators of sexual violence against children.⁴¹ The enactment of Government Regulation in Lieu of Law No. 1 of 2016 into Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law becomes the legal foundation for judges in imposing sanctions on perpetrators of sexual violence against children. It means that in deciding cases of sexual violence against children in court, the imposition of punishment depends on the judge's judgment.

Chemical castration penalty contained in Law No. 17 of 2016 shows that the penal policy adopted by the government does not stem from rational reasons, but rather from emotional reasons. This argument is based on several grounds. First, in consideration of this Government Regulation in Lieu of Law, the government states that criminal sanctions imposed on perpetrators of sexual violence against children do not give a deterrent effect and cannot comprehensively prevent sexual violence against children. Hence, it is necessary to amend the Child Protection Law immediately. This consideration is more or less the same reason for the stipulation of Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection. Second, there are aspects in some regulations that overlap each other, such as criminal sanctions, deterrent effect, and comprehensive prevention.⁴²

⁴¹ Minutes of the Meeting of Commission VIII of the People's Representatives Council on July 25, 2016. A meeting to hear input on the Draft Bill concerning Government Regulation in Lieu of Law No.1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection, views from the United Development Party Faction.

⁴² Minutes of the Meeting of Commission VIII of the People's Representatives Council on July 25, 2016. A meeting to hear input on the Draft Bill concerning Government Regulation in Lieu of Law No.1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection.

Third, the increase in the severity of criminal sanctions in this Government Regulation in Lieu of Law is very emotional, but without including rational-legal formulation and following the provisions of the state legislation. Moreover, retributive punishment for criminals is no longer fashionable. Unusual minimum punishment, however, is still maintained. The minimum sentences are 5 (five) to 10 (ten) years in prison, while the maximum sentences are 15 to 20 years with several conditions. Also, the government will increase the 1/3 of these penalties in several conditions. For example, when an individual repeats criminal acts or when the crimes are committed by those whose duty is to protect children. However, it is not clear whether the increase can be done twice or only once.

Increasing the severity of the sanctions is understandable. However, the drafters do not regard the provisions in the Criminal Code, specifically Article 12 paragraph (4), which states that maximum imprisonment is 20 years. It means that when an offender is sentenced 20 years in prison, they cannot get the 1/3 increase of imprisonment. A minimum of 10 years' penalty is also irrational because it will force the court to issue the sentence without considering the severity of the perpetrator's actions. Hence, the sentence imposed by the court is not proportional.

Fourth, this Government Regulation in Lieu of Law introduces the concept of chemical castration. The concept of providing treatment can be assessed under Law No. 11 of 2012 concerning Child Criminal Justice System. The Draft Bill of Criminal Code also adopts the same concept. In the Child Criminal Justice System Law and the Draft Bill of Criminal Code, treatment is part of the sanctions where the child requires special treatment or sanctions instead of primary punishment (in the Child Criminal Justice System Law). Meanwhile, in the Draft Bill of Criminal Code, the court can give treatment when the punishment is limited to fines or when the criminal act is committed by individuals who cannot be held accountable, for example, those suffering mental illness. In short, primary punishment and treatment cannot be taken together.

Fifth, castration is one of the sanctions in this Government Regulation in Lieu of Law. Castration is classified as treatment, meaning that the judge can choose whether to impose this punishment or not. There is no concept of consent or agreement from the person who will be castrated. Meanwhile, in other countries, chemical castration is carried out in a "mandatory," "discretionary," or "voluntary" manner. "Mandatory" means that castration is imposed when a crime occurs. "Discretionary" means that castration is treated as an option where the judge does not have an obligation to impose this sanction. Meanwhile, "voluntary" means that castration is imposed when the individual who will be castrated gives consent.

Sixth, chemical castration is carried out during and, or after the perpetrator finishes primary punishment if it is related to obscene acts. If it is related to having sexual intercourse with children, the punishment is imposed on the perpetrator for a maximum of 2 years. It is carried out after the perpetrator finishes primary punishment. This arrangement is not sufficient because the effect of castration is not permanent. It means that if castration is carried out as long as the perpetrator is serving primary punishment, then the perpetrator requires simultaneous treatment. Giving the injection after the perpetrator finishes primary punishment for two years is also ineffective for perpetrators with death sentence or life imprisonment.

Seventh, costs are an essential subject of exploration, considering that the cost of castration is issued or budgeted by the government. The Government Regulation in Lieu of Law explains that it is the judge's decision that determines how long the castration will take place. It can be carried out during or after primary punishment. This arrangement, however, requires a tremendous amount of money for injections that must be given once in 2 weeks. Therefore, if the convict gets minimum sentence as formulated in Article 81, the government needs to cover the cost for at least 240 times of injection. Meanwhile, for the scheme where the castration is carried out after the first punishment, the government needs an additional 48 injections. A single injection is working only for one or three months.

Chemical castration aims to reduce sexual drive by inserting drugs to the body. However, further examination must be done to prove the success of this method. So, ones cannot immediately decide to give the injection and assume that it will successfully reduce sex drive. The drug has different effects depending on the individual's physical condition⁴³ and hence, the injection must be carried out repeatedly following the duration of the sentence. Furthermore, the effects of chemical castration are only temporary. In other words, if the administration of anti-androgen stops, the libido will return to normal. Thus, there is no guarantee that the castrated perpetrators will not repeat their actions after completing their sentence.⁴⁴

Finally, this Government Regulation in Lieu of Law shows that the government clearly fails to pay attention to the victims' interests. There is no single word that mentions the reinforcement of their rights. There is no compensation or treatment for them. The focus solely lies on the perpetrator. In contrast to the perpetrators who are threatened with chemical castration, the victims do not know the concept of rehabilitation. Additionally, they do not receive arrangement to additional rights or protection and assistance.⁴⁵

Indonesian criminal law experts argue that the principles of civil law determine the aggrieved party and that the loss is caused by the actions of an individual which, in criminal law, is known as the *dader* (the perpetrator) of a criminal act. So, compensation in criminal law must be seen from its relation to these three elements: offences (criminal acts), perpetrator, and victim. Other elements to consider are material and immaterial damages. Material damages do not cause problems, in contrast to immaterial damages, which include distress, anxiety, and shame. This damage must be compensated with money. In civil law, it is commonly known as "mourning money."⁴⁶

The main characteristic of restitution is the maker's responsibility to meet the demands for restitution in criminal cases, which, in victimology, refers to the restoration of physical and moral damages as well as a loss of property and rights caused by a criminal act.

⁴³ Minutes of the Meeting of Commission VIII of the People's Representatives Council on July 25, 2016. A meeting to hear input on the Draft Bill concerning Government Regulation in Lieu of Law No.1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection.

⁴⁴ Interview with andrologist dr. Edwin Pradana, Sp. And, Malang, October 9, 2018, 19.00. WIB.

⁴⁵ Perppu Nomor 1 Tahun 2016 (Sengaja) Melupakan Korban: 9 Catatan Kritis ICJR Terhadap Perppu Nomor 1 Tahun 2016, ICJR.or.id/perppu-nomor-1-tahun-2016-sengaja-melupakan-korban-9-catatan-kritis-icjr-terhadap-perppu-nomor-1-tahun-2016 accessed on May 01, 2016.

⁴⁶ AAA. Ngr. Tini Rusmini Gorda, *Hukum Perlindungan Anak Korban Pedofilia Perspektif Viktimologi Dalam Formulasi Kebijakan Dan Cita Hukum Pidana* (Malang: Setara Press, 2017).

Restitution differs from compensation. Compensation is based on a request. If granted, the community or the state must pay the damages. On the other hand, restitution is a demand from the victim that must be judged by the court. If granted, the perpetrator of the criminal act must pay for the damages.⁴⁷

The effectiveness of chemical castration can be assessed based on the executor of the punishment. The process of chemical castration involves injecting chemical substances. Thus, it falls to the medical field, which is usually handled by a doctor. As a response to this matter and also Law No. 17 of 2016 which regulates chemical castration penalty for perpetrators of sexual violence against children, the Indonesian Doctor Association issued *Fatwa* of the Medical Honor and Ethics Council No. 1 of 2016 concerning Chemical Castration, which is based on the doctor's oath and the Indonesian Medical Ethics Code. In this *fatwa*, the Indonesian Doctor Association states that the implementation of chemical castration cannot involve doctors as the executors.⁴⁸

Performing chemical castration is a violation of the oath and doctor's code of ethics regarding prioritising the patients' health because the castration injection gives negative impacts to the castrated individuals. Testosterone in men does not only stimulate a man's sex drive but also helps build bone mass and control the body's metabolism. Thus, if testosterone is suppressed or removed, the bones will be fragile. Then, the decrease in quality will expose the individual to the risk of a heart attack.⁴⁹

The Medical Ethics Code states that a doctor must heal the patient, not to impose a punishment that makes the patient suffer. The 2012 Medical Ethics Code explicitly states that "doctors are tasked with curing sick people, reducing pain, and alleviating the suffering of patients. Doctors may not act arbitrarily against their own body or other people's." All doctors in any institution, including civilian and military institutions, must consistently carry out the code of ethics and doctor's oath.

Furthermore, the imposition of an additional penalty in the form of chemical castration counts as violations of rights, especially the right to informed consent and the protection of the physical and mental integrity of the person. It is as stated in Article 39 of Law No. 29 of 2004 concerning Medical Practice that "medical practice is held based on an agreement between a doctor or dentist with patients to maintain health, prevent disease, improve health, disease treatment, and health recovery."

¹ It is in line with the Indonesian Doctor Association's statement at the hearing with Commission VIII of the People's Representative Council. The Indonesian Doctor Association issued a letter dated June 9, 2016, requesting that doctors not become executors of chemical castration as contained in Government Regulation in Lieu of Law No. 1 of 2016. The rejection is based on the *fatwa* of the Medical Honor and Ethics Council No. 1 of 2016 concerning Chemical Castration, which is based on the doctor's oath and the Indonesian Medical Ethics Code. The Indonesian Doctor Association also states that based on scientific

⁴⁷ Gorda.

⁴⁸ News Broadcast of the Indonesian Doctor Association Executives in www.idionline.org/wp-content/uploads/2016/06/BERITA-pb-idi-2.pdf, accessed on December 12, 2018, at 20.00 WIB.

⁴⁹ Interview with andrologist dr. Edwin Pradana, Sp. And, Malang, October 9, 2018, at 19.00. WIB.

evidence, chemical castration guarantees neither the loss nor reduction of sex drive or sexual violence

CONCLUSION

The juridical foundation is a consideration which explains regulations to resolve legal problems or to fill the legal vacuum by considering existing regulations, the ones that will be changed, or the ones that will be revoked in order to ensure legal certainty and a sense of community justice. Some of these legal issues include outdated regulations, overlapping regulations, weak regulations due to its position being lower than laws, or there is no regulation at all. The juridical foundation is also a substance review of a law that has to do with the Academic Script by paying attention to the hierarchy of legislation with the 1945 Constitution.

The juridical foundation will be used as a legal foundation for the new legislation, in this case, the Draft Bill concerning amendments to Law No. 23 of 2002 concerning Child Protection. Considering that sexual violence against children is increasing from year to year, threatening children's strategic role as the nation's future generation. Therefore, the state needs to increase the severity of criminal sanctions and provide treatment to the perpetrators of sexual violence against children. The increase in cases of violence shows that criminal sanctions as contained in Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection do not give a deterrent effect for the perpetrators. Hence, the perpetrators must be imposed with more severe punishment, which is a combination of primary punishment, additional punishment, and treatment.

Based on this study, the researchers recommend providing additional penalties in the form of restitution and compensation to victims and psychological care to the perpetrators to recover victims' rights. This mechanism must be contained in the laws. Restitution and compensation have a firm root of punishment because Indonesian criminal sanctions focus on the recovery of victims' rights (victim-oriented), which have been robbed by the perpetrators.

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