



Study of Penal Policy on Chemical Castration Sanction on Child Sexual Crimes Cases in Indonesia

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Abstract

Article 28 B Paragraph (2) of the Constitution of the Republic of Indonesia states that the State guarantees the right of the child to survival, growth and development and protection from violence and discrimination. Along with the rapid flow of globalization and the negative impact of the development of information and telecommunication technology, sexual violence against children is increasing. Indonesian Child Protection Commission (KPAI), said in 2015 there are 218 cases, in 2016 there are 120 cases, and in 2017 recorded as many as 116 cases. To address the phenomenon of sexual violence against children, the President of Indonesia issued a Regulation of The Government of Substitutes of The law No. 17 of 2016, hereinafter referred to as PERPPU. The contents of criminal penalties against perpetrators of criminal acts of sexual violence against children may be subject to additional crime in the form of identity of the perpetrator, and may be subjected to chemical acts accompanied by the rehabilitation and installation of electronic detectors. Basic consideration of the release of this Perppu minimize sexual crimes, Giving a deterrent effect for perpetrators of sexual crimes and Prevent intention for everyone to commit sexual crimes. But the release of this Perppu invites the pro and contra regarding how its application, given that until now there is no Government Regulation that regulates further, especially the Indonesian Doctors Association refused to do chemical castration. This paper wants to explore about the existence of the Perppu is seen from the study of criminal law policy.

Keyword: Chemical Castration, Criminal Law Policy, Penal Policy, Sexual crimes

INTRODUCTION

Article 28 B paragraph (2) of the Constitution of the Republic of Indonesia affirms that the State guarantees children's rights to survival, growth and development and protection from violence and discrimination. The rights of children are

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constitutionally protected, therefore guarantees for children's rights have received attention from the State, through various legislation aimed at protecting children, including the issuance of the Child Protection Act, which has undergone several changes. The first Child Protection Act was issued Law No. 23 of 2002, which was later amended by Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 and finally amended by 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 becomes Law.

In the explanation of Law No. 23 of 2002, explained that: children are the future of the nation, so that every child has the right to survival, to grow and develop, to participate and to be entitled to protection from acts of violence and discrimination and civil rights and freedom. Likewise in the explanation of Law No. 35 of 2014 also states that the same thing is that: Every child has the right to survival, to grow and develop and has the right to protection from violence and discrimination. Children as shoots, potentials, and young generation who are the successors of the ideals of the nation's struggle have a strategic role, traits, and special traits so that they must be protected from all forms of inhuman treatment resulting in the protection of human rights.

Along with the rapid flow of globalization and the negative impact of the development of information technology and telecommunications, sexual violence against children is increasing. The Indonesian Child Protection Commission (KPAI), stated that in 2015 there were 218 cases, in 2016 there were 120 cases, and in 2017 there were 116 cases.

Responding to the phenomenon of sexual violence against children, the President of Indonesia issued a Government Regulation in Lieu of Law No. 1 of 2016, which was subsequently upgraded to Law namely 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 becomes Law. The contents of criminal offenses against perpetrators of criminal acts of sexual violence against children can be subject to additional criminal sanctions in the form of announcing the identity of the perpetrators, and can be subjected to acts of chemical castration accompanied by rehabilitation and installation of electronic detectors. The basic consideration for the issuance of this Perppu is to minimize sexual crimes, give a deterrent effect to perpetrators of sexual crimes and prevent any intention for anyone to commit sexual crimes. However, the issuance of this Perppu invites pros and cons of how to implement it, considering that until now there has been no further Government Regulation regulating, especially the Indonesian Medical Association has refused to do chemical castration. This paper wants to explore the existence of the Perppu seen from the study of criminal law politics.

RESEARCH METHOD

This research is a normative legal research, where in this study the author analyzes various laws and regulations relating to sanctions for chemical castration in the perspective of criminal law. This study also uses various comparisons of theories to answer existing problems relating to criminal law policy in the case of applying chemical castration sanctions.

FINDING AND DISCUSSION

Penal Policy: Development in Indonesia

According to Sudarto implementing criminal law politics means holding elections to achieve the results of criminal legislation that are best in the sense of meeting the requirements of justice and usability (Sudarto, 1981: 159). On another occasion Sudarto stated that implementing criminal law politics means an effort to realize criminal legislation that is in accordance with the situation and situation at a time and for the future (Sudarto, 1983: 20). Seen as part of legal politics, the politics of criminal law means, how to try or make and form a good, future criminal law (*ius constituendum*).

Sudarto stated that if criminal law is to be involved in efforts to overcome the negative aspects of community development, then it should be seen in the overall relationship of criminal politics or "social defense planning" even this must be an integral part of the community protection plan (Sudarto, 1981: 104).

The criminal law enforcement policy is a series of processes consisting of three stages of policy. First, the formulative policy stage or the legislative policy stage, namely the stage of drafting / formulating criminal law. Second, the judicial / applicative policy stage, namely the stage of implementing criminal law. Third, the stage of executive / administrative policy, namely the stage of implementation / execution of criminal law. The first stage (legislative policy) is the stage of enforcing the law "in abstracto" while the second and third stages (the stages of the judicial and executive policy) are the stages of law enforcement "in concreto" (Arief, 2012: 10).

The last three years seem to be a year of concern for the world of Indonesian children. The Indonesian Child Protection Commission (KPAI) found hundreds of cases of sexual violence against children allegedly carried out by the closest people as perpetrators.

KPAI commissioner Jasra Putra revealed that: He found 218 cases of child sexual violence in 2015. While in 2016, KPAI recorded 120 cases of sexual violence against children. Then in 2017, there were 116 cases. According to Jasra Putra, the culprit is the closest person to the child such as stepfather and biological father, the closest family, and his friend (KPAI, 2017).

The perpetrators of criminal acts of sexual violence against these children can be convicted, using the Child Protection Act, violating Article 76D, and Article 76E of Law No. 35 of 2014 concerning Amendments to Law No.23 of 2002 concerning Child Protection.

Article 76 D, Everyone is prohibited from committing violence or threats of violence forcing the child to have sex with him or with other people.

Article 76 E, Everyone is prohibited from committing violence or threats of violence, coercion, deception, conducting a series of lies, or persuading the child to commit or allow lewd acts to be committed.

The punishment imposed by the judge on the perpetrator of the crime does not prevent another person from committing a crime of sexual violence. Although there is a theory of punishment in the form of special prevention and general prevention, or which is often referred to as "special deterrence and general deterrence", it turns out that it cannot prevent people from committing a crime. Special prevention is intended to have a criminal influence on convicts. The crime prevention that is wanted to be achieved by special prevention is that with the criminal can influence the behavior of the convicted person not to commit the crime again. This means that the criminal aims so that the

convict will turn out to be a better and more useful person for the community. While the general Prevention is intended to influence the criminal against the community in general, meaning that the prevention of crime that is to be achieved by general prevention is that the criminal can affect the behavior of community members in general not to commit criminal acts.

Perppu No.1 of 2016 Concerning The Second Amendment to Law Number 23 of 2002 Concerning Child Protection

Responding to the phenomenon of sexual violence against children which continues to increase, gives a deterrent effect to the perpetrators, and prevents the occurrence of sexual violence against children Wednesday, May 25, 2016, President Jokowi has signed Perpu No. 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection, He said the Government had determined sexual crimes against children as extraordinary crimes. Because the crime can threaten and endanger the lives of children. In the Perppu it is regulated regarding criminal charges, additional crimes, and other actions for the perpetrators. President Jokowi, said the criminal charge in the form of an additional criminal third of the threat of imprisonment of at least 10 years and a maximum of 20 years. In addition, the threat of life sentences and the death penalty goes to criminal charges. Whereas for additional criminal alternatives that are regulated is the announcement of the identity of the perpetrator, chemical castration, and installation of electronic detection devices. The president said the addition of the article would provide room for judges to decide on the most severe sentences. "In order to create a deterrent effect on the perpetrators," said Jokowi (Kompas Online, 2016).

The Perpu mainly concerns changes in penalties relating to Article 76D, Article 76E of Law No. 35 of 2014 concerning Amendments to Law No.23 / 2002 concerning Child Protection.

The contents of the Perppu:

1. Change the provisions of Article 81
 - (1) Criminalization of any person who commits violence or threat of violence forces the child to have sex with him or other people. Sentenced to a minimum of 5 years and a maximum of 15 years and a maximum fine of 5 billion rupiah.
 - (2) The provisions of paragraph (1) also apply to every person who intentionally commits deception, a series of lies, or persuades a child to have intercourse with him or someone else.
 - (3) If done by parents, guardians, people who have family hubs, child caregivers, educators, education personnel, officers who handle child protection, or carried out by more than one person together, the penalty is added to 1/3.
- Add paragraph (4) - (9)
 - (4) Add 1/3 of the criminal threat for recidive
 - (5) Causing victims more than one person, resulting in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and / or death victims, perpetrators sentenced to death, for life, or for a minimum of 10 years and at the latest 20 year.

- (6) In addition to being subject to basic criminal offenses, the offender may be subject to additional criminal acts in the form of announcing the identity of the perpetrator.
 - (7) The perpetrators referred to in paragraphs (4) and (5) may be subjected to acts of chemical castration and installation of electronic detectors.
 - (8) The action referred to in paragraph (7) shall be decided jointly with the principal penalty by including the period of implementation of the action.
 - (9) Additional Crimes and actions are excluded for child offenders.
2. Between Article 81 and 82 Article 81 A is inserted
- (1) the action referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 years and carried out after the convict has undergone a basic crime.
 - (2) The implementation of actions is monitored periodically by the ministry that organizes government affairs in the legal, social and health fields.
 - (3) Implementation of chemical castration accompanied by rehabilitation.
 - (4) Further regulated with PP.
3. Provisions in Article 82 are amended:
- (1) Crime against any person who commits violence or threat of violence, force, conduct, deception, conduct a series of lies, or persuade the child to commit or allow obscene conduct. Sentenced to a minimum of 5 years and a maximum of 15 years and a maximum fine of 5 billion rupiah.
 - (2) If done by parents, guardians, people who have family hubs, child caregivers, educators, education staff, officers who handle child protection, or more than one person is carried out together, the penalty is 1/3.
- Add verses (3) - (8)
- (3) Add 1/3 of the criminal threat for recidive.
 - (4) causing more than one victim, resulting in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and / or death victims, perpetrators sentenced to death, for life, or for a minimum of 10 years and at the latest 20 year.
 - (5) In addition to being subject to basic criminal offenses, the offender may be subject to additional criminal acts in the form of announcing the identity of the perpetrator.
 - (6) The perpetrators referred to in paragraphs (4) and (5) may be subjected to acts of chemical castration and installation of electronic detectors.
 - (7) The action referred to in paragraph (7) shall be decided jointly with the principal penalty by including the period of implementation of the action.
 - (8) Additional crimes and actions are excluded for child offenders.
4. Between 82 and 83 Article 82 A is inserted
- (1) the action referred to in Article 82 paragraph (6) is imposed for a maximum period of 2 years and carried out after the convict has served a principal sentence.
 - (2) The implementation of actions is monitored periodically by the ministry that organizes government affairs in the legal, social and health fields.
 - (3) Further regulated with PP.

- (4) Chemical castration is carried out by inserting anti-androgen chemicals into one's body so that the testosterone production in their bodies decreases, and will affect their libido.

The Legalization of PERPPU No.1 of 2006 Concerning the Second Amendment to Law No. 23 of 2002 Concerning Child Protection

According to Article 7 of Law No. 12 of 2011 concerning the Establishment of Legislation Regulations, the Perppu is the Regulations of Laws and Regulations under the 1945 Constitution and TAP MPR RI.

Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that: "in the case of compulsive matters, the President has the right to stipulate government regulations in lieu of laws". However, the 1945 Constitution does not provide further explanation about what is meant by a state of compulsion which is compelling.

According to MK Decision No. 138 / PUU-VII / 2009, the Constitutional Court regulates 3 conditions for fulfillment of 'the compulsion of force', namely:

- (1) There is a situation of urgent need to resolve legal issues quickly based on the Act,
- (2) The required laws do not yet exist so that there is a legal vacuum (vacuum of law) or the substance of the existing law is inadequate, and
- (3) The legal vacuum cannot be overcome by making a law based on ordinary procedures because it will require a considerable amount of time while the urgent situation requires legal certainty to be resolved.

The Constitutional Court considers that Article 22 of the 1945 Constitution provides a special institution by authorizing the president to make Government Regulations (as) Substitution of Laws, to fill legal gaps. In this case if there are urgent situations and conditions that require *in casu* law, the Act. If you have to go through a normal process, the process of making the law requires a long time. Therefore the making of Perppu is the solution to this situation. Accordingly, according to the Constitutional Court, the notion of compulsive crises is not interpreted as limited to the existence of a state of danger as referred to in Article 12 of the 1945 Constitution. however, the danger is not the only situation that causes the emergence of compulsion, as referred to in Article 22 paragraph (1) of the 1945 Constitution. Furthermore, the Constitutional Court also makes the Perppu very subjective because it is a right and depends entirely on the President. However, it does not mean that in absolute terms depends on the subjective judgment of the president because the subjective judgment of the president must be based on objective conditions, namely the existence of three conditions as a parameter of coercive crises. In certain cases, if the need for a law is very urgent to solve a very important state problem that is felt by all nations, then the president's right to determine the Perppu can be a mandate to resolve the problems of the nation and state.

Thus Perppu No. 1 of 2016 concerning the second Amendment to Law No. 23 of 2002 concerning Child Protection when analyzed using the decision of the Constitutional Court No. 138 / PUU-VII / 2009, then the issuance of the Perppu does not meet the criteria of 3 (three) conditions for fulfilling the pressing force, namely the existence of a state of urgent need to resolve legal issues quickly based on the Law, the required Law does not yet exist so that there is a legal vacuum (vacuum of law) or the substance of the existing law is inadequate, and the legal vacuum cannot be overcome by

making laws based on ordinary procedures because it will take a long time while the urgent situation requires legal certainty to be completed.

The existence of this Perppu according to the author does not fulfill the formal requirements for the establishment of the Law in accordance with the Decision of the Court No. 138 / PUU-VII / 2009. considering the Act that is actually needed already exists, so there is no legal vacuum. The law in question is Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning the Protection of Children, the criminal is already quite heavy.

Chemical Castration: Pro and Cons

Castration in men is a procedure in which a person will lose the function of his testicles, so they lose libido and sterility.

Castration has two different types of procedures, namely surgery and chemical processes. In surgical castration, or testicular surgery, the effect is permanent. However, in chemical castration, drugs will be given regularly to reduce testosterone levels in the body, so that sexual drive will decrease. Chemical castration is done by using anti-androgen drugs to reduce testosterone levels, which can suppress libido or sexual drive. This procedure is commonly used to treat advanced prostate cancer, and for some cases, it is used as a therapy for sexual crime rehabilitation. Unlike permanent surgical castration, the chemical castration effect on a person can disappear from time to time after treatment is stopped. Chemical castration works to accelerate natural testosterone metabolism, change the effects of hormones in the body, and influence the release of pituitary glands from precursor hormones for testosterone production. The most common drug choices used in the procedure are medroxyprogesterone acetate (MPA) and cyproterone acetate. These drugs can reduce testosterone levels effectively in men, reduce sex drive, and reduce their ability to be sexually stimulated (Rudystina, 2017).

Pro and Cons of Chemical Castration

1. Safe and effective in reducing libido

Drugs used in the procedure can dramatically reduce the amount of testosterone produced in the testes, and suppress sexual drive without losing one's ability to have sex. Chemically neutered men can still have sex, only their desire to engage in sexual activity will no longer exist

2. Reducing the level of recidivism (repetition of despicable deeds).

As indicated earlier, large studies conducted on chemical castration for sexual offenders have recorded dramatic decreases in recurrence rates. Based on several studies, the rate of recidivism for the second sexual offense was only around 2%, compared with no chemical treatment of 40%.

3. Has negative health effects

Although the effects of this procedure can disappear after treatment is stopped, side effects can continue to emerge over time. Among these are the loss of bone density which is directly related to osteoporosis, and loss of muscle mass accompanied by an increase in body fat that triggers heart disease. Other side effects include erectile dysfunction, infertility, hair loss, and weakness.

4. Violating human rights for criminals

Opponents of the chemical castration law believe that forcing sexual offenders to undergo treatment that can affect sexual reproduction and sex drive completely violates the constitutional rights of criminals (Rudystina, 2017).

Chemical Castration Sanctions in the Perspective of Penal Policy

Crime prevention efforts using criminal law are part of criminal policy. Even this criminal policy is essentially an integral part of community protection efforts in an effort to achieve social welfare. Perppu as an effort of the Government in renewing the Child Protection Act or updating criminal law is a criminal law policy, which is part of criminal policy. Efforts to deal with crime with criminal law are essentially part of law enforcement efforts.

According to Barda Nawawi Arief, the meaning and nature of renewal of criminal law are as follows:

1. Perspective of a Policy Approach

- a. As part of social policy, renewal of criminal law is essentially part of efforts to overcome social problems (including humanitarian issues) in order to achieve / support national goals (public welfare and so on).
- b. As part of criminal policy, renewal of criminal law is essentially part of efforts to protect the public (especially crime prevention efforts).
- c. As part of the law enforcement policy, the renewal of criminal law is essentially part of an effort to renew the legal substance in order to make law enforcement more effective.

2. Perspective of Value Approach

The renewal of criminal law is essentially an effort to conduct a review (reorientation and reevaluation) of sociopolitical, socio-philosophical, and sociocultural values that underlie and provide content for the normative and substantive content of the intended criminal law. It is not a reform (reform) of criminal law, if the value orientation of the criminal law aspired is the same as the value orientation of the old criminal law (Arief, 2011: 30).

Starting from the above policy approach, Sudarto argued that in the face of criminalization, he must pay attention to the following matters:

- a. The use of criminal law must pay attention to national development goals, namely to create a just and prosperous society that is materially spiritual based on the Pancasila. In connection with this, (the use of) criminal law aims to tackle crime and impose a countermeasure for the countermeasures itself, for the sake of prosperity and protection of society.
- b. Acts that are attempted to be prevented or dealt with with criminal law must be undesirable actions, namely actions that bring harm (material and / or spiritual) to citizens.
- c. The use of criminal law must also take into account the cost and benefit principle.
- d. The use of criminal law must also pay attention to the capacity capacity of the work force of law enforcement agencies, that is, there must be no overloading (Arief, 2011: 31).

In Indonesia the application of criminal castration chemistry is still a pro and contra, even the Indonesian Medical Association (IDI) states its refusal to become an executor of criminal castration for perpetrators of sexual crimes against children. This is according to IDI because the implementation of castration penalties by doctors is considered to violate the doctor's oath and Indonesian Medical Ethics Code (Burhani, 2016).

This shows that the Perppu as a criminal law policy does not take into account the cost and benefit principle and does not take into account the capacity to work capacity of law enforcement agencies.

In carrying out criminal law policy is needed not only a policy-oriented approach but also a value-oriented approach. Criminal policy cannot be separated from the value issue at all.

As Christiansen stated that the conception of the problem of crime and punishment is an essential part of the culture of any society. Similarly, according to W. Clifford, that the very foundation of any criminal justice system consists of a philosophy behind a given country. Especially for Indonesia which is based on Pancasila and its national development policy line aims to form "Whole Indonesian Man". If the criminal will be used as a means to achieve this goal, the humanistic approach must also be considered. This is important not only because the crime is essentially a humanitarian problem, but also because in essence the criminal contains elements of suffering which can attack the interests or values that are most valuable to human life (Burhani, 2016).

A humanistic approach to the use of criminal sanctions means that the criminal imposed on the offender must be in accordance with civilized human values. This can be seen from several laws and regulations that prohibit cruel and inhuman punishment, which include:

1. Law Number 5 of 1998 concerning ratification of anti-cruelty, torture, treatment, or punishments that are cruel, inhuman, and degrading to humans.
2. Article 33 paragraph (1) of Law No. 39 of 1999 concerning Human Rights, which states: "Everyone has the right to be free from cruel, inhuman, degrading punishment and human dignity.

Chemical Castration Sanctions in The Perspective of Criminalization Purposes

Traditionally, the theory of punishment according to Muladi and Arief (1984: 10) in general, consists of:

1. Absolute theory or retributive / *vergeldings theorieen* theory

According to absolute theory / retributive theory, criminal is imposed solely because a person has committed a crime or a criminal act (*quia peccatum est*). Criminal is an absolute consequence that must exist as a retaliation to the person who committed the crime. So the basis of justification of the criminal lies in the existence or occurrence of the crime itself.

2. Relative Theory

According to this theory of criminalization is not to satisfy the absolute demands of justice. Revenge itself has no value, but only as a means to protect the interests of the community. Therefore, according to Johannes Andenaes, this theory can be referred to as the theory of social defense. Criminal purposes for prevention of crime are distinguished between special prevention and general prevention or often used the terms "special deterrence and general deterrence". Special prevention is intended to influence the criminal against the convicted person, prevent the crime to be achieved by the criminal by influencing the behavior of the convicted person to not commit a crime again.

3. Combined theory (*verenigings theorieen*).

The first author to propose a combined theory is Pellegrino Rossi. Even though he still considers retaliation as the principle of the criminal and that the weight of the criminal should not go beyond a just retaliation, he maintains that the criminal has various influences including the improvement of something damaged in society and

general prevention. In this theory, the orientation of the prohibition of criminal law is aimed at people and their actions.

When examined with the purpose of criminal theory, it appears that castration crimes are imposed solely as a means of retaliation. Castration is in accordance with absolute theory, castration is imposed solely because people have committed a crime.

Likewise, if examined with the aim of supplying according to Article 55 Paragraph (2) of the 2015 Criminal Code Concept, which regulates the purpose of punishment it is formulated that punishment is not intended to bring human dignity down, then the castration criminal is contrary to the purpose of punishment as formulated in Article 55 paragraph (2) The 2015 KUHP Concept Criminal crimes will cause painful suffering for a long time, resulting in disruption of the function of the reproductive organs and if given in a long time will make the perpetrators of sexual crimes become impotent.

The 2012 World Rape Statistic report shows that the death penalty or castration sentence for rape in various countries in the world is not effective in causing a deterrent effect. There is no evidence to guarantee that the use of chemical castration has reduced the number of violence against women and children (Mardiya, 2017: 222).

According to Ted Honderich in Arief (1994: 43) regarding the effectiveness of sanctions, a criminal can be called an economic deterrent if:

1. The criminal really prevents.
2. The criminal does not cause a situation that is more dangerous / detrimental than will occur if the criminal is not imposed.
3. There is no other criminal that can effectively prevent smaller dangers / losses.

Chemical Castration in the Perspective of Sentencing System

According to Hulsman, the punishment system (the sentencing system) is a statutory regulation related to criminal sanctions and punishment (the statutory rules relating to penal sanction and punishment) (Hulsman, 1978: 320). While the notion of punishment can be interpreted as giving or imposing a criminal. The definition of the criminal system can be seen from 2 (two) angles:

- a. In a broad sense, the criminal system is seen from a functional angle, that is, from the point of work / process. In this broad sense, the penal system can be interpreted as:
 - 1) Overall system (statutory rules) for criminal functionalization / operationalization / concretization.
 - 2) The whole system (legislation) which regulates how criminal law is enforced or operationalized concretely so that a person is subject to criminal (legal) sanctions.

With this understanding, the criminal system is identical to the criminal law enforcement system which consists of sub-systems of material / substantive criminal law, sub-systems of formal criminal law, and sub-systems of criminal implementation law. The three sub-systems constitute a unified criminal system, because it is impossible for criminal law to be operated / enforced concretely only with one sub-system.

- b. In a narrow sense, the criminal system is viewed from a normative / substantive angle, which is only seen from substantive criminal law norms. In this narrow sense, the criminal system can be interpreted as:
 - 1) Overall system (statutory rules) for punishment.

- 2) Overall system (statutory rules) for granting / imposition and implementation of criminal acts.

The entire statutory rules contained in the Criminal Code, as well as in special laws outside the Criminal Code, are essentially one unit of the criminal system, consisting of general rules, and special rules (special rules). . General rules are contained in Book I of the Criminal Code, and special rules are contained in Book II and Book III of the Criminal Code, as well as in special laws outside the Criminal Code (Arief, 2011: 3).

Criminal chemistry seen from the criminal punishment system or rules, in the Criminal Code are as follows:

- a. Study with Article 10 of the Criminal Code.

Article 10 of the Criminal Code regulates the types of crimes that can be imposed on perpetrators of criminal acts, in the form of principal and additional criminal penalties. From what is stipulated in Article 10 of the Criminal Code, castration criminal is not regulated in Article 10 of the Criminal Code.

- b. The Criminal Code only regulates the general criminal threat of 1 day, does not recognize the system of special criminal threats. Whereas Perppu No. 1 of 2016 regulates a special threat system, namely 5 years (Article 81 paragraph (1) and Article 82 paragraph (1) and 10 years (Article 81 paragraph (5) and Article 82 paragraph (4). This is not known in the Criminal Code.

CONCLUSION

The policy of chemical castration sanctions for perpetrators of sexual violence against children is regulated 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 becomes Law. If reviewed from the political study of criminal law, the Government Regulation in Lieu of Law No. 1 of 2016, this does not meet the formal requirements for the establishment of the Perppu according to the decision of the Constitutional Court No. 138 / PUU-VII / 2009, which is about 3 (three) coercive requirements " namely: There is a situation of urgent need to resolve legal issues quickly based on the Law, the required Law does not yet exist so that there is a legal vacuum (vacuum of law) or the substance of the existing law is inadequate, and the legal uncertainty cannot be overcome by making a law based on ordinary procedures because it will require a considerable amount of time while the urgent situation requires legal certainty to be resolved . Bearing in mind that the required Act actually exists, so there is no legal vacuum. The law in question is Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning the Protection of Children, the prisoners are already quite heavy. Judging from the policy approach, the existence of this Perppu does not take into account the cost and benefit principle and does not take into account the capacity to work capacity of law enforcement agencies. Judging from the value approach, it does not pay attention to the humanistic approach. This is important not only because the crime is essentially a humanitarian problem. A humanistic approach to the use of criminal sanctions means that the criminal imposed on the offender must be in accordance with civilized human values.

BIBLIOGRAPHY

- Hulsman, L.H.C. (1978). *The Dutch Criminal Justice System From A Comparative Legal Perspektif*, on D.C. Fokkema (Ed) *Introduction to Dutch Law For Foreign Lawyers*, Nederland: Kluwer Deventer.
- Muladi & Nawawi Arief, B. (1984). *Teori-teori dan Kebijakan Pidana*, Bandung: Alumni.
- Mardiya, N. Q. (2017). 'Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual', *Jurnal Konstitusi*, Volume 14, No. 1,
- Nawawi Arief, Barda. (1994). *Kebijakan Legislatif Dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang: CV Ananta.
- (2011). *Perkembangan Sistem Pemidanaan di Indonesia*, Semarang: Pustaka Magister.
- (2011). *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*, Jakarta: Kencana Prenada Media Group.
- (2012). *Kebijakan Formulasi Ketentuan Pidana, Dalam Peraturan Perundang-undangan*, Semarang: Pustaka Magister.
- Sudarto. (1981). *Hukum dan Hukum Pidana*, Bandung: Alumni.
- (1983). *Hukum Pidana dan Perkembangan Masyarakat*, Bandung: Sinar Baru.

Online Source

- Burhani, Ruslan, 10 June 2016, http://www.antarane.ws.com/berita/566611/wapres-menghormati-keputusan-idi-tolak-eksekusikebiri?utm_source=related_news&utm_medium=related&utm_campaign=news
- Rudystina, Adinda September 6, 2017, <https://helohehat.com/hidup-sehat/seks-asmara/mengenal-proses-kebiri-kimia/>
- [...] <http://www.kpai.go.id/berita/tahun-2017-kpai-temukan-116-kasus-kekerasan-seksual-terhadap-anak/>
- [...] <https://nasional.tempo.co/read/774280/jokowi-terbitkan-perpu-kebiri-inilah-isi-lengkapny>