

PROCEEDING
The 2016 International Conference and Call
for Papers (ICCP) UNS

Theme
“The Administration of Justice”

organized by
Faculty of Law, Universitas Sebelas Maret

Surakarta, 19-20 November 2016

PROCEEDING
International Conference and Call for Papers (ICCP)
UNS

Theme

***“Law and Sustainable Development amongst
Developed and Developing Countries”***

organized by
Faculty of Law, Universitas Sebelas Maret

Surakarta, 19-20 November 2016

Reviewer

Dr. Hari Purwadi, S.H., M.Hum.

Dr. Pujiyono, S.H., M.H.

Dr. Emmy Latifah, S.H., M.H

Editor

Rachma Indriyani, S.H., LL.M.

PROCEEDING
International Conference and Call for Papers (ICCP)
UNS

Theme

“The Administration of Justice”

Reviewer

Dr. Hari Purwadi, S.H., M.Hum.

Dr. Pujiyono, S.H., M.H.

Dr. Emmy Latifah, S.H., M.H

Editor

Rachma Indriyani, S.H., LL.M.

Cover Design : Pustaka Hanif

Content Layout : ASA GRAFIKA Solo

Publisher : Faculty of Law UNS

**Address : Jalan Ir. Sutami N. 36 A, Kentingan,
Surakarta 57126 (0271) 664989**

Email : 2016iccpuns@gmail.com

ISBN : 978-602-7386-55-2

PREFACE

The 2016 International Conference and Call for Papers (ICCP) UNS, held in Surakarta from November 19-20 November, 2016, with an overarching conference theme of “The Administration of Justice”. This theme was developed due to highlighted issue in ensuring that public bodies and those who exercise public functions make the right decisions, and challenges on providing justice for all.

This proceedings from the conference provides multiple meanings of the term sustainability that divided into seven panels, namely Human Rights and Criminal Justice System; The Administration of Islamic Law; Maladministration and its Remedies; Environmental Crime and Administration of Justice; Business Law Perspective; Customary Law; and Miscellaneous. There were eight plenary sessions covering the different areas of the conference : Prof. Dr. Ida Madieha Abdul Ghani Azmi (International Islamic University Malaysia); Dr. A (Albertjan) Tollenaar (the University of Groningen); Prof. Huala Adolf, S.,H., LL.M., Ph.D., FC Arb (Universitas Padjajaran); Pan Mohamad Faiz, PhD (The Constitutional Court of Indonesia); Prof. Dr. Supanto, S.H., M.Hum (Universitas Sebelas Maret).

These public talks, respectively, were very accesible to a general audience. The conference participants came from various background such as researcher, lecturer, practitioner, and college students as well. The first day before conference program was started by a special gala dinner to honor all of distinguished guests, invitation, and participants.

The selected paper that were presented on the conference program formed the heart of the conference and provide ample opportunity for discussion. Of the total number of presented papers, all papers that split into seven panels sub theme are included in this proceedings. We would like to thanks to the committee who were facing the challenge during the conference to achieve the aims of the event. All in all, the ICCP UNS was successful and we expect this proceeding could be useful for the entire scholar.

Dr. Hari Purwadi, S.H., M.Hum

LIST OF CONTENT

INVITED SPEAKER ARTICLE:

Dr. A (Albertjan) Tollenaar

“Administration Of Justice In A More Repressive Administrative Law: An European Perspective”

PANEL SESSIONS:

PANEL 1

Human Rights and Criminal Justice System

1. Non-Penal Policy As Alternative Terrorism Law Enforcement In Indonesia (Siyono's Terorrism Case Studies)
 2. Model Of Law In Land Acquisition That Is Based On Fairness For Public Interest And Rights Of Land's Holder
 3. The Implementation Of Social Security Based On The Law Number 24 Of 2011 About Social Security Organizing Agency (Bpjs)
 4. The Problematic Of Legal Foundation Of Interception Authority By Commission Of Corruption Eradication Of Republic Indonesia After Decision Of Constitutional Court
 5. The Protection Of Suspect's Right In Indonesian Criminal Justice System
 6. The Rights Of Children In Conflict With The Law
 7. Human Rights In PerspectiveUu No. 16 Of 2011 On Legal Aid
 8. Analysis Of International Human Rights Law Regarding The Treatment Of Unpleasant On Women In War
 9. Protection Of Citizen's Constitutional RightsIn The Health Care Beauty Clinic In The Context Of Welfare State In Indonesia
 10. The Implementation Of Retributive Avoidance Principle In Juvenile Criminal Justice System In Indonesia
 11. Government's Role In Improving Welfare Labor Informal Through Social Security To Greet Asean Economic Community
 12. Juridical Review Of Grants For Goods Seized The Smuggling Crimes
 13. Legal Principle Of Citizenship In Indonesia
 14. Free A Judge From Prison Of Legal Positivism Paradigma Strategic Step Toward Corruption Eradication In Indonesia
 15. Strengthening Institutions, Functions And AuthorityThe Indonesian National Commission On Human Rights In Implementing The Protection And Enforcement Of Human Rights In Indonesia
 16. The Correlation Of Oath And God In The Constitution Of Republic Of Indonesia 1945
 17. The Link Between Fishing Industry And Abuses Of Human Rights
 18. Problematizing The Indonesian Police Force's Authority In Criminal Law Enforcement
 19. The Implementation Of The Death Penalty In The Perspective Of Indonesian Human Rights Law: Between Universalistic Versus Particularistic Views
 20. Interpretation Of Human Rights On The Material Unlawfulness In Corruption Crimes
 21. RestorativeJusticeAsAFormOfProtectingVictimsInTheRenewalOfCriminalJusticeSystem
 22. Optimization Of Child Identity Card As An Instrument Of Child Protection
-

PANEL 2**The Administration of Islamic Law**

1. Policy Harmonization Between Zakat And Income Tax In Indonesia Law System
2. Development For Productivity Of Endowment (Waqf) Based On Commercial Building Build Operate Transfer (Bot)

PANEL 3**Maladministration and Its Remedies**

1. Fulfill Efforts Of Indigenous Women's Political Rights In Order To Enforcement Human Rights
2. Setting Utilizationland Estates DisplacedFunction Principles-Based Social Rights To Business
3. Forest Fire And The Asean Economic Community's Reification(Philosophical Perspective Of Environmental Crime)
4. Examining of the Judge Verdict Quality in the Case of Environmental Crime Notably Hazardous Waste
5. The Recognition Of Forest People Rights Of Indigenous Peoples For Climate Change Justice In Indonesia

PANEL 4**Environmental Crime and Administration of Justice**

1. Applying A Principle Of Premum Remedium In Law Enforcement Against Environmental Crime To Achieve Sustainable Development In Indonesia
2. Apparatus Concernes The Environment: Kuningan Government Policies In Water Resource Conservation
3. Legal Analysis On Forest Certification : A Means Of Social Change
4. Law Enforcement Model On Environmental Crime Through Mediation
5. The Effort to Overcome The Crime Of Forest Fire In Jambi Province
6. Strengthening Environmental Law Enforcement Against Crime

PANEL 5**Business Law Perspective**

1. The Challenges Of Indonesia Digital Startup Business
 2. Legal Perspective In Creating Employment Policies For Minimum Wage Payment Systems In The Company.
 3. Legal Protection Of Intellectual Property Right Based Of Pancasila Justice In Smes Culinary Sector
 4. Constitution Food ; Study Of Constitutionality Principles Of Food Sovereignty In The Indonesia Constitution
 5. The Judge's Independencerelated To The Dualism Of Tax Judicaturein Indonesia: A Reconstructive Idea Of Tax Judicature In Indonesia
 6. Study Of Consumer Protection Law In The Financial Services Sector
 7. Conformity Of Law Number : 25 Of Regarding Capital Investment To The Improvement Of Prosperity Bases On The 1945 Constitution
 8. The Settlement Of Electronic Commerce Transactions By Implementing Mediation Via Online Dispute Resolution (Odr) In Indonesia
 9. Legal Culture Influence On Implementation Of Bankruptcy Law In Indonesia
 10. Good Corporate Governance (Gcg) In Hajj Management (An Overview On The Legal Aspects Of Business)
 11. Land Bank Perspective For Low Income Housing In Indonesia
-

12. Development Of Intellectual Property Rights Particularly Copyright Of Musical And Song Works As A Fiduciary Guarantee Object To Get A Bank Credit In Indonesia
13. A Model Of Law In Health Care Fraud Prevention
14. Legal Policy In Facilitating The Business Licensing To Improve The Investment Climate In Indonesia
15. Recontruction Burden Sharing Liability Corporationand Board Of Corporate Crime
16. Legal Analysis On A Bankruptcy Petition That Is Filed By A Bank

PANEL 6

Customary Law Perspective

1. The Recognition And Protection Of Indigenous Land Right In Indonesia
2. Notary As An Executor Of Inheritance Statement, Deed Of Testament And The Arcade Of Olographic Deed Testament For Balinese Tribal Community
3. The Utilization Of Customary Court As Means Of Penal Mediation : A Lesson Learned From Papua, Indonesia
4. 'Rechtsverwerking' The Principle Of Adat Land Law And It Embodiment In The National Land Law
5. The Utilization Of Customary Court As Means Of Penal Mediation : A Lesson Learned From Papua, Indonesia

PANEL 7

Miscellaneous

1. Problems Of Regional Head Election Simultaneously Against National Security
2. Coomercial Court, Obstacles And Challenges In Practice
3. Harmonisation Between The Election System Of Governors, Regents, Or Mayors With Judicial Administrative System In Resolving The Dispute Of Determining The Candidates' Pairs
4. The Legal Study Of Pancasila Economic System Based On The People-Oriented Concept
5. The Law Enforcement Of Cybercrime After The Validity Of Law 11 Of 2008 On Information And Electronic Transactions (Ite Law)
6. The Living Law : To Fill Legal Gap Between Law In Action And Law In The Book From A Judge`S Legal Reasoning Perspective
7. The Bomb Jokes In Flight: The Regulations And Cases In Indonesia
8. Reconceptualization Of Administrative Justice System In The Administration Justice Paradigm
9. Import Of Food: Policies That Are Not Justice For Farmers
10. The Existence Of The Regional Representative Council As The Representative Body Of Regions In The Bicameral System
11. Critical Analysis On Indigenous People Recognition In Indonesian Legal System
12. The Widest Possible Autonomy In The Implementation Of Regional Government In Indonesia
13. Philosophy Mbaru Gendang In Manggarai By Democracy Pancasila Perspective
14. The Performance Of Civil And State Administration (Datun) And Guard And Security Team For Government And Regional Development (Tp4d) Of State Attorney In The Prevention Of Corruption (Political Perspective Against Decree Law Of Attorney General Of Republic Indonesia Number Kep-152 / A / Ja / 10/2015 On Establishing Guards And Security Team For Government And Development)
15. Attorney Authority As Government Law Office In Submitting Bankrupt For The Sake Of Public Interest
16. Criminal Liability Of Business Entity In The Form Of Limited Partnership In Environmental Protection And Management

17. Breakthrough Regulation Of Proposed Amount Related To Determine The Aspirations Of The Board Of Representatives In The Regional Development Planning
 18. Reviewing Concepts Cyber Notary Of Notary Public Good
 19. Special Area As An Alternative Management Of Border Road In West Kalimantan Between Indonesia and Sarawak Malaysia in Progressive Law Perspective (Case Study On The Border In Kab. Sambas Kalimantan Barat To Sarawak Malaysia And Border In Kab. Sanggau West Kalimantan Indonesia Sarawak Malaysia)
 20. Political Law On Criminal Justice System In Handling Environment Degradation
 21. Optimizing The Role Model In Implementing Attorney Money Laundering Act To Achieve Return On Assets Obtaining Results Of Corruption
 22. Harmonization Of Criminal Rule In Local Regulation In Semarang City
 23. Implementation Of Legal Protection For Outsourcing Labors In Companies Using Outsourcing Service
 24. Administrative Sanction For Violation Taken By The Employee Provider Company
 25. Legal Policy Of Castration For Sexual Abuse Against Children Perpetrator
 26. Privatization Model Of Imprisonment Body As A Concept Of Prisoner Development
 27. Application System For Islamic Law Inheritance Of Indonesian Citizens Of The Islamic Religious And Standing In Respect To The National Law As One Of The Renewal Of The National Legal System
 28. Analysis On Legal Substance In Regency Land Asset Cooperation
-

LEGAL POLICY OF CASTRATION FOR SEXUAL ABUSE AGAINST CHILDREN PERPETRATOR

Desy Maryani

Doctoral Program of Faculty of Law of Diponegoro University, Semarang desymaryani1985@gmail.com

ABSTRACT

Nowadays, there are many cases of sexual abuse against children crime occurred. Several sexual violence cases need extra protection especially for victims of sexual abuse. Based on such consideration, issued law No.35 of 2014 on Amendments of Laws No.23 of 2002 on Child protection. This regulation is one of government efforts to reform the law which aims at ensuring children rights fulfillment namely right to grow up, develop and optimal participation and get protection from violence. The existence of this law is considered able to prevent and decrease sexual abuse against children. However, in reality it is still far from expectations. There are a lot of sexual abuses still in high rate statistically. To optimize children protection, the government has issued Government Regulations In Lieu Of Law on castration penalty for perpetrator of sexual abuse against children. This amendment is issued because government aware that sexual abuse against children is continuously increase. However, the castration action became pro and contra in public.

In this paper, there are two issues are analyzed namely legal policy which underlie castration action for sexual abuse against children perpetrator and the reason of castration action as sentence for sexual abuse against children perpetrator. Method used in this research is normative juridical approach and analyzed using secondary data. The result of this research showed that legal policy of castration action for Sexual Abuse Against Children Perpetratoris cause by previous law on children protection had not been accommodated in combating sexual abuse against children, as well as castration is considered as a solution in sentencing the perpetrator in which this is not a reprisal but a preventive sentence. It is also hoped can create the deterrence effect for perpetrator.

Keywords: Legal Policy, Castration, Sexual Harassment

A. INTRODUCTION

Children are mandate and gift from the Almighty God in which the value and dignity as human beings are attached. Each child has value and dignity that should be upheld and each child born has to get their rights. It conforms to the provisions of Children's Right Convention ratified by Indonesian government by Decision of President No. 36 Year 1990 that states general principles of children's protection, namely non-discrimination, children's best interest, life and growth continuance, and children's participation appreciation¹. However, until the issuance of Children's Protection Law and until now, children's welfare and right fulfillment are still far from expectation. It can be seen from repetition of sexual harassment toward children.

Frequent sexual harassment toward children, observed from many cases of sexual harassment occurred in 2014-2016, among others:

1 Rika Saraswati, 2015, *Hukum Perlindungan Anak Di Indonesia*, Citra Aditya Bakti, Bandung, page 1

- a. Case of AS (24 years old) alias Emon, a resident of Sukabumi City, who was called as a sexual predator that was thirsty of children to be sodomized. Sexual harassment committed by AS had reached 73 children²;
- b. Case of a man initialized MS, 35 years old, who raped AS, a 13-year-old kid who was his own nephew³;
- c. Case of abuse committed by Syanwani alias Iwan/IW (45 years old), the arrest of a man who worked as motorcycle driver was done because of the report that the man had abused eight kids, namely BS (12), MMD (15), RR (15), RN (14), MIS (15), NSH (11), NK (13), FRH (13)⁴;
- d. Case of rape and murder of a girl
Initialized PNF, 9 years old, PNF was found naked and wrapped by cardboard in Kalideres, West Jakarta. From the result of autopsy on the victim, it was found that PNF died due to sexual harassment. The sexual intercourse was done in violence and led to her death⁵;
- e. Case of rape and murder of Yuyun (14), a resident of Kasie Kasubun Sub-District, Padang UlakTanding District, RejangLebong Regency, Bengkulu, who was raped and murdered by 14 criminals⁶.

Some cases of sexual harassment toward children above show the more frequency of sexual harassment toward children nowadays so that it becomes public attention. To optimize the protection for children, the government has issued Government Regulation in Lieu of Law regarding castration for the perpetrators of sexual harassment toward children.

Selection or determination of castration as one of the means to countermeasure crimes basically is a policy option. In determining a policy, people can be pro or con toward castration. However, after the policy is decided/established and then formulated in a Government Regulation in Lieu of Law, then observed from the aspect of penal policy and criminal policy, the policy of formulation of castration is surely expected to be implemented.

B. DISCUSSION

1. Legal politics underlying the issuance of castration for the perpetrators of sexual harassment toward children

According to Sunaryati Hartono in her book entitled “Politik Hukum Menuju Satu Sistem Hukum Nasional”, she state that practically law politic as a tool or means and step that can be used by the government to create a national law system that can be

- 2 Reza Gunadha, *Bocah Korban Sodomi Emon Kembali Bertambah Jadi 73 Orang*, Tribun Jabar, (accessed from <http://www.tribunnews.com/regional/2014/05/05/bocah-korban-sodomi-emon-kembali-bertambah-jadi-73-orang>, on 16 October 2016, at 11.56 AM)
- 3 Robertus Belarminus, *Setubuhi Keponakan Berusia 13 Tahun Seorang Paman Masuk Bui*, (accessed from <http://megapolitan.kompas.com/read/2015/08/13/1659Setubuhi.Keponakan.Berusia.13Tahun.Seorang.Paman.Masuk.Bui>, on 16 October 2016, at 01.37 PM)
- 4 Hendra Gunawan, *Bocah Disodomi Sebelum Cabuli Korban Iwan Ritual Keris*, Tribun Jakarta, (accessed from <http://www.tribunnews.com/metropolitan/2015/09/13/sebelum-cabuli-korban-iwan-lakukan-ritual-keris>, on 16 October 2016, at 01.47 PM)
- 5 Eko Priiliawito, Bayu Nugraha, Muhammad Iqbal, *Fakta Pembunuhan Dalam Kardus dan Jejak Agus Darmawan*, Viva.co.id (accessed from <http://metro.news.viva.co.id/news/read/685292-fakta-pembunuhan-dalam-kardus-dan-jejak-agus-darmawan>, on 16 October 2016, at 02.00 PM)
- 6 Yuliardi Hardjo Putro, *Kronologi Kasus Kematian Yuyun ditangan 14 ABG Bengkulu*, (accessed from <http://regional.liputan6.com/read/2499720/kronologi-kasus-kematian-yuyun-di-tangan-14-abg-bengkulu>, on 16 October 2016, at 03.00 PM)

used to achieve national vision and goals⁷. Law politic is as the legal policy or legal line (policy) regarding law that will be implemented either by creating new law or by replacing old law to achieve national goals⁸.

National law politic is the direction to be taken in creation and enactment of law and the effort to make law as a process to achieve national vision and goals, legal ideals and guiding rule of law as contained in the Opening of Indonesian Constitution 1954 that places Pancasila as the paradigm of law politic and constitutes a platform for common life for Indonesian citizens that are very complex but still bound together as a unity⁹.

Sudarto views that law politic is, first: an effort to realize better regulations pursuant to the condition and situation in a certain time, second: a policy of a country through competent institutions to establish intended regulations estimated to be able to be used to express the things contained in society and to achieve the visions¹⁰.

A policy that has been recommended to be selected by policy makers does not constitute a guarantee that the policy is going to succeed in its implementation. There are many variables influencing the success of policy implementation either for individual or group or institution¹¹. It aims related to the support ordemand that has to be processed by politic system through some decisions and public services provided by the government so as to create welfare for the people. In this perspective, the effectiveness of politic system is its ability to create welfare for the people¹².

As a country based on Pancasila and upholding the values of nationalism and humanism, Indonesia has many regulations that expressly give protection for children¹³, but the problem is whether the regulations have given protection or not.

The following legal regulations for the perpetrators of sexual harassment toward children that can be identified:

a. Article 289 to Article 296 of Criminal Code

Article 289 : “Whoever with violence or violence threat forces someone to do or let an obscene act happen is punishable because of committing an action that violates morality honor by imprisonment of nine years maximum.”

Article 290 : Punishable by imprisonment of seven years maximum:

1. Whoever commits an obscene act with someone, whereas it is known to him that the person is unconscious or helpless;
2. Whoever commits an obscene act with someone, whereas it is known to him or should be thought that the person is under fifteen years old or if the age is not known, the person is not of marriage age;
3. Whoever persuades someone who is known to him or should be thought that the person is under fifteen years old or if the age is not known, the person is not of marriage age to commit an obscene act or sexual intercourse out of wedlock with other person.

7 Satjipto Rahardjo, 1991, *Ilmu Hukum*, ThirdPrinting, Citra Aditya Bakti, Bandung, page 352-353

8 Mahfud MD, 2012, *Politik Hukum di Indonesia*, PT. Raja Grafindo Persada, Jakarta, page 1

9 Mahfud MD, 2006, *Membangun Politik Hukum Menegakkan Konstitusi*, LP3ES, Jakarta, page 30-31

10 Sudarto, 1981, *Hukum dan Hukum Pidana*, Alumni, Bandung, page 159

11 AG. Subarsono, *Analisa Kebijakan Publik Konsep, Teori dan Aplikasi*, Pustaka Pelajar, Yogyakarta, 2015, page 87

12 Yaya Mulyana Aziz & SyariefHidayat, *Dinamika Sistem Politik Indonesia*, Pustaka Setia, Bandung, 2016, page v

13 Nasir Djamil, 2015, *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta, page 27

Article 291

- (1) If one of the crimes based on article 286, 287, 289, and 290 results in serious injury, then punishable by imprisonment of twelve years maximum;
- (1) If one of the crimes based on article 286, 286, 287, 289, and 290 results in death, then punishable by imprisonment of fifteen years maximum.

Article 292 : “An adult who commits an obscene act with someone of the same sex, who is known to him or should be thought by him that the person is immature, is punishable by imprisonment of five years maximum.”

Article 293

- (1) Whoever by giving or promising money or goods, abuses the carrier that occurs from situation relation, or with misdirection purposely moves someone immature with good behavior to do or to let an obscene act done with the person, whereas the immaturity is known or should be known, is punishable by imprisonment of five years maximum;
- (2) Prosecution can only be done based on report by the person against whom the crime is committed;
- (3) Grace period mentioned in article 74 for the report is respectively nine months and twelve months.

Article 294

- (1) Whoever commits an obscene act with his child, step child, adopted child, child under their control who are immature, or with immature child whose raising, education, or custody are given to him, or with his servant or subordinate who are immature, is punishable by imprisonment of seven years maximum;
- (2) Punishable by the same punishment:
 1. Official who commits an obscene act with someone who due to his position is his subordinate, or with someone whose custody is trusted or given to him;
 2. Caretaker, doctor, teacher, staff, supervisor, or servant in prison, state job, education institution, orphanage, hospital, mental asylum, or social institution, who commits an obscene act with a person admitted into it.

Article 295

- (1) Punishable:
 1. By imprisonment of five years maximum, whoever purposely causes or facilitates an obscene act done by his child, step child, or child under his control who are immature, or by immature child whose raising, education, or custody are given to him, or by his immature servant, with other person;
 2. By imprisonment of four years maximum, whoever causes or facilitates an obscene act, except mentioned in item 1 above, done by a person known immature or who should be thought immature, with other person.
- (2) If the perpetrator of crime is as a livelihood or habit, the punishment can be added by one third.

Article 296 : “Whoever purposely causes or facilitates an obscene act by other person with other person, and makes it as a livelihood or habit, is punishable by imprisonment of one year four months maximum or by fine of fifteen thousand rupiahs.”

- b. Article 81 and Article 82 of the Law No. 23 Year 2002 regarding Children's Protection Article 81 states:

- (1) Each person who purposely commits violence or violence threat to force a child to do sexual intercourse with him or other person is punishable by imprisonment of 15 (fifteen) years maximum and 3 (three) years minimum and by fine of IDR 300,000,000 (three hundred million rupiahs) maximum and IDR 60,000,000 (sixty million rupiahs).
- (2) The provision of crime as referred to in verse (1) also applies for each person who purposely commits deceit, a series of lies, or persuades a child to do sexual intercourse with him or other person.

Article 82 states:

"Each person who purposely commits violence or violence threat, forces, commits deceit, a series of lies, or persuades a child to do or let a child do an obscene act is punishable by imprisonment of 15 (fifteen) years maximum and 3 (three) years minimum and by fine of IDR 300,000,000 (three hundred million rupiahs) maximum and IDR 60,000,000 (sixty million rupiahs)."

- c. The Law No. 35 Year 2014 regarding Amendment of the Law No. 23 Year 2002 regarding Children's Protection

The provisions of Article 81 are amended to state as the following:

- (1) Each person who violates the provision as referred to in Article 76D is punishable by imprisonment of 5 (five) years minimum and 15 (fifteen) years maximum and by fine of IDR 5,000,000,000 (five billion rupiahs) maximum.
- (2) The provision of crime as referred to in verse (1) also applies for each person who purposely commits deceit, a series of lies, or persuades a child to do sexual intercourse with him or other person.
- (3) If the crime as referred to in verse (1) is committed by parent, guardian, child caretaker, educator, or teacher, the punishment will be added by 1/3 (one third) of the punishment as referred to in verse (1).

The provisions of Article 82 are amended to state the following:

- (1) Each person who violates the provision as referred to in Article 76E is punishable by imprisonment of 5 (five) years minimum and 15 (fifteen) years maximum and by fine of IDR 5,000,000,000 (five billion rupiahs) maximum.
- (2) If the crime as referred to in verse (1) is committed by parent, guardian, child caretaker, educator, or teacher, the punishment will be added by 1/3 (one third) of the punishment as referred to in verse (1).

- d. Government Regulation in Lieu of Law No. 1 Year 2016 regarding amendment of two articles of the Law Number 23 Year 2002 regarding Children's Protection, namely Article 81, Article 81A is inserted, then Article 82, Article 82A is inserted.

The provisions of Article 81 and 82 of the Law Number 23 Year 2002 are amended to state the following:

Article 81

- (1) Each person who violates the provision as referred to in Article 76D (each person is forbidden to commit violence or violence threat to force a child to do sexual intercourse with him or other person) is punishable by imprisonment of 5 (five) years minimum and 15 (fifteen) years maximum and by fine of IDR 5,000,000,000 (five billion rupiahs) maximum;
- (2) The provision of crime as referred to in verse (1) also applies for each person who purposely commits deceit, a series of lies, or persuades a child to do sexual intercourse with him or other person;

- (3) If the crime as referred to in verse (1) is committed by parent, guardian, child caretaker, educator, or teacher, the punishment will be added by 1/3 (one third) of the punishment as referred to in verse (1);
- (4) Besides for the perpetrator as referred to in verse (3), addition of 1/3 (one third) of the punishment, it is charged to the perpetrator who has been punished because of committing the crime as referred to in Article 76D;
- (5) In case the crime as referred to in Article 76D results in more than 1 (one) victims, results in serious injury, mental disorder, spreading disease, disruption or loss of reproduction function, and/or death, the perpetrator is punishable by death penalty, lifetime imprisonment, or imprisonment of 10 (ten) years minimum and 20 (twenty) years maximum;
- (6) Besides charged by punishment as referred to in verse (1), verse (3), verse (4), and verse (5), the perpetrator can be charged with additional punishment in form of announcement of the perpetrator's identity;
- (7) The perpetrator as referred to in verse (4) and verse (5) can be charged with an action in form of chemical castration and installation of electronic detector;
- (8) The action as referred to in verse (7) is decided along with the main punishment by stating the period of implementation of the action;
- (9) Additional punishment and action are excluded for a perpetrator who is still a child.

Besides that, besides Article 81 and Article 82, one article is inserted, namely Article 81A that states the following:

Article 81A

- (1) The action as referred to in Article 81 verse (7) (charged with additional punishment in form of announcement of the perpetrator's identity) is charged for a period of 2 (two) years maximum and after the convict undergoes the main punishment;
- (2) Implementation of the action as referred to in verse (1) is under periodic supervision by ministry that organizes the government affairs in field of law, social, and health;
- (3) Implementation of chemical castration is accompanied by rehabilitation;
- (4) Further provision regarding procedure of implementation of the action and rehabilitation is regulated by Government Regulation.

The provisions of Article 82 are amended to state the following:

Article 82

- (1) Each person who violates the provision as referred to in Article 76E (each person is forbidden to commit deceit, a series of lies, or persuades a child to do sexual intercourse with him or other person) is punishable by imprisonment of 5 (five) years minimum and 15 (fifteen) years maximum and by fine of IDR 5,000,000,000 (five billion rupiahs) maximum.
- (2) If the crime as referred to in verse (1) is committed by parent, guardian, persons who have family relation, child caretaker, educator, teacher, apparatus who handles children's protection, or committed by more than one person together, the punishment will be added by 1/3 (one third) of the punishment as referred to in verse (1);
- (3) Besides for the perpetrator as referred to in verse (3), addition of 1/3 (one third) of the punishment, it is charged to the perpetrator who has been punished because of committing the crime as referred to in Article 76E;

- (4) In case the crime as referred to in Article 76E results in more than 1 (one) victims, results in serious injury, mental disorder, spreading disease, disruption or loss of reproduction function, and/or death, the perpetrator is punishable by death penalty, lifetime imprisonment, or imprisonment of 10 (ten) years minimum and 20 (twenty) years maximum;
- (5) Besides charged by punishment as referred to in verse (1), verse (3), verse (4), and verse (5), the perpetrator can be charged with additional punishment in form of announcement of the perpetrator's identity;
- (6) The perpetrator as referred to in verse (4) and verse (5) can be charged with an action in form of chemical castration and installation of electronic detector;
- (7) The action as referred to in verse (6) is decided along with the main punishment by stating the period of implementation of the action;
- (8) Additional punishment and action are excluded for a perpetrator who is still a child.

Between Article 82 and Article 83, according to the Government Regulation in Lieu of Law, one article is inserted namely Article 82A that states the following:

Article 82A

- (1) The action as referred to in Article 82 verse (6) is implemented during and/or after the convict undergoes the main punishment;
- (2) Implementation of the action as referred to in verse (1) is under periodic supervision by ministry that organizes the government affairs in field of law, social, and health;
- (3) Further provision regarding procedure of implementation of the action and rehabilitation is regulated by Government Regulation.

Various efforts by the government in overcoming sexual harassment toward children including in renewing the law to provide protection for children as the victims of sexual harassment namely by the issuance of the Law No. 23 Year 2002, the Law No. 35 Year 2014 until the issuance of Government Regulation in Lieu of Law No. 1 Year 2016 regarding the amendment of two articles of the Law Number 23 Year 2002 regarding Children's Protection. The Government Regulation in Lieu of Law regarding castration was issued due to the repetition of sexual harassment toward children that is really alarming, so that the frequent cases of sexual harassment toward children nowadays become public attention. The problem is not only physically but also psychologically that can result in trauma, revenge, and so on.

Does the existence of castration action viewed from the view of Pancasila contradict the Second Amendment of Constitution 1945 and the Law No. 39 Year 1999 regarding Human Rights that state that: "each person deserves to live" (Article 28A Jo. Article 28 verse (1) of Constitution 1945 and Article 9 verse 1 Jo. Article 4 of the Law of Human Rights) and "each person deserves to be free from forced omission and life omission" (Article 33 verse 2 of the Law of Human Rights)? Against the problem, the following matters can be delivered:

- a. Viewed as a unity, Pancasila contains a value of balance between one principle and another principle. However, if Pancasila is viewed partially (emphasizing one of the principles), there are opinions that state that castration action contradicts Pancasila and some also say that it does not contradict Pancasila. So, the opinions that accept and reject castration are based on Pancasila.
- b. It can be observed from a research conducted by Faculty of Law UNDIP cooperating with Office of Attorney General in 1981 stating that "there

is a tendency among them who are pros and cons to make Pancasila as “justification”¹⁴.

Type of punishment cannot solely be faced diametrically to human rights, similarly castration action, because basically all types of punishments contradict human rights. It is the same as “personal freedom rights” (Article 4 of the Law of Human Rights) or “right of freedom” (Opening of Constitution 1945) that cannot be faced diametrically to “imprisonment”. If it is faced diametrically, it means that “imprisonment” also contradicts the Opening of Constitution 1945 and the Law of Human Rights because imprisonment basically “takes freedom away”. Similarly to death penalty that in Article 6 verse (2) of ICCPR states that death penalty is allowed for “the most serious crimes”¹⁵. Then castration action can be given to the perpetrator of sexual harassment toward children because cases of sexual harassment toward children nowadays are serious crimes and the punishment is not carelessly given to the perpetrator. Castration is not given to all perpetrators of sexual harassment toward children but also to perpetrators who meet the elements in Government Regulation in Lieu of Law No. 1 Year 2016 regarding Children’s Protection. Even it is given carefully and through process of medical detection, namely only given to perpetrators who have erection ability beyond normal.

2. Castration Action is Used as Solution for Punishment for Perpetrators of Sexual Harassment toward Children

Castration is one form of punishments or treatment by injecting antiandrogen drug, such as *medroxyprogesterone acetate* or *cyproterone*, namely drugs that can depress the function of testosterone hormone to reduce the level of testosterone, namely male hormone, that is responsible for the occurrence of libido¹⁶.

There have been pros and cons against castration action. The selection of castration action as one of the means of criminal policy (criminal countermeasure policy), especially in overcoming sexual harassment toward children through Government Regulation in Lieu of Law regarding Castration is a reasonable thing. The reasons that can be delivered are among others:

a. Observed from the aspect of penal policy:

The term “penal policy” according to BardaNawawiArief can also be called as “criminal law policy”. In foreign literature, the term “criminal law policy” is frequently known as some terms, among others “penal policy”, “criminal law policy”, or “*strafrechtspolitik*”. Furthermore, BardaNawawiArief states that the definition of criminal law policy or penal policy can be observed from law politic and criminal politic¹⁷.

Crimes are included in criminal policy. Criminal policy is not separated from a wider policy namely social policy consisting of social welfare policy and social

14 Barda Nawawi Arief, 2015, *Pidana Mati Perspektif Global, Pembaharuan Hukum Pidana dan Alternatif Pidana Untuk Koruptor*, Pustaka Magister, Semarang, page 33

15 *Ibid*, page 36

16 Supriyadi Widodo Eddyono, *Menguji Euforia Kebiri*, page 17, (accessed from journal in icjr.or.id/data/wp-content/uploads/2016/02/Menguji-Euforia-Kebiri.pdf, on 22 October 2016, at 11:25 AM)

17 Barda Nawawi Arief, 2014, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenadamedia Group, Jakarta, page 26

defense policy¹⁸. The usage or selection of a type of criminal sanction (including castration action) in penal policy basically constitutes a part of criminal policy and social policy, namely a policy to achieve welfare and an effort or policy to implement prevention and countermeasure for social protection.

The direction of law policy aims to use law as a rule that provides protection for citizen's rights and secures the life of generation in the future¹⁹. Therefore, law system of each country in the practice always gets modernization.

b. Observed from the aspect of effort of law renewal in Indonesia:

The effort of law renewal in Indonesia that has started since the birth of Constitution 1945 cannot be separated from the foundation and at the same time national goals to be achieved as formulated in the Opening of Constitution 1945²⁰. The national goals are contained in the fourth paragraph of the Opening of Constitution 1945 that expresses:

Pursuant to which, in order to form a Government of the State of Indonesia that shall **protect** the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general **prosperity**, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace, and social justice, Indonesia's National Independence shall be laid down in a Constitution of the State of Indonesia, which is to be established as the State of the Republic of Indonesia with sovereignty of the people and based on the belief in the One and Only God, on just and civilized humanity, on the unity of Indonesia and on democratic rule that is guided by the strength of wisdom resulting from deliberation/representation, so as to realize social justice for all the people of Indonesia.

From the formulation of Opening of Constitution 1945, two main national goals can be observed, namely:

1. To **protect** the whole people of Indonesia;
2. To advance general **prosperity** based on Pancasila.

So, two keywords of national goals can be observed, namely "**social defense**" and "**social welfare**". The national goals are the line of general policy that becomes a foundation and at the same time the goals of law politic in Indonesia. It also should be a foundation and goals of each effort of law renewal, including criminal law renewal, in this case to overcome the crimes of sexual harassment toward children.

Taking castration action for the perpetrators of sexual harassment toward children does not only provide protection for children who become victims of sexual harassment but also provide protection for people so as to live peacefully without any fear for children. Reasons of human rights and human dignity always become a consideration of castration punishment. However, we need to know that human rights are not only human rights as individual, but also human rights for people that have to be protected from perpetrators of sexual harassment.

18 Barda Nawawi Arief, 2014, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenadamedia Group, Jakarta, page 77

19 Marlina, 2009, *Peradilan Pidana Anak di Indonesia*, Refika Aditama, Bandung, page 1

20 Barda Nawawi Arief, 2015, *Tujuan dan Pedoman Pemidanaan (Perspektif Pembaharuan dan Perbandingan Hukum Pidana)*, Pustaka Magister, Semarang, page 34

- c. Observed from comparative law and consistence of legislative policy (positive law) in Indonesia, and observed from the aspect of consequence/harm of sexual harassment toward children:

Comparative law can be used to illustrate systematic study regarding certain comparison-based law tradition and law regulation²¹. As a comparison, castration is one type of actions for perpetrators of sexual harassment that is also implemented in some countries to protect the people.

Norway is the only country in Europe Union that expressly states in its criminal law in 2010 that castration is one of punishments for perpetrators of sexual crimes²². Poland only implements chemical castration as a part of treatment for pedophilia. Australia also has included in its criminal law for perpetrators of sexual crimes toward children and perpetrators of rape. Russia has accepted chemical castration in its criminal law for perpetrators of sexual crimes toward children in which the victim is 12 years old or below 12 years old. India and Taiwan give castration injection specifically for pedophilia and recidivist of sexual crimes toward children²³.

Based on comparison with some countries, then castration can be implemented in Indonesia because implementing castration action for perpetrators of sexual harassment toward children is quite reasonable as a form of optimization of state protection for children.

Sexual harassment is viewed as a crime that only becomes private affair (individual victim), but has to be made as public problem, because the crime clearly constitutes a form of behavior that emphasizes lust, revenge, and superiority, namely the strong one can sacrifice other person²⁴. In line with that, NusryahbaniKantjasungkana states that rape or sexual harassment cannot be viewed solely as a problem between individuals, but it is a social problem related to human rights, especially related to protection from any form of torture, violence, cruelty, and neglect of human dignity²⁵. Sexual harassment and its handling so far become one of indications and proof of weak protection (aegis) of human rights from sexual harassment.

Violence frequently happens to children that can harm, endanger, and frighten children. Children who become victims of violence suffer from loss, not only materially but also immaterially, such as emotional and psychological shock that can affect children's life in the future²⁶. The occurrence of cases of sexual harassment toward children even accompanied by murder demands a seriousness to protect children. Castration action that is given to perpetrators of sexual harassment toward children is not given carelessly to the perpetrators. Castration is not given to all perpetrators of sexual harassment toward children but also to perpetrators who meet the elements in Government Regulation in Lieu of Law No. 1 Year 2016

21 Peter deCruz, 2016, *Perbandingan Sistem Hukum Common Law, Civil Law and Socialist Law*, Nusa Media, Bandung, page 4

22 Zachary Edmonds Oswald, "OffWith His..." *Analyzing the Sex Disparity in Chemical Castration Sentences*", Michigan Journal of Gender and Law, Vol 19:471, 2012-2013 page 484, accessed from journal in icjr.or.id/data/wp-content/uploads/2016/02/Menguji-Eforia-Kebiri.pdf, on 22 Oktober 2016, at 11:25 AM

23 *Ibid*

24 Abdul Wahid and Muhammad Irfan, 2011, *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Atas Hak Asasi Perempuan*, Refika Aditama, Bandung, page 62

25 Eko Prasetyo and Suparman Marzuki, 1997, *Perempuan Dalam Wacana Pemerkosaan PKBI- DIY*, Yogyakarta, page 178

26 MaidinGultom, 2014, *Perlindungan Hukum Terhadap Anak dan Perempuan*, RefikaAditama, Bandung, page 1-2

regarding Children's Protection. Even it is given carefully and through process of medical detection, namely only given to perpetrators who have erection ability beyond normal that is useful to depress sexual urge and remove erection ability. Therefore, it requires law policy to overcome sexual harassment toward children.

C. CONCLUSION

Based on the explanation above, it can be concluded that:

1. Law politic underlying the issuance of castration punishment for perpetrators of sexual harassment toward children is because sexual harassment toward children is increasing significantly that harms and endanger children's life, damage children's personality and growth, and disrupt comfort, peace, safety, and social order, and the punishment sentenced for perpetrators of sexual harassment toward children does not give deterrent effect and has not been able to comprehensively prevent the occurrence of sexual harassment toward children.
2. Castration is used as a solution toward sentencing for perpetrators of sexual harassment toward children with reasons:
 - a. Observed from the aspect of criminal law policy, the use and selection of a type of criminal sanction (including castration action) in penal policy, namely a policy to achieve welfare and effort or policy to implement prevention and countermeasure for social protection.
 - b. Observed from the aspect of law renewal in Indonesia, two keywords of national goals can be seen namely "social defense" and "social welfare".
 - c. Observed from the aspect of comparative study with some countries, castration can be implemented in Indonesia because implementing castration action for perpetrators of sexual harassment toward children is quite reasonable as a form of optimization of national protection for children.

REFERENCES

BOOK

- Abdul Wahid dan Muhammad Irfan, 2011, *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Atas Hak Asasi Perempuan*, Refika Aditama, Bandung
- AG. Subarsono, 2015, *Analisa Kebijakan Publik Konsep, Teori dan Aplikasi*, Pustaka Pelajar, Yogyakarta
- Barda Nawawi Arief, 2014, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenadamedia Group, Jakarta
- , 2014, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenadamedia Group, Jakarta
- , 2015, *Tujuan dan Pedoman Pemidanaan (Perspektif Pembaharuan dan Perbandingan Hukum Pidana)*, Pustaka Magister, Semarang
- , 2015, *Pidana Mati Perspektif Global, Pembaharuan Hukum Pidana dan Alternatif Pidana Untuk Koruptor*, Pustaka Magister, Semarang
- Eko Prasetyo dan Suparman Marzuki, 1997, *Perempuan Dalam Wacana Pemerkosaan*, PKBI-DIY, Yogyakarta

- Maidin Gultom, 2014, *Perlindungan Hukum Terhadap Anak dan Perempuan*, Refika Aditama, Bandung
- Marlina, 2009, *Peradilan Pidana Anak di Indonesia*, Refika Aditama, Bandung
- Mahfud MD, 2006, *Membangun Politik Hukum Menegakkan Konstitusi*, LP3ES, Jakarta
- , 2012, *Politik Hukum di Indonesia*, PT. RajaGrafindo Persada, Jakarta
- Nasir Djamil, 2015, *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta
- Peter deCruz, 2016, *Perbandingan Sistem Hukum Common Law, Civil Law and Socialist Law*, Nusa Media, Bandung
- Rika Saraswati, 2015, *Hukum Perlindungan Anak Di Indonesia*, Citra Aditya Bakti, Bandung
- Satjipto Rahardjo, 1991, *Ilmu Hukum*, Cet III, Citra Aditya Bakti, Bandung
- Sudarto, 1981, *Hukum dan Hukum Pidana*, Alumni, Bandung
- Yaya Mulyana Aziz & Syarief Hidayat, 2016, *Dinamika Sistem Politik Indonesia*, Pustaka Setia, Bandung

WEBSITE

- Reza Gunadha, *Bocah Korban Sodomi Emon Kembali Bertambah Jadi 73 Orang*, Tribun Jabar, (diakses dari <http://www.tribunnews.com/regional/2014/05/05/bocah-korban-sodomi-emon-kembali-bertambah-jadi-73-orang>, Tanggal 16 Oktober 2016, Pukul: 11:56 WIB)
- Robertus Belarminus, *Setubuhi Keponakan Berusia 13 Tahun Seorang Paman Masuk Bui*, (diakses dari: <http://megapolitan.kompas.com/read/2015/08/13/1659Setubuhi.Keponakan.Berusia.13Tahun.Seorang.Paman.Masuk.Bui>, Pada tanggal 16 Oktober 2016, Pukul: 13:37 WIB)
- Hendra Gunawan, *Bocah Disodomi Sebelum Cabuli Korban Iwan Ritual Keris*, Tribun Jakarta, (diakses dari: <http://www.tribunnews.com/metropolitan/2015/09/13/sebelum-cabuli-korban-iwan-lakukan-ritual-keris>, Pada Tanggal 16 Oktober 2016, Pukul: 13:47 WIB)
- Eko Prihiawito, Bayu Nugraha, Muhammad Iqbal, *Fakta Pembunuhan Dalam Kardus dan Jejak Agus Darmawan*, Viva.co.id (diakses dari <http://metro.news.viva.co.id/news/read/685292-fakta-pembunuhan-dalam-kardus-dan-jejak-agus-darmawan>, Pada tanggal 16 Oktober 2016, Pukul: 14:00 WIB)
- Yuliyardi Hardjo Putro, *Kronologi Kasus Kematian Yuyun ditangan 14 ABG Bengkulu*, (diakses dari <http://regional.liputan6.com/read/2499720/kronologi-kasus-kematian-yuyun-ditangan-14-abg-bengkulu>, pada tanggal 16 Oktober 2016, Pukul: 15:00 WIB)
- Zachary Edmonds Oswald, “*OffWith His....” Analyzing the Sex Disparity in Chemical Castration Sentences*”, Michigan Journal of Gender and Law, Vol 19:471, 2012-2013, hlm. 484, diakses dari jurnal dalam icjr.or.id/data/wp-content/uploads/2016/02/Menguji-Euforia-Kebiri.pdf, pada Tanggal 22 Oktober 2016, Pukul 11:25 WIB)
- Supriyadi Widodo Eddyono, *Menguji Euforia Kebiri*, hal. 17, (diakses dari jurnal dalam icjr.or.id/data/wp-content/uploads/2016/02/Menguji-Euforia-Kebiri.pdf, pada Tanggal 22 Oktober 2016, Pukul 11:25 WIB)