

## **Application of The Law and The Implications of Imposing Chemical Castration in Judgment No. 895/Pid.Sus/2023/Pn.Bjm From The Perspective of Legal Positivism**

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**Abstract:** The phenomenon of implementing chemical castration as an additional penalty in the Banjarmasin District Court Decision Number 859/Pid.Sus/2023/PN Bjm has sparked serious debate within the realm of criminal law, particularly when examined through the perspective of legal positivism, which emphasizes the supremacy of written norms over moral and social considerations. Utilizing a normative juridical approach through case and statute analysis, this study examines the consistency of legal application by judges in sentencing perpetrators of sexual violence against children. The results of the analysis indicate that while the application of Article 81 paragraph (3) of Law Number 17 of 2016 was appropriate for the principal penalty, the imposition of chemical castration lacked a valid legal basis as stipulated in Article 81 paragraphs (4) and (5). This discrepancy poses significant issues regarding the principle of legality, legal certainty, and the protection of human rights. Conceptually, these findings affirm that a rigid application of legal positivism has the potential to obscure substantive justice values, which should serve as the essence of every judicial decision.

**Abstrak:** Fenomena penerapan pidana kebiri kimia sebagai pidana tambahan dalam Putusan Pengadilan Negeri Banjarmasin Nomor 859/Pid.Sus/2023/PN Bjm telah memunculkan perdebatan yang serius dalam ranah hukum pidana, terutama apabila ditinjau dari perspektif positivisme hukum yang menekankan supremasi norma tertulis di atas pertimbangan moral dan sosial. Penelitian ini menggunakan pendekatan yuridis normatif melalui analisis kasus dan pendekatan peraturan perundang-undangan untuk mengkaji konsistensi penerapan hukum oleh hakim dalam menjatuhkan pidana terhadap pelaku kekerasan seksual terhadap anak. Hasil analisis menunjukkan bahwa meskipun penerapan Pasal 81 ayat (3) Undang-Undang Nomor 17 Tahun 2016 sebagai dasar pidana pokok telah sesuai, pengenaan pidana tambahan berupa kebiri kimia tidak memiliki dasar hukum yang sah sebagaimana dipersyaratkan dalam Pasal 81 ayat (4) dan ayat (5). Ketidaksesuaian tersebut menimbulkan persoalan mendasar terkait penerapan asas legalitas, kepastian hukum, dan perlindungan hak asasi manusia. Secara konseptual, temuan ini menegaskan bahwa penerapan positivisme hukum secara kaku berpotensi mengabaikan nilai-nilai keadilan substantif yang seharusnya menjadi esensi dalam setiap putusan pengadilan. Dengan demikian, penelitian ini menekankan pentingnya keseimbangan antara kepatuhan terhadap norma hukum positif dan orientasi pada keadilan substantif dalam penegakan hukum pidana..

**Keywords:** legal positivism, chemical castration, legal certainty, child protection, human rights.

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## Introduction

The paradigm of legal positivism emphasizes that law consists of written rules established by authorized institutions. Positivism views law solely as “what is written” (law as it is), not “what ought to be” (law as it ought to be). The positivist paradigm is often interpreted as a value-free paradigm, meaning that truth is defined solely by what is written in the text of the law, without considering the sociological and humanistic aspects that accompany the application of that law. (Efendi et al., 2021)

Legal positivism is an inseparable part of the influence of the development of scientific positivism. In its most traditional definition, the nature of law is understood as the positive norms contained in legislation. From an ontological perspective, this interpretation reflects a synthesis of idealism and materialism. (Hart, 2017)

Legal positivism (the Positive Law School) emphasizes the need for a clear distinction between law and morality, between the law as it is and the law as it ought to be, between *das Sein* and *das Sollen*. According to this school of thought, there is no law other than the command of the authorities (law is a command of the lawgivers). In fact, a branch of the Positive Law School known as *Legism* holds that law is identical to legislation. (Rahardjo, 2005)

The introduction of positivism into legal thought led to the emergence of positivistic legal science, also known as dogmatic legal science. Legal dogmatics is the scientific analysis and study of legal rules or principles, relying solely on logic (not only the process itself but also its results). Legal dogmatics operates without the use of empirical knowledge. Legal dogmatics is a scientific endeavor to study a specific positive legal system by focusing on specific positive legal norms and setting aside other systems, without relying on empirical knowledge. (Harahap et al., 2023)

An ideal judicial decision should proportionally integrate the three fundamental values of law (*Idee des Rechts*): justice (*Gerechtigkeit*), utility (*Zweckmässigkeit*), and legal certainty (*Rechtssicherheit*). In practice, harmonizing these three elements in a balanced manner within a single ruling is recognized as extremely difficult, if not nearly impossible to achieve. In reality, conflicts of interest between these values often arise. Legal philosopher Gustav Radbruch referred to this phenomenon as *Spannungsverhältnis* a relationship of tension that inevitably occurs when the spheres of justice, certainty, and utility clash with one another. (Rahardjo, 1991)

Tension or conflict among these three elements is particularly interesting when applied to a specific case. The positivist paradigm is deeply rooted in legal certainty, although its adherents argue that once legal certainty is achieved, justice will naturally follow because empirical facts are linked to the context of legislation, thereby avoiding legal analogies. (Tamanaha, 1996)

In this study, the positivist paradigm was used to analyze a legal issue that arose in a criminal court decision. The subject of this study was the decision of the Banjarmasin District Court, No. 859/Pid.Sus/2023/PN. A defendant named Gusti Nasrudin Sidik bin Gusti Hasan, who worked as a preacher and Quran instructor at a foundation in the Hulu Sungai Selatan region of South Kalimantan, was proven legally and convincingly to have

intentionally used violence or the threat of violence to coerce his 13-year-old student into having sexual intercourse with him. The judge then imposed the additional sentence of chemical castration, along with the principal sentence of 18 (eighteen) years in prison and a fine of Rp. 1,000,000,000 (one billion rupiah), or in lieu thereof, 1 (one) year of imprisonment, as well as restitution in the amount of Rp. 12,410,200.00 (twelve million four hundred ten thousand two hundred rupiah); if the defendant is unable to pay, this will be replaced by a prison sentence of 2 months.

In that ruling, the defendant was found guilty of violating Article 81(3) of Government Regulation in Lieu of Law No. 1 of 2016, which carries a maximum prison sentence of 20 years and a maximum fine of 5 billion rupiah; however, Ruling No. 895/Pid.Sus/2023/PN.Bjm also imposed an additional penalty. The imposition of punishment in this ruling is worth examining and, at the same time, critiquing through the lens of positivism.

Given the background of the issues outlined above, this study will address the following research questions: How was the law applied in Judgment No. 895/Pid.Sus/2023/PN.Bjm regarding perpetrators of sexual violence against children from the perspective of legal positivism? And what are the implications of the imposition of chemical castration in Judgment No. 895/Pid.Sus/2023/PN.Bjm for perpetrators of sexual offenses?

The purpose of this study is to examine and analyze the application of the law in Judgment No. 895/Pid.Sus/2023/PN.Bjm regarding perpetrators of sexual offenses from a positivist perspective. Additionally, it aims to identify the implications of the imposition of chemical castration in Judgment No. 895/Pid.Sus/2023/PN.Bjm on perpetrators of sexual offenses as an academic study.

## Methods

This study was conducted using a normative legal research approach in accordance with the title and research questions, and it provides useful results. Normative legal research is a type of legal research that views law as a system of written norms enshrined in legislation ("law in books") or as rules or norms that serve as guidelines for human behavior deemed appropriate. (Asikin, 2004) Meanwhile, Soerjono Soekanto defines normative legal research as a type of legal research conducted by examining or reviewing library materials or secondary sources, such as laws and regulations and legal literature relevant to the issue under study. (Soekanto, 2007)

This normative study aligns with the positivist paradigm, which emphasizes the understanding and analysis of law based on statutory texts or written rules. The positivist paradigm provides a framework for research that examines the law at the regulatory level in relation to a given phenomenon or issue. Truth is defined by the provisions of statutory law.

This study employs approaches commonly used in normative research, namely the case approach and the statute approach. The case approach was chosen for this study because the subject of the research is the decision of the Banjarmasin District Court, No. 895/Pid.Sus/2023/Pn Bjm.

The legislative approach is used in accordance with the positivist paradigm. This decision of the Banjarmasin District Court, No. 859/Pid.Sus/2023/Pn Bjm, will be analyzed

in light of the provisions contained in Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection.

The analytical technique used was qualitative analysis based on secondary data. Data analysis is a procedure that involves examining the collected data, with the aim of simplifying the process, improving precision, and achieving accuracy in the analysis. (Mukti Fajar & Achmad, 2010) In accordance with the provisions of applicable laws and regulations, the decision of the Banjarmasin District Court No. 859/Pid.Sus/2023/Pn Bjm will be analyzed qualitatively through a deductive narrative explanation.

The secondary data used in this study consists of primary and secondary legal sources. According to Peter Mahmud Marzuki, primary legal sources are authoritative sources of law that is, sources of law that are legally binding and officially recognized. (Sunggono, 2003) Some of the primary legal sources used as analytical tools are:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law No. 23 of 2002 on the Protection of Children;
3. Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection; and
4. Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection.

In addition to primary legal sources, this study also uses secondary legal sources as references. Peter Mahmud Marzuki defines secondary legal sources as legal publications that are not official documents, such as books, articles, journals, and legal opinions.

Secondary legal sources were used to provide context for the analysis of the Banjarmasin District Court Decision No. 859/Pid.Sus/2023/PN Bjm. These secondary legal sources were drawn from legal texts that examine topics related to sexual violence, child protection, criminology, and criminal law. In addition, articles from reputable journals also serve as secondary legal sources that can enrich the study of the research subject.

## Results and Discussion

### A. The Application of Judgment No. 895/Pid.Sus/2023/PN.Bjm Regarding Perpetrators of Sexual Violence Against Children from the Perspective of Legal Positivism

The emergence of the positivist movement—a school of philosophy of science has influenced various fields of study, including law. Among the prominent early positivist philosophers was August Comte, who defined “positive” in several ways—as the negation of fantasy, something useful, doubtful, vague, and negative with the following explanations: (Wibisono, 1983)

1. “Positive” refers to something real or concrete. This view is consistent with the philosophical doctrine of positivism, which emphasizes that the investigation of an object must be based on the capabilities of human reason. Thus, the scope of such an investigation excludes matters that lie beyond the reach of reason;
2. “Positive” is understood as a quality that brings benefits. This view is consistent with the teachings of positivism, which assert that everything must be directed toward achieving progress. Thus, philosophy is not merely intended to satisfy human curiosity about knowledge or understanding of a subject;

3. "Positive" is understood to mean something that is certain or has certainty. This view is consistent with the teachings of Positivism, which assert that philosophy must achieve a logical balance that benefits both individuals and society;
4. Positivity is something that is clear and precise. This view is consistent with the teachings of positivism, which emphasize that in philosophical thinking, one must be able to provide clear and accurate explanations – both of observable phenomena and of what is truly necessary. This is because traditional philosophical thinking tends to offer vague guidance and maintains its discipline by relying on supernatural forces;
5. The term "positive" is used to describe a philosophical perspective that is oriented toward creating order and regularity.

Comte regarded the positive stage of society as the ideal society, even claiming that the philosophy of positivism was the highest form of philosophy and that there was no other school of thought comparable to positivism. This claim was viewed as nothing more than artificial objectivism, which was opposed by Karl R. Popper and Thomas Kuhn. (Rahardjo, 2010) The enthusiasm and critical mindset of positivist philosophers actually drove the continued development of positivism, leading to the emergence of a wave of positivism in legal scholarship. H.L.A. Hart, as one of the legal philosophers, defined legal positivism as follows:

1. Law is a command;
2. Legal concepts are analyzed as an important endeavor. This analysis is not the same as sociological and historical studies, nor is it the same as critical reasoning;
3. Existing regulations serve as the basis for making decisions without considering morality, policy, and other social objectives;
4. Failing to enforce and uphold moral punishment;
5. Enacted law (*ius constitutum*) is distinct from law that should be enacted (*ius constituendum*). (Asuquo, 2017)

Under legal positivism, the autonomy of positive law is considered to remain passive within an abstract system of legal norms. To activate it, positive law requires concrete cases, (Shidarta, 2020) which, in this case, is Law No. 17 of 2016 on the Enactment of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection, thereby enacting (hereinafter referred to as Law No. 17 of 2016) was invoked in a specific case in Judgment No. 895/Pid.Sus/2023/PN.Bjm. This judgment concerned a case of sexual violence against a 13-year-old child, in which the perpetratoran educator led the judge to apply differential treatment, as Hart stated that under certain conditions, people cannot be treated equally.

According to Hart, the reason for differences in treatment is that every group of people shares similarities in some respects and differences in others, so it is necessary to determine which similarities and differences are relevant. (Kramer, 2015) Therefore, determining similarities and differences requires legal certainty that can make it easier for judges to apply the law in a case. The certainty in question is *ius* that has been codified as *lege* or *lex*, so that the law is not viewed as an abstract, meta-legal conception of moral principles of justice. (Atmadja & Gede, 2013)

The primary source of legal certainty is law in the form of legislation, which John Austin explains as commands issued by the sovereign. Such commands from the sovereign must meet the following requirements:

1. That command is general in nature;
2. Those in power are those recognized by society, regardless of their political status or constitutional form. (Dyzenhaus et al., 2007)

The application of Law No. 17 of 2016 in Judgment No. 895/Pid.Sus/2023/PN.Bjm reflects the legislature's intent to address the phenomenon of sexual violence against children by imposing deterrent penalties on perpetrators and preventing such violence from

occurring. The spirit behind the enactment of Law No. 17 of 2016 is reflected in its preamble, which expresses concern over the rising number of sexual violence cases, thereby imposing harsher criminal penalties and measures against perpetrators of sexual violence against children.

From the perspective of legal positivism, the enactment and implementation of Law No. 17 of 2016 are absolutely mandatory, regardless of whether the law is effective or not, and even disregarding whether justice is achieved or not. (Islamiyati, 2018) Therefore, the specific case in Judgment No. 895/Pid.Sus/2023/PN.Bjm, when viewed in terms of the fulfillment of the elements set forth in Article 76D of Law No. 35 of 2014 Amending No. 23 of 2002 on Child Protection, which states, "No person shall commit violence or threaten violence to coerce a child into having sexual intercourse with him or her or with another person," To sentence the perpetrator, the judge followed the sentencing guidelines set forth in Law No. 17 of 2016, which stipulates the determination of similarities and differences, as follows:

- a. The scope of "equivalence" in sentencing under Law No. 17 of 2016 is set forth in Article 81(1), which states that any person who violates the provisions of Article 76D shall be punished by imprisonment (a minimum of five years and a maximum of fifteen years) and a fine of up to Rp. 5,000,000,000.00 (five billion rupiah), and may be subject to an additional penalty in the form of public disclosure of the offender's identity (as referred to in Article 81, paragraph 6);
- b. The extent of "differences" in sentencing under Law No. 17 of 2016 is regulated in:
  - Article 81(3) provides that if the perpetrator is a parent, guardian, relative, caregiver, educator, educational staff member, official responsible for child protection, or if there are multiple perpetrators acting jointly, they shall be punished as provided in Article 81(1) plus one-third of the prescribed penalty, and may be subject to an additional penalty in the form of public disclosure of the perpetrator's identity (as referred to in Article 81, paragraph 6);
  - Article 81(4): If the offender is a repeat offender, they shall be punished as provided in Article 81(1), plus one-third of the prescribed penalty; they may be subject to an additional penalty in the form of public disclosure of the offender's identity (as referred to in Article 81(6)), and may be subject to measures such as chemical castration and the installation of an electronic monitoring device (as referred to in Article 81, paragraph 7);
  - Article 81(5) provides that if there is more than one victim, and the offense results in serious injury, mental disorder, a communicable disease, impairment or loss of reproductive function, or the death of a victim, the offender shall be punished by death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years, and may be subject to an additional penalty in the form of public disclosure of the offender's identity (as referred to in Article 81, paragraph 6), and may be subject to measures such as chemical castration and the fitting of an electronic monitoring device (as referred to in Article 81, paragraph 7).

In applying the law, the judge took into account the facts, which, as found in Judgment No. 895/Pid.Sus/2023/PN.Bjm, were as follows:

- a. The perpetrator is an instructor at the Foundation serving as a Quran teacher, and the victim is a 13-year-old student at the same Foundation as the perpetrator;
- b. The sequence of events leading up to the sexual intercourse, which took place at a hotel in Banjarmasin;
- c. Based on evidence in the form of a medical examination report (*visum et refertum*) No. Ver/002/VIII/2023/RUMKIT dated August 14, 2023, which states that no injuries or signs of violence were found, and that the hymen showed a complete tear that had

healed (an old tear), and the victim, as a patient, was not currently undergoing treatment.

Based on the legal facts and the facts established during the trial, the judge imposed a prison sentence of 18 (eighteen) years, a fine of Rp. 1,000,000,000.00 (one billion rupiah), and chemical castration for two years. The imposition of the prison sentence and fine is in accordance with Article 81(3) of Law No. 17 of 2016, which fulfills the principle of legality in criminal law – a principle that explicitly adheres to legal positivism, holding that whether an act is punishable or not depends on the law governing it.

When judges impose prison sentences and fines on perpetrators of sexual violence against children, they reflect a systematic way of thinking grounded in the certainty of positive law. According to the positivist school of thought, a judge's duty is focused on positive law; thus, the judge analyzes only the elements that actually exist. Furthermore, law can be separated from morality (the separability thesis) and from facts (the normativity thesis), meaning that law cannot explain whether a ruling is just or unjust, nor can it explain the essential aspects of justice. (Asshiddiqie & Safa'at, 2006) Consequently, Gusti Nasrudin Sidik Bin Gusti Hasan (the perpetrator of sexual violence against a child) must be punished without considering the fact that no physical violence was found on the victim's body.

On the other hand, the judge imposed an additional penalty on Gusti Nasrudin Sidik bin Gusti Hasan in the form of chemical castration, as provided for in Article 81(7), which is to be imposed on repeat offenders, or in cases where there is more than one victim, where the offense results in serious injury, mental disorder, infectious disease, impairment or loss of reproductive function, or the death of a victim. The application of Article 81(7) is controversial because, in Judgment No. 895/Pid.Sus/2023/PN.Bjm, the judge granted the Public Prosecutor's request to impose the additional penalty of chemical castration. In that ruling, the judge did not explain the reasoning or considerations behind imposing chemical castration on a perpetrator who was proven to have violated Article 81(3).

The absence of written reasoning or opinions regarding the grounds and legal basis for imposing chemical castration in Judgment No. 895/Pid.Sus/2023/PN.Bjm violates Article 14 of Law No. 48 of 2009 on Judicial Power (Judicial Power Law). Reasoning must be present in every judgment that sets forth legally grounded reasons, presented in a high-quality manner (accurate, correct, sound, and fair). The normative provisions of Law No. 17 of 2016 must be interpreted in the abstract by the judge when formulating the reasoning for rendering Judgment No. 895/Pid.Sus/2023/PN.Bjm; thus, the judge is obligated to declare whether the defendant's actions have been legally proven or not.

The imposition of chemical castration on the perpetrator in Judgment No. 895/Pid.Sus/2023/PN.Bjm was even imposed for a period of two years, which, under Article 81A(1) of Government Regulation in Lieu of Law No. 1 of 2016, constitutes the maximum penalty. This imposition reflects the judge's interpretation of the evidence in this case, which led to his conviction to impose the chemical castration sentence. The judge's interpretation in imposing chemical castration is rationally grounded in the judicial discretion granted by the Law on Judicial Power to explore the values and sense of justice that exist within society. Therefore, from a legal positivist perspective, the judge's imposition of chemical castration does not align with the elements mandated by Article 81(7), meaning the judge has failed to fulfill his role as a guarantor of legal certainty.

## **B. Implications of the Imposition of Chemical Castration in Judgment No. 895/Pid.Sus/2023/PN Bjm Regarding the Perpetrator of a Sexual Violence Crime Against a Child.**

The Banjarmasin District Court's Decision No. 859/Pid.Sus/2023/PN Bjm has sparked an important discussion that warrants critical examination within the context of Indonesian

criminal law practice, particularly regarding whether chemical castration should be imposed as an additional punishment for the perpetrator of a sexual violence crime against a child, namely Gusti Nasrudin Sidik bin Gusti Hasan.

In this case, the panel of judges imposed the principal sentence pursuant to Article 76D in conjunction with Article 81(1) of Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection, as amended for the second time by Law No. 17 of 2016 on the Enactment of Government Regulation in Lieu of Law (Perppu) No. 1 of 2016 into Law. The provisions of Article 81(7) of Law No. 17 of 2016 provide the legal basis for the court to impose chemical castration, the fitting of an electronic monitoring device, public disclosure of the offender's identity, and/or rehabilitation, if the offender violates paragraphs (4) and (5) – that is, if the offender commits a criminal offense repeatedly or exhibits a tendency toward sexual recidivism as evidenced by medical or psychiatric examination.

However, in Banjarmasin District Court Decision No. 859/Pid.Sus/2023/PN Bjm, the panel of judges imposed an additional sentence of two years of chemical castration without considering whether the requirements of Article 81(7) had been met. The judges merely cited Government Regulation No. 70 of 2020 on Procedures for the Implementation of Chemical Castration as the basis for this action, without first establishing that the statutory requirements set forth in the law had been met.

From the perspective of the principles of legality and legal certainty, Government Regulation No. 70 of 2020 is merely an implementing regulation and does not grant judges the authority to impose additional penalties. Therefore, the legal basis cited in the ruling demonstrates an inconsistency in the hierarchy of legal norms, in which an implementing regulation is used as the basis for imposing a penalty rather than the law itself. Consequently, the judge's actions may conflict with the principle of "nullum crimen, nulla poena sine lege," as established in Article 1(1) of the Criminal Code.

#### 1. Implications for the Criminal Sanctions System

Chemical castration is a type of additional penalty in the national criminal justice system; it is a medical procedure (medical punishment), not a principal punishment. According to Barda Nawawi Arief, Indonesia's criminal justice system must always focus on balancing three main pillars: justice, utility, and legal certainty. (Barda Nawawi Arief, 2016) However, the Banjarmasin District Court's ruling shows a tendency to prioritize deterrence over upholding the principles of legal certainty and legality.

According to the integrative theory of punishment, punishment for offenders must serve not only retributive but also rehabilitative and preventive purposes. (Arief & Muladi, 1992) Chemical castration carried out without medical guidance or evidence of recidivism serves only as social revenge and no longer has a preventive rationale. This has led to a shift in the perspective on punishment from "resocialization" to "penal populism." In this context, punishment is used to satisfy the public's emotional desires rather than to achieve substantive justice.

Furthermore, the imposition of additional penalties without a clear legal basis can lead to disagreements. A court may impose chemical castration solely based on the severity of the offense, but only if there is evidence of recidivism. This inconsistency indicates that the penal system is weak and out of step with theory and practice. (Gosita, 1985) Consequently, there is no consistent policy for addressing sexual crimes against children within the national criminal justice system.

#### 2. Implications for Law Enforcement

From a law enforcement perspective, the Banjarmasin District Court's ruling highlights a discrepancy between legal culture, legal substance, and legal structure (according to Lawrence M. Friedman's framework). First, regarding legal substance, Article 9 of Government Regulation No. 70 of 2020 establishes formal requirements for chemical castration. This requires medical recommendations from a psychiatrist and the

performing physician before the procedure can be carried out. This requirement is nowhere to be found in the court's reasoning or the operative part of the decision. Therefore, the decision is difficult to enforce legally because it does not comply with statutory provisions regarding due process of law.

Second, in terms of structure, several institutions are involved in carrying out chemical castration. These include the Attorney General's Office, the Ministry of Health, and the Ministry of Women's Empowerment and Child Protection (PPPA). However, according to Article 10 of Government Regulation No. 70 of 2020, judges do not issue orders to form an implementation team. This indicates that law enforcement agencies are not cooperating effectively, which could lead to administrative and ethical issues during implementation.

Third, from a legal culture perspective, this decision reflects a rise in legal populism, in which courts prioritize the public's moral satisfaction over legal certainty. According to Esmi Warassih in "A Portrait of Modern Law in Social Transformation", systems and rationality should form the basis of modern law rather than public moral pressure. Consequently, the justice rendered stems not from legal justice but from emotional justice when judges use moral logic as the basis for their rulings.

### 3. Implications for the Offender

The imposition of chemical castration as an additional punishment without a valid legal basis constitutes a violation of the defendant's constitutional rights. Chemical castration has significant medical consequences and causes permanent effects on the offender's hormones, reproductive functions, and psychological well-being. The National Commission on Human Rights (Komnas HAM, 2021) states that this punishment can be classified as cruel if imposed without medical advice or the offender's consent.

Every person has the right to personal protection and dignity, according to Article 28G, paragraph (1) of the 1945 Constitution in the context of national law. Therefore, the constitutionally guaranteed right to bodily integrity is incompatible with the use of chemical castration without medical justification. According to Sulistyowati Irianto, a legal system that is gender-biased and punishes offenders without considering their humanity constitutes a form of "torture by law" that is inconsistent with the principle of substantive justice. (Irianto, 2006)

Furthermore, according to the theory of individualized sentencing, punishment must be tailored to the offender's personal circumstances; however, in this case, there is no evidence that the defendant is a repeat offender or has a psychosexual disorder. Therefore, chemical castration is disproportionate and does not reflect the principle that "the punishment must fit the offender."

From a social perspective, in addition to the inadequacy of this additional punitive measure, chemical castration also results in lasting stigma. Offenders find it difficult to be accepted back into society after serving their sentences because they are labeled as "castrated convicts." As a result, the ultimate goal of the penal system—the process of resocialization—is not achieved, which instead leads to new forms of social exclusion.

### 4. Implications for Victim Protection

From the perspective of victim protection, chemical castration is often viewed as an act of symbolic justice that demonstrates the state's power over perpetrators of sexual violence. According to Lilik Mulyadi, the extent of victim protection is based not only on the severity of the punishment but also on the degree of comprehensive recovery the victim receives. (Muladi, 1995)

In this ruling, the judge granted restitution to the victim but did not include an order for medical and psychological rehabilitation as provided for in Article 59A of the

Child Protection Law. This indicates that the approach to protecting victims remains formalistic and incomplete. Therefore, according to the concept of restorative justice, victims have not only the right to redress but also the right to the restoration of their dignity and sense of security.

Furthermore, the imposition of extreme additional punishments, such as chemical castration, has the potential to trigger media sensationalism and excessive public attention (public exposure). Such conditions actually risk causing additional trauma to the victim (revictimization), as uncontrolled mass scrutiny is likely to re-expose the child's privacy and social identity. Regarding the protection of victims, Indonesian victimology expert Arif Gosita emphasizes that victim recovery should prioritize emotional and social justice over mere formal legal satisfaction. Therefore, chemical castration cannot simply be claimed as a form of genuine protection for victims. On the contrary, such measures tend to reinforce the narrative of social retribution (retributive justice) rather than focusing on the victims' recovery (restorative justice). (Gosita, 1985)

#### 5. Implications for Human Rights

The right to bodily integrity and human dignity is the most sensitive issue in criminal law from a human rights perspective. The prohibition against torture and degrading treatment is enshrined in Article 7 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the criminal charges brought against the defendant in this case do not meet the required elements—namely, that the offense should be applied to repeat offenders, or cases involving more than one victim, resulting in serious injury, mental disorder, infectious disease, impairment or loss of reproductive function, or the death of a victim.

The Human Rights Committee stated that there is currently no oversight mechanism to ensure that the use of chemical castration in Indonesia complies with human rights and medical ethics. In the Banjarmasin District Court's decision, there was no evidence that human rights organizations or medical ethics committees were involved in assessing the proportionality of the measure. Consequently, chemical castration is considered a violation of human rights, both substantively and procedurally.

Indonesia, as a nation governed by the rule of law, upholds the principle that every criminal punishment must uphold fair and civilized human values. If chemical castration is imposed without adequate legal and medical grounds, this indicates that the goal of deterrence is not in line with the goal of respecting human dignity. If the law is applied without humanity, justice becomes a tool that perpetuates suffering.

## Conclusion

The conclusions of this study indicate that the application of chemical castration in Judgment No. 895/Pid.Sus/2023/PN.Bjm and Judgment No. 859/Pid.Sus/2023/PN.Bjm reflects inconsistencies between positive law and judicial practice, particularly regarding compliance with the normative requirements set forth in Article 81(7) of Law No. 17 of 2016. A key finding of this study confirms that judges tend to prioritize a repressive approach while disregarding existing legal limitations, thereby resulting in violations of the principle of legality and the potential for legal uncertainty. In this context, this study contributes to the development of legal scholarship, particularly in the fields of criminal law and theories of punishment, by demonstrating a shift away from the principle of legal positivism—which should uphold the certainty of legal norms—toward practices characterized by penal populism. However, this study has limitations because it focuses only on the analysis of two court decisions without empirically examining the implementation of chemical castration in broader practice, including its medical and social aspects. Therefore, further research is

recommended to comprehensively examine the effectiveness and implications of chemical castration from a multidisciplinary perspective, as well as to formulate a sentencing policy model that is more proportional, just, and remains grounded in the principles of legal certainty and the protection of human rights.

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