

ACTUALIZATION OF THE IDEA OF PANCASILA LAW IN THE RECONSTRUCTION OF CHEMICAL CASTRATION EXECUTOR NORMS OF CHILD PROTECTION ACT IN PERSPECTIVE INDONESIAN LAW

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ABSTRACT

The formulation of the legal norms of chemical castration executors in the Child Protection Act is part of the criminal law policy which is considered contrary to the legal ideals of Pancasila which is the main foundation in the implementation of national legal development and has the potential to violate the oath and code of ethics of the Indonesian medical profession. The problem is set to answer the question: how is the reconstruction of the norms of chemical castration executors in the Child Protection Act in line with the actualization of the legal ideals of Pancasila in the development of Indonesian criminal law? The research method used in this study is the Normative Juridical research method with a Statute Approach approach which aims to examine the suitability between chemical castration execution arrangements in the Child Protection Act and the provisions of criminal executions that apply generally based on criminal justice practices in Indonesia to avoid conflicts of interest in the implementation of medical practice. According to the study's findings, the reconstruction of chemical castration execution standards by the actualization of Pancasila Sila 1 Almighty Divinity's legal ideals can only be accomplished by amending the Child Protection Act's legal provisions by incorporating the responsibilities of doctors performing chemical castration into the Police's primary responsibilities, as has been done in the execution of other criminal offenses.

Keywords: Legal mind, Pancasila, reconstruction, chemical castration, child protection.

INTRODUCTION

Government Regulation instead of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection (hereinafter referred to as Perpu No. 1 of 2016) has historically been recorded as a statutory provision that introduces chemical castration sanctions, installation of electronic detection devices, and rehabilitation as legal norms formulated by the Government to respond to the high cases of child sexual violence in Indonesia.

Following the enactment of Law No. 17 of 2016 concerning the establishment of Perpu No. 1 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning child protection (hereinafter referred to as Law No. 17 of 2016), the chemical castration sanctions in Perpu No. 1 of 2016 were then emphasized, and further details were provided by Government Regulation No. 70 of 2020 regarding Procedures for the Implementation of Chemical Castration Measures, Installation of EI (hereinafter referred to as PP No. 70 of 2020).

Many parties, especially the medical profession as health workers, have been paying close attention to the punishments against chemical castration in Perpu No. 1 of 2016. This is because there are worries that chances may arise for doctors to participate in the use of chemical gelding.

Responding to the situation, the Chairman of the Indonesian Doctors Association (IDI) Daeng M. Faqih stated that chemical castration is a form of punishment, not a medical service. So it is not related to the duties of doctors and health workers. If doctors become executors of chemical castration, it has the potential to cause conflicts of norms, namely medical ethics, world health organization (WHO) orders, and health laws that prohibit doing so (TIM, 2019). Likewise, the Honorary Council of Medical Ethics (MKEK) responded by issuing Fatwa No. 1 of 2016 concerning Chemical Castration which in principle states that the medical profession in Indonesia is very bound to the doctor's oath, so it cannot accept directly acting as an executor of chemical castration.

On the other hand, the execution of chemical gelding is a duty that must be fulfilled, according to Rudy Hartono, the head of the Mojokerto District Attorney's Office, who made this statement on August 24, 2019. He claimed that while medical professionals may decline to follow court orders, the execution of chemical geldings is a legal need. You risk punishment if you disobey the law's directives (Safutra, 2019). Since the law of the land is the order of the legislation, the doctor is required to do his duties by it (Hidayatullah et al., 2020).

Concerns about the emergence of opportunities for the involvement of doctors in the execution of chemical geldings became something that could not be avoided following the issuance of PP No. 70 of 2020 which restrictively placed doctors as executors of the chemical gelding.

Despite attempts to mediate the conflict of roles and interests between doctors and prosecutors in addressing the chemical castration executor controversy, one of them is through the filing of Police Medicine (Dokpol) (Alam, 2022). But still, it cannot be implemented. Given the position of the Police Doctor himself who is also bound by the code of ethics and the oath of medicine as the medical profession in general. In carrying out its responsibilities and practicing its professions, it is governed by Law No. 29 of 2004 Governing the Practice of Medicine, and is overseen by the same parent organization, the Indonesian Doctors Association (IDI).

Until now, there have been at least 3 chemical castration convictions decided by the courts against perpetrators of child sexual abuse, including (Indonesia, 2022): (1) Muh. Aris bin Syukur, convicted of the rape of 9 children by the Mojokerto District Court in August 2019, (2) Rahmat Slamet Santoso, convicted of an obscenity case against 15 students by the Surabaya District Court in November 2019, and (3) Dian Ansori, convicted of obscenity case against minors by the Sukadana District Court in East Lampung in February 2021.

There are not a few studies on chemical castration that have been written and published, most recently in 2022, including Candra Purnama Laia, Ryan Maulana and Rochmani, Lalu Muhammad Rofi'i and Mawardi, and Henny Yuningsih who specifically wrote it as a Dissertation at Brawijaya University in 2019 ago. Based on its substance, each of these studies successively addresses: legal considerations in the conviction of chemical castration (Laia, 2022), the Purpose of Conviction in the Imposition of Chemical Castration Sanctions (Maulana, 2022), reasons for the crunch in the formation of Perpu No. 1 of 2016 (Mawardi, 2022), and the implementation of chemical castration acts in a human rights perspective (Salsabila, 2019).

In contrast to the four studies above, the substance of the research that the author submits focuses more on efforts to examine the suitability between the formulation of norms governing chemical castration executors in PP No. 70 of 2020 with the criteria and ideals of national legal development which include: moral/religious values, human rights, accommodating the sense of justice of all people, opening up space for participation in its formation, and social justice for the common welfare.

The selection of the research focus is based on the following arguments: (1) there has been no similar research that examines the presence or absence of causality between the practice of Pancasila, especially the 1st Precept which upholds spiritual, ethical, and moral values with the formulation of chemical castration executor norms, (2) testing the suitability between the code of ethics and the medical oath with the formulation of norms that place doctors as executors of chemical castration, and (3) the establishment of chemical castration norms is part of the criminal law policy related to the development of national law so that its formation cannot be separated from the existence of Pancasila as a legal ideal that underlies legal development in Indonesia.

Referring to the background description above, the author further limits the research to the problem: how is the reconstruction of the chemical castration executor norm in the Child Protection Act in line with the actualization of the legal ideals of Pancasila in the development of Indonesian criminal law? This problem is set to test the actualization of the legal ideals of the 1st Pancasila Sila of the Almighty Godhead in the formulation of the norms of chemical castration executors regulated in the Child Protection Act and contribute technically to compile a reconstruction of norms that can transfer the involvement of doctors as executors of chemical castration through the implementation of the main tasks of the Police that are considered relevant in the field of criminal execution.

This research uses a doctrinal legal research model with normative juridical research methods, namely legal research which according to its understanding puts the law as a building of a norm system. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, treaties, and doctrines (teachings) (Fajar N. D., Mukti dan Achmad, 2010). The research specification in this study is the Statute Approach. This approach opens up the opportunity to learn whether there is consistency and conformity between a law and another or between a statute and the Constitution or between regulation and legislation. The results of the study are an argument to solve the problem at hand (Marzuki, 2009). Through this approach, research activities are directed at efforts to examine the suitability between chemical castration execution arrangements in the Child Protection Act and the provisions governing criminal executions in general that apply in criminal justice practice as contained in other laws and regulations.

PANCASILA IS THE IDEA OF INDONESIAN LAW OF LEGAL DEVELOPMENT

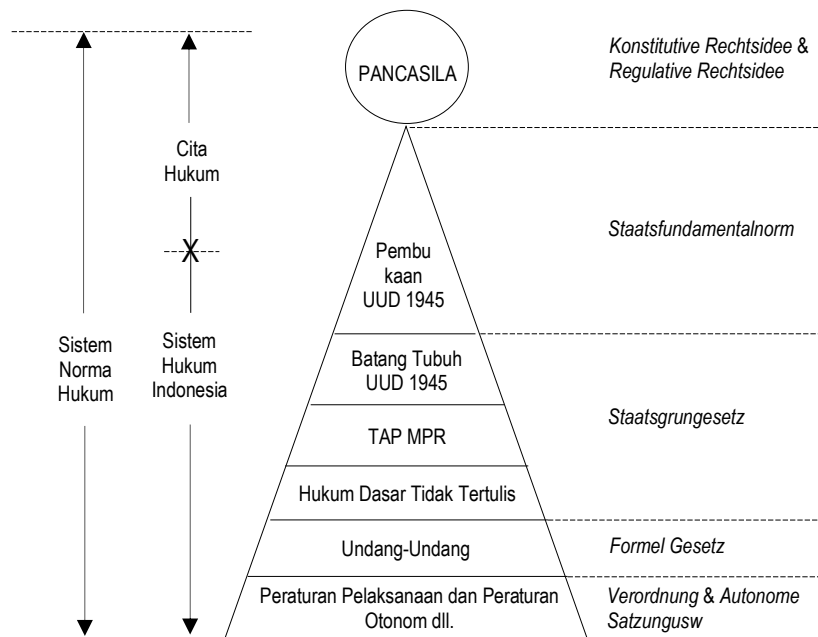
The establishment of national law must heed the values and ideals of the nation's law. Law as an element of a nation's civilization must be a mirror and a statement of the values that live in the soul of the nation. Such a national law will be better supported and obeyed by the community and able to move the community to behave as expected because it is in line with the ideals of the law that live and develop amid society (Nazriyah, 2022).

The establishment of a national legal system must refer to the philosophical basis of Pancasila. Because Pancasila is the ideal of Indonesian law which determines the direction of life as an orderly people, to build an independent, united, sovereign, just, and prosperous country (Saleh, 1995). Pancasila has been declared its position by the founder of this country as seen in the 1945 Constitution, in the General Explanation. There it was affirmed, that Pancasila is a Legal Mind (*Rechtsidee*) that masters the basic law of the State, both the written basic law and the unwritten basic law (Oetojo Oesman dan Alfian, 1992).

According to Rudolf Stemmler, the mind of law is the building of thought, which is required to guide the law toward the values that society wishes. Similarly, Gustaf Radbruch asserts that the legal mind not only functions as a regulative benchmark, determining if a positive law is fair or not but also as a constitutive basis, establishing that the law would lose its meaning if it were not for the legal mind (Zaidan, 2011).

The significance of Pancasila as a legal mind in the process of legal development according to A. Hamid S. Attamimi is (Oetojo Oesman dan Alfian, 1992): in the Indonesian legal system, there is a Legal Mind that is nothing but Pancasila, which is constitutive and regulative of the Indonesian legal norms system with the fundamental norms of the state which is none other than Pancasila as well. We cannot accept a system of stand-alone legal norms without the legal mind, because it is incompatible with our philosophy of life in the life of society, nation, and state.

Pancasila as a Fundamental Norm of the State (Staatsfundamentalnorm)



Source: A. Hamid S. Attamimi (Oetojo Oesman dan Alfian, 1992).

DEVELOPMENT OF STRATEGIC ISSUES AND DEVELOPMENT OF CHILD PROTECTION

Children have a significant role in many facets of societal and governmental life. Article 28B paragraph (2) of the Second Amendment to the 1945 Constitution states that “Every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination,” demonstrating the state’s awareness of the significance of the child’s position.

From the viewpoint of the law, children receive their level of protection as subjects. From the time she was still in the womb until she was born, even long before she was mature and capable in the eyes of the law (Setiawati et al., 2017). From birth, including while he is still in the womb, civil law guarantees a child’s basic rights (Soebekti, 2003) by the provisions of Article 2 paragraph (1) of the Civil Code (Soebekti, R. & Tjitrosoedibio, 2007): “The child in a woman’s womb is regarded as having been born, whenever the child’s interests desire. Dying at birth is considered to have never existed”.

Child protection-related criminal law policies have been incorporated into national legislation and are dispersed across the Civil Code, the Criminal Code, and several other laws and regulations (Joni, Muhammad & Tanamas, 2018). Lastly, through the passage of Law No. 17 of 2016 concerning the Establishment of Government Regulations instead of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection as a regulation to address issues related to the high rate of sexual crimes against children, Law No. 17 of 2016 concerning the Establishment of Government Regulations was passed (S. & Naibaho, 2020) This demonstrates how the state is required to guarantee children’s protection and how accountable it is to do so (Sujatmiko, 2016) particularly defense against sexual assault (Yusyanti, 2020).

Sexual assault on children is a serious offense that is on the rise and poses a substantial risk to the child’s life, harms the child’s development and personal life, and disrupts the community’s sense of comfort, peace, and security (Ginting et al., 2019). Children with a population of approximately ± 79.5 million or equivalent to 30.1% of the total Indonesian population (KPAI, 2021a) have a level of vulnerability as victims of sexual violence. The Indonesian Child Protection Commission (KPAI) in the period 2016-2020 recorded complaints of child protection cases with clustering as follows (KPAI, 2021b):

Table 1: Child Complaint Cases based on Child Protection Cluster Indonesian Child Protection Commission (KPAI) The year 2016-2020

Child Protection Cases	2016	2017	2018	2019	2020
Pornography and Cyber Crime:					
a. Child victims of online sex crimes	112	126	116	87	103
b. Child victims of pornography from social media	188	142	134	148	91
Children Face the Law as Victims:					
a. Children as victims of sexual violence (rape/obscenity)	192	188	182	190	419
b. Children as victims of sodomy/pedophilia	0	0	0	0	20
c. Children as victims of abortion	64	58	61	43	11
Trafficking and Exploitation:					
a. Children as trafficking victims	72	58	65	56	28
b. Children as victims of child prostitution	112	104	93	64	29

c. Children as victims of child commercial sexual exploitation (ESKA)	69	89	80	71	23
Amount	809	765	731	659	724

Source: (KPAI, 2021b).

During the period from 2016 to 2020, cases of children who were victims of sexual violence (rape/obscenity) were ranked highest with 1,171 cases (32%), cases of children who were victims of pornography from social media 703 (19%), cases of children who were victims of online sexual crimes 544 (15%), cases of children who were victims of child prostitution 402 (11%), cases of children who were victims of commercial sexual exploitation of children 332 (9%), children who were victims of trafficking were 279 (8%), children who were victims of abortion were 237 (6%), and children who were victims of sodomy/pedophilia 20 (1%). The Ministry of Women’s Empowerment and Child Protection (Kemenpppa) also mapped the ratio of child victims of violence to 14,894 in 34 provinces with a distribution (SIMFONI-PPA, 2022):

Table 2: Map of the distribution of child victims of violence (per 10,000 children) Kemenpppa SIMFONI-PPA As of January 1, 2022

Province	Case	Province	Case	Province	Case
Jawa Timur	1.300	Nusa Tenggara Timur	505	Maluku	229
Jawa Barat	1.037	Aceh	471	Maluku Utara	228
Sumatera Utara	1.023	Lampung	422	Kalimantan Tengah	213
Jawa Tengah	980	Kalimantan Timur	416	Bali	185
DKI Jakarta	702	Kalimantan Selatan	370	Kalimantan Utara	162
Sulawesi Selatan	694	Kalimantan Barat	337	Bengkulu	142
Riau	646	Sulawesi Tengah	303	Gorontalo	142
Sulawesi Utara	622	Kepulauan Riau	295	Papua	139
Banten	621	Sumatera Selatan	279	Bangka Belitung	123
Nusa Tenggara Barat	556	Sulawesi Tenggara	250	Papua Barat	123
Daerah Istimewa Yogyakarta	546	Jambi	232	Sulawesi Barat	93
Sumatera Barat	508				

Source: (SIMFONI-PPA, 2022).

The number of child victims of violence in the 10 provinces with the highest rankings is spread in: (1) East Java 1,300 (8.7%), (2) West Java 1,037 (7.0%), (3) North Sumatra 1,023 (6.9%), (4) Central Java 980 (6.6%), (5) DKI Jakarta 702 (4.7%), (6) South Sulawesi 694 (4.7%), (7) Riau 646 (4.3%), (8) North Sulawesi 622 (4.2%), (9) Banten 621 (4.2%), and (10) West Nusa Tenggara 556 (3.7%). While the province with the lowest rank is West Sulawesi 93 (0.6%).

LEGAL NORMS OF CHEMICAL CASTRATION IN THE CHILD PROTECTION ACT

Law No. 23 of 2003’s criminal provisions originally only covered the principal offenses, which are outlined in Articles 77 to 90 and are subject to penalties and imprisonment. For example, violators of this Law’s Articles 81 and 82 face up to 15 years in prison, a 3-year minimum sentence, and an Rp. 300 million maximums fine, and an Rp. 60 million minimum fine if they conduct crimes like sexual assault against children.

These clauses have undergone numerous adjustments as a result of changes to the law itself. The most recent of these revisions were made by Law No. 17 of 2016, which introduces measures like chemical castration, the installation of electronic detection devices, and rehabilitation for those who commit sexual assault against children along with the imposition of criminal penalties and fines for those who commit crimes against children (Alam, 2020).

According to the Article 1 Number 2 definition of chemical castration in PP No. 70 of 2020: Chemical castration is the process of administering chemicals by injection or other means to offenders who have been found guilty of using force or threats of force to coerce children into having sexual relations with them or with others, resulting in the victimization of more than one (one) person, serious injury, infectious diseases, impaired or lost reproductive function, and/or the victim’s death, to stifle sexual urges.

The conditions outlined by Law No. 17 of 2016 and PP No. 70 of 2020 for the actual execution of chemical castration are as follows: Chemical castration in conjunction with rehabilitation; (1) carried out by a doctor on the prosecutor’s order after consultation with the ministries of health, law, and human rights; (2) not used on juvenile offenders; (3) implemented after the conviction has been served for the primary crime; (4) imposed for no more than two years; and (5) carried out by a doctor on the prosecutor’s order after consultation with the ministries of he.

Chemical castration operations are governed by the following rules in Article 5-13 Chapter II of the Second Part of PP No. 70 of 2020 about implementation:

1. The initial stages of the process include clinical assessment, decision, and implementation.
2. No later than nine months before the criminal completes serving the primary sentence, the prosecutor must obtain a notice from the ministry of law and human rights before the clinical evaluation. The prosecutor arranges for a clinical evaluation to begin no later than 7 days after receiving the notice, which is sent to the ministry of health within 7 days of notification. The clinical evaluation is carried out by a group of medical and mental health professionals and consists of (a) a clinical interview, a technique for learning more about the offender’s physical and mental health conditions to make early or interim clinical judgments regarding the convict’s health issues, (b) psychiatric interviews, which use structured or open-ended questions to examine a guilty person’s mental state without the use of any tools, (c) physical examination, a process to determine the

- offender' and (d) A supporting examination, which consists of several medical examinations of particular indications, must be finished and submitted to the prosecutor no later than 14 days after receiving the prosecutor's notice to determine whether the person who committed copulation is fit or unfit to be chemically castrated.
3. The act of chemical castration is performed once it has been decided that the offender deserves it. The execution of chemical castration is postponed for a maximum of six months if the judge determines that the criminal is not suitable for it while a new clinical assessment and ruling are prepared. If the re-clinical examination and re-inference still state that the criminal is unsuitable to be subjected to chemical castration, the prosecution notifies the court that decides the case in the first instance in writing and includes the results of the pre-clinical assessment and re-conclusion.
 4. As soon as the defendant has completed serving the first sentence, but no later than seven days after receiving the finding that the offender is fit to be exposed to chemical castration, the prosecution instructs the doctor to perform the chemical castration.
 5. In government-owned hospitals or regional hospitals that have been explicitly approved for the execution of chemical geldings, prosecutors, representatives from the justice and human rights, social affairs, and health ministries are present.
 6. When a chemical gelding execution occurs, the prosecution tells the victim or his family and notes it in the minutes.

ACTUALIZATION OF THE MIND OF PANCASILA LAW IN THE IDEA OF RECONSTRUCTION OF CHEMICAL CASTRATION EXECUTOR NORMS

The development of national law must be based on values derived from Indonesian culture itself. Therefore, the most important foundation used to explain the basic values for the formation of national law is none other than Pancasila which contains five basic precepts or values. These five basic values are considered to be a true reflection of the plural culture of the Indonesian nation. That is, the five basic values become the source of national legal principles, as well as the ideal (spiritual) basis for determining a legal norm (Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, 2020) which is reflected through the national legal sub-system which is integral in carrying out development in the field of law, namely (Nazriyah, 2022): (a) sub-systems of law creation or formation, (2) sub-systems of law related to the content or material of law in the form of legal principles and legal rules, and (3) sub-systems of application and enforcement of laws.

The debate over the norms of chemical castration that place doctors as executors of chemical castration are a small part of the evidence of how important Pancasila is in carrying out its role as a legal ideal in the implementation of legal development in Indonesia, including in the criminal field. Although the doctor's rejection of the existence of the norm is still limited to unilateral statements and has not led to factual action, because its implementation itself has not exceeded the time limit set by law since the first case was decided by the court, it is predicted to cause difficulties for law enforcement of child sexual violence crimes and encourage an image of legal uncertainty in cases that have been decided by the courts.

If the idea of reconstructing the norms of chemical castration executors in Law No. 17 of 2016 is connected with the importance of Pancasila as a legal ideal in legal development in Indonesia and the integral sub-system of national law which includes the creation or formation of laws, legal content or materials as well as the application and enforcement of laws in the implementation of development in the field of law, then at least the following analysis is obtained: **First.** That the philosophical foundation of the creation or formation of chemical castration norms in Law No. 17 of 2016 cannot be used as the same foundation for the benefit of the creation or formation of chemical castration executor norms. Although the state must guarantee the fulfillment of the rights and protection of children from sexual violence, the appointment of doctors as executors of chemical castration is considered contrary to the oath and code of medical ethics which means it also violates the legal ideals of Pancasila, especially Sila 1 Almighty Godhead which upholds spiritual, ethical and moral values. The same values can be understood by tracing the role and position of doctors in carrying out health efforts as stipulated in Law No. 29 of 2004 concerning the Practice of Medicine, Law No. 36 of 2009 concerning Health, and Law No. 36 of 2014 concerning Health Workers. The values that are considered by Pancasila, especially Sila 1 of the One True God which upholds spiritual, ethical, and moral values, include: (a) the value of benefits that require doctors to provide the greatest benefit to humanity to maintain and improve the degree of public health, (b) the human value that requires doctors to provide equal treatment by not distinguishing ethnicity, nation, religion, social status, and race, (c) the value of balance that requires doctors to maintain harmony and harmony between the interests of the individual and society and (d) the value of protection and safety Patients who require doctors not only to provide health services but must be able to provide an increase in the degree of health while still paying attention to patient protection and safety. **Second.** That the content or legal material of Law No. 17 of 2016 which places doctors as executors of chemical castration is legal content or material that is contrary to the practice of medicine which places doctors as the main component in providing health services by the Medical Practice Law, the Health Law, and the Health Workers Act. By the three laws, doctors are responsible for carrying out all activities and/or series of activities that are undertaken in an integrated, integrated, and sustainable manner to maintain and enhance the level of public health, including disease prevention, health improvement, disease treatment, and health recovery by the government and/or the community. Meanwhile, the regulation of the duties of doctors in the Child Protection Act is part of the implementation of punishments that are completely unrelated to the health services that are in the scope of the practice of medicine. **Third.** That the application and enforcement of the law on the crime of child sexual violence through the execution of chemical castration will not be able to be carried out as long as the content or legal material of Law No. 17 of 2016 still puts the doctor as the executor. This also means that throughout that there will also be an image of legal uncertainty over the execution of chemical geldings that have been decided in cases of crimes of child sexual abuse in criminal justice practice. Therefore, changes are needed to the content or material of the law that regulates the norms of chemical castration executors to ensure legal certainty in the application and enforcement of the law on the crime of child sexual violence. One of the alternatives offered is by encouraging the involvement of the Police in the execution of chemical geldings by the provisions of Article 14 paragraph (1) letter 1 of Law No. 2 of 2002 concerning the Police which contains the main duties of the Police to carry out other duties by laws and regulations. It is not the first occasion that the Police have provided technical assistance for a criminal execution. Based on Chief of Police Regulation No. 12 of 2010 concerning Procedures for the Implementation of the Death Penalty, the same support has long been provided to executions involving troops of the Mobile Brigade (Brimob).

CONCLUSION

Reconstruction of chemical castration executor norms in line with the actualization of the legal mind of Pancasila can only be carried out through improvements to the legal content or material of the Child Protection Act, especially those governing the involvement of doctors as executors of chemical castration. The formulation of the legal content or material of the Child Protection Act that places doctors as executors of chemical castration is considered a form of creation or formation of norms that are not in line with the legal ideals of Pancasila Sila 1 Almighty Godhead which upholds spiritual, ethical and moral values and is contrary to the oath and medical ethics that contain the values of benefits, humanity, balance, and patient protection and safety. Moreover, the execution of chemical castration is part of the implementation of punishments that are not included in the health efforts that are in the scope of medical practice. The actualization of the legal mind of Pancasila is the most important element in the sub-system of creating or establishing executor norms in every statutory regulation, including the Child Protection Act. This is important to avoid a repeat of conflicts of roles and interests as occurs in the execution of chemical castrations in the case of crimes of child sexual violence. The transfer of the execution of chemical geldings through the implementation of the main duties of the Police is the closest option for the Government to strive for the availability of chemical castration executor resources derived from law enforcement elements themselves so as not to violate the legal ideals of Pancasila Sila 1 Almighty Godhead which contains spiritual, ethical and moral values.

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