



# Reformulation of Chemical Castration Execution through Implementation Main Duties of the Police

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**Abstract.** After doctors refused to participate in the execution of chemical castration, prosecutors were obliged to be able to be proactive in law enforcement procedures against sexual assault against children. The goal of this study is to develop a model for chemical castration execution that can be used in police work to support the prosecutor's office in carrying out its legal obligations under Law No. 16 of 2004 regarding the prosecutor's office, particularly about the implementation of judge rulings and court decisions. Can the execution of chemical castration be carried out through the performance of police duties? was the issue posed. Normative juridical research methodology is employed. To achieve legal certainty regarding the implementation of the Mojokerto PN verdict, whose execution is scheduled to take place in 2031, prosecutors are expected to use the availability of police resources that receive health skills training as a solution to prepare chemical castration executioners by the provisions required in Article 9 letter b of PP No. 70 of 2020. This practice of providing police with technical assistance during executions is not new. By Perkapolri No. 12 of 2010 about Procedures for the Implementation of the Death Penalty, the same assistance has long been provided during executions employing Brimob units.

**Keywords:** reformulation; execution; chemical castration; police.

## 1. Introduction

Many parties, especially the medical profession as health workers, have long expressed concern about the inclusion of chemical castration sanctions in Perpu No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. This is because there are worries that opportunities may arise for doctors to carry out chemical castration. In response to the circumstance, Daeng M. Faqih, chairman of the Indonesian Medical Association (IDI), said that chemical castration is a kind of punishment rather than a medical procedure. As a result, it has nothing to do with the obligations of medical professionals. There could be a contradiction between medical ethics, World Health Organization (WHO) directives, and health regulations if a practitioner were to carry out chemical castration[1]. The Honorary Council of Medical Ethics (MKEK), which released Fatwa No. 1 of 2016 about Chemical Castration, provided the same response.

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After the publication of Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration Measures, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children (here), opportunities for doctors to participate in the execution of chemical castration in its development have become an unavoidable reality for the medical profession.

The controversy over the appointment of doctors as executors of chemical castration, which has long existed since the issuance of Perpu No. 1 of 2016, culminated in the issuance of PP No. 70 of 2020, which is a derivative of the enactment of Law No. 17 of 2016 concerning the Stipulation of Perpu No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law. Through judgment No: 69/Pid.Sus/2019/PN.Mjk, Mojokerto State-enforced chemical castration in the case of child rape committed by Muh. Aris. [1]

As of right present, the court has sentenced at least three offenders of child sexual assault to chemical castration, including:[2] (1) Muh. Aris bin Syukur, convicted of rape of 9 children, (2) Rahmat Slamet Santoso, convicted of molesting 15 students, and (3) Dian Ansori, convicted of molesting minors.

On August 24, 2019, Mojokerto Chief District Attorney Rudy Hartono declared that the execution of chemical castration is a duty that must be fulfilled, in contrast to medical institutions. He asserts that although doctors are free to decline to render judgments in court, chemical castration is a statutory requirement. You risk punishment if you disobey the law's directives[3] given that this is the country's legislation, the doctor is required to carry out his duty by statutory orders.[4]

Despite attempts to resolve the chemical castration executor controversy by mediating the conflict of responsibilities and interests between doctors and prosecutors, notably by submitting medical staff from the Penitentiary [5] such as Police Medicine (Dokpol)[6], it still can't be put into practice. Considering the position of the Police Doctor, who is likewise subject to the same oath and code of ethics as the medical profession as a whole. It is governed by Law No. 29 of 2004 concerning Medical Practice, Law No. 36 of 2009 concerning Health, and Law No. 36 of 2014 concerning Health Workers in the discharge of their obligations and professions. It falls under the umbrella of the same parent organization, namely the Indonesian Medical Association (IDI).

Prosecutors must get new executors ready right away who can take the place of doctors in the execution of chemical castration while still requiring the fulfillment of minimum competence in the health sector to act as executors of chemical castration by laws and regulations to address the gap between expectation (*das sollen*) and reality (*das sein*) in the reality of law enforcement of child sexual violence crimes today. One way is by involving law enforcement personnel who are drawn from police resources deemed appropriate for carrying out the primary police responsibilities associated with carrying out criminal execution. To provide legal clarity for the criminal application of chemical castration in the Mojokerto District Court decision whose execution is scheduled to occur in 2031.

Numerous research on chemical castration have been authored and published since the publication of Perpu No. 1 of 2016, which sparked controversy over the participation of doctors in the implementation of chemical castration. However, none of them have included papers with the same general themes as the author's research submission. As a result, the author will only compare this research with a few studies that share the same title while still paying attention to the validity of the necessary research, such as:

- a. I Putu Gede Sumariartha Suara's 2018 Child Protection Law Policy on the Implementation of Chemical Castration Against Pedophile Perpetrators;[5]
- b. Nadia Maharani's 2019 policy on reformulating castration sanctions against those who commit pedophilia crimes in Indonesia;[7]
- c. By Risa Hadiansyah in 2022, Law No. 17 of 2016 on Child Protection in Indonesia will include a policy on the formulation of chemical castration sanctions;[8]
- d. Henny Yuningsih in 2019 wrote a piece titled "Regulation of Chemical Castration Against Perpetrators of Sexual Intercourse with Threats of Violence Against Children";[9]
- e. Herwin Sulistyowati's 2019 project, "Reconstruction of Castration Criminal Sanctions Against Perpetrators of Child Sexual Violence in Indonesia Based on Pancasila Values";[10] and
- f. By Irene Widiyaningrum in 2021, The Politics of Castration Law in the Indonesian Criminal Justice System.[11]

When compared to some of the studies mentioned above, the author's proposed research differs and satisfies the criteria for originality, uniqueness, and research utility. In contrast to earlier research, the author focuses more on efforts to discover chemical castration execution formulations that can be technically applied to the implementation of the Police's primary duties under Law No. 2 of 2002 concerning the Police, to support the prosecutors' duties and powers in the criminal justice system, particularly about the implementation of judge determinations and court decisions by Law No. 16 of 2004.

The following arguments, among others, contain the elements of uniqueness, creativity, and expediency mentioned in the research that the author supplied:

- a. The formulation of chemical castration execution that can take the place of the obligations and participation of doctors as chemical castration executors has not been the subject of a study of a similar nature;
- b. the absence of comparable studies on issues that hamper efforts to prosecute cases involving child sexual abuse, particularly about the accessibility of resources for chemical castration;
- c. The majority of current research has not fully sought the image of legal certainty for the implementation of court decisions with permanent legal force in cases of sexual violence crimes against children and is more focused on

achieving justice and legal expediency for criminal defendants and chemical castration executors;

- d. There is still little comparable study targeted at predicting the lack of chemical castration executor resources as a preventative measure for prosecutors in terms of satisfying the conditions of execution for criminal defendants condemned to chemical castration; and
- e. There has not been a similar study that investigates the relationship between the implementation of the primary responsibilities of the police for chemical castration execution and the implementation of the duties and authority of prosecutors in the criminal sector to carry out court rulings.

The research goals for this study are to (1) Understand and analyze the formulation of chemical castration execution in the Child Protection Law, which can be implemented through the implementation of the primary police responsibilities that can support the implementation of the prosecutors' responsibilities and powers in the criminal justice system as the person in charge of chemical castration execution, and (2) Understand and examine the reform's effects.

## **2. Problems**

The scope of this study focuses on the problem: What is the basis for the involvement of the Police in the execution of chemical castration and its effect on the legal certainty of prosecuting child sexual violence crimes in the future?

## **3. Method**

This study employed the Normative Juridical approach, a legal research methodology that rests its analysis on relevant statutes and rules and is pertinent to the legal topics that are the study's main concern[12] using the Statute Approach, which offers the chance to examine the coherence and compliance of one statute with another, with the Constitution, or with regulations[13]. Descriptive analysis data analysis techniques are used to present data qualitatively. The purpose of data analysis using the descriptive analysis method is to systematically examine and present the facts, describe the challenges faced by prosecutors in carrying out court orders requiring the criminal imposition of chemical castration for crimes involving child sexual abuse, and attempt to reformulate the execution of chemical castration in the Child Protection Law by implementing the primary responsibilities of the Police that have been relegated to this role.

## **4. Discussion**

### **4.1 Criminal Provisions of Child Protection Law**

The Civil Code, Criminal Code, and many laws and regulations on child protection have all included criminal law policies about child protection[14], As a final measure to address issues related to the high rate of sexual offenses against children, Law No. 17 of 2016 was passed[15] This demonstrates how the state is required to guarantee children's protection and how accountable it is to do so[16] particularly defense against sexual assault.[17]

With the ratification of the International Convention on the Rights of the Child, specifically through Presidential Decree No. 36 of 1990 concerning the Ratification of Convention on the Rights of the Child (Convention on the Rights of Child), Child Protection Law has historically gone through several changes, each accomplished by:

- a. Law No. 23 of 2002 concerning Child Protection;
- b. Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection;
- c. Government Regulation instead of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection; and
- d. Law No. 17 of 2016 concerning the Stipulation of Government Regulations instead of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection Law.

Law No. 23 of 2003's criminal provisions originally only included the primary criminal threat of imprisonment and fines as specified in Articles 77 to Article 90 according to the requirements of the offense committed. Articles 81 and 82 of this law, which particularly address the sanctions imposed on those who commit sexual violence against children, establish a maximum sentence of 15 years in jail and a minimum of 3 years, as well as a maximum fine of Rp. 300 million and a minimum fine of Rp. 60 million. Following amendments to the law itself, these provisions have since changed. Most recently, Law No. 17 of 2016 introduced measures such as chemical castration, the installation of electronic detection devices, and rehabilitation for those who commit sexual assault against children, in addition to the imposition of criminal penalties and fines for those who commit crimes against children.

Article 81, Section 81A, Article 82, and Article 82A of Perpu No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 were the first laws to regulate chemical castration. He clarified that chemical castration generally is a part of the government's strategy to deter sexual assault against youngsters and prevent it completely[18] President Joko Widodo is trying to address the urgent issue of sexual violence against children, which has greatly escalated[19]. Its rationale is as follows: "Law No. 23 of 2002, as amended by Law No. 35 of 2014, has regulated criminal sanctions for those who commit sexual violence against children, but these sanctions have not had a deterrent effect and have not been able to fully prevent the occurrence of sexual violence against children. The government needs to make the primary offense punishable by death or life in prison as well as other crimes like disclosing the identity of the perpetrator to combat the phenomena of sexual violence against children, have a deterrent effect on those who do it, and prevent it. Additionally,

provisions relating to chemical castration, the installation of electronic detection equipment, and rehabilitation must be added. Following the adoption of Law No. 17 of 2016 and additional clarification through PP No. 70 of 2020, the chemical castration sanction in Perpu No. 1 of 2016 was confirmed.

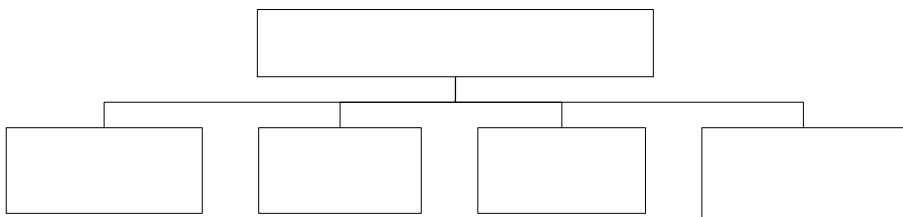
**4.2 Position of the Prosecutor in the Criminal Justice System**

A system of laws and agencies known as criminal justice is employed by the government to uphold social order, prevent and control crime, and punish lawbreakers[20]. The criminal justice system is made up of organizations, laws, and procedures to uphold social order and reduce crime through punishment and rehabilitative measures[21]. Law enforcement, courts, and prisons make up the three primary parts of the criminal justice system. Investigating crimes and apprehending suspects are the responsibilities of law enforcement. In these situations, the law must be interpreted and applied by the court. Prisons use housing, monitoring, and other community-based initiatives to prevent crime in their surrounding areas[21].

The work of police, prosecutors, judges, and correctional officers, which also refers to the application of criminal procedural law, is what is known as the administration of criminal justice. It starts with the process of investigation and investigation, arrest, detention, and prosecution, and ends with examination in court hearings. These initiatives aim to fulfill the objectives of criminal justice[22]. The entire stage of investigating criminal cases to identify illegal activities that took place and bring legal action against the culprits can be understood as the criminal justice process. The criminal justice system works its way through several institutions, beginning with the police, moving on to the prosecutor's office, the court, and concluding with the prison[23].

Imman Yusuf Sitinjak revealed that the criminal justice system, which is essentially a system of power to enforce criminal law consisting of investigative power, prosecution power, the power to try cases and render verdicts, and the power to execute judgments/criminal by implementing bodies/execution officials, is the institution in charge of doing so[24]. This system is described by Mardjono Reksodiputro as a crime-control system made up of police institutions, prosecutors, courts, and prisons for criminal defendants[25].

*Chart 1. Criminal Justice System[25]*



The creation of justice during the execution process may be the Criminal Procedure Code's ultimate objective. If the parties accept the judge's decision after it

has been read and no legal remedy is sought by either party or is even possible to seek it again, the judge's decision is said to have permanent legal effect (in Kracht). The competent authorities will next carry out the judge's ruling, which has a permanent legal effect; this is known as an execution.

The outcome of the judicial process in a court proceeding is a court decision[26]. Execution is the most crucial step in the law enforcement process against a crime since it results in the completion of criminal justice and the application of court rulings with lasting legal effect (inkracht van gewijsde). Given that it is recognized that the judge's decision will always have a permanent legal effect, Allan Rowman Supit remarked that every judgment must be executable because otherwise, it will be useless (inkracht van gewijsde).[27]

The role of the prosecutor's office is crucial to the implementation of the law specifically within the framework of the rule of law. According to Bagir Manan, "realizing law in concreto" involves the idea that administrative employees carry out both legal services and law enforcement, thus it's not just a phenomenon of courts or judges. As public law enforcement agencies, the prosecutor's office and the police serve as the first point of contact in the criminal justice system.[28] The prosecutor, for whom the clerk delivers a copy of the judgment letter, is responsible for executing a court decision that has gained legal force, according to Article 270 of the Code of Criminal Procedure. The responsibilities and powers of the prosecutor's office in carrying out their roles as a part of law enforcement within the Indonesian criminal justice system are outlined in Law No. 16 of 2004 in addition to being specified in the Criminal Procedure Code[23]. According to Article 30 of Law No. 16 of 2004, the prosecutor's office has the following responsibilities and powers: "the criminal sector, the civil and state administrative fields, and the field of public order and peace". By Article 30(1) (b), the prosecutor's office has the responsibility and power to carry out decisions made by judges and court orders that have been given permanent legal effect.

While a prosecutor is always a prosecutor, a prosecutor need not always be a public prosecutor.[24] Article 1 point 6 letter an of the Criminal Procedure Code is narrower than Law No. 16 of 2004's definition of a prosecutor. Therefore, the prosecutor has two roles: public prosecutor and executor. While the public prosecutor has the power to bring charges and implement court orders. In other terms, the public prosecutor is the prosecutor in charge of cases during the prosecution phase. The public prosecutor has the authority to carry out the judge's ruling. Because the public prosecutor is a prosecutor, he or she can carry out the judge's decision but another prosecutor (who is not one) cannot (not a public prosecutor).[23] In light of this, it can be said that the unique responsibility granted by law to prosecutors is to implement judgments.[29]

Additionally, Article 3 of PP No. 70 of 2020's regulations states that "The implementation of chemical castration, the installation of electronic detection devices, and rehabilitation are carried out by officers who have competence in their fields by order of the prosecutor", and Article 9 letter b of PP No. 70 of 2020 states: "Within a period of no later than 7 days after the date of the court order".

Looking at the laws above that govern the execution of chemical castration, the prosecutor's role in this situation is to function as the person in charge of the execution, whose implementation is mandated to the doctor as an officer with expertise in the medical field. The ability to carry out court orders as an inherent authority of the prosecutor's institution is closely related to the engagement of prosecutors and doctors in the execution of chemical castration acts at the same time.

### 4.3 Police execution of chemical castration

The legal system upholds law and order and makes sure that offenders and victims receive justice.[30] When dealing with perpetrators and violators through investigative agencies like the police and prosecutors, Kathleen Daly and Rick Sarre discovered that the criminal justice system is not a system at all but rather a regulation of several bureaucratic entities governed by the state,[31] given that the criminal law does not stand alone. Criminal law is enforced by individuals who work for particular institutions, even though elements outside of criminal justice might affect its direction or operation: such as law enforcement personnel, public defenders, judges, and prison staff.[31]

The law enforcement process is influenced by legal components consisting of law-making institutions or laws, legal workers such as judges, prosecutors, police, advocates, and other institutions authorized to carry out the law.[32] Penitentiaries, courts, legal counsel, and law enforcement agencies including police and prosecutors are the organizations tasked with overseeing the processes for arrest, prosecution, trial, and sentence execution of those found guilty.[31]

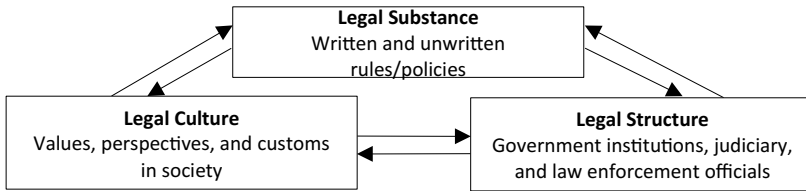
The factors that affect law enforcement are where the real issues reside. These factors have a neutral connotation, thus their substance determines whether they have positive or negative effects. These elements are listed below:[33] 1. The actual legal considerations, which in this essay shall only refer to the law 2. Lawmakers and other individuals involved in enforcing the legislation 3. Elements of tools or infrastructure supporting law enforcement 5. Cultural aspects, specifically as a result of effort, creation, and taste based on human charities in the association of life, and 4. Community considerations, specifically the setting in which the law applies or is applied. These five elements are intimately related to one another because they define law enforcement and serve as a benchmark rather than an indicator of its success.

The goal of the legal system is to establish consistency and order. According to Lawrence M. Friedman, the legislative framework, content, and culture all affect how effective law enforcement is. These three components work together to create a legal system that is interconnected and must be coordinated to fulfill the purposes of the law[31], that is[34]: 1. Institutions created by the legal system that fulfill a range of functions in the context of how the system functions are considered structural elements. This feature enables one to see how the legal system frequently contributes to the creation of legal materials, 2. The decisions and regulations that the legal system generates and that are used by the parties that are both governed and regulated



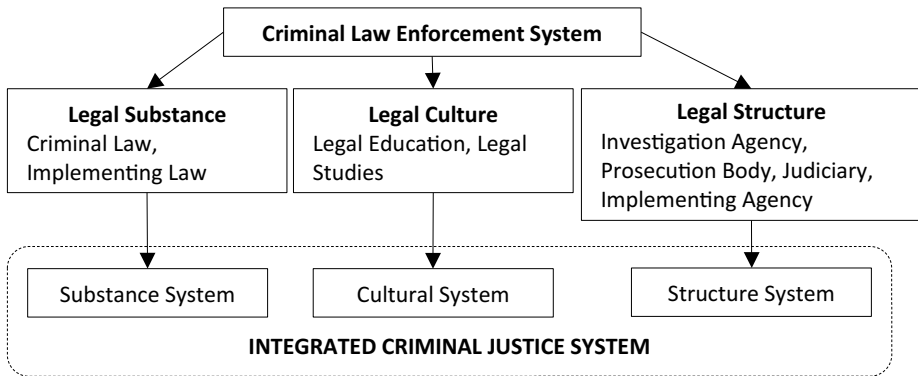
are the substantive elements, 3. The cultural component is made up of beliefs and attitudes that affect how the law is applied, which Friedman referred to as a “legal culture” that serves as a link between the rule of law and everyone’s behavior as a citizen.

**Chart 2. Legal System[34]**



While this is happening, the goals of the criminal justice system as a whole are 1. Short-term, to resocialize inmates; 2. Medium-term, to carry out crime prevention; and 3. Long-term, to attain social welfare[25]. The criminal justice system cannot function solely or partially to achieve this purpose. This is because the criminal justice system is a part of a bigger system, namely the criminal law enforcement system, which is made up of numerous components that are connected, ongoing, and constantly carried out[25].

**Chart 3. Integrated Criminal Law Enforcement System[25]**



By relating it to Mardjono Reksodiputro’s viewpoint on the criminal justice system, we can see that to realize the Integrated Justice System, criminal law enforcement requires an integrated relationship between sub-systems, specifically the substance of the law with institutions in the process, such as the police, prosecutors, and judicial bodies.[25]

When related to Lawrence M. Friedman's opinion above, the problem of law enforcement of child sexual violence crimes, especially chemical castration executions, lies in the conflict between components in the legal system which include legal substance and legal structure. The Child Protection Law as a substantive component is considered to hinder the work of another component, namely the prosecutor's institution as a legal structure that acts as the person in charge of the execution of chemical castration. Through this description, it can also be explained that the Child Protection Law, which is out of the legal system, has not been able to work properly due to law enforcement interference which results in the non-working of the law in full.

The IDI policy, which forbids doctors from acting as executors of chemical castration, is anticipated to be one of the challenges that will force prosecutors to prepare preventative measures, such as obtaining technical support from law enforcement institutions, particularly the police as a state tool that helps to maintain public safety and order, enforce the law, and provide protection, p.

Because it is in the hands of the National Police that the law becomes tangible or experiences its manifestation in society, the National Police's role in realizing law enforcement to uphold security and order can essentially be considered as living law, [22] This is taking into account the function and standing of the National Police as a member of the law enforcement community. I Ketut Adi Purnama explicitly noted in this regard that the work of law enforcement in Indonesia's criminal justice system, which is made up of police, prosecutors, courts, attorneys, and prisons, is the most interesting since there is a great deal of human engagement in decision-making.[22]

The implementation of Police duties in the form of carrying out other duties by laws and regulations based on Article 14 paragraph (1) letter l of Law No. 2 of 2002 is one of the duties of the Police that can be proposed as an alternative to support the duties and authorities of prosecutors in the criminal field, particularly concerning the execution of chemical castration.

Prosecutors anticipate being able to solve the issue of a lack of executors whose legitimacy complies with PP No. 70 of 2020 and by the rules of Article 14 paragraph (1) letter l of Law No. 2 of 2002 by increasing police engagement in the execution of chemical castration. Following their respective roles and positions as law enforcement officials who are both a part of the criminal justice system, the submission of the police as a substitute that can aid in the implementation of prosecutorial duties in the execution of chemical castration becomes a necessity that can be applied. This is consistent with Soerjono Soekanto's assertion that the discretionary aspect of law enforcement is why the role issue is significant. Disregarding is crucial in law enforcement because:[33] 1. No legislation is so complete as to regulate all human conduct, 2. There are delays in adjusting legislation to developments in society that cause uncertainty, 3. The lack of cost to implement legislation as desired by the framer of the law, and the existence of individual cases that require special handling.

It is not the first time that police have provided technical assistance for the implementation of prosecutorial responsibilities in criminal executions. The same

support has historically been provided to executions carried out by Mobile Brigade (Brimob) units by Law No. 2/PNPS/1964 concerning Procedures for the Implementation of the Death Penalty Imposed by Courts in the General and Military Courts and Kakorbrimob Decree No. Pol.: Skep/122/VIII/2007 concerning Guidelines for the Implementation of Executions of.

The planned adjustment measures may provide the Police with a sizable enough share to act as executors ready to take over the role of doctors in the execution of chemical castration. Additionally, it is an example of how police are carrying out their duties to uphold the law to achieve legal certainty guarantees in the implementation of future criminal convictions for child sexual assault crimes and anticipates prosecutors' failure to implement court orders containing chemical castration.

## 5. Conclusion

The idea of involving the Police in the execution of chemical castration refers to the practice of the criminal justice system which places the Police as an element of law enforcement together with the Prosecutor's Office, Court, and Prison, through the implementation of other duties by laws and regulations which are the main duties of the police as has been practiced in the execution of executions involving Mobile Brigade (Brimob) units. Meanwhile, the effect of reformulating the execution of chemical castration through the implementation of the main duties of the Police in the content of the Child Protection Law is an effort to ensure legal certainty for the implementation of the duties and authorities of prosecutors in the criminal field in carrying out the determination of judges and court decisions that have obtained permanent legal force and become a solution for the availability of chemical castration executor resources in cases of child sexual violence crimes decided by the court.

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