

# *Jurnal Hukum Replik*

## Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 8 No. 1 Maret 2020

Submit: 25/08/2020

Revised: 26/08/2020

Published: 29/08/2020

### CASTRATION AS AN ENTERPRISE OF CRIMINAL POLICY IN THE CHILD PROTECTION LAW

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#### Abstract

The rise of sexual violence against children in Indonesia requires strict legal rules and a deterrent effect on perpetrators. So the government in the latest child protection law includes punishment for castration. The issues raised are how the application of criminal law against perpetrators of sexual violence against children (pedophilia) in Indonesia and how the additional criminal regulation of castration as a criminal law policy in the child protection law. The type of research used is normative research, which is research that focuses on a positive direction in the form of statutory regulations. Criminal application for perpetrators of sexual violence against children is regulated in the Criminal Code and the Child Protection Act. Castration is a new legal policy by the government in dealing with perpetrators of sexual violence against children.

Keywords: Castration, Legal Policy, Child Protection

#### INTRODUCTION

The Mojokerto District Court issued Decision Number 69 / Pid.Sus / 2019 / PN.Mjk dated 2 May 2019, which was upheld by the Appeal Decision at the East Java High Court with Decision Number 695 / PID.SUS / 2019 / PT.SBY on 18 July 2019 with 12 years imprisonment and a fine of 100 million Rupiah subsidiary to six months imprisonment and additional chemical castration punishment against Aris, convicted of child rape in Mojokerto, who was found guilty of violating Article 76 D in conjunction with Article 81 Paragraph (2) of Law Number 23 years 2002 on Child Protection. The application of additional castration against perpetrators of child rape in a judge's decision is something new in the world of justice in Indonesia since the issuance of Government Regulation instead of Law Number 1 of 2016 concerning Child Protection. (Mu, 2018; Saumin & SutanRambe, 2019)

Talking about children, we cannot be separated from the sustainability of human life, nation, and state. The 1945 Constitution of the Republic of Indonesia Article 18 B paragraph (2)

explicitly states the importance of the role of children, that the state guarantees that every child has the right to live, grow and develop and has the right to protection from violence and discrimination. (Ismantoro Dwi Yuwono, 2018) Therefore, we must always try not to let children become victims of power, and children fall into committing acts of disgrace or other evil deeds.

Data from the Indonesian Child Protection Commission on sexual violence against children in Indonesia is rampant, rape, sodomy, and many even lead to acts of murder. In 2012 there were 412 cases. In 2013 there were 343 cases. In 2014 there were 656 cases. In 2015, there were 2018 cases, and in 2016 there were 92 cases. With the rise of sexual violence against children, 25 May 2016 the President Signed a Government Regulation instead of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which 9 November 2016 was promulgated as Law Number 17 of 2016. This second amendment creates castration as an additional punishment for perpetrators of sexual violence against children.(Hidayat, 2017; Kurniawan, 2017)

In general, castration has not been regulated as an additional punishment in the prevailing laws and regulations in Indonesia. Types and forms of criminal sanctions, as referred to in Article 10 of the Criminal Code, penalties consist of the leading crimes, namely death penalty, imprisonment, imprisonment, fines, and imprisonment.(Wahyuni, 2017) Besides, it is also known as additional punishment, revocation of individual rights, confiscation of certain items, and the announcement of a judge's decision.(Arif, 2017; Yuriswanto, 2017)

The issuance of Government Regulation instead of Law Number 1 of 2016 is the government's criminal law political policy.(Barda Nawawi Arief, 2018; Putri, 2019) Sudarto stated that criminal law policy or criminal law politics could be seen from legal politics. The political law in question is:(Najih, 2014)

1. There is an attempt to create reasonable regulations according to the circumstances and situations at a time.
2. The existence of policies from the state through the authorized bodies to establish the desired rules that are thought to be used to express what is contained in society and to achieve what is aspired.

The implementation of castration is a new criminal punishment in the rule of law in Indonesia, and there has been a lot of support and rejection regarding the performance of this sentence. The implementation of castration, which has been regulated by Law Number 17 of 2016 concerning Child Protection, is expected to be able to provide a deterrent and preventive effect on the perpetrators, as well as to reduce the rate of sexual crimes against children. (Arliman, 2017; Noviana et al., 2020)

Seeing the foregoing, the author is interested in research in a scientific paper entitled Additional Castration as a Criminal Law Policy Update in the Child Protection Act. With the problems that will be examined in the writing of this article are How to Apply the Criminal Law to Perpetrators of Sexual Violence Against Children (Pedhopilia) in Indonesia and How to Regulate Additional Castration as a Criminal Law Policy in the Child Protection Law.

## **METHODOLOGY**

The type of research used is normative research, which is research that focuses on positive law in the form of statutory regulations, and this research uses secondary legal materials as the primary data. (Burris et al., 2010; Halim et al., 2019) The data collection technique is carried out using a literature study, which is a way to collect data in the form of books and official sources related to the legal issues being studied. (Soekanto & Mamuji, 2018) Data processing using qualitative analysis, namely by analyzing the results of the study with descriptive data analysis. (Nugrahani & Hum, 2014; Sugiarto, 2017)

## **RESULT AND DISCUSSION**

### **1. Implementation of Criminal Law Against the Performers of Sexual Violence To Children (Pedhopilia) In Indonesia**

The rise of rape cases, in this case, sexual deviation against children (pedophilia) in Indonesia, is very frightening. This is evident in the increasing number of cases of sexual violence against children, which annually experiences an increase in victims. Sexual

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violence against children is a serious crime that is increasing from time to time and significantly endangers and threatens children and lives, damages personal life and children's development, and disturbs the sense of comfort, peace, security, and order in society.

Suppose we see sexual crimes in terms of rape from the translation from the Dutch language, namely *verkrachting*, which means intercourse. Rape is an attempt to wreek sexual desire by a man against a woman in a way that is considered violating according to morals and laws.(Wignjosoebroto, 1997)

Sexual violence against children (*Pedhopilia*) literally means love for children. In its development, it is generally used as a term to describe a psychosexual development disorder in which people have abnormal erotic desires for children.(Supardi, 2005) Whereas in Sudarsono's Legal Dictionary, *Pedophilia* is defined as a mental disorder in adults or adolescents who have started adulthood (ages 16+), usually characterized by a primary or exclusive sexual interest in prepubescent children (ages 13-), it can be said that sexual interest in children - prepubescent child.(Sudarsono, 2007)

Kartono defines *pedophilia* as a sexual disorder that is included in the category of *paraphilia*. The term *paraphilia* was first suggested by Wilhelm Stekel, a psychotherapist in his book *Sexual Aberation*, saying that *paraphilia* refers to a group of disorders involving sexual attraction to unusual objects or unusual sexual activity.(Kartono, 2009)

Criminal law provisions against perpetrators of sexual violence against children in the Criminal Code are regulated in Chapter XIV concerning crimes against decency, including:

a. Article 287

Paragraph (1) of the Criminal Code "Anyone who has intercourse with a woman outside of marriage, even though he knows or should reasonably suspect that he is not yet fifteen years old, or if his age is not clear, that it is not yet time for marriage, shall be punished by a maximum imprisonment of nine years.

b. Article 288

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- of the Criminal Code (1) Anyone who has intercourse with a woman in a marriage he knows or should reasonably suspect that it is not yet time for him to marry him, if said act results in injuries, shall be punished by a maximum imprisonment of four years. (2) If the act results in serious injuries, the maximum imprisonment of eight years is imposed. (3) If the product is death, the maximum imprisonment of twelve years will be imposed. "
- c. Article 290  
Paragraph (2) and (3) of the Criminal Code "He will be punished by a maximum imprisonment of seven years: (2) Whoever commits obscene acts with someone, even though he knows or should reasonably suspect that he is not yet fifteen years old or if his age is unclear, he is not however ready to marry. (3) Whoever persuades someone whom he knows or should reasonably suspect that he is not yet fifteen years of age or if the age is not clear then that he is not yet married, to commit or allow sexual immorality or sexual intercourse outside of marriage with another person. "
- d. Article 292  
of the Criminal Code "An adult who commits obscene acts with another person of the same sex, whom he knows or should reasonably suspect to be minor, shall be punished by a maximum imprisonment of five years."
- e. Article 293  
Paragraph (1) of the Criminal Code "Whoever by giving or promising money or goods misuses the dignity arising from the relationship of the situation, or by deliberately moving an immature person and his good behavior to commit or allow obscene acts to be committed with him, even though he is not yet mature, he knows or should be suspected. , is punishable by a maximum imprisonment of five years. "
- f. Article 294  
Paragraph (1) of the Criminal Code "Whoever commits obscene acts with his child, stepchildren, adopted children, children under his supervision who are not yet

mature, or with minors whose care, education and care is handed over to him or with his bachelor or underage under his supervision, shall be punished by imprisonment at the most. seven years long. "

Efforts to tackle sexual crimes against children whose provisions in the Criminal Code are considered very weak, so that Law Number 23 of 2002 concerning Child Protection was issued. Penalties for pedophiles in the Criminal Code are a maximum of 9 years, in Law Number 23 of 2002 concerning Child Protection, a minimum of 3 years and a maximum of 15 years is regulated, which are as follows:

- 1) Article 81 of Law Number 23 the Year 2002 concerning Child Protection  
"(1) Anyone who deliberately commits violence or threatens violence to force a child to have intercourse with him or with another person shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 years and a maximum fine of Rp. 300,000,000.00 (Three Hundred Million Rupiah) and at least Rp. 60,000,000.00 (Sixty Million Rupiah). (2) The criminal provisions as referred to in paragraph (1) shall also apply to any person who deliberately commits a trick, a series of lies, or induces a child to have intercourse with him or another person. "
- 2) Article 82 of Law Number 23 the Year 2002 concerning Child Protection  
"Anyone who deliberately commits violence or threats of violence, coerces, commits trickery, a series of lies, or induces a child to commit or permits obscene acts, shall be punished with imprisonment for a maximum of 15 (Fifteen) years and a minimum of 3 (Three ( years) and a maximum fine of Rp. 300,000,000.00 (Three Hundred Million Rupiah) and a minimum of Rp. 60,000,000.00 (Sixty Million Rupiah). "

With the existence of this Child Protection Law, it does not create a deterrent effect for perpetrators to commit sexual violence against children. The punishment for the perpetrator is still considered not maximal, so the government made changes with the issuance of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. This government move is to increase the guarantee of

protection for children. Provisions on sexual violence against children are contained in Article 81, Article 76D, Article 76 E, namely:

- a) Article 76D of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection "Everyone is prohibited from committing violence and threats of violence force children to have intercourse with him or with other people."
- b) Article 76E of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection "Everyone is prohibited from engaging in violence and threats of violence, coercing, tricking, committing a series of lies, or inducing children to commit or allow obscene acts to be committed."
- c) Article 81 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection "(1) Anyone who violates the provisions referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). (2) The criminal provisions as referred to in paragraph (1) shall also apply to any person who deliberately commits deception, a series of lies, or induces the child to have intercourse with him or other people. (3) In the event that the criminal offense as referred to in paragraph (1) is committed by parents, guardians, child caregivers, educators, or educational personnel, then the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph (1). "
- d) Article 82 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection "(1) Anyone who violates the provisions referred to in Article 76E shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiahs). (2) If the criminal offense as referred to in paragraph (1) is committed by parents, guardians, child caregivers, educators, or

educational personnel, then the penalty is added by 1/3 (one third) of the punishment as referred to in paragraph (1)."

The number of cases of sexual violence against children or pedophilia makes people uncomfortable and creates fear in social life. Sanctions for perpetrators do not provide worry to perpetrators, but instead, cases of sexual violence against children are increasing every year. The government in 2016 issued a Government Regulation instead of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection, which was later promulgated into Law Number 17 of 2016 concerning Child Protection. The addition of castration law is a new thing in the amendment of the Child Protection Law, namely:

- (1) Article 81 of Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection

"(1) Anyone who violates the provisions referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). (2) The criminal provisions as referred to in paragraph (1) shall also apply to any person who deliberately commits deception, a series of lies, or induces the child to have intercourse with him or other people. (3) In the event that the criminal offense as referred to in paragraph (1) is committed by parents, guardians, people with family ties, child caregivers, educators, educational personnel, officials who handle child protection, or it is committed by more than one person. collectively, the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph (1). (4) Apart from the perpetrator as referred to in paragraph (3), an additional 1/3 (one third) of the criminal penalty is also imposed on the perpetrator who has been convicted of committing the criminal act as referred to in Article 76D. (5) In the event that the criminal act as referred to in Article 76D causes more than 1 (one) victim, results in serious injuries, mental disorders, infectious diseases, impaired or



loss of reproductive function, and/or the victim dies, the perpetrator is sentenced to death, life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years. (6) Apart from being subject to the criminal sanctions as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator. (7) The perpetrators, as intended in paragraphs (4) and (5), may be subject to actions in the form of chemical castration and installation of chips. (8) The action, as referred to in paragraph (7) shall be decided together with the principal punishment by specifying the time frame for the execution of the action. (9) Additional penalties and actions are exempted from child offenders. "

- (2) Article 81A of Law Number 17 of 2016 concerning Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection. "

(1) The action, as referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 (two) years and shall be carried out after the convict has served the preceding sentence. (2) The implementation of the actions referred to in paragraph (1) shall be under regular supervision by the ministry that administers government affairs in the legal, social, and health sectors. (3) The implementation of chemical castration is accompanied by rehabilitation. (4) Further provisions regarding procedures for implementing measures and repair shall be regulated in a Government Regulation. "

- (3) Article 82 of Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection

"(1) Anyone who violates the provisions referred to in Article 76E shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiahs). (2) If parents commit the criminal offense as referred to in paragraph (1), guardians, people who

are related to family, child caregivers, educators, educational personnel, officials who handle child protection, or it is committed by more than one person. collectively, the penalty is added by  $1/3$  (one third) of the criminal threat as referred to in paragraph (1). (3) Apart from the perpetrator as referred to in paragraph (2), an additional  $1/3$  (one third) of the criminal penalty is also imposed on the perpetrator who has been convicted of committing the criminal act as referred to in Article 76E. (4) In the event that the criminal act as intended in Article 76E causes more than 1 (one) victim, results in serious injuries, mental disorders, infectious diseases, disturbed or loss of reproductive function, and the victim dies, the penalty is added by  $1/3$ . (one third) of the criminal threat, as referred to in paragraph (1). (5) Apart from being subjected to the criminal sanctions as referred to in paragraph (1) to paragraph (4), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator. (6) The perpetrators, as referred to in paragraph (2) to section (4), may be subject to measures in the form of rehabilitation and installation of chips. (7) The action, as referred to in paragraph (6) shall be decided together with the principal punishment by specifying the time frame for the execution of the story. (8) Additional penalties are excluded for child offenders. "

- (4) Article 82 of Law Number 17 of 2016 concerning Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection

(1) Actions, as referred to in Article 82 paragraph (6) shall be carried out during and after the convict has served the preceding sentence. (2) The implementation of the actions referred to in paragraph (1) shall be under regular supervision by the ministry that administers government affairs in the legal, social, and health sectors. (3) A Government Regulation shall regulate further provisions regarding the procedure for implementing the action."

## **2. Additional Criminal Regulations As A Criminal Policy In The Child Protection Law**

The existence of criminal law is an attempt to use sanctions to combat crimes. Criminal law provides sanctions for actions that are not desired by society as a harmful system of sanctions. This is related to the view of life, moral order, and religious morals, as well as the interests of the nation concerned. It is not wrong if, to a certain extent, it can be said that the criminal law of a country can be an indication of the nation's civilization. According to Van Hammel, the purpose of Criminal Law is that Crime must contain a frightening element to prevent criminals who have the opportunity not to carry out their evil intentions. Criminals must have an aspect of repairing the convict, and an aspect of destroying criminals that are impossible to repair. The only purpose of a crime is to maintain legal order.(Soedarto, 1986)

The application of criminal sanctions (punishment) is the oldest method, as old as human civilization itself, as an effort to combat Crime. Until now, the criminal law is still used and relied on as a means of criminal politics. In fact, at the end of the majority of statutory products, sub-chapters on criminal provisions are almost always included.(Hamzah, 2012)

The Criminal Code and the Child Protection Act contain sanctions for perpetrators of sexual violence or pedophilia. However, there are still some weaknesses that arise if the legal sanctions are imposed on the perpetrators of sexual violence against children. The criminal sanction against the perpetrator of rape is considered not to provide fear to the perpetrator of sexual violence crime. (Nawawi, 2000)

Law Number 17 of 2016 concerning Stipulation of Government Regulation instead of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection regulates new criminal sanctions, namely the provision of additional criminal law in the form of castration as the last alternative and the imposition of the further punishment does not eliminate the principal sentence. The imposition of other penalties in the criminal law system must be imposed together with the main sentence, meaning that the additional punishment cannot stand alone. Castration is a

surgical or chemical procedure that aims to remove function in males and ovaries in females.

In the history of human civilization, castration has been done for various purposes. Victor T. Cheney, in *A Brief History of Castration* 2nd Edition, stated that castration had been done in East Mediterranean in 8,000-9,000 years ago. The goal so that more females than males. However, there is no definite record of when castration was carried out in humans. In Egypt, in 2,600 BC (BC), castrated slaves had a higher value because they were considered to be more diligent and obedient to their masters. Similar acts were found in slaves in Greece around 500 BC, harem guards of kings in Persia, as well as treasurers and a number of Chinese imperial officials.

Castration, as a form of punishment or treatment, has recently become a symptom in several countries, including countries in the European Union and the United States. Based on the World Rape Statistics or world statistics on rape in various countries in the world, currently, 20 states impose castration punishment, namely 9 European countries (UK, Poland, Russia, Germany, Czech Republic, Denmark, Sweden, and Spain) and 9 American states (California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin), one Latin American country (Argentina) and one country in Asia (South Korea).

One of the theories of punishment is the theory of absolute punishment; that is, the penalty is imposed solely because a person has committed a crime or criminal act. Corruption is a final consequence that must exist as a retaliation against the person who commits a crime. So the basis of justification for crime lies in the existence or occurrence of the crime itself. (Muladi & Nawawi Arief, 2010)

Wesley Crag, in his book *Eddy Hiariej*, which states that there are four things related to punishment in modern society, namely: (Eddy OS, 2016)

- a. Criminalization is understandable and unavoidable in modern society.
- b. The implementation of punishment is a reflection of the evolving criminal justice system, and the types of punishment that can be imposed cannot be separated from

the kind and character of the criminal act committed. Strictly speaking, there is a relationship between the era of criminal acts or the punishment itself.

- c. Criminal administration should undergo significant reform concerning the implementation of crimes in Western Europe and North America.
- d. The number of sentences used must provide criteria for evaluating whether the execution of the crime is following the purpose of the punishment itself. Does the penalty apply to need to be reformed towards improvement.

The implementation of castration punishment is law enforcement that is very relevant to face current developments, as long as it is carried out humanely, the sentence can bring about significant changes in the life of the nation and state, even though these benefits are still not being felt at this time but with the existence of these legal rules the perpetrators it is hoped that evil will not repeat such acts.

Castration punishment is a new legal policy by the government in dealing with the perpetrators of sexual violence against children. In terms of standard policies known as traditional politics, as defined by Mahfud MD, that Political Law is a legal policy or official line (policy) regarding law that will be enforced either by making new laws or by replacing old rules, to achieve the goal Country.

Criminal law policy or criminal law politics can be seen from the legal politics presented by Sudarto, which states that traditional politics are:(Moh Mahfud, 2009)

- 1) Attempts to create reasonable regulations following the circumstances and situations at a time.
- 2) The policies of the state through the authorized bodies to establish the desired rules which are expected to be used to express what is contained in society and to achieve what is aspired.

Efforts to overcome crime through the making of laws are essentially an integral part of public protection efforts and efforts to achieve community welfare. Therefore, it is only natural that legal policies or criminal law politics are also an essential part of social

systems or politics. Social policy can be defined as all reasonable efforts towards the welfare of society and also the protection of the company.(Najih, 2014)

Reforming criminal law does not mean improving criminal law, but the desire to replace it for the better. This will affect the implementation of the law in the future. The criminal law of castration is used to solve social problems, especially the issue of pedophilia, which is considered a form of social disease that threatens public order.

## **CONCLUSION**

1. Application of criminal law against perpetrators of sexual violence against children (Pedophilia) in Indonesia is clearly regulated in the Criminal Code and the Child Protection Law. The Criminal Code regulates crimes against pedophilia in Article 287 Paragraph (1), Article 288, Article 290 Paragraph (3), (4), Article 292, Article 293 Paragraph (1), and Article 294 Paragraph (1) of the Criminal Code. Then in Articles 81, 82 of Law Number 23 the Year 2002 concerning Child Protection Amended by Article 76D, 76E, 81.82 of the Law -Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. I am refined by Articles 81, 81A, 82, 82A of Law Number 17 of 2016 concerning the stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection.
2. Law Number 17 of 2016 concerning Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection regulates new criminal sanctions, namely the provision of additional criminal law in the form of castration as the last alternative and the imposition of said other punishment does not eliminate the principal sentence. The implementation of castration punishment is law enforcement that is very relevant to face current developments. Castration is a new legal policy by the government in dealing with perpetrators of sexual violence against children in a standard system known as law politics.

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Vol. 8 No. 1 Maret 2020

Submit: 25/08/2020

Revised: 26/08/2020

Published: 29/08/2020

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# *Jurnal Hukum Replik*

## Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 8 No. 1 Maret 2020

Submit: 25/08/2020

Revised: 26/08/2020

Published: 29/08/2020

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