



**Icon-LBG<sup>2016</sup>**

**The Third International  
Conference on Law,  
Business and Governance**

**PROCEEDINGS**

Hosted by  
Faculty of Law, Faculty of Economics and Faculty of Social Science  
Bandar Lampung University (UBL)

# **Icon-LBG 2016**

**THE THIRD INTERNATIONAL CONFERENCE  
ON LAW, BUSINESS AND GOVERNANCE 2016**

**20, 21 May 2016  
Bandar Lampung University (UBL)  
Lampung, Indonesia**

## **PROCEEDINGS**

**Organized by:**



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## ***PREFACE***

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the Third International Conference on Law, Business and Governance (3<sup>th</sup> Icon-LBG 2016) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 46 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Unika ATMA JAYA, Shinawatra University, Universitas Sebelas Maret, Universitas Timbul Nusantara, Universitas Pelita Harapan, Universitas Bandar Lampung, Universitas Lampung.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 21 May 2016

**Mustofa Usman, Ph.D**  
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# LEGISLATIVE MEASURES TO PREVENT AND COMBAT SEXUAL VIOLENCE AGAINST CHILD: NATIONAL AND INTERNATIONAL PERSPECTIVE

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## Abstract

Legislative measures is one of some measures commonly used as internationally accepted on the logical framework to ensure that implementation of the international convention at the States parties to its international convention will become appropriate. In context of implementation of the Convention on the Rights of the Child, legislative measures should be afforded by an administrative and other measures that include among others: decentralisation, federalisation and delegation; training and capacity-building; visible in budgets. Legislative measures means an active measure taken by the government and parliament to apply the best interests principle by systematically considering on the how children's rights and interests will be affected by their actions. This may a proposal of the new law which is directly concerned with children, including those which are not directly concerned with children, but indirectly affect children. Realisation of legislative measures and administrative and other measures will assure that implementation of the international convention will become appropriate and gives an envisaged impact.

Ministerial of Women Empowerment and Child Protection has applied a holistic approach to develop a child protection system. This approach consists of some elements and one of them is regulatory and policy framework (*Kerangka Hukum dan Kebijakan*). This is actually a legislative measures based on internationally accepted on the logical framework.

Legislative measures to prevent and combat sexual violence against child consists of a proposal of the new law which is directly concerned with children, including those which are not directly concerned with children, but indirectly affect children. The first one is debate on the propose of national law on the chemical castration=*hukum kebiri dengan disuntik*. This is a measure to combat sexual violence against child. The second one is debate on the necessity of controlling of the internet shop operation (*warung internet*), the necessity of proposal or implementation of law on control of liquor and alcoholic (*Undang-undang tentang Pengendalian Minuman Keras dan Beralkohol*) at the local/regional level (regional law/*Peraturan Daerah*), and the necessity of amendment and implementation of the Law on the Media (*Undang-undang tentang Pers=UU Nomor 40 Tahun 1999*), in particular the prohibition of publication of sadistic criminal action. These are measures to prevent sexual violence against child.

**Keywords:** legislative measures, child sexual violence

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## 1. FOREWORD

The CRC Committee (Committee on the Rights of the Child) emphasizes in its General Comment Number 5 (2003)<sup>1</sup> the importance of ensuring that domestic law reflects the identified general principles in the CRC Convention (Convention on the Rights of the Child) namely Articles 2<sup>2</sup>, 3<sup>3</sup>, 6<sup>4</sup> and 12<sup>5</sup>. The CRC Committee welcomes the development of consolidated children's rights statutes, which can

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<sup>1</sup>General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), adopted at Thirty-fourth session 19 September-3 October 2003 (CRC/GC/2003/5, 27 November 2003).

<sup>2</sup>Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind.

<sup>3</sup>Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children.

<sup>4</sup>Article 6: the child's inherent right to life and States parties' obligation to ensure to the maximum extent possible the survival and development of the child.

<sup>5</sup>Article 12: the child's right to express his or her views freely in "all matters affecting the child", those views being given due weight.

highlight and emphasize the Convention's principles.<sup>6</sup> But the CRC Committee emphasizes that it is crucial in addition that all relevant "sectoral" laws (on education, health, justice, etc.) reflect consistently the principles and standards of the CRC Convention.<sup>7</sup>

Paragraph mentioned above is part of the meaning of legislative measures. This is an obligation of Indonesia as consequent of its ratification to the CRC Convention which is carried out by enacting of Presidential Decree Number 36 of 1990 (Keputusan Presiden Nomor 36 Tahun 1990).

In Indonesia, all relevant "sectoral" laws mentioned above can be argued include national law (*Undang-undang, Peraturan Pemerintah, Peraturan Pemerintah Pengganti Undang-undang*, etc. ) and regional law (*Peraturan Daerah*). "Sectoral laws" related to sexual violence against child include, among others, Law on the Information and Electronical Transaction (*Undang-undang Informasi dan Transaksi Elektronik= UU Nomor 11 Tahun 2008*), Law on the Telecommunication (*Undang-undang tentang Telekomunikasi= UU Nomor 36 Tahun 1999*), Law on Control of Liquor and Alcoholic (*Undang-undang tentang Pengendalian Minuman Keras dan Beralkohol*), Law on the Media (*Undang-undang tentang Pers=UU Nomor 40 Tahun 1999*), Law on Control of Illicit Traffic of Narcotics and Prohibited drugs (*Undang-undang tentang Pengendalian Peredaran Gelap Narkotika dan Zat Adiktif lainnya= UU Nomor 35 Tahun 2009*), etc.

Alongside the general principles mentioned above, Article 3 CRC Convention is the focus in this paper. In this regard, the paper will focus on to what extent did the "sectoral" laws highlight and emphasize the Convention's principles especially principle of the best interests of the child as enshrined in Article 3 CRC Convention. In other word, to what extend did the "sectoral" laws reflect consistently principle of the best interests of the child.

CRC Committee wrote the meaning of principle of the best interests of the child as follows:

The best interests of the child is a primary consideration in all actions concerning children. The article refers to actions undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.<sup>8</sup>

The meaning of legislative measures mentioned above can be argued similar to approach of the work of the Ministerial of Women Empowerment and Child Protection<sup>9</sup>, in particular regulatory and policy framework. In this regard, regulatory and policy framework include decisions or actions of the legislative body to propose a new law and or amend an existing law by systematically considering the children's rights and interests. The scope of law in this context is including those which are not directly concerned with children, but indirectly affect children. For example, law on the welfare system for children and family, law on the social behaviour change system, etc.<sup>10</sup>

The work of the Ministerial of Women Empowerment and Child Protection to protect children based on the holistic approach to create a child protection system. This system consist of five elements as follows: firstly, regulatory and policy framework (*Kerangka Hukum dan Kebijakan*); secondly, social welfare system for children and family (*Sistem Kesejahteraan Sosial bagi Anak dan Keluarga*); thirdly, court system (*Sistem Peradilan*); fourthly, social behaviour change system (*Sistem Perubahan Perilaku Sosial*); fifthly, mapping and evaluation system (*Sistem Pemetaan dan Penilaian*). Apart from that, many other elements are a cross cutting elements among the five elements mentioned above, namely parenting support, fostering and counselling for children, basic needs services (health and education system), child court, adoption system, witness and victim child. The five elements of a child protection system is figured as below:

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<sup>6</sup> CRC/GC/2003/5, 27 November 2003, paragraph 22.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, paragraph 12.

<sup>9</sup> Ministerial of Women Empowerment and Child Protection, "Upaya Peningkatan Perlindungan Anak dengan Membangun Sistem Perlindungan Anak", Makalah pada Focus Group Discussion tentang Background Study RPJMN 2014-2019 Bidang Hukum dan HAM, halaman 8, Bappenas, 2 Juli 2013.

<sup>10</sup> Ibid.



Figure 1. Elements Of A Child Protection System

Legislative measures related to sexual violence against child is the focus of this paper due to the many cases of sexual violence against child have been occurred. Even, some cases are brutal, barbaristic and sadistic. According to the news of TV One, Kabar Malam, Sunday 15 May 2016, at 22.00 pm., some brutal and sadistic sexual violence against child have been broadcasted. Firstly, gang rape against child who is 12 years old in Klaten Central Jawa. The rapists are six persons and before doing the rape they drunk liquor and alcohol. Secondly, brutal murder and rape against women who is 18 years old in Serang Banten. The rapist have damaged the victim's genitals with the handle of a hoe (*merusak alat kelamin korban dengan gagang cangkul*). Thirdly, incest against child who is 6 years old in Sidrad South Sulawesi. The rape has occurred during some years. Also, there were 33 cases on the sexual violence against child in Sukabumi during January – April 2016.<sup>11</sup> Sexual violence against children have reached 58 percent of the 21,600 criminal cases against children according to Arist Merdeka Sirait.<sup>12</sup> In addition, Erlinda Iswanto spoke as follows:

*Komisi Perlindungan Anak Indonesia (KPAI) mencatat jumlah kejahatan seksual terhadap anak-anak menurun, namun kualitas kejahatan naik secara drastis.*

*“Secara totally sekarang hanya ada kurang lebih 1600-an kasus yang terjadi, dan memang jumlahnya menurun dibanding tahun-tahun sebelumnya. Tetapi secara kualitas dan bentuknya, sekarang itu lebih berbahaya”, ungkap Ketua Divisi Sosialisasi Komisi Perlindungan Anak Indonesia (KPAI) Erlinda Iswanto melalui sambungan telepon di Jakarta (12/5/2016).<sup>13</sup>*

To provide for a proper discussion related to legislative measures to prevent and combat sexual violence against child, this paper will elaborate two issues as follows: firstly, a proposal of the new law which is directly concerned with children; secondly, a proposal of the new law which is not directly concerned with children, but indirectly affect children. The first issue consists of debate on the propose of national law on the chemical castration = *hukum kebiri dengan disuntik*. The second issue consists of the necessity of proposal or implementation of the Law on the Information and Electronical Transaction

<sup>11</sup>Running text of Trans TV, Sunday, May 15 of 2016, News Update at 12.00 wib.

<sup>12</sup> Available at [http://www.jpnn.com/read/2016/02/03/354532/Di-Depan-Jokowi,-KPAI:-Indonesia-Darurat-Kejahatan-Seksual-pada-Anak-\(diakses 15 Mei 2016\)](http://www.jpnn.com/read/2016/02/03/354532/Di-Depan-Jokowi,-KPAI:-Indonesia-Darurat-Kejahatan-Seksual-pada-Anak-(diakses%2015%20Mei%202016)).

<sup>13</sup>KPAI: Indonesia Darurat Kejahatan Seksual Terhadap Anak, Jumat, 13 Mei 2016 | 16:15 WIB, available at <http://www.arah.com/article/3318/kpai-indonesia-darurat-kejahatan-seksual-terhadap-anak.html> (diakses 15 Mei 2016).

(Undang-undang Informasi dan Transaksi Elektronik = UU Nomor 11 Tahun 2008) and Law on the Telecommunication (Undang-undang tentang Telekomunikasi = UU Nomor 36 Tahun 1999) at the local/regional level (regional law/Peraturan Daerah), in particular with regard to controlling of the internet shop operation (*warung internet*); the necessity of proposal or implementation of Law on Control of Liquor and Alcoholic (Undang-undang tentang Pengendalian Minuman Keras dan Beralkohol) at the local/regional level (regional law/Peraturan Daerah); the necessity of amendment and implementation of the Law on the Media (Undang-undang tentang Pers = UU Nomor 40 Tahun 1999), in particular the prohibition of publication of sadistic criminal action.

## **2. PROPOSAL OF THE NEW LAW WHICH IS DIRECTLY CONCERNED WITH CHILDREN: A DEBATE ON THE PROPOSE OF NATIONAL LAW ON THE CHEMICAL CASTRATION = *HUKUMAN KEBIRI DENGAN DISUNTIK***

The proposal concerning the application of the government regulation in lieu of law (*Perppu*= *Peraturan Pemerintah Pengganti Undang-undang*) on the chemical castration for the rapist is based on the public concerns on the light sentencing for perpetrators of rape. In addition, on the other hand, the public felt that the act of rape has exceeded the limits of humanity, barbaric and sadistic.

Below is quoted some articles in Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 concerning sentencing that can be imposed for the rapist of child.

Article 76D of Law Number 35 of 2014 jo Number 23 of 2002 stipulates as follows:

Everyone is prohibited to do a violence or threats of violence to force the Child had intercourse with her or with other people.

Translation of Article 76 D of Law Number 35 of 2014 jo Number 23 of 2002:

*Setiap orang dilarang melakukan kekerasan atau ancaman kekerasan memaksa Anak melakukan persetubuhan dengannya atau dengan orang lain.*

Violation against Article 76 D of Law Number 35 of 2014 jo Number 23 of 2002 will be punished by the sentencing as stipulated in Article 81 of Law Number 35 of 2014 jo Number 23 of 2002. Below is cited Article 81 of Law Number 35 of 2014 jo Number 23 of 2002.

Article 81 of Law Number 35 of 2014 jo Number 23 of 2002 stipulates as follows:

- a). Any person who violates the provisions of Article 76D shall be punished with imprisonment of minimum five (5) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
- b). The penal provisions referred to in paragraph (1) shall also apply to every person who deliberately commits a ruse, a series of lies, or persuading Children intercourse with her or with other people.
- c). In the case of a criminal act referred to in paragraph (1) conducted by the Parent, Guardian, caregivers Children, educators, or staff, then the punishment shall be added by 1/3 (one third) of the criminal sanctions referred to in paragraph (1).

Translation of Article 81 of Law Number 35 of 2014 jo Number 23 of 2002 :

- a). *Setiap orang yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 76D dipidana dengan pidana penjara paling singkat 5 (lima) tahun dan paling lama 15 (lima belas) tahun DAN denda paling banyak Rp 5.000.000.000,00 (lima miliar rupiah).*
- b). *Ketentuan pidana sebagaimana dimaksud pada ayat (1) berlaku pula bagi Setiap Orang yang dengan sengaja melakukan tipu muslihat, serangkaian kebohongan, atau membujuk Anak melakukan persetubuhan dengannya atau dengan orang lain.*
- c). *Dalam hal tindak pidana sebagaimana dimaksud pada ayat (1) dilakukan oleh Orang Tua, Wali, pengasuh Anak, pendidik, atau tenaga kependidikan, maka pidananya ditambah 1/3 (sepertiga) dari ancaman pidana sebagaimana dimaksud pada ayat (1).*

Article 76 D of Law Number 35 of 2014 jo Number 23 of 2002 is very close with Article 76E of Law Number 35 of 2014 jo Number 23 of 2002. Both of them are form of the sexual violence against child. Therefore Article 76E of Law Number 35 of 2014 jo Number 23 of 2002 is cited below.

Article 76 E of Law Number 35 of 2014 jo Number 23 of 2002 stipulates as follows:

Everyone is prohibited to do a violence or threat of violence, to force, deceit, do a series of lies, or persuade the child to do or let do obscene acts.

Translation of Article 76 E of Law Number 35 of 2014 jo Number 23 of 2002:

*Setiap Orang dilarang melakukan Kekerasan atau ancaman Kekerasan, memaksa, melakukan tipu muslihat, melakukan serangkaian kebohongan, atau membujuk Anak untuk melakukan atau membiarkan dilakukan perbuatan cabul.*

Violation against Article 76 E of Law Number 35 of 2014 jo Number 23 of 2002 will be punished by the sentencing as stipulated in Article 82 of Law Number 35 of 2014 jo Number 23 of 2002. Below is cited Article 82 of Law Number 35 of 2014 jo Number 23 of 2002.

Article 82 of Law Number 35 of 2014 jo Number 23 of 2002 stipulates as follows:

- a). Any person who violates the provisions of Article 76E shall be punished with imprisonment of minimum five (5) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
- b). If the crime referred to in paragraph (1) conducted by the Parent, Guardian, caregivers Children, educators, or staff, then the punishment shall be added by 1/3 (one third) of the criminal sanctions referred to in paragraph (1).

Translation of Article 82 of Law Number 35 of 2014 jo Number 23 of 2002:

- a). *Setiap orang yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 76E dipidana dengan pidana penjara paling singkat 5 (lima) tahun dan paling lama 15 (lima belas) tahun DAN denda paling banyak Rp 5.000.000.000,00 (lima miliar rupiah).*
- b). *Dalam hal tindak pidana sebagaimana dimaksud pada ayat (1) dilakukan oleh Orang Tua, Wali, pengasuh Anak, pendidik, atau tenaga kependidikan, maka pidananya ditambah 1/3 (sepertiga) dari ancaman pidana sebagaimana dimaksud pada ayat (1).*

Apart from that, public deemed that the judge was sometimes imposing the light punishment for the rapists or perpetrators of sexual violence against child. Actually there is a need to do a research and to collect data on the judge/court practice in imposing a sentencing for the rapists or perpetrators of sexual violence. The data mentioned below can provide for a little figure concerning imposed sentencing for the rapists or perpetrators of sexual violence against child.

The first example is sentencing from the Sukabumi local court. In this context, Andri Sobari alias Emon was imprisoned for 17 years and fine of IDR 200,000,000,00 for the sexual violence against child and having committed sodomi as many as 100 boys.<sup>14</sup> The victim came from his village who were aged between 8 and 11. Some of the victims suffered injuries to their anuses.<sup>15</sup>

The second example is the case of molesting a child at the Jakarta International School. In this regard the Supreme court annulled the previous court decisions and sentencing the perpetrators with 11 years imprisonment and fine of IDR 100,000,000,00. As published by Indra Budiarti, on Wednesday, February 25 2016, the Supreme Court overturned the acquittals of Bantleman and Ferdinand Tjong and ordered each to serve 11 years in prison and pay Rp 100 million ( US\$7,476 ) in fines, or serve an additional six months imprisonment.<sup>16</sup>

BBC Indonesia wrote the verdict from the Supreme court mentioned above as follows:

*Mahkamah Agung melalui putusan kasasinya menjatuhkan hukuman penjara kepada dua guru Jakarta International School, setelah mereka sempat diputus bebas dalam sidang banding oleh Pengadilan Tinggi DKI Jakarta. Dalam sidang kasasi, Neil Bantleman dan Ferdinand Tjong dihukum 11 tahun penjara dan denda Rp100 juta, serta subsider 6 bulan.*

*Putusan itu diketok oleh majelis hakim yang dipimpin hakim agung Artidjo Alkostar pada Rabu kemarin (25/02). Juru bicara Mahkamah Agung (MA), Suhadi, mengatakan alasan putusan itu ialah hakim menganggap pembuktian Pengadilan Negeri Jakarta Selatan "sudah betul".*

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<sup>14</sup> Ant, hukumonline.com: "Hakim Vonis Emon 17 Tahun Penjara", Selasa 16 Desember 2014; available at <http://www.hukumonline.com/berita/baca/lt549058d738c4c/hakim-vonis-emon-17-tahun-penjara> (diakses 14 Mei 2016)

<sup>15</sup> Agus Maryono and Ainur Rohmah, thejakartapost.com: "Man nabbed for allegedly molesting dozens of children", June 7 2014; available at <http://www.thejakartapost.com/news/2014/06/07/man-nabbed-allegedly-molesting-dozens-children.html> (accessed May 15, 2016)

<sup>16</sup> Indra Budiari, thejakartapost.com: "New evidence expected to turn tables on JIS case", Sat, February 27 2016; available at <http://www.thejakartapost.com/news/2016/02/27/new-evidence-expected-turn-tables-jis-case.html> (accessed May 14 2016)



"Tidak ada bukti baru, hanya penafsiran tentang hukumnya saja," kata Suhadi kepada wartawan BBC Indonesia, Pijar Anugerah. Menurut MA, Bantleman dan Ferdinant Tjong melanggar pasal 82 UU no. 23 tahun 2002 tentang perlindungan anak.<sup>17</sup>

We can argued that both of the court verdicts mentioned above are quite similar to the rule as stipulated in Article 82 of Law Number 35 of 2014 jo Number 23 of 2002. Therefore we appreciated and respected the court. However, we can also criticize that both of the court verdicts are affected by public discourses which promotes the court to set a heavier sentencing for the perpetrators. In this regards, public discourses were delivered by the media. We will dont know what kind of the court verdict upon the case if there is no public scrutiny through the media.

It is worthy to note, eventhough there is no comprehensive research on the court practice in imposing sentencing for the rapists and perpetrators of sexual violence against child, public deems that court tend to impose light sentencing for this violence. Government also deems that public needs a heavier sentencing for the rapists and perpetrators of sexual violence against child. Therefore then the Government sets the government regulation in lieu of law (*Perppu=Peraturan Pemerintah Pengganti Undang-undang*) on the amendment of Article 81 and 82 of Law Number 35 of 2014 jo Number 23 of 2002.

The basic idea of the amendment of both articles includes, among others, to create "jera/trauma" effect for the rapists or perpetrators of sexual violence against child and provide for an appropriate protection for child. To this end, the government regulation in lieu of law propose a publication or broadcasting of identity and photo of the rapists or perpetrators of sexual violence against child, and imposing of the chemical castration/*hukuman kebiri*. By doing so, the government regulation in lieu of law envisage a creation of "rasa malu" of the rapists or perpetrators of sexual violence against child.

Alongside of the journey of the government regulation in lieu of law there is a public debate on the necessity of the government regulation in lieu of law. Some of the non- governmental organization such as KontraS, Komnas HAM, ICJR (Institut for Criminal Justice Reform) deliver a critic to the government regulation in lieu of law. Generally they deem that chemical castration/*hukuman kebiri* break the human rights in particular the Convention against Torture and other Cruel, Inhuman Degrading Treatment and Punishment. This was ratified by Indonesia through enacting of Law Number 5 of 1998. In addition, there is also no evidence in the world that reveal that imposing the chemical castration have contributed to reducing the number cases of rape and or sexual violence against child.

Criticize the public debate on the necessity of the government regulation in lieu of law, including the imposing of chemical castration/*hukuman kebiri*, author propose some argument as follows.

The imposing of chemical castration should be based on the willingness of the rapist and perpetrator of sexual violence of child. By getting a consent from the rapist it can be argued that there is no violation against the human rights. It would be better if the imposing of chemical castration/*hukuman kebiri* is to be available during serving the sentencing and post serving the sentencing. For those who want to give a consent to do a chemical castration after serving the sentencing, this must be considered as a factor to reduce the period of their imprisonment. This is a difference with the concept laid down in the government regulation in lieu of law in where chemical castration/*hukuman kebiri* is available just at during imprisonment.

In order to reduce the finance of the government, an obligation to provide for a budgets should be given to the rapist and or perpetrator of sexual violence against child. This means the rapist and or perpetrator who had given his consent has to pay the fee for doing the chemical castration/*hukuman kebiri* upon himself. If available other methode for doing castration, such as genital castration/*kebiri alat reproduksi*, the government should also inform to the rapist and or perpetrator of sexual violence against child.

A proposal on the imposing a chemical castration/*hukuman kebiri* can be argued as a legislative measure aims to enhance the protection of child. In this regard, chemical castration/*hukuman kebiri* is assumed can provide for "jera/trauma" effect for the rapist and or perpetrator of sexual violence against child. If they feel "jera/trauma" then they are assumed do not want to do offence again

Eventhough there is many opinion on the opposition of the efectiveness of castration/*hukuman kebiri*, author has found a positive support from the responce/students on the efectiveness of castration/*hukuman kebiri*. Based on the my observation/evaluation on the answer sheet of students who

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<sup>17</sup> BBC Indonesia, [www.bbc.com](http://www.bbc.com/indonesia/berita_indonesia/2016/02/160225_indonesia_jis): "Sempat bebas, dua guru JIS kembali dihukum penjara", 25 February 2016, available at [http://www.bbc.com/indonesia/berita\\_indonesia/2016/02/160225\\_indonesia\\_jis](http://www.bbc.com/indonesia/berita_indonesia/2016/02/160225_indonesia_jis) (accessed May 14 2016)

are attending in my class, most of them can support an idea to propose a castration/ *hukuman kebiri*. They deem in general that the rapists and or perpetrator of sexual violence against child, in particular cases such as the case of Yuyun (happened in Bengkulu) and Angeline (happened in Bali), is sadis and or barbaric. They also deem that the rape and or sexual violence against child committed by adults and or foster parents (*orangtua asuh/orangtua tiri*) is definitely barbaric.

Support to the proposal on the imposing castration/*hukuman kebiri* was also comes from the listener (some of many) of the event on the “Konsultasi Hukum” broadcasted by RRI Pro-3 at every Wednesday night. At one or two of many event of the “Konsultasi Hukum” RRI Pro 3, author was appointed as a resource person on the issue of child protection law, including issue on the castration/*hukuman kebiri*.

A proposal on the implementation castration, including chemical castration can be argued as an active measure throughout government and parliament to apply the best interests principle by systematically considering on the how children’s rights and interests will be affected by their actions. In this regard by a proposal of the new law which is directly concerned with children. This is in line with the meaning of principle of the best interests of the child as written by the CRC Committee.<sup>18</sup>

### **3. Proposal Of The New Law Which Is Not Directly Concerned With Children, But It Can Affect Children**

According to the work/approaches of the Ministerial of Women Empowerment and Child Protection in developing a child protection system, we can argued that social behaviour change system (*sistem perubahan perilaku sosial*) is one of the importance element. Social behaviour of the people, including children should be controlled by the law if we wish the change of social behaviour contribute a positive aspect for nation development. In this regard, it is clear to say that internet system has contributed significant change of the social behaviour of people. Many profesional work and even human relation is going well through the support of the internet.

#### **A. The necessity of controlling internet shop (Warnet) operation**

In Indonesia public service for internet acces can be provided by, among other, the Internet shop (*warung internet = warnet*). As a part of business activity, the lisencc and operation of the internet shop is ruled by Law on the Information and Electronical Transaction (*Undang-undang Informasi dan Transaksi Elektronik = UU Nomor 11 Tahun 2008*) and Law on the Telecommunication (*Undang-undang tentang Telekomunikasi = UU Nomor 36 Tahun 1999*) at national level. At the local or regional level, lisencc and operation of the internet shop is ruled by local regulation namely regional law (*Peraturan Daerah = Perda*).

There is an indication on the relationship between internet shop operation and rape and or sexual violence against child. It is clear to claim that internet shop has significant contribution on the public access to internet. We can argue in this regard that this is a positive aspect of the internet shop. However, the internet shop can also provide for a negative aspect for the nation development if the operation of the internet shop is not controlled by the government. It is a necessity to control internet shop operation related to operational work and restriction of negative content. Operational work of internet shop should be limited in a manner in line with the need to create condusive time for student for their study. It is not suggested that internet shop is allowed to operate 24 hours. There is some idea to limit the operation of the internet shop until 23.00 wib.

With regard to control on the negativ content of internet, this is actually a necessity absolutely as stipulated in national law such as Law Number 11 of 2008 on the Information and Electronical Transaction, Law Number 36 of 1999 on the Telecommunication etc. Some of the regional or local government have also enacted a regional law (*Peraturan Daerah=Perda*) on the controlling of the internet shop operation, including to support the prohibition of negative content of the internet. Unfortunately, there are some evidences on the in-effective implementation of the prohibition on the negative content of internet. Below is cited two evidences on the in-effective implementation of those prohibition.

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<sup>18</sup> CRC/GC/2003/5, 27 November 2003, paragraph 12.

As reported by Abdul Hakim, eight children who committed sexual violence against child in Surabaya, having access negative content from the *warnet* located near their house.<sup>19</sup> All children admitted in having access to the pornography content while they are questioned by Ms. Tri Rismaharini (Walikota Surabaya) at the Surabaya Police detention. The answer of the children is as follows: *"Mendapati pertanyaan itu, salah seorang tersangka menjawab bahwa dia mengetahui cara . . . dari film porno di sebuah warnet, tepatnya di sebuah warnet yang ada di sekitar rumah tersangka dan korban, yaitu di Jalan . . . Surabaya"*.

The second evidence is stated by official of the Police Office at Tambun Cikarang. As reported by Gobekasi, Local Police of Tambun will do controlling to the internet shop worked in South Tambun territory. This aims to anticipate the increasing number of the criminal cases on the sexual violence against women . In addition, Tambun Police Officer has previously stated that some children accessed pornography content from the internet shop. It is worthy to note that not all of the internet shop do not have the self-filtering mechanism to prevent the user to access to pornography. Of course some of the internet shop has operated in line with the rule.

According to the Law Number 11 of 2008 on the Information and Electronical Transaction jo Law Number 36 of 1999 on the Telecommunication, local government is required to have regional law (Peraturan Daerah=Perda) on the controlling of the internet shop operation. Some of local government has had the regional law which is addressed directly to internet shop operation. For examples, local government of the Municipal of South Tangerang (Kota Tangerang Selatan) and Depok. Some other have had the regional law but do not address directly to internet shop operation. For example, regional law on the ensuring of the public order (Peraturan Daerah tentang Ketertiban Umum).

It should be noted that local governments are also required to implement their regional law in an appropriate manner. In this regard they have to provide for a sufficient budgets, trained staff etc. to support their job to do a regularly control on the internet shop operation. Without sufficient budgets and trained staff, local government can not implement their regional law.

#### **B. The necessity of controlling illicit traffic of Liquor and alcohol (*Minuman keras dan alkohol*) and traditional substances associated with alcohol**

Some recent accident happened in some places have revealed to us that many peoples illegally consumed booze or "oplosan" (*Pesta Minuman Keras*) and did offence after consuming booze or "oplosan". One of the offence is sometimes rape or sexual violence against child/women. Unfortunately, young people also consumed booze or "oplosan". For example, at February 2016, 26 people, mostly students, died in Yogyakarta after consuming tainted liquor in separate locations.<sup>20</sup> In this regard, "oplosan" (concoctions) means the drinks comes from highly diverse substances which is invented by people (not an industry). Below mentioned is accidents which is published by media at the current time.

Friski Riana reported that child who is 15 years old was a victim of gang rape which is happened at May 12 2016 in South Jakarta. Before tragedy occurred, perpetrators and the victim drinks together "oplosan". Perpetrators has arrested and the Police shall allege them with violation of Articles 76 E and 76 D of Law Number 35 of 2014 jo Number 23 of 2002.<sup>21</sup>

As wrote by Soe Tjen Marching in the Jakarta Post, there is a relation between alcohol and crime according to statement of Fahira Idris, member of the Regional Representatives Council (DPD-RI). She wrote concerning "Case of Yuyun" as follows:

Several high-ranking officials and public figures have quickly expressed outrage and proposed solutions following belated reports of the gang-rape and murder of a 14-year-old girl by 14 young men and boys in Bengkulu. Among many others, member of the Regional Representatives Council (DPD) Fahira Idris, who has a large online following, blamed alcohol as the cause of the crime. However, such arguments unwittingly support the patriarchal excuse that protects men who abuse women. It is not men's fault if they become abusive, it is alcohol. Yes, alcohol may trigger aggression by changing normal brain-functions.

<sup>19</sup> Abdul Hakim, antaranews.com: "Dalapan anak pelaku kejahatan seksual ditangkap di Surabaya", Jumat 13 Mei 2016, available at <http://www.antaranews.com/berita/560509/dalapan-anak-pelaku-kejahatan-seksual-ditangkap-di-surabaya> (accessed May 14 2016)

<sup>20</sup> Editorial, thejakartapost.com: "Editorial - Regulating liquor", Wed, February 10 2016, available at <http://www.thejakartapost.com/news/2016/02/10/editorial-regulating-liquor.html> (accessed May 14 2016)

<sup>21</sup> Friski Riana and Ninis Chairunnisa, m.tempo.co: "Dicekoki Minuman Keras, Remaja 15 Tahun . . . di Kuburan", Jumat 13 Mei 2016, available at <https://m.tempo.co/read/news/2016/05/13/064770711/dicekoki-minuman-keras-remaja-15-tahun-diperkosa-di-kuburan> (accessed May 14 2016)

However, many people who drink are never violent and some men tend to use drinking to justify their behavior. If, as people claim, the perpetrators of the gang-rape of Yuyun, were “blinded” by *tuak* (palm wine) and thus their behavior was unconscious, they were definitely “conscious” enough to try to eliminate the traces of their crime.<sup>22</sup>

Fitriyan Zamzami reported in *Republika News* that perpetrators of gang rape and murder against Yuyun are affected by *Tuak*.<sup>23</sup> She wrote as follows :”. . . *Lainnya melihat bahwa konsumsi miras punya peran tak kecil mengingat para pemerkosa Yuyun memang mabuk tuak lebih dulu.*”<sup>24</sup>

Based on the accidents mentioned above, we can argue that “oplosan”, liquor and alcohol has the relation with the occurred of rape and sexual violence against child. It should be noted that not all of the having fun with “oplosan”, liquor and alcohol is always followed by the commit of offence including rape and sexual violence against women. However, most of the society claim that those conduct has disturbed public order and therefore there is a necessity to be prohibited. In this regard, some local governments has initiated to draft regional law (*Peraturan Daerah*) to control the sales of liquor, alcohol and or related traditional substances. For examples, local government of Jakarta<sup>25</sup> and Surabaya.<sup>26</sup>

A proposal on the initiation to draft regional law to control the sales of liquor, alcohol and or related traditional substances can be argued as an active measure taken by the local government and parliament to apply the best interests principle by systematically considering on the how children’s rights and interests will be affected by their actions. In this regard by a proposal of the regional law (*Peraturan Daerah*) which is not directly concerned with children but it affect children. This is in line with the meaning of principle of the best interests of the child as written by the CRC Committee.<sup>27</sup>

### C. The necessity of enhancing the awareness of media to obey their Journalism Code of Ethic and Media Law

There are some research which revealed correlation between publication and broadcasting of the Media with crime. These include Gabriel Tarde (1843-1904) “Society is imitation” and Leonard Eron and Rowell Huesman (1990). According to my observation, some of the news and or reportase by Media indicates a violation of their Journalism code of ethic and media law, namely Articles 3(1), 5(1) and 7(2) of Law Number 40 of 1999 and Rules 4 and 5 Journalism code of ethic.

Relates to the crime, in particular rape and sexual violence against child, we can argue that the Media can inspire the perpetrator to copy what the way to do offence. Therefore, there is a necessity to enhance the awareness of media to obey their Journalism code of ethic. By doing so, the Media shall contribute to the protection of the women from potential sexual offence committed by other.

From the perspective of legislative measures to prevent and combat sexual violence against child, the enhancement of media awareness is included therein. In this regard, enhancement of the media awareness is the legislative measure which is intended to make implementation of the Media Law and Journalism code of ethic is implemented by an appropriate manner.

## 4. CONCLUSION

As stated by the CRC Committee, legislative measures means, in general, a measure in context of legislation to propose a new law which is directly concerned with the child or is not directly concerned with the child but it can affect the child. In context of legislative measure to prevent and combat sexual violence against child, measure to prevent includes a proposal to draft regional law to control internet shop operation and to control the sales of liquor, alcohol and related traditional substances. These are a

<sup>22</sup>Soe Tjen Marching, thejakartapost.com, opinion:”Rapes from Bengkulu, Aceh, May '98, '65 ...”, Monday 16 May 2016, available at Source: <http://www.thejakartapost.com/academia/2016/05/16/rapes-from-bengkulu-aceh-may-98-65.html> (accessed May 16 2016)

<sup>23</sup>Fitriyan Zamzami, [www.republika.co.id](http://www.republika.co.id) :”Menengok Relasi Miras dan Perkosaan”, Kamis 5 Mei 2016, available at <http://www.republika.co.id/berita/kolom/fokus/16/05/05/o6ou0t393-menengok-relasi-miras-dan-perkosaan> (accessed May 14 2016)

<sup>24</sup> Ibid.

<sup>25</sup>The Jakarta Post, thejakartapost.com: “Jakarta set to regulate liquor sales,” Wednesday, September 16 2015, available at <http://www.thejakartapost.com/news/2015/09/16/jakarta-set-regulate-liquor-sales.html> (accessed May 14 2016)

<sup>26</sup>Indra Harsaputra, thejakartapost.com: “Surabaya bans alcohol in minimarts”, Monday, May 26 2014, available at <http://www.thejakartapost.com/news/2014/05/26/surabaya-bans-alcohol-minimarts.html> (accessed May 14 2016)

<sup>27</sup> CRC/GC/2003/5, 27 November 2003, paragraph 12.

legislative measure in perspective the adoption new law which is not directly concerned with child but it can affect the child. Measure to combat sexual violence against child includes a proposal on the adoption of national law concerning possibility implementation of the castration/*hukuman kebiri*. This is a legislative measure in perspective the adoption of new law which is directly concerned with the child.

Finally, the enhancement of media awareness to obey their Journalism code of ethic and the Media Law, can also argued as a legislative measure. This is not an action to propose a new law, but an action to ensure that the law shall be applied in an appropriate manner. (end)

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