

THE PROBLEM OF INSTALLATION OF ELECTRONIC DETECTION DEVICES ON PERSONS OF SEXUAL VIOLENCE AGAINST CHILDREN*

Virgie Kesfian Alifa¹, Beniharmoni Harefa²

Fakultas Hukum, Universitas Pembangunan Nasional Veteran Jakarta

¹e-mail: virgiekesfiana@upnvj.ac.id*

²e-mail: beniharefa@upnvj.ac.id

Abstract

Act No. 17 of 2016 pertaining to the PERPU No. 1 of 2016 pertaining to the second amendment to the Law No. 23 of 2002 on Child Protection is being considered as the number of cases of sexual violence against children increases annually. Therefore, it is necessary to increase the penalties for those who sexually assault children. Government Regulation 70 of 2020 regulates using electronic detection devices as a secondary penalty. However, since their enactment until now, there has been no judge's decision determining the other party's liability for the installation of this electronic detection device. This is due to the fact that the regulation itself contains numerous flawed instruments. This study aims to identify the problems and potential solutions associated with installing electronic detection devices on perpetrators of sexual violence against children. This research leads to an examination of normative legal law, with data gathered through document studies. PP 70/2020's rules for the application of the installation of electronic detectors contain a number of flaws with respect to a number of instruments, as revealed by the research results. This issue will then be compared to the regulations of several countries that have implemented it, such as the Netherlands, England, and the United States so that a solution can be found to apply penalties for the installation of electronic detection devices, specifically how to operate the device using GPS technology and the form of the tool in the form of an electronic bracelet attached to the leg of the perpetrator of sexual harassment against children.

Keywords: *Electronic Detectors; Problems; Possible Solutions.*

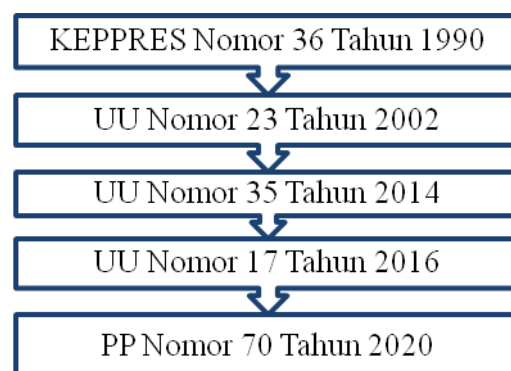
INTRODUCTION

President Joko Widodo signed Government Regulation (PP) No. 70 the Year 2020 on the procedure for the implementation of chemical measures, the installation of electronic detection tools, rehabilitation, and the identification of perpetrators of sexual violence against children on December 7, 2020. (Hidayat & Sulistyowati, 2020).

PP 70/2020 is based on Act No. 17 of 2016, which repealed the main criminal sanctions and additional criminal acts such as chemical violations, rehabilitation, the installation of electronic detection tools, and the

announcement of the perpetrators' identities. (Setiawan & Wibowo, 2019)

Chart 1. Journey of Government Regulation Number 70 of 2020



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The journey of PP 70/2020 began in 1990 with the adoption of the Convention on the Rights of the Child by KEPPRES 36/1990. Moreover, the implementation of the Law in 2002 through the Child Protection Law 23/2002. The Law has been amended twice, first in 2014 via Law 35/2014 amendments. The Second Amendment to PERPU 1/2016, which was subsequently enacted as Law 17/2016 concerning the Stipulation of PERPU Number 1 of 2016 Regarding the Second Amendment to Law Number 23 of 2002 Regarding Child Protection, Becomes Law. Final passage of PP No. 70 of 2020, as outlined in Law No. 17 of 2016, about Procedures for Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Publication of the Identity of Perpetrators of Sexual Violence Against Children (Leksono, 2018).

The installation of electronic detection devices on perpetrators of child sexual abuse is mandated by law in several nations and has been put into practice. One of them is South Korea, which requires all perpetrators of sexual violence to have electronic detection devices installed. (Umar Cindrawati S et al., 2021). Several states in the United States, the Netherlands, and the United Kingdom are among the additional nations that have implemented these sanctions. (Rosdayana, 2021).

The installation of electronic detection devices has both pros and cons, as it opposes the goals of punishment. It is explained that the purpose of discipline is to encourage convicts to make positive progress and to implement changes that will facilitate even more positive progress. As a result, the installation of

electronic detection devices was not consistent with the goals of punishment in Indonesia. In addition, the purpose of discipline is to emphasise prevention, with social welfare as the ultimate objective. (Christiansen, 2017) Another impediment to installing an electronic detection device is that the perpetrator will be subjected to a double punishment, as they will have already served the preceding sentence and will only receive this additional punishment after being released.

Articles 14 through 17 of PP No. 70 of 2020 detail the procedures for implementing the installation of electronic detection devices. Article 17 states that additional provisions regarding technical instructions for installing electronic detection devices are governed by a Ministerial Regulation that governs the government's legal affairs. There is currently no ministerial regulation governing the implementation of additional sanctions for installing this electronic detection device. Until now, No decision has imposed additional penalties for installing electronic detection devices on child sexual abuse perpetrators.

Based on the aforementioned phenomenon, this study can formulate several problems, including: How can the problem of installing electronic detection tools for perpetrators of child sexual abuse be implemented in Indonesia?

Feren Nabila has conducted previous research on the subject of additional punishment concerning identifying the perpetrator (Nabilla, 2022). Iryana Data Leksono about Judicial Analysis of Electronic Detection Instruments as Additional Sanctions (Leksono, 2018). Kintan Ayundari, Perspective of Islamic

Criminal Law, on installing electronic detection tools(Kintan, 2022). Referring to previous research, which may have some discussion similar to the topic of the installation of electronic detection tools, this study focuses more on the problem – the problem of installing electronic Detection tools that have not yet been applied, as well as how solutions to install this electronic detector tool can be implemented immediately.

RESEARCH METHODS

This research examines normative jurisprudence. Document analysis is used for data collection. Researchers use qualitative data analysis methods that produce data in the form of descriptions, and the researchers themselves determine the veracity of the data (Irwansyah, 2020). This study uses content analysis to analyse legal materials(Moleong, 2019). This technique is comprised of a series of steps to extract the core of the data source from which a conclusion will be drawn using a library study to comprehend the setting of Government Regulations Number 70, the Year 2020, pertaining to the presence of an additional criminal installation of an electronic detection device for child sexual abuse perpetrators (Soekanto & Mahmudji, 2019).

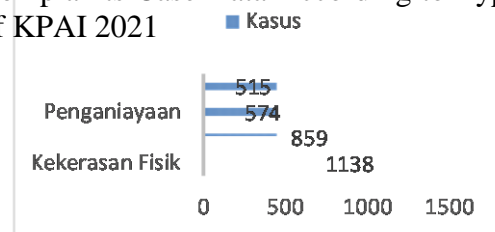
RESULT AND DISCUSSION

A. Problems with the Installation of Electronic Detection Devices for Sexual Abusers of Children

Sexual abuse in children frequently has long-lasting traumatic effects and requires long-term recovery(Harefa, 2020). These actions violate religion, the law, or societal norms of behaviour (Mahmudan, 2022). Therefore, sexual violence against children is classified as a

Graviora Delicta because it has long-term effects on the child's psychological development, including depression, shame, and trauma (Nabilla, 2022). Graviora delicta is an alternative term for the heinous crime of child sexual abuse.

Graphic 1. Children's Special Protection Complaints Case Data According to Type of KPAI 2021



Source: Datadoks, KPAI 2021

According to the information presented in the graphic above, there are 1,138 complaints related to children who have been victims of physical abuse. There were 574 complaints of persecutors in the position following sexual abuse. There are 515 documented cases of child abuse. In 35 instances, children were murdered, and in 14 instances, they were sacrificed. (Vika Azkiya Dihni, 2022)

In 2021, 45% of cases of sexual violence against children were reported to the Ministry of Women's Empowerment and Child Protection (PPPA), according to data on child violence cases(KPAI, 2021b). The Indonesian Child Protection Commission also collected data on sexual violence against children in Indonesia over a five-year period. (KPAI, 2021a)The data tend to increase yearly, but in 2020 there has been a substantial increase. In 2019, 190 children were victims of sexual violence, and in 2020, there will be a significant increase to 419 children(Mahmudan, 2022).

According to the KemenPPPA, Indonesia is in an emergency regarding

sexual violence against children. The number of documented cases of sexual violence against children reached 9,588 in 2022, according to statistics. This number rose from the previous year to 4,162 instances (Yla BMW, 2022). Cases of sexual violence against children remain unresolved, according to the data. Even after the Child Protection Act and the PP that regulates additional penalties for child sexual abuse perpetrators were passed, it suffices to say that the protection of children in Indonesia is still insufficient, as children are frequently the victims of violence in their environments.

In an attempt to fight sexual violence against children, have a deterrent effect, and prevent all forms of sexual abuse against children, the government contemplated and decided to punish these actions. The Government Regulations were also approved to implement Law No. 17 of 2016's Articles 81 and 82 (Wiyono, 2022).

Government Regulation No. 70 of 2020 aims to combat sexual violence against children, punish perpetrators, prevent sexual violence against children, and implement the provisions of Article 81A paragraph (4) and Article 82a paragraph (3) of Law No. 17 of 2016.

Sexual violence is difficult to report and prove due to its underlying nature, but its effects on the victim are long-lasting. The problem with asylum crimes against children arose because the prison sentences given to the perpetrators failed to deter them, leading to an increase in rape and kidnapping (Lazuardi & Pribadi, 2022).

Installation of electronic detection tools is one of the arrangements for the execution of additional penalties governed

by Government Regulation No. 70 the Year 2020. The law allows for the simultaneous implementation of two different types of punishments, namely, criminal punishments and action punishments (Fauzi, 2019).

Consequently, this PP utilizes a double-track system. The Double Track System is a system in which funding reflects the principle of parity between criminal sanctions and action sanctions (Sakdiyah et al., 2021). An example is the use of such a mechanism as an attempt to give a deterrent effect or become a general prevention by the sanction of action or as an attempt to rehabilitate the offender. These days, the rule of law, which can also be referred to as the law of the righteous, does not predominate, nor is it required to be rejected.

The fact that the installation of electronic detection tools has not yet been completed as of this moment is evidenced by the fact that some of the articles in PP 70 of the Year 2020 still contain a number of issues (Setyorini et al., 2021). It is explained in paragraph one of article 14 that those who commit adultery or fraud are subject to the requirement that they install electronic detection devices in their homes. In the following verse, it is clear that the criminal proceeded with the action only after finishing the crime chain. The third verse specifies the duration as at least two (2) years. There are a total of 15 sentences that have the potential to be reworked into a variety of different phrases, such as those used to describe the contours of a bracelet or another similar device.

Article 16 discusses installing and removing electronic detection devices

beginning with the letters a through j. However, there are still points that require clarification. In letter A, it is explained that the party responsible for its implementation is the Ministry that oversees the government's health and social sectors. There is no additional information available regarding individual and department reliability. Then, article 16, letter c, which pertains to the installation of electronic detection equipment on a body part, must be reviewed by the Ministry of Health, which demonstrates a need for more clarity and must be examined.

Article 17 mentions Technical Instructions related to installing electronic

detection devices that still need to be published but are referred to. Accordingly, technical instructions from the authorised Ministry in the maintenance of government affairs in the related laws are essential, as this is specified in Article 17, which is believed to be one of the reasons why electronic detection tools have yet to be implemented.

In the following table, specifics of the problem encountered by researchers in PP 70/2020 when installing electronic detection tools are presented one by one:

| | |
|---------------------|---|
| Definition | not contained |
| Functionally | not contained |
| How to work | not contained |
| Form of tool | Article 15 in the form of an electronic bracelet or other comparable technology |
| Duration | for two (2) years in Article 14 |
| Purpose | To address the issue of sexual abuse against children |
| Placement | Article 16 letter C stipulates that it is placed after being inspected by the ministry responsible for governing the health sector. |
| Technology | not contained |
| Outlay | not contained |
| Executor | Article 16 letter A ministries that conduct government business in the health and social fields. |

Table 1: Problematic aspects of electronic detector installation outlined in PP 70/2020. Source: Part Three of Government Regulation No. 70 of 2022.

According to the detailed problem table for PP 70 for 2020, the installation of electronic detection tools is still regulated due to a need for more information regarding the definition, function, how the technology is applied, and who is responsible for its implementation. The PP 70 of 2020 does not include a description for installing electronic detection tools, but the general provisions include an explanation and

characterisation for chemical detection. The function of electronic detection tools is also not described in detail in this PP, but in Part II, after the section that explains Article 15, "other similar tools" is a tool that works to identify former prisoners.

Regarding equipment, article 15 of PP 70/2020 mentions electronic bracelets or similar items. The phrase "or any other similar" is multiple interpretations that violate the legal certainty theory. Based

on the idea presented by Gustav regarding legal certainty (Santoso, 2021), one of his points of view is that the law should be based on facts written correctly and should not be formulated to avoid confusion in digestion, to be simple to implement, and clear.

In sentence 3 of article 14 of PP 70/2020, installing an electronic detection device carries a maximum sentence of 2 (two) years after completion of the main sentence. The regulation regarding the time for installing electronic detection devices, when viewed in light of PP 70/2020, in which the implementation lasted two years after the previous principal sentence was completed, is inconsistent with the theory of sentencing goals. One of them is a combined theory in which punishment aims not only to retaliate but also to protect and educate offenders so that they can productively return to society (Daris Warsito, 2018).

PP 70/2020 regulates the installation of electronic detection devices to combat sexual violence against children, providing a deterrent effect and preventing sexual violence so that additional penalties are imposed in addition to the principal punishment. This objective offers only a general description of further penalties. According to PP 70/2020, it still needs to be determined where electronic detectors should be installed. Because it is stated in Article 16 letter c that the body part that will be attached to the sensor is determined after an examination.

This implementation is enumerated in Article 16 letter of PP 70/2020 as being carried out by the health and social affairs ministries. According to this article, clarity and certainty regarding who

installed this detector is the remaining issue. This is a matter of multiple interpretations, so the penalty for installing electronic detection devices has yet to be implemented.

A Quran instructor in the Depok region of West Java (Utami, 2021) was found guilty of obscenity at the end of 2021. Andi Rio, the head of the Intelligence Section of the Depok District Attorney's Office, responded to the case of a Quran teacher with the initials MMS (52) who was suspected of molesting ten female students. He said that if this case goes to trial, Andi Rio's party will consider imposing an additional sentence on MMS.

Andi Rio stated on Tuesday (21/12/2021) that the possibility of imposing additional criminal charges by the prosecutor in the form of announcing the identity of the perpetrators and other illegal activities in the form of rehabilitation and installation of electronic detection devices is very open.

While reading the charges on Wednesday, June 29, 2022, the prosecutor omitted the punishment for installing an electronic detection device. In its place, prosecutors demanded that the perpetrator serve 15 years in prison and compensate the victim. The case, as mentioned above, was resolved on August 3, 2022, with a sentence of 19 (nineteen) years in prison and a fine of Rp 500,000,000,-. (five hundred million rupiahs) (PN Depok, n.d.).

The preceding demonstrates that many law enforcement officials, particularly prosecutors, are still hesitant to demand the installation of electronic detection devices. Since the passage of PP 70/2020, additional penalties for installing

electronic detection devices have not been implemented in Indonesia. This is due to the problems contained in PP 70/2020.

B. Solutions to be Implemented in Indonesia for the Installation of Electronic Detectors

A law or regulation is legitimate if it serves some public purpose and if it does not unfairly target or disadvantage any particular individual or group. The Indonesian government has recently revised a number of laws and regulations, one of which is the Criminal Code, also known as the Penal Code. Every year, the prevalence of sexual violence increases. Since the previous Criminal Code had been inherited from the colonialists, and several of its articles needed to be revised or changed because they were no longer applicable, this was done (Khanza & Murti, 2022).

Adults and children alike are among the victim population. Many of the perpetrators are the victim's closest friends or family members, who are present in the victim's immediate environment. Children are a group that is highly susceptible to sexual violence because they are always viewed as weak or powerless and have a high degree of dependence on adults. This renders children helpless when they are threatened not to disclose what occurred. In almost every case, the perpetrator is the victim's close family member or friend. A significant number of perpetrators, such as parents and teachers, dominate their victims (I Noviana, n.d.).

The term "graviora delicta" can also describe sexual violence against children (Formicola, 2016). Graviora delicta is a serious crime whose impact is

fatal for the victim, including the emergence of shame and depression and, most importantly, the psychological impact on the victim until adulthood.

Article 51, letter b of the most recent Criminal Code states that punishment is intended to socialise the convicted individual. Article 52 states that the sentence is not meant to degrade human dignity. Several opinions regarding installing electronic detection devices stated that the punishment impeded the perpetrators' ability to reintegrate into society and impaired their human dignity. Because the installation of this electronic detection device "indicates" that the previous offender was convicted of child sexual abuse.

However, because the victim is a child, the child will experience long-lasting trauma. To ensure that the installation of an electronic detector, because the child is the subject of the punishment, does not contradict its intended purpose. Because child victims of sexual violence qualify the crime as a *graviora delicta*, it is a capital offence (Wahid & Irfan, 2001).

For the installation of this electronic detection device to be implemented immediately to punish perpetrators of sexual violence against children, the solution must include an explanation of the device's definition, function, form, mechanism of operation, duration, purpose, placement, technology, funding, and implementer. These are at least described one by one as follows:

The installation of electronic detection devices is not defined in PP 70 of 2020, but explanations and definitions about chemical castration are included in the general provisions of this PP.

Consequently, the purpose of an electronic detector is derived from the device's appearance, the person to whom it is attached, and the reason for the attachment.

Part II, article by article, which explains article 15, discusses "other similar devices," namely devices that detect ex-convicts' whereabouts. However, this PP must describe the function of electronic detection devices in detail. Therefore, the operation of this electronic detection device must be maximized and provide benefits for the community, particularly for children, so that there are no further child victims and perpetrators who have the option to "distance" themselves from children.

In PP 70/2020, the operation of the electronic detector has yet to be described in detail. Meanwhile, in North Carolina, criminals are identified electronically through a microchip or similar device implanted in their thumb (Rosdayana, 2021). The device monitors the movements and locations of perpetrators of sexual violence by transmitting radio frequencies as a transponder method for remotely storing data and automatically identifying it (Rosenberg, 2018). The technology used in bracelet-shaped electronic devices in Indonesia can utilize GPS. The Global Positioning System (GPS) is a system for determining global positioning and navigation using satellites and the triangulation technique.

In Indonesia and throughout the country, GPS is frequently useful for tracking locations and providing directions to a specific area. The GPS infrastructure in Indonesia is comparable to that of other nations, so it is deemed suitable for use in electronic detection

devices. The perpetrators of sexual violence will always have the device on their feet and attached to their feet. The GPS signal beam will always be able to track the perpetrator's location, regardless of whether they are close to the victim or other children. Thus, the offender is incapable of repeating his actions.

Article 15 of PP 70/2020 specifies electronic bracelets and similar items as tools. According to the principle of legal certainty, the phrase "or other similar" is open to multiple interpretations. Gustav's theory on legal certainty explains (Santoso, 2021), in part, why he thinks that laws need to be based on facts that are written correctly and why they shouldn't be formulated in a way to avoid mistakes in meaning, simplicity of application, and clarity of language. The discussion in Article 15 of PP 70/2020 should focus more on whether to use an electronic bracelet or a microchip device similar to those used in North Carolina.

In article 14, paragraph 3 of PP 70/2020, the act of installing an electronic detection device is given a maximum of 2 (two) years after serving the main sentence. In contrast, installing this electronic detector is paired with a lifetime period under Jessica's law in California (Gies, 2012). Contrary to the theory of sentencing objectives, the regulation regarding the length of time for installing electronic detection devices, when viewed in light of PP 70/2020, in which the implementation lasted two years following the completion of the previous principal sentence, conflicts with the regulation. One of them is a combined theory in which the purpose of punishment is not only to retaliate but also to provide perpetrators with

protection and education so that they can appropriately return to society (Daris Warsito, 2018).

This electronic detection tool is paired with the perpetrator based on the duration or length of the crime. The installation of this electronic detector is accompanied by a lifetime guarantee under the terms of California's Jessica's law. When viewed through the lens of PP 70/2020, where its implementation will take two years with the main punishment already completed, the rule on the lengthy installation of electronic detection tools runs counter to the theory behind the funding. However, if it is determined that the victim of sexual violence, in this case, is a child, this punishment should not be contrary to funding purposes. In Indonesia, it is best to examine which child can utilize Jessica's Law from the victim's point of view. Because according to the author, only two years after serving the main sentence does not significantly reduce the incidence of child sexual abuse. In some instances of child abuse, the perpetrator of an abortion on a child still receives a reduced sentence. In law enforcement, judges rarely terminate cases with the most significant criminal threat or under the maximum statutory penalty. Maximum remuneration should be imposed on those who commit sexual offences against children to enforce the law and hold the perpetrator of sexual abuse of children accountable for their actions.

PP 70/2020 regulates the installation of electronic detection tools to combat sexual violence against children, achieve a deterrent effect, and prevent sexual violence so that additional punishments are imposed in addition to the

introductory sentence. This purpose only explains generally associated other penalties. Malaysia has enacted different disciplines using Electronic Monitoring Devices, which consists of installing electronic detection tools on perpetrators of child sexual abuse. In the criminal justice system, EMD serves three functions: detention, restriction, and surveillance, depending on the application. By monitoring and restricting the movement of child sexual abuse offenders, this punishment can serve as an alternative to incarceration (Hassan et al., 2022).

The location where electronic detection tools based on PP 70/2020 will be installed still needs to be discovered because Article 16 letter c specifies that the body part that a detection device will dry will be determined after an examination. However, North Carolina has established the fingernail rule for microchip placement. The microchip employs radio frequency identification, a satellite-based monitoring technology (RFID). The technology will then store the identity information of the perpetrator and monitor their presence and movements (Ozguven & Ozbay, 2015).

The person who sexually abused this child or his or her family should pay for the cost of putting this detection tool in place. Article 35 of the sexual violence crime stipulates that perpetrators must pay a reimbursement fee. The fee is granted when the offender's condition is such that they cannot pay the total amount. In this case, the state will compensate for the deficiency through the victim aid fund.

CONCLUSION

Sexual abuse of children is the gravest of all crimes because of the

lasting psychological damage it causes. Installation of electronic detection tools is one of the arrangements for the execution of additional penalties governed by Government Regulation No. 70 in the Year 2020. With the approval of PP 70/2020, additional punishments will be imposed on offenders after they have served their introductory sentences for sexually abusing minors. However, there has been no implementation of electronic detection devices in Indonesia due to issues with the regulation. When analysed from the perspectives of financial sustainability, legal certainty, and justice, however, there are some problems with the deployment of detection tools. The problem arises from the fact that PP 70/2020 contains multiple instruments of articles that conflict with one another concerning electronic detection tools' definitions, functions, methods of operation, forms, durations, purposes, locations, technologies, financing, and executors. There has been no judicial decision regarding the use of electronic detectors as of yet.

Criminals in North Carolina have a microchip or similar device implanted in their thumb, which is used to identify them electronically. In Indonesia, it is best to examine Jessica's eligibility under the law from the victim's perspective. PP 70/2020 regulates the installation of electronic detection tools to combat sexual violence against children, achieve a deterrent effect, and prevent sexual violence so that additional punishments are imposed in addition to the introductory sentence. Malaysia has enacted various penalties involving electronic monitoring devices, which entail the installation of electronic

detection tools on child sexual abuse offenders. The location where PP 70/2020-based electronic detection tools will be installed has yet to be determined.

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