

# The Perspective of Human Rights and Criminal Law in Viewing the Criminal Law Policy on Chemical Castration Sanctions in Indonesia

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## ABSTRACT

Sexual violence is one of the most severe crimes and is part of human rights violations. Especially when children become victims of this crime. Therefore, the government issued a regulation regarding the provision of sanctions for perpetrators of sexual violence, especially against children. This study aims to see the views of human rights and criminal law in Indonesia in implementing the criminal law of chemical castration sanctions for perpetrators of sexual violence. This research will be carried out using a normative juridical approach. The data that will be used in this research come from different research results, previous studies, and laws that are relevant to this research. The results of this study found that the provision of castration law is something that is considered vile and inhumane. This is because this punishment can make the perpetrator lose confidence in returning to the community so that it is not following the purpose of the law, which seeks to maintain solidarity in the community.

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## ABSTRAK

Kekerasan seksual merupakan salah satu kejahatan terberat dan merupakan bagian dari pelanggaran HAM. Apalagi ketika anak-anak menjadi korban kejahatan ini. Oleh karena itu, pemerintah mengeluarkan aturan mengenai pemberian sanksi bagi pelaku kekerasan seksual, khususnya terhadap anak. Penelitian ini bertujuan untuk melihat pandangan hak asasi manusia dan hukum pidana di Indonesia dalam menerapkan hukum pidana sanksi kebiri kimia bagi pelaku kekerasan seksual. Penelitian ini akan dilakukan dengan menggunakan pendekatan yuridis normatif. Data yang akan digunakan dalam penelitian ini berasal dari hasil penelitian yang berbeda, penelitian sebelumnya, dan hukum yang relevan dengan penelitian ini. Hasil penelitian ini menemukan bahwa ketentuan hukum kebiri merupakan sesuatu yang dianggap keji dan tidak manusiawi. Sebab, hukuman ini bisa membuat pelaku kehilangan kepercayaan untuk kembali ke masyarakat sehingga tidak sesuai dengan tujuan hukum yang berupaya menjaga solidaritas di tengah masyarakat.

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## I. INTRODUCTION

Children are an inseparable part of human life's survival and a nation's and state's sustainability. With this critical role of children, children's rights are expressly stated in the constitution Article 28 B paragraph (2) of the 1945 Constitution, that the State guarantees every child has the right to survival, growth and development and protection from violence and discrimination. Therefore, we always try not to let children become victims of violence or children fall into evil deeds or other despicable acts (Mangesti & Suhartono, 2022).

Children who are victims of sexual violence in recent years continue to increase. Data in 2002 showed that children aged 6-12 years experienced sexual violence (33%) and emotional (28.8%), compared to physical violence (24.1%) (Ujhelyi Nagy et al., 2019). In 2017 KPAI found 116 cases of sexual violence against children. KPAI Commissioner Jasra Putra revealed that data showed that his party found 218 cases of child sexual violence in 2015. Meanwhile, in 2016, KPAI recorded 120 cases of sexual violence against children. Then in 2017, there were 116 cases (Nugraheni, 2019).

In 2016 the media was stirred up by the incident of a toddler, 2.5 years old LN, being found dead in a pathetic condition behind his grandmother's house in the Bogor district. From the results of the post-mortem, it was found that the victim's genitals were damaged, and there were signs of violence on the body of the foreigner, the perpetrator was an adult aged 26 years. In 2017 there was another horrendous incident in Jayapura, a 28-year-old YK perpetrator raped a 7-year-old APR child. These cases show that violence and sexual crimes against children are still very high in Indonesia (Ilyasa, 2021). Children expected to be this nation's successors must become victims and savagery of irresponsible people. Therefore, providing legal protection to children is natural and realistic, which is not only a guideline for their human rights but is also the responsibility of all components of the Indonesian nation (Xie, 2021).

Unlike other acts of violence, sexual violence against children has a much more severe impact on children directly and in the long term. This case doesn't just leave physical scars. Moreover, this anarchistic act will harm the emotional, social, and psychological development of victims of violence (Lev et al., 2022). One form of protection for children to anticipate the increase in sexual violence against children, the government issued Perpu No. 1 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning child protection. This Perpu No. 1 was later passed into Law No. 17 of 2016 concerning the stipulation of Perpu No. 1 of 2016. The Perpu regulates the weighting of punishments for perpetrators of sexual crimes, especially against children (Sabila et al., 2022). The Perpu governs the existence of criminal acts and actions, while in this paper, the author focuses more on actions. The action referred to in the Perpu states that the perpetrator who commits a criminal act can be given a penalty of action in the form of Chemical Castration accompanied by rehabilitation (Tirza & Cendana, 2022).

The implementation of chemical castration is a new punishment in Indonesia, and there are pros and cons related to implementing this action. On the one hand, it is anticipated that the application of castration will have a deterrent and preventative effect on abusers and can reduce sexual offenses against children. On the other hand, chemical castration is considered a Human Rights Act (HAM) violation (Puteri et al., 2020). Human rights are essentially the most fundamental rights that all humans possess as the greatest gift from God Almighty, because they enable humans to become dignified beings. According to the constitution, the state may not punish individuals by diminishing their rights and ideals. However, chemical castration is seen as an act of violence and is contrary to the Constitution of the Republic of Indonesia, which guarantees the right not to be tortured and the right to be free from torture and other degrading treatment (Kumar & Choudhury, 2021). Moreover, the adoption of chemical

castration focuses solely on retribution for offenders, not on reform. The castration law seems to have returned to the colonial era, which was oriented towards revenge, even though Indonesia had abandoned the theory of retaliation, Indonesia is now oriented towards the goal of punishment to improve personal behavior itself, in addition to paying attention to the interests of the victim (Hobbs & Trotter, 2016). Based on the description above, this study aims to examine further the criminal law policy of chemical castration sanctions from the perspective of Human Rights and Criminal Law in Indonesia.

## II. METHOD

The research conducted for this work was normative in nature. Legal research that is normative is also known as doctrinal legal research. Frequently, the law is conceived as either what is contained in the legislation (law in books) or as a rule or norm, which is a standard for acceptable human behavior. Legal documents and data collection techniques constitute literature/document studies. This research employs both a statutory approach and a concept analysis technique.

## III. RESULT AND DISCUSSION

### **Chemical Castration in the View of Human Rights**

The history of human rights can be traced back to the beginning of the story of people in their social life in this world, namely when they began to recognize their status as legal subjects. Nevertheless, according to scientific research, the history of human rights only evolves and develops when human rights are maintained and defended against attacks or threats emanating from the state's power. Thus, the human rights issue is really about the connection between humans (individuals) and society (Barnett, 2018).

Every child is guaranteed the right to survival, growth and development, and protection from violence and prejudice by the state. There are currently numerous instances of sexual violence against children. The government recognizes that the problem of sexual crimes against minors has reached an extreme level and that extraordinary measures are required to combat it; hence, the government publishes new legislation that are intended to dissuade abusers. In 2016, the government released Perpu No. 1 of 2016 regarding the second amendment to Law No. 23 of 2002 on child protection. This Perpu makes it more difficult for offenders of sexual offenses, while the regulation stipulates that abusers are subject to chemical castration. The article states explicitly that the threat of punishment for violators of the provisions in Article 81 paragraph 7, "Against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to chemical castration and installation of electronic detection devices".

Chemical castration is the process of injecting anti-testosterone compounds into a man's body in order to suppress testosterone levels. Testosterone is a hormone that plays a role in various functions, including sexual function. That is, the hormone testosterone affects a man's sexual arousal. Head of the Andrology and Sexology Section of the Faculty of Medicine, Udayana University, Denpasar, Wimpie Pangkahila, said castration in the medical world is known as castration. Castration is performed chemically rather than physically removing the testicles. This can be accomplished through the administration of anti-androgen tablets or injections. The anti-androgen hormone is an anti-male hormone, giving the anti-androgen drug will make a man lack the hormone testosterone so that he no longer has a sex drive. Anti-androgen medications will produce the same results as surgical castration.

The 2012 world rape statistics report shows that castration punishment for perpetrators of rape crimes in various countries is ineffective in creating a deterrent effect. There is no evidence to suggest that the use of chemical castration has reduced the number of violence against women and children. Chemical castration seems to have violated human rights.

According to the Head of the Department of Clinical Psychology, Faculty of Psychology, Atma Jaya Catholic University, Jakarta, Dinastuti, the (psychological) effects of physical or chemical castration are not the same for everyone. This condition makes castration sanctions raise pros and cons, including in developed countries. The debate is not only about the human right not to be tortured in the implementation of sanctions, but also about the gap between the causes of a sexual offense and the type of punishment. Therefore, it is reasonable that castration injections have not been shown to reduce sexual offenses (Sujono, 2022).

In terms of the world of health, implementing the castration law causes many adverse effects. As quoted from National Geographic Indonesia, it was explained that: “The anti-androgen hormone is an anti-male hormone. Giving anti-androgen drugs will not affect a man who will become feminine,” said Wimpie. However, chemical castration causes harmful effects in premature body aging. Anti-androgen fluids are known to decrease bone density, hence increasing the risk of bone loss and osteoporosis. In addition to reducing muscle mass, anti-androgens increase the likelihood of fat accumulation, hence raising the risk of heart and blood vessel disease. The chemical castration process can paralyze organs, which can be called torture (Baltodano-Calle et al., 2022).

According to the above reasoning, the castration statute has numerous negative repercussions. The application of the castration statute is deemed an act of violence and contradictory to the Indonesian constitution, specifically Article 28 G, paragraph 2, which reads, “everyone has the right to be free from the torture that degrades human dignity and has the right to obtain political asylum from other countries”. As well as Article 33 paragraph 1 of Law No. 39 of 1999 on Human Rights states, “everyone has the right to be free from torture, punishment, or cruel, inhuman, degrading and degrading treatment of humanity”. Indonesia has also ratified the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which was enacted by the United Nations General Assembly in Resolution No. 39/46 on 10 December 1984 and entered into force on 26 June 1987.

Article 7 of the Covenant stipulates very clearly the concern regarding the protection of human beings from threats of torture by other parties: “No one shall be subjected to torture, or any cruel, inhuman or degrading treatment or punishment, in particular no one, without his voluntary consent may be made into a medical or scientific experiment”.

The preceding clauses of the article demonstrate that everyone has the right to freedom from cruel and humiliating punishments and to human dignity. The chemical castration law applied only has implications for retaliation and torture for the perpetrators. As explained in Article 1 of General Provisions Number 4 of Law No. 39 of 1999 concerning Human Rights, what is meant by torture is any act that is done intentionally, causing great pain or suffering, both physically and spiritually. The implementation of castration can make the perpetrator not even better but instead makes the perpetrator lose confidence and become more emotional. Experts in the field of health deny the existence of castration because the castration punishment makes the perpetrators aggressive and cannot guarantee the recurrence of sexual crimes because the perpetrator's sexual memory remains attached to his mind despite the decrease in his testosterone hormone, so it is feared that it will even lead to the commission of new crimes.

Regarding the application of chemical castration to perpetrators of sexual violence, Komnas HAM holds the following positions:

- a. The imposition of punishment through castration can be qualified as an inhuman punishment which is thus inconsistent with the constitution and Indonesia’s commitments to human rights. Article 28G, subsection 2, of the Indonesian constitution stipulates that “everyone has the right

to be free from torture and treatment that degrades human dignity". Therefore, these rights are constitutional, and their development, protection, and realization are also fundamental obligations (Kinanti et al., 2022).

- b. The provision of extra punishment through castration (both chemical and surgical) is also a breach of rights, specifically the right to consent to medical treatment and the right to protection of a person's physical and mental integrity (Hermawan & Hananto, 2022).
- c. According to the opinions of physicians, legal experts, and criminologists, sexual violence has not only medical but also psychological and social reasons. The act of sexual violence is not limited to genital penetration alone. In this instance, in addition to punishment based on the existing legislation, recovery efforts through thorough medical, psychological, and social rehabilitation, guided by human rights principles, must be provided (Kaur et al., 2022).
- d. The Perppu on the provision of castration should be reconsidered and not issued. Komnas HAM believes that the treatment of sexual crimes against children, in this case women, necessitates a comprehensive and consistent response that focuses not only on punishment but also on rehabilitation and preventive measures, such as establishing a social protection system for children or enhancing education and knowledge about reproduction. This can be accomplished by implementing or improving Presidential Instruction No. 5 of 2014 for the National Movement Against Sexual Crimes Against Children and other current instruments. This will hopefully be the key issue (Rahman & Sarip, 2020).

Sexual violence has both physical and psychological and social reasons. Sexual violence is not limited to genital mutilation. Consequently, legal punishments must take into account recovery efforts through comprehensive medical, psychological, and social rehabilitation while still respecting human rights.

### **The Criminal Law's View on the Implementation of the Castration Law**

The public typically views the law as a system of regulations created by the state, which links its citizens to the presence of punishments as compulsion to enforce the law. The state has the authority to enforce sanctions against activities that violate the law when the culprit has been found guilty by a court ruling having permanent legal effect (Pavel, 2018).

Criminal law is an attempt to combat crime via the use of punishments. As a damaging system of sanctions, criminal law offers punishments for behaviors that are not desired by the community. It pertains to the perspective on life, morals, and religious morals, as well as the nation's interests. In some sense, it would not be incorrect to say that a country's criminal code can serve as an indicator of its culture. Criminal law must consider features of the human situation, nature, and traditions based in the culture of the Indonesian country (Reitz & Klingele, 2019).

Criminal and criminal matters in history are always changing. From century to century, its existence has been widely debated by experts. If we look at it from the point of view of the development of society, this change is natural because humans are always trying to update something to improve welfare in the future. In addition to the application of criminal law to combat social problems, criminal law enforcement policies are included in social policies, which are defined as all legitimate attempts to promote public welfare (Burrell & Fourcade, 2021).

Making criminal regulations or formulating new criminal acts must be oriented towards improving the perpetrators and protecting the victims. Criminal law is no longer a tool to take revenge or give the most severe punishment to the perpetrator. Legal reform must be implemented using a policy-based strategy because it is merely a component of a policy or policy step. Each policy incorporates concerns of value.

Criminal law is unnecessary because the task of regulating or defeating crime through criminal law is fundamentally both a social and a policy problem (Putra & Ahyani, 2022).

Consideration of value is something that must be considered in formulating a crime. There must be a policy approach and a values approach. Two basic challenges in criminal policy utilizing the instruments of punishment (criminal law) are the determination of (1) whether conduct should be criminalized and (2) which sanctions should be applied or inflicted on the offender. Formulating what sanctions are imposed on the perpetrators is a central problem in making a statutory rule. In Perpu No. 1 of 2016, there are sanctions for implementing the Chemical Castration Law for perpetrators. Castration law is considered a setback in the scientific development of criminal law.

The implementation of the law of chemical castration is by injecting it into the human body so that it makes its lust decrease or even disappear. These actions certainly violate human nature and make the perpetrators become tormented. The purpose of criminal law in today's modern era is no longer oriented to revenge but to make perpetrators and victims alike get justice. Talking the purpose of criminal law cannot be separated from the currents in criminal law. The classical flow, in principle, only adheres to a single sanction in the form of a type of criminal sanction. According to Sudarto, the classical school of crime is retributive and repressive towards criminal acts. Contrary to classical schools, modern schools view that their character and environment heavily influence human freedom of will, so they cannot be blamed and punished (Saputra & Sopyono, 2018).

From the two streams of criminal law above, the idea of criminal individualization was born, which has several characteristics, including punishment that must be adapted to the characteristics and circumstances of the perpetrator; This means that there must be flexibility for judges in choosing criminal sanctions (type and severity of sanctions) and there must be the possibility of criminal modifications in their implementation. The castration legislation is analogous to a classical school that is punitive and repressive and focuses solely on deeds, therefore it disregards the effects of the law's application. In Indonesia, criminal law does not follow the classical flow, which is action-oriented and does not strive to correct the culprit. In addition, criminal law must continue to consider the victim's circumstances and provide justice for sexual offense victims.

Castration is a novel form of punishment in Indonesia. In addressing the problem of criminalization, Sudarto argues that certain factors must be taken into account, including the fact that the application of criminal law must take into account the objectives of national development, namely the realization of a materially and spiritually equitable, just, and prosperous society based on Pancasila. The castration law does not establish a just and successful society based on Pancasila, but instead punishes the culprits, if you consider the opinion expressed by Sudarto in the preceding paragraph. The second precept of Pancasila states that just and civilized humanity, by implementing the castration law, actually makes humans lose confidence as God's creatures, and castration punishment does not humanize humans to be more civilized. Criminal law is indeed expected to provide a deterrent effect, however, it should not be used as retaliation, only shock therapy for prisoners so that they become aware.

In contrast to crime, in terms of the element of suffering, it is not essential, on the contrary, it is necessary to correct the perpetrators of the crime and protect the community. The purpose of punishment is not intended to suffer human beings and demean human dignity. Regarding criminal law, crime is a means to achieve specific goals, namely protecting society and individuals (Yuningsih, 2020).

Muladi believes that a particular note must be included in the sentencing objectives. The first is that the location of sentencing objectives must more or less accommodate the aspirations of the people who

demand retaliation, even though, in this case, it means not revenge but a balance based on the perpetrator's guilt level. The second is that the set of sentencing objectives must also include the purpose of sentencing to maintain community solidarity. Punishment must be directed to maintain and maintain community unity. Punishment is one of the weapons to fight the wishes that society is not allowed to realize. The punishment of criminal acts only frees us from sin but makes us feel genuinely noble at heart. Criminal justice is a public statement that society reduces aggressive desires in ways that are acceptable to society. Collective purging is aimed at strengthening the morale of society and binding its members together to fight against lawbreakers (Haryanto et al., 2021).

The implementation of the chemical castration law is only oriented towards retaliation which can make the perpetrators lose confidence in reuniting with the community. On the other hand, the implementation of the chemical castration law also does not have any impact on victims of criminal acts. According to Hart, the function of criminal law is to maintain order and general decency, protect citizens from what is called immoral or harmful, and provide protection against exploitation from other parties. The state must protect individual autonomy and retain respect for the human person when enforcing criminal penalties. Therefore, punishment must have a purpose and function that maintains the equilibrium between the interests of the individual and those of the community in order to promote mutual prosperity.

Based on the explanation above, the function of criminal law is to maintain order and protect its citizens. If you look at the principle of balance, there must be a balance for both the perpetrator and the victim. The chemical castration law does not pay attention to the principle of balance, and it even seems forced. No party is protected or benefited from the implementation of the chemical castration criminal law in Indonesia.

#### IV. CONCLUSION

The provision of punishment through castration can be qualified as an inhuman punishment which is thus inconsistent with the constitution and Indonesia's commitments to human rights. Article 28G, section 2, paragraph 2 of the Indonesian constitution states that "everyone has the right to be free from torture and degrading treatment." Therefore, these rights are constitutional, and their development, protection, and realization are also fundamental obligations. The imposition of castration sanctions for rape perpetrators in various countries shows that it is ineffective and does not have a deterrent effect. There is no evidence to suggest that the use of chemical castration has reduced the number of violence against women and children. Chemical castration seems to have violated human rights.

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