

CHEMICAL CASTRATION PUNISHMENT FOR PERPETRATORS OF SEXUAL VIOLENCE AGAINST CHILDREN AS REVIEWED FROM CRIMINAL LAW POLICY

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ARTICLE INFO

History of the article:

Received: 08/04/2025

Corrected: 18/04/2025

Accepted : 30/04/2025

Published: 30/04/2025

Keywords:

Chemical Castration,
Sexual Violence,
Children

ABSTRACT

Violence or sexual harassment experienced by children as victims by people closest to the child is a concerning condition, which should be the child's closest environment to teach, protect, educate and direct children to grow and develop into good child behavior. The obstacle in the implementation of chemical castration for perpetrators of sexual crimes against children is that chemical castration is a punishment rule that has only been legalized for the first time in Indonesia, so further research is needed on the advantages and disadvantages of implementing chemical castration, in the State Gazette Number 5882 does not contain a clear explanation regarding the technical instructions for the execution of chemical castration, the rejection of the Indonesian Doctors Association to carry out the execution because it violates the Doctor's Oath, the Indonesian Medical Code of Ethics and Human Rights, there is no party willing to be appointed as the executor of chemical castration, because basically the prosecutor has the authority to execute but is not authorized to execute if the punishment is outside the prosecutor's duties

1. Introduction

Protecting Indonesian children means protecting the potential of human resources and developing the whole Indonesian person, toward a just and prosperous society, both materially and spiritually, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Child protection efforts must begin as early as possible so that they can optimally participate in the development of the nation and state.

Children, who should be the lifeblood of a nation and require protection from adults due to their immaturity, are instead the targets of crimes orchestrated by the very adults who should be their protectors.

A common occurrence is that children are enslaved, traded, used for manual labor, sexually exploited by adults, used as commercial sex workers, and abandoned on the streets, resulting in a life of deprivation. This impacts the



growth and development of a child's character, leading them to become criminals, thugs, beggars, buskers, and so on.

One of the sanctions introduced through Law Number 17 of 2016 is the imposition of chemical castration for perpetrators of sexual violence against children. Chemical castration is the injection of a chemical compound to suppress certain hormones. When administered to males, it suppresses testosterone. The government also enacted Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installing Electronic Detection Devices, Rehabilitation, and Publicizing the Identities of Perpetrators of Sexual Violence Against Children.

By imposing additional penalties in the form of chemical castration, it is hoped that perpetrators of child sexual violence will lose the desire to reoffend. While this measure has garnered public support, some oppose the chemical castration law. Although the additional penalties have been passed into law, public debate remains.

The effectiveness of this penalty, if implemented, and its potential to reduce the number of sexual crimes against children, continues to be debated. The performance and role of law enforcement officials in resolving these crimes by enforcing existing laws have also come under public scrutiny. Because existing laws still allow perpetrators to freely carry out their actions, law enforcement officials are increasingly receiving public scrutiny and expectations.

2. Research Method

This paper employs normative legal research. Normative legal research refers to legal norms, specifically library or secondary sources. Normative legal research refers to legal norms that are relevant to or related to existing laws and regulations, court decisions, and other legal norms.

This research is descriptive and analytical, revealing laws and regulations related to the legal theories under study. This paper outlines the imposition of chemical castration as a criminal sanction for perpetrators of sexual violence against children, as reviewed by Government Regulation Number 70 of 2020.

The data collection technique used in this study is library research, which involves collecting written legal materials relevant to the research problem, particularly those related to the problem. Legal materials obtained through library research, legislation, and articles are then analyzed and linked to provide a more systematic presentation to address the formulated problems.

All data obtained and collected will then be reviewed and analyzed. Qualitative data analysis is conducted by selecting articles containing legal principles





pertaining to criminal aspects and policies related to castration punishment. The qualitative data will then be presented in a systematic description, explaining the relationships between the various types of data. Furthermore, all data will be selected, processed, and analyzed descriptively, in order to provide solutions to the research problems.

The data obtained from the research results will be drawn into conclusions using the deductive method, which draws conclusions from a general to a specific problem, thus serving as a reference for answering the research questions.

3. Results And Discussion

Results

Criminal sanctions in the Criminal Code only impose maximum penalties without imposing minimum sentences or fines. Only then, in Law Number 35 of 2014, minimum and maximum sentences of 5 (five) years and 15 (fifteen) years, respectively, and a maximum fine of five billion rupiah, were implemented. There is also a provision for an additional one-third prison sentence if the perpetrator is a parent, guardian, childcare provider, educator, or education personnel.

This provision for additional criminal sanctions represents a breakthrough in terms of sanctions that had not previously existed. This can be considered a good regulation, given that in reality, many perpetrators of sexual violence against children are none other than those closest to the child, such as parents and guardians. Perpetrators often abuse their position to facilitate their criminal acts.

Referring to the development of sexual violence against children and examining the impact of such crimes, which can disrupt or damage the mental or psychological well-being of the child victims, it can be said that the child's future is affected by the sexual violence they experience. Likewise, law enforcement against crimes of sexual violence is not only directed at upholding legal justice but also simultaneously at upholding social justice.

This means not only imposing the harshest possible punishment or criminal sanctions on perpetrators, but also ensuring the recovery of children as victims of crime, and ensuring the public's awareness of the importance of protecting and nurturing children as the nation's future generation.

Based on this, criminal law policy efforts are being implemented through criminal law reform, specifically the Child Protection Law. Criminal law reform efforts in Indonesia are inseparable from legal policy, which is tasked with examining necessary changes to existing laws to meet new societal needs. This





legal policy continues the development of legal order from the "ius constitutum," which rests on the framework of previous legal foundations, to the development of the "ius constituendum," or future law.

The above is in line with what was put forward by Barda Nawawi Arief, namely that the renewal of criminal law essentially contains the meaning of an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, socio-cultural values of Indonesian society which underlie social policy, criminal policy and law enforcement policy in Indonesia.

4. Discussion

The policy of establishing criminal sanctions as a means of combating crime represents one of several alternatives. The policy of establishing criminal sanctions as part of crime prevention cannot be separated from the State's goal of protecting all Indonesians and advancing public welfare based on Pancasila and the 1945 Constitution. Under such circumstances, it is the State's obligation to protect and promote the welfare of society, especially from potential disruptions resulting from criminal acts.

The rationale for enacting Law Number 17 of 2016 concerning Child Protection is the significant increase in cases of sexual violence against children, which threatens and endangers children's lives, damages their personal lives and development, and disrupts the sense of comfort, peace, security, and public order. The government believes that the criminal sanctions imposed on perpetrators of sexual violence against children have not yet provided a deterrent effect and have not been able to comprehensively prevent sexual violence against children.

The enactment of Law Number 17 of 2016 concerning Child Protection represents a highly opportune moment amidst the rise in sexual violence against children. The public is still fresh in their memories when the death of Eno (18 years old) shocked them. Eno was found dead in a horrific manner after being raped and murdered by her boyfriend and his office friends in a very sadistic manner. Prior to Eno's death, several deaths had occurred due to sexual violence, such as that of Yuyun (14 years old), who was also brutally murdered after being gang-raped by a group of youths under the influence of alcohol.

Several types of sanctions for legal subjects who commit crimes, in this case humans as perpetrators of sexual violence against children, include: principal penalties and additional penalties. The principal penalty consists of imprisonment and a cumulative fine. Additional penalties include the announcement of the perpetrator's identity as formulated in Article 81





Paragraph (6) and Article 82 Paragraph (5). In addition, provisions for criminal action are also formulated, namely chemical castration and the installation of electronic detection devices as formulated in Article 81 Paragraph (7) with the provisions of the conditions as formulated in Article 81 Paragraph (4) and Paragraph (5) of the provisions of Law Number 17 of 2016.

Based on the impact of the perpetrator's actions, it is appropriate that future criminal law policies in terms of formulating provisions of laws and regulations are not to include criminal provisions that are contrary to human rights, which in this case is not including chemical castration sanctions in the realm of criminal action. If chemical castration sanctions are carried out, then chemical castration should be formulated in the realm of principal crimes.

Because the principal penalty, additional penalties, and criminal action are essentially based on different philosophies of punishment, this means that there must be a balance between the human rights of the perpetrator and the victim. The victim, in this case a child, whose rights have been violated by the perpetrator through sexual violence, is obligated to serve the sanction or punishment as a result of their actions.

The additional penalty in the form of chemical castration was imposed by the Panel of Judges at the Mojokerto District Court in its decision on the defendant Muh Aris Bin Syukur, where the Public Prosecutor did not include the chemical castration penalty in their demands. Castration, also known as castration, is a surgical procedure and/or the use of chemicals intended to eliminate testicular function in males or ovarian function in females. Castration can be performed on both animals and humans.

Based on non-juridical considerations, the judge's imposition of an additional sentence of chemical castration is an optimal and comprehensive measure, not only by increasing the criminal penalty but also as a preventive measure. Therefore, the additional sentence of chemical castration for the defendant not only provides legal certainty but also serves as the fairest punishment for the defendant and the victim, and provides educational benefits to the community to create a deterrent effect. The Decision of the Panel of Judges of the Mojokerto District Court Number 69/Pid.Sus/2019/PN.Mjk complies with the criminal sentencing procedures required by law. Normatively, the principal criminal sentence and the additional sentence of chemical castration for perpetrators of child sexual violence are acceptable to both the defendant and the victim.

Non-juridical considerations include the defendant's aggravating circumstances, namely that the defendant's actions have caused deep sorrow for the victim's family and caused public unrest. There are no mitigating circumstances for the defendant. Therefore, the Defendant should be subjected to the additional





penalty of castration to curb his inclination (desire) to commit acts (crimes) related to sexual crimes against children.

The author disagrees with castration punishment because it is ineffective in addressing sexual violence against children. One indication that the goal of castration has been achieved is if cases of sexual violence against children cease to occur, or at least there is a significant decrease in the number. In reality, cases of sexual violence against children continue to frequently appear in local, regional, and national media. Therefore, even though a judge's decision to impose a castration sentence cannot be expected to have a deterrent effect on the perpetrator, let alone deter others, and it cannot guarantee protection for children from sexual crimes.

This is partly influenced by the lack of executions of convicts sentenced to castration, as the law stipulates that executions are only carried out after the convict has completed their primary prison sentence. However, the author hopes that, for the sake of child protection, more judges will support the government's wishes, as well as those of child advocates and advocates, by imposing harsh sentences on perpetrators of sexual crimes against children, particularly by imposing additional penalties in the form of castration. Although many oppose castration as a human rights violation, the perpetrators of these crimes also violated human rights.

Within the theories of punishment recognized in civil law or European-continental legal systems, there are two main theories: absolute and relative. The absolute theory views punishment as retribution for a crime, thus focusing on the act itself and the crime itself. The relative theory, on the other hand, is not focused on the crime itself but rather aims to achieve beneficial goals, protecting society and promoting prosperity.

Chemical castration is a new breakthrough expected to curb the rampant pedophile crime. However, in practice, there has been no consensus on which body is authorized to carry out chemical castration. The considerations for Law No. 17 of 2016 state that the ratification of this law aims to reduce crimes against children.

In carrying out its duties, the Prosecutor's Office enforces court decisions that have permanent legal force. Prosecutors cannot automatically carry them out independently, as chemical castration is under the authority of health agencies. In this case, the Indonesian Medical Association (IDI) was the institution chosen by the Mojokerto District Attorney's Office to carry out the execution, but the IDI rejected the decision for various reasons.

Due to this refusal, the Prosecutor's Office has attempted to find another agency willing to carry out the execution, but to no avail, and the sentence has not yet





been carried out. In an interview with the author, the Prosecutor's Office is following up by awaiting technical guidelines issued by the Ministry of Health, or amendments to Law No. 17 of 2016, which add technical guidelines for the implementation of chemical castration. The only legal remedy available is a judicial review (PK) with the Supreme Court to review the decision. However, the Prosecutor's Office has not yet attempted to file a judicial review with the Supreme Court.

Despite the efforts made by the Mojokerto District Prosecutor's Office, the supervising judge has the authority to supervise and observe the sentencing of criminals. This supervision is administrative in nature, with the prosecutor and the head of the prison submitting periodic reports to the supervising judge, which are useful for the judge in sentencing other defendants.

If chemical castration cannot be carried out, legal uncertainty will arise. Without legal certainty, people don't know what to do, which ultimately leads to violence (chaos) due to the indecisiveness of the legal system. Therefore, legal certainty refers to the clear, permanent, and consistent application of laws, the implementation of which cannot be influenced by subjective circumstances.

5. Conclusion

Criminal sanctions for perpetrators of sexual violence against children based on the Mojokerto District Court's ruling against Muh. Aris Bin Syukur, who raped nine minors. The defendant was found guilty of violating Article 76 in conjunction with Article 81 paragraph (2) of Law Number 23 of 2002 concerning Child Protection. The defendant was legally and convincingly proven to have committed the crime charged. Regulations regarding the executors of perpetrators of sexual crimes against children lack legal certainty. Law enforcement for perpetrators of sexual violence as stipulated in the Criminal Code and the Child Protection Law is considered ineffective, so the government enacted Law Number 17 of 2016, which imposes increased penalties for perpetrators of sexual violence, including chemical castration.

Chemical castration punishment for perpetrators of sexual violence against children, from a criminal law policy perspective, is a provision of Law Number 17 of 2016, a criminal law policy implemented by the government in response to the increasing number of cases of sexual violence experienced by children as victims. The provisions in the law regulate sanctions or penalties for perpetrators of sexual violence against children, which consist of principal penalties, additional penalties and criminal actions. Principal penalties consist of imprisonment and fines. Meanwhile, additional penalties include the





announcement of the perpetrator's identity, and criminal actions include chemical castration and the installation of electronic detection devices as formulated in the provisions of Article 81 Paragraph (7).

Obstacles in implementing chemical castration for perpetrators of sexual crimes against children are that chemical castration is a punishment regulation that is being legalized for the first time in Indonesia, so further research is needed on the advantages and disadvantages of implementing chemical castration punishment. State Gazette Number 5882 does not contain a clear explanation regarding the technical instructions for executing chemical castration punishment, the refusal of the Indonesian Medical Association to carry out executions because it violates the Doctor's Oath, the Indonesian Medical Code of Ethics and Human Rights, there is no party willing to be appointed as the executor of chemical castration punishment, because basically the prosecutor has the authority to execute but is not authorized to execute if the punishment is outside the prosecutor's duties.

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