



Formulation of sanction regulations for the crime of chemical castration in Indonesia

Hairun Jariah, Abdul Rokhim, Maisyarah, Mawar Putri Oktaviani
Lecturer at the Faculty of Law, University of 17 Agustus 1945 Samarinda
Email: hairun@untag-smd.ac.id, 69abdulrokhim@gmail.com; Asyari280182@gmail.com;
mawarputrioccta@gmail.com

Correspondence Author: Abdul Rokhim

Abstract

There are advantages and disadvantages to implementing the castration penalty. On the one hand, the implementation of the castration penalty is expected to have a positive and preventive impact on perpetrators of criminal acts, as well as reducing the number of sexual violence against children. However, on the other hand, the application of chemical castration is considered a violation of Human Rights (HAM). Although the types of sanctions for each type of criminal act are different, what is clear is that the application of sanctions in criminal discipline must still refer to the objectives of the discipline itself. This research aims to determine the legal application of the chemical castration penalty in Indonesia and examine and analyze the criminal legal provisions for chemical castration for perpetrators of criminal acts of sexual violence against children. This research uses a normative juridical criminal law approach, namely by analyzing written documents or regulations. The approach used in this research can be a statutory approach and a case approach to the crime of castration. The results of research regarding the use of chemical castration in Indonesia have not been implemented and the direction regarding the implementation of chemical castration is still unclear. Until now there have been no perpetrators of chemical castration because in general the Indonesian Specialist Doctors Association (IDI) firmly rejects the existence of chemical castration punishments and does not allow doctors to be perpetrators of chemical castration punishments. To detail the punishment of chemical castration in disciplinary settings, several reasons can be used as a basis for punishing chemical castration on perpetrators of sexual crimes against children. There is no evidence to suggest that castration punishment has a deterring effect, or that there is a side effect of castration punishment that makes the discipline disproportionate to the perpetrator's actions

Keywords:

Sanction Formulation, Implementation of Criminal Offenses, Chemical Castration.

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1. INTRODUCTION

In Law Number 23 of 2002, it is stated that a child in this case is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Children must be protected so that they can live, grow, develop, and play an optimal role in human rights, and receive guarantees from violence and discrimination. Child protection has indeed been stipulated at the level of the law, but it cannot be denied that criminal acts of violence against children are still widespread in various cities and regions, such as neglect, torture, discrimination, sexual violence, sexual acceptance, and violence against children every day, which involves excessive reporting in addition to criminal and drug crimes.

Sexual Violence is any act of damaging, insulting, disturbing, and/or attacking a person's body and/or reproductive function due to a relationship of control and/or unequal sexual orientation, which causes or results in mental and physical suffering that disrupts a person's reproductive health and loss of opportunities. Carry out education safely or optimally [1].

Cases of violence or disclosures experienced by children as victims are sometimes carried out by people closest to them. Sexual violence perpetrated by people closest to him occurred. Various trigger components such as financial problems, concerns, and sensitivity towards family members, as well as the impact of pornographic films that are widely available via the internet also play a role.

In contrast to other criminal acts, cases of criminal sexual violence against children have a much more real impact on children, both immediately and in the long term. This case does not just remove physical wounds. But more than that, these acts of violence will damage the emotional, social, and mental development of victims of criminal acts. As for the factors that cause a person to become a perpetrator of a crime of sexual violence, one of them could be a history of physical, sexual, or emotional violence in childhood [2].

In response to various cases of crimes against children, the government issued Government Regulation No. 07/2020 on Chemical Castration, Installation of Electronic Tracking Devices, and Recovery and Identity Declaration of Perpetrators of Sexual Crimes against Children. This government regulation states that perpetrators of sexual relations with children who are in a forced situation can still be subject to chemical castration, installation of electronic tracking devices, and recovery.

The issue of determining the type of sanction in criminal discipline cannot be separated from the issue of determining the objectives to be achieved in criminal discipline. In other words, the understanding of disciplinary objectives is aimed at recognizing and harmonizing the extent to which the detailed approach of the law is made, as well as measuring the extent to which the types of sanctions, both in the framework of discipline and activities that have been determined, can be effective in achieving the objectives.

There are pros and cons regarding the use of castration. On the one hand, the implementation of castration punishment is expected to have an impact on the prevention and control of offenders, as well as to reduce the number of sexual crimes against children. On the other hand, the use of chemical castration is considered a violation of human rights.

Although the type of sanction for each form of offense is different, it is clear that any application of sanctions in criminal discipline must remain for the discipline itself.

The subject of this study is how the application of the law on the implementation of chemical castration punishment in Indonesia. And what are the details of the direction of criminal sanctions for violations of the law of adequate chemical castration in Indonesia?

This study aims to determine the application of the Law on the Implementation of Chemical Castration Punishment in Indonesia and to review and analyze the details of chemical castration punishment for sexual offenders against children.

2. RESEARCH METHODS

The main topic of discussion in this research is how the law applies to the implementation of chemical castration in Indonesia and what are the details of the direction of criminal sanctions for violations of the law of natural chemical castration in Indonesia?

This research aims to determine the application of law to the implementation of chemical castration punishment in Indonesia and to examine and analyze the details of chemical castration punishment for perpetrators of sexual crimes against children.

3. RESULTS AND DISCUSSION

3.1. Application of Law to the Implementation of Chemical Castration in Indonesia

3.1.1. Provisions for castration criminal sanctions in Indonesia

On 25 May 2016, President Joko Widodo signed Government Regulation in Lieu of Law Number 1 of 2016 Concerning the First Amendment to Law Number 23 of 2002 Concerning Child Guarantee, this is a response to the issue of violence against children committed by reviewing the regulations that currently exist through Perppu Number 1 of 2016, which has now been ratified as Law Number 17 of 2016 Concerning the First Amendment to Law Number 23 of 2002 Concerning Child Guarantee jo. Law of the Republic of Indonesia Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Guarantee. On 7 December 2020, the Government issued Government Regulation (PP) of the Republic of Indonesia Number 70 of 2020 on the procedures for the implementation of chemical castration executions, use of electronic early detection tools, recovery and reporting the identity of perpetrators of sexual crimes against children [3].

3.1.2. Chemical castration punishment for perpetrators of criminal sexual violence against children

One option is to regulate the provision of criminal sanctions as a means of dealing with criminal acts. Regulations on the provision of criminal sanctions as part of overcoming criminal acts cannot be separated from the State's goal of ensuring the full implementation of the Indonesian State and promoting the general welfare based on Pancasila and the 1945 Constitution. In such a structure, the state is obliged to protect and prosper society, especially with the possibility of the emergence of disturbances due to criminal acts that occur.

Based on their objectives, criminal sanctions, and action sanctions are also based on different basic ideas. Criminal sanctions aim at imposing an unusual punishment (*bijzonder*

lead) on the perpetrator of a criminal act so that he feels the consequences of his actions. Criminal sanctions not only aim to punish the perpetrator of a criminal act but also provide a framework for punishing the actions of the perpetrator of a criminal act. Thus, the main difference between criminal sanctions and activity sanctions is the presence or absence of an element of blame, not the presence or absence of an element of fault. Meanwhile, activity sanctions are more educational [4].

Chemical castration still exists in several countries such as Australia, the United States, Poland, Russia, Moldova, Germany, Switzerland, Scandinavia, and South Korea [5].

3.1.3. Application of law to the implementation of chemical castration in Indonesia

The existence of a special regulation on castration as a method of punishment brought back the discourse of pros and cons that had existed since the introduction of the castration sanction into Indonesia's criminal law framework through Government Regulation in Lieu of Law Number 1 of 2016. At the time, Indonesian Child Protection Commission (KPAI) assessed that there was a crisis of sexual violence. For children, a Perppu is needed to address this fundamental situation.

The high demands for children, which were used as the basis for the creation of this Government Regulation in Lieu of Law, were then contradicted by some groups, especially as the punishment of castration would be very contrary to human rights, as it is still considered a brutal, inhumane and destructive act.

An example of the case is the decision against Muhammad Aris for having sexual relations with 9 minors, the plaintiff was sentenced to 12 years in prison, this decision was lighter than the prosecutor's demand for 17 years in prison, based on the provisions of Article 81 paragraph 5 of Law No. 17 of 2016 on the Principles of Government Regulation as a replacement for Law No. 1 of 2016 on the First Amendment to Law No. 23 of 2002 on Child Guarantee, Law No. 35 of 2014. In the case of an offense under Article 76D that causes more than one victim, resulting in serious injury, mental disorders, infectious diseases, disabilities, or regenerative work is misplaced and/or the victim dies, the perpetrator shall be sentenced to life imprisonment or detention for a minimum of 10 years and a maximum of 20 years. In this case, the interviewee felt irritated because there was more than one victim.

If you look at the case above, the prosecutor did not ask that the defendant be sentenced to chemical castration, but here the judge imposed a sentence of chemical castration. The current strategy for implementing chemical castration is still considered to be deficient in its implementation.

The punishment of chemical castration may be a punishment that is considered less common in Indonesia, so stars and cons appear both on the screen and on social media. The sanction of chemical castration is a double-edged sword: on the one hand, it will hurt the perpetrators; on the other hand, the punishment given by the government conflicts with human rights violations. On the other hand, human rights are human rights that must be protected and guaranteed by the state and each individual for the sake of the honor and self-respect of the individual. In the system of the unitary state of the Republic of Indonesia, it cannot be justified to punish someone by destroying his human rights, because this is against the system of the unitary state of the Republic of Indonesia, namely the right to be free from

torture. Regardless, the implementation of chemical castration has the potential to become a motivation for backlash rather than the expected improvement. Carried out by the perpetrator.

3.2. Formulation of Sanction Regulations for the Crime of Castration in Indonesia

3.2.1. Application of legal politics in imposing chemical castration sanctions

According to [3], the regulation of criminal sanctions as a means of overcoming criminal acts is an option. The regulation of criminal sanctions as part of overcoming criminal acts cannot be separated from the interests of the state to ensure the implementation of the Indonesian state as a whole and to promote public welfare based on Pancasila and the 1945 Constitution. In such conditions, the state is obliged to guarantee and prosper the community, especially with the possibility of negative impact due to criminal acts that occur.

The issuance of Government Regulation in Lieu of Law No. 1 of 2016 is a step by the government, in this case, the President, to respond to the rampant cases or crimes of sexual violence against children. Law No. 1 of 2016 on Governmental Control in Lieu of Law No. 1 of 2016 has been jointly approved by members of the House of Representatives (DPR) to become a law, in this case, Law No. 17 of 2016 on Governmental Control in Lieu of Law No. 1 of 2016.

The idea of enacting Law No. 1 of 2016 on Government Control, not Law No. 1 of 2016 on the First Amendment to Law No. 23 of 2002 on the Protection of Children, is based on the fact that sexual violence against children is becoming more and more widespread. In essence, it damages and endangers the lives of children, harms their personal lives and development, and disrupts their sense of safety, peace, security, and tranquility. The Government believes that not only the safety of children's lives but also human survival, child development, and child welfare are threatened by criminal sanctions against perpetrators of sexual violence against children. Violence against children has not had a significant impact and has not been able to comprehensively prevent the occurrence of sexual violence against children [6].

Forms of criminal violence against children include not only physical violence such as murder, abuse, or sexual violence but also non-physical violence such as financial, psychological, and religious violence. As a form of child protection in Indonesia, law enforcement officers use laws (positive laws) such as the Criminal Code (KUHP), Law No. 23 of 2002 as amended by Law No. 35 of 2014 on Child Protection, and most recently as amended by Law No. 17 of 2016 on Guarantees of Government Regulation in Lieu of Law No. 1 of 2016 on Child Guarantees, which provide various forms of legal guarantees related to the issue of child protection from criminal acts of sexual violence. This child social security framework is provided through the regulation of child social security laws, laws on the treatment of crimes of domestic violence are the selection, preparation, or changes to the forms of child social security regulated in the Criminal Code or KUHP [7].

Thus, [8] states that legal policy can be a legal approach or a legitimate legal direction that is realized by the state to realize the state's goals, which can be in the form of making laws that are no longer valid and replacing existing laws. In this sense, issues of legal legislation must be based on the goals of the state and the legal framework applicable to the country, society, and society itself. In the Indonesian context, these goals and frameworks are

stated in the introduction to the 1945 Constitution, especially Pancasila, which gives rise to references to legal norms.

3.2.2. Analysis of chemical castration sanctions for crimes of sexual violence against children

There are 3 speculations about the reasons for discipline, each of which has been explained in the previous chapter, namely the revenge hypothesis (supreme), the goal/target hypothesis (relative), and the combined hypothesis. The first is the direct hypothesis, this hypothesis requires a discipline that is commensurate with the evil deeds committed by the perpetrator as the cause of the suffering of others, so that the perpetrator also has the right to suffer according to his actions that cause others to suffer (*leed met leed vergelding worden*) so that this discipline does not mean to punish the perpetrator of the crime, but this discipline is the highest demand, not only something that must be forced, but can be a necessity, in other words, suffering must be repaid with suffering or revenge (*revenge*).

Meanwhile, relatively speaking, this hypothesis requires discipline to be the goal as a means of avoidance, both specific avoidance (the perpetrator of the crime) and general avoidance (society). In the sense that discipline aims to anticipate and reduce errors, it should be expected to change the behavior of offenders and other individuals who have the potential or the propensity to make errors, so that the hypothesis can be more widely accepted. Thus, the basis for legitimizing the existence of a discipline consistent with this hypothesis lies in its justification.

The third can be a combined hypothesis. This combined hypothesis attempts to combine the concepts accepted by the supreme hypothesis and the relative hypothesis. So it can be concluded that the reason for discipline is that in addition to enforcing a criminal act, it must also act as a deterrent and provide a sense of security and guidance to the convicted community. According to the author, the concept of discipline in Indonesia is in line with this hypothesis because, according to Law No. 12 of 1995 on Correctional Institutions, the role of Correctional Institutions (Lapas) is as a place to carry out the development of prisoners and rehabilitation students.

3.2.3. Formulation of sanctions for the crime of chemical castration in Indonesia

The implementation of castration punishment has created both pros and cons in society. Some parties support the implementation of castration punishment because it is believed that this Perpu will have an impact that inhibits perpetrators of sexual violence against children and will reduce cases of sexual violence against children in Indonesia. On the other hand, many parties do not support castration punishment because it is seen as a violation of human rights. However, to open minds and experiences, the author tries to explain the views on the implementation of castration punishment from the perspective of supporters and opponents of castration punishment.

As far as the reasons for the implementation of the castration law are concerned, there are several basic reasons. Firstly, the existence of castration will certainly make someone think twice about committing sexual violence against children. This can be seen from the rampant discourse on the implementation of castration for perpetrators of sexual violence

against children. The Indonesian Child Protection Commission (KPAI) noted a decrease in the number of child victims of sexual violence in 2015 [9].

At present, castration does not affect a person's fundamental right to have a family and to procreate.

Thirdly, the imposition of castration can be a judge's choice and not an obligation. For judges. The Perpu states that judges can impose castration. This means that judges cannot impose castration on perpetrators of sexual violence against children. Judges are given the power to reject perpetrators by agreeing to their warnings.

Fourthly, judges cannot impose castration on every perpetrator of sexual crimes. Perpu No. 1 of 2016 stipulates that castration can only be imposed on perpetrators of sexual crimes that result in more than 1 (one) victim, result in serious injury, mental disorders, sexually transmitted diseases, disorders or loss of reproductive function, and/or death of the victim, the perpetrator shall be punished with death penalty, life imprisonment or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.

The main reason for this is that castration has been enforced in various countries. Currently, castration is enforced in the Czech Republic, Germany, Moldova, Estonia, Argentina, Australia, Israel, New Zealand, South Korea, and Russia, as well as several states in the United States [10].

However, there are several reasons for the abolition of castration. Firstly, castration violates a person's human right not to be tortured. Although in Indonesia the fundamental rights to have a family and to perpetuate one's lineage are not violated by castration, the right not to be tortured is violated because this right is a non-derogable right. This is also in line with the International Covenant on Civil and Political Rights (ICCPR), which states that no one shall be subjected to torture, cruel, inhuman or degrading treatment or discipline. It was approved by the Indonesian government through Law No. 12 of 2005[11].

At present, castration is not a criminal purpose. In criminal law, three opinions explain the purpose of criminal law, namely to fight, to have a deterrent effect and to restore the original situation [12]. If we see criminal law as appropriate retribution, we might say that this aim can be achieved by castration. However, if we see the purpose of the crime as a deterrent and to restore the original situation, then of course this goal has not been achieved, because castration does not affect the victims of sexual violence against children.

Thirdly, there are efforts to abolish castration in other countries. One example is the Committee for the Prevention of Cruel, Inhuman or Degrading Treatment or Punishment (CPT), a regional monitoring committee in Europe that monitors the implementation of the punishment. The CPT has a long tradition of opposing torture and has made various suggestions regarding the implementation of castration in countries that are subject to the convention [13].

Fourthly, there are the side effects of castration. Chemical castration has negative effects in the form of premature aging of the body. Anti-androgenic fluids are known to reduce bone density, increasing the risk of osteoporosis.

Fifthly, the effects of chemical castration are temporary or short-lived. This means that when the anti-androgen is stopped, arousal and erection may return [14].

Sixth, the cost of castration is not cheap. A urologist from Asri Urology Centre, Dr. Arry Rodjani, SpU, said that the cost of chemical castration starts from 700 thousand IDR for one application on one person [15].

The main reason is that castration is not supported by experts in Indonesia. This can be seen from the statement of Indonesian Doctors Association (IDI) Chairman General Ilham Oetama Marsis, who asked the government not to involve experts as implementers in the implementation of castration [15].

From the above description, the author argues for the rejection of castration for perpetrators of sexual violence against children. The author argues that there is no evidence that castration has a negative effect and that there are side effects of castration that make the punishment disproportionate to the perpetrator's actions. Furthermore, the reluctance of the Indonesian Doctors Association (IDI) to carry out this punishment strengthens the author's conviction to reject this punishment.

The punishment of chemical castration should be replaced by the most severe penalty or life imprisonment. In this way, the number of cases of sexual violence against children can be reduced. Compared to the discipline of chemical castration punishment, which seems to cover 2 years, this punishment cannot be used as a reference for when perpetrators of sexual crimes who have been sentenced to chemical castration can recover and not repeat their actions.

4. CONCLUSION AND SUGGESTIONS

4.1. Conclusion

1. The implementation of chemical castration punishment in Indonesia has not been carried out and the direction of the use of chemical castration punishment is still unclear. Up to now, there have been no perpetrators of chemical castration punishment because, in general, Indonesian Doctors Association (IDI) strongly denies the existence of chemical castration punishment and does not allow people who are experts to become perpetrators of chemical castration punishment. Thus, there are obstacles, especially in terms of the law, law enforcement officers, agencies and institutions, society, and culture.
2. In the description of chemical castration punishment in disciplinary regulations, there are several reasons for applying chemical castration punishment to perpetrators of sexual violence against children. There is no evidence that castration has a negative impact, and there are side effects of castration that make the punishment disproportionate to the perpetrator's actions. Furthermore, IDI's reluctance to become a perpetrator of castration further strengthens the author's determination to reject castration.

4.2. Suggestions

1. The government should consider efforts to provide disciplinary sanctions for perpetrators of sexual crimes. The government should also take steps to provide appropriate disciplinary sanctions for perpetrators. The chemical castration law is certainly not the only solution to the problem of sexual crimes, as there must be awareness and participation between the community and the government to find the root of the problem and the right person to deal with it.

2. Because the castration law does not consider a value-based approach, the criminal sanction policy of chemical castration must be reconsidered by involving academics and the Indonesian Medical Association to ensure that the chemical castration law can be a good law to be implemented in Indonesia.

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