



The Legal Policy Of Chemical Castration Sanctions From A Human Rights Perspective In The Era Of Contemporary Democracy

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Abstract. The regulation on chemical castration has sparked various pro and con responses from the Indonesian public. Those in favor of chemical castration argue that it is an appropriate measure to reduce the number of sexual violence cases against children. They believe that the punishments or sanctions in place before the introduction of chemical castration were insufficient to address the massive issue of sexual violence against children. On the other hand, those who oppose chemical castration argue that it will not effectively solve the problem of child sexual abuse, as it introduces new issues related to justice and utility. The type of legal research used is normative juridical legal research, which examines written law from various aspects, including theoretical, historical, philosophical, comparative, structural and compositional, scope and content, consistency, general explanations, and Article-by-Article analysis. from a Human Rights perspective, the chemical castration penalty in Undang-Undang Nomor 17 of 2016 is highly contrary to Human Rights. This penalty is considered a form of cruel violence and is in conflict with the provisions in the Constitution of the Republic of Indonesia, existing legislation, and other human rights agreements. Additionally, the imposition of the chemical castration penalty in Undang Nomor 17 Tahun 2016 appears to have been formed solely based on an emotional approach, raising concerns about its potential ineffectiveness

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1 Introduction

President Joko Widodo in 2016 signed Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas Undang-undang Nomor 23 Tahun 2002 on Child Protection. This regulation was later enacted into Undang-undang Nomor 17 Tahun 2016. The amendment aims to impose penalties that serve as a deterrent for perpetrators of sexual violence against children by revising the criminal sanctions and adding chemical castration as a punishment.

In general, chemical castration is performed by introducing chemical substances, in the form of anti-androgens, into a person's body to reduce the production of testosterone, thereby decreasing sexual desire. In the medical field, testosterone is a hormone that plays a sexual function in the male reproductive organs. When anti-androgens are introduced into a man's body, these substances inhibit the glands in the brain from producing testosterone, leading to a decrease in sexual drive.[1]

One of the cases of child sexual violence that shocked Indonesian society was the case of sexual violence committed by Muh Aris bin Syukur or known as Aris Mojokerto. Aris was charged as a result of his crime of committing sexual violence against minors with nine victims. Aris committed his crimes over a period of three years, from 2015 to 2018. As punishment, the Mojokerto District Court sentenced him to twelve years in prison and an additional sentence of chemical castration.

The regulation on chemical castration has sparked various pro and con responses from the Indonesian public. Those in favor of chemical castration argue that it is an appropriate measure to reduce the number of sexual violence cases against children. They believe that the punishments or sanctions in place before the introduction of chemical castration were insufficient to address the massive issue of sexual violence against children. On the other hand, those who oppose chemical castration argue that it will not effectively solve the problem of child sexual abuse, as it introduces new issues related to justice and utility. Concerns include the perceived disregard for the human rights of the perpetrators, the medical risks they would face, the high costs of implementing chemical castration, and the need for monitoring the convicts after they have served their sentence.[2]

Chemical castration clearly violates the human rights that every person is entitled to. According to Amnesty International, chemical castration breaches international law prohibiting torture, as well as cruel, inhuman, and degrading punishment, as stipulated in the International Covenant on Civil and Political Rights (ICCPR). The indeterminate nature of the sterilization process infringes upon the rights of sexual violence offenders to have offspring.[3]

The imposition of chemical castration as an additional penalty, or *ultimum remedium*, for child predators seems hasty, as the government at that time was seeking a swift and optimal solution to reduce the increasing number of sexual violence cases against children each year. Chemical castration requires strict and careful oversight in its implementation due to the dangerous side effects of the drugs used for the procedure. Furthermore, the Ikatan Dokter Indonesia (IDI), as the authorized body to carry out chemical castration, refused to take such action because the punishment violates the medical code of ethics, which serves as the legal guideline for doctors in Indonesia. The legal policy of chemical castration as a solution to the widespread issue of sexual violence against children in Indonesia is an interesting subject for research.[4]

In the era of contemporary democracy, the protection of human rights serves as a vital foundation for building a fair and inclusive legal order. Democracy is not only about political freedom but also about the recognition and respect for the inherent rights of individuals. The state is responsible for ensuring that every citizen, without discrimination, has access to justice, participation, and legal protection. Amid increasingly complex global dynamics, human rights protection must be integrated into every public policy, especially in balancing individual freedoms with the public interest. Therefore, governments and legal institutions must continuously adapt, strengthen human rights protection mechanisms, and maintain accountability to uphold the principles of democracy.

2 Research Method

The type of legal research used is normative juridical legal research, which examines written law from various aspects, including theoretical, historical, philosophical, comparative, structural and compositional, scope and content, consistency, general explanations, and Article-by-Article analysis.[5]

3 Discussion

3.1 INTRODUCTION OF CHEMICAL CASTRATION

Castration, also known as sterilization, is a surgical action and/or the use of chemicals aimed at eliminating the function of the testes in males or ovaries in females. Castration can be performed on both animals and humans. Conceptually, castration has developed into two forms: surgical castration, known medically as orchietomy, and chemical castration. According to the Medical Dictionary, surgical castration refers to the surgical removal of testes (orchietomy) or ovaries (oophorectomy) to stop the production of sex hormones. Meanwhile, chemical castration is a procedure in which medications are administered to reduce testosterone levels. Essentially, both forms of castration constitute a medical procedure, whether surgical or chemical, intended to halt or reduce the function of male (testes) or female (ovaries) organs in producing sexual hormones.[6]

In several countries, chemical castration has become a punishment for sexual offenders, including rapists and pedophiles. This process, generally known as castration through the injection of specific chemicals, is referred to as chemical castration or chemical injection. At least two drugs are commonly used: cyproterone acetate, which is generally employed for chemical castration throughout Europe, and medroxyprogesterone acetate (MPA, the primary ingredient now used in DMPA), which is used in the United States. By injecting antiandrogen drugs, such as medroxyprogesterone acetate or cyproterone acetate, which are capable of suppressing the function of the hormone testosterone, testosterone levels are lowered. Testosterone is a male hormone responsible for libido.[7]

According to Peraturan Pemerintah No. 70 Tahun 2020, dalam Pasal 1 angka 2, Chemical Castration is defined as the administration of chemical substances through injection or other methods to offenders previously convicted of violence or threats of violence that coerced a child into engaging in sexual intercourse with the offender or with another person. This action may be imposed if the offense resulted in more than one victim, caused serious injury, psychological disorders, sexually transmitted diseases, loss or impairment of reproductive organs, or led to the victim's death, aiming to suppress excessive sexual desires. Chemical castration is generally performed by introducing anti-androgen chemicals into a person's body to reduce testosterone production, thereby diminishing sexual drive. Medically, testosterone is a hormone that plays a role in male sexual function, so when anti-androgens are administered to males, these substances inhibit the brain's glands from producing testosterone, thereby lowering sexual arousal.[8]

The category of chemical castration sanctions or punishment, as formulated in the provisions of Pasal 81 Ayat (7) Peraturan Pemerintah Pengganti Undang-Undang (PERPU) No.1 Tahun 2016 yang telah ditetapkan menjadi Undang-Undang No. 17 Tahun 2016, is imposed on perpetrators of sexual violence against children, namely:[9]

- a) Parents, guardians, family members, child caregivers, educators, educational personnel, and officers involved in child protection.
- b) a perpetrator who has previously been convicted of committing sexual violence against children (recidivist).
- c) Perpetrators who cause harm to more than one person, resulting in severe injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or the death of the victim

Chemical castration is not a new punishment, as several countries have already implemented this sanction or punishment for perpetrators of sexual violence against children. Currently, there are 20 countries that enforce chemical castration for offenders of child sexual abuse, including nine European countries, nine U.S. states, one Latin American country, and one Southeast Asian country. The nine European countries are the United Kingdom, Poland, Russia, Germany, the Czech Republic, Denmark, Sweden, and Spain. The nine U.S. states include California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin. The Latin American country implementing this punishment is Argentina, while the Southeast Asian country is South Korea.[10]

the author presents several countries that have implemented chemical castration sanctions, namely:[11]

1) United States of America

The state of California was the first state in the United States to implement chemical castration as a punishment for perpetrators of child sexual abuse. Chemical castration has been applied in California since 1996. In the state of Florida, this punishment has been in effect since 1997. Other states that have enacted chemical castration laws include Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin. In some of these states, chemical castration can be imposed on offenders after their first offense. However, for a second offense, the punishment of chemical castration is enforced compulsorily for sexual offenders.

2) Australia

Chemical castration as a punishment is applied only in certain states in Australia, including Western Australia, Queensland, and Victoria. In 2010, a repeat child sex offender in North Queensland was brought to trial again for groping and kissing an underage girl. This man had previously undergone chemical castration, voluntarily receiving treatment to reduce his libido. Then, in 2012, two sex offenders in Victoria agreed to undergo chemical castration through treatment to reduce their libido.

3) South Korea

South Korea became the first country in Asia to implement chemical castration as a punishment in July 2011 for perpetrators of sexual crimes against children under the age of 16. Local advocates argued that the use of chemical castration was an effective and scientific method to reduce sexual offenses. The punishment was later expanded to include perpetrators of sexual crimes against children under the age of 19. This measure was established during a ministerial meeting that approved the revision of the chemical castration law draft.

4) Germany

Germany is the last European country to permit the implementation of orchiectomy, or surgical removal of the testicles, as a punishment for convicted sexual offenders. Germany is among the countries that have regulations concerning castration penalties. In early 2012, the European Union Anti-Torture Committee urged Germany to end the practice. In a written response, the German government stated that the practice was "under review." Germany enforces this punishment under strict procedures: the convicted individuals are informed about the potential impacts and possible side effects. Most importantly, the convicted individual must consent to undergoing chemical castration.

3.2 VIEW OF CONTEMPORARY DEMOCRACY TWARD CHEMICAL CASTRATION

Human Rights are fundamental rights that have existed since a person is born, inherent to every human being, and cannot be violated as they are granted by God. Human Rights are a gift for human life, as they represent recognition of human dignity and worth. Therefore, by their very nature, Human Rights are inalienable and cannot be interfered with or revoked by anyone; no authority, no matter how great, can infringe upon Human Rights. In their development, Human Rights have been enshrined in constitutions and have become an important part of legal provisions, alongside other significant matters.[12]

The enforcement of Human Rights in Indonesia is a concept that must always be upheld. As a nation that has experienced colonialism, the founders of Indonesia deeply understood the importance of Human Rights for the life of the nation and the state. This is evident from the inclusion of key concepts and fundamental rights in the 1945 Constitution, which was established before the Universal Declaration of Human Rights. Additionally, the idea of a legal state, where Human Rights are recognized, protected, and respected, was expressed by the founders of the Republic of Indonesia. This is clearly reflected in the creation of the constitutions that have governed Indonesia.[13]

The government's imposition of chemical castration sanctions through PERPPU Nomor 1 Tahun 2016, which was later ratified as Undang-undang Nomor 17 Tahun 2016, has sparked controversy among the public, particularly regarding the issue of cruel punishment and human rights violations. As a country that guarantees the human rights of its citizens in its constitution, the state, through its government, should not issue legal products that overstep the boundaries of individual rights. Moreover, chemical castration sanctions are considered ineffective in various countries where they have been implemented and have only led to additional problems.

The legal policy regarding chemical castration sanctions from a human rights perspective in contemporary democratic Indonesia has sparked various opinions. On one hand, this policy is seen as a firm measure to provide a deterrent effect on perpetrators of sexual crimes against children, which continue to rise. However, from a human rights perspective, chemical castration raises serious concerns about violations of fundamental rights, such as the right to physical and mental integrity, as well as the prohibition against torture and inhumane treatment. In modern democracy, criminal policies must align with the principles of respect for human rights, and the implementation of chemical castration as an additional punishment remains a subject of debate, particularly concerning its compliance with international legal standards and medical ethics. Therefore, it is crucial for Indonesia to continuously evaluate this policy to balance justice for victims and respect for the fundamental rights of offenders.

The evaluation must include an in-depth study of the effectiveness of chemical castration as a form of punishment, as well as its potential impact on the human rights of offenders, including the risk of violating principles of justice and humanity. Additionally, the implementation of this policy requires clear regulations regarding monitoring mechanisms and medical procedures that comply with medical ethics. Resistance from the medical community, such as the Ikatan Dokter Indonesia (IDI), emphasizes that this policy not only presents ethical dilemmas but also has the potential to undermine the existing legal and normative framework. In the context of contemporary democracy, a more holistic approach is needed, focusing on victim recovery, offender rehabilitation, and more effective prevention efforts, rather than solely relying on repressive and controversial punishments.

The perspective of the Komisi Nasional Hak Asasi Manusia (Komnas HAM) regarding the implementation of chemical castration punishment for perpetrators of sexual violence is as follows:

- a. Administering punishment through chemical castration can be classified as cruel and inhumane, and is therefore inconsistent with the provisions of the constitution and Indonesia's commitment to human rights. Pasal 28G Ayat (2) of the Indonesian Constitution states that "Every person has the right to be free from torture and inhumane treatment that degrades human dignity." Thus, this right is constitutional, and its promotion, protection, and fulfillment are also constitutional commitments.
- b. The imposition of an additional punishment through castration can also be classified as a violation of rights, specifically the violation of the right to an individual's consent in medical procedures and the right to protection of one's physical and mental integrity.

- c. Perppu Nomor 1 Tahun 2016 jo. Undang-Undang Nomor 17 Tahun 2016 tentang Perubahan Kedua Undang-Undang Nomor 23 Tahun 2002 on Child Protection and imposes additional punishment in the form of chemical castration, should not have been issued. The National Human Rights Commission (Komnas HAM) views that addressing sexual crimes against children, and women in this case, requires comprehensive and consistent action, not solely focused on punishment. It should also include rehabilitation and preventive measures, such as developing a social protection system for children (such as child- and women-friendly communities, transparency regarding offenders), or through education and increasing understanding of reproduction. This can be implemented by enforcing Instruksi Presiden (Inpres) Nomor 5 Tahun 2014 on the National Movement Against Sexual Crimes Against Children and strengthening other existing instruments.[14]

Komnas HAM view, which expresses opposition to chemical castration sanctions, explains that the formulation of chemical castration sanctions was not accompanied by coordination among government agencies. Chemical castration sanctions also contradict existing regulations that guarantee an individual's human rights will not be violated.

The protection of human rights for Indonesian citizens is guaranteed under Undang-Undang Nomor 39 Tahun 1999. Pasal 4 Undang-Undang Nomor 39 Tahun 1999 states that human rights guaranteed by the state are inalienable rights.

Additionally, Pasal 2 Undang-Undang Nomor 39 Tahun 1999 states that:

“Negara Republik Indonesia mengakui dan menjunjung tinggi Hak Asasi Manusia dan kebebasan dasar manusia sebagai hak yang secara kodrati melekat pada dan tidak terpisahkan dari manusia, yang harus dilindungi, dihormati, dan ditegakan demi peningkatan martabat kemanusiaan, kesejahteraan, kebahagiaan, kecerdasan, dan keadilan”.

The Republic of Indonesia recognizes and upholds human rights and fundamental freedoms as rights that are inherently attached to and inseparable from human beings, which must be protected, respected, and enforced to promote human dignity, welfare, happiness, intelligence, and justice.

Chemical castration in humans is carried out by injecting chemical medications into the body. However, in addition to suppressing libido and reducing the inclination to commit sexual violence, chemical castration has dangerous negative side effects that may arise.

The medications used in chemical castration can lead to negative side effects such as premature aging of the body. Anti-androgen fluids are known to reduce bone density, thereby increasing the risk of brittle bones or osteoporosis. Additionally, anti-androgens also decrease muscle mass, which increases the likelihood of body fat accumulation and raises the risk of cardiovascular diseases. John Stinneford has even argued that subjects undergoing chemical castration experience a process he terms as organ incapacitation, which can be considered a form of torture.[15]

Given the negative effects that result from the implementation of chemical castration, it can be argued that such a measure actually tortures offenders. This clearly contradicts Pasal 28G Ayat (2) UUD 1945, which asserts that every person has the right to be free from torture or treatment that degrades human dignity.

The phrase "every person" indicates that this right applies universally, regardless of an individual's status, whether they have committed a crime or not. This means that even if someone has committed a crime, they should not be subjected to torture as a means of atoning for their wrongdoing. Additionally, Pasal 28 Ayat (1) UUD 1945 also emphasizes that the right not to be tortured is a non-derogable right. In this context, this right cannot be reduced or diminished under any circumstances.[16]

Chemical castration disregards the limitation on human rights that are classified as non-derogable rights, as it violates Pasal 5 of the Universal Declaration of Human Rights (UDHR) and Pasal 7 of the International Covenant on Civil and Political Rights (ICCPR). Both articles state that no one shall be subjected to torture, cruel, inhumane, or degrading treatment or punishment, nor be made a subject of medical or scientific experiments without consent. According to these provisions, criminal punishment is indeed an instrument that can be used by the state to limit the human rights of citizens who violate laws established by the state. However, it is undeniable that the evolution of criminal law is also influenced by human rights principles, which emphasize that offenders still retain the right to be treated humanely.[17]

These Pasal reflect the commitment of the international community, including Indonesia, to uphold humanitarian principles in the administration of punishment. This is further emphasized in the General Comment on Pasal 7 of the ICCPR, which states that state parties must protect the dignity and physical and mental integrity of individuals through legislative, administrative, judicial, or other measures. This includes ensuring that all persons deprived of their liberty are treated humanely and with respect for their inherent dignity. It also stipulates that no excessive punishment creating physical or mental suffering is permissible, even if intended as a penalty for crime or as educational or disciplinary action. Additionally, the General Comment on Pasal 7 of the ICCPR asserts that there is no justification or leniency for violating Pasal 7 for any reason. This underscores the non-derogable nature of the rights enshrined in Article 7 of the ICCPR.[18]

The issues outlined above should be approached with wisdom, given that the law is inevitably a crystallization of political will, which often interacts and even competes with one another. This includes the process of formulating sanctions, which is also a part of the law-making process in Indonesia. If the formation of laws is not based on the principles outlined in Undang-Undang Dasar 1945, the resulting laws are likely to be disproportionate, allowing violations of individual rights through excessively harsh sanctions. In this context, the imposition of chemical castration sanctions contradicts the principles of human rights as established in both national and international legal instruments, allowing for violations of individual rights by the government.[19]

Additionally, Indonesia is one of the countries that has ratified the International Covenant on Civil and Political Rights through Undang-Undang Nomor 12 Tahun 2005 and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Undang-Undang Nomor 5 Tahun 1998. This should be a commitment to uphold human rights, particularly in the process of formulating sanctions, which is the responsibility of legislators. If the sanctions formulated do not consider proportionality, legislators are effectively allowing violations of individual rights in the criminal policy-making process.

Moreover, the adherence to these commitments by legislators in the formulation of criminal sanctions reflects an accommodation of the balance between justice and legal certainty for offenders, preventing a bleak future due to excessively harsh sentences. This aligns with the second principle of Pancasila, which states "a just and civilized humanity," (*kemanusiaan yang adil dan beradab*) where the legal products created ensure the respect and protection of human rights by the state for everyone, without exception.

Criminal law is used with the aim of creating human well-being. The utilitarian theory, encapsulated in Jeremy Bentham's phrase 'the greatest happiness for the greatest number,' asserts that punishment should not deprive individuals of happiness. Any form of punishment is not solely intended for retribution or for vague purposes of social protection.[20]

The government's obligation to prevent and address cases of sexual violence against children by formulating and enacting chemical castration provisions as outlined in Undang-undang Nomor 17 Tahun 2016 is not in line with Indonesia's legal politics, especially in the context of contemporary democracy. Indonesian legal politics require that the creation, modification, and establishment of policies reflected in legislation must align with the goals of legal reform in Indonesia. The misalignment of the legal reforms carried out by the government indicates that the policies implemented are heavily influenced by emotional approaches, without considering other potential approaches that could be applied and executed effectively.

The creation of policies heavily influenced by emotional approaches, without considering alternative approaches, according to Bassiouni as cited in Barda Nawawi Arif, can lead to issues such as: a crisis of over-criminalization (an increase in the number of crimes) and a crisis of excessive boundaries in criminal law (where attempts to control behavior become ineffective).[21]

4 Conclusion

Based on the explanations provided and discussed above, the author concludes that, from a Human Rights perspective, the chemical castration penalty in Undang-Undang Nomor 17 of 2016 is highly contrary to Human Rights. This penalty is considered a form of cruel violence and is in conflict with the provisions in the Constitution of the Republic of Indonesia, existing legislation, and other human rights agreements. Additionally, the imposition of the chemical castration penalty in Undang Nomor 17 Tahun 2016 appears to have been formed solely based on an emotional approach, raising concerns about its potential ineffectiveness.

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