



The Threat of Chemical Castration Punishment for Perpetrators of Obscene Crimes from a Medical Point of View and Law Number 39 of 1999

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Abstract. This research looks into the threat of chemical castration as a penalty for obscene crime offenders, evaluating its implications from both medical and legal perspectives. The focus is on Law No. 39 of 1999 related to Human Rights in Indonesia, which addresses the legal framework for such punitive measures. Chemical castration, a controversial method intended to reduce recidivism by diminishing sexual drive, is scrutinized for its medical efficacy and potential long-term health effects. This research examines the extent to which chemical castration aligns with human rights principles and assesses its overall impact on public health. The study utilizes a qualitative approach, incorporating a review of existing legal documents, regulations, and medical literature. The legal analysis considers how chemical castration fits within the current human rights framework, while the medical review explores the treatment's effectiveness and associated risks. By integrating findings from both fields, The goal of the study is to present a fair analysis of the application of chemical castration in the legal system. the goal is to inform policy recommendations that ensure the ethical application of chemical castration while upholding human rights standards and considering the health implications for those subjected to this punishment. The results contribute to the broader discussion on the appropriateness and implications of chemical castration as a legal sanction, providing insights into how such measures can be implemented more humanely and effectively within the legal system.

Keywords: Chemical Castration, Human Rights, Legal Framework

1 INTRODUCTION

The goal of the study is to present a fair analysis of the application of chemical castration in the legal system, which stipulates that chemical castration is the punishment for anyone

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who willfully engages in sexual assault against children in any manner and with specific and with specific criminal components. Chemical castration is used as an extra punishment to lower the offender's sexual hormones. According to international agreements like the ICCPR and UNCAT 1948, which Indonesia's Law and Human Rights has ratified, the state's protection of human rights may be superseded by the explicit application of criminal law. Chemical castration has various advantages and disadvantages, but it may be able to lower the rate of habitual crime or recidivism among sexual offenders in Indonesia. However, there is ongoing discussion regarding the efficacy of such measures in deterring crime.

The second concept, which is derived from Pancasila beliefs, states that the state must respect humanity and treat all citizens fairly. Every person has the right to life and the freedom from torture and other cruel treatment that diminishes human dignity, according to the Republic of Indonesia's 1945 Constitution's Human Rights chapter. In this situation, the penalty must benefit both parties, both the victim and the offender, specifically. A reassessment of the 1945 Constitution's Article 1 Paragraph 1 requirement is also necessary. [1,] This asserts Indonesia's duty to uphold security and foster peace for its people because it is a rule of law nation. For humans to survive and for a country or state to be viable, children are an essential component. Given the significance of children, the 1945 Constitution's Article 28 B, paragraph (2), clearly states that the State upholds each child's right to life, development, and growth as well as their right to be shielded from discrimination and violence. In [2]

As a result, Indonesia has established regulations as a legal state to offer a legal framework for achieving legal certainty and establishing social order. Since the Child Protection Law generally ensures that children's rights are fulfilled so that they can grow, develop, and participate as best they can in accordance with their dignity and are protected from sexual violence, it aims to provide guarantees for the protection of children's rights, including in relation to the issue of pedophilia. Since sexual violence is listed as a moral infraction in the Criminal Code, it follows that it is morally clean and that the government should give it more attention. Thus, the author's goal in writing this paper was to resolve the legal dispute that arose during the application of chemical castration from the standpoint of children's human rights.

2 METHOD

In order to comprehend human or social phenomena, this study employs a qualitative technique, which is a method of gathering specific opinions from informant sources, doing research in a natural environment, and producing a thorough and intricate image that can be expressed in words. [3] Within the framework of Law Number 39 of 1999 respecting Human Rights, the study's qualitative research focuses on the legal and medical implications of the threat of chemical castration for those who commit obscene acts. This

study falls under the normative legal and medical research category and attempts to determine if chemical castration is appropriate under current laws and regulations as well as to analyze its effects from a medical and legal standpoint. While the medical method concentrates on the effects of chemical castration on the offender's health, the normative approach looks at the laws pertaining to this procedure. Medical literature, legal records, and pertinent scientific articles make up the data used.

Observation and literature analysis are two methods of data acquisition. In order to conduct the literature study, legislative papers, including Law Number 39 of 1999, and medical literature about the effects of chemical castration were gathered and examined. The application of chemical castration in the field was observed, and where feasible, pertinent case reports were included. Medical and legal analyses were used to evaluate the consequences of chemical castration based on medical literature and the compliance of rules with human rights principles, respectively. Policy suggestions about chemical castration are based on the analysis's findings.

3 RESULTS AND DISCUSSION

According to the Republic of Indonesia's 1945 Constitution, the State protects children from prejudice and violence and ensures their survival, growth, and development. The negative effects of technical and communication advancements, as well as the quickening pace of globalization, are contributing to a substantial rise in child abuse, particularly sexual violence.[4]

The government responded to this problem by amending Law No. 23 of 2002 on child protection by Perppu No. 1 of 2016. For those who commit sexual abuse against children, the Perppu governs the use of chemical castration combined with rehabilitation. The author will give a quick overview of the history of chemical castration before delving more into this topic, looking at statistics from different parts of the world:

3.1 History of the Application of Chemical Castration

Castration has had many functions throughout human history. According to Victor T. Cheney's *A Brief History of Castration*, 2nd Edition (2006), castration was used 8,000–9,000 years ago in the Eastern Mediterranean to guarantee that there were more female sheep than males. [5] No concrete documentation of chemical castration of humans has been found. However, castrated slaves were regarded highly in Egypt in 2,600 BC (BC) because their masters viewed them as more loyal and hardworking. Similar behaviors were seen in treasurers and several Chinese imperial officials, guards in the king's harem in Persia, and slaves in Greece in 500 BC. Castration methods have changed in the modern era: Some were carried out to preserve Italian boys' soprano voices, while others were

intended to stifle immoral behavior in certain religious settings. Castration is still a common punishment for sexual offenses including rape and pedophilia in a number of nations today. Castration is used to reduce the growth of particular demographic groups or to lessen behaviors linked to mental and physical illnesses. In the past, rapists, pedophiles, homosexuals, and transgender people were frequently subjected to chemical castration, occasionally as an alternative to incarceration.

Chemical castration and physical castration are the two forms of castration that have been used in different nations. By amputating pedophiles' testicles, physical castration a practice used in the Czech Republic and Germany leaves the offender without the hormone testosterone, which may impair his sexual urge. In the meanwhile, physical and pharmacological castration are not the same. where the testicles are not amputated in order to perform physical castration. In order to weaken the testosterone hormone, the executor will contain anti-androgen substances. Injections or pills might be used for this. A person's libido, or sexual drive, will decline or perhaps vanish entirely if their testosterone levels decline. Chemical castration has temporary effects, though, and libido and other body functions may progressively return if treatment is discontinued. The United States, specifically the state of California since 1996, as well as a number of other states, including Argentina (2010), Australia, Israel, New Zealand, South Korea (2011), Russia (2011), Moldova (2012), and Estonia (2012), have also enacted laws governing castration. These countries include Denmark (1929), Sweden (1944), Finland (1970), Norway (1977), and Poland (2009). [6] According to the author, castration as a form of punishment or treatment has recently become common in a number of nations, including the US and the EU. Twenty nations presently enforce the punishment of castration, according to World Rape Statistics or statistics on rape in different nations worldwide. [7]

3.2 How is Indonesia implementing chemical castration now that Law 17/2016 has been issued

In Indonesia, incidents of child sexual abuse are becoming more frequent. Given the historical background, the Indonesian government ultimately decided to strengthen the penalties for those who commit acts of violence by enforcing chemical castration and installing electronic detection devices for those who force children to engage in sexual activity with them or with others, causing multiple victims to suffer severe injuries, mental illnesses, infectious diseases, disruption or loss of reproductive function, and/or death, in order to suppress excessive sexual desire and provide rehabilitation [8]. Where applicable, this is in line with Law Number 17 of 2016's Article 81, paragraph (7), which deals with the Determination of Government Regulations in lieu of Law Number 1 of 2016's Second Amendment to Law Number 23 of 2002, which deals with the protection of children. [9] Law No. 23 of 2002 and PP No. 70 of 2020 regulate other penalties, such as the installation

of electronic detection devices or chips, in addition to chemical castration. The chip is intended to track the whereabouts of formerly incarcerated individuals. [10]. bb

3.3 Those who can be punished with Chemical Castration and Chip Installation are:

- a. According to Article 76E of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, "Everyone is prohibited from committing violence or threatening violence, forcing, committing deception, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed," those who commit criminal acts of obscene acts against children are prohibited [11].
- b. Those who engage in sexual activity with children, as defined by Law Number 35 of 2014's Article 76D, which states that "No one may use violence or threats of violence to coerce a child into having sex with him or another individual." [12]

Criminals who commit the crimes of sexual intercourse with children and lewd acts against children face a minimum sentence of five years in prison, a maximum sentence of fifteen years, and a maximum fine of Rp five billion [13]. However, it is important to note that not all of the offenders of these crimes can be punished with chemical castration or the installation of electronic detection devices or chips. In this situation, proper electronic detecting equipment can be installed as a form of action against:

- a) Obscene or criminal acts perpetrated against children by parents, guardians, relatives, child care providers, teachers, educational personnel, child protection officials, or by multiple individuals acting in concert.
- b) Offenders with prior convictions for sexual intercourse with children and/or obscene acts against children.
- c) Offenders of sexual intercourse with children and/or obscene acts against children that cause more than one victim to suffer from severe injuries, mental illnesses, infectious diseases, disturbed or lost reproductive function, and/or death. [14]

3.4 In the interim, the following people may be subject to chemical castration sanctions:

- a. The offender who engaged in sexual activity with a kid who had previously been found guilty of the same offense
- b. Offenders whose crimes cause several victims to suffer from several victims to severe injuries, mental illnesses, infectious diseases, reproductive harm, and/or death.

Chip installation and chemical castration are imposed for a maximum period of 2 years and are carried out after the convict has served the principal sentence. The implementation of chip installation and chemical castration is accompanied by rehabilitation under regular supervision by the ministry that handles government affairs in the fields of social law and health. In this context, chemical castration and chip implantation, based on the author's response, are appropriate punishments. This is because the impact on victims of sexual crimes is extraordinary, especially on their psychological development in the future, due to depression, shame and other negative impacts. In his book by Frank W. Putnam entitled "Ten - Year Research Update Review: Child sexual abuse" states that child sexual abuse is not just a deviant perpetrator but rather a complex and painful life experience for children. [15]

The practice of chemical castration is regulated in Law 17/2016 and PP no. 70 of 2020, chemical castration is imposed on perpetrators of sexual intercourse based on court decisions that have permanent legal force, given a maximum period of two years accompanied by rehabilitation and funded by the state. Chemical castration is carried out in three stages. The first is clinical assessment, which is carried out by officers who have competence in the medical and psychiatric fields who come from coordination between the Ministry of Health and the prosecutor's office. Clinical assessment includes clinical and psychiatric interviews, physical examination and supporting examinations. Second, namely a conclusion containing the results of a clinical assessment that determines whether the perpetrator of sexual intercourse with a child is worthy or unfit to be subject to chemical castration. The implementation of chemical castration will be carried out in government hospitals or designated regional hospitals, attended by prosecutors, representatives from the Ministry of Law and Human Rights, Ministry of Social Affairs and Ministry of Health. The implementation of chemical castration for perpetrators of sexual violence against children is carried out simultaneously during psychiatric rehabilitation, social rehabilitation and medical rehabilitation.

3.5 Chemical castration punishment for perpetrators of obscene acts, reviewing from a medical and legal perspective Law Number 39 of 1999 concerning Human Rights

There are arguments for and against using chemical castration as a punishment for sexual assaulters both in Indonesia and abroad. Those who oppose chemical castration believe that it violates human rights because it affects a person's physical, psychological, and sexual characteristics. Medical evidence also indicates that chemical and surgical castrations result in significant health issues. The author will discuss a number of reasons from a medical and human rights standpoint:

- a. Castration, particularly chemical castration, is highly dangerous for osteoporosis, also known as bone brittleness or loss of bone density. It is impossible to prevent bone fractures with increasing chemical castration intensity.

- b. The results of chemical castration are not consistent. The medications administered during castration may react very fast, slowly, or not at all in people with particular psychological characteristics, thus they have no effect on their sexual ability.
- c. Diabetes mellitus, prostate cancer in men, and breast cancer in women are among the risks associated with long-term chemical castration. Those who support chemical castration then defend these statistics, arguing that they are insignificant in comparison to the losses suffered by victims of sexual assault. As a medical measure to combat sexual cravings and fantasies

Based on procedures used in a number of nations, it is well established that chemical castration can only lower the recidivism rate for sexual assault by 2 to 5%, not as much as many parties had hoped. Furthermore, recurrent acts of sexual assault are still possible. Given that the effects of chemical castration are transient rather than permanent, this condition is actually medically predicted. According to Nugroho, the outcome of chemical castration is contingent upon the duration and the overall impact of chemical medications, because the constant injection of chemicals for chemical castration is necessary, and a person's sexual function will return to normal once the castration drug administration is ceased. [16] Gender differences also exist in the way chemical castration is administered. Depending on the situation, it can be administered to men once a week and to women at least once every three months.

Many experts in criminology and criminal law question if chemical castration is a reliable method of preventing recurrent acts of child sexual violence. According to Berlin, chemical castration will work for offenders with high sexual desires or libido issues, but not for those who commit violent crimes because of other mental diseases like psychopaths or those who have no moral compass at all. According to Veditje Ratkoceri, who agrees with Berlin, chemical castration is not a viable solution for all juvenile sexual offenders.

3.6 If viewed from Law Number 39 of 1999 (fn law no. 39 of 1999), the sanction of chemical castration is contrary to Human Rights, the following is the classification of articles in Law no. 39 of 1999 concerning Human Rights which is contrary to the sanction of chemical castration for perpetrators

- Article 4 of Law no. 39 of 1999 "The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual and equal before the law, and the right not to be prosecuted on the basis of applicable law retroactively is a human right that cannot be reduced under any circumstances and by anyone."
- Article 11 of Law no. 39 of 1999 "Everyone has the right to fulfill their basic needs to grow and develop properly."
- Article 12 of Law no. 39 of 1999 "Everyone has the right to protection for their personal development, to obtain education, to educate themselves, and to improve their quality of life in order to become a person who is faithful, devout, responsible, of noble character, happy and prosperous in accordance with human rights.

- Article 71 of Law No.39 of 1999 "The government is obliged and responsible to respect, protect, uphold and promote human rights as regulated in this Law, other statutory regulations and international law on human rights accepted by Republic of Indonesia.
- Article 74 of Law no. 39 of 1999 "No provision in this Law may be interpreted to mean that the Government, party, group or party is permitted to reduce, damage or eliminate human rights or basic freedoms regulated in this Law."

The author of this article has provided a framework for considering the advantages and disadvantages of chemical castration. Human Rights (HAM) are a collection of rights that are fundamental to human existence and nature as creatures of the Almighty God and are His gifts, which must be recognized, protected, and honored. They are also included in Law Number 39 of 1999 about Human Rights. Protection for the honor and defense of human rights by the government, the state, the law, and everyone else. In this instance, the link between humans as creatures and their Creator can be used to theologically trace the concept of human rights. No human being is better than another. God Almighty is the only absolute thing. Its status as *Prima Facie* has implications for the relativity of human knowledge, 17 key concepts, and human rights, which stem from the notions of equality among all people and freedom inherent in each individual. Goals pertaining to what is deemed good or evil, right or wrong, must always be evaluated in light of the requirements of the individual. More significantly, the author views freedom as the definition of human rights, but that freedom ceases when it begins to infringe upon the rights of others. [17]

Therefore, the author examines the immoral and barbaric case of Herry Wirawan, who molested over 12 female Islamic boarding school students who suffered psychological trauma as a result of being raped, in order to discuss the imposition of chemical castration, a topic that is currently very popular in Indonesia. In addition, Herry Wirawa began to exploit the victims, the majority of them were still children. Article 81 paragraphs 1, 3, and 5 of Law Number 17 of 2016 concerning amendments to Law Number 23 of 2002 concerning Child Protection, as well as Article 65 paragraph 1 of the Criminal Code, have been found to be violated by Herry Wirawan's actions. Given the circumstances of this case, the offender should be punished appropriately for the crimes he committed (because rape involves more than just harming the child's moral and psychological well-being). However, it turns into a moral weight and worries a lot of family members, particularly the parents of the child who has been sexually abused. Chemical castration is a penalty that can take away a criminal's sexual hormones.

Because sexual violence against children is still perceived as more harmful to the victim when we rely solely on the law, actions taken against the perpetrator are only intended as a form of punishment. Therefore, efforts to reduce sexual violence against children cannot be merely repressive measures but also preventive measures. procedure to get better. Human rights are inherent rights that people have since they are endowed with conscience and reason. [18] Since the existence of human rights is fundamentally owned, carried, and

linked to each individual's individuality, they also hold the primary and most important place or degree in social life. People immediately felt obligated to show him respect. [19]

3.7 legal protection theory

Since the legal protection offered to society is the main topic of this theoretical investigation, the theory of legal protection is a crucial theory to examine. The society that this theory targets is one that is weak from a legal and economic standpoint.[20] The phrase "legal protection theory" originates in English, and it is known as "theorie der rechtliche schutz" in German and "theorie van de wettelijke bescherming" in Dutch.

The grammatical definition of protection is a haven or an action to defend. To protect is to compel or persuade someone to seek safety. Taking cover can signify one of three things: (1) concealing, (2) arranging oneself to avoid detection, or (3) requesting assistance. In the meantime, (1) covering to make it invisible is part of the definition of guarding. (2) take care of, tend to, or support, (3) preserve or help.[21]

Giving the sufferer a sense of security is the aim of protection. A sense of security is the absence of danger, disruption, and conflict, as well as the absence of fear or anxiety. The family, advocates, social institutions, police, prosecutors, courts, and other parties are among those who wish to offer protection in the meanwhile. According to Satjipto Rahardjo, legal protection is providing protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.[22]

Maria Theresia Geme, on the other hand, describes protection as having to do with governmental activities that (only) enforce state law in order to provide assurances of certainty on the rights of an individual or group of individuals..[23]

Theoretically, the form of legal protection is divided into two forms, namely:

a) Preventive protection

Legal protection that is preventive in character is known as preventive legal protection. Protection gives citizens the chance to voice their concerns (inspraak) to a government decision before it becomes final. This legal protection is crucial for government activities that are founded on freedom of action and attempts to avoid disagreements. Additionally, the government is encouraged to exercise caution when making choices pertaining to the principle of freies ermessen by the existence of this preventive legal protection, and the public is given the opportunity to voice their thoughts or file objections to the proposed decision.

b) Repressive protection

The purpose of repressive legal protection is to settle conflicts. Courts that fall under the purview of general courts and government entities that serve as administrative appeal institutions are the two bodies that currently manage a portion of the legal protection of the populace in Indonesia.

A request for an appeal against a government action made by a party who feels wronged by the government's action is handled by government agencies that are administrative appeal institutions. The government organization with the power to alter or even reverse government acts.[24]

3.8 Legal Protection According to Philipus M Hadjon Regarding the Imposition of Castration

In compliance with Government Regulation Number 70 of 2020, Article 1 Number 2, which outlines the protocols for executing chemical castration, setting up electronic detectors, promoting rehabilitation, and disclosing information on those who commit sexual abuse against minors. Chemical castration is a method used to treat perpetrators who have committed acts of violence or threatened children to engage in forced sexual activity that results in many victims, serious injuries to mental health problems such as infectious diseases and loss/damage/reproductive function.[25]

The main goal behind this action is to control excessive sexual arousal while managing its impact through medical attention. The Indonesian government is currently effectively implementing these measures in accordance with applicable laws; however, correctional institutions do not apply traditional criminal sanctions that specifically apply the ex-criminal punishment pattern as stipulated in Article X of the Criminal Code (KUHP). As observed from the conditions discussed earlier, certain policy choices made by authorities who provide chemical castration only rely on their exclusive understanding without adequate legal protection that has been formulated previously - indicating an unbalanced reason and not in accordance with proper handling in future ethical debates regarding legitimate preventive approaches to further behavior that is common. seen among those who have strong desires that underlie predatory sentiments towards vulnerable groups who are unprotected but helpless in front of them. Thu stated: "Castration will never be enough if we truly aspire to eliminate all forms of crime from society."

As emphasized by Philipus M. Hadjon, legal protection plays a crucial role in upholding social justice and balancing power within society. Legal protection includes various aspects such as protection against violence, discrimination, abuse of power, and human rights violations. Effective legal protection requires fair laws, an independent judiciary, and robust enforcement mechanisms. In this context, the punishment of chemical castration may interfere with, or even eliminate, the reproductive capability of the offender, which raises concerns regarding the right to reproductive autonomy an aspect of human rights. From Hadjon's perspective, imposing castration as a punishment can be seen as a failure to

provide adequate legal protection for the offender, potentially infringing upon their fundamental rights.[24]

4 CONCLUSION

The Indonesian government finally agreed to add and make regulations regarding punishment for perpetrators by providing chemical castration and installing electronic detection devices for perpetrators of violence or forcing children to do so, in light of the growing number of cases of sexual violence against children in Indonesia and the country's past. having sex with him or someone else in order to curb excessive sexual drive while also receiving recovery.

The use of chemical castration is incompatible with both the applicable legislative requirements (Law Number 39 of 1999 respecting Human Rights) and medical principles. Based on the information provided by the author, it can be concluded that chemical castration is more detrimental than beneficial from a medical and regulatory standpoint. The law governing chemical castration sanctions (Law Number 39 of 1999 respecting Human Rights) does not enhance long-term sustainability; rather, it merely serves as a temporary deterrent.

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