



Juridical Analysis of the Application of Chemical Castration Penalties to Sexual Crimes Against Children

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Abstract

This study aims to determine the effectiveness of the application of chemical castration to perpetrators of sexual crimes against children. The practice of chemical castration falls outside the main criminal scope and does not fall under its jurisdiction. Therefore, chemical castration becomes an additional punishment for perpetrators of sexual offenses against children. If examined further, the application of chemical castration is an additional crime that is revocation of certain rights to the defendant. The purpose of revocation of certain rights is not to eliminate the honor of the perpetrator, but to prevent the perpetrator from committing the same crime in the future. The rights that are reduced from chemical castration are reproductive rights and rights related to the sexual activity of the perpetrator. In connection to chemical castration, which is designated as an additional criminal offense, the use of chemical castration cannot stand independently. Chemical castration can be carried out after the perpetrators of sexual crimes against children have served the main criminal sentence. This is done in order to maintain the security and safety of the future generations of the nation, so the issue of the human rights of perpetrators of sexual crimes against children can be put aside.

Keywords: *Application of Chemical Castration; Sexual Crime; Purpose of Sentencing*

Introduction

Children are the nation's future generation, and it is expected that their presence will improve the lives of Indonesians. Children will carry on the spirit of effort to achieve affluence and prosperity for society and the country as the hopeful heirs of their forebears. If society and government are able to educate and care for children to become the next generation of quality and character, then the presence of children is a gift for a nation. Therefore, the state must be able to guarantee the continuity of children's physical and spiritual development and growth. Additionally, the government has a duty to defend children's rights and uphold them against any infractions that can threaten their safety and honor (Simatupang & Faisal, 2018).

Considering how easily children's rights and reputations can be violated, it is only fair that the State and all levels of society prioritize protecting children from the actions of the irresponsible (Iskandar et al., 2021). Violence and sexual offenses are common types of threats to children. The commission of this crime is a reality that occurs right in the middle of people's everyday lives; in fact, the persons who commit acts of sexual violence against minors are typically the people who are the closest to the victim.

Sexual crimes against children in general can be defined as various forms of sexual acts accompanied by threats by the perpetrator, where the victim is a child who is legally still not old enough to carry out sexual activity. Article 1 Government Regulation Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children (hereinafter referred to as Government Regulation (PP) of Chemical Castration) defines a child as a person who has not yet reached the age of 18 (hereinafter referred to as Government Regulation (PP) of Chemical Castration). eighteen) years and who are still in the womb. Based on the Government Regulation (PP) of Chemical Castration analysis, it can be seen explicitly that sexual crimes against children include two aspects, namely, forced sexual intercourse against children accompanied by violence and or threats of violence as well as obscene acts against children accompanied by violence and threats of violence. Based on this, it can be seen that sexual crimes committed against children are divided into forced intercourse and obscene acts. The scope of forced intercourse includes various sexual activities carried out by the perpetrator to force the child to have intercourse with him or with other people forcibly. Meanwhile, obscene acts include various efforts made by perpetrators such as forcing, lying, deceiving, and persuading children to commit obscene acts against them.

In fact, cases of sexual crimes against children necessitate particular protection measures from the government and law enforcement. This is done because the consequences of these acts can be fatal for the future safety and development of children. Children who are victims of sexual crimes experience a variety of losses, including bodily diseases, reproductive health issues, and mental instability as a result of severe trauma. Consequently, the government must take the necessary steps to conduct rehabilitation to mend the trauma suffered by the victims. Nonetheless, the government must also find a way to minimize the pace of the increase in sexual offenses against children in Indonesia (Probosiwi & Bahransyaf, 2015). This shows that persons who can to commit sexual crimes grow and develop alongside youngsters who are victims. This situation is undeniably true because, according to data from the Ministry of Women's and Children's Empowerment, minors are the group most likely to experience sexual offenses. This is made worse by the fact that the perpetrators of the crime are the victim's closest relatives. According to data from the Ministry of Women's and Children's Empowerment, there were 2.572 incidents of sexual crimes in which the perpetrators were the victim's partners or colleagues and 1.738 cases in which the perpetrators were the victim's parents.

The number of sexual crimes committed against children implies that some punishments have failed to discourage sexual offenders. There are a significant number of instances of sexual offenses committed against children that include more than one victim. This shows that there are many factors that significantly influence the number of children who become victims of crimes, including the closeness of the victim and the perpetrator in their social and emotional relationships and places of residence, the ineffective oversight provided by the government and law enforcement officials, and the lack of the worst penalties for those who commit sexual crimes against children (Saitya, 2019). These three factors must be handled promptly as they are the most crucial. Given that sexual offenses against minors are a form of serious crime that can threaten the safety of the nation's future generations. The truth that parents, teachers, family members, and friends who ought to be leading the charge in protecting children instead have emerged as the primary offenders of sexual crimes has only served to exacerbate the situation. Therefore, it is crucial to establish a sentence that can serve as a deterrence to the criminals and instill fear

in others who may be inspired to commit sexual crimes against children (child sexual predators). For the sentence to function as a deterrent against the rapidly rising prevalence of sexual offenses against children (Sitompul, 2015).

The imposition of chemical castration on those who violate children is thought to be a remedy that can slow down the growth of the youngsters who are the victims of these crimes. The application of chemical castration is intended to lessen the perpetrator's excessive sexual urge. This is done so that after serving their term, offenders of sexual crimes against minors will have no motivation to repeat their crimes. In real life, the adoption of chemical castration punishment is prompted by the absence of a maximum penalty for sexual offenders. In this way, the practice of chemical castration will be geared toward safeguarding the rights of children. The Child Protection Law, which has undergone two amendments, has given rise to new thought about the formation of policies relating to additional penalties for sexual offenders, such as chemical castration. The additional punishment is outlined in Article 81, Paragraph 7 of Law No. 17 of 2016, which stipulates that perpetrators of sexual crimes against children are subject to chemical castration and the installation of electronic detection devices. The formulation of the policy is geared toward protecting children from a variety of sexual predators.

The presence of Government Regulation (PP) of Chemical Castration means that all forms of sexual crimes against children must be recompensed in the form of appropriate punishment. Hence, the existence of Government Regulation (PP) of Chemical Castration further emphasizes the procedures for implementing chemical castration which so far has not been regulated in Indonesian positive law. In general, the application of chemical castration is carried out by inserting substances called anti-androgens into the bodies of sex offenders. The effect caused by these substances is to reduce levels of testosterone production in the perpetrator's body, so it can affect the perpetrator's desire to have sexual activity (Nurhidayat, 2019). Based on this understanding, it can be seen if the implementation of chemical castration is carried out as a form of effort to prevent the occurrence of the same act by the same perpetrator. Therefore, the application of chemical castration is expected to be able to provide a sense of justice for the victims whose rights and honor have been taken away. In addition, chemical castration can serve as a reminder for anyone with a desire that leads to sexual crimes against children to exercise restraint due to the severity of the punishment. Although the application of chemical castration is considered a solution, its status and position as a new punishment has not been included in the existing criminal system in Indonesia. As such, chemical castration becomes a new type of punishment within the Indonesian criminal justice system. Consequently, this must be explained and underlined in the creation of the renewal of criminal sanctions and the goal of punishment in Indonesia (Hasanah & Soponyono, 2018).

Formulation of the problem

Based on the above background, the formulation of the problem that can be found is:

- a) What is the position of chemical castration against perpetrators of sexual crimes against children based on the Indonesian criminal system?
- b) How to Apply Chemical Castration to Sexual Crimes Against Children Based on the Purpose of Criminalization in Indonesia?

Method

This research was undertaken with a normative juridical approach, focusing on the rules or norms of Indonesian positive law (laws and regulations) (Budianto, 2020). Literature studies with qualitative analysis were employed in the development of this paper, suggesting that they were derived from statutes

and library sources (Cudney et al., 2020). The method used in this writing is normative legal research based on literature research, namely the assessment of the level data. The second level of data includes legal files, libraries, and research products. Furthermore, the primary material in conducting this research study comes from primary legal materials and secondary. The literature studied is used to answer the questions about the research problems posed. The data that has been collected, is then carried out a simple but in-depth analysis, with several stages. In order to provide a thorough analysis, the analysis process is easily carried out, beginning with the process of gathering data and ending with data identification in accordance with the desired classification.

Results and Discussion

The Position of Chemical Castration Against Perpetrators of Sexual Crimes in Children Based on the Criminal System in Indonesia

The formulation of policies on criminal punishments committed by a person must be geared toward protecting and restoring the rights of victims whose rights have been violated. In addition, the objective of giving criminal punishments has evolved to the point that punishment is no longer a means of exacting retaliation against the offender. Instead, it is a process of development and direction so that the offender recognizes his mistakes and does not repeat it in the future. Accordingly, the construction of the criminals' punishment must prioritize the ideals of humanity (Prasetyo, 2005). So that those who commit crimes are presented as parties who are given the chance to improve themselves. However, in point of fact, if the criminal is subjected to sanctions that do not have a deterrent impact, then there is a possibility that they would perpetrate the same crime again in the future. In this specific instance, particularly offences involving sexual offenses committed against children. There are several instances of sexual crimes committed against children in which the offender has committed the same crime previously. One of them is the case in East Belitung, where the perpetrator is a recidivist who commits obscenity. While the victims are children aged 7 and 12, brothers and sisters who are none other than the perpetrator's own friends' children (Hendra, 2022).

This emphasizes the necessity for a penalty with a deterrent effect and a warning that instills dread in those who have the potential to commit crimes. Chemical castration is a significant advancement in the sentencing of sexual offenders against children. The occurrence of chemical castration serves as a counterbalance to the committed crimes. Reviewing the fact that sexual offenses against minors are a huge threat to the future of the nation. Therefore, the government and law enforcement authorities have a significant obligation to protect every child against sexual predators. As of now, imprisonment is no longer regarded as an effective deterrent against criminal activity. Hence, the existence of chemical castration is acknowledged as evidence of the continuation of criminal law sanctions. Even though in its application there are numerous different viewpoints that spark controversies. Nevertheless, the high rate of sexual offenses against children cannot be resolved conventionally.

The controversy surrounding the implementation of a policy of chemical castration for perpetrators of sexual crimes is not only a result of problems that are frequently viewed as contrary to the rights of the perpetrators, but also a result of the view that chemical castration is an act of retaliation by the government. They believe that the objective of punishment in Indonesia is to not only produce a deterrent impact, but also to educate criminals. This chemical castration focuses solely on creating a deterrent impact, neglecting other aspects such as the process of developing criminals' understanding. Due to this reason, the notion of punishment in Indonesia attempts to impose penalties or punishments that are instructional in character and reduce parts of punishment that tend to be punitive (Utrecht, 1994). On this basis, it is clear that the creation of laws governing criminal punishments must incorporate two essential components. The application of sanctions must be consistent with the fundamental concept of the criminal justice system in Indonesia and share the same orientation as the goal of punishment in Indonesia. This

should be something that is taken into consideration before any chemical castration rules are put into place in Indonesia.

1. The Position of Castration in the Indonesian Criminal System

When regarded from the standpoint of the legal system in Indonesia, the imposition of chemical castration on those responsible for sexual offenses committed against children has very little friction with the laws included in the Criminal Code. Article 10 of the Criminal Code regulates two distinct forms of punishments. The forms of criminal punishment consist of the death penalty, imprisonment, principal punishment, and confinement as the chief punishment. In addition, the Criminal Code covers offenses including the forfeiture of property, the publication of judicial rulings, and the cancellation of specific rights. Hence, chemical castration is a new norm in the Indonesian criminal justice system. This indicates that the legal basis for chemical castration is the *lex specialist* principle (Arief, 2015). As a result, this needs to be taken more seriously because it's crucial to realize consistency between the general Criminal Code and the special Regulation on Chemical Castration. In Government Regulation Number 70 of 2020 about Chemical Castration, it is stated that those who can be sentenced to Chemical Castration are those who have committed sexual crimes against children with multiple victims, resulting in serious injuries, mental disorders, and infectious diseases, and resulting in the victim's death. Nevertheless, the guidelines do not provide sufficient context for understanding the role of castration sanctions in Indonesia's legal system.

Based on this perspective, it is clear that the main crime is a sanction that the panel of judges must impose on the criminals. Meanwhile, the further penalty is an optional sentence that can be imposed by the panel of judges. The majority of the time, the panel of judges does not impose additional punishments. In this instance, the application of chemical castration falls outside the main criminal scope. Consequently, chemical castration is an additional punishment for those who commit sexual crimes against minors. After looking closer, the application of chemical castration constitutes an additional crime that takes the defendant of some rights. The objective of denying someone particular privileges is not to destroy their reputation, but to discourage them from repeating the same criminal behavior in the future. The rights that are diminished by chemical castration are reproductive rights and rights associated with the perpetrator's sexual behavior. Chemical castration can only be used in conjunction with another criminal act, as it is illegal to use the procedure on its own. After the primary criminal term has been served by those who commit sexual crimes against children, chemical castration may be performed. The question of the human rights of offenders of sexual crimes against minors can be set aside to ensure the security and safety of future generations of the nation.

2. Implementation of Government Regulation Number 70 of 2020

In Indonesia, regulations regarding chemical castration sanctions are specifically regulated in Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration Measures, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children (Government Regulation (PP) of Chemical Castration). The historical basis for the establishment of this Chemical Castration Government Regulation is as an extension of Article 81A paragraph (4) and Article 82A paragraph (3) of Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection becomes Law. Where in the regulation requires a more detailed elaboration and explanation regarding the procedure for implementing the application of chemical castration to perpetrators of sexual crimes against children. Hence, the presence of this Chemical Castration regulation in criminal law itself has a meaning to reinforce the implementation of castration. As such, there is no legal vacuum that has the potential to

interfere with the procedure for imposing additional sanctions on perpetrators of sexual crimes against children.

Government Regulation (PP) of Chemical Castration explicitly explains that to be given castration sanctions, criminals must meet the requirements as stated in article 1 of Government Regulation (PP) of Chemical Castration. Article 1 paragraph 2 states that the perpetrators of sexual crimes against children have fulfilled the following elements: 1. The number of victims is more than one person, meaning that the actions that have been carried out by the perpetrators of crimes have resulted in many victims; 2. The victims have suffered enormous losses. such as serious injury, loss of reproductive function and experiencing transmission of venereal disease; and 3. The perpetrator's actions resulted in the victim's death. Based on these regulations, it can be seen that chemical castration is used for perpetrators of sexual crimes that have caused a lot of harm to the future of Indonesian children. Because a clinical examination is conducted before castration is performed to determine feasibility, chemical castration practiced in Indonesia still pays regard to human rights. The goal of the clinical examination is to confirm that the perpetrator is capable and appropriate for castration. The castration will be delayed for a maximum of six months if the assessment finds that the offender is not deserving of chemical castration.

Based on the provisions of Article 9 letter C of Chemical Castration regulation which states that castration is carried out after the perpetrator has finished serving the main sentence. This becomes the basis if castration cannot be carried out while the perpetrators of the crime are still serving their sentence in the correctional institution. This indicates that the principle of applying chemical castration cannot conflict with the provisions of Article 10 of the Criminal Code. Where the additional punishment is only an additional punishment that can be included in the main crime. Thus, in its implementation, it cannot stand alone or be independent (Soesilo, 1995). Chemical castration measures will only be implemented for a period of five years. Afterward, the reproductive organs belonging to the perpetrators of the crime will become normal again. There is no definite explanation regarding the time limit for the chemical castration. The problem that is feared is that after two years of chemical castration, perpetrators of sexual crimes against children will return to their actions. This is because the lust and sexual desire of the perpetrators of the crime has returned to normal. Therefore, the effectiveness of the application of chemical castration to reduce cases of sexual crimes against children is questionable. Whereas the orientation of chemical castration aims to provide a deterrent effect on perpetrators as well as a firm warning for anyone who has the intention to commit a similar crime. This is what then becomes a consideration so that the community can respect and protect the safety and honor of children. Hence, the deterrent effect of the criminal sanction should be able to function as a form of punishment as well as a social reprimand for evil deeds that have been committed by criminals (Fuady, 2016).

The Application of Chemical Castration to Sexual Crimes Against Children Based on the Purpose of Sentencing in Indonesia

In essence, there are no laws that specifically refer to the idea of punishment that Indonesia has embraced. In fact, sentencing typically employs a combination of theories. As such, in addition to delivering punishment that deters offenders, the objective of punishment in Indonesia is also expected to be able to provide instruction for criminals. Therefore, the measures contained in Indonesian positive law must be geared toward assisting criminals in becoming better people. In this light, some consider chemical castration incompatible with the goal of punishment. This is because chemical castration is believed to solely focus on the element of retaliation that deters criminals, without regard for the education process and elevating the perpetrators' consciousness. As a result, offenders will be incapable of recognizing their mistakes and may repeat their activities in the future. This is worsened by the fact that there is no real proof that castration reduces the number of sexual offenses committed against children in nations that practice it. Chemical castration only has a brief deterrent effect, which is the primary issue. In order to make it simple for the perpetrators to commit their crimes again after a two-year

period of castration. In addition, the cause of sexual crimes against children is a complicated issue for which a suitable remedy must be discovered. The effectiveness of chemical castration in preventing an increase in sexual crimes against children remains questionable.

Based on this perspective, it can be seen if the sanctions desired by Indonesia's criminal objectives do not reuse the concept of retaliation. Moreover, the imposition of chemical castration is carried out after the perpetrators of the crime have completed the main criminal sanctions. This has the potential to give rise to the idea that criminals get double sentences. Therefore, to be able to carry out criminal law reform, a comprehensive approach is needed to formulate policies that are in accordance with Indonesia's criminal objectives (Wahyuni, 2016). The conception purpose of modern punishment must be able to reach the turmoil and problems that arise in society and are required to be able to provide solutions. Accordingly, law enforcement officers will find it easier to prevent crimes that occur in the community. So that punishment can function as a tool to achieve mutual benefit. All these aspects seek to maintain a balance for victims, perpetrators, and the community.

1. The Relevance of the Application of Chemical Castration to Criminalization in Indonesia Based on Article 6 letter an of Government Regulation (PP) of Chemical Castration

It is stated that the application of chemical castration is carried out through clinical stages, where the team in charge of carrying out castration is a medical team who are experts in their fields along with psychiatry. Thus, the implementation of castration has been carried out based on proper scientific procedures. This is done as an effort to continue to respect the human rights of perpetrators of sexual crimes against children. Although chemical castration is considered by some to be a punitive measure that violates human rights, in fact, the acts that have been committed by the perpetrators against the victim are even more inhumane. The consequences caused by the crime of the perpetrator are very fatal for the victim, not infrequently the victim who is still a child experiences a sense of trauma to serious injuries that lead to death. In addition, the application of chemical castration to perpetrators is not permanent and only lasts for two years. In other words, after going through a chemical castration period of two years, criminals can use their reproductive organs normally. When compared with the poor condition of the victim, of course, the punishment is still not comparable. Therefore, using humanitarian reasons and the perpetrators' human rights as a shield to reject the application of chemical castration is an excuse that is difficult to accept. Considering that sexual crimes against children are crimes that are inhumane and have the potential to become a national disaster, the perpetrators of these crimes should receive punishments commensurate with their actions.

In line with Indonesia's sentencing objectives, which require that criminals in addition to receiving punishments that have a deterrent effect, they must also receive education in order to become better individuals. In this case, Article 18 of the Government Regulation (PP) of Chemical Castration states that there are rehabilitation efforts for perpetrators of sexual crimes against children who are sentenced to chemical castration. The forms of rehabilitation are divided into three, namely, medical rehabilitation, social rehabilitation and psychiatric rehabilitation. Based on this, it can be seen that the use of chemical castration has been balanced by efforts to rehabilitate the perpetrators, both medically and socially, which will be directly supervised by the government.

This implies that in the regulations regarding chemical castration, apart from being oriented towards providing a deterrent effect, and also seeks to provide criminals with access to rehabilitation in the community. This rehabilitation aims to enable criminals to be able to restart their lives in the community. Based on these considerations, it is only natural that chemical castration is still carried out against perpetrators of sexual crimes against children.

2. Factors Inhibiting the Implementation of Chemical Castration in Indonesia

Government Regulation Number 70 of 2020 concerning Chemical Castration is a new positive law in Indonesia. Previously, the application of chemical castration used the legal basis of Law Number 17 of 2016 to provide additional penalties for perpetrators of sexual crimes. Whereas the Chemical Castration government regulation regulates matters of a more specific nature, namely related to the problem of the procedure for administering chemical castration. In its application, chemical castration gets a lot of rejection. The arguments regarding the rejection lead to human rights, as well as the effectiveness of the chemical castration concept itself. Human rights observers consider that the rights of the perpetrators are no less important than the rights of people in general (Fuady & Faudy, 2015). This is done to prevent offenders of sexual crimes against children from being subjected to arbitrary punishments. If examined further, consciously the application of chemical castration will indeed reduce or even override some of the rights owned by the perpetrators. However, this is done in order to uphold justice on the side of the victim. In other words, castration efforts become a solution so that the perpetrator can understand and realize the suffering experienced by the victim. In essence, it aims to make criminals able to realize the various mistakes that have been made. Given that the problem of sexual crimes against children has cases that tend to be unsolved.

In this regard, the concept of applying chemical castration is deemed necessary to be improved. Policies regarding the application of chemical castration in Indonesian positive law must be comprehensive. This means that in addition to functioning to give punishment to perpetrators of crimes, it is necessary to develop a rehabilitation center for perpetrators of sexual crimes. In addition, to do prevention, it is necessary to strive for the development of social protection for children. Social protection has an orientation to give more attention to the honor and future of children. If this concept is implemented fully and consistently, the prevention of sexual crimes against children will be more controlled. This is done as a form of evaluation of the concept of chemical castration so far. Considering that solving the problem of sexual crimes only with punishment in the form of chemical castration will only reduce cases without dealing with the root cause of the problem that should be solved. Therefore, to deal with the root causes of cases of sexual crimes against children, a specific and systematic settlement pattern is needed (Dirgantara et al., 2017). In addition, the concept of Chemical Castration that has been applied is only oriented toward punishing criminals. Meanwhile, efforts to recover the victims have been neglected. As a result, the criminal law pertaining to the problem of sanctions must be amended. Instances in which additional criminal consequences in the form of chemical castration are carried out immediately upon the judge's verdict, without waiting for the perpetrator to undergo the primary offense first. This is done to ensure that the government and law enforcement officials pay attention to efforts to restore the victim's rights while the perpetrator is still being held accountable for the main crime.

Conclusion

The controversy about the implementation of a policy of chemical castration for perpetrators of sexual crimes is not only a result of problems that are frequently viewed as contrary to the rights of the perpetrators, but also a result of the perception that chemical castration is an act of retaliation by the government. They believe that the objective of punishment in Indonesia is to not only produce a deterrent impact, but also to educate criminals. This chemical castration focuses solely on creating a deterrent impact, neglecting other aspects such as the process of developing criminals' understanding.

In Government Regulation Number 70 of 2020 concerning Chemical Castration itself, it has been explained that those who can be sentenced to Chemical Castration are perpetrators of sexual crimes against children whose victims are more than one person, resulting in serious injuries, mental disorders, and infectious diseases and resulting in the death of the victim. However, the Government Regulation (PP) of Chemical Castration does not explain in detail the position of castration sanctions in the criminal

system in Indonesia. In addition, the cause of sexual crimes against children is a complex problem that must be found an appropriate solution. The effectiveness of chemical castration is still questionable in preventing the possibility of an increase in sexual crimes against children.

To effectively implement chemical castration as a penalty for offenders of sexual crimes against children that get to the bottom of the problem, it is not sufficient to merely rely on hope. This is due to the fact that sexual offenses against children are not simple issues. Consequently, a unique pattern of problem-solving is required. As a result, changes to the criminal law governing sanctions are necessary. Instances in which additional criminal consequences in the form of chemical castration are carried out immediately upon the judge's verdict, without waiting for the perpetrator to undergo the main crime first.

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