



Castration of Sex Offenders: Indonesian Criminal Law Reform

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ABSTRACT

The rise of cases of sexual violence today makes people become restless. This research is a normative legal research, where in this study the author analyzes various laws and regulations relating to sanctions for chemical castration in the perspective of criminal law. This study also uses various comparisons of theories to answer existing problems relating to criminal law policy in the case of applying chemical castration sanctions. The results show that The increasingly widespread cases of sexual crimes against children that can have a major impact on the child's psychic development. It deserves to be given a severe punishment and appropriate to the perpetrator. The imprisonment sanction that is deemed to be irrelevant and has no deterrent effect can be answered by the punishment of the last choice of child sex offender. Thus, the enforcement of the criminal law of nuisance is reasonable in the technical context of the sentence after a permanent legal court ruling stating the punishment of the left. It aims to create a comfortable environment where children grow and develop and guarantee the future of Indonesian children.

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1. Introduction

Responding to the phenomenon of sexual violence against children¹, the President of Indonesia issued a Government Regulation in Lieu of Law No. 1 of 2016, which was subsequently upgraded to Law namely Law No. 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law No. 1 of 2016 concerning the second

¹ Krismiyarsi, K. (2018). Study of Penal Policy on Chemical Castration Sanction on Child Sexual Crimes Cases in Indonesia. *Indonesian Journal of Criminal Law Studies*, 3(2): 121-132.

Amendment to Law No. 23 of 2002 concerning Child Protection becomes Law. The contents of criminal offenses against perpetrators of criminal acts of sexual violence against children² can be subject to additional criminal sanctions in the form of announcing the identity of the perpetrators, and can be subjected to acts of chemical castration accompanied by rehabilitation and installation of electronic detectors.

The basic consideration for the issuance of this Perppu is to minimize sexual crimes, give a deterrent effect to perpetrators of sexual crimes and prevent any intention for anyone to commit sexual crimes. However, the issuance of this Perppu invites pros and cons of how to implement it, considering that until now there has been no further Government Regulation regulating, especially the Indonesian Medical Association has refused to do chemical castration.

The rise of cases of sexual violence today makes people become restless especially for mothers who have daughters. The story of little boy Angelina who was originally rumored to disappear and eventually found to have been buried in addition to the chicken coop with the condition naked. Known before his death, the poor boy has been subjected to abuse and sexual violence perpetrated by housemaids in the house. Then again the case of rape-busy crowd that afflicts junior high school children in Bengkulu that led to the death of the girl.³

Finally, the exposure of online media cases that provide impressions for pedophilia known as Loly candy.com where there is a lot of content of child sexual violence, especially girls from the age of 2 years to 10 years.⁴ Moreover, members of the media share a video of sexual violence that they even committed themselves to the children and performed not on the same victim but on different children on each video show. It is very ironic, not many victims who report themselves as victims even though it has been ascertained a lot of children who become victims.

It is undeniable that such crimes occur not only in Indonesia but also in many other countries.⁵ The exact number of these crimes is often a dark number. There are several factors that cause it to happen, among others, reluctance to report to the authorities, the pressure from outside parties or may also be due to embarrassment factor because the event can be viewed as a disgrace that should be closed tightly and should not be heard by others. That sexual crimes are not limited as a necessity, sexual crimes are also one of the most complex types of crimes of disclosure. Includes sexual crimes with children as victims. It is reasonable that Indonesia calls its openly and massive state calling itself in an emergency sexual crime against a child. This fact clearly shook public awareness of how high the risks are threatening Indonesian children. It also

² Mardiyah, N. Q. (2017). 'Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual', *Jurnal Konstitusi*, Vol. 14, No. 1: 71-92

³ CNN Indonesia. "Terdakwa Kasus Angeline, Margriet Dihukum Seumur Hidup" available online at: <https://www.cnnindonesia.com/nasional/20160229142054-12-114271/terdakwa-kasus-angeline-margriet-dihukum-seumur-hidup> Accessed on 30 March 2018

⁴ Deutsche Welle (DW). <https://www.dw.com/id/loly-candy-di-facebook-terungkap-pedofil-masih-jadi-ancaman/a-37985355> Accessed on 30 March 2018

⁵ Ingratubun, F., Karim, M.S., Arie, M., and Shakharina, I.K. (2018). Responsive Legal Protection Against Child Abduction: A Human Rights Perspective, *Journal of Law, Policy and Globalization*, Vol. 71: 135-141

shows the failure of society and government in fulfilling the obligation to protect children. Repeated cases of child abuse are a signal of the nation's great weakness in protecting the future assets.

On the other hand, the medical experts declare chemistry must be done repeatedly. In addition, it can also cause side effects. Cases in Western Australia show that libido suppressant drugs can lead to osteoporosis, heart disease, and breast augmentation. Observing the enforcement of criminal law in other countries. Meanwhile, Indonesia seems to consider applying for pedophiles. However, castration is still a debate for human rights activists. The process of sterilization makes the rights of perpetrators of sexual crimes have offspring erased.

In contrast to the pro castrasy, the reaction to reject the punishment of the left is due to the view that corporal punishment is contrary to human rights. Counter Reaction, among others, was submitted by the civil society network of victims' protection consisting of 33 NGOs and advocacy institutions rejecting the punishment of the noble for violating human rights.⁶ This kind of punishment does not necessarily reduce the threat of sexual violence in children, because consequently the perpetrators will commit violence in other forms such as hitting or hurting by using other objects.

In fact, giving punishment to the perpetrator does not guarantee psychological recovery to victims of sexual violence. Both asked the government to review further related to the application of the punishment of the left and ask the government to replace it with the application of a deterrent effect that is accompanied by the restoration of the perpetrators and victims of sexual crimes.

2. Method

This research is a normative legal research, where in this study the author analyzes various laws and regulations relating to sanctions for chemical castration in the perspective of criminal law. This study also uses various comparisons of theories to answer existing problems relating to criminal law policy in the case of applying chemical castration sanctions.

3. Chemical Castration from Criminal Law and Human Rights: Comparative Studies

There are even some perpetrators of sexual violence to children released. This indicates a weak legal condition for the protection of victims of sexual violence.⁷ This punishment effort is intended to provide a deterrent effect to the perpetrators of sexual crimes in children and to protect the future of children from sexual predators. As a matter of study it turns out that the application of corporal punishment has already

⁶ Kamal, M., Santosa, R., & Djatmika, D. (2017). The Imbalance Attitude of the Journalists in Six Chemical Castration Texts: An SFLCritical Discourse Analysis. *Jurnal Humaniora*, 29(3), 256-264.

⁷ Wijkman, M., Bijleveld, C., & Hendriks, J. (2011). Female sex offenders: Specialists, generalists and once-only offenders. *Journal of sexual aggression*, 17(1), 34-45.

been done in several countries in the world.⁸ Countries that have enforced the punishment for the sex offenders, among others :

3.1. United States

The state of California is the first US state to impose chemical penalties for child sex offenders. However, the regulation has been in effect since 2010. The application of the law in Poland was done by force against perpetrators who have been found guilty by the court.hment in California has been in effect since 1996. In Florida, punishment has been in effect since 1997. Other states are Georgia, Iowa, Louisiana, Montana, Oregon, Texas and Wisconsin. In some of these states, chemical punishment can be done depending on the court's decision, for the first crime. However, for the second criminal act, the penalty is forcibly imposed on the perpetrators of sexual crimes.

3.2. Poland

The Polish government passed a regulation governing the punishment of a child against child sex offenses since 2 Poland The Polish government passed a regulation governing the punishment of a child against child sex offenses since 2009. However, the regulation has been in effect since 2010. The application of the law in Poland was done by force against perpetrators who have been found guilty by the court.009. However, the regulation has been in effect since 2010. The application of the law in Poland was done by force against perpetrators who have been found guilty by the court.

3.3. Moldova

Beginning in mid-2012, the Moldovan government begins to enforce the punishment of candor for child sex offenders. But this punishment has been criticized by Amnesty International and is called inhuman treatment. Amnesty International calls that every crime must be punished in a manner consistent with the Universal Declaration of Human Rights.

3.4. Estonia

The Estonian government began to impose chemical penalties on sex offenders beginning in 2012. The then Estonian Minister of Justice, Christian Michal, stated that chemical penalties would be given through treatment to suppress libido of sex offenders. Estonian punishment is primarily imposed on pedophiles (Perpetrators of sexual deviation against small children).

3.5. Israel

It is not known for certain since the Israeli government ship enforced the punishment of the elderly for child sex offenders. But local media Haaretz briefed two child sex offenders who agreed to undergo chemical chemistry punishment in May 2009.

⁸ D.C. Fokkema (Ed) Introduction to Dutch Law For Foreign Lawyers, Nederland: Kluwer Deventer.

The punishment was enforced voluntarily, so there must be a willingness from the perpetrator to run it. At that time, the two actors who are brothers willing to undergo treatment to suppress their libido in order to prevent them commit the same crime in the future. Before serving the sentence, both actors have served prison sentences first.

3.6. Argentina

Argentina punishment has just been imposed in a province of Mendoza since 2010. Given the rules passed by decree by the provincial government, any perpetrators of sexual crimes or rapists in Mendoza are subject to chemical penalties. Punishment in Mendoza Province is voluntary in order not to violate Argentine international or constitutional law. A total of 11 convicted cases of rape in Mendoza agreed to undergo chemical penalties. In addition, by willingly serving the punishment of the noble, the perpetrators of sexual crimes are also rewarded for the relief of the prison sentences they must undergo.

3.7. Australia

Chemical penalties in Australia are applicable in some states, including Western Australia, Queensland, and Victoria. In 2010, a child perpetrators of repeatedly enslaved sexual offenses in North Queensland were again on trial for feeling and kissing underage girls. This man has been undergoing chemical punishment before, by voluntarily receiving treatment to reduce his libido. Then in 2012, two sex offenders in Victoria agreed to undergo chemical sentence, through treatment to reduce their libido.

3.8. South Korea

South Korea became the first country in Asia to perform chemical punishment in July 2011 for perpetrators of sexual offenses against children under the age of 16. Local advocates argue that the use of chemical law is an effective and scientific method of reducing sexual crimes. The punishment was later expanded to include child sex offenders under 19. This penalty is set in a ministerial meeting that endorsed the revision of the draft law.

3.9. Russia

In October 2011, the Russian parliament passed a legal rule allowing courts to order chemical harassment on sex offenders. The punishment threatens sex offenders who attack children under the age of 14. Under applicable rules, chemical punishment orders will be made by a forensic psychiatrist appointed directly by the court in charge of such sexual offenses. The prevailing sentence in Russia shall be exercised by any perpetrator convicted by the court.

3.10. Jerman

Germany is the last European country to allow the execution of Orchiectomy or surgery to take the testicles against the perpetrators of sexual crimes. Germany belongs

to a country that has rules on punishment. Beginning in 2012, the EU Anti-Torture Committee urged Germany to end the execution of the sentence. In a written reply, the German government said that the practice was "under review." Germany enforces this punishment with strict procedures: the prisoner was previously notified of the impact and possible side effects. And most importantly: the convicted person is willing to undergo chemical wandering.

As a result, even if it has applied the punishment of the noble, in the implementation there is a difference. As in countries such as the Netherlands, Germany, France, Belgium, Sweden, Denmark, and the Czech Republic, sex offenders may choose punishment for him, whether jailed for long or castrated. Castration is done chemically. That is, for castration actions, the perpetrators may voluntarily ask for sterilization in order to reduce unnatural lib. The results of research in the Scandinavian countries say the application of nuts reduces the rate of repeat of sexual crimes by the same perpetrator to 35%. In Asia alone, the first chemical castration of sex offenders was introduced in South Korea four years ago. Under the legal umbrella that prevails there, sex crimes against children under the age of 16 can be punished chemically.

In 2013, the South Korean government even revised the rules to impose such actions on offenders whose victims are under 19 years old. Using hormonal drugs is generally aimed at reducing the criminal acts of the recidivists. Historically, the effort was first performed in 1944. Charles Scott and Trent Holmberg, in his article in the *Journal of the American Academy of Psychiatry and the Law*, in September 1996, mentioned that California became the first US state to permit the application of a criminal to criminals. Certain sex who has completed his prison term. Despite the controversial legislation, eight other states in the United States adopted a similar practice for probation or parole probation. Out of a total of nine federal states in the US, four of them allow only chemical hazards. The other four states, such as California, Florida, Iowa, and Louisiana, allow chemical and surgical (voluntary) castrations. Castration has been used in some other countries as a punishment for sex offenders. According to research by Busto and Harlow, legal punishment of castrate or castration has been done in California, Florida, Iowa, Louisiana, and Texas. In Europe, in some cases in Germany and in many cases in the Czech Republic there are more than 50 cases of sexual crimes punishable by cultivation or castration in 2001-2006.

4. Assessing the Castration of Sex Offenders in Indonesian Criminal Law Reform

The government's efforts in making breakthroughs in the form of severe punishment in the form of punishment to the perpetrators of sexual crimes against children turned out to cause a new problem. However, the government plan is related to the punishment of the perpetrators of crimes against children received a different response from the community, especially among human rights watchers. The punishment of the left is a category of human rights violations. Because the law contains physical and

psychological torture. However, the argument is that the government's act of publishing castration punishment is not entirely wrong given that in human rights itself has developed.⁹ The development of human rights as a discipline occurs due to several things.

The study of human rights is interdisciplinary. Human rights are included in the study of theorists or concepts of democracy, state law and constitutionalism. Even in law, human rights are found in all disciplines of law, such as constitutional law, state administration law, criminal law, civil law and others. Second, the widespread object of human rights review is limited to individual and political rights or civil and political rights. Then, the definition of human rights increases including social rights, subsistence rights, social rights, such as the rights of traditional societies. Third, the relationship between human rights and the state (government).

Human rights were originally defined as mere obligations of the state to respect or uphold everything related to human rights. The state in this case the government is prohibited from interfering with human rights, except in relation to public order. The State shall ensure that there is no violation of human rights. The state no longer serves as a guardian of human rights but as a human rights organizer. Fourth, the development of human rights sources. Originally considered only as a natural rights but in reality, it is difficult to determine the scope of rights that are natural because the scope of human rights is increasing based on the basis of scientific theories as well as based on the science of law. This means that the Government has the right to issue provisions as a consequence of the enforcement of public order and includes the enforcement of human rights.¹⁰

The enforcement of criminal provisions in the criminal justice system in Indonesia is interesting to be studied, especially from the legal aspect of the law. Political law in question is covering the implementation of legal policy that includes:

1. The development of a law with the intention of the making of law and the renewal of legal materials deemed incompatible with the necessary legal requirements.
2. Implementation of existing legal provisions, especially the affirmation of the functions of the institution and the guidance of law enforcement members.

The development of the law is basically directed towards the realization of legal structures, substances and cultures that are in accordance with local needs and in line with the objectives of national law. These two aspects should be oriented towards the ideals of the rule of law based on the principles of democracy and social justice in a society of the Indonesian nation. So that legal politics should be related to the criminal law in the level of legal idealita because it is related to expectations or expectations and ideals of national law. However, in the reality level there is a gap because the fact that

⁹ Sharfudin, 2009, "Pelaksanaan Politik Hukum Pidana dalam Penegakan Hukum Pidana di Indonesia", *Jurnal Hukum Pro Justitia*, Vol. 27 No.2.

¹⁰ Ratkoceri, V. (2017). Chemical Castration of Child Molesters-Right or Wrong?!. *European Journal of Social Science Education and Research*, 4(5), 70-76.

the publication of the criminal law of kebiri is not in line with the law itself, because it is loaded with controversy.

To assess whether or not proper castration is applied, there are nine studies of consideration for the punishment:

1. Could it be punishment for rape?

The answer may be that it is a severe punishment that deserves to be imposed on a rapist so that they do not repeat his actions and become an example for others not to do a similar act. So, the punishment of the other than being *Ultimum Remidium* also has a deterrence effect for others.

2. Left against pedophiles is not a solution

Sexual offenses against children do not merely occur because of the libido drive of the offender, but involve other factors such as the desire to dominate or control other weaker parties. Sexual acts by means of the genital apparatus are not the only impediments of the offender's desires. Asexually, people with pedophilia can excite irregularities to harass and injure children. Child sexual abuse is independent and is influenced entirely by the instigator's libido drive. Poverty, social imbalances, and permissive attitudes in society allow this form of violence to occur.

3. Castrate pedophiles should first understand before making rules

Ronny Noor gave a choice, that chemistry is much better than a physical thing. Here are the five benefits. First, the perpetrator of a sexually conscious crime is still possible to perform sexual activity after experiencing psychotherapy. Secondly, the perpetrators of sexual crimes can voluntarily request castrated chemistry. Third, chemistry is more realistic compared to the physical and electronic bracelets. Fourth, in contrast to physical castration, the influence of antilibido drugs may cease when drug administration in chemical kebiri is stopped. Fifth, of course, people will feel relieved and more secure if they know that the perpetrator of sexual crimes have been castrated chemistry.

4. Then, Why Cultivate Vital Tool?

Prison sentence (Shutterstock) Muhammad Armand just wonders: "Where are the friends who concentrate on mental health matters?". Not suing, just wondering, because the problematic sexual behavior is distorted, clear about mental health and behavior problems, and about psychology, as well as about psychiatry! If drugs have BNN, why pedophilia cases that have passed the humanitarian threshold, not drafted the formation of the Prevention and Countermeasures of Pedophilia Patients? The author - until now - does not yet have accurate information about the existence of a body that deals with this public health problem. And in each case of sexual abuse by a pedophile, the author considers it a "fake sex". This is a strange word, is not it? False

because children are forced to serve lust craze from pedophiles. An 'operation' of strange sexual intercourse. Far from being reasonable, and threatening the victim's reproductive organs.

5. Elevate Fences to Protect Children from Pedophiles

Our mission is to prevent. As soon as Angra Bramagara reminded. In addition to the impact of castration, which means pascakejadian, there is also a statement from several parties related to prakarsa, that is why someone malakukan sex crimes. They assume that someone is doing it because of a psychiatric illness or a deviant sexual fantasy. This is where it really needs to be healed. Everyone may agree that there is something that deviates from the child sex offender. To treat it, we must know first who-who are the people who deviate it. However, from where we know that a person has a sexual deviation if he does not tell himself to others. Or maybe we wait for an incident, so we know that someone has a deviant behavior. In fact, our mission wants to prevent the incident happened? Like a house, then the punishment is the fence.

However, the provisions of the criminal law have been stipulated by the government as a substitute of the previous provisions of Child Protection. Criminal punishment or termed Kastrasi does not exist in the punishment system in Indonesia. In Indonesia under Article 10 of the new Criminal Code known 4 provisions of criminal punishment in the form of capital punishment, imprisonment, imprisonment and fine, there is also another type of criminal punishment according to Law No. 20 of 1946 on criminal cover. In the literature per Indonesian Law itself, the provisions on sexual offenses against children are stipulated in article 290 of the Criminal Code with a maximum imprisonment of seven years. Furthermore, special provisions that accommodate the interests of children are stipulated in Law No. 23 of

2002 on the protection of children, with a maximum imprisonment of fifteen years, and a minimum of three years and a maximum fine of Rp. 300,000.00 (three hundred million rupiah). Implementation of these provisions is in line with developments that occur in the community, where crimes of sexual violence have been considered still occur and should be enforced the law. According to Cicero (106-43 BC), "yam societies yam ius" meaning where there is society where the law is ". This shows that the law can not be separated from the community. The law is in charge of serving society and not vice versa, but it is better to mention that the law is made up of the soul and character of society. But the fact the law is slower to follow the development of society. The situation gave rise to the adagium "law is not society" (law is not society). Clearly this is a basic problem of forming a law that is applying local provisions in the substance of the law that was not acceptable to the public. The characteristic of the legal structure also becomes the problem that makes the weakness in the development of law as well as the legal culture in the community.

5. Conclusion

The government's efforts to enforce punishment in the penal system should be appreciated even though the implementation level is on paper only. It is none other than the form of government efforts to prevent the widespread action of crimes of sexual violence against children with maximum punishment in the form of criminal law. To be more useful, law enforcement officers as law enforcement agencies should properly apply and implement what has become government policy. Actual action by applying the provisions in the settlement of child sexual violence cases at the stage of investigation, prosecution and verdict is the right action that can be done by law enforcement. On the other hand, the government should immediately realize the implementation of the punishment procedure so that it is clear how the procedures for the implementation of the punishment, who the executor is, how the financing is and the most important is the recovery effort for the victims who need special handling.

The increasingly widespread cases of sexual crimes against children that can have a major impact on the child's psychic development. It deserves to be given a severe punishment and appropriate to the perpetrator. The imprisonment sanction that is deemed to be irrelevant and has no deterrent effect can be answered by the punishment of the last choice of child sex offender. Thus the enforcement of the criminal law of nuisance is reasonable in the technical context of the sentence after a permanent legal court ruling stating the punishment of the left. It aims to create a comfortable environment where children grow and develop and guarantee the future of Indonesian children.

References

- Ingratubun, F., Karim, M.S., Arie, M., and Shakharina, I.K. (2018). Responsive Legal Protection Against Child Abduction: A Human Rights Perspective, *Journal of Law, Policy and Globalization*, Vol. 71: 135-141
- Kamal, M., Santosa, R., & Djatmika, D. (2017). The Imbalance Attitude of the Journalists in Six Chemical Castration Texts: An SFLCritical Discourse Analysis. *Jurnal Humaniora*, 29(3), 256-264.
- Krismiarsi, K. (2018). Study of Penal Policy on Chemical Castration Sanction on Child Sexual Crimes Cases in Indonesia. *Indonesian Journal of Criminal Law Studies*, 3(2): 121-132.
- Mardiya, N. Q. (2017). 'Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual', *Jurnal Konstitusi*, Vol. 14, No. 1: 71-92
- Ratkoceri, V. (2017). Chemical Castration of Child Molesters—Right or Wrong?!. *European Journal of Social Science Education and Research*, 4(5), 70-76.
- Sharfudin, 2009, "Pelaksanaan Politik Hukum Pidana dalam Penegakan Hukum Pidana di Indonesia", *Jurnal Hukum Pro Justitia*, Vol. 27 No.2.
- Wijkman, M., Bijleveld, C., & Hendriks, J. (2011). Female sex offenders: Specialists, generalists and once-only offenders. *Journal of sexual aggression*, 17(1), 34-45.

CNN Indonesia. "Terdakwa Kasus Angeline, Margriet Dihukum Seumur Hidup" available online at: <https://www.cnnindonesia.com/nasional/20160229142054-12-114271/terdakwa-kasus-angeline-margriet-dihukum-seumur-hidup> Accessed on 30 March 2018

Deutsche Welle (DW). <https://www.dw.com/id/loly-candy-di-facebook-terungkap-pedofil-masih-jadi-ancaman/a-37985355> Accessed on 30 March 2018

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