

# Additional Sanction Model For Chemical Castration Against Pedophiles In Indonesia

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## Abstract

Every year, the rate of sexual violence rises sharply. One example is that Indonesia has sexual violence in the 2020 National Women's National Commission Annual Record 4,898 women are victims of violence. Previously, the Government had ratified Article 81A paragraph (4) and Article 82 paragraph (3) of Law Number 17 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection. The article describes additional sanctions for chemical castration given to perpetrators. This was reaffirmed by Government Regulation Number 70 of 2020 on Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. However, the problem is, the additional criminal sanctions model for chemical castration against pedophile perpetrators in Indonesia has not been implemented.

**Keywords:** Additional Sanction;Chemical Castration;Pedophiles.

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## I. Introduction

The problem of sexual violence in Indonesia, especially against women and children, needs more strict and intensive attention. This is because there is a tendency towards women and child victims who are often neglected by competent institutions in the criminal justice system, which should provide adequate attention and protection based on the law (Mien Rukmini, 1). The increase is not only in terms of quantity or number of cases but also in terms of quality. And what is even more tragic is that the perpetrators who are more dominant from the surrounding environment are located, among others, in their own homes, schools, educational institutions, and social circles (Ivo Noviana, 14).

Sexual deviation or sexual abnormality or sexual perversion, or sexual harassment is a form of sexual urge and satisfaction obtained or unusually shown to sexual objects. It is called unique because sexual deviant behavior is followed by sexual fantasies oriented towards achieving orgasm through relationships outside of heterosexual sexual relations of the same sex or from underage sex partners or sexual relations that are normatively contrary to recognized norms of sexual behavior in general. Sex perversion is sexual behavior that differs from expected standards, and the law specifically prohibits it in most countries; exhibitionism, fetishism, and rape are examples of such deviations (C.P. Chaplin, 458).

Victims who report are often considered to have consensual intercourse. Situations like this are often faced by victims who are still young women and young women. Thereports that are given are often stopped in the middle of the road because the evidence provided is lacking. The cost of the post-mortem and DNA tests, often used as the primary evidence of rape, is still often borne by the victim. The problems of infrastructure, budget, and human resources in all forms of services for victims to seek justice and recovery continue to surface. Victims also find it challenging to get protection, including in the form of a safe house, let alone recovery support.

Regarding sentencing, George P. Fletcher argues in his writings entitled *Punishment and Responsibility*, "The nations of punishment and responsibility display a tight conceptual connection. Punishment reveals the point of holding someone responsible for a wrongful act, and responsibility enables to make sense of punishment" (Blackwell Publishing, 504). And Immanuel Kant also thinks that "once this guilt is determined, Kant does not deny that something useful can be drawn from the punishment." A 20-year-old man who raped nine girls in Mojokerto became the first to be sentenced to chemical castration in Indonesia. However, the sentence was threatened that it could not be carried out because it collided with several rules and medical ethics codes.

This act is a heinous act because, in essence, the child cannot protect himself from various kinds of actions that cause mental, physical, and social losses in the field of life: the perpetrator, Moh. Aris (20), a welder in Mojokerto, committed the crime after work and raped the victim in a quiet place. Castration is carried out by using medication either through injections or tablets. The goal is to reduce or even cut off sexual desire and make a person unable to perform sexual acts. The number of cases of sexual crimes

against children makes many governments in the world impose castration sentences as a heavier reward for the perpetrators. Many countries use this punishment in cases of serious sexual crimes against minors. The castration process is carried out in two ways: chemical and surgical. Chemical castration itself is done with a series of drug therapy to reduce sex hormones.

As an active response to the protection of children, the panel of judges at the Mojokerto Court ruled that Muh. Aris was guilty of violating Article 76D in conjunction with Article 81 paragraph (2) of Law Number 23 of 2002 and Law Number 35 of 2014 on Child Protection imposed on 2 May 2019. This has shown that the panel of judges at the Mojokerto District Court, apart from giving an essential criminal decision in the form of a prison sentence of 12 (twelve) years and also provide action in the form of chemical castration on the perpetrator as contained in Article 81 paragraph (7) of Law Number 17 of 2016.

Previously, research related to the legal protection of children victims of rape in the criminal justice system (Comparative Study between Indonesia and Malaysia) was conducted by Herry Liyus. This study only thinks about how the protection of children is provided and the criminal justice system adopted by Indonesia and Malaysia as a comparison. Therefore, the researcher aims to update and add to the novelty of the results of this study.

## **II. Reserch Methods**

In this study, the researcher will use a statutory approach, a case approach, a comparative law approach, a conceptual approach, and a historical approach. Through several sources of statutory data, journals, and relevant research results or articles, and coupled with interviews with several sources. The data collection technique will go through several stages: an inventory of laws and regulations, field research, discussions, and documentation studies. The primary data that has been obtained will be analyzed by researchers using the Miles and Huberman method, namely, Data Reduction, Data Presentation, Conclusion Drawing, and Verification.

## **III. Result and Discussion**

### **Model of Sexual Violence Criminal Suspensions in other Countries**

Several countries have implemented laws governing castration, namely Denmark (1929), Sweden (1944), Finland (1970), Norway (1977), Poland (2009), the United States, namely the state of California (1996) and several other states. others, Argentina (2010), Australia, Israel, New Zealand, South Korea (2011), and Russia (2011), Moldov (2012), and Estonia (2012) (NuzulQur'aini Mardiya, 219).The chemical castration procedure was carried out in Russia after the court requested a forensic psychiatrist's report to follow up medical steps against the perpetrator. Then the court will inject a Depo-Provera substance containing synthetic progesterone into the patient's body. By injecting more female hormones into the male body, it will decrease sexual desire. After undergoing chemical castration, perpetrators of pedophilia crimes will serve a prison sentence. They can only apply for parole after serving 80 percent of the sentence. The castration punishment in force in Russia must be carried out by every offender found guilty by the Court.

In South Korea, the government only uses the chemical castration method if health experts examine that the perpetrators of sexual crimes are likely to repeat their actions. The chemical castration procedure will be carried out after a psychiatrist's diagnosis is made, then the prosecutor's office will carry out the castration process.In all countries that apply the punishment of castration, rapists who are given a heavier sentence (castration) continue to serve a corporal penaltyby applicable laws.

Although several European countries mentioned above have included articles of punishment or acts of castration in their criminal law, the procedural law governing the mechanism of these articles has difficulty, because before being carried out, a diagnosis must be carried out, because not all perpetrators must be castrated, but must be checked and diagnosed more health and medical implications. The criminal code in European countries requires a minimum age for the application of physical or chemical castration punishment; theperiodnecessary to undergo this procedure ranges from 14-21 years where the perpetrator who will experience the system may not be forced to undergo it or given a choice if not to undergo the castration procedure. Serve a longer prison sentence. California was the first US state to impose chemical castration on perpetrators of sexual crimes against children. Castration in California has been in effect

since 1996. Meanwhile, in Florida, castration has been in effect since 1997. Other states include Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin.

In some of these states, chemical castration can be carried out, depending on the court's decision, for the first felony. However, castration is forcibly imposed on perpetrators of sexual crimes for the second crime. United States states such as Louisiana and Iowa have adopted castration as treatment and not punishment. In the United States itself, there has been a long debate about this castration since 1980, even far in the previous era. Injecting chemical liquids to child sex offenders in the form of medroxyprogesterone acetate (MPA) is believed to reduce testosterone levels which have implications for decreased sexual desire. However, giving MPA to child sex offenders was rejected by The Food and Drug Administration; the reason put forward by the FDA is to reduce this sexual desire, then child sex offenders must be injected with chemical castration at a dose of 500 milligrams and given every week for a certain period.

It is resulting in impotent. According to this institution, it is unnecessary to make child sex offenders helpless; this MPA injection can disrupt reproductive organ function in perpetrators. Besides that, it will also cause more severe problems that are difficult to predict as the implications of this MPA injection. The addition of chemical castration is also not supported by sufficient, comprehensive data regarding the effectiveness of preventing sexual violence, including reducing recidivism or repeated acts of sexual violence by the same perpetrator. The data also show that as a way to reduce recidivism of perpetrators of sexual violence, chemical castration is effective when this act is part of a treatment program voluntarily followed by people who have problems controlling libidinal desires and is followed by inherent psychological assistance.

#### **Additional Sanction Model for Chemical Castration Against Pedophiles in Indonesia**

The term criminal is defined as a criminal sanction, but it is also interpreted through other terms such as punishment, punishment, sentencing, imposing sentences, giving criminal and criminal penalties (Mahrus Ali, 185). Criminal sanctions are a causal punishment because it is the case. The effect is the punishment; the person affected will receive sanctions in the form of imprisonment or other laws from parties who have the duty and authority to give sentence. Criminal sanctions are a type of sad sanctions that

are threatened or imposed on acts or perpetrators of criminal acts or criminal acts that can interfere with or endanger legal interests.

The definition of castration, according to the Big Indonesian Dictionary, is the removal of the testicular glands that are sterile, so they do not produce semen or sperm (Kementerian Pendidikan dan Kebudayaan Republik Indonesia, 2021). At the same time, castration punishment is a system of legal rules (discipline) in the form of heavier punishment for perpetrators of sexual crimes, especially against children as victims. With the consideration and various reasons, the application of castration as an additional crime is considered to reduce the sexuality of perpetrators of crimes against children through genetic cutting or by injecting drugs in the form of chemical substances (Philipus M. Hadjon, 19). Castration, or castration in medical language is also called gonadectomy, is a process of cutting the genitals by surgically physically removing the genitals permanently to reduce or even eliminate the intake of the hormone testosterone contained in humans.

The use of the term punishment derived from the Dutch word "straf" in criminal law is better known as "sanctions," or by the word "criminal" The elements and characteristics of a criminal as stated by Mahrus Ali are as follows (Mahrus Ali, 186):

1. The punishment is essentially an imposition of unpleasant suffering;
2. The punishment is given intentionally by the competent authorities;
3. Penalties are imposed on a person who commits a crime as stated in the law;
4. Crime is a rebuke of the State against someone for violating the law.

Regulations related to castration are contained in Article 81A paragraph (4) and Article 82A paragraph (3) of Law Number 17 of 2016 on Stipulation of Government Regulation instead of Law (Perppu) Number 1 of 2016 on Second Amendment to Law Number 23 2002 on Child Protection. And at the end of 2020, President Joko Widodo ratified Government Regulation Number 70 of 2020 on Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity Perpetrators of Sexual Violence against Children. Cyproterone acetate is commonly used in castration processes, which is widely used for chemical castration throughout Europe. And also, medroxyprogesterone acetate is one of the essential ingredients of drugs used in America. By injecting the antiandrogen drug,

which can suppress the function of the testosterone hormone. Which lowers the level of testosterone, the male hormone responsible for the onset of libido.

The concept of additional punishment for chemical castration that applies in Indonesia is carried out after the perpetrator has completed the major crime that has been determined. Other criminal sanctions for chemical castration will be given 2 (two) years after the perpetrator has served the main sentence and imposed for a maximum of 2 (two) years based on the judge's decision. Suppose the perpetrator is sentenced to chemical castration in proving his crime. In that case, testimony from an expert is required to provide information about the perpetrator's background until he commits sexual violence against children (Messy Rachel Mariana Hutapea, 29).

At the conceptual level, castration or castration in its development includes surgical castration (surgical castration) or known in medical terms orchiectomy and castration (chemical castration). According to the Medical Dictionary, surgical castration (oophorectomy) stops sex hormone production. Meanwhile, chemical castration is a procedure where medications are administered to reduce testosterone levels. Both forms of castration or castration are essentially medical procedures, both surgically and using chemicals to stop or reduce the function of male (testes) and female (ovaries) organs in producing sexual hormones (RusmilawatiWindari& Azmi Syahputra, 251).

In the development of the medical world, there are two types of chemical castration or castration which can be seen from the types of chemical drugs used to reduce pathological sexual behavior of perpetrators of sexual violence, namely the use of medroxyprogesterone acetate and cyproterone acetate to reduce sexual fantasies and sexual urges. This drug is widely used in the United States, Canada, and some European countries and the use of luteinizing hormone-releasing hormone (LHRH) such as leuprolide acetate and goserelin, which function to control the circulation of the hormone testosterone to the lowest level. The use of LHRH is currently considered to have a more practical effect than other types of medicine.

"Sexual violence against children is currently included in the serious case category, which must have serious checks and balances sanctions," said M. Irfan Syahputra as the Larantuka District Court Chief Judge. He continued that when he saw the decision if he was fixated on the Code of Medical Ethics as the executor, it was necessary to harmonize the code of ethics as a binding rule or not. So, it was reaffirmed regarding the

additional criminal sanctions regulations for chemical castration and applying the principle of the rule of law Article 1 paragraph 3, in which enforcement of the law is a decision.

With a significant expenditure to carry out the castration process and not contradict medical ethics as an executor. Researchers have a novelty that applying additional sanctions for perpetrators of sexual violence against children in Indonesia can be replaced with stoning sanctions where Indonesia has a majority Muslim population. This was previously allowed by scholars from the Hanafi school of thought. Suppose the perpetrator of a pedophile commits sexual orientation to a child of a different sex from himself, for example. In that case, the perpetrator is a man and saves pedophilia to a girl; then the law is qiyas with Zina. If he is married, it includes Zina Mukhsan; if he is not married, it includes Zina GhairuMukhsan. With details, the punishment for the perpetrators is 100 lashes or stoning.

#### **IV. Conclusion**

It can be concluded that Indonesia is currently still facing problems related to the execution of castration, especially human resources, which serve as executors. However, it is hoped that this can be done soon so that a graph of an increase or decrease in crimes of sexual violence against children can be seen. If the additional criminal sanction of chemical castration cannot be used as an option by the convict, it would be better for Indonesia to be able to change the type of additional criminal sanction that does not cost a lot of money but creates a deterrent effect on the perpetrators, namely whipping or stoning.

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