

# Chemical Castration Punishment: An International Human Rights Law Perspective

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## Abstract

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*This research aims to find out the international legal instruments in the case of chemical castration and from the perspective of punishment and health. This research is a normative juridical research using conceptual method. Data funds are used primenr, secondary and tertiary. This research focuses on chemical castration from the perspective of international human rights and health impacts. The result of this research is the implementation of chemical castration in Indonesia and abroad needs to be reviewed from a human rights perspective whether there are rights of the perpetrators that are violated because the legal action of chemical castration is a torture and inhumane punishment so that there are many negative stigmas and legalization of violations of human rights. In addition, there are health rights that are violated by the defendants.*

**Keywords:** *Castration, Chemical, Human Rights.*

## A. INTRODUCTION

One form of crime that disturbs the community is the crime of sexual harassment. The crime of sexual harassment is still rampant in society, this is indicated by the large number of news articles that appear about sexual harassment and the victims can be anyone and anywhere. data in 2023 complaints through online media dominated specifically in child cases reaching 87.9%. (KPAI data bank, 2023)

In Article 81 paragraph (7) of Law Number 17 Year 2016, the government has legitimized chemical castration as an additional punishment for perpetrators of sexual violence. Chemical castration sanctions received rejection from various parties such

as Komnas HAM, the Indonesian Medical Association (IDI) and others. IDI refused to be the executor due to several considerations, namely the effectiveness of chemical castration and the undesirable side effects of chemical castration, the possibility of psychiatric problems that cause sexual crimes and the opportunity for offenders to commit more extreme crimes (Soetedjo, 2018).

The first Chemical Castration Punishment in Indonesia began with an incident that occurred in Mojokerto. The Mojokerto District Court handed down a sentence of chemical castration for the crime of sexual violence committed by Muhammad Aris against a minor. In addition to chemical castration, he was also sentenced to 12 years imprisonment and a fine of Rp100 million in lieu of six months imprisonment. The defendant was found to have committed sexual crimes against nine minors. The addition of criminal sanctions in the form of chemical castration has drawn pros and cons from various perspectives (Sri Juliati, 2022). Looking at the negative effects, chemical castration is considered a form of torture and degrades human dignity in the sense that chemical castration sanctions or punishments are not in accordance with human rights. In addition, chemical castration sanctions are only oriented towards retaliation, where criminals must be punished in accordance with their actions without seeing any consequences arising from the sanctions. The provision of criminal sanctions does not merely provide a deterrent effect but must provide benefits and justice to the perpetrator so that after serving the sentence the perpetrator can be accepted in society and improve the perpetrator.

A person who gets criminal sanctions is still treated in accordance with the rights as a human being as in human rights inherent from birth. Protection of human rights in Indonesia is clearly regulated in the 1945 Constitution and Law Number 39 of 1999

concerning Human Rights which prohibits torture against people. Article 28G paragraph (2) of the 1945 Constitution: "Every person has the right to be free from torture or degrading treatment and the right to obtain political asylum from another country". Article 28B paragraph (1) of the 1945 Constitution: "Every person has the right to form a family and continue offspring through legal marriage"

Article 28I paragraph (1) of the 1945 Constitution: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances". The chemical castration punishment is also considered to violate Article 33 paragraph (1) of Law Number 39/1999 on Human Rights. "Everyone has the right to be free from torture, punishment or treatment that is cruel, inhumane, degrading to his human dignity."

However, there are also examples of cases of chemical castration punishment that are not considered to violate human rights because they are considered to violate human rights because from the beginning the perpetrators themselves have violated the human rights of their victims. Heri Wirawan's case as an example, the perpetrator violated the severe human rights of 14 female students, so if studied according to human rights in Indonesia, the punishment must also be given fairly to the perpetrator because of the damage caused by his violation if it is based on the law. The case of harassment is a serious crime that violates human rights, traumatizes the victims and their families and disturbs the peace in the community (Dinar Sugiana, 2022) Seen from the point of view of human rights itself intersects with the obligation to respect the human rights of others.

Furthermore, how is the instrument of the application of chemical castration in European countries? national application of chemical castration punishment such as Poland (2010), Moldova (2012), Estonia (2012), Germany (1969) with physical castration, Czech Republic (2001). Israel was the first Middle Eastern country to implement castration in 2009. So in this case there are two references for countries that have implemented castration punishment, first, establishing this punishment as a national punishment, second, establishing this punishment voluntarily from the offender so as not to violate international human rights law (Andreas A., 2021).

Through this paper, the author will analyze chemical castration in the perspective of International Human Rights. Is it in accordance with human rights and realizes a dignified and appropriate justice or not. The purpose of this research is to analyze chemical castration sanctions in the perspective of International Human Rights.

In this study the author focuses on the rules of international law relating to chemical castration in terms of Human Rights perspective, the author examines with the formulation of the problem as follows 1) How is chemical castration in human rights and criminal perspective in Indonesia 2) How Chemical Castration in the perspective of International Human Rights.

## **B. RESEARCH METHODS**

The method in this research is normative-judicial by examining and analyzing library materials or secondary data to be developed based on the law. The approach method used in this research is conceptual approach and statute approach.

## C. RESULTS AND DISCUSSION

### 1. Provisions in Indonesia

In Indonesia, the imposition of chemical castration is classified as an additional punishment when viewed in article 10 (ten) of the Criminal Code. The following are the types of sentences imposed by judges based on Article 10 of the Criminal Code, namely

#### 1. Principal Punishment

- a. Death penalty
- b. Imprisonment
- c. Confinement
- d. Fines

#### 2. Additional Penalty

- a. Deprivation of certain rights
- b. Forfeiture of certain goods
- c. Announcement of judge's decision

When examined, chemical castration sanctions are included in additional punishment, namely point (1) revocation of certain rights. However, this is not in line with the rights that can be revoked by the judge in deciding a case. The following are certain rights that can be revoked through a judge's decision, namely the rights contained in Article 35 which reads:

- 1. The rights of convicted persons which may be deprived by judicial verdict in the cases specified in this Code or in other general regulations are:
  - a. The right to hold positions in general or specific positions.
  - b. The right to enter the armed forces.
  - c. The right to vote and to be elected in elections held under general rules.

- d. The right to become a legal advisor or administrator by court order, the right to become a guardian, supervisor, guardian, over someone who is not their own child.
- e. The right to exercise paternal authority, guardianship or conservatorship over one's own children.
- f. The right to engage in certain livelihoods.

The application of chemical castration is stated in Law No. 17/2016 on the Stipulation of Government Regulation in Lieu of Law No. 1/2016 on the Second Amendment to Law No. 23/2002 on Child Protection which was passed into law on November 9, 2016.

The changes made in Law Number 17 Year 2016 are as follows:

Provisions of Article 81:

1. Any person who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah);
2. The criminal provisions as referred to in paragraph (1) shall also apply to any person who intentionally commits deceit, a series of lies, or induces a Child to have sexual intercourse with him/her or with another person;
3. In the event that the criminal offense as referred to in paragraph (1) is committed by parents, guardians, people who have a family relationship, child caregivers, educators, education personnel, officials who handle child protection, or is committed by more than one person jointly, the punishment shall be increased by 1/3 (one third) of the punishment as referred to in paragraph (1);

4. In addition to the perpetrators as referred to in paragraph (3), the addition of 1/3 (one third) of the punishment is also imposed on perpetrators who have been convicted for committing a criminal offense as referred to in Article 76D;
5. In the event that the criminal offense as referred to in Article 76D causes more than 1 (one) victim, results in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years;
6. In addition to the punishment as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcement of the perpetrator's identity;
7. The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of chemical castration and installation of electronic detection devices;
8. The measures as referred to in paragraph (7) shall be decided together with the principal punishment and shall include the period of implementation of the measures;
9. Additional punishment and measures are excluded for juvenile offenders.

In addition, between Article 81 and Article 82, 1 (one) article is inserted, namely Article 81A which reads as follows:

1. Measures as referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 (two) years and shall be implemented after the convict has served the main punishment;

2. The implementation of the measures referred to in paragraph (1) shall be periodically supervised by the ministries that organize government affairs in the fields of law, social affairs, and health;

3. The implementation of chemical castration is accompanied by rehabilitation;

4. Further provisions regarding the procedures for implementing measures and rehabilitation shall be regulated by Government Regulation.

## 2. Objectives and Sanctions in the perspective of the purpose of punishment

Sanctions for people who are proven to have committed a criminal offense must pay attention to the purpose of imposing punishment. According to Sudarto, in the face of criminalization there are things that must be considered, including the use of criminal law to pay attention to the objectives of national development, namely to create a just and prosperous society that is evenly distributed materially and spiritually based on Pancasila. Conversely, does chemical castration not realize a just society based on Pancasila and human rights? In fact, chemical castration sanctions are only oriented towards retaliation as the purpose of this sanction. Like the motto in Indonesia *Hutang pati, nyaur pati, utang lara, nyaur lara*, which means the murderer must be killed, the persecutor must be persecuted. According to this theory "retaliation" (*vergelding*) by many people is put forward as a reason for punishing a crime. (Prodjodikoro, 2003).

The imposition of sanctions pays attention to the goal of correcting the perpetrator and the perpetrator can be accepted in society even though he has previously committed actions that harm society. One of the theories of punishment is the Relative theory, a crime does not absolutely have to be followed by a punishment. For this reason, it is not enough to have a punishment, but the need and benefits of a punishment for society or for the criminal himself must be questioned. Not only in the

past, but also in the future. Therefore, there must be a further goal than just imposing punishment. Relative theory pays attention to efforts by imposing punishment to improve the criminal to become a good person who will no longer commit crimes (Prodjodikoro, 2003).

The relative theory looks for the basis of criminal law in organizing the order of society and its consequences, namely the goal of preventing crime. This is what makes a punishment more effective. The provision of chemical castration sanctions actually makes the perpetrator feel ashamed and difficult to return to society, and the community is also afraid because it builds a stigma that the perpetrator is a criminal who needs to be shunned because he has received severe sanctions so that he is no longer afraid of committing the same act because it only considers the actions of the perpetrator in the past. This builds public distrust that someone who has served a sentence will change.

Apart from the rejection of IDI as the executor as the author mentioned in the introduction, other negative effects are in the form of premature aging of the body, reducing bone density so that the risk of porous bones or osteoporosis increases, reducing muscle mass which increases the chance of the body accumulating fat, and then increasing the risk of heart and blood vessel disease (Taringan: 2019.40). the way the execution of chemical castration sanctions looks ordinary because it is done by injection but the effects caused are really serious, the negative effects experienced by people subjected to chemical castration sanctions make the perpetrator feel tortured slowly so that this sanction seems cruel and sadistic.

Because of the side effects that arise, chemical castration can also be categorized as cruel, inhumane, and/or degrading human dignity if the punishment causes: (Fuady)

1. Causing physical suffering
2. Causing mental anguish
3. International Legal Instruments and the Right to Health

- a. Universal Declaration of Human Rights (UDHR) Article 25

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing and health care and necessary social services, and is entitled to security in the event of unemployment, sickness, disability, widowhood, old age or other circumstances beyond his control. "Mothers and children have the right to special care and assistance. All children, whether born within or outside marriage, shall receive equal social protection."

- b. Convention on the Rights of the Child (Children's Convention, or CRC) Article 24

"The State recognizes the right of the child to enjoy the best standard of health in health and services in the treatment of illness & health rehabilitation. The State ensures that no rights are deprived in particular to access to such health services".

- c. International Covenant on Economic, Social and Cultural Right (ICESCR) Article 9 and Verse 12 Paragraph (1)

"The states parties to the present covenant recognize the right of everyone to social security, including social insurance." "States parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical health and mental health."

- d. International Covenant on Civil and Political Rights 58 (ICCPR) Article 6 Verse (1) and Article 7

"Every human being is entitled to the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right to life." "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected to medical or scientific experimentation without his or her freely given consent."

In implementing chemical castration, the Indonesian government has made a report to the Office of the High Commissioner for Human Rights as a form of Indonesia's obligation to ratify the UDHR, ICCPR and CAT. There are rights and obligations as manifestations of human rights principles formulated in various (international) legal instruments that place human rights as a set of normative rights that must be implemented and guaranteed. In principle, in human rights law, the state c.q. the government has a position as a duty bearer and individuals residing in its jurisdiction as rights holders. The obligations assumed by the state are the obligation to respect, the obligation to fulfill, and the obligation to protect human rights for its citizens (Manfred Noak, 2002). The international obligation of every state to respect, promote, fulfill, protect and uphold human rights is not merely based on the obligation of a law, but also based on morality to uphold human dignity. This kind of state obligation is actually a fundamental obligation for every actor in international relations both on a national and international scale (Kartini Sekartadji, 2003).

On the other hand, the process of chemical castration of the offender is contrary to the offender's right to health because chemical castration has many negative effects. The injection of anti-testosterone hormones works by suppressing the production and activity of testosterone so that it does not lead to libido as long as the person is under the influence of the drug. Chemical castration by giving injections of special drugs,

with various methods having different physical and psychological side effects. Castration can indeed reduce the sexual drive in sex offenders, however, if castration is done by removing the testicles, it will permanently remove the organ. Castration can also lead to the possibility of the offender becoming more aggressive due to psychological and social factors, negative feelings, such as hurt, anger, and resentment, have been formed since the offender feels victimized.

#### **D. CLOSING**

There are national and international legal instruments that accommodate chemical castration, but in the perspective of national and international law, there are many rejections, especially from a medical or health perspective because it violates human rights and has a lot of negative impacts that cause side effects both health, physical, and psychological. Thus, the obligation to uphold human dignity is more important than applying chemical castration which has a negative impact.

The author's suggestion is the need for legal instruments to regulate the executor if chemical castration is indeed implemented, and if it has not been implemented to pay attention to the victims who are deprived of human rights.

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