

Castration for Sexual Violence Perpetrators: Controversy and Reformation Based on Human Rights

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Abstract

The rate of sexual violence against children in Indonesia is high, and increases every year. However, the law enforcement process involves both advantages and disadvantages, with respect to the implementation of castration sanctions in Indonesia. These relate to human rights from both the perspective of the perpetrator, and the victim. In addition, the lack of clear legal provisions regarding procedures for implementing castration sanctions also creates obstacles to their implementation. The research addresses the following questions: How does the controversy surrounding castration sanctions relate to human rights? How can the legal provisions for castration sanctions in Indonesia be reformulated to comply with human rights principles? This research employs a normative research method supported by empirical data. The results of the research show that the implementation of chemical castration has advantages and disadvantages, including the idea that chemical castration violates human rights. Another controversy concerns the refusal of the Indonesian Doctors Association (IDI) to become the executor of castration because the implementation of chemical castration in the form of criminal sanctions is contrary to the doctor's code of ethics. With this controversy, it is necessary to reformulate the implementation of chemical castration sanctions in Indonesia, which will be offered in this research based on the implementation of castration penalties in other countries.

Keywords: *Chemical Castration, Human Rights, Sexual Violence*

I. INTRODUCTION

Since children are a nation's most valuable resource, they are essential to its future. This is because children's quality is now determined by how they are treated.¹ However, currently, children's futures are threatened by perpetrators of sexual violence. In 2021, the majority of cases involving children and the law were cases in which children were victims of sexual violence.² Komnas Perempuan noted that in the last thirteen years, cases of sexual violence amounted to almost a quarter of all cases of violence, or 93,960 cases of all reported cases of violence against women (400,939). This indicates that 20 women are sexually abused every day. Documentation from CATAHU, including the National Commission for Women's annual records and assistance institutions for female victims, is the source of this data. The National Commission on Violence Against Women draws on information from the Joint Fact-Finding Team (TGPF) for the May 1998 Riots and the Timor Leste Reception, Truth and Reconciliation Commission (CAVR) to examine experiences of violence against women in Aceh's post-tsunami refugee camps, armed conflict and natural resource conflicts in Poso, the 1965 Tragedy, Ahmadiyah, migration, Papua, Ruteng, and the implementation of regional autonomy.³

Sexual violence resembles an iceberg: the media only highlights a handful of sexual violence cases that resulted in the death of the victim, but a closer look reveals many cases of sexual violence of various types. Most victims are reluctant to report the incidents they experience, which could be due to fear of the stigma that victims often receive. If they dare to report or they are trapped in a certain situation, system or environment will be makes them silent and unable to do anything.⁴ The types of violence experienced by children in Indonesia include physical violence, emotional violence and sexual violence.⁵ The number of cases of violence experienced by children, including physical, psychological and sexual violence in 2020, is depicted in Figure 1 below:⁶

1 D W Ningsih, "TINDAK PIDANA YANG DILAKUKAN OLEH ANAK" (2017) 5:1 Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik 56-63.

2 "LBH Jakarta: Anak-anak masih rentan jadi korban kekerasan seksual - ANTARA News", online: <<https://www.antaraneews.com/berita/2284918/lbh-jakarta-anak-anak-masih-rentan-jadi-korban-kekerasan-seksual>>.

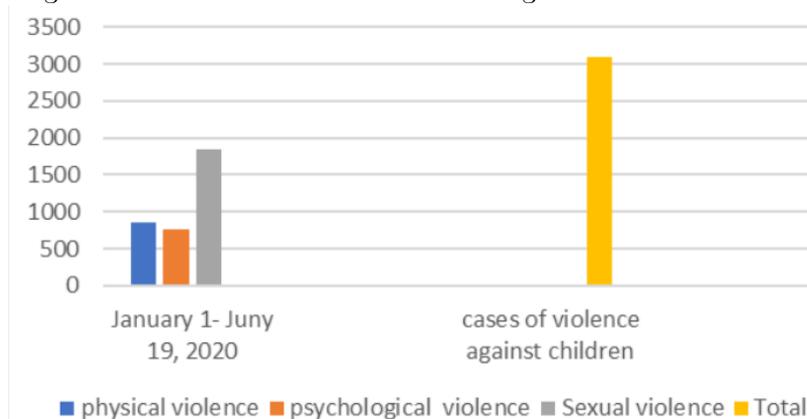
3 Komnas Perempuan, *Temuan Kajian Lapangan Di Bandung, Yogyakarta dan Balikpapan dan Pertemuan Validasi Pengembangan Policy Brief SRHR di Makassar, Bali dan Jakarta* (Jakarta: Komnas Perempuan, 2015).

4 Sahadi Humaedi Utami Zahirah Noviani P, Rifdah Arifah K, Cecep, "MENGATASI DAN MENCEGAH TINDAK KEKERASAN SEKSUAL PADA PEREMPUAN DENGAN PELATIHAN ASERTIF" (2018) 3:1 Jurnal Penelitian & PPM 22-56.

5 Fransiska Novita Eleanora, *Buku Ajar Hukum Perlindungan Anak dan Perempuan* (Malang: Madza Media, 2021) 9.

6 Kemenppa, "Angka Kekerasan Terhadap Anak Tinggi Di Masa Pandemi Kemen Pppa Sosialisasikan Protokol Perlindungan Anak", (2023), <<https://www.kemenppa.go.id/index.php/page/read/29/2738/angka-kekerasan-terhadap-anak-tinggi-di-masa-pandemi-kemen-pppa-sosialisasikan-protokol-perlindungan-anak>>.

Figure 1. Number of cases of violence against children in 2020



Sources: <https://www.kemenppa.go.id/index.php/page/read/29/2738/angka-kekerasan-terhadap-anak-tinggi-di-masa-pandemi-kemen-pppa-sosialisasikan-protokol-perlindungan-anak>

Figure 1 shows that more than 1500 children experienced sexual violence in 2020, while more than 500 children experienced psychological and physical violence. So that cases of violence against children in 2020 totaled more than 3000 cases offline. According to data from the Indonesian Child Protection Commission (KPAI), there were 18 instances of sexual violence in educational institutions in 2021, resulting in 207 victims, 126 of whom were girls and 71 of whom were boys, ages 3 to 17. Middle school (or equivalent) students are the most frequent victims (36 percent), followed by elementary school (32 percent), high school (28 percent), and kindergarten (4 percent). Sexual violence in schools has been reported across 17 districts/cities in 8 provinces: West Java, East Java, Central Java, Yogyakarta, West Sumatra, South Sumatra, South Sulawesi and Papua.⁷

The increasing number of immoral cases, including sexual violence or child abuse, reflects the weakness of law enforcement in Indonesia to date. Cases of sexual violence against children can cause anxiety parents of both girls and boys. Problems relating to criminal acts of sexual violence against children arise because the prison sentences imposed on perpetrators do not deter such crimes; in fact, cases of rape and molestation against children continue to increase.⁸

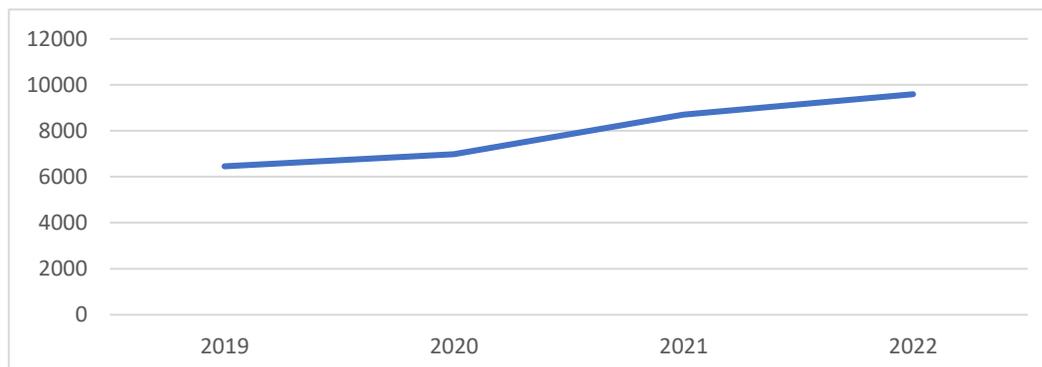
The issue of sexual violence against children is increasingly prevalent and has become a global problem in almost all countries. Cases of sexual violence against children continue to increase over time.⁹ This can be seen in Graph 1, below:

7 Rizki Setyobowo Sangalang, "Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Seksual Dalam Lingkungan Pendidikan", (2022) 7:2 *Jurnal Ilmu Hukum Tambun Bungai* 176 <https://doi.org/10.61394/jihtb.v7i2.230>.

8 Sri Endah Wahyuningsih, "Perlindungan Hukum terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini" (2016) 3:2 *Jurnal Pembaharuan Hukum* 173 <http://dx.doi.org/10.26532/jph.v3i2.1407>

9 Ivo Noviana, "Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya Child Sexual Abuse: Impact And Hendling", (2015) 1:1 *Sosio Informa* 146, <https://doi.org/10.33007/inf.v1i1.87>.

Graph 1. Data on Sexual Violence in Children



Source: Processed by the author

Data on cases of sexual violence against children continued to rise between 2019 and 2022, as shown in Graph 1 above. More specifically, there were 6,456 recorded cases of sexual abuse against children in 2019, 6,980 in 2020, 8,703 in 2021, and 9,588 in 2022.¹⁰ These statistics demonstrate how concerning sexual violence incidents currently in Indonesia.

Sexual abuse against minors has been reported by a number of Indonesian news outlets as early as 2023. In a case in South Sumedang District a 13-year-old disadvantaged youth, sexually assaulted a 5-year-old.¹¹ There are many instances in which a member of the child's own family has sexually abused them. In one such case, a father in Bandung raped his two daughters for five years, from 2017 to 2023.¹² Similar incidents have also occurred in Lampung Province, when police detained two fathers for raping their own biological children in the districts of Pringsewu and Tulang Bawang Barat. In another case, a young man in South Lampung was taken into custody for raping his mother and younger sister.¹³ Sexual abuse against minors is a critical issue in Indonesia, as evidenced by these numerous examples. Therefore, it is imperative that Indonesia engage in a conversation about sexual abuse against minors.

Sexual violence against children is not the same as other types of violence. This is because the immediate and long-term effects of sexual abuse on children are far

10 Irfan Maulana, "Kekerasan Seksual Anak Meningkat Tiap Tahun, 2019-2022 Ada 31.725 Kasus", *news.okezone.com* (27 January 2023), online: <<https://nasional.okezone.com/read/2023/01/27/337/2754380/kekerasan-seksual-anak-meningkat-tiap-tahun-2019-2022-ada-31-725-kasus>>

11 Kiki Andriana, "Sudah Ada 5 Kasus Kekerasan Terhadap Perempuan dan Anak di Sumedang", *jabar.tribunnews.com* (24 January 2023), online: <<https://jabar.tribunnews.com/2023/01/24/awal-tahun-2023-sudah-ada-5-kasus-kekerasan-terhadap-perempuan-dan-anak-di-sumedang>>

12 Avepasco, "Kekerasan Seksual Terhadap Anak Dilakukan oleh Ayah Tiri di Bandung" (2023), online: *pasjabar.com* <<https://pasjabar.com/2023/01/24/kekerasan-seksual-terhadap-anak-dilakukan-oleh-ayah-tiri-di-bandung>>.

13 Vina Octavia, "Tiga Kasus Kekerasan Seksual di Dalam Keluarga Terbongkar di Lampung" (2023), online: *kompas.id* <<https://www.kompas.id/baca/nusantara/2023/01/06/tiga-kasus-kekerasan-seksual-di-dalam-keluarga-terbongkar-di-lampung>>.

more severe. The government issued Law Number 17 of 2016 about the provisions of Perpu No. 1 of 2016 on Protection of Children as a way to protect children from the rise in sexual assault against minors. The harshness of penalty for those who commit sexual abuse against children is regulated by this law, with violators facing the possibility of chemical castration along with rehabilitation.¹⁴

Chemical castration is a new form of punishment in Indonesia which has advantages and disadvantages. In addition to reducing the number of sexual offenses against children, the criminalization of castration is anticipated to have a deterrent and preventive effect on offenders. On the other hand, the act of chemical castration is regarded as violating the 1945 Constitution, namely the rights to be free from torture and treatment that diminishes one's human dignity.¹⁵

When viewed from a human rights perspective, chemical castration sanctions are considered to deprive a citizen of their human rights. In Indonesia, these sanctions apply to individuals convicted of sexual crimes against children, which are protected under Law No. 39 of 1999.¹⁶ Human rights are inherent in every individual, as they are connected to the realities of human existence. Accordingly, the Indonesian Human Rights Commission considers punishing sexual offenders with chemical castration to be improper. The Commission considers chemical castration to be a cruel and inhumane punishment which is not in line with Indonesia's human rights commitments or the constitution. Because chemical castration is a kind of torture and degrading treatment, the Indonesia Human Rights Commission views it as a violation of human rights.¹⁷

However, do perpetrators of sexual crimes also consider the human rights of the children who are harmed in the process? Chemical castration should be carried out in accordance with the medical code of ethics, while also adhering to legal obligations and standards.¹⁸ Some discussions on human rights violations concentrate on sexual assault offenders who are subjected to castration punishment, often disregarding victims of sexual assault. Perpetrators of sexual assault have also infringed upon the victim's fundamental rights, including the right to personal protection and the freedom from torture or other cruel treatment that diminishes human dignity.¹⁹

14 Laurensius Arliman S, "Undang-Undang Nomor 17 Tahun 2016 Tentang Penetapanperppu 1 Tahun 2016 Sebagai Wujud Perlindungan Anakditinjau Dari Perspektif Hukum Tata Negara" (2017) 1:2 Jurnal Hukum Positum 165-173.

15 Sofian Syaiful Rizal, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Anak dalam Perspektif HAM" (2021) 1/1 Legal Studies Journal 57.

16 *Government Regulation No. 70 of 2020 on Procedures for Implementing Chemical Castration, Installing Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children.*

17 Nur Hafizal Hasanah & Eko Sopyono, "Kebijakan Hukum Pidana Sanksi Kebiri Kimia dalam Perspektif HAM dan Hukum Pidana Indonesia" (2018) 7:3 Jurnal Magister Hukum Udayana (Udayana Master Law Journal) 305-315.

18 Komisi Nasional Hak Asasi Manusia, "Mengupas Peraturan PP Kebiri Kimia" (2024), online: *kommasham.go.id* <<https://www.kommasham.go.id/index.php/news/2021/2/1/1660/mengupas-peraturan-pp-kebiri-kimia>>.

19 A Muhammad Asrum, "HAK ASASI MANUSIA DALAM KERANGKA CITA NEGARA HUKUM (Catatan Perjuangan Di Mahkamah Konstitusi)" (2016) 4/1 Jurnal Cita Hukum, Fakultas Syariah dan Hukum UIN Jakarta 135.

Regardless of the human rights context, castration is still considered necessary as a preventive measure to reduce the number of cases of sexual violence against children. However, the implementation of castration as a criminal penalty, as regulated in Law No. 17 of 2016 has not established a system and procedures for carrying out castration until recently in regulations derived from this law, both in the form of Government Regulations (PP) and Ministerial Regulations (Permen). This situation hampers judges in implementing these rules optimally when handling and deciding cases.²⁰ Thus, it can be seen that there is an overlap related to human rights regulations, which prohibit types of punishment in the form of torture such as chemical castration, with the existence of regulations on the implementation of chemical castration. This overlap has generated controversy in Indonesia.

In addition, the debate surrounding the implementing of castration as a human right, and the absence of procedural legal regulations regarding the implementation of castration sanctions, demonstrates a need for legal reform related to the implementation of castration penalties in Indonesia. This reform can be informed through a comparative analysis of criminal law in other countries that implement castration as punishment. Countries with laws regulating castration include Poland, the United States, Australia, South Korea, and Russia.²¹

This research seeks to compare the advantages and disadvantages of implementing castration sanctions and human rights in Indonesia. The main aim of this research is to identify legal reforms in the implementation of castration sanctions that still prioritize human rights through a comparison of national criminal laws. Based on the review of the background above, the main issues addressed in this research are: How is the castration sanction controversy related to human rights? How can the legal provisions on castration sanctions in Indonesia be reformulated to comply with human-rights standards? The research method employed is normative, supported by empirical data, with data processing and analysis depending on the type of data. This research uses a statutory approach, a comparative approach, and a case approach.²²

II. CONTROVERSY OVER CHEMICAL CASTRATION SANCTIONS IN RELATION TO HUMAN RIGHTS

Every human being has rights that cannot be violated. Human rights are deeply embedded in human nature and life. Therefore, the interaction between individuals and society is at the center of the human rights debate.²³ Criminal penalties have significant impacts on human rights, as they involve restrictions on individual liberty.

20 Ali Dahwir & Barhamudin Barhamudin, "Penerapan Sanksi Kebiri Kimia Terhadap Pelaku Tindak Pidana Seksual Terhadap Anak" (2021) 19:3 Jurnal Solusi 302-320.

21 Nuzul Qur'aini Mardiya, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual" (2017) 14/1 Jurnal Konstitusi 230.

22 Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

23 Leni Safitri Oka Ardiya Putra, Anita Trisiana, "PERLINDUNGAN HAMDALAM MENCIPTAKAN KESEJAHTERAAN MASYARAKAT" (2021) 10/1 Jurnal Global Citizen Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan 1111.

Detention and imprisonment, as forms of criminal punishment, can pose challenges to the right to liberty and protection from torture or inhumane treatment. Sentences that are inappropriate or violate human rights standards can compromise an individual's dignity, threaten their right to privacy, and deprive them of the right to fair treatment during the judicial process.²⁴ Therefore, a review of the application of criminal sanctions in a country is necessary in order to realize the enforcement of human rights.

Violations were found of the principle of "equal standing before the law", prohibition against torture, and violations of fair trials. Other violations include the experiences of vulnerable groups when undergoing searches, examinations without reasonable grounds, and experiences of physical violence during the legal process. Further, vulnerable groups experience coercion and violence to produce confessions to acts they did not commit. Vulnerable groups also experience a series of other inhumane acts, including forced hair cutting by state officials and sexual violence during the legal process.²⁵ Qanun (legal regulations that apply specifically in the Aceh region, Indonesia) contain provisions that do not guarantee the implementation of human rights, especially for groups that are considered vulnerable. The Qanuns that were enacted do not respect human rights in several aspects and do not serve as an instrument to protect the human rights of vulnerable groups.²⁶ As a result, vulnerable groups are potentially subjected to various types of punishment that are contrary to human rights, including chemical castration.

There are benefits and drawbacks to the new punishment of chemical castration in Indonesia. On the one hand, it is anticipated that the sanction of castration will deter and prevent offenders and lower the number of sexual crimes against children; on the other hand, it is regarded as a violation of human rights as a whole.²⁷ The implementation of castration sanctions is often associated with human rights violations. However, a number of parties support the sanction of castration due to its deterrent effect for perpetrators of sexual violence.

From a human rights perspective, there are arguments for and against castration as a form of punishment for perpetrators of sexual violence against children. Indonesia is one of the countries that has recognized and ratified the 1989 International Convention the Right of The Child.²⁸ Compliance with the convention

24 Soni Rohima Daulay & Tamaulina Br Sembiring, "Implikasi Hukuman Pidana Terhadap Hak Asasi Manusia Sebuah Tinjauan Kritis" (2024) 2 Journal of International multidisciplinary reserch 1.

25 Arsa Ilmi Budiarti, *Laporan Penelitian: Survei Kebutuhan Hukum Bagi Kelompok Rentan 2022* (Jakarta: Indonesia Judicial Research Society, 2022).

26 Zainal Abidin, *Analisis Qanun-Qanun Aceh Berbasis Hak Asasi Manusia* (Jakarta: Demos, 2011).

27 Rizal, *supra* note 15.

28 The International Convention on the Rights of the Child was formed by the United Nations and an international convention that regulates the civil, political, economic, social and cultural rights of children. Countries that ratify this international convention are bound to implement it in accordance with international law. This convention was ratified on November 20, 1989 in New York with currently 150 signatories and 193 party states. Rosmi Darmi, "IMPLEMENTASI KONVENSI HAK ANAK TERKAIT DENGAN PERLINDUNGAN ANAK YANG BERHADAPAN DENGAN PROSES HUKUM" (2016) 16/4 Jurnal Penelitian Hukum DE JURE 440.

is mandatory, which guarantees four rights: survival, protection, development, and participation.²⁹ Indonesia, having ratified the Convention on the Rights of the Child, must ensure that its laws and policies support the convention's provisions. Chemical castration can serve as an effective punishment and preventive measure to protect children. Further, Indonesia has ratified the Convention Against Torture³⁰ through Law No. 5 of 1998, which prohibits cruel, inhuman, or degrading punishment, including castration. Indonesia, as a state party, must comply with this ban. Imposing chemical castration without the perpetrator's free consent would violate obligations under the ICCPR and the Convention Against Torture.

As independent individuals, children still lack full self-control, and therefore require extra protection. Such protection represents legal justice within the rule of law and reflects Pancasila's³¹ principle of social justice through norms that guide Indonesian society and social interactions.³² Child protection reflects justice by ensuring children's rights and obligations. It consists of juridical protection—related to public and civil law—and non-judicial protection, which covers social, health, and education aspects. Chemical castration sanctions are categorized as juridical protection. However, Article 28I (1) of the Indonesian Constitution guarantees the right to life, freedom of thought and religion, and protection from torture, slavery, and unlawful prosecution.³³ These inalienable rights cannot be reduced by anyone, including the state. Upholding them ensures social stability and mutual respect. Chemical castration, with its severe side effects, is regarded as a human rights violation that dehumanizes individuals and amounts to torture.

In addition, at a fundamental level, Article 28B of the 1945 Constitution contains contradictions. While paragraph (1) guarantees the right to family and procreation, it also permits government limitations to protect the rights of others

29 Silvia Fatmah Nurushshobah, "KONVENSI HAK ANAK DAN IMPLEMENTASINYA DI INDONESIA" (2019) 1/2 BIYAN: Jurnal Ilmiah Kebijakan dan Pelayanan Pekerjaan Sosial 126.

30 The Anti-Torture Convention or in official language is the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment or in English it is better known as The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international legal instrument that aims to prevent torture throughout the world. This convention was adopted by the UN General Assembly through resolution 39/46 on 10 December 1984 and came into force on 26 June 1987. Indonesia ratified this convention through Law No. 5 of 1998 on 28 September 1998. Aldo Rico Gerald, "Mekanisme Pengaduan Oleh Committee Against Torture Terkait Tindakan Penyiksaan dan Perlakuan yang Merendahkan Martabat Manusia" (2020) 23:01 JURNAL YUSTIKA: MEDIA HUKUM DAN KEADILAN 36-48.

31 Pancasila is the foundation of the Indonesia and the ideology of the Indonesian nation, consisting of five basic principles: Belief in One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy guided by the wisdom of deliberation and representation, and Social Justice for all Indonesian people. Pancasila embodies noble values that serve as the nation's outlook on life and moral guidelines for national and state life. D S Tiarylla, L U Azhima & Y A Saputri, "Pancasila Sebagai Dasar Negara di Indonesia" (2023) 2:4 Indigenus Knowledge 277-283.

32 Christian Siregar, "PANCASILA, KEADILAN SOSIAL, DAN PERSATUAN INDONESIA" (2014) 5/1. *Humaniora* 109.

33 Saldi Isra, "Peran Mahkamah Konstitusi dalam Penguatan Hak Asasi Manusia Di Indonesia" (2014) 11/3 *Jurnal Konstitusi* 418.

and uphold morality, religion, security, and public order in a democratic society.³⁴ The right to family and procreation is a derogable right, meaning it may be limited in urgent circumstances that threaten the state or its people. Sexual violence, which continues to endanger Indonesian children, is one such threat. Although castration involves medical treatment, perpetrators still see it as punishment. Criminologists argue that sexual crimes stem from power and violence, not sexual desire, so therapy—not chemical castration—is more effective. Psychological treatment addresses underlying issues without the harmful effects and drug dependence caused by castration.

The right to family and procreation may also be limited under the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law No. 12 of 2005. Article 4 authorizes such restrictions during emergencies.³⁵ The emergency of child sexual violence, widely reported in the media, justifies chemical castration for offenders. Such crimes cause serious harm. Article 28B also affirms every child's right to survival, development, and protection from violence and discrimination.³⁶ However, the Human Rights Commission deems chemical castration inappropriate, deeming prison sentences as sufficient, and noting that its effectiveness in reducing violence is unproven. Moreover, castration violates international human rights conventions and constitutes corporal punishment that degrades human dignity, with doubtful deterrent effect.

Sexual crimes are a form of offense that violates human rights. The *Universal Declaration of Human Rights* (UDHR)³⁷ states that all humans are born free and equal in dignity and rights, yet violations persist, often limiting human rights unlawfully. Children are among the most affected groups. Article 5(3) of Law No. 39/1999 affirms that vulnerable groups entitled to protection include children, pregnant women, the elderly, the poor, and the disabled.³⁸ Children's limited understanding makes them vulnerable to sexual crimes, requiring protection from the state, society, and parents, as affirmed in Article 3(2) of the Convention on the Rights of the Child. However, chemical castration as a punitive sanction is outdated, as modern criminal law emphasizes justice over suffering. According to Radbruch, justice—prioritized above benefit and certainty—should guide punishment, aligning

34 Andi Muhammad Asrun, "Hak Asasi Manusia Dalam Kerangka Negara Hukum: Catatan Perjuangan di Mahkamah Konstitusi" (2016) 4:1 *Jurnal Cita Hukum* 133-154.

35 Md Mustakimur Rahman, "Fundamental Rights in Times of Emergency: Aatur Rahman vs Muhibur Rahman Revisited" (2018) 5/1 *Brawijaya Law Journal* 43.

36 Bambang Satriya, "Anak Membutuhkan Penegak Hukum Humanis (Analisis Putusan Perkara Nomor 1/PUU-VIII/2010)" (2011) 8/5 *Jurnal Konstitusi* 650.

37 The Universal Declaration of Human Rights (UDHR) is a human rights document that establishes fundamental human rights to be protected universally and the basis for human rights agreements at the global and regional levels. This document consists of 30 articles outlining the views of the UN General Assembly regarding guaranteeing human rights to all people which was first ratified on December 10 1948. Fardhan Wijaya Kosasi, "DEKLARASI UNIVERSAL HUMAN RIGHT DAN PEMENUHAN HAK ASASI BAGI NARAPIDANA" (2020) 7/4 *JUSTITIA : Jurnal Ilmu Hukum dan Humaniora*, 800.

38 dan Manunggal Kusuma Wardaya Tenang Haryanto, Johannes Suhardjana, A Komari, Muhammad Fauzan, "PENGATURAN TENTANG HAK ASASI MANUSIA BERDASARKAN UNDANG-UNDANG DASAR 1945 SEBELUM DAN SETELAH AMANDEMEN" (2008) 8//2 *Jurnal Dinamika Hukum* 143.

with progressive legal theory that seeks human welfare. Castration, causing more harm than benefit and violating human rights, cannot be considered a just punishment.

Based on the analysis above, this paper argues that chemical castration does not violate human rights either from a regulatory or medical perspective. From a regulatory perspective, the stipulation of chemical castration sanctions does not violate human rights because Indonesia has ratified the Convention on the Rights of the Child, which means Indonesia is bound to provide protection rights to children. The application of chemical castration can be a method of fulfilling this right to protection. Regarding the statement that chemical castration is contrary to human rights as regulated in the ICCPR and the Anti-Torture Convention, this issue can be linked to one of the provisions of the ICCPR, which states that the ICCPR gives the state the authority to limit a person's human rights in necessary or emergency situations. The sexual violence against children that occurs in Indonesia should be considered an emergency situation, given that hundreds of cases of sexual violence against children are reported every year.

Another point of contention is the lack of specificity and clarity in the Indonesian legal framework governing the implementation of chemical castration. This includes identifying the entity responsible for carrying out the procedure and the characteristics of offenders subject to the chemical castration sentence. The Indonesian Doctors Association (IDI) opposes taking on the role of castration executor. This is because doctors in the medical field are not trained to handle the pain and other issues that the chemical castration treatment may cause for prisoners. The role of a doctor is to help individuals recover from illness, alleviate their suffering, and improve their well-being. Practicing physicians are bound by the Code of Medical Ethics and the Doctor's Oath, which states that they should, in theory, respect patient autonomy, do no damage, and act justly. Consequently, physicians who perform castration are deemed to have transgressed both the Code of Medical Ethics and the Doctor's Oath.³⁹ Contrary to the wishes of the government, the IDI, the Honorary Council, and the Medical Code of Ethics have refused to carry out the castration punishment. The Hippocratic Oath's medical ethics principle states that causing someone's death or disability violates the "do no harm" principle.⁴⁰

In providing protection for vulnerable groups who have the potential to become the main targets in chemical castration criminalization, the state must also provide protection to minorities and groups or individuals who are considered politically and legally vulnerable. Groups or individuals are considered vulnerable if the products of legislation or state policies rarely or never include them as subjects of regulation. Affirmative legal policies to protect their vulnerability are also not provided. In fact, according to international human rights norms, one form of state

39 Muhammad Mirza Ibrahim, "Chemical Castration Sanction Against Crimes Of Sexual Violence In Children Reviewing From Criminal Law Aspects" (2022) 3:2 UMPurwokerto Law Review 93-103.

40 Nabain Idrus, Gatot Dwi Hendrowibowo & Kaharudin, "SANKSI HUKUMAN KEBIRI KIMIA DITINJAU DARI PERSPEKTIF HAK ASASI MANUSIA" (2021) 9:12 Jurnal Kertha Semaya 2483-2492.

participation in the context of mainstreaming human rights is the protection of minorities and vulnerable groups so that they are not excluded legally and are not isolated in the social life of society.⁴¹

Members of minority groups are guaranteed human rights protection under the Indonesian Constitution. Their customary rights, and the religion or beliefs embodied in their customs, are acknowledged and honored in Article 18B, paragraph 2. Similarly, they are protected and acknowledged as Indonesian citizens and residents (Article 26). The state is required to protect citizens' fundamental rights as constitutional rights if this citizenship right is recognized (Chapter IX). Articles 28A through J of the Constitution further safeguard the rights of minority groups. Articles 28A, 28C (paragraph 2), 28E (paragraph 2), and 28I (paragraphs 2, 3) all address the defense of minority rights.⁴² Legal protection of the human rights of minority groups in Indonesia are regulated within the framework of the principle of equality before the law and non-discrimination, also stated in Article 3 Paragraph (3) of Law Number 39 of 1999 concerning Human Rights. Meanwhile, Article 27 of the ICCPR, which has been ratified by Law Number 12 of 2005 concerning the Ratification of the 1966 ICCPR, regulates that the rights of the minority group cannot be denied. Meanwhile, Law Number 39 of 1999 does not clearly mention protection for minority groups.⁴³

III. APPLICATION OF CHEMICAL CASTRATION SANCTIONS IN SEVERAL COUNTRIES

As discussed in the previous sub-chapter, the existence of several difficulties related to the implementation of chemical castration sanctions shows that the legal provisions for chemical castration are not supported by adequate legal instruments. In the meantime, children in Indonesia are increasingly experiencing sexual violence. Therefore, it is necessary to reformulate the guidelines for the use of chemical castration sanctions in Indonesia in order to solve a number of issues. So when the public interest and the perpetrator's motives are treated fairly, it will produce different results. As a result, the state's implementation of chemical castration appears necessary in order to safeguard the offenders' human rights against social threats and more brutal reprisals from the relatives of victims. Chemical castration must be used to safeguard society from the harm posed by sexual offenders.⁴⁴

41 Anisatul Hamidah, "Urgensi Prinsip Non-Diskriminasi Dalam Regulasi Untuk Pengarus- Utamaan Kesetaraan Gender" (2021) 51:3 *Jurnal Hukum & Pembangunan* 687-688.

42 KOMNAS HAM, *Upaya Negara Menjamin Hak-Hak Kelompok Minoritas Di Indonesia Sebuah Laporan Awal*, (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2016).

43 Yogi Zul Fadhl, "Kedudukan Kelompok Minoritas dalam Perspektif HAM dan Perlindungan Hukumnya Di Indonesia" (2014) 11:2 *Jurnal Konstitusi* 360-371.

44 Supid Arso Hananto Spto Hermawan, "Contestation of Chemical Castration Punishment for Child Sex Offenders: Case in Indonesia" (2022) 13/2 *Uum Journal of Legal Studies* 32.

The application of chemical castration is undoubtedly justified when considering the "protection" component to maintain normal social interactions as this may also have an impact on increasing community protection. It is imperative that chemical castration be performed professionally and in compliance with medical ethics. The same feeling of regard for human dignity should be observed while performing chemical castration if the goal is for those who commit sexual offenses to also treat others with dignity. In order to implement the additional punishment of chemical castration, the government must establish implementing regulations, develop infrastructure, and provide human resources, health professionals and psychologists who accompany offenders undergoing chemical castration procedures, and allocate a budget to perform chemical castration on a continuous basis. Coordinating across the law, social, and health ministries to monitor court rulings to supervise the application of chemical castration is necessary in order to ensure that the punishment's goals—namely, preventing recurrent acts of sexual violence and deterring offenders—are met.⁴⁵

The controversy over the implementation of the chemical castration law is not unique to Indonesia. In fact, every country that implements the castration penalty has also experienced controversy. However, other countries hold that the state has the right to enforce sanctions for unlawful acts on perpetrators who are declared guilty by a court decision that has permanent legal force.⁴⁶

Indonesia is not the first country in Asia to implement chemical castration. Additionally, several countries in the world have also implemented chemical castration sanctions, including South Korea, the United States, Australia, Russia, and Germany.⁴⁷ In several countries, the implementation of the castration penalty continues to be carried out using various methods, which can be used as a reference for law in Indonesia.⁴⁸ These methods are described below.

1. South Korea

Chemical castration was added to the list of penalties for sexual offenses in South Korea in 2011. Castration is said to have a deterrent effect in South Korea, lowering recidivism rates to 2% to 5%, even for serial pedophilic offenders.⁴⁹ The chemical castration method is only employed by the South Korean government when healthcare providers determine that the sex offender is likely to engage in new crimes. In South Korea, the prosecutor performs the chemical castration process upon a psychiatrist's verification of the diagnosis. A psychiatrist must have clinical expertise in identifying, treating, and preventing mental health issues to be qualified for the task. Therefore, the South Korean government only consults with doctors or qualified medical professionals. Therefore, although law enforcement continues to

45 Mardiya, *supra* note 21.

46 T. Prasetyo, *Kriminalisasi Dalam Hukum Pidana*, Bandung: Nusa Media, 2010, p. 46.

47 Aditia Arief Firmanto, "Kedudukan Pidana Kebiri Kimia dalam Sistem Pemidanaan di Indonesia (Pasca dikeluarkannya Perpu No.1 Tahun 2016)", *Jurnal Hukum Novelty*, 8/1, 2017, p. 13.

48 Supiyati, "Kebijakan Hukum Kebiri Kimia Terhadap Pelaku Kejahataan Seksual Dalam Perspektif Pemidanaan", *Rechtsregel, Jurnal Ilmu Hukum*, 3/2, 2020, P. 254.

49 Joo Yong Lee, Kang Su Cho, "Chemical Castration for Sexual Offenders: Physicians' Views", *J Korean Med Sci*, 28/2, 2013, p. 171-172. doi: 10.3346/jkms.2013.28.2.171

carry out chemical castration, it is not without the diagnosis of a medical professional.⁵⁰

2. United States

Some American states have enacted chemical castration laws for sexual violence. California was the first state to implement a chemical castration law, in 1996. A number of states followed suit, including California, Montana,⁵¹ Iowa,⁵² Wisconsin,⁵³ Louisiana,⁵⁴ Oregon,⁵⁵ and Florida⁵⁶, with some of these states adopting even stricter laws. In California, offenders found guilty of sexually assaulting a victim under the age of thirteen may be subject to chemical castration.⁵⁷ However, Florida, Oregon, and Montana have no age requirements for sexual assault victims, recognizing that it takes more than incarceration to prevent sex offenders from reoffending. Most American states recognize chemical castration as an appropriate way to achieve a reduction in cases of sexual violence.⁵⁸ In an attempt to respond to public opinion by adopting strict measures against sexual violence, legislators in the United States have produced laws that are too numerous and less inclusive in terms of punishment for perpetrators of sexual violence.⁵⁹ A 1952 report from a California legislative subcommittee on sexual crimes stated that 60 people had undergone chemical castration in San Diego County since 1937. Following chemical castration, there was a zero percent sexual recidivism rate.⁶⁰

3. West Australia

In Western Australia, the Director of Public Prosecutions (DPP) may petition the Supreme Court for a continuous detention order or supervision order for sexual violence offenders under the Dangerous Sexual Offenses Act 2006 (DSO Act). The court can order perpetrators of sexual violence to receive a chemical treatment that reduces sexual libido, which is also used in chemical castration. The court issued this order based on reports from two psychiatrists regarding the mental health of perpetrators of sexual violence. The perpetrator may begin receiving medication

50 Ari Purwita Kartika, M. Lutfi Rizal Farid, dan Ihza Rashi Nandira Putri, "Reformulasi Eksekusi Kebiri Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter dan Perlindungan Hukum Bagi Pelaku Pedofilia", *Jurnal Hukum IUS QUIA IUSTUM*, 27/ 2, 2020, p. 355.

51 *Montana Criminal Code of 2007 Articles 45-5-512*.

52 *Iowa Criminal Code of 2003 Articles 903 B.1*.

53 *Wisconsin Criminal Code of 2005 Articles 302*.

54 *Louisiana Criminal Code of 2005 Articles 15, 538*.

55 *Oregon Criminal Code of 2005 Articles 144, 625*.

56 *Florida Criminal Code of 2007 Articles 794*.

57 *California Criminal Code of 2008 Articles 645*.

58 Elizabeth M Tullio, "Chemical Castration for Child Predators: Practical, Effective, and Constitutional" (2009) 13/191 *Chapman Law Review* 207.

59 Samantha Vaillancourt, *Chemical Castration: How A Medical Therapy Became Punishment and the Bioethical Imperative to Return to a Rehabilitative Model For Sex Offenders* University Graduate School Of Arts And Sciences, 2012).

60 Linda E Weinberger, "The Impact of Surgical Castration on Sexual Recidivism Risk Among Sexually Violent Predatory Offenders" (2005) 33:1 *The Journal of the American Academy of Psychiatry and the Law* 20-34.

before being released from prison, and may be released after receiving anti-libido medication.

Anti-libido drug sentencing decrees impose a minimum term of seven years for sexual assault offenders. Under the DSO Act, conviction for a "serious sexual offence" allows the DPP to make such an application. According to Part B of the DSO Act and the Western Australian Criminal Code, a severe sexual offense is defined as one that carries a sentence of seven years or more. The main reasoning in determining that perpetrators of sexual violence should be given anti-libido medication is to reduce the risk of sexual violence occurring again. The court also considers potential issues arising from administration of anti-libido medication, as well as psychiatrists' recommendations, and any medical risks to the perpetrator. The legal and practical risks of applying chemical castration is considered as part of an appropriate sentencing plan for perpetrators of sexual violence in Western Australia, as long as it is accompanied by other psychological treatment measures.⁶¹

4. Poland

Poland is the first nation in Europe to mandate chemical castration for individuals convicted of sexual assault. After a rape and incest case garnered significant media attention, the punishment became the subject of public discussion. The Polish government claims that chemical castration is intended to enhance the perpetrator's mental well-being, lower libido, and lessen the likelihood of reoffending. The Polish prime minister who approved the chemical castration penalty, Donald Tusk, claimed that since those who commit sexual violence have violated the human rights of their victims, it is not necessary to address human rights considerations when enforcing chemical castration sanctions against them. According to the government, Poland has the strictest anti-pedophile legislation in Europe.⁶²

5. Russia

The Russian Legislature (Duma) began enacting laws pertaining to chemical castration in 2012. In Russia, laws pertaining to chemical castration apply to those who have sexually abused children, a measure elicited by a sharp rise in incidents of sexual violence against children in 2010. Russian legislation mandates chemical castration for perpetrators of sexual violence based on statistical data, which notes that perpetrators of sexual violence often reoffend. Article 97 of the Criminal Code, states that: "Compulsory medical action in the form of chemical castration can be imposed by a court against a person who: has committed sexual violence against someone aged eighteen years and sexual violence against a minor under fourteen years of age; someone who suffers from a disorder of sexual preference (pedophilia) that does not qualify as crazy." The law further states that such chemical castration procedures can only be applied to mentally ill individuals who pose a risk of recurrent sexual violence or other harm. The Russian Federation's

61 Institute for Criminal Justice Reform, *Review of Laws Providing for Chemical Castration in Criminal Justice* (Jakarta Selatan: Review of Laws Providing for Chemical Castration in Criminal Justice, 2016).

62 Christina Hebel, "An Unsuitable Instrument" for Sex Offenders EU Politicians Angered By Polish Chemical Castration Plan", *Spiegel International* (September 2008).

executive and criminal laws, as well as other federal laws, dictate the implementation methods.⁶³

6. Germany

Until 2014, Germany had a regulation that allowed physical castration (surgical) for specific criminal acts. However, Germany has been encouraged to discontinue the practice of physical castration by the Council of Europe's Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT). According to German officials, the use of physical castration has drastically declined in recent years because of advancements in medicine and the availability of anti-androgen medications for chemical castration. The Law on Voluntary Castration, approved in 1969, was the first law governing castration in Germany. According to this statute, castration can be performed chemically or medically, but only with the offender's permission. Measures for serious crimes, including sexual offenses, were later revised in 1998 by modifications to the Law on Voluntary Castration.⁶⁴ According to an analysis of criminal record archives, of 1,036 German castrated sex offenders who were reintegrated into society, there was a 2.3 percent drop in sexual crime recidivism following the castration execution.

IV. REFORMULATION OF THE IMPLEMENTATION OF CHEMICAL CASTRATION SANCTIONS IN INDONESIA

Based on the examples above, it can be observed that chemical castration provisions are varied across countries. In some European, American, and Asian countries, castration is considered an effective way to reduce the number of sexual crimes against children.⁶⁵ Overall, research shows that the recidivism rate of sexual crimes in Europe and the US after chemical castration is low, ranging between 0 and 10 percent.⁶⁶ Some of the chemical castration provisions discussed in the section above can be applied in Indonesia. These are described in the analysis below:

63 Reform, *supra* note 61.

64 *Ibid.*

65 Muridah Isnawati Aulya Dwisudarini, "Juridical Review of Chemical Castration Action In The Perspective of Criminal Law And Human Rights" (2021) 17/3 YURISDIKSI Jurnal Wacana Hukum dan Sains Universitas Merdeka Surabaya 319.

66 Weinberger, *supra* note 60.

1. Involving Medical Party or Psychiatrist to the Judge Before Deciding on Chemical Castration for the Defendant

In some countries, a judge is obliged to obtain recommendations from medical experts and psychiatrists before the court decision is finalized. A defendant may be ordered to undergo chemical castration only if these recommendations indicate that the defendant is likely to reoffend. The medical examination must also be supported by the results of a psychological examination, which concludes that the defendant cannot control their urges, especially towards children. If the recommendation from the examination results shows that the defendant does not have the potential to repeat sexual violence, then the judge should not impose chemical castration for the defendant. This idea has been implemented in South Korea, Florida, Iowa, Louisiana, Oregon, and Western Australia.

The procedures for implementing chemical castration in Indonesia are currently as explained in the previous chapter, namely, regulated in PP No. 70 of 2020. This regulation contains a provision that, before chemical castration is carried out, a series of examinations (clinical assessment, conclusion, and implementation) must be conducted to determine whether or not the defendant is fit to undergo the procedure. However, if the examination was carried out after a court decision stated that the defendant was sentenced to chemical castration. So, in this case the judge in determining the sanction for chemical castration which was confirmed in a decision was not based on the recommendations of medical experts and psychiatrists. On the one hand, the judge is not an expert in the field of medicine or psychology and not yet know the condition of the defendant when he was given chemical castration. Therefore, this study recommends that a medical and psychological examination be carried out for the defendant when he commits sexual violence. So that the results of the examination can be used as a recommendation by the judge before deciding on chemical castration sanctions for perpetrators of sexual violence.

2. Determination of the Period of Treatment Before Carrying Out Chemical Castration

This approach is a subsequent step following the decision that the defendant should be sentenced to chemical castration. Afterward, the defendant is obliged to serve the basic sentence of imprisonment as stipulated in the decision, with chemical castration serving as an additional punishment that does not reduce the main sentence. After the convict has served the basic prison sentence, there should be a provision requiring that the convict sentenced to chemical castration first undergo intensive medical treatment. It is also necessary to determine the length of time the convict will undergo treatment before chemical castration is carried out. This process has been implemented in several states, such as Montana, Louisiana, Florida, and California. These states determine the length of time for convicts to undergo treatment, ranging from 60 days to one week, before chemical castration is carried out.

Government Regulation No. 70 of 2020 concerning Procedures for Implementing Chemical Castration stipulates that convicts sentenced to chemical castration should undergo an examination first before conducting the procedure. However, before undergoing chemical castration, the convict requires medical care to prepare for the procedure. An examination should be carried out before a decision is made, as per the previous idea.

3. Chemical Castration Executed by an Enforcement Officer under the Correctional Institution

This idea relates to the advantages and disadvantages of implementing the castration penalty in Indonesia, which is carried out by doctors. This is as stipulated in Article 9 of Government Regulation No. 70 of 2020, which states that "the prosecutor ordered the doctor to carry out chemical castration". As previously explained, the implementation of chemical castration is opposed by various doctors in Indonesia because it conflicts with the medical code of ethics. So, it is necessary to reformulate the legal provisions regarding doctors who carry out chemical castration. Several countries and states have also stipulated that law enforcement officials should be fully responsible for carrying out chemical castration. This has been implemented by South Korea, California, and Florida.

Based on analysis above, three ideas for reformulating the application of chemical castration in Indonesia can be formed based on examples from several countries in the world. The fact that various countries have implemented chemical castration means that it does not necessarily violate human rights, but rather depends on how the chemical castration sanctions are implemented. The reformulation ideas above prioritize medical care both before and after the decision on chemical castration. These ideas also consider the human rights of convicts. Thus, in these cases, chemical castration is framed as a form of treatment and care for the convict.

V. CONCLUSION

The implementation of chemical castration has advantages and disadvantages, one of which is the idea that chemical castration violates human rights. The research conducted argues that chemical castration does not violate human rights, both from a regulatory and medical perspective. There is an increasing need for chemical castration sanctions for perpetrators of sexual violence against children, because children have the right to feel safe, as set forth in the Child Protection Law. Another issue is the refusal of the Indonesian Doctors Association (IDI) to become the executor of castration because it conflicts with the medical code of ethics. Thus, it is necessary to reformulate the implementation of chemical castration sanctions in Indonesia based on castration penalties in other countries. The suggested reformulations include: Recommendations from medical or psychiatric parties to the Judge before making a decision on chemical castration for the defendant; Determination of the period of treatment before the execution of chemical castration; The party carrying out the chemical castration execution is the Law Enforcement Officer under the management of the Correctional Institution.

Although the implementation and regulation of chemical castration sanctions have received opposition from various parties, the author believes that chemical castration sanctions are still needed in Indonesia. Perpetrators of sexual violence against children have violated the human rights of others, and the impact of sexual violence has the potential to destroy a child's future. The author provides suggestions that chemical castration sanctions be maintained in Indonesia regardless of the controversies that exist. Thus, it is necessary to reformulate or reconstruct laws related to chemical castration in order to address the obstacles and shortcomings of the current legal regulations for chemical castration.

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