

# The Urgency of Reformulating Chemical Castration Sanctions for Perpetrators of Sexual Violence

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## Abstrak

Merespon kedaruratan kekerasan seksual yang terjadi beberapa waktu lalu, Pemerintah Republik Indonesia mengesahkan Peraturan Pemerintah yang mengatur mengenai pemberian sanksi kebiri kimia. Permasalahan yang muncul dari penetapan Peraturan Pemerintah terkait dengan sanksi kebiri kimia adalah berkaitan dengan tujuan yang hendak dicapai dari pemberian sanksi kebiri kimia dan dikaitkan dengan tujuan pemidanaan. Tujuan dari penulisan artikel ini adalah untuk merumuskan konsep ideal dari sanksi kebiri kimia yang hingga saat ini masih pro dan kontra di tengah-tengah masyarakat. Penulisan artikel ini menggunakan metode penelitian hukum normative dengan pendekatan perundang-undangan dan pendekatan konseptual. Hasil dari penelitian ini menunjukkan bahwa kebiri kimia belum tentu efektif menekan angka kekerasan seksual namun jelas bertentangan dengan hak untuk melanjutkan keturunan. Kesimpulan dari penelitian ini adalah sanksi kebiri kimia sebaiknya dihapuskan dan dapat digantikan dengan rehabilitasi bagi korban kekerasan seksual dan pembebanan tanggung jawab pemulihan korban kekerasan seksual kepada pelaku.

**Kata kunci:** kebiri kimia, kekerasan seksual, reformulasi.

## Abstract

Responding to the emergency of sexual violence that occurred some time ago, the Government of the Republic of Indonesia passed a Government Regulation which regulates the imposition of sanctions for chemical castration. The problems that arise from the stipulation of Government Regulations related to chemical castration sanctions are related to the objectives to be achieved from the imposition of chemical castration sanctions and are related to the purpose of punishment. The purpose of writing this article is to formulate the ideal concept of chemical castration sanctions which currently still have pros and cons in society. This article was written using normative legal research methods with a statutory approach and a conceptual approach. The results of this research show that chemical castration is not necessarily effective in reducing the rate of sexual violence but is clearly contrary to the right to continue offspring. The conclusion of this research is that the sanction of chemical castration should be abolished and can be replaced with rehabilitation for victims of sexual violence and the burden of responsibility for the recovery of victims of sexual violence on the perpetrators.

**Keywords:** chemical castration, sexual violence, reformulation.

## INTRODUCTION

Violence or sexual crime is a crime that is considered an unlawful act that is very detrimental to the victims and can be classified as an extraordinary crime that tarnishes and insults a person's humanity (Khristianti Weda Tantri, 2021). Sexual crime is also not a problem only at the Indonesian level, but is quite serious in countries around the world (Rafli & Susanti, 2022).

Referring to World Health Organization (WHO) data in its global records, around 30% (thirty percent) of women throughout the world experience sexual violence as partners or non-partners. In general, sexual crimes are committed by promiscuous men. Meanwhile, the victims who are harmed usually range from children to young women.

The factors that cause sexual crimes to occur can come from outside (External) or from within (Internal) the perpetrator of a sexual crime. Of the internal factors, namely first, psychological factors, which originate from a person's disturbed psychology and can encourage someone to commit sexual crimes. This can be said to be a mental disorder and a mind that cannot be controlled so that one cannot choose and sort one's actions. Second, the biological factor that

is generally shared by all people is the existence of sexual desire because of a background need. Third, moral factors and revenge are related entities. The existence of trauma in the past can cause someone to take revenge on other people, this is also influenced by a person's deviant morals (Arsawati & Ditayani Antari, 2021).

Furthermore, factors originating from external are first, cultural factors. A culture that is never free from the factor of sexual crimes because men generally have stronger power or energy than children and/or female teenagers. This results in the intention to always dominate or always want to be above women in any matter, including sexual crimes. Second, economic factors are always associated with poverty. Due to a person's financial inability, people commit sexual crimes and can also become victims (Simatupang, 2022).

Of course, this is contrary to or prohibited by law, and before criminal law (in the case of crimes) was regulated by positive law, this was recognized as an action that was not in accordance with moral values and religious values. Because the consequences of sexual crimes experienced by a child and/or teenage girl greatly impact the child's survival, such as severe trauma, difficulty reconnecting with friends, physical injuries, and even death.

Therefore, special treatment is needed to deal with perpetrators of sexual violence, focusing on children. One of them is criminal law efforts in handling and controlling sexual crimes, namely there are a number of regulations such as in Chapter fourteen concerning Crimes Against Morality in the Criminal Code (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence ( PKDRT Law) and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). Furthermore, more specifically in criminal law policy, regulations have been made regarding the handling of perpetrators of sexual crimes, namely Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for Implementing Actions Chemical castration, installation of electronic detection devices, rehabilitation, and announcement of the identity of perpetrators of sexual violence against children through the imposition of castration sanctions (PP Implementation of Castration).

The urgency of forming this regulation is because it is driven by Law Number 17 of 2016 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law (Determination Law Child protection). Because sexual violence against children needs to receive more serious attention, giving chemical castration punishment to perpetrators of sexual crimes against children is considered to have a deterrent effect and as a form of prevention or preventive effort. This castration is carried out using an injection method containing certain substances for convicts of sexual crimes against children whose aim is to reduce a perpetrator's sexual desire and may even lose it. This of course creates a debate between those who agree and disagree with castration sanctions in Indonesia. Because it is considered to be in conflict with the 1945 Constitution (UUD 1945) which regulates a number of human rights (HAM) as well as international conventions. Therefore, the castration sanction policy is not justified because it is contrary to human rights. The next thing we can do is examine the appropriate steps to handle cases of sexual violence. That in criminal law there is a policy, namely legal reformulation or criminal law reform.

Legal reformulation or criminal law reform can be interpreted as a step to replace or completely eliminate, change, add, improve, review legal provisions and legal principles in legislation. Not only that, apart from what has been mentioned, the meaning of reformulation also means what our attitude is towards changing the existing legal system, from not yet achieving maximum results, to finding a point of satisfactory or perfect results so that we always aim for certainty in law policy (Mastur et al., 2020).

## METHOD

This research uses a type of normative legal research which is defined as research on legal regulations. Therefore, this research focuses on the Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of

Violent Perpetrators. Sexuality Against Children. Furthermore, this research used a regulatory approach and a concept approach.

## RESULT AND DISCUSSION

As can be said in the background, sexual crime is an act that is believed to have existed not only when it was regulated as a statutory provision, but far from that when moral and religious norms were introduced. As regulated in a number of Indonesian rules or laws as follows:

Provisions related to sexual crimes can be found in Articles 289, 290, 291, 292, 293 and 294 of the Criminal Code. Article 289 of the Criminal Code regulates threats against perpetrators of sexual crimes who force someone to commit obscene acts. Article 289 of the Criminal Code carries a threat of nine years in prison. Article 290 of the Criminal Code which consists of 3 (three) points or numbers states that the threat of imprisonment for seven years if committing a sexual crime against a person who is unconscious or not conscious, carrying out sexual activity against someone who is not yet fifteen years old or can be said to be with someone child and inviting a child by persuading him to do it. Furthermore, in Article 291 of the Criminal Code, if an act as stated in Articles 289 and 290 causes serious injury, the penalty is twelve years in prison, whereas if it causes death, the threat is fifteen years in prison.

Article 292 of the Criminal Code prohibits sexual crimes against a child of the same sex. If this act is committed, it can be punished by imprisonment for five years. Article 293 of the Criminal Code essentially regulates sexual crimes for someone who promises to pay using money or objects in order to carry out sexual activity with them aimed at a minor or child. This provision threatens that if someone does so, they can be sentenced to five years in prison. Article 294 of the Criminal Code consists of 2 paragraphs, first, threatens up to seven years in prison for sexual acts against children, whether biological, step, adopted children, or those under their supervision. Second, the perpetrator of a sexual crime is also threatened with a seven year sentence, in this case someone who the perpetrator is someone who has a position or authority in his field of work which is directed towards his subordinates or people he trusts. PKDRT Law.

The PKDRT Law is a criminal law provision regarding violence, one of which prohibits violence or sexual crimes in the household area. According to Article 2 of this Law, those included in the scope of the household are children, wives, husbands, those who are related by blood or family, or who live permanently in the household, as well as people who work or help whether they live permanently or not in the household.

Sexual violence as referred to in the PKDRT Law in Article 8 is an act by one member of the household against other members to have sexual relations with them on the basis of coercion. If this act is committed, it can be threatened with imprisonment for 12 years and a maximum fine of thirty-six million rupiah according to Article 46 of the PKDRT Law. Furthermore, Article 47 of the PKDRT Law regulates that if sexual violence is committed for commercial or other purposes, the penalty is increased to fifteen years in prison with a minimum criminal record of four years and a maximum fine of three hundred million rupiah. has almost the same regulations as the Criminal Code. Namely, Article 48 of the Domestic Violence Law also states that if a sexual crime as previously explained results in a household member being injured with no hope of recovery, their mental health can be disturbed, resulting in a miscarriage, they can be sentenced to prison for a minimum of five to twenty years and a minimum fine of twenty-five million. rupiah and a maximum of five hundred million rupiah. There is an exception regarding sexual violence if it is committed by a husband against his wife or a wife against her husband, which is a complaint offense.

The TPKS Law is a new law that regulates violence or sexual crimes. In terms of its naming, it uses the term criminal act of sexual violence, which means there is a criminal element and also fulfills the elements of sexual violence, so the TPKS Law can be used as a reference to ensnare perpetrators of sexual crimes. Based on Article 4 of the TPKS Law, the various types of criminal acts of sexual violence are all sexual activity that is not desired by one of the perpetrators and there are elements of violence or coercion or threats, even those that are electronic based. Apart from what has been mentioned above, what is included in the crime of sexual violence is coercion

of sexual activity against adults or children, including to benefit oneself by means of sexual exploitation.

The regulations regarding perpetrators of sexual violence in this Law have so far accommodated a number of modes of sexual violence as previously stated, namely from non-physical sexual harassment to electronic-based harassment. Regarding criminal regulations, they also vary according to the level of crimes committed. The threat of imprisonment is a maximum of six months to 15 years and a maximum fine of one billion rupiah.

Starting with the issuance of the Child Protection Determination Law, this provision, especially Article 81 paragraph (7), essentially regulates that in relation to perpetrators of sexual violence committed because of family or blood relations and sexual acts that result in serious injuries, reproductive functions that are not as useful as they should be. If it occurs again, results in the death of a person and causes an infectious disease, then it can be treated with chemical castration. The regulation of specific castration sanctions is regulated in the criminal law policy which has created regulations regarding the handling of sexual crime perpetrators, namely the PP on the Implementation of Castration. The urgency of forming this regulation is because it is driven by the Child Protection Determination Law. Because sexual violence against children needs to receive more serious attention, such as implementing a chemical castration policy for perpetrators of sexual crimes against children is considered to have a deterrent effect and as a form of prevention or preventive effort.

According to Article 1 point (2) of the Government Regulation on the Implementation of Castration, it is stated that Chemical Castration is a process. by injecting or using other methods containing certain substances to perpetrators of sexual violence against children so that they have sexual relations with the perpetrator which results in many victims, injuries, mental disorders, transmission of disease, reproductive disorders and death, in order to control excessive sexual desire and provide rehabilitation.

In the case of providing chemical castration in the TPKS Law, it is implemented based on a court decision that has been accepted. Before carrying out the chemical castration action ordered by the prosecutor, it must first be coordinated with health officials in the government. Furthermore, article 3 of the TPKS Law states that the implementation of the chemical castration action is on the order of the prosecutor as the implementer of the decision carried out by competent officers. As far as the author knows, someone who has the competence or authority to do this is a health worker, one of whom is a doctor.

However, the views of several doctors regarding the implementation of chemical castration have been rejected by the Indonesian Doctors Association. Because from a medical perspective, the profession and the act of castration are very contradictory. On the one hand, a doctor's job is to save someone from a critical period due to an illness, cure the patient, relieve pain and so on. Meanwhile, on the other hand, in medical professional ethics, doctors on duty are prohibited from carrying out dangerous activities that threaten the safety of others or themselves (Windari & Syahputra, 2020).

Of course, this is very contradictory from the perspective of medical science, which is the executor of chemical castration. Apart from that, this is also supported by the fact that the effectiveness of chemical castration has not been proven because there has not been adequate proof or double blind studies. It is also emphasized that the side effects of chemical castration may result mental problems.

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Previously it was agreed that reformulation or renewal of criminal law can be interpreted as a step to replace or completely eliminate, change, add, improve, review legal provisions and legal principles in legislation. That this research focuses on the reformulation of the PP on the Implementation of Castration. Which refers to one or several provisions of the reformulation above.

Before discussing reformulation, this idea stems from the debate regarding the pros and cons of providing chemical castration to convicts of sexual violence. This is what triggers disruption of a policy that can run and be implemented in society if there are still polemics going on. From the pro side, they think that it is appropriate for anyone who commits sexual violence against children to be punished as severely as possible, namely by implementing measures. chemical castration of the perpetrator. But from the side that pays attention to the effects of chemical castration, it is possible that many side effects can occur before carrying out trials first. In addition, the state is too pro-vice, taking sides in the sense of not restoring the victim's condition, but instead choosing to concentrate on punishing the victim. This is of course the main key in choosing the right steps to resolve this debate. Apart from that, the PP on the Implementation of Castration has officially been implemented.

If we look at it in accordance with what is regulated in the 1945 Constitution (UUD 1945), there are a number of human rights substances that have been ignored regarding the action to castrate clams. First, as formulated in Article 28 B paragraph (1), it is stated that "every person has the right to form a family and continue their offspring through a legal marriage". Based on these provisions, continuing offspring is every person's human right so that a function can function as it should in a family. Therefore, the state must actually guarantee that every citizen, even though someone has the status of a prisoner, does not eliminate their right to continue their offspring.

Furthermore, it is also emphasized that the 1945 Constitution is used as a moral and legal consideration in order to exercise their rights, which aims to form a harmonious family and is accommodated by statutory regulations. Specifically referring to the right to form a family and continue offspring, the substance of the norms in the 1945 Constitution explains "Indonesian society, which has developed from the very simple to the modern, is in principle a family society. Family society has

get to know the social institutions which concern the rights and obligations of society which consist of religious institutions which recognize that humans are creations of God Almighty with all their rights and obligations; family institutions as a place for humans to live together to develop offspring in order to maintain the continuity of their existence."

Therefore, it is in line and related to Law Number 1 of 1974 concerning Marriage that in the explanation of the Article it is stated that the purpose of a marriage is none other than to form a harmonious, happy family and be able to have or continue offspring. Therefore, the action or implementation of chemical castration is undesirable. Because chemical castration can eliminate a person's sexual desire as previously explained and eliminate his instinct to continue natural offspring in terms of the right to have relations with a married couple in accordance with the Marriage Law.

There was also support from among the medical associations who refused to carry out Kim's castration, which could be assumed that the act was actually inappropriate and not justified for any reason. In this case, of course, it is to handle cases of sexual violence that focus on children or young women. This does not mean that this is a dead end in handling cases of sexual violence against children. However, there are still many other alternatives that can be provided in handling this case. As has been explained in the regulation of sexual violence in the laws and regulations that we already have, there are various provisions or substances for dealing with sexual crime cases.

As in the TPKS Law, which is a legal reform regarding criminal acts of sexual violence, it has regulated the handling of sexual violence in a modern way. If we focus on the deterrent effect, apart from imposing prison sanctions, the main formulation that can be prioritized is carrying out social and medical rehabilitation measures. Because rehabilitation in cases of sexual violence is



not only given to victims, but to perpetrators, rehabilitation facilities can also be provided. As in the TPKS Law in Article 1 point (22), rehabilitation is given to victims and perpetrators with the aim of recovering from physical and mental disorders in order to restore their role in society and to be accepted back into their social environment. So, the act of carrying out chemical castration is not justified and is contrary to The 1945 Constitution relates to a person's right to continue their descendants. Therefore, the provisions in the Child Protection Determination Law in Article 81 paragraph (7) and in the PP on the Implementation of Castration itself must be deleted or changed. By no longer imposing the sanction of castration on perpetrators of sexual violence, but still providing facilities or attention with rehabilitation measures as regulated in the PP on the Implementation of Castration.

## CONCLUSION

Regulations for perpetrators of sexual violence in Indonesian legislation have so far been able to accommodate perpetrators of sexual crimes. The application of castration sanctions is a legal policy that is contrary to human rights, one of which is Article 28B paragraph (1) concerning the right to continue one's offspring. Therefore, the action or implementation of castration is not justified. So, the reformulation of the PP on the Implementation of Castration regarding the implementation of chemical castration measures must be abolished and still impose prison sentences, fines as the main punishment and mandatory rehabilitation as in the UUTPKS and PP on the Implementation of Castration.

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