

PENALTIES FOR CHEMICAL CASTRATION FROM THE PERSPECTIVE OF NON-DEROGABLE RIGHTS FOR CONVICTS

SITI ZUBAIDAH³, M. AMIL SHADIQ², ABDUL KARIM³, RUSLAN MUSTARI⁴

Faculty of Law, Universitas Bosowa Jl. Urip Sumoharjo No. Km. 4, Sinrijala, Panakkukang, Makassar, Sulawesi Selatan 90232, Indonesia^{1,2,4}

Department of Management, Faculty of Economic and Business, Universitas Bosowa Jl. Urip Sumoharjo No. Km. 4, Sinrijala, Panakkukang, Makassar, Sulawesi Selatan 90232, Indonesia³

siti.zubaidah@universitasbosowa.ac.id¹

amilshadiq63@gmail.com²

abdul.karim@universitasbosowa.ac.id³

ruslanmustari@universitasbosowa.ac.id⁴

Abstract - Chemical castration is an additional punishment as a weight penalty that threatens perpetrators of sexual violence against children, as stipulated in Law Number 17 of 2016. This sentence is carried out after the convict has finished serving his sentence for the primary crime. Chemical castration is carried out by injecting chemicals such as Medroxyprogesterone acetate; cyproterone acetate, and LHRH Agonists. These three types of drugs can cause side effects of decreased levels of testosterone and estradiol (the hormone estrogen) which can affect fertility in men. The hormone testosterone, which is also called androgen, is a hormone that promotes male sexual desire. If the hormone testosterone is reduced it can reduce fertility in men, reduce muscle mass, osteoporosis, fatigue, impaired glucose levels, anemia, depression, and pain. Various instruments of international law and national law prohibit cruel and torturous punishments. This article aims to analyze the state's constitutional obligation to protect convicts subject to additional chemical castration crimes. This research is normative, using primary legal materials in the form of laws and regulations, and secondary legal materials such as journals or other research results. The results show that the punishment of chemical castration is torture, and the state does not carry out its constitutional obligations as stated in Article 28 I Paragraph (4) and is in conflict with the non-derogable rights of convicts.

Keywords: the right not to be tortured, chemical castration punishment, crime of sexual violence against children

INTRODUCTION

In Indonesia, crimes of sexual violence against children have increased, as data from the Ministry of Women's Empowerment and Child Protection (Ministry of Child Protection) in 2022 recorded 21,241 cases of violence against children in the country. The types of violence vary, namely physical violence, psychological violence, sexual violence, neglect, human trafficking, and exploitation (Efiyanti & Widjaja, 2021). The violence that stood out was sexual violence with a total of 9,588 children (45%), 4,162 psychological violence, 3,746 physical violence, 1,269 child victims of neglect, 219 cases of criminal acts of trafficking in persons, and 216 children who became victims of exploitation.

Sexual violence against children shows a significant increase every year, and failures in handling cases of sexual violence, so that victims feel powerless and lose their sense of security (Saputra et al., 2023). This then became the consideration that Indonesia was facing a sexual violence emergency (Shadiq, 2017). President Joko Widodo issued government regulation instead of Law Number 1 of 2016 (PERPPU No. 1 of 2016) on May 25, 2016, based on an emergency condition of sexual crimes against children. PERPPU No.1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning child protection (Purnomo et al., 2022). which was later stipulated as Law Number 17 of 2016 concerning the stipulation of government regulation instead of Law



Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning child protection law.

Article 81 paragraph (6) and paragraph (7) state that perpetrators of crimes of sexual violence against children can be given additional punishment in the form of announcing the identity of the perpetrators; chemical castration; and installation of electronic detectors (Marzuki, 2013). The purpose of giving the additional sentence is to overcome sexual violence against children; provide a deterrent effect to the perpetrators; and prevent sexual violence against children (Hamzah, 2020). Furthermore, regarding procedures for implementing action and rehabilitation, it is regulated by government regulations, namely Government Regulation Number 70 of 2020 concerning procedures for carrying out chemical castration, installing electronic detection devices; rehabilitation, and announcement of the perpetrator's identity (Monica et al., 2021).

Various research results show that the additional punishment of chemical castration for perpetrators of sexual violence to deter perpetrators is ineffective, and is a heinous punishment, giving rise to pro and contra attitudes towards its application (Pambudhi & Chaerunnisa, 2021). The additional punishment of chemical castration is carried out after the perpetrator has completed his prison sentence and is carried out by injecting a chemical substance, to reduce sexual desire and libido for the perpetrators of crimes of sexual violence (Zubaidah et al., 2022). Chemical castration (castration) also means surgery and/or the use of chemicals to eliminate the function of the reproductive organs in the form of testes in men and ovaries in women (Rachmadani & Daming, 2021). The chemicals used are not those with a permanent effect, but those with a non-permanent working effect (Sudewo & Abdurrachman, 2020). The effects of chemical castration will gradually disappear, so that male sexual function, libido, and erectile ability will return to normal (Shadiq & Karim, 2023). This raises the pros and cons of the additional punishment of chemical castration in society (Tarigan, 2020).

One of the parties that refused was the Indonesian Doctors Association (IDI), because in PP No.17 Th. 2020 The executor of chemical keiri injections is a doctor on the order of the prosecutor. The attitude of the IDI chairman was in response to the Mojokerto Regency court judge's Decision regarding case No.69/Pidsus/2019/PN. Mjk against Muh. Aris bin Syukur, who was found guilty of committing the crime of rape of 9 (nine) children, was sentenced to 12 years in prison and a fine of 100 million subsidiary 6 months in prison, as well as an additional sentence of chemical castration (Appludnopsanji & Purwanti, 2021). The IDI chairman's refusal was based on the consideration that: Chemical castration is a form of punishment, not medical services; and if a doctor becomes the executor of chemical castration, then it has the potential to cause a conflict of norms, namely between government regulation No. 70 Years 2020 with the code of medical ethics.

The IDI refused to be the executor of chemical castration by issuing a fatwa of the PB IDI Medical Ethics Council number 1 of 2016, which states that the medical profession must heal and diagnose disease, medical science highly values anyone's health as a Human Right (Puteri et al., 2020). Chemical castration can cause complications to the function of other body organs, by decreasing the hormone testosterone due to chemical castration. Among other things, bone loss, reduced blood cells, muscle atrophy, and disturbances in cognitive function (Tahir et al., 2021). Nurina Savitri (Amnesty International Indonesia Campaign Media Manager) responded to Government Regulation No. 70 of 2020, that forced chemical castration is cruelty and violates legal rules regarding torture, cruel, inhuman, and degrading treatment or punishment according to international law (Nasrullah, 2022).

Various international and national legal instruments regulate the prohibition of disrespectful, degrading treatment of human dignity, including prisoners (Zubaidah & Ainun, 2021). Several previous studies have concluded that forced chemical castration is torture, inhumane, cruel, and degrading to human dignity, as well as a violation of the human rights of inmates. Unlike in some countries, chemical castration is not an additional punishment. In Alabama, chemical castration is a requirement for convicts who have committed crimes of child sexuality to obtain conditional release (Zubaidah et al., 2023). In Estonia, chemical castration acts as an alternative to imprisonment and as part of a complex treatment for perpetrators of sexual violence against



children. In Argentina, chemical castration is a voluntary choice for perpetrators of rape and is calculated as a reduction in prison sentences (Mardiya, 2017). Meanwhile, in Poland, chemical castration is mandatory for pedophiles whose victims are children under 15 years of age.

METHOD

The type of research in the preparation of this article is normative research, namely research that analyzes legal norms as guidelines for human behavior, legal arguments, and conflicting norms. This study uses primary legal materials and secondary legal materials (Hasan et al., 2023). Primary legal material consists of legislation, official notes, or treatises in the making of legislation and judges' decisions, while secondary legal material consists of textbooks, legal journals, and comments on court decisions (Arrasyid, 2021). Non-legal materials were also used in this study, namely medical ethics journals. This study uses a statutory approach and a case approach. The statutory approach is to examine the regulations related to chemical castration. Case focus is carried out by examining cases related to research issues (chemical castration). The cases studied in this study are those that have obtained court decisions that have permanent legal force, especially in the part of the judge's legal considerations (Irianto, 2011). Qualitative analysis is carried out using methods that emphasize aspects of a deeper understanding of the rights of convicts who have been convicted of crimes of sexual violence. The data analyzed by this method are in the form of text or narrative.

DISCUSSION

1. Convict Rights Part of Human Rights

Article 1 point (6) of Law Number 22 of 2022 concerning Corrections (UU-Prison) explains that what is meant by convicts is convicts who are serving prison sentences for a certain time and for life-or-death row inmates, who are awaiting the implementation of a decision, who are currently serving prison sentences. undergo coaching in the Penitentiary The convict is placed in the Correctional Institution for a certain period in the framework of coaching so that the correct behavior of the convict returns to society. They are also referred to as inmates.

The purpose of organizing a correctional system as stated in Article 2 of the Correctional Law is: (a) to provide guarantees for the protection of the rights of detainees, children, and inmates; (b) to improve the quality of personality and independence and not repeating criminal acts so that they can be accepted again by the community, and can live normally as good, law-abiding, responsible citizens, and can play an active role in the development and; (c) Protect the public from the repetition of criminal acts.

It is explicitly explained in letter (a) that one of the purposes of sentencing is to guarantee protection for the rights of prisoners, children, and inmates/convicts. Their rights, among other things, are to receive humane treatment and to be protected from acts of torture, exploitation, neglect, violence, and all acts that harm physically and mentally. Therefore, for convicts, the only suffering is the loss of freedom, so the state must not make the condition of convicts who have been fostered worse than the deprivation of their liberty.

Fostered citizens are human beings who are also attached to several rights that must be respected and protected by the state. Prison inmates have rights guaranteed by the constitution and other laws, some of which can be intervened/reduced (derogable rights), as well as rights included in the civil and political fields that cannot be reduced under any circumstances (non-derogable rights).

Derogable rights are rights included in civil and political rights that are not absolute the fulfillment of which may be reduced, restricted, or postponed by the state. One example is the large-scale social restrictions set by the government when the Covid-19 pandemic hit Indonesia. PSBB limits people's right to move, but the right to move is not absolute. The Covid-19 outbreak has also affected the rights of inmates to visit their families.

2. Legal Instruments for Prisoners Not to Be Tortured and Receiving Cruel Treatment

Article 9 letter of Law Number 22 of 2022 states that convicts have several rights that must be fulfilled by the state. One of these rights is the right to receive humane treatment and to be



protected from acts of torture, exploitation, omission, violence, and all acts that harm physically and mentally (Article 9 letter I Law Number 22 of 2022).

Article 28 I paragraph (2) of the 1945 Constitution states: "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 an individual before the law, and the right not to be prosecuted based on retroactive law are Human Rights which cannot be reduced under any circumstances.

Human Rights are the rights of every person because that person is a human being, therefore human rights are equal rights where everyone has the same opportunity to have them. Human rights are also inalienable rights, which means that someone who is called a human being may not stop being a human being, even if his actions exceed the standard of human actions in general (the perpetrators of crimes). As a human, his rights as a human will always be attached to him until he dies. Article 28 I paragraph (4) of the 1945 Constitution states: the protection, promotion, upholding and fulfillment of human rights is the responsibility of the state, especially the government. In this case, the State of Indonesia has a constitutional responsibility to uphold and protect human rights.

Article 5 of the Universal Declaration of Human Rights called the General Declaration of Human Rights (UDHR), states "No one may be tortured or treated cruelly, subjected to inhuman or degrading treatment or punishment" based on the provisions of Article 5 of the DUHAM, then there is an acknowledgment a strong belief that every human being has the right to receive inhumane treatment or punishment, even if he is guilty before the law.

The UN minimum standards regarding the treatment of convicts require respectable and dignified treatment of convicts because they are human beings, and the purpose of imprisonment is to protect society from crime and reduce repetition. To achieve this goal, as long as the convicts are in the Penitentiary, they are given training, education, and assistance for moral, spiritual, and social improvement, as well as their physical health, so that when they return to society, they have become good, law-abiding, and more responsible individuals. So, coaching or repairs are all carried out when the person concerned is in his sentence in a penitentiary.

3. The Additional Punishment of Chemical Castration for Perpetrators of the Crime of Sexual Violence Against Children Is Punishment That Tortures Physically and Mentally

Article 1 point 2 PP NO. 70 Years 2020 states that "the additional punishment for chemical castration is the administration of chemicals through injection or other methods, which are carried out to perpetrators who have been convicted of committing violence or threats of violence forcing children to have intercourse with them or other people, resulting in more than 1 (one) victim." person, resulting in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim died, to suppress excessive sexual desire, accompanied by rehabilitation". Chemical castration is decided through a court decision that has permanent legal force. Then in Article 6 and Article 7 PP No. 70 years In 2020 it was stated that chemical castration was carried out through the following stages: clinical assessment; conclusion; and implementation. At the clinical assessment stage, clinical and psychiatric interviews were conducted; physical examination; as well as supporting examinations.

From the understanding and explanation of these articles, it can be concluded that the requirements for carrying out chemical castration can be explained in the table below:

Table 1. Requirements for the Implementation of Chemical Castration

No.	Condition	Description	Chapter
1	Law	a. perpetrators of crimes of sexual violence against children b. victims of more than one person c. resulting in serious injuries, mental disorders, infectious diseases, impaired/loss of reproductive function, and/or death	Article 1 point 2; Article 2 paragraph (2), Article 4



		d. Is a repetition (the crime of sexual violence is carried out continuously)	
		e. the case has permanent legal force	
		f. executed after the convict has finished serving his principal sentence	
		g. cannot be applied to child offenders	
2	Medical	a. clinical assessment (clinical and psychiatric interviews; physical examination; investigations)	Article 6; Article 7;
		b. performed by doctors and teams who have competence in the medical and psychiatric fields	Article 3; Article 9;
		c. held at a government hospital/appointed hospital	Article 18
		d. rehabilitation after chemical castration (medical rehabilitation, psychiatric rehabilitation, social rehabilitation)	Paragraph (1)(2); Article 20 Paragraph (1)(2)

Source: Research result, 2023.

From Table 1 above, it can be explained that additional chemical castration sentences can be carried out if legal and medical conditions are met. The legal requirements include the fulfillment of the elements of the crime of sexual violence against children, the court decision has permanent legal force, and the convict has completed serving his principal sentence. While the medical requirements include: that the convict is physically, spiritually, and psychologically healthy, this is done through a clinical assessment; chemical castration is carried out by doctors and teams who have competence in the medical and psychiatric fields; carried at a government hospital or other designated hospital; rehabilitation (medical, psychiatric, social) after the implementation of chemical castration.

4. Medical Requirements for the Performance of Chemical Criminal Currency

The physical examination is a process to find out whether the convict has physical abnormalities, while the supporting examination is a series of medical examination processes for certain indications to obtain a complete clinical conclusion. The physical examination and supporting examinations are optional, that is, if needed. If the results of the clinical assessment are appropriate, then chemical castration will be continued, and if the results of the clinical assessment are not feasible, then a delay of 6 (six) months will be carried out for another clinical assessment. If the results again show that it is not feasible, then the prosecutor will notify in writing the court that decided the first case of the crime of sexual violence against children. The clinical assessment process involves several parties, for this, it is necessary to have good coordination. From a clinical examination point of view, it takes a relatively long time to obtain results/conclusions that are appropriate or inappropriate for convicts to undergo chemical castration.

The implementation is carried out by doctors and a team that has authority in the medical and psychiatric fields, with the consideration that chemical castration can cause pain and other complications for convicts. The right professional to carry out chemical castration injections is a person who has medical competence, namely a doctor. It is carried out in a government-owned hospital, or a regional hospital appointed by the prosecutor. Thus, the place for chemical castration must be in a hospital, taking into account the availability of facilities and infrastructure that accommodate and facilitate supervision. For this matter, a designated government hospital or regional hospital must complete the facilities and infrastructure for the implementation of chemical castration. Medical rehabilitation, psychiatric rehabilitation, social rehabilitation within 3 months, and can be extended for another 3 months. Medical rehabilitation is a health service that is held in health facilities and includes promotive, preventive, and curative service efforts, with complete and integrated health services, through medical, psychosocial, educational, and vocational approaches to achieve optimal functional abilities. Performed by a specialist in physical



medicine and rehabilitation. Is a therapy performed to restore body functions that are experiencing problems, such as injuries, fractures, or pinched nerves?

Psychiatric rehabilitation is a variety of activities required by convicts so that they do not experience mental disorders due to chemical castration so that those concerned can return to living in society normally. Social rehabilitation after chemical castration is a process for chemical castration convicts who experience impaired physical and mental functioning, as well as impaired social functioning, which aims to enable convicts to return to carrying out their social functions in society. It is noted that the requirements for the implementation of chemical castration indirectly recognize that chemical castration punishment for convicted perpetrators of sexual violence against children can disrupt the function of the organs of the body (Shadiq et al., 2023). This can be interpreted in reverse, in terms of the need for medical rehabilitation due to the effects of chemical castration which causes disturbances in the function of the body's organs, as well as psychological disorders, such as always being restless and so on. Thus, the person who needs to be rehabilitated is not healthy, but a person who has problems with their organs or is sick, and the pain is the result of chemical injections.

On various occasions, the Indonesian Doctors Association (IDI) has stated that it refuses its role as executor of chemical castration. The refusal was stated in the Fatwa of the Medical Ethics Council Number 1 of 2016 concerning Chemical Castration, which essentially states that "Tasks that conflict with healing are not the duties of the medical profession." accurate blind about the effectiveness of chemical castration, and unwanted side effects of chemical castration. If this reason is interpreted in reverse, then the injection of chemical castration is not an act of healing, but an act of hurting, and it is contrary to the duties of a doctor.

5. Chemical Castration Penalties in the Perspective of the Non-Derogable Rights

Responsibility for the fulfillment, protection, and enforcement of Human Rights is the responsibility of the state. The responsibility to fulfill human rights refers to the state's obligation to take legislative, administrative, judicial, and practical policy steps to ensure that the state's obligation can be fulfilled optimally. Meanwhile, the state's responsibility to protect human rights requires active action by the state to ensure that there are no violations of human rights by individuals, corporations, or the state itself. The responsibility of the state in upholding human rights requires that institutions representing the state must use the law as a means of fulfilling, respecting, and protecting human rights.

Prisoners have several rights that must be fulfilled by the state. One of the rights of convicts is the right to receive humane treatment and to be protected from acts of torture, exploitation, neglect, violence, and all actions that endanger the body and mind. These rights cannot be revoked under any circumstances (Non-Derogable Rights). Article 4 paragraph (1) of the International Covenant on Civil and Political Rights, states that the state has the authority to reduce (derogate) human rights in situations where the state is experiencing an emergency that threatens the life of the nation. The threat in question must meet the following requirements: affect the entire population and all or part of the territory; threaten the political independence or territorial integrity of the country or the existence of the basic functions of the institutions needed to uphold human rights.


Before Law Number 17 of 2016 concerning Additional Punishment of Chemical Castration for convicts of sexual violence against children, Indonesia was declared in an emergency condition for crimes of sexual violence against children. However, this state of emergency threatens the life of the nation as required for the state to reduce (derogation) human rights, according to the author, is not fulfilled. So the determination of additional chemical castration penalties for perpetrators of sexual violence against children is a violation of human rights and a denial of the state's constitutional obligations towards convicts.

CONCLUSION

The imposition of an additional sentence of chemical castration is a form of torture against convicts and is a violation of human rights which is regulated in the article on the fulfillment of the rights of convicts as stated in Article 9 of the Correctional Law letter I, namely: to receive humane treatment and to be protected from acts of torture, exploitation, omission, violence, and all actions that endanger the physical and mental. The principle of losing independence is the only suffering because the state must not make the condition of the people served or fostered worse than before they were deprived of their independence. In the condition of loss of independence, it is filled with efforts aimed at improving and increasing their quality as members of society. The principle of restorative justice is that the development of criminal law in the future carries restorative justice, namely justice that focuses on recovery, not on punishment/retributive. The restorative approach is expected to optimize the parties involved and affected by violations or crimes that have occurred to be empowered. This empowerment is expected to resolve conflicts and return to the situation before the crime occurs.

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