

## Criminal Sanctions of Chemical Elementary in the Perspective of Justice Principles

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### Abstract

*Sexual crime against children is a social phenomenon that is rife in Indonesia. This causes the government to be again required to formulate regulations to reduce the sensation of sexual crimes against children. Child protection activists are pushing for the castration of perpetrators of sexual crimes against children. The insistence on forming regulations related to castration is as if it is a cruel punishment aimed at perpetrators of sexual crimes against children. The question that arises from the discourse on the implementation of the castration sentence is, "Is the castration punishment by the principle of justice?"*

### Keywords

chemical castration; perspective of the principle of justice; criminal sanctions



## I. Introduction

It is still fresh in our minds that sexual violence against children and women has been rampant in recent years. These two things are separate from violence against children and violence against women. Case after case of violence that occurred in Indonesia is not at all contemporary. Sexual crimes have been committed against women and children in Indonesia for a long time. It's just that it is often forgotten. It appears and sinks into the mass media coverage. In other words, sexual violence only *booms* when there are victims. After that, it's over, without any human (society) improvement efforts.

Of course, we have seen in media reports that the President of the Republic of Indonesia recently signed Perppu No. 1 of 2016 concerning amendments to Law no. 32 of 2002 concerning Child Protection. This Perppu is based on responding to the emergency conditions of sexual violence against children. But the emergency of sexual violence happens not only to children but also to women. Pepper No. 1 of 2016 is the protection of children against sexual crimes. Then what is the Perppu for the protection of women against sexual crimes?

On the other hand, the threat of chemical castration in the Perppu, according to the author, is not a proper step in responding to cases of sexual violence. Then the existence of this Perppu will only apply if sexual violence occurs against children. Then what about sexual violence against adult women (people) and even adult men? Don't they also need legal protection? In addressing sexual violence against children, the Child Protection Law is clear enough for us to understand together. The Child Protection Act regulates better in providing guarantees for children not to experience sexual violence, the criminal threat against the perpetrator is higher, and there is a minimal threat when compared to that stipulated in the Criminal Code. This means Indonesian children have a legal guarantee to get protection from sexual crimes. The question is whether, by doing so, sexual crimes will be reduced?

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UU no. 23 of 2002 concerning Child Protection which was later changed to Law no. 35 of 2014, does not also provide significant changes to cases of sexual violence against children. So the government issued Perppu No. 1 of 2016, which was then promulgated through Law no. 17 of 2016, dated November 9, 2016, regarding the Stipulation of Government Regulation instead of Law no. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection Becomes Law. The legal material is extraordinary; there are also additional penalties in the form of the installation of detection equipment and the law of castration against perpetrators of sexual crimes against children.

According to Astuti et al (2019) Education is an obligation of every human being that must be pursued to hold responsibilities and try to produce progress in knowledge and experience for the lives of every individual. Education is one of the efforts to improve the ability of human intelligence, thus he is able to improve the quality of his life (Saleh and Mujahiddin, 2020). Education is expected to be able to answer all the challenges of the times and be able to foster national generations, so that people become reliable and of high quality, with strong characteristics, clear identities and able to deal with current and future problems (Azhar, 2018).

It should be noted that responding to violent behavior and sexual crimes is not only a matter of punishment. But more than that, moral education in the family, educational institutions, and society also needs to be concerned. For example, someone who comes from a low-income family, does not go to school, his family is in disarray, lacks moral education, and does not have a job, can also be a trigger for someone to become a perpetrator of the crime (including sexual violence). So, according to the author's opinion, sexual violence and crime are creations of the perpetrator's social environment, not an issue of uncontrolled libido.

Sigmund Freud said that the libido in humans is always banging and struggling to be released. In this quote, the word "human" needs to be underlined. Human means everyone without exception, including me, and you are human. Are you and I the perpetrators of sexual violence? For that reason, we (humans) must be chemically castrated to lull that struggling libido.

The human context in Sigmund Freud's Libido theory is general, not specific. In another part of his writings, Freud said that human libido could be released in various ways, such as reading, cooking, working, and other activities. According to the authors, this basis cannot be used as a reference for applying chemical castration to perpetrators of sexual violence because the impingement of human libido is not solely on sexual activity. In reality, not all humans become perpetrators of sexual crimes.

On the other hand, in Law no. 17 of 2016, according to the author, this regulation is only oriented toward punishing the perpetrators. It does not state how the victim obtains the fairest legal justice, does not state how the psychological and social recovery steps are taken, and it does not say how the victim's family gets protection (mass media attacks and so on).

Meanwhile, victims of sexual violence are neglected.

In-Law no. 23 of 2002 paragraph (2): "every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to be kept secret." But on the other hand, the mass media has the authority and authority to *publish* the identity of the child who is the victim and the perpetrator. The mass media and social media often criminalize victims and perpetrators. Don't forget that in our memories, the sadistic rape case using the handle of a hoe, the victim later became *a meme* on social media. Likewise, perpetrators still in junior high school (junior high school) receive blasphemy on social media.

It is worth questioning the empathy and feelings of our society represented by social media. *Likes* and *shares*, which are easy to do, prove that our community has not been educated in social media. How do the victim's family or even the perpetrator's family feel? In this case, the author sees that the irresponsible use of social media also creates new actors for cases of sexual violence.

How does the government respond to this? Will chemical castration be punished, sexual crimes end, or at least decrease? With such sanctions, the government expects a deterrent effect for perpetrators and prevents sexual violence against children.

The government believes increasing sentencing is the most effective way to suppress criminal acts. However, the government's views and decisions have had pros and cons, particularly regarding the addition of additional penalties for sexual crimes in the form of chemical castration and chip installation. Of course, groups who are pro with the government's criminal law policy welcome this decision. Meanwhile, for those who are contra, this is a view and determination of the government, which is entirely wrong and reactive. Sanctions are very high, plus fines and additional penalties in the form of castration. The effectiveness of criminal sanctions is often assessed in the context of *deterrence*. Yet many studies present that this way of thinking is terrible. The installation of chips for perpetrators of sexual crimes does not guarantee that it will not be repeated/prevented or can provide a deterrent effect for perpetrators.

There are pros and cons related to the castration of criminal witness, which raises a philosophical question that is still raising question marks, is "Is the criminal sanction of chemical castration in accordance with the principle of justice?" Related to this philosophical question, an ethical theory was introduced by the philosopher Aristotle in his book entitled *Rhetorica* and *Ethica Nicomachea*. This theory argues that the purpose of the law is solely to realize justice. Justice here is *ius sum cuique tribuere* which means to give everyone what is due or due. Or the full slogan reads, "*Iustitia est constans et perpetua voluntas ius suum cuique tribuere*". In other words, the law, according to this theory, aims to realize or realize justice.

Starting from the description above, in this short paper, the author tries to describe the views of the principle of justice regarding the enforcement of chemical castration criminal sanctions in Article 81A of Law no. 17 of 2016 concerning Stipulation of Government Regulation instead of Law No. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection Becomes Law.

### **Problem Formulation**

Does the principle of justice sanction chemical castration?

## **II. Research Method**

This research is legal research using a statutory approach. The legal materials used are primary, secondary, and tertiary, analyzed using an analytical description.

### III. Results and Discussion

In his book *Rhetorica* and *Ethica Nicomachea*, the philosopher Aristotle introduced the ethical theory. This theory argues that the purpose of the law is solely to realize justice. Justice here is *ius sum cuique tribuere* which means to give everyone what is due or due. Or the full slogan reads, "*Iustitia est constans et perpetua voluntas ius suum cuique tribuere*". In other words, the law, according to this theory, aims to realize or realize justice.

G. Radbruch states that something that is made must have a goal or purpose. So, the law was made with a purpose. This goal is a value that humans want to realize. There are three main legal objectives, namely:

- a. Justice for balance;
- b. Certainty for determination;
- c. Benefit for happiness.

Furthermore, Aristotle teaches two kinds of justice: distributive justice (*distributive*) and commutative justice (*commutative*). Distributive justice demands that everyone gets what their right or share; *suum cuique tribuere* (*to reach his own*) is. This share is not the same for everyone. Depending on wealth, birth, education, ability, and so on is proportional. What is considered fair here is if everyone gets their right or share proportionally considering education, position, power, etc. Distributive justice is the government's duty to its citizens, determining what citizens can demand. This distributive justice is the obligation of legislators to be considered in drafting laws. This justice gives to every one according to merit or ability. Here it is not equality that is demanded but balance. "Every citizen has the right and is obliged to participate in the defense and security of the state," reads Article 30 paragraph (1) of the 1945 Constitution (second amendment). This does not mean that everyone without exception can become a soldier, but only those who, after the screening and medical examination, are deemed capable of carrying out their duties as soldiers, while those who are sickly will, of course, not receive attention.

Article 6 paragraph (1) of the 1945 Constitution reads, "candidates for President and Vice President must be an Indonesian citizen since his birth...". This does not mean that every Indonesian citizen can become President or Vice President from birth, only those who meet the requirements. Even then, elections must still be held. It is unfair that people who can't afford it must pay the same high taxes as prominent businessmen. So, this distributive justice is proportional.

Commutative justice gives everyone the same amount. In the association in society, commutative justice is the obligation of each person to the other. Here what is required is equality. What is fair is when everyone is treated equally regardless of position. In a refugee camp, the distribution of rice equally will be fine.

While distributive justice matters to legislators, commutative justice are primarily for judges. Judges pay attention to individual relationships with the same procedural position without discriminating between people (*equality before the law*). If distributive justice is proportional, commutative justice is absolute because it pays attention to equality.

Distributive justice, according to Aristotle, focuses on the distribution, honors, wealth, and other goods that are equally obtainable in society. Leaving aside the mathematical "proof," it is clear that the distribution of wealth and other valuables was, in Aristotle's mind, based on the overall values among citizens. A fair distribution may be a distribution that is by the value of its goodness, namely its value to society.

On the other hand, commutative justice focuses on correcting something wrong. Commutative justice seeks to provide adequate compensation for the injured party if a violation is violated or an error is committed. If a crime has been saved, the perpetrator must receive appropriate punishment. However, injustice will disrupt the "equality" that has been established or has been formed. Commutative justice is tasked with rebuilding this equality.

From the description above, commutative justice is the jurisdiction of the judiciary, while distributive justice is the domain of the government. In his argument, Aristotle emphasizes the need to distinguish between judgments that base justice on the nature of the case and those based on general and common human nature and decisions based on particular views of specific legal communities. This distinction should not be confused with the difference between positive law stipulated in the law and customary law. Because, based on Aristotle's credit, the last two judgments can be a source of consideration that only refers to specific communities, while other similar decisions, although embodied in the form of legislation, are still natural laws if they can be obtained from the general nature of humans.

Suppose you pay attention to the implementation of Aristotle's theory of commutative justice above, according to the author. In that case, it is still not possible to touch the perpetrators of the crime of rape, especially against minors. The application in the articles still does not feel a sense of justice. The sentences handed down to the rapists do not reach half the number of sanctions in the report. Many perpetrators of rape crimes do not bear the maximum sentence. The threat of punishment for the perpetrators of rape, according to the provisions of the Criminal Code concerning the act of rape, is a maximum of 12 years. Many perpetrators of rape crimes do not bear the maximum sentence. Meanwhile, the victims have to live with disgrace and psychological trauma stories. So unfair.

What about additional criminal sanctions in the form of chemical castration contained in Article 81 A of Law no. 17 of 2016 concerning Stipulation of Government Regulation instead of Law No. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection Becomes Law, is it in line with the principles of commutative justice as taught by Aristotle's theory of justice? In the author's opinion, this is not true, even if they reason or argue that chemical castration is a therapeutic measure. In the author's opinion, inserting chemical liquids into the body of a person who is not sick is a form of torture, especially when there is an element of coercion. In the explanation of Human Rights (HAM), every human being has *non-derogable rights*, one of which is the right to be free from torture. Humans are not born criminals. But every human being has the potential to be a criminal.

This situation brings pros and cons to academics, legal experts, and other stakeholders concerned with children's problems. Indeed, when examined from the victim's perspective, the existence of chemical castration sanctions brings justice. But what if read from the perpetrator's perspective, does this sanction meet the principles of justice? Based on the analysis, it can be described as follows:

### **3.1 Pro Law of Transport**

A member of Commission III, Arsul Sani, believes that the castration penalty for pedophiles must be enforced. The reason is that pedophile victims often occur both in the public sphere and within the household. Meanwhile, Attorney General HM. Prasetyo assessed that the crime of sexual violence against children should be *extraordinary*, so



there must also be handling of a remarkable law enforcement process. The legal basis considered fast is the Perppu (Government Regulation instead of Law).

Likewise, Arist Merdeka Sirait, Chairman of the National Commission for Child Protection, believes that the punishment of castration for perpetrators of sexual violence against children can reduce child abuse cases. This punishment can have a deterrent effect on perpetrators of sexual crimes against children, coupled with the application of social sanctions, namely distributing and posting photos of perpetrators in public places. Castration is not cut off from sexual desire but controlled, so they do not perform sexual acts. We hope this will have a deterrent effect.

### 3.2 Cons of the Law of Transportation

Expert opinion on child welfare, Prof. Dr. Irwanto, thinks that the government has misfocused on responding to cases of rape and obscenity that have arisen. The government seems to be more focused on punishing perpetrators of sexual violence, ranging from castration to life imprisonment. This is justified by using the same punishment in several developed countries. They reflect on several United States countries that use castration as a punishment. Furthermore, according to Prof. Dr. Irwanto, the crime of sexual violence in states that apply castration discipline did not decrease significantly.

Masruchah, a member of Komnas Perempuan, believes that she does not agree with the sanctions or the punishment for castration because some of them are human rights violations. If a deterrent effect is sought, it can be done by maximizing the sentence that is currently in development. While dr. Boyke Dian Nugraha, a sexologist, judged that castration for perpetrators of sexual crimes against children was not effective. The reason is that perpetrators of sexual crimes against children still have the potential to commit crimes as long as their mental condition is not treated. It is the soul that is sick. Castration or castration will not complete his soul. The best way to deal with perpetrators of sexual crimes against children is to provide treatment and rehabilitation for perpetrators of sexual crimes against children. Then the children are given sex education to protect themselves from the perpetrators of sexual crimes.

Data from the *World Rape Statistics* or world statistics on rape in various countries prove that the death penalty or castration is ineffective in causing a deterrent effect. In addition, chemical castration against perpetrators from a medical point of view, according to Roslan Yusni Hasan, a neurologist or neurology specialist, the use of chemical castration hurts someone because it will make a person's hormonal condition unbalanced, and the perpetrator who has been castrated can rape again even though his libido is low. Because the memory of sexual violence is still there, potentially even more aggressive and triggering depression.

In addition to the above opinion, there are several things that the author would like to express regarding the rise of "castration" initiatives against perpetrators of sexual crimes against children.

- a. Article 10 of the Criminal Code explains the punishment used as the basis for criminal law in Indonesia, namely the major crime and additional punishment. The main disciplines consist of capital punishment, imprisonment, confinement, fines, and imprisonment (closure was practiced in the case of July 3, 1946). At the same time, additional penalties are revocation of certain rights, confiscation of goods, and announcement of the judge's decision. If you look at these provisions explicitly and implicitly, it seems complicated to include "castration" into one of the crimes described above. If "castration" is included as a punishment for "revocation of certain rights,"

- what rights are revoked by being castrated? Does the revocation of requests have to injure the body or the body of a citizen?;
- b. The imposition of 'castration' penalties for sexual crimes will have profound implications, for example, for perpetrators who already have partners. It will have a substantial psychological impact on a wife who has a husband as a sexual offender and is sentenced to 'castration.' Moreover, as a married couple, the wife has the right to be provided with physical and spiritual support, besides that, the wife also has the right to continue the offspring that has been guaranteed by the 1945 Constitution of the Republic of Indonesia.
  - c. The punishment of 'castration' is not by what the purpose of punishment is developing today. . The sentence that was previously used as retaliation and the maintenance of public order has now grown into educating or correcting people who committed crimes so that later they will be helpful to and accepted by the community so that the new term 'penal institutions' appear from the previous prisons, and 'inmates.' of the prior term convict;
  - d. Pappu Number 1 of 2016, promulgated into Law No. 17 of 2016, was rejected by the Indonesian Doctors Association (IDI) as the executor of the castration sentence. The refusal is based on the fatwa of the Honorary Council and Medical Ethics (MKEK) Number 1 of 2016 concerning Chemical Castration and is also based on the Doctor's Oath and the Indonesian Code of Ethics (Kodeki);
  - e. By being castrated, a person will lead to an unclear life and suffering for all time. For example, if a criminal has been released from prison and has turned out to be good and accepted by society, but on the other hand, his sexual life has been castrated, can the State return him? Does he always have to suffer all his life and continue to suffer?;
  - f. Those who are not married become perpetrators of sexual crimes. Then they are determined to be suspects. The judge will give the verdict of 'castration.' What about their right to marry and continue their offspring as guaranteed by the constitution?

The chemical castration punishment is a form of criminalization back to the perpetrators. So that the person who was previously the perpetrator became a victim because of the implementation of this castration sentence. Meanwhile, the improvement of the social environment, the educational background, and the family environment, which is the shelter for the children, seems to be neglected. The protection of children only focuses on punishing the perpetrators, while the anticipation that there will be no victims has not been realized.

The law was drafted, made, and passed. Of course, there is a purpose for human life on this earth. With this goal, there will be one or more achievements that humans desire as the subject and object of law enforcement. Andi Hamzah and Sumangelipu are of the opinion:

The question for centuries has not been answered, what is the real purpose of imposing a crime. Of the many answers, none of them satisfies all parties. Some answered, "to fix the criminal." If it is only aimed at fixing criminals, there is no place for the death penalty and life imprisonment.

For crimes that deeply offend the principles of just and civilized humanity, as mentioned earlier, it is difficult to eliminate the deterrent of the criminal to be imposed. Likewise, the nature of revenge is a crime. In the author's opinion, the goal is to improve criminals so that they can become good citizens, appropriate if the convict still has hope for improvement, especially for *victimless crimes* such as homosexuals, pimps, and the like.

This opinion reminds us that the purpose of criminal law in Indonesia is not only to focus on efforts to repair criminals so that they can return to being good citizens but also cannot escape from deterrence and retaliation, which are compensation for violations or crimes they have committed.

Meanwhile, from the developmental aspect, the purpose of imposing criminal offenses in the course of history can be compiled as follows:

1. *Revenge (Revenge)*;

A person who has caused harm and misfortune to another person, according to the reason for this purpose of retaliation, is obliged to suffer the same as that which has been inflicted on another person. In primitive society, the purpose of punishment is to highlight this aspect of retaliation which often occurs due to the actions of one ethnic group resulting in demands for revenge from other tribes.

2. *Removal of Sins (Expiation)*;

Terms of the purpose of punishment in the sense of remission of sins is also a history in human civilization. The purpose of punishment like this is rooted in religious thought. According to the Judean-Christian tradition, punishment is the expiation of a fault by the suffering of the perpetrator. Thus there is a balance.

3. *(Deterrent)*;

The justification for deterrence is based on the reason that criminal threats made by the State will prevent or limit crime. Criminal acts can be reduced by imposing penalties on perpetrators quickly, accurately, and commensurately. This will make rational human beings think about the pros and cons of an action. The basis for considering the pros and cons of an act is the result of classical criminology thinking in the 18th century for criminal law reform, pioneered by Jeremy Bentham from England and criminologist Cesare Beccaria.

4. *Protection of the Public (Protection of the Public)*;

Such a criminal system is to isolate criminals from the law-abiding society. Thus the crime in the community will decrease. In the past, a method of giving marks to criminals was used, for example, being branded as burnt so that good and honest people avoided it, or the convict was thrown out or put in prison.

5. *Repair the Criminal (Rehabilitation of The Criminal)*

This goal is the most widely asked of people in this modern era. The punishment must be sought so that it can change the views and attitudes of the criminal so that he will no longer commit crimes in the future.

According to JP Glastra van Loon, it is said that in carrying out its role, the law has an essential function, namely:

- a) bringing order to society and regulating social life;
- b) Resolve disputes;
- c) Maintain and maintain order and rules, if necessary, by force;
- d) Changing the laws and regulations to adapt to the needs of the community;
- e) Fulfill the demands of justice and legal certainty by realizing the above functions.

From the description above, the law must be able to realize justice, used for the benefit of the community, and general legal certainty. According to the theory of commutative justice, at least the perpetrator of the crime gets what he deserves for the action he did because it has robbed the victim's virginity, future, and honor. Fair justice does not necessarily eliminate his rights as a human being. The application of castration sanctions for perpetrators of child sex crimes is not by what the purpose of punishment is



currently developing. The sentence that was previously used as retaliation and the maintenance of public order has now grown into educating or improving people who have committed crimes so that later they will be helpful to and accepted by the community so that the new term 'correctional institution' appears from the previous prison and 'inmates.' of the prior term convict.

Professor of Criminal Law at the Faculty of Law, University of Indonesia, Harkristuti Harkrisnowo, said the sentence could be misdirected and was feared to be a boomerang. He explained often, perpetrators of sexual violence are considered to have an *abnormal sex drive* or high sex libido and an abnormal urge. Perpetrators perpetrate not all cases of sexual violence *with a weird sex drive*, and the variables that must be regulated if castration is made a regulation will be very complex. On the other hand, the implementation of castration is not further held whether it is carried out by force or voluntarily. There is a conceptual difference between chemical castration accompanied by rehabilitation.

#### IV. Conclusion

Very high sanctions plus fines and additional penalties in the form of castration and the installation of chips for perpetrators of sexual crimes do not provide a guarantee that it will not be repeated/prevented or can provide a deterrent effect for perpetrators. On the other hand, chemical castration criminal sanctions do not reflect the principle of justice for the perpetrators. The chemical castration punishment is a form of criminalization back to the perpetrators. So that the person who was previously the perpetrator became a victim because of the implementation of this castration sentence. Meanwhile, the improvement of the social environment, the educational background, and the family environment, which is the shelter for the children, seems to be neglected. The protection of children only focuses on punishing the perpetrators, while the anticipation that there will be no victims has not been realized.

Responding to sexual violence (both that occur to children and adults) is our collective effort so that there are no victims. The revitalization of our society that tends to be individualistic is an important note in the fight against sexual crimes. By caring for others, protecting each other, the concept of loving one another will be a trigger for peace, so that violence and sexual crimes will be combated.

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