

IMPLEMENTATION OF CASTRATION LAW ON CHILD RAPE AS A DETERMINATION EFFORT FOR PERPETRATOR IN INDONESIA

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Abstract

The purpose of this study is to investigate the effectiveness of castration as a deterrent for child rapists in Indonesia. A normative approach, or documentary legal research, was utilized in the writing of this research. The study's findings demonstrate that the purpose of giving punishment is to repair the damage that is both individual and social caused by a crime. In Indonesia, sexual assaults have increased annually. The government passed PERPU No. 1/2016 to Law 17/2016 which imposes harsher penalties for sexual violence crimes, including chemical castration, because the Criminal Code's and Child Protection Law's criminal penalties for perpetrators of sexual violence are considered to be ineffective. Society has pro and contra of chemical castration in terms of its efficacy and its use, which is regarded as a violation of human rights. However, in addition to these advantages and disadvantages, the Government should prepare human resources, infrastructure, and regulations for effective, efficient, and on-target implementation in order to reduce the rise in sexual violence and prevent recurrence.

Keyword: castration law; child sexual violence; deterrent effect

1. INTRODUCTION

The development of sexual violence as a crime in society is increasingly diverse in terms of its motives, nature, form, intensity, and mode of operation. Anxiety arises because crime is perceived as a threat to the well-being of society and the environment. As a social reality, the problem of crime cannot be avoided and is always present. Because there are aspects that are very particular to women, sexual violence is a significant and complicated topic on all maps of violence against women. The root of sexual violence against women is the issue of unequal power relationships between perpetrators and victims. women, as the power relations between men and women are in question. When one party has more control over the victim, inequality gets worse.

In Indonesia right now, sexual violence is a very big problem. Although anyone can be a victim of sexual violence, women account for the majority of those who do. Ironically, the majority of sexual assaults in Indonesia today involve minors. (elementary & junior high schools). The modes that are often used are money, value, and goods. The perpetrators abused their power and/or position to threaten the victims. Sexual violence includes negative deviations that act inconsistently/violating immoral norms and customs. Acts of sexual violence certainly harm victims both physically, mentally and psychologically. Especially if the victim is a minor, the trauma experienced can interfere with the child's growth and development.

According to information from the Ministry of Women's Empowerment and Child Protection (PPPA), the Online Information System for the Protection of Women and Children (Symphony) recorded at least 11,952 cases of child violence in 2022. Of these, the forms of violence experienced most by children was sexual violence in 7,004 cases. This indicates that sexual violence accounts for 58.6% of cases of violence against children. The Ministry of PPPA also noted, based on the same data, that there were 8,478 cases of violence against women in 2021, 15 percent of which were sexual violence, or 1,272 cases.

Despite the fact that sexual violence occurs frequently, not many people are aware of or sensitive to the issue. Sexual assault is frequently viewed as a single offense against decency. This view is even upheld by the state through the substance in the Lawbreaker Code (KUHP). Crimes involving sexual violence, such as rape, are categorized as decency violations under the Criminal Code. Not only does this classification reduce the rate of rape, but it also creates the perception that sexual violence is simply a moral issue. On the one hand, understanding sexual violence as a matter of decency makes it less important than other crimes like murder or torture. In point of fact, the experiences of women who have been the victims of sexual violence demonstrate how sexual violence can destroy the victim's entire life, leaving her with the impression that she is unable to continue living it.

Due to the numerous instances of rape and sexual violence against girls, President Joko Widodo on May 25 2016 issued Government Regulation in Lieu of Law (PERPU) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. PERPU 1/2016 was later legalized to become Law Number 17 of 2016 dated 9 November 2016 concerning the Stipulation of Perpu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law (hereinafter referred to as Law 17/2016)¹⁰, which stipulates additional punishment in the form of revealing the identity of the perpetrator as well as aggravating penalties for those who commit sexual crimes against children, including the death penalty, life imprisonment, and a maximum of 20 years in prison.

However, the facts that emerged after the stipulation of this sentence contained pros and cons to the application of the castration law. As for those who reject the imposition of chemical castration because Indonesia as a country that has ratified the ICCPR and CAT should not apply punishments that are amputation and cause human organ dysfunction. In the meantime, those who advocate for the addition of chemical castration acknowledge that doing so serves both as a preventative measure and as a means of dissuading criminals from repeating their actions. Additionally, the castration law has the potential to lower the rate of sexual violence, particularly against children. Given that children are the nation's future, it is essential that every child receive adequate protection.

Based on the preceding information, the authors are interested in conducting research on the use of castration law as a form of punishment for child rapists in Indonesia as a deterrent.

2. RESEARCH METHODS

The author of this study employs the descriptive research method, which aims to provide an objective description of a circumstance in terms of the kind of data and its source. Because the majority of this research is conducted on secondary data in libraries, such as books and official government documents, the approach method used in writing this research is a normative approach, also known as documentary legal research. Secondary data, which can take the form of books or other forms of documentation that are typically available in libraries or privately owned, as well as other sources required in accordance with the study's title, are the type of data used in this investigation.

3. DISCUSSION

3.1 Criminal Law for Rape perpetrators in Indonesia

Because rape is a sexually related criminal act that occurs when one or more people force another person to have sexual intercourse through the penetration of the vagina or anus with a penis, other body parts like the hands, or with certain objects, either by force or threats of violence, rape is regulated under Indonesian criminal law. Rape is basically a form of primitive violence that can happen to anyone. Rape is a social challenge that is not only sexual violence but is always a form of behavior that is influenced by a certain system of power.

Article 285 of the Criminal Code (KUHP) in Indonesia regulates criminal acts against rapists, stating that: Anyone who uses violence or threats of violence to force a woman to have sex with him outside of marriage faces rape charges and a maximum of twelve years in prison. In this article, rape is defined as if it is committed outside of marriage. In addition, the word intercourse means that legally rape occurs when penetration has occurred. When penetration has not occurred, the incident cannot be said to be rape, but it is included in the category of obscenity. So, the term rape has the same meaning as coercion, which is both a form of action, only the difference is that the act of forcing is not necessarily in the form of intercourse (forcibly inserting the penis into the vagina or anus), while rape is definitely in the form of intercourse regardless of the intercourse being carried out between adults or between adults and children. While Article 76D of Law of the Republic of Indonesia Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection mentions rape, it states that no one may use violence or threats of violence to coerce a child into having sexual relations with them or another individual.

There are elements, the meaning of rape can be interpreted in three forms:

- 1) 1) A relationship with a woman without her consent is considered rape. There is a dominant element in this sentence, and that element is prohibited having sexual relations with a woman without her consent.
- 2) 2) A man engaging in unconstitutional sexual activity with a woman without the woman's consent is committing rape. There are more complete elements in this

sentence, including a man engaging in illegal sexual activity with a woman under duress and against her will.

- 3) A man committing a rape is having sex with a woman who is not his wife without her consent and when the woman is scared or in a potentially dangerous situation. This definition is nearly identical to that provided in Criminal Code section 285.

Furthermore, special criminal acts for cases of rape of children are mentioned in Article 287 paragraph (1) which reads:

If a man has sexual relations with a woman who is not his wife and he knows or should reasonably suspect that the woman is under the age of 15, or if it is unclear how old she is, that the woman is not yet ready for marriage, he will be punished with nine years in prison.

Additionally, according to paragraph 3 of Article 290 of the Criminal Code:

Anyone who encourages a person who is known or reasonably should be suspected to be under the age of fifteen or who appears to be unmarried to commit or permit obscene acts to be committed or to have intercourse with another person outside of marriage is subject to a maximum sentence of seven years in prison.

Notwithstanding the arrangements contained in the Crook Code, criminal assents against assault are likewise contained in the Law of the Republic of Indonesia Number 35 of 2014 concerning Alterations to Regulation Number 23 of 2002 concerning Kid Assurance Article 81 states:

1. Article 76D stipulates that anyone who violates it will be subject to a minimum of five years and a maximum of fifteen years in prison and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
2. Anyone who intentionally commits deception, a series of lies, or induces a child to have sexual intercourse with him or another person is subject to the criminal provisions outlined in paragraph 1.

Thus, it can be interpreted that the government has provided a legal umbrella so that the crime of rape can be minimized in society. As stated in the Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in Article 81 paragraph (7), which reads Against the perpetrators as referred to in Paragraph (4) and Paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices, this effort was also carried out by imposing more severe sanctions in the form of castration.

3.2 Implementation Castration law for Perpetrators of Child Rape Crimes in Indonesia

In Indonesia, the issue of sexual violence, particularly rape, particularly against children, requires greater focus and seriousness right now. "Everyone has the right to protection of himself/herself, family, honor, dignity, and property under his control," according to Article 28G paragraph (1) of the 1945 Republic of Indonesia Constitution and its amendments, is in line with this mandate as well as the right to a feeling of safety and insurance from dangers of

dread to do or not do or not accomplish something a common liberty. According to the 1945 Republic of Indonesia Constitution, Article 28 H paragraph (2), "Every person has the right to receive convenience and special treatment in order to obtain equal opportunities and benefits in order to achieve equality and justice." Children's rights, which are human rights, are also protected by Law Number 23 of 2002, which was enacted in addition to the 1945 Constitution. In addition, the Child Protection Act emphasizes that the state, society, parents, and family are all responsible for a series of ongoing actions aimed at safeguarding children's rights.

This indicates that sexual offender castration has been made legal in Indonesia. "Against the perpetrators as referred the form of chemical castration and installation of electronic detection devices," according to Indonesia's Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 in paragraph (4) and paragraph (5) may be subject to action in concerning Child Protection, has included castration punishment to safeguard the human rights of rape victims' children.

Castration is a form of punishment or treatment that has recently emerged as a symptom in several nations, including the United States of America and the European Union. According to the World Rape Statistics, or statistics on rape around the world, there are currently 20 countries that use castration. Nine of these countries are in Europe, nine are in the United States, one is in Latin America, and one is in Southeast Asia. The nine European nations are Britain, Poland, Russia, Germany, Czech Republic, Denmark, Sweden and Spain, California, Florida, Georgia, Iowa, Louisiana, Montana, Oregon, Texas, and Wisconsin are the nine states in the United States.

Castration, which takes the form of chemical castration for sexual offenders, has been included in the criminal code of several EU nations. In 2010, Norway was the only country in the European Union to explicitly state in its criminal law that sex offenders could be castrated. Chemical castration is the only treatment for pedophilia in Poland. Criminal laws for rape and child sex offenders have also been added in Australia. Chemical castration has been included in Russia's criminal code for child sex offenders when the victim is younger than 12 years old. In the meantime, rapists might get castration injections in Turkey.

Castrating child sex offenders with chemical injections, which is a more severe form of punishment, demonstrates a strategy for retribution that has long been abandoned. This method also has the appearance of barbarism and is regarded as a punishment used by primitive people. There is almost no correlation between reduced sexual crimes against children and aggravated punishment. Retaliation as a form of punishment for criminals is no longer popular in many countries, and many people and human rights groups have protested against it. Academically, this punishment also does not have a healing effect on the victim. Child crime expert Jocelyn B. Lamm of Yale University,

Law Number 23 of 2002 Concerning Child Protection Becomes Law (hereinafter referred to as Law 17/2016)¹⁰, which stipulates aggravating penalties for perpetrators of sexual crimes against children, including the death penalty, life imprisonment, and a maximum of 20 years in prison, as well as additional punishment in the form of announcement of the perpetrator's

identity, is the law that regulates it in Indonesia itself. Chemical castration and the installation of electronic detectors are two additional options available to the perpetrators. However, the fact that emerged after the imposition of this sentence, many people are against this, they say that the castration law is a punishment that violates human rights. However, we also have to see from the point of view of victims of sexual crimes, where their future and honor were taken away in this way. Of course, in addition to physical losses, of course victims also experience psychological trauma.

However, there haven't been any studies to demonstrate that castration punishments can effectively curb sexual violence. Castrating the offender is not an easy way to stop sexual violence because it is a complex behavior. Castration of perpetrators is not just for the victims; there is also no significant correlation between castration and a decrease in child sexual crimes; there is no scientific evidence that cases of sexual violence have decreased. The government should prepare human resources, infrastructure, and implementing regulations so that these regulations can be enforced effectively, efficiently, and on target in order to reduce the increase in sexual violence and prevent recurring crimes, regardless of the benefits and drawbacks of aggravating castration laws.

4. CONCLUSION

The conclusion that can be drawn from the above discussion is that the purpose of imposing punishment is to repair damage that a crime has caused, both to the individual and to society. In Indonesia, sexual assaults have increased annually. The government passed PERPU No. 1/2016 to Law 17/2016, which imposes harsher penalties for sexual violence crimes, including chemical castration, because the Criminal Code's and Child Protection Law's criminal penalties for perpetrators of sexual violence are considered to be ineffective. Society weighs the benefits and drawbacks of chemical castration in terms of its efficacy and its use, which is regarded as a violation of human rights. Nonetheless, regardless of the advantages and disadvantages, the public authority ought to get ready HR, foundation and carrying out guidelines so these guidelines can be authorized really, effectively and on track to decrease the expansion in the quantity of sexual brutality and forestall repeating violations. The maiming sentence applied to the culprits of the wrongdoing of assault against kids ought to be a discipline that makes an obstruction impact for the culprits.

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