



## DEVELOPMENT OF CHILD PROTECTION POLICY AGAINST THE DANGERS OF SEXUAL PREDATORS

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### Article Info

#### Article history:

Received : 01 May 2025

Acceptance : 27 June 2025

Published : 13 July 2025

E-ISSN: 2541-5263

P-ISSN: 1411-4380



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### ABSTRACT

*The application of chemical castration punishment for sexual predators is an appropriate policy to protect children from sexual predators in Indonesia, as formulated in Article 81 and Article 81A of Government Regulation in Lieu of Law Number 1 Year 2016 on the Second Amendment to Law Number 23 Year 2002 on Child Protection. It is hoped that this policy can reduce the number of sexual violence that occurs in children. But there are polemics about the punishment, including; various groups think that castration punishment has violated human rights, the absence of technical instructions to perform chemical castration, to the rejection of the Indonesian Doctors Association (IDI) to become the executor of chemical castration because it is contrary to the medical code of ethics. This research has two problem formulations, namely; I) Why does the Government of Indonesia apply chemical castration punishment for sexual predators? II) How is the human rights perspective on chemical castration punishment? This research is a normative research with secondary data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Using data collection techniques with literature study and interviews. While data analysis uses qualitative analysis so that this form of research is evaluative research. The approaches taken are conceptual approach, legislative approach, and historical approach. The purpose of this research, namely; I) to explain more deeply the development of child protection policies in Indonesia until the implementation of chemical castration punishment. II) to explain further about human rights perspective towards chemical castration punishment. Finally, it concludes that: I) The implementation of chemical castration punishment by the Government of Indonesia is an effort to reduce the number of sexual violence against children. II) Chemical castration punishment in Indonesia is in accordance with the spirit of human rights in Indonesia. Because it can protect the human rights of children who range to be harmed.*

**Keywords:** Child, Protection, Sexual Predators

## 1. INTRODUCTION

The government should have paid more attention to human rights, cost-benefit considerations, and medical ethics before formulating chemical castration as a punishment in Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Therefore, the punishment imposed on perpetrators of sexual crimes would not merely serve as a deterrent, potentially leading to human rights violations and breaches of medical ethics.

Regarding human rights, the Indonesian state protects and guarantees the human rights of every citizen. These rights are enshrined in Articles 28A to 28I of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). The state's guarantee of the rights of every citizen does not mean that the state has opened the door wide open for its citizens to engage in any act according to their individual desires without any clear boundaries (Fitri & Hutagalung, 2023). Article 28J of the 1945 Constitution defines the human rights enjoyed by every citizen. These limits must be established so that every citizen can live in an orderly manner within society, nation, and state.

Fundamental rights are fundamental rights. Human rights are fundamental and inherent to human identity universally. According to Tom Campbell, "...human rights are based on the affirmation of human equality" (Campbell, 2001). Therefore, examining human rights, according to Todung Mulya Lubis, is truly examining the totality of life; the extent to which our lives provide a proper place for human beings (Todung Mulya Lubis, 1984).

With human rights always being fundamental (grounded), human rights belong to every human being, from birth to death, without exception. As stated in Article 1 of the Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights..." (All human beings are born free and equal in dignity and rights). This article clearly states that even newborn children possess human rights that must be respected and protected by everyone, especially the government. The Indonesian government recognizes the importance of protecting the human rights of every child (Sagala, 2018). Therefore, various legal instruments have been enacted in Indonesia to guarantee and protect the human rights of every child.

Various penalties have been formulated in legislation as a form of threat and deterrent for anyone who "deprives" children of their human rights, ranging from imprisonment and fines to chemical castration. Chemical castration is an additional punishment/increased punishment for perpetrators of sexual crimes which has been formulated in Article 81 paragraph (3) and paragraph (7) of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Then a polemic arose regarding the chemical castration punishment. Is it appropriate and

proportionate to apply chemical castration punishment to sexual criminals? Does chemical castration punishment not violate human rights? How effective is the chemical castration punishment, can it reduce the number of cases of sexual violence against children?

## 2. RESEARCH METHOD

This research uses a normative juridical approach, focusing on the study of legal norms enshrined in laws and regulations and applicable legal principles (David Tan, 2021). This approach was chosen because the issues studied relate to state policies in the form of regulations regarding child protection and the application of chemical castration as a punishment for child sexual offenders, as well as a review from a human rights perspective.

The type of data used in this study is secondary data, consisting of three types of legal materials. First, primary legal materials, namely relevant laws and regulations, such as Law Number 23 of 2002 concerning Child Protection, Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002, Law Number 39 of 1999 concerning Human Rights, and international legal instruments related to human rights that have been ratified by Indonesia. Second, secondary legal materials include legal literature, journal articles, legal expert opinions, and relevant court decisions. Third, tertiary legal materials, in the form of legal dictionaries, legal encyclopedias, and regulatory indexes, were used to support understanding of primary and secondary legal materials.

Data collection was conducted through library research, which involved searching, reading, and analyzing various written sources, including relevant laws and regulations and scientific literature. Furthermore, to strengthen the analysis, this research also included limited interviews with several expert sources, such as legal practitioners, academics, and, where possible, parties familiar with child protection and human rights issues.

The data obtained were analyzed qualitatively using an evaluative approach. Qualitative analysis involves examining the content and meaning of the legal materials reviewed and then systematically interpreting them. Three approaches were used in the analysis: a conceptual approach to understand the basic concepts of child protection and human rights, a legislative approach to examine regulations related to chemical castration, and a historical approach to understand the development of child protection policies in Indonesia leading up to their inception. Through this method, it is hoped that the research can provide an objective assessment of the existence and implications of chemical castration as a child protection policy within the framework of respect for human rights.

### 3. RESULT AND ANALYSIS

#### **The Development of Child Protection Policy in Indonesia**

In this life and existence, every human being, including children, has rights and freedoms. Children are the next generation of the nation's ideals and future human resources, the nation's capital for sustainable development (Nasrullah, 2022). In order to realize quality national and state development, it is only natural that children's rights receive greater attention.

The turbulent events of World War I resulted in many children becoming victims, experiencing hardship, having their rights neglected, and becoming victims of violence. The end of the war did not mean a decrease in violence and violations of children's rights (Susilowati, 2013). In fact, the exploitation of children's rights escalated to a more alarming level (Hadi Supeno, 2010). An activist named Eglantyne Jebb developed seven draft declarations of children's rights, which were later adopted by the Save the Children Fund International Union. These include:

1. Children must be protected from all considerations of race, nationality, or religion;
2. Children must be cared for while respecting the integrity of the family;
3. Children must be provided with the means necessary for normal development, both materially, morally, and spiritually;
4. Hungry children must be fed, sick children must be cared for, mentally or physically disabled children must be educated, and orphans must be cared for and provided with housing;
5. Children must be the first to receive assistance/help in times of adversity;
6. Children must enjoy and fully benefit from welfare and social security programs, receive training so that when needed, they can use it to earn a living, and must be protected from all forms of exploitation;
7. Children must be cared for and educated with the understanding that their talents are needed for service to fellow human beings.

Based on the above facts, the UN ratified the Convention on the Rights of the Child (CRC) to protect and enforce children's rights worldwide on November 20, 1989, and it entered into force on September 2, 1990. This Convention has been ratified by all countries in the world, except Somalia and the United States. Indonesia ratified the CRC through Presidential Decree Number 36 of 1990. Article 1 states, "[I] ratify the Convention on the Rights of the Child" (Organización de las Naciones Unidas, 1989).

The CRC consists of 54 articles divided into four parts:

1. Preamble, which contains the context of the CRC;
2. Part One (Articles 1-41), which regulates children's rights;

3. Part Two (Articles 42-45), which regulates the monitoring and implementation of the CRC;
4. Part Three (Articles 46-54), which regulates the implementation of the convention.

Constitutionally, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination. This article has a profound philosophical significance, as it means that no Indonesian child should be deprived of the guarantee of survival, growth, and development, and that no child should be deprived of protection from violence and discrimination.

The Convention on the Rights of the Child was ratified by the Government of the Republic of Indonesia in New York, United States, on January 26, 1990, as a result of the United Nations General Assembly session, adopted on November 20, 1989, with a declaration, the original copy of which is in English and attached to the Presidential Decree. Twenty-five years have passed since the Government of the Republic of Indonesia ratified the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990. Various policies in the field of child protection and the fulfillment of children's rights have been enacted. Referring to the CRC, as stated, a child is every person under the age of 18. Evidence of the government's concern for child protection can be seen in its ratification of the Convention on the Rights of the Child. The Indonesian government has ratified Law Number 23 of 2002 concerning Child Protection on October 22, 2002, which has now been amended twice: Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection.

The Child Protection Law embodies the state's obligation to implement its legal obligations resulting from the ratification of international law. In drafting this law, the Convention on the Rights of the Child served as the primary reference, in addition to prevailing social norms in Indonesia. Politically, the state has an obligation to actively develop a system that guarantees the welfare and protection of children. Therefore, the Convention requires the state to incorporate the principles of non-discrimination, child survival, and development into national planning and government policies, and the legislative body must ensure adequate budget allocation for child welfare services.

Overall, the law's core content embodies the provisions and principles of the Convention on the Rights of the Child. Even before the Convention on the Rights of the Child was ratified, the government had already enacted Law No. 4 of 1979 concerning Child Welfare. The explanation to Law No. 47 of 1979 explains that a nation that manages its household must be able to establish and foster a system of

livelihood and character. This endeavor is a continuous effort passed down from generation to generation, with the will, willingness, ability, and skills to carry out this task. This can only be achieved if the younger generation, as the next generation, is able to embrace and internalize the nation's philosophy of life. Therefore, efforts must be made to ensure that the younger generation develops behavioral patterns consistent with prevailing societal norms. To achieve this goal, efforts are made to foster, care for, and improve children's welfare.

To support the implementation of Law Number 4 of 1979, a Government Regulation concerning Child Welfare Efforts for Children with Problems was also created. According to Government Regulation No. 2 of 1988, children with problems include those who are parentless and neglected, abandoned children, children with disabilities, children with behavioral problems, and children with disabilities. Indeed, the age limits for children vary widely, as can be seen in the following table:

No	Laws	Child Age Limits
1	Civil Code	Fetus in the womb up to 21 years of age or previously married (as stated in Article 330 of the Civil Code)
2	Law Number 4 of 1979 concerning Child Welfare	21 Years of Age or Previously Married (Article 1 paragraph 1)
3.	Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child	18 Years of Age as stated in Article 1
4	Law Number 39 of 1999 concerning Human Rights	18 Years of Age or Previously Married as stated in Article 1 paragraph 5
5.	Law Number 13 of 2003 concerning Manpower	18 Years of Age, Article 1 point 26
6.	Law Number 40 of 2004 concerning the National Social Security System	23 Years of Age, Already Working, or Already Married. Found in article 41
7.	Law Number 30 of 2004 concerning the Position of Notary	Age 18 years or married (article 39)
8.	Law Number 7 of 1983 in conjunction with Law Number 36 of 2006 concerning Taxation	Age 18 years or married (found in the explanation of article 8 paragraph 2)
9.	Law Number 23 of 2006 concerning Population Administration	17 years old or previously married (article 63)
10.	Law Number 12 of 2006 concerning Citizenship	18 years old or married (article 4)
11.	Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking	Fetus in the womb until the age of 18 years (found in article 1 paragraph 5)
12.	Law Number 10 of 2008 concerning Elections for the House of Representatives (DPR), Regional Representatives Council (PD), and Regional People's Representative Council (DPRD)	17 years old or ever married (article 1 paragraph 22)

13.	Law Number 42 of 2008 concerning the Presidential and Vice Presidential Elections	17 years old or previously married (article 1 paragraph 21)
14	Law Number 44 of 2008 concerning Pornography	Age 18 years (article 1 point 4)
15.	Law Number 2 of 2008 in conjunction with Law Number 2 of 2011 concerning Political Parties	17 years old or previously married (article 14)
16.	Law Number 22 of 2009 concerning Road Traffic and Transportation	17 years (article 81)
17.	Law Number 11 of 2012 concerning the Juvenile Justice System	Minimum 12 years and maximum 18 years (article 1 paragraph 3)
18.	Law Number 35 of 2014 concerning Child Protection	Fetus in the womb until the age of 18 years (article 1 paragraph 1)

The enactment of Government Regulation in Lieu of Law (Perppu) No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection demonstrates the government's commitment to protecting children. This is evident in the articles that increase the penalties for perpetrators of sexual crimes, namely the death penalty, life imprisonment, a maximum of 20 years' imprisonment, and a minimum of 10 years' imprisonment. The Perppu also regulates three additional sanctions: chemical castration, the installation of electronic detection devices, and the announcement of the perpetrator's identity. The Convention on the Rights of the Child also emphasizes the right of children to be protected from all forms of sexual exploitation and sexual abuse, including child prostitution and other unlawful sexual practices.

#### Chemical Castration Punishment

In the Criminal Code, crimes of sexual violence, such as rape, are considered a violation of morality (Paradias & Soponyono, 2022). This categorization not only diminishes the severity of rape but also creates the perception that sexual violence is solely a moral issue (Purwanti & Zaliandi, 2018). The application of chemical castration as a punishment is considered barbaric and contrary to human dignity by some. But what exactly is chemical castration? According to Dr. Ika Puspita Sari, a researcher from Gajah Mada University (UGM), chemical castration is an effort to reduce sexual drive, usually performed on perpetrators of sexual violence by lowering the levels of the androgen hormone, testosterone, in men.

Therefore, chemical castration involves injecting anti-androgen chemicals into the body through injections or oral pills. These anti-androgens weaken testosterone, thereby reducing or even eliminating sexual desire in those who receive the injections or pills containing them. According to the Minister of Health, Prof. Dr. Nila Farid Moeloek, Sp.M(K), explains that chemical castration involves injecting anti-androgen chemicals, either through pills or injections, into the body of a sex offender with the aim of reducing testosterone levels.

Meanwhile, Wimpie Pangkahila, a sexologist from the Faculty of Medicine at Udayana University, Denpasar, stated that chemical castration involves injecting

anti-androgen drugs, such as medroxyprogesterone acetate or cyproterone, which suppress testosterone function. Without these drugs, men lose sexual desire, are unable to achieve erections, and are unable to have sex. In addition to suppressing sexual drive and the inability to achieve erections, anti-androgens suppress sperm production, resulting in infertility. Chemical castration is considered a punishment that satisfies society's sense of justice for child sexual abuse. However, the phrase "sense of social justice" is a term with unclear meaning and limitations.

The lack of clarity regarding the meaning and limitations of "societal justice" makes it difficult to determine parameters that can be used as a benchmark or yardstick to assess whether this "societal justice" is met in sentencing perpetrators of sexual crimes against children. Thus, this issue makes it difficult to meet the demands of societal justice in law enforcement regarding sexual crimes against children.

A societal sense of justice should align with efforts to advance human rights protection. According to Rubin, there are three prerequisites for advancing human rights protection, as follows:

- 1) The codification of higher law in a form accessible to all members of society. A codification of higher law that is accessible to every member of society.
- 2) The identification of an institution that can apply definitive interpretations of that law to the ruler.
- 3) The designation of an institution or agency that can provide definitive interpretations to the ruler (government).
- 4) The agreement of all government actors that these interpretations are definitive or supreme.

The agreement or willingness of every party running the government to accept the interpretation of the law is the definitive or most important interpretation. The rapid flow of globalization and the negative impact of developments in information and communication technology have given rise to a new phenomenon: sexual violence against children. Sexual violence against children is a serious crime that has been increasing over time and significantly threatens and endangers children's lives, damages their personal lives and development, and disrupts the sense of comfort, peace, security, and public order.

The discourse on castration punishment was proposed by the Indonesian Child Protection Commission (KPAI). According to the Chairman of KPAI, Asrorun Niam Sholeh, (for perpetrators of sexual violence - author's addition) there must be aggravated legal penalties to provide a deterrent effect. In addition to imprisonment up to the death penalty, there is a social punishment (namely) castration punishment with anti-androgen injections. The punishment in the form of anti-androgen injections is an appropriate punishment for pedophiles or perpetrators of sexual violence against children. With anti-androgen injections, it is hoped that the chain of sexual crimes is broken. The government reasons that it



is necessary to issue Government Regulation in Lieu of Law Number 1 of 2016 because the provisions on criminal sanctions for perpetrators of sexual violence against children, in Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, have not provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children. The House of Representatives (DPR) believes that Government Regulation in Lieu of Law Number 1 of 2016 (PPN 1/2016) is lacking, as it only stipulates increased penalties without addressing victim rehabilitation. It fails to consider how to restore victims who have suffered greatly physically and psychologically.

Meanwhile, those in favor, such as President Joko Widodo, have expressed their approval of increased penalties for perpetrators of sexual violence against children, including the imposition of libido-nerve castration. Similarly, Attorney General H.M. Prasetyo believes that sexual violence against children should be considered an extraordinary crime, necessitating extraordinary legal enforcement. However, the Indonesian Doctors Association (IDI), while not opposing the additional castration clause for perpetrators of sexual violence in the Perppu, has refused to implement the proposed additional punishment for perpetrators of sexual crimes against children.

### **The Right to Freedom from Torture and the Human Rights of Children**

Talking about human rights in this context means talking about the right not to be tortured or treated arbitrarily. Long before the enactment of Law Number 39 of 1999 concerning Human Rights and Eleanor Roosevelt's drafting of the Universal Declaration of Human Rights (UDHR) for the United Nations Commission on Human Rights, the English Bill of Rights existed from 1688-1689. This Bill of Rights explained that those found guilty were not permitted to be punished with cruel or unusual punishments.

In fact, the 1945 Constitution of the Republic of Indonesia also stipulates the right not to be tortured or treated arbitrarily, as stipulated in Article 28G paragraph (2) and Article 28I paragraphs (1) and (2). Article 28G paragraph (2) states that "Everyone has the right to be free from torture or degrading treatment of human dignity and has the right to obtain political asylum from another country."

Article 28I paragraphs (1) and (2) state that:

- (1) 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 a person before the law, and the right not to be prosecuted under retroactive laws are human rights that cannot be diminished under any circumstances.

- (2) Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment.

According to Marzuki, the nature of human rights lies in humanity or the inherent human nature of humans in their function as a source of human rights (Marzuki, 2017). Consequently, human rights are universally applicable because all humans are equal (have humanity). This definition implicitly explains the moral dimension of human rights, which is closely related to the nature of humans as beings with physical and existential aspects.

Therefore, the understanding and practice of law should be fostered in accordance with the foundation of natural law as moral principles based on universal reason, namely human nature. In Indonesia, the establishment of natural law and natural rights has been treated as the foundation of human rights. This can be seen in the Decree of the People's Consultative Assembly No. XVII/MPR/1998 concerning Human Rights, which recognizes that:

- 1) The Indonesian people have views and attitudes regarding human rights that are rooted in religious teachings, universal moral values, and the noble values of the nation's culture, and are based on Pancasila and the 1945 Constitution.
- 2) As a member of the United Nations, Indonesia has a responsibility to respect the Universal Declaration of Human Rights and various other international instruments concerning human rights.

This is also stated in Article 2 of Law Number 39 of 1999 concerning Human Rights:

The Republic of Indonesia recognizes and upholds Human Rights and basic human freedoms as rights that are naturally inherent in and inseparable from humans, which must be protected, respected and upheld for the sake of increasing human dignity, welfare, happiness, intelligence and justice.

As a nation based on human rights, Indonesia rightly recognizes that the legitimacy of the State is based on its respect, protection, and fulfillment of the rights of each and every individual. Similarly, regarding rights, Dworkin explains the importance of rights. This argument is based on two elements: the first is the concept of human dignity. The second is the concept of political equality. Both concepts require that every human being be treated according to their dignity as a human being and treated equally as a free subject with others. However, due to the difficulty of defining the concept of human dignity positively, its negative meaning, treatment contrary to human dignity, is more likely to be universally agreed upon, namely "brutality, cruelty, humiliation, uncivilized or barbarous behavior, harsh treatment..."

When human rights are linked to the Indonesian government's policy on child protection, there will undoubtedly be pros and cons regarding this policy. This is because the Indonesian government has implemented various severe penalties, for example: Chemical castration, life imprisonment, and even the death penalty are punishments for perpetrators of child sexual abuse. Do these punishments violate human rights? One could readily say, "Yes, they violate human rights." The assessment that these punishments violate human rights only considers the types of punishments, ignoring the crimes committed by perpetrators of child sexual abuse.

All forms of punishment inherently violate human rights. It can be argued that no punishment is free from human rights violations, such as imprisonment (depriving the right to liberty), fines (depriving property), and the death penalty (depriving the right to life). When it comes to child protection, which human rights should the government prioritize: the human rights of child sexual predators or the human rights of children? The government must prioritize the human rights of children as the nation's future generations. Every child has the right to survival, growth, and development, and the right to protection from all forms of violence, particularly sexual violence. Guaranteeing these rights is mandated by Article 28B paragraph (2) of the 1945 Constitution.

If the government fails to adopt appropriate and firm policies regarding child protection, the level of violence against children could increase, thereby violating children's basic rights to grow and develop normally. The various penalties considered quite severe for sexual predators represent the government's efforts to protect and guarantee the rights of innocent children. Considering the numerous cases of violence against children, the public is understandably incensed and angry at the level of brutality committed by sexual predators.

An example of a particularly shocking case of child sexual violence in Indonesia in mid-2016 was the rape and murder of 14-year-old Yuyun, committed by a gang of 14 youths in Rejang Lebong Regency, Bengkulu. According to Abdul Haris Semendawai, Chairman of the Witness and Victim Protection Agency (LPSK), in early 2018, the trend in cases of sexual violence, particularly against children, showed an increase. The victims were not limited to girls. In fact, the number of male child victims was actually increasing. Semendawai also highlighted the large number of children who are victims of sexual violence. In January alone, the number of child victims of sexual violence could exceed 100, spread across several regions.

#### **4. CONCLUSION**

Chemical castration is part of the government's efforts to reduce cases of sexual violence against children. The implementation of chemical castration is due to the increasing number of cases of sexual violence against children. Chemical castration

does not conflict with human rights; in fact, it reflects the government's commitment to protecting and upholding the human rights of children who are vulnerable to harm. This study recommends that the Indonesian government immediately issue technical regulations regarding chemical castration to provide legal certainty.

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