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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Reorientation of Pancasila Justice Values in the Implementation of Chemical Castration as a Criminal Sanction Against Perpetrators of Sexual Crimes

Agung Cahyo Putro

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,

E-mail: agungcahyoputro14@gmail.com

Abstract. *The increasing number of sexual violence cases against children has prompted the government to introduce chemical castration sanctions against perpetrators of such crimes. However, this sanction is considered to violate human rights, particularly by those who uphold the principle of respect for human rights. Therefore, it is necessary to discuss the reorientation of Pancasila justice values in the implementation of chemical castration criminal sanctions against sexual offenders. The method used in this study is a sociological juridical method. Based on the discussion, it can be concluded that the implementation of Article 81 of Government Regulation in Lieu of Law Number 1 of 2016 has not effectively protected or restored child victims of sexual violence. The factors influencing this condition include legal regulations that remain inconsistent with respect for human rights as regulated in Pancasila and the 1945 Constitution of the Republic of Indonesia; law enforcement that has not yet paid sufficient attention to the recovery of child victims of sexual violence; and the cultural factor of society, which has not been able to effectively participate in eradicating sexual violence against children due to the existence of a culture that regards sexual violence against children as a family disgrace that must not be known by anyone.*

Keywords: *Chemical Castration; Justice; Pancasila; Reorientation; Sexual Crime.*

In its development, children constitute the nation's next generation and will become development assets for maintaining, preserving, and advancing the existing achievements of national development. Therefore, children require special protection and attention in order to ensure their physical, mental, and social growth and development in a complete, harmonious, and balanced manner. Such special protection and attention should not only be provided by the government and parents, but also by all layers of society, which are expected to play an active role in protecting and safeguarding children's rights.

Based on available data, the number of child victims of sexual crimes has increased every year. The Director of Yayasan Kaka Solo, Shoim Sahriyati, explained that this increase reached 15 percent annually. In 2017, there were 33 victims in 23 cases, while in 2018, up to November, there were 37 cases. The victims of these sexual crimes were generally between 13 and 15 years old. In addition, the trend of sexual crimes has also shifted. Previously, victims of sexual crimes were mostly senior high school students, whereas currently many victims are junior high school students.

In its development, in order to eradicate sexual crimes and provide a deterrent effect for offenders, President Joko Widodo issued Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. The increasing number of violent acts that threaten children's lives became one of the reasons for the President to issue the regulation. Despite triggering both support and opposition, Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, commonly known as the Chemical Castration Regulation, was officially signed by President Joko Widodo.

As has emerged in public discourse, the Chemical Castration Regulation contains provisions on the death penalty, public disclosure of the offender's identity, chemical castration measures, and the installation of an electronic monitoring device or chip on offenders. These provisions officially came into force after being signed by President Joko Widodo. However, the enactment of the Chemical Castration Regulation cannot be separated from the problems accompanying it.



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From a constitutional perspective, a Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang or Perppu) is a type of legislation that reflects the executive power to respond to circumstances constituting a compelling emergency. Constitutionally, such a “compelling emergency” represents one form of extraordinary state conditions that may arise in Indonesia, in addition to conditions of war and other states of emergency.

Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that:

“In the event of a compelling emergency, the President shall have the authority to issue a Government Regulation in Lieu of Law.”

This provision constitutes the President’s constitutional prerogative to act promptly, appropriately, and proportionately under abnormal constitutional circumstances (noodverordeningsrecht) in order to safeguard the interests of the State. Nevertheless, constitutional scholars have emphasized that the interpretation of the phrase “compelling emergency” must be exercised with great caution. An overly broad interpretation could transform the Perppu into an instrument of authoritarianism in the administration of government.

The principal objective of the Chemical Castration Regulation is to impose harsher criminal sanctions upon perpetrators of sexual crimes against children. This policy is based on the empirical assumption that existing criminal penalties have failed to create a deterrent effect and have not comprehensively prevented sexual violence against children.

Prior to the issuance of the Regulation, Law Number 35 of 2014 concerning Child Protection had already provided for mandatory minimum sentences and sentence enhancements of one-third where the offender was a parent, guardian, caregiver, teacher, or educational personnel. Under that law, the maximum sentence that could be imposed upon perpetrators of child sexual offences was 20 years’ imprisonment.



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The Chemical Castration Regulation substantially strengthens these sanctions by introducing the death penalty, life imprisonment, increasing the mandatory minimum imprisonment from five years to ten years, and imposing additional penalties in the form of public disclosure of the offender's identity. Most controversially, it also introduces chemical castration and the installation of an electronic tracking device (chip) as corrective measures (*maatregel*) imposed upon offenders.

Several legal issues arise from the sanctions framework introduced by the Regulation.

First, the expansion of offences punishable by death will inevitably attract international criticism, particularly from the United Nations Human Rights Commission, which has consistently encouraged member states, including Indonesia, to abolish or at least reduce the use of capital punishment within their domestic legal systems.

Second, the introduction of a ten-year mandatory minimum sentence potentially conflicts with the principle of judicial independence in sentencing. By prescribing such a severe minimum punishment, Indonesian law implicitly categorizes child sexual offences alongside the most reprehensible crimes, including gross human rights violations regulated under Law Number 26 of 2000 concerning Human Rights Courts. Ironically, even offences such as corruption, terrorism, and narcotics crimes do not uniformly impose such stringent mandatory minimum sentences.

Third, according to Ted Honderich, the classification of chemical castration and electronic monitoring as corrective measures (*maatregel*) reflects an incomplete understanding of the distinction between criminal punishment (*straf*) and corrective measures (*maatregel*) within Indonesia's double-track criminal sanction system.

Regardless of the method employed, castration bears little resemblance to the rehabilitative philosophy that traditionally justifies corrective measures. Instead, it more closely aligns with the punitive theory of incapacitation, whose objective is to eliminate an offender's ability or opportunity to repeat criminal conduct.

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Similarly, requiring offenders to wear electronic monitoring devices after completing their prison sentences effectively subjects them to double punishment. Such measures implicitly acknowledge the State's lack of confidence in the effectiveness of its correctional system to rehabilitate offenders convicted of sexual crimes against children.

Finally, whether chemical castration is classified as a criminal punishment or a corrective measure, it remains constitutionally vulnerable. Although Article 28J of the 1945 Constitution permits restrictions upon human rights by statute, any limitation must remain consistent with morality and religious values. Consequently, methods of punishment that conflict with moral principles and religious teachings should not be incorporated into Indonesia's legal system.

In light of these constitutional and philosophical concerns, this study seeks to reconstruct the legal policy underlying the issuance of the Chemical Castration Regulation. Accordingly, this article analyzes the legal conception of governmental policy from a comprehensive perspective and is entitled:

"Reorientation of Pancasila Justice Values in the Implementation of Chemical Castration Criminal Sanctions Against Sexual Offenders."

2. Research Methods

This study employs a socio-legal (juridical-sociological) research method, combining normative legal analysis with sociological analysis of law. Accordingly, this research examines not only the applicable legal provisions but also the social realities surrounding the implementation of chemical castration sanctions in Indonesia.

3. Results and Discussion

3.1. The Implementation of Chemical Castration in Cases of Sexual Violence Against Children in Indonesia

The implementation of Article 81 of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 on Child Protection is fundamentally inconsistent with the philosophical values embodied in Pancasila. This inconsistency can be observed through the contradiction between Article 81 paragraph (7) and the core principles underlying each of the Pancasila's five principles.

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3.1.1. The First Principle: Belief in the One and Only God

The value of Belief in the One and Only God, as embodied in the First Principle of Pancasila, serves as the moral foundation of Indonesia's constitutional order. It aims to establish divine morality within national and state life through the concept of a mutual cooperation state (*negara gotong royong*), first introduced by Sukarno.

In Yudi Latif's view,

"Divinity within the framework of Pancasila represents an effort to seek common ground through the spirit of mutual cooperation in order to establish a strong moral foundation for political life based upon divine morality."

This principle is manifested through the State's obligation to provide equal protection and security for every individual regardless of religious affiliation.

Viewed from this perspective, Article 81 paragraph (7), which authorizes chemical castration, potentially contradicts the First Principle of Pancasila because its implementation may produce serious physical and psychological health consequences for convicted offenders. Furthermore, the provision may also be applied to juvenile offenders who themselves are children or adolescents.

Consequently, chemical castration infringes not only physical integrity but also spiritual and psychological well-being. It violates both religious and material dimensions of human existence or, borrowing Kuntowijoyo's terminology, both the *ukhrawi* (spiritual) and *duniawi* (worldly) aspects of humanity. In his expression, it violates the principle of *loro-lorone atunggal*, namely the inseparable unity between spiritual and material dimensions of human life.

Therefore, implementing Article 81 paragraph (7) ultimately disrupts the principle of balance that should characterize human existence, particularly for offenders subjected to chemical castration.

3.1.2. The Second Principle: Just and Civilized Humanity

The principle of Just and Civilized Humanity requires every individual to fulfill obligations and responsibilities toward fellow human beings as well as toward nature. As previously explained by Mohammad Hatta, human responsibility is exercised not only vertically toward God but also horizontally toward humanity.

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Within Islamic teachings, these relationships are expressed through the concepts of *hablum minallah* (the relationship between human beings and God) and *hablum minannas* (the relationship among human beings).

Viewed from this perspective, the implementation of Article 81 paragraph (7) fundamentally violates the human rights of individuals subjected to chemical castration.

Such a violation simultaneously contradicts the First Principle of Pancasila. The failure to uphold humanity inevitably represents a failure to fulfill divine values because justice, according to Pancasila, requires the protection of the human rights of every individual regardless of status.

Accordingly, violating the Second Principle necessarily constitutes a violation of the First Principle, and vice versa, because both principles are inseparable components of Indonesia's constitutional philosophy.

3.1.3. The Fourth Principle: Democracy Guided by the Inner Wisdom of Deliberation Among Representatives

From a philosophical standpoint, Indonesia is a nation founded upon belief in God. Consequently, the State bears the responsibility to fulfill the divine mandate of establishing justice through respect for human dignity and the protection of human rights.

This mandate can only be realized through the strengthening of national solidarity, both domestically and internationally. Such solidarity requires the realization of popular sovereignty and the spirit of familyhood (*kekeluargaan*) within constitutional governance.

In essence, divine values can only be effectively realized through civilized humanity, nationalism, democracy founded upon family values, and the principle of mutual cooperation (*gotong royong*).

Without genuine popular sovereignty and the spirit of familyhood, national unity cannot be sustained because governmental power would merely serve particular interests rather than the common interests of the entire nation.

Such circumstances would inevitably result in widespread violations of human rights and humanitarian values, thereby contradicting the moral teachings of religion as well as the divine values embodied in Pancasila.

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Accordingly, Indonesia requires a model of social democracy, under which sovereignty genuinely resides in the people, whether exercised directly or through representative institutions.

From this perspective, Article 81 paragraph (7) also risks creating a legal system inconsistent with civilized justice. Rather than realizing social justice, it may institutionalize legal mechanisms incompatible with humanitarian values that should characterize Indonesia's constitutional democracy.

3.1.4. The Fifth Principle: Social Justice for All Indonesian People

The preceding discussion demonstrates that each of the principles of Pancasila ultimately aims to realize justice for every member of society in all aspects of life, including social, cultural, economic, political, and legal spheres.

From a legal perspective, the Fifth Principle of Pancasila, Social Justice for All Indonesian People, requires the law to be applied fairly and without discrimination. The law is expected to protect the rights of every individual equally and to ensure justice for all members of society.

In relation to Article 81 paragraph (7) of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 on Child Protection, the implementation of chemical castration has the potential to create injustice toward individuals convicted of sexual offences against children. As previously explained, chemical castration may produce adverse physical and psychological health consequences for offenders.

Such circumstances may also undermine the constitutional principles embodied in the Fourth Principle of Pancasila, namely popular sovereignty and deliberative democracy based upon the spirit of familyhood. Consequently, rather than promoting justice, the implementation of chemical castration may produce legal injustice that is inconsistent with the philosophical foundation of the Indonesian legal system.

The foregoing analysis demonstrates that Article 81 paragraph (7) of Government Regulation in Lieu of Law Number 1 of 2016 is inconsistent with the constitutional ideals of public welfare, social justice, Belief in the One and Only God, Just and Civilized Humanity, the Unity of Indonesia, and Democracy Guided by the Inner Wisdom of Deliberation Among Representatives, as expressly embodied in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia.

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Furthermore, Article 81 paragraph (7) is also inconsistent with several constitutional provisions concerning fundamental rights, namely Article 28D paragraph (1), Article 28G paragraphs (1) and (2), and Article 28I paragraph (1) of the 1945 Constitution.

Article 28D paragraph (1) provides that:

“Every person shall have the right to recognition, guarantees, protection, and legal certainty based upon a just legal system, as well as equal treatment before the law.”

Article 28G paragraph (1) further provides that:

“Every person shall have the right to protection of themselves, their family, honour, dignity, and property under their control, as well as the right to security and protection from threats that may prevent them from exercising their fundamental rights.”

Meanwhile, Article 28G paragraph (2) stipulates that:

“Every person shall have the right to be free from torture and from degrading treatment, and shall have the right to obtain political asylum from another country.”

Finally, Article 28I paragraph (1) states:

“The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from slavery, recognition as a person before the law, and protection against retrospective prosecution constitute non-derogable human rights that cannot be limited under any circumstances.”

Based on these constitutional provisions, it may be argued that Article 81 paragraph (7) violates the constitutional rights to humane treatment and freedom from torture.

Chemical castration, as regulated under the provision, may inflict both physical suffering and psychological distress because of its medically recognized side effects. Consequently, the sanction potentially infringes upon the constitutional rights to personal integrity, bodily autonomy, and freedom from cruel, inhuman, or degrading treatment.

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Therefore, from both constitutional and human rights perspectives, the implementation of chemical castration remains highly controversial within Indonesia's legal system.

3.2. Factors Influencing the Effectiveness of Chemical Castration in Combating Sexual Violence in Indonesia

The effectiveness of any legal regulation is generally influenced by three principal factors:

- a) The legal framework itself;
- b) Law enforcement; and
- c) The legal culture of society.

These three factors likewise determine the effectiveness of implementing Government Regulation in Lieu of Law Number 1 of 2016, as subsequently enacted as Law Number 17 of 2016.

3.2.1. Law Enforcement Factors

From the perspective of law enforcement, the implementation of Government Regulation in Lieu of Law Number 1 of 2016 has encountered significant obstacles. One of the principal causes is the existence of substantive weaknesses within the Regulation itself.

In addition, the effectiveness of implementation is affected by the quality of human resources, institutional capacity, and the availability of adequate facilities and infrastructure among law enforcement agencies.

Field research conducted by the author further indicates that a considerable number of law enforcement officials oppose the implementation of Article 81 because of concerns regarding the serious health consequences associated with chemical castration.

The empirical findings are summarized in the following table.

Table 1: Law Enforcement Officers' Views on Chemical Castration Sanctions from the Perspective of the Health of Perpetrators of Sexual Violence Crimes

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No.	Law Enforcement Officer	Yes	No	Others	Total
1	Judges	3	1	1	5
2	Prosecutors	4	2	-	6
3	Police	5	-	3	8
4	Advocates	5	2	3	10

Among the 29 law enforcement officials who participated in the study, 17 respondents believed that chemical castration poses serious health risks to offenders.

According to these respondents, the hormonal injections used in chemical castration may cause osteoporosis (premature bone deterioration), increase the risk of cardiovascular disease, and permanently affect the offender's future quality of life.

Conversely, five respondents argued that chemical castration does not pose significant long-term health risks because its effects are temporary and generally disappear once hormonal treatment is discontinued.

The remaining seven respondents expressed different opinions and offered alternative perspectives regarding the implementation of chemical castration.

3.2.2. Socio-Cultural Factors

Another factor affecting the effectiveness of the implementation of Government Regulation in Lieu of Law Number 1 of 2016 is the prevailing legal culture within Indonesian society.

Many victims and their families remain reluctant to report incidents of sexual violence to law enforcement authorities because such crimes are often regarded as a family disgrace or a taboo that should not be disclosed to the public. This cultural perception discourages victims from seeking legal protection and contributes significantly to the underreporting of sexual offences against children.

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As a consequence, Article 81 of Government Regulation in Lieu of Law Number 1 of 2016, as enacted by Law Number 17 of 2016, cannot be implemented effectively. Moreover, the increasing incidence of sexual violence against children is also closely associated with socio-economic problems, particularly poverty and economic hardship, which continue to constitute significant contributing factors to child vulnerability.

3.3. Repositioning Justice within the Policy on Chemical Castration

The foregoing discussion demonstrates that Indonesia's criminal justice system has traditionally emphasized retribution, punishment of the offender, and, to a certain extent, the rehabilitation of offenders. However, the legal system has paid comparatively little attention to the restoration of victims' rights.

Accordingly, it is necessary to reform Indonesia's criminal law policy concerning the implementation of chemical castration by adopting the principle of individualization of punishment.

The principle of individualization requires that criminal sanctions should not merely punish offenders but should also consider the rights, circumstances, and interests of all parties involved, including victims, offenders, and society as a whole. Consequently, criminal punishment should pursue a balanced approach between justice, legal certainty, and social welfare.

With regard to the urgency of incorporating the principle of individualized punishment into Indonesia's criminal law reform, Rupert Cross states:

"A change in the penal system can properly be described as an endeavour to achieve penal reform if it is aimed directly or indirectly at the rehabilitation of the offender, or if its object is to avoid, suspend or reduce punishment on humanitarian grounds."

This opinion suggests that genuine reform of a criminal justice system cannot be achieved merely by emphasizing rehabilitation, suspension, or mitigation of punishment on humanitarian grounds alone.

Nevertheless, the principle of individualized punishment simultaneously recognizes the importance of human dignity and the human rights of offenders. Criminal sanctions should therefore be imposed proportionately while respecting fundamental human rights.

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Viewed from this perspective, the policy of chemical castration deserves further reconsideration because of its potential to violate the constitutional and human rights of convicted offenders.

To realize a reconstructed criminal law policy concerning chemical castration, it is necessary to institutionalize and internalize new legal values within society. Such legal reform requires that the values embodied in legislation correspond to the values actually practiced by society.

According to socio-legal theory, the successful institutionalization of new legal values depends upon three principal factors:

- 1) The effectiveness of introducing new legal values;
- 2) The degree of social resistance toward those values; and
- 3) The speed with which the new values are introduced into society.

The effectiveness of institutionalizing legal reform is influenced by several factors, including:

1. The quality of human resources involved;
2. Institutional capacity;
3. Organizational structure;
4. Available facilities and infrastructure; and
5. The methods employed within the legal bureaucracy.

The stronger the motivation and competence of legal institutions, the more effective the implementation of legal reform will become.

Furthermore, systematic supervision and continuous public education are essential to improve legal awareness and strengthen public understanding regarding the importance of legal reforms grounded in the noble values of society.

The period required for institutionalizing new legal values is equally important. Reform that is implemented too hastily is likely to fail. Conversely, reforms introduced through careful planning and gradual implementation have a greater likelihood of succeeding.

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4. Conclusion

Based on the foregoing analysis, it can be concluded that the implementation of Article 81 of Government Regulation in Lieu of Law Number 1 of 2016 has not effectively protected or restored child victims of sexual violence. Several factors contribute to this lack of effectiveness. First, the existing legal framework remains inconsistent with the principles of human rights as embodied in Pancasila and the 1945 Constitution of the Republic of Indonesia. Second, the law enforcement system has not sufficiently prioritized the recovery and rehabilitation of child victims of sexual violence. Third, prevailing socio-cultural attitudes continue to impede the eradication of sexual violence against children, particularly because many members of society still regard such offences as a family disgrace that should remain concealed rather than reported to law enforcement authorities.

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