

# SANCTIONS FOR CHEMICAL CASTRATION ACTION IN INDONESIA

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**Abstract:** *The imposition of sanctions for acts of castration for perpetrators of sexual crimes is a policy to suppress sexual crimes, especially against children in Indonesia. There have been two convicts who have been sentenced and have permanent legal force with chemical castration sanctions. The policy of chemical castration is considered an inappropriate policy seen in the concept of the Indonesian sanctions system because it is oriented to retaliating against the perpetrators, the action sanctions should be oriented towards the perpetrators to be treated and rehabilitated so as not to commit the crime again. But the policy of the castration action. The government has given authority to doctors to carry out chemical castration for perpetrators of sexual crimes against children. However, the doctor through the Medical Ethics Honorary Council (MKEK) refused to be the executor on the grounds that it was against the Indonesian Medical Ethics Code. With the refusal of the doctor, it creates uncertainty over the court's decision which has permanent legal force.*

**Keyword:** *Chemical Castration, Doctor and Execution*

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## 1. INTRODUCTION

Crimes that are dangerous and can harm the interests, development and future of children are sexual crimes. This crime always occurs with a different *modus operandi* for each child and has been going on for a long time and the increase is very worrying. This reflects that the protection of children has not met the expectations of society. Data on sexual crimes in Indonesia can be categorized as very concerning, even during 2021 there will be 6,547 sexual violence against children or 45.1% of the total violence against children, which totals 14,517 cases.

Previously, Indonesia had issued a policy to tackle sexual crimes against children through Law No. 35 of 2014 concerning Child Protection, but the existence of these regulations has not had an impact. significant in dealing with sexual crimes and does not address public concerns about these crimes. Finally, with the pressure of the community so that the government moves quickly to find solutions so that sexual crimes against children can be tackled, President Joko Widodo issued a policy that was quite phenomenal, namely by issuing a Government Regulation in Lieu of Constitution (Perpu) No. 1 of 2016 which was ratified by the People's Representative Council (DPR) through Law number 17 of 2016 concerning Child Protection.

This phenomenal regulation regulates the addition of sanctions in the form of chemical castration and is a sanction that has never been implemented in the sanctions system in Indonesia. Castration is an action in the form of surgery or non-surgical to suppress the testosterone hormone so that the function of the genitals according to it does not even function. The Indonesian state chooses the type of castration applied in the action sanction is non-medical in the form of chemical castration. Chemical compounds will be included in the bodies of sex offenders, the effect is loss of libido, because testosterone and sexual hormones are suppressed so that they do not function.

The policy of chemical castration for perpetrators of sexual crimes against children is widely criticized, not because the sanctions are not good, but the sanctions for these actions are theoretically criminalized out of the basic idea. Action sanctions seen in the perspective of a double track system are types of sanctions that are oriented towards providing restoration and repairs that have a positive effect on criminals so that they do not repeat the crime in society. In contrast to criminal sanctions, which are oriented towards retaliation for crimes committed by someone. The



concept of double track system tries to combine the function of sanctions in addition to retaliating and providing a deterrent effect as well as improving the perpetrators themselves.

Sanctions of castration that apply in Indonesia are considered to violate the concept of punishment because the sanctions of castration are oriented towards revenge against perpetrators of sexual crimes, not for recovery or rehabilitation. Referring to the reasons for chemical castration which are considered as a form of retaliation instead of making repairs, among others, the victim is more than one person, resulting in serious injuries, the victim becomes insane, the victim is infected with an infectious disease, the reproductive organs are damaged and the victim dies. This reason can be a reference for people to be sanctioned by chemical castration. Chemical castration does not qualify for action sanctions because chemical castration will cause pain to the perpetrator and also have harmful side effects for the person who was chemically castrated.

This chemical castration policy, apart from contradicting the concept of punishment, also has other problems in implementing the regulation. Doctors who have been given the authority as chemical castration executor through Government Regulation no. 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children, refuses to implement these rules on the grounds that they are contrary to the medical code of ethics, the oath of the medical profession and have not been proven to have a deterrent effect on people. The doctor's job is to cure the patient's illness, not otherwise give pain like chemical castration is believed to give pain. The rules for implementing castration have been regulated, but in the end it was not maximally implemented because of refusal by the doctor.

The ratification of chemical castration as an action sanction should be well communicated to every stake holder so that this policy is not considered a hasty and haphazard policy, a policy must be prepared carefully, measurably and can be executed, lest there be a protracted polemic. after the adoption of the policy.

Two inmates have been waiting for the execution of chemical castration, first, Muhamad Aris who was sentenced and remains under the law at the Mojokerto District Court. Second, Rahmat Santoso S was terminated and remains legally in the Surabaya District Court. They are currently serving the main punishment in the form of imprisonment for twelve years each, after which they will receive a chemical castration sanction for a maximum of 2 years after serving the main sentence.

The polemic of the castration sanction must be resolved immediately before the execution of the two convicts so that there are no problems both in concept and in implementation. Especially on the basic idea of action sanctions must really be implemented in the sanctions of castration so as not to be wrong in its application. If the concept of castration is in accordance with the perspective of the double track system, there is no reason for the doctor to refuse to take the action, because the action is an attempt to treat the perpetrator so that he can recover from the disease and not commit another sexual crime.

The chemical castration policy has become a very confusing legal policy, both in the context of the concept of the basic idea and in its implementation, the policy will also result in a double punishment. In practice, chemical castration is a criminal sanction that is oriented towards giving suffering to perpetrators of sexual crimes and is a retaliation for the actions of perpetrators of sexual crimes against children. This is different from the concept of the basic idea of action sanctions, which are actually oriented to provide remedies for criminals. There is a need for policy reformulation so that the sanctions for castration can return to the ideal concept.

The unwillingness of doctors to be the executor of castration cannot be separated from the unclear concept of castration itself, so that doctors think that this action will endanger themselves in the perspective of the medical profession because it is suspected that it will violate the code of ethics and the doctor's oath. In this study, a deeper regulatory review is conducted regarding the position of doctors as executor of castration, including refusal to perform the castration and what sanctions can be applied to doctors who refuse to become executor.

Several studies have been conducted relating to chemical castration for perpetrators of sexual crimes, but the substance of the material differs between what the researchers wrote, First. Hyungsoon Park wrote a journal entitled Legislative Update, Recent Amendments to South Korean Criminal Law: Confronting Child Sexual Abuse in his journal stating that there is no guarantee that perpetrators of sexual crimes will not do it again even though they have been severely punished. The solution to prevent the problem of sexual abuse, especially to children, is not only given punishment but also requires psychological treatment and assistance and other experts. Second, Walter J. Meyer III & Collier M. Cole, They wrote about Physical and chemical castration of sex offenders: A review, in their journal, states that castration or removal of the testicles has gone down in history for medical, punitive and social reasons, whether by physical or chemical castration. Ethical and

scientific guidelines try to find out whether castration can be beneficial for perpetrators and society. Third, Mazlum öpüra and Sidar öpürb, they wrote about Chemical Castration as an Evolving Concept: Is It a Possible Solution for Sexual Offences?, in the journal it was explained that each country has its own castration policy, including surgery and chemistry, in the research. also explained about the side effects of chemical castration as well as ethical issues.

## 2. IDENTIFICATION OF PROBLEMS

This research will focus on, First, the policy of chemical castration in the perspective of the Indonesian sanctions system. Second, to find out the doctor's obligation to carry out chemical castration against perpetrators of sexual crimes.

## 3. RESEARCH METHODS

This research focuses on the Sanctions of Castration in Indonesia, both in terms of the basic idea concept and in the implementation of the policy. A normative juridical approach is required using primary and secondary data and analyzed qualitatively. This research is also a normative research by conducting a study of the rules regarding chemical castration in Indonesia and the existing legal materials through interviews, literature studies and then researchers analyze descriptively.

## 4. RESEARCH RESULTS AND DISCUSSION

### 4.1 Chemical castration policy in the perspective of the Indonesian sanctions system.

A new history in the Indonesian criminal system, the legalization of chemical castration as an effort to reduce the number of sexual crimes, especially to children. The increase in cases of sexual crimes against children became the basis for the issuance of this policy by the government through the Perpu. The issuance of the Perpu policy implies that there is a compelling urgency related to legal events in society that need to be regulated immediately. The increase in sexual crimes against children was the reason for the coercion at the time, and there was a lot of pressure from the community for the government to immediately make policies to provide a deterrent effect to perpetrators of sexual crimes. Finally, in 2016 the Government issued a policy of imposing sanctions for perpetrators of sexual crimes against children.

The chemical castration policy is expected to be a reform of Indonesia's criminal law which has been stuck with the Dutch colonial criminal law which focuses on criminal sanctions. Indonesian criminal sanctions are punitive and repressive which are influenced by the criminal theory at that time, namely the retributive theory, which means that the perpetrator must be punished for his mistake. Criminal law reform based on the Criminal Code is no longer in accordance with the development of national criminal law, the development of criminal law outside the Criminal Code and there has been a duplication of criminal law norms between criminal law norms in the Criminal Code and criminal law norms in laws outside the Criminal Code.

Prior to the adoption of the chemical castration policy, several state institutions, such as the National Commission on Human Rights and the National Commission on Women and Non-Governmental Organizations such as The Institute for Criminal Justice Reform (ICJR) and the medical professional organization the Indonesian Doctors Association (IDI), asked the government to refrain from doing so. cancel the policy because it is considered to be ineffective and has not been proven to be a sanction that has an impact to create a deterrent effect.

In particular, IDI as a medical professional organization in Indonesia expressly refuses to be the executor, and at the time the Government Regulation was passed on chemical castration, it emphasized that doctors were the executor of chemical castration. The regulation caused controversy because the implementation of chemical castration was considered contrary to the Medical Practice Act and the Medical Code of Ethics.

The pros and cons of this policy become a serious problem and the polemic must be resolved immediately, so that the law provides certainty and justice for the community to realize the objectives of the law. The sense of community justice will be realized as a form of achieving the goals of the law itself. The modern era has shifted the paradigm that justice does not only belong to the victim or the injured person, but also applies to the perpetrators of crime. referring to the theory of punishment, there are two theories, namely First, the absolute theory, this theory argues that criminal sanctions are imposed for the purpose of giving retaliation in order to provide a deterrent effect to the perpetrators of crime. Second, the Relative theory, this theory states that criminal sanctions not only provide a deterrent effect but must also look at the interests of the perpetrators.

The purpose of the punishment is to provide a perspective that punishment is not only oriented towards revenge for the evil act committed, but also how to look at the interests of the perpetrator so that in the future the perpetrator of the crime does not repeat it again. The



punishment theory gave birth to several concepts, initially in imposing a criminal known as the single track system concept or a one-track system, namely criminal sanctions that only focus on retaliation and suffering to the perpetrators of crimes. The existence of this concept is not effective in tackling crime and finally the concept of a double track system or a two-track system emerged, namely in addition to criminal sanctions, action sanctions can also be used. Action sanctions have an orientation to restore, heal or treat criminals so that in the future they do not commit crimes again.

Since Indonesia's independence, there have been problems with our criminal law which is very complicated, including the use of colonial legal products from the former Dutch colonies, meaning that in the political context of Indonesian criminal law there is no

The goal of Indonesian criminal law is to have the seriousness to reformulate sanctions so that crimes can be tackled and prevented. In fact, our criminal law has not been able to significantly reduce the crime rate. The colonial legacy legal products used in Indonesia need to be revised immediately in accordance with the politics of criminal law and in accordance with legal values in society.

In the midst of the problems of criminal law that still uses colonial law, Indonesia's criminal law policies are getting better and progressive without ignoring the applicable criminal law (KUHP) and getting out of the colonial paradigm, namely giving retribution and suffering for criminal acts committed by someone. The concept of a double track system is applied in order to achieve justice for the victims who are harmed and there is also justice for the perpetrators of the crime. The current criminal paradigm in Indonesia must be in accordance with the constitution which upholds the value of Human Rights (HAM).

The concept of the double track system is used in several laws in Indonesia, including the Criminal Code, the Juvenile Criminal Justice System Act, the Narcotics Law and the Environmental Protection and Management Act, including the Child Protection Law. These rules in addition to implementing criminal sanctions by punishing perpetrators with basic punishments such as imprisonment, fines, confinement and so on. In addition to criminal sanctions, action sanctions are also applied by providing improvements to perpetrators of sexual crimes so that they do not commit crimes again.

Indonesia is not the only country that implements a chemical castration sanction policy, the first Asian country to implement chemical castration sanctions for perpetrators of sexual crimes against children is South Korea. Chemical castration has existed throughout history for both social, legal and medical reasons. The policy of castration sanctions has become a polemic and has created debate within the community, this is because the sanctions for chemical castration are no longer relevant and are not in line with the concept, namely the double track system concept. Sanctions for castration are considered to still have a motive for giving revenge and suffering for perpetrators of sexual crimes against children. The chemical castration policy is not in accordance with the political spirit of Indonesian criminal law which has shifted not only to retaliation but also to self-improvement of the perpetrators.

It is clear that chemical castration sanctions have the aim of retaliating and providing suffering. The reason a person may be subject to castration sanctions is to provide a deterrent effect because the victim is more than one victim, sexually transmitted disease, the victim becomes insane, the victim is disabled and dies. This reason is clearly a reason for retaliation, which is actually the concept of criminal sanctions, not action sanctions. In addition, it can be seen in the general explanation of the regulation that it is clear that the motive for the revision of the Child Protection Law through the Perpu is an attempt to retaliate not to correct the perpetrators because of the increase in sexual crimes against children and the encouragement of the community to punish the perpetrators of sexual crimes against children as severely as possible.

To understand castration as a punishment, it is necessary to pay attention to whether it is facultative or imperative. First, it is necessary to explain in depth the nature of the law, either imperative or facultative. The law must be obeyed, in order to create and maintain order in society. In order for the regulations that are made to be truly obeyed, it is necessary to have a regulation that is regulating and coercive. Thus, in addition to being regulatory (facultative/aanvullend recht) the law also has a coercive nature (imperative/dwingend recht).

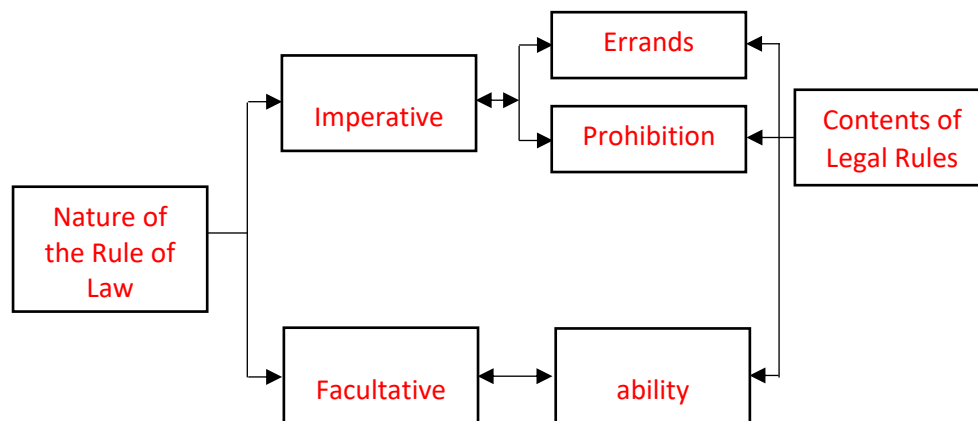


Figure 1 Schematic of the nature and content of the rule of law

The sanction for castration as regulated in the Child Protection Act is facultative. The phrase "the perpetrator may be subject to additional punishment in the form of chemical castration" qualifies the act of chemical castration as facultative in nature, meaning that it may or may not be imposed depending on the judge examining the case and must be included in the decision clearly and unequivocally. If it has been decided by the court and has permanent legal force, it must be implemented and there can be no further rejection.

Essentially the sanctions for chemical castration are different from the main reason (*ratio d'etre*) of actions in criminal law. The action aims to provide benefits/improve the person concerned, while chemical castration sanctions are not a form of rehabilitation facility that can cure pedophilia which is a sexual deviation.

Referring to Article 81 paragraph 7 of the Child Protection Law which contains chemical castration sanctions, as a medical action that is qualified as a type of punishment against the body (corporal punishment). The imposition of chemical castration sanctions only temporarily eliminates sexual urges and is not curative. Dr. research. Boyke about the impact of chemical castration will cause changes in the character of the body like a woman, hair loss, which then has an impact on weakening other vital organs so that osteoporosis can occur, body stooping, weakening of the heart's blood pump. The impact is not only physical, but also will affect the mind. This psychological impact is caused by the perpetrator continuously thinking about the changes that occur and consequently causing depression, thus raising the possibility of committing suicide. Another point of view is that chemical castration is an arena for revenge against perpetrators of sexual violence against children. However, it should also be taken into account that the next impact that will occur, should not cause new victims from the pedophile perpetrators themselves.

Article 81 paragraph (8) of the Child Protection Law stipulates that the sanctions for chemical castration shall be decided "together" with the principal criminal. This joint phrase indicates that chemical castration sanctions are added to the vulnerability in their application, especially in anticipating the occurrence of double punishments that are not in accordance with the principle of double track systems, this is based on essentially that chemical castration sanctions have been different from the main reason (*ratio d'etre*) acts in criminal law. The action aims to provide benefits/improve the person concerned, while chemical castration is not a form of rehabilitation facility that can cure pedophilia, which is a sexual deviation.

#### 4.2 Obligations of doctors who carry out chemical castration

The provision of additional sanctions for castration is one of the attitudes and efforts of the government in responding to sexual crimes committed by adults against minors. The implementation of chemical castration sanctions in Indonesia is a new and unique sanction, so that many debates arise regarding the implementation of the chemical castration action itself. The inclusion of castration sanctions in the sanctions system in Indonesia is one of the hopes that it can put emphasis on the rampant pedophilia acts that occur. In addition, it can at least reduce the high number of sexual crimes against children. Children as the nation's next generation are often targeted by "child predators" and need to be taken seriously in handling and enforcing the law. Seeing the number of non-criminal cases against children, seen from the aspect of the impact, it has its own characteristics, because the impact of these actions has a direct or indirect and prolonged impact. Especially the emotional, social and psychological aspects of child victims of sexual violence.





There are at least two inmates who are waiting for their basic sentence to be completed and then undergo chemical castration, including the convict on behalf of Aris who was sentenced to the Mojokerto district court and rahmat santoso who was sentenced to the Surabaya district court. The Mojokerto Prosecutor's Office and the Surabaya High Prosecutor's Office as executor of the castration of convicts of sexual crimes against children are waiting for technical regulations regarding the process of chemical castration, both the implementing rules of the Child Protection Act and the internal rules of the attorney general's office, because the rules for chemical castration are new and different characteristics from other punishments. Although it is not the prosecutor who directly carries out the chemical action, but as a state institution that has the authority to execute court decisions, the Indonesian Attorney General's Office has begun to coordinate in order to make the execution of the chemical castration a success.

Talking about the implementation of chemical castration, of course, it will be directly related to who will take medical action in carrying out chemical or physical castration against someone who has been found guilty and sentenced to chemical castration. To determine authority, basically the authority that a person has is a position in a government and is regulated in a statutory rule that has been established, that is what is called authority. The authority relating to legal actions that apply according to existing rules is a formal authority possessed by a public official or agency. This position of authority becomes an important position because it is related to constitutional law and administrative law of a country.

Philipus M. Hadjon stated that to take a legal action the government must be based on a legitimate authority based on the provisions of the legislation. There are 3 (three) powers which include attribution authority, delegation authority, and mandate authority. The division of state power by law is the articulation authority, the authority which initially started from the delegation of authority which was the authority of delegation and mandate. The delegation of authority from the government to other government groups is carried out with accountability and accountability is transferred to the delegates, which is a procedural act of delegation. After the revocation of rights, the power of attorney can exercise this authority based on the principle of "contraarius actus". The procedure for delegating from superiors to subordinates is an explanation of the mandate. The giver of the mandate carries out the authority that has been given by itself. Meanwhile, delegation is defined as a delegation of existing authority by a State Administration agency or position that has obtained attributive government authority to another State Administration agency or position. This delegation is always preceded by an attribution of authority.

The implementation of the chemical castration authority based on the authority given is basically the authority of the Prosecutor as described in Article 1 number 6 letter a of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). as the executor of a court decision that has permanent legal force and in that case the prosecutor delegates the authority to a doctor who is an expert in the medical field to carry out the execution of chemical castration.

The Criminal Procedure Code explicitly stipulates that the authority to carry out the role of execution rests with the Prosecutor if a case has obtained permanent legal force. So that the execution of chemical castration is carried out on the orders of the prosecutor after a court decision has permanent legal force. In this aspect, the prosecutor is still mentioned as the executor because he gave the order to carry out the punishment for chemical castration in accordance with the implementation instructions. Within the framework of criminal law construction, initially it was determined that doctors were not the executor, but only became the technical team for implementing the law. Although it is necessary to serve as material for a review of the authority granted by the prosecutor to a doctor as the executor of chemical castration, it is not clearly regulated in the Child Protection Act.

The Child Protection Act does not clearly state that chemical castration is carried out by doctors as a responsible profession in the health sector. However, this action is contradictory to the medical profession who has the responsibility in the health sector to provide healing to every patient, not to reduce or even eliminate rights and nature as a human being. In this case, it is necessary to pay attention to the basic norms of the medical profession that are attached to oneself and the professional oath as a doctor. This affirmation is contained in Article 82A Paragraph (2) of the Child Protection Law which regulates that the implementation of chemical castration is supervised by the Ministry of Health, Social Affairs and the Ministry of Law. The doctor's obligation to act as the execution of the chemical castration action, juridically the doctor must be willing to carry it out without reserve, because this is a state order. However, this was rejected by the doctors on the grounds that executing the perpetrators by castration was contrary to basic ethical values (Indonesian Medical Ethics Code/KODEKI), Professional Standards and Law No. 29 of 2004 concerning Medical Practice.



The issuance of Government Regulation of the Republic of Indonesia Number 70 of 2020 has become a bright spot as well as confirming and becoming the legal basis for doctors in carrying out chemical castration actions. Even though at this stage, the norms are still considered contrary to the Indonesian Medical Professional Code of Ethics. Article 2 paragraph (3) of PP Number 70 of 2020 states that the implementation of court decisions that have legal force will still be carried out on the orders of the prosecutor after coordinating with the ministry that carries out government affairs in the health sector, the ministry that carries out government affairs in the legal field, and the ministry that organizes government affairs in the field of law, government affairs in the social sector.

The article shows that the authority that is actually owned by the prosecutor will have to coordinate with government institutions that have authority in the health, legal, and social fields. This shows that the authority that is in the prosecutor's office cannot stand alone, there needs to be consideration of other aspects before entering the implementation stage of the execution of chemical castration actions with the stages of clinical assessment, conclusion and implementation.

Only in Article 9 letters a and b of PP Number 70 of 2020 explains that chemical castration can be carried out after it is concluded that the perpetrators of sexual crimes against children deserve to be subjected to chemical castration. The Prosecutor, within seven working days after receiving the conclusion, ordered the doctor to carry out and carry out chemical castration against the perpetrators of the sexual crimes. The authority of the executor of the implementation of chemical castration only appears in Article 9 letter b where the prosecutor with his authority instructs doctors to carry out chemical castration against the perpetrators of the crime of sexual intercourse.

The act of chemical castration by giving chemical substances through injection or by other means/methods is carried out on perpetrators who have been convicted of sexual violence or threats of violence against children. This action is aimed at every perpetrator of sexual violence against children and they have been convicted of criminal acts of violence or threats of sexual violence. Chemical castration accompanied by rehabilitation is intended to suppress excessive sexual desire. The sanctions for chemical castration cannot be imposed on those whose perpetrators are still children. Chemical castration with the installation of an electronic detection device is carried out after the decision has permanent legal force for a maximum period of two years. Regarding the timing of the implementation of chemical castration against convicted perpetrators of sexual violence against children, notification of when the castration will be carried out, no later than nine months before the main sentence is completed.

Before understanding the technical stages in the implementation of chemical castration, it is necessary to first understand the qualifications of the castration itself. Because the paradigm that is developing in society is that the term chemical castration is a criminal sanction for those who commit sexual violence. However, this view is clearly wrong, because the inclusion of chemical castration is based on the purpose of formulating a government regulation in lieu of this law as an act of treatment by suppressing or eliminating sexual desire for those who commit sexual violence. In line with the opinion of Prof. Eddy OS. Hieariej the term chemical castration punishment must be straightened out into the act of chemical castration, not using the term chemical castration sanction. PP is in accordance with its formulation to implement Article 81 a paragraph 4 and Article 82 a paragraph (3) of Law Number 17 of 2016 concerning Child Protection.

Referring to Article 5 PP No. 70 of 2020, this chemical castration action is imposed for a maximum period of two years. These actions must be carried out by officers who have competence in the health sector. As in Article 6 in its implementation, this chemical castration action is carried out in three stages, including the clinical assessment stage, conclusion and implementation stage. The technical stage in the application of chemical castration sanctions is related to time. Within seven days after the notification is informed, the public prosecutor will coordinate with the relevant parties for a clinical assessment. This clinical assessment stage is carried out by clinical and psychiatric interviews, physical examinations and supporting examinations by a team consisting of medical officers and psychiatrists. Furthermore, at the conclusion stage, it will contain the results of a clinical assessment that confirms the feasibility of the perpetrators of sexual violence. The last stage is the implementation stage of the chemical castration action against the perpetrators.

This clinical assessment determines the fate of perpetrators of sexual violence against children whether or not they are eligible for chemical castration. If the perpetrator based on the results of this clinical assessment deserves to be castrated, a maximum of seven days after the question, the doctor at the government hospital or a regional hospital appointed by the prosecutor's order will carry out chemical castration on the convict of sexual violence against children.

For those who after a clinical assessment is not suitable for chemical castration, they are not immediately free from chemical castration. Chemical castration is postponed for a maximum of six months and during the delay a clinical assessment will be carried out. After the second clinical



assessment is carried out and it is still declared unfit to be subjected to chemical castration, the prosecutor will convey information on the results of the clinical assessment to the court that decides the case.

The refusal of doctors to be the executor of chemical castration adds to the complexity of this policy, IDI (Indonesian Doctors Association) as a forum for Indonesian doctors firmly refuses to be the executor of chemical castration for various reasons, especially MKEK (Honorary Council for Medical Ethics) has issued fatwa No. 01 of 2016 concerning Chemical Castration, through this fatwa doctors are prohibited from being the executor of chemical castration because doctors are in charge of curing sick people, alleviating patient suffering and increasing patient happiness. In contrast to castration which doctors believe will provide suffering and pain for patients. This has actually violated the code of ethics and the oath of the medical profession.

Doctors are the first contact for patients to be able to solve various health problems regardless of disease, organology, age group, and gender. Actions taken by doctors are always expected by patients regardless of time, must be carried out as early as possible, comprehensive, complete, continuous. The actions taken need to also coordinate and collaborate with other health professionals. The principles used must also be based on the principles of effective and efficient service and uphold professional, legal, ethical and moral responsibilities.

Doctors cannot be separated from their profession as individuals and groups who are members of one organization. As an individual doctor, he carries out his duties and obligations as he took the doctor's oath when he vowed to become a doctor. As individuals who are bound in one group, doctors must also follow every policy set by their group. In this case IDI as the only professional organization for all doctors in the territory of Indonesia as regulated in the Law on Medical Practice No. 29 of 2004.

Apart from the attitude of the government which remains committed to making a product of laws and regulations that are considered contrary to international conventions, it is also necessary to understand that the imposition of chemical castration sanctions is expected to have a significant impact on the high rate of sexual violence against children. In addition, the imposition of chemical castration sanctions is a preventive measure to frighten anyone who will commit acts of sexual violence against children. However, it is also necessary that important aspects in the application of chemical castration sanctions are carried out based on careful consideration in the imposition of chemical castration

Chemical castration sanctions need to be carried out by someone who has expertise in the field of health in its implementation, therefore a Public Prosecutor needs to involve parties outside the prosecutor's office due to his limitations. In carrying out the additional punishment of chemical castration, the prosecutor's office must appoint a doctor who is considered competent in carrying out medical actions to apply chemical castration, but this indirectly contradicts the principles of the Code of Medical Ethics in Indonesia.

The debate regarding the act of chemical castration violating the code of ethics must be ended immediately for the sake of legal certainty of decisions that have permanent legal force that must be implemented. If the polemic is not resolved, the implementation of chemical castration will be hampered, because doctors continue to refuse to be the executor of chemical castration against perpetrators of sexual crimes. The debate about the refusal to be the executor of chemical castration also cannot be resolved with the theory of medical bioethics. This theory can serve as a reference and bridge the conflicting understandings of medicine, ethics, morals and other sciences, including law. With this theory, doctors cannot perform chemical castration, which has been considered a violation of medical ethics.

The powerlessness of the state forces doctors to carry out chemical castration actions due to the lack of strict rules and the absence of sanctions that can ensnare doctors who refuse the execution. Doctors are much more afraid of ethical sanctions from the Honorary Council of Medical Ethics which lead to sanctions and the effect of revocation of practice licenses compared to state orders to castrate which even if they refuse will not have any effect on the doctor. Firmness is needed from the state to maintain the authority of court decisions that have permanent legal force so that the sanctions for this castration can be executed by re-regulating the rules for chemical castration, including the provision of sanctions for doctors who refuse the execution of chemical castration.

The doctor who is the executor of chemical castration is protected by law and is even allowed to carry out the execution. This rule is clearly regulated in Articles 50 and 51 of the Criminal Procedure Code which regulates that anyone who is given an order by the state to carry out an execution then the act is a justification, so that he is not subject to criminal sanctions.



## 5. CONCLUSION

The chemical castration policy is a policy of the Indonesian government to tackle sexual crimes against children, but this policy is not appropriate due to a misunderstanding. Action sanctions should aim to be able to treat, recover and have a positive impact on perpetrators of sexual crimes. On the other hand, the action on the chemical castration policy in the Child Protection Act is oriented towards retaliating for a crime committed by a person, besides that the chemical castration action has a negative impact and will hurt the perpetrator. This chemical castration action is more relevant to the category of criminal sanctions than action sanctions.

Doctors who have been given the authority to perform chemical castration on the orders of the prosecutor in coordination with the ministry of health, the ministry of law and human rights and the ministry of social affairs, it is with this authority that doctors are obliged to carry out chemical castration. The granting of authority by the state must be obeyed and carried out by doctors to become chemical castration executors so that court decisions that have sentenced them to chemical castration are authoritative. Refusal to carry out chemical castration is tantamount to going against state orders. The debate regarding the action of chemical castration against medical ethics and professional oaths can be resolved if the state imposes strict sanctions on doctors who refuse the execution in order to maintain the authority of court decisions which have permanent legal force.

## REFERENCES

- [1] Afifah, W. "Kewenangan Dokter Dalam Melaksanakan Eksekusi Hukuman Kebiri." *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 10, no. 2 (2021): 303-36.
- [2] Amrunsyah. "Impian Yang Terabakan" (Implementasi Dari Tujuan Hukum Dan Hukum Pidana Di Indonesia Volume." *Legalitē* 4, no. 1 (2019): 181-204.
- [3] Beritno, Pratom. "Penegakan Hukum Kebiri Kimia Terhadap Pelaku Kekerasan Seksual Anak Berdasarkan Peraturan Pemerintah Nomor 70 Tahun 2020" 6, no. 1 (2021): 56-71.
- [4] Çöpür, Mazlum, and Sidar Çöpür. "Chemical Castration as an Evolving Concept: Is It a Possible Solution for Sexual Offences?" *Journal of Forensic Psychiatry and Psychology* 32, no. 2 (2021): 326-51. <https://doi.org/10.1080/14789949.2020.1849359>.
- [5] Dewi, Retia Kartika. "Efek Kebiri Kimia, Dari Hasrat Seksual Berkurang Hingga Ketidaksaburan." *kompas.com*, 2022. <https://www.kompas.com/tren/read/2022/01/12/194500465/efek-kebiri-kimia-dari-hasrat-seksual-berkurang-hingga-ketidaksaburan>.
- [6] Efiyanti, Mellisa, and Gunawan Widjaja. "The Implementation of Chemical Castration Sanctions against Convicts of Child Sexual Crimes in Indonesia by Doctors." *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1-16.
- [7] Gina Santika Ramadhani; Barda Nawawi Arief; Purwoto. "Sistem Pidana Dan Tindakan 'Double Track System' Dalam Hukum Pidana Di Indonesia." *Diponegoro Law Review* 1, no. 4 (2012). <https://ejournal3.undip.ac.id/index.php/dlr/article/view/612/610>.
- [8] Hafrida, Hafrida, and Progresif Atau Primitif. "Indonesia Criminal Law Review Pro Kontra Sanksi Kebiri Kimia : Sanksi Yang Progresif Atau Primitif?" 1, no. 1 (2021). <https://scholarhub.ui.ac.id/iclr/vol1/iss1/2/>.
- [9] Hartawati; Yeni Nuraeni; L. Alfies Sihombing. "Implementasi Hukuman Tambahan Kebiri Kimia Terhadap Pelaku Kejahatan Kekerasan Seksual Terhadap Anak Berdasarkan Pp No. 70 Tahun 2020 (Tinjauan Yuridis Putusan Perkara Pidana Khusus No. 69/Pid.Sus/2019/Pn.Mjk)" 02 (2021): 18-38.
- [10] Hasanah, Nur Hafizal, and Eko Soponyono. "Kebijakan Hukum Pidana Sanksi Kebiri Kimia Dalam Perspektif HAM Dan Hukum Pidana Indonesia," 2018, 305-17. <https://doi.org/10.24843/JMHU.2018.v07.i0>.
- [11] HR, Ridwani. *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada, 2013.
- [12] Hutahae, Bilher. "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak." *Jurnal Yudisial* 6, no. 1 (2013): 64-79.
- [13] I Putu Reza Bella Satria Diva and I Gusti Agung Ayu Dike Widhiyastuti. "Relevansi Pengkualifikasian Sanksi Kebiri Kimiawi Sebagai Sanksi Tindakan Dalam Hukum Pidana." *Kertha Wicara: Jurnal Ilmu Hukum* 8, no. 1 (2018): 1-15. <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/49334>.
- [14] Inkiriwang, Maria Amanda. "Penjelasan Dokter Boyke Tentang Dampak Kebiri Kimia." *okezone.com*, 2016. <https://lifestyle.okezone.com/read/2016/06/01/481/1403478/penjelasan-dokter-boyke-tentang-dampak-kebiri-kimia>.
- [15] Ishaq. *Dasar-Dasar Ilmu Hukum Edisi Revisi*. Revisi. Jakarta: Sinar Grafika, 2018.
- [16] Jamaludin, Ahmad, and Sayid Mohammad Rifqi Noval. "Pemidanaan Kebiri Terhadap Pelaku Kejahatan Seksual Kepada Anak Perspektif Hak Asasi Manusia Dan Hukum Islam." *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 14, no. 2 (2021): 191-208. <https://doi.org/10.15575/adliya.v14i2.10135>.
- [17] Kania, Dede. "Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia." *Yustisia Jurnal Hukum* 3, no. 2 (2014): 19-28. <https://doi.org/10.20961/yustisia.v3i2.11088>.
- [18] Kartika, Ari Purwita, Muhammad Lutfi Rizal Farid, and Ihza Rashi Nandira Putri. "Reformulasi Eksekusi Kebiri Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter Dan Perlindungan Hukum Bagi Pelaku Pedophilia." *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 345-66. <https://doi.org/10.20885/iustum.vol27.iss2.art7>.
- [19] KOMPASTV. *Bagaimanakah Mekanisme Hukuman Kebiri Kimia? - Melek Hukum*. Indonesia: [www.youtube.com](http://www.youtube.com),

- 2021.
- [20] Kurniawan, I Wayan Edi, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara. "Jaksa Selaku Eksekutor Dalam Putusan Pengadilan Tindak Pidana Pembunuhan." *Jurnal Preferensi Hukum* 1, no. 2 (2020): 154-58. <https://doi.org/10.22225/jph.1.2.2353.154-158>.
- [21] Leasa, E Z. "Penerapan Sanksi Pidana Dan Sanksi Tindakan ( Double Track System ) Dalam Kebijakan Legislasi." *Jurnal Sasi* 16, no. 4 (2010): 51-57. [file:///Users/ahmadjamaludin/Downloads/jsasi2010\\_16\\_4\\_7\\_leasa\(8\).pdf](file:///Users/ahmadjamaludin/Downloads/jsasi2010_16_4_7_leasa(8).pdf).
- [22] Lee, Joo Yong, and Kang Su Cho. "Chemical Castration for Sexual Offenders: Physicians' Views." *Journal of Korean Medical Science* 28, no. 2 (2013): 171-72. <https://doi.org/10.3346/jkms.2013.28.2.171>.
- [23] Mantalean, Vitorio. "Pemerintah Catat 6.500 Lebih Kasus Kekerasan Seksual Terhadap Anak Sepanjang 2021." *kompas.com*, 2022. <https://nasional.kompas.com/read/2022/01/19/18555131/pemerintah-catat-6500-lebih-kasus-kekerasan-seksual-terhadap-anak-sepanjang?page=all>.
- [24] Mardiya, Nuzul Qur'aini. "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual." *Jurnal Konstitusi* 14, no. 1 (2017): 213. <https://doi.org/10.31078/jk14110>.
- [25] Meyer, Walter J., and Collier M. Cole. "Physical and Chemical Castration of Sex Offenders: A Review." *Journal of Offender Rehabilitation* 25, no. 3-4 (1997): 1-18. [https://doi.org/10.1300/J076v25n03\\_01](https://doi.org/10.1300/J076v25n03_01).
- [26] Nurdiana, Meita Agustin; Ridwan Arifin. "Tindak Pidana Pemerkosaan: Realitas Kasus Dan Penegakan Hukumnya Di Indonesia." *Literasi Hukum* 3, no. 1 (2019): 52-63. <https://jurnal.untidar.ac.id/index.php/literasihukum/article/view/1350>.
- [27] Park, Hyungsoon. "Recent Amendments to South Korean Criminal Law: Confronting Child Sexual Abuse." *Australian Journal of Asian Law* 14, no. 2 (2013): 1-5. <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=102767340&site=ehost-live>.
- [28] Rahawarin, Ahmad Rifai. "Tiga Sistem Sanksi (Trisisa) Hukum Pidana (Ide Pembaharuan Sanksi Hukum Pidana Nasional)" 7, no. 2 (2017): 144-76. <https://core.ac.uk/download/pdf/327194096.pdf>.
- [29] S., Tunggal, and Nathalina Naibaho. "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Terhadap Anak Dalam Perspektif Falsafah Pidana." *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 329. <https://doi.org/10.21143/jhp.vol50.no2.2594>.
- [30] Soesilo, Galih Bagas. "Telaah Kritis Kebiri Kimia Sebagai Pidana Tambahan Bagi Pelaku Pedofilia." *Amnesti Jurnal Hukum* 3, no. 1 (2021): 15-24. <https://doi.org/10.37729/amnesti.v3i1.892>.
- [31] Soetedjo, Julitasari Sundoro, and Ali Sulaiman. "Tinjauan Etika Dokter Sebagai Eksekutor Hukuman Kebiri." *Jurnal Etika Kedokteran Indonesia* 2, no. 2 (2018): 67. <https://doi.org/10.26880/jeki.v2i2.18>.
- [32] Supiyati. "Kebijakan Hukum Kebiri Kimia Terhadap Pelaku Kejahatan Seksual Dalam Perspektif Pidana." *Jurnal Ilmu Hukum* 3, no. 2 (2020): 247-58. <http://openjournal.unpam.ac.id/index.php/rjih/article/view/8093>.
- [33] Wahyuningsih, Sri Endah. "Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa." *Jurnal Pembaharuan Hukum* 1, no. 1 (2014): 17-23. <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/PH/article/view/1457>.
- [34] Wiharyangti, Dwi. "Implementasi Sanksi Pidana Dan Sanksi Tindakan Dalam Kebijakan Hukum Pidana Di Indonesia." *Pandecta* 6, no. 1 (2011): 79-85. <https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/2326/2379>.
- [35] Yulio, I Gusti Ngurah, Mahendra Putra Dewa, and Nyoman Rai Asmara Putra. "Tinjauan Yuridis Terhadap Hukuman Kebiri Terhadap Pelaku Kekerasan Seksual Kepada Anak." *Ojs.Unud.Ac.Id* 7, no. 2 (2018): 1-15. <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/39473>.