

Chemical Castration Sanction Against Crimes Of Sexual Violence In Children Reviewing From Criminal Law Aspects

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Abstract

Chemical castration is an effort to enforce the law against perpetrators of violence against children by injecting anti-testosterone into perpetrators whose purpose is to suppress sexual desire to prevent and provide a deterrent effect to perpetrators of crime so as not to repeat similar crimes in the future. The existence of Government Regulation Number 70 of 2020 reaped various reactions, both pros and cons. This research method is normative juridical by examining secondary data as a primary material to research by searching for regulations, literature, and research journals. Chemical castration sanctions in terms of criminal law aspects include the purpose of punishment based on combined theory and paralysis theory, data on crimes of violence against children, legal protection in the form of restitution and compensation, counseling services, medical services, or assistance to children as victims and criminal responsibility for perpetrators. The obstacle to implementing additional sanctions for chemical castration in terms of the criminal law aspect is the executor or executor of the chemical castration action. The executor of chemical castration, in this case, the Doctor through the Indonesian Medical Association (Ikatan Dokter Indonesia, IDI), rejects the act of chemical castration against the perpetrator for violating the Doctor's Oath and the Medical Code of Ethics.

Keywords: Sexual Violence, Chemical Castration, Executor

Abstrak

Tindakan kebiri kimia merupakan upaya penegakan hukum terhadap pelaku kejahatan kekerasan seksual pada anak dengan cara menyuntikan anti-testosteron kepada pelaku yang tujuannya adalah untuk menekan nafsu seksual, mencegah dan memberikan efek jera kepada pelaku kejahatan agar tidak mengulangi kejahatan yang serupa di masa yang akan datang. Adanya Peraturan Pemerintah Nomor 70 Tahun 2020 menuai reaksi yang beragam baik pro maupun kontra. Metode Penelitian ini adalah yuridis normatif dengan cara meneliti data sekunder sebagai bahan dasar untuk diteliti dengan cara mengadakan penelusuran terhadap peraturan-peraturan, literatur, dan jurnal penelitian. Sanksi kebiri kimia ditinjau dari aspek hukum pidana meliputi tujuan pemidanaan berdasarkan teori gabungan dan teori pelumpuhan, data kejahatan kekerasan terhadap anak, perlindungan hukum berupa pemberian restitusi dan kompensasi, pelayanan konseling, pelayanan atau bantuan medis terhadap anak sebagai korban dan pertanggungjawaban pidana terhadap pelaku. Kendala pelaksanaan sanksi tambahan kebiri kimia ditinjau dari aspek hukum pidana adalah eksekutor atau pelaksana tindakan kebiri kimia. Eksekutor kebiri kimia dalam hal ini Dokter melalui lembaga Ikatan Dokter Indonesia (IDI) menolak adanya tindakan kebiri kimia terhadap pelaku karena melanggar Sumpah Dokter dan Kode Etik Kedokteran.

Kata Kunci : Kekerasan Seksual, Kebiri Kimia, Eksekutor.

I. Introduction

Indonesia is based on law, as stipulated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3). Crime is an anti-social act that harms a person individually and in groups, both material and immaterial losses. One form of crime that occurs in society is the crime of sexual violence. The crime of sexual violence is a form of heinous crime. It is not commendable in a community where its development is increasingly diverse in terms of motive, nature, form, intensity, and modus operandi.¹

¹ Ni Made Dwi Kristiani, "Kejahatan Kekerasan Seksual (Perkosaan) Ditinjau dari Perspektif Kriminolog". Bali: Magister Hukum Universitas Udayana, *Jurnal Megister Hukum Udayana*, Vol.7, No.3, 2014

The Government made efforts to protect it by making legal products, namely Law Number 17 of 2016, the stipulation of Government Regulation instead of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in Article 81 and Article 82 experienced change. The regulation stipulates that the punishment is only for someone 19 (nineteen) years old who is the perpetrator of the crime of sexual violence against children. The regulation also regulates the severity of punishment for perpetrators of sexual crimes against children, namely the death penalty, life imprisonment, and a maximum of 20 (twenty) years in prison, as well as the addition of chemical castration, installation of electronic detectors and announcements of the identity of the perpetrators aimed at suppressing sexual desire. To prevent and provide a deterrent effect so as not to repeat crimes in the future.

For example, the case that occurred in Mojokerto. The perpetrator is Muhammad Aris bin Syukur (aged 20 years), a resident of Mangelo Village, Suko District, Mojokerto Regency, who was reported to the police in October 2018. The crime was committed against 9 (nine) minors. Furthermore, the Mojokerto District Court issued its Decision Number: 69/Pid.Sus/2019/PN Mjk issued the Surabaya High Court Decision Number: 695/Pid.Sus/2019/PN Sby dated July 18, 2019, which confirmed the previous decision by violating Article 76 D in conjunction with Article 81 paragraph (2) of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 in conjunction with Law Number 17 of 2016 concerning child protection, with a verdict imposing imprisonment for 12 (twelve) years, subsidiary 6 (six) months of confinement and a fine of Rp. 100,000,000 (one hundred million rupiahs) and additional punishment of chemical castration by injection of anti-testosterone.

On December 7, 2020, the Government stipulated Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. Responding to this, the Chairperson of the National Commission for Child Protection appreciated the Government and said that Government Regulation Number 70 of 2020 was a tool to execute when a court decision added a weighting sentence through chemical castration.²

Furthermore, Deputy Chairperson of the Indonesian Child Protection Commission (*Komisi Perlindungan Anak Indonesia*, KPAI) Rita Pranawati, MA, and KPAI Commissioner for Children Dealing with Law Putu Elvina, S.Ps.I, MM said (in a written statement) there were at least 6 (six) points in response to the enactment of Government Regulation No. 70 of 2020 to increase the protection and fulfillment of children's rights.³ However, there are various kinds of counter reactions from several parties to the imposition of chemical castration punishment, both the National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*, KOMNAS HAM) and doctors through the Indonesian Medical Association (*Ikatan Dokter Indonesia*, IDI) because there are several reasons, namely violating the medical oath and violating the Code of Medical Ethics and Human Rights.

² Vitoro Mantalean, *Dukung PP Kebiri Kimia Predator Seksual, Komnas PA: Ini Hadiah untuk Anak Indonesia*, retrieved from: <https://megapolitan.kompas.com/read/2021/01/04/15181651/dukung-pp-kebir-kimia-predator-seksual-komnas-pa-ini-hadiah-untuk-anak> ; accessed on February 1, 2021

³ Rita Pranawati, MA, *KPAI menyikapi Terbitnya Peraturan Pemerintah Nomor 70 Tahun 2020 Tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak*, retrieved from: <https://www.kpai.go.id/publikasi/suara-kita/kpai-menyikapi-terbitnya-peraturan-pemerintah-nomor-70-tahun-2020-tentang-tata-cara-pelaksanaan-tindakan-kebir-kimia-pemasangan-alat-pendeteksi-elektronik-rehabilitasi-dan-pengumuman-identitas-pel> ; accessed on February 1, 2021

II. Research Problems

1. How are chemical castration sanctions against perpetrators of sexual violence against children from the aspect of criminal law?
2. What are the obstacles to implementing chemical castration against perpetrators of crimes of sexual violence against children from the aspect of criminal law?

III. Research Methods

The method in this research is normative juridical. The normative juridical method is a method in legal analysis by examining library materials or secondary data as the basis for analysis by conducting searches on regulations and literature related to research.⁴ The data collection technique in this research uses secondary data, namely primary legal materials and secondary and tertiary data. Secondary data is obtained from literature studies or regulatory documents related to the problem. Which includes; Government Regulation Number 70 of 2020, Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, Fatwa of the Honorary Council of Medical Ethics, the Executive Board of the Indonesian Doctors Association (*Majelis Kehormatan Etik Kedokteran Pengurus Besar Ikatan Dokter Indonesia*, MKEK PB IDI) Number 1 of 2016 concerning Chemical Castration and other regulations. After the primary and secondary legal materials in the form of documents obtained are complete, they are analyzed qualitatively.

IV. Research Results And Discussion

1. Chemical Castration Sanctions Against Perpetrators of Sexual Violence in Children from the Aspect of Criminal Law

Based on Article 1 paragraph (2) of Government Regulation Number 70 of 2020 explains that: "the act of chemical castration is the administration of chemical substances through injection or other methods carried out to perpetrators who have been convicted for having committed violence or threats of force against children to have intercourse with them or with other people, causing more than 1 (one) person to become a victim causing serious injury, mental or psychological disorders, infectious diseases, disruption or loss of reproductive function in the body and/or the victim may die, to suppress sexual desire excessively accompanied by a rehabilitation program".

Criminal sanctions are based on the perspective of victimization (restorative justice characteristics); perpetrators are responsible for their actions and losses, repairing the damage done to victims and reducing future harm.⁵ Perpetrators of sexual violence against children are described as solid and unable to control themselves over sexual attraction.⁶ Perpetrators of sexual crimes against children receive criminal sanctions and actions.⁷ Every criminal policy-making needs a formulation that uses a penal tool to regulate and determine criminal acts.⁸

The theory of punishment related to chemical castration is a combined theory (*Verenigings Theorien*) that the purpose of the crime is to avenge the perpetrator's wrongdoing and provide protection to society by creating an order. The imposition of criminal penalties

⁴ Soerjono Soekanto dan Mamudji, Sri, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pers, 2001), 13-14

⁵ Angkasa, *Viktimologi*, (Depok: Rajawali Pers, 2020), 223.

⁶ Hassen Sedkaoui, Etienne Mullet, Mapping French people's views on chemical castration of child and adolescent sex offenders, Colombia: Pontificia Universidad Javeriana, *Journal APA Pycoinfo*, Vol. 15, No. 3, (2016), 1-7

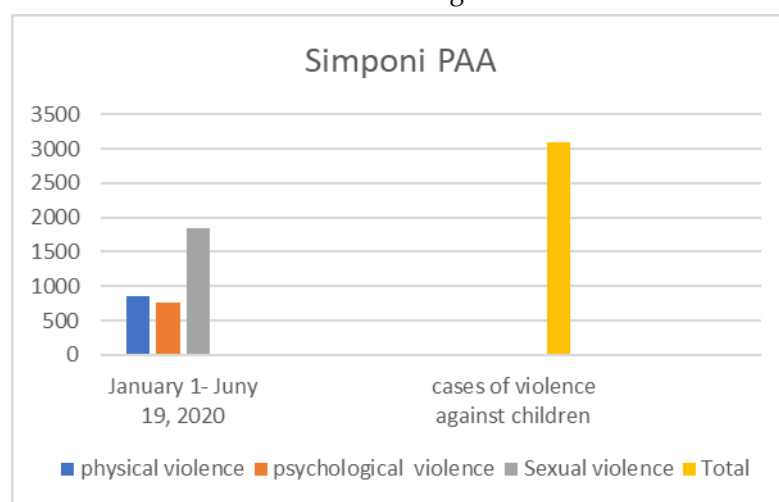
⁷ Tunggal S dan Nathalina Naibaho, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Terhadap Anak dalam Perspektif Falsafah Pidana", Jakarta: Fakultas Hukum Universitas Indonesia, *Jurnal Hukum & Pembangunan*, Vol. 50, No. 2, (2020): 329-343

⁸ Arief, Barda Nawawi, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Cet. ke-4, (Jakarta: Kencana, 2014), 30

against a person is oriented towards efforts to retaliate against the perpetrator's actions and educate or improve so that they do not commit crimes that can harm and disturb the community.⁹ The purpose of punishment based on the theory of paralysis is to reduce the opportunity to commit acts against the law in the future.¹⁰ The term "Isolation" means that offenders must be isolated from legal members so as not to contaminate the course of the influence of the correctional institution embodied in the structure of fortifications and the character of security precautions of some prisons or remedial programs for prisoners.¹¹ Therefore, there is treatment by people who have power over someone by carrying out acts of exile.¹² It means that additional sanctions for chemical castration are related to the combined theory and the paralysis's theory, where the perpetrator is responsible for all kinds of actions, and the chemical castration as additional sanctions can provide a deterrent effect on the perpetrator to prevent the perpetrator commit it in the future.

Crimes experienced by children have various types. Crimes of sexual violence against children do not only occur in Indonesia but also occur in many other countries.¹³ The following is data on violence against children that occurred in Indonesia:

Table 1. Number of Violence Against Children in 2020



Source: Online Data Application *Simponi Pemberdayaan Perempuan dan Anak*

Based on the data above, cases of violence against children from January 1 to June 19, 2020, there were at least 3,087 cases of violence against children, including 852 cases of physical violence, 768 cases of psychological (mental) violence, and 1,848 cases of Sexual violence, the case data is classified as high.¹⁴ In connection with the data above, that sexual

⁹ Ali, Mahrus, *Dasar-dasar Hukum Pidana*, Ctk. Pertama, Edisi Pertama, (Jakarta: Sinar Grafika, 2011), 187-192.

¹⁰ Suwarnatha, I Nyoman Ngurah, *Tujuan Pemidanaan Sanksi Tindakan Kebiri Pelaku Kekekrasan Seksual Terhadap anak*, (Denpasar: Fakultas Hukum Universitas Pendidikan Indonesia, Proseding Senhasis, 2018), 7.

¹¹ Marlina, *Hukum Penitensier*, (Bandung: Refika Aditama, 2011), 79.

¹² Sarbudin Panjaitan, "Tindakan Isolasi Dalam Penahanan Tersangka Ditinjau Dari Kitab UU Hukum Acara Pidana". Semarang: PDIH UNISSULA, *Jurnal Hukum Samudra Keadilan*, Vol. 10, No. 2, (2015), 271

¹³ Fitriyah Ingratubun, H.M. Said Karim, Marthen Arie, and Lin Karita Shakharina, "Responsive Legal Protection Against Child Abduction: A Human Rights Perspective", South Sulawesi: Hasanuddun University, *Journal of Law, Policy and Globalization*, Vo. 71, (2018), 135-141

¹⁴ *Publikasi dan Media Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, Angka Kekerasan Terhadap Anak Tinggi di Masa Pandemi, KEMENPPPA Sosialisasikan Protokol Perlindungan Anak*, retrieved from: <https://www.kemenpppa.go.id/index.php/page/read/29/2738/angka-kekerasan-terhadap-anak-tinggi-di-masa-pandemi-kemen-pppa-sosialisasikan-protokol-perlindungan-anak> ; accessed on February 1, 2021

violence is a crime with the highest number compared to psychological and physical violence against children.

According to the Executive Director of the Institute for Criminal Justice Reform (ICJR), Supriyadi Widodo Eddyono, he considered that the Perppu on castration issued by the Government was not progressive; the punishment must be progressive in that the state compensates the victims with funds so they can perform physical treatment and psychological rehabilitation. In addition, ICJR activist Irasmus Natipulu said that chemical castration is a populist rule, but the Government's commitment to handling victims is still minimal and tends to back down. There is a need for a new comprehensive law that covers all aspects of protection and recovery for victims of sexual violence.¹⁵

Concerning law enforcement in terms of child protection, several perpetrators of sexual violence against children are released, showing a weak legal condition to provide child protection.¹⁶ Children as victims of crimes of sexual violence require material and immaterial restitution. Giving restitution is not only the state's responsibility but also the perpetrator's responsibility to restore the victim's condition.¹⁷ One of the efforts to protect children is establishing legal products that refer to international conventions on children's rights in the form of general principles, namely non-discrimination, the best interests of children, survival and growth and development, and respect for children's participation.¹⁸

Child legal protection includes abstract protection (protection that is felt emotionally) and concrete (protection that is supposed in real terms, namely material and immaterial gifts).¹⁹ Legal protection can be given to victims through restitution and compensation to restore victims' physical and psychological losses and compensation for costs incurred. Counseling services aim to restore the victim's psychological condition to normal. Another legal protection is medical assistance for victims who suffer medically. Children become targets for channeling sexual desires because children do not quite understand that sexual violence is a crime in children who do not dare to reject the wishes of the perpetrators of crime.²⁰

Based on the description above, chemical castration sanctions, when viewed from the aspect of criminal law, are part of criminal sanctions against perpetrators of crimes of sexual violence against children, as regulated in Government Regulation Number 70 of 2020 concerning Procedures for Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation and Announcements Identity of Perpetrators of Sexual Violence against Children. The crime rate of sexual violence against children has the highest crime rate compared to crimes of psychological and physical violence against children that occurred in Indonesia, so the Government made concrete efforts with the establishment of Government Regulation Number 70 of 2020. The purpose of chemical castration sanctions is to suppress sexual desire, and prevent and provide a deterrent effect so as not to repeat the crime in the future so that it is relevant to the theory of punishment, both the combined approach and the theory of paralysis.

¹⁵ Luthfia Ayu Azanella, *Soal Kebiri Kimia*, ini Catatan ICJR, retrieved from: <https://www.kompas.com/tren/read/2021/01/07/123157865/soal-kebiri-kimia-ini-catatan-icjr?page=2>; accessed on February 1, 2021

¹⁶ Miriam Wijkman, Catrien Bijleveld, and Jan Hendriks, "Female sex offenders: Specialists, generalists and once-only offenders", Netherlands: Departement of Criminal Law and Criminology VU University Amsterdam, *Journal of Sexual Agression*, Vol.17, No. 1, (2011), 34-45

¹⁷ Nurini Aprilianda, "Perlindungan Anak Korban Kekerasan Seksual Melalui Pendekatan Keadilan Restoratif", Malang: Fakultas Hukum Universitas Brawijaya, *Jurnal Arena Hukum*, Vol. 10, No. 2, (2017), 309-332

¹⁸ Nur Hidayati, "Perlindungan Anak terhadap Kejahatan Kekerasan Seksual (Pedofilia)", Semarang: Staf Pengajar Jurusan Teknik Mesin Politeknik Negeri Semarang, *Jurnal Pengembangan Humaniora*, Vol. 14, No. 1, (2014), 68-73

¹⁹ Sri Endah Wahyuningsih, "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan", Semarang: Fakultas Hukum UNISSULA, *Jurnal Pembaharuan Hukum*, Vol. 3, No. 2, (2016), 172-180

²⁰ Irvan Rizqian, "Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Menurut Hukum Pidana Indonesia", Bandung: Pascasarjana Program Studi Magister Ilmu Hukum Universitas Suryakencana, *Journal Justiciabellen*, Vol. 01, No. 01, (2021), 51-61

2. Obstacles in the Implementation of Chemical Castration against Perpetrators of Sexual Violence against Children from the Aspect of Criminal Law

Regarding the implementation of court decisions in the Criminal Procedure Code, Article 270 explains that the Prosecutor still carries out the performance of court decisions that have obtained legal force, for which the Registrar sends a copy of the decision letter to him. Implementing court decisions is part of the duties and authorities of the Prosecutor, as stated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Article 1 point 1 that the Prosecutor is a functional official authorized by law to act as a public prosecutor and implementer of court decisions who have obtained a power of attorney. Permanent law and other powers under the law. The duties and authorities of the Prosecutor are also regulated in the Prosecutor's Law Article 30 paragraph (1) number 2, namely carrying out judges' decisions and court decisions that have permanent legal force.

Regarding the execution of chemical castration in Government Regulation Number 70 of 2020, Article 2 paragraph (1) states that: "actions of chemical castration, installation of electronic detection devices and rehabilitation are imposed on perpetrators of sexual intercourse based on court decisions that have permanent legal force." Furthermore, in paragraph (3) that: "the implementation of court decisions as referred to in paragraphs (1) and (2) is carried out on the orders of the Prosecutor after coordinating with the ministry in charge of government affairs in the health sector, the ministry in charge of government affairs in the legal and ministry that carries out government affairs in the social sector. The implementation of chemical castration measures must be carried out by officers who have competence in their fields; as stated in Article 3 that the implementation of chemical castration measures, installation of electronic detection devices, and rehabilitation are carried out by officers who have competence in their fields on the orders of the Prosecutor.

Chemical castration is an additional sanction applied after the perpetrator has completed the major crime, as stated in Government Regulation Number 70 of 2020 Article 1 paragraph (4) that the perpetrator of sexual intercourse is a convict who has served the main crime. The chemical castration action against the perpetrator is carried out by an officer competent in their field on the orders of the Prosecutor based on a court decision with permanent legal force. Chemical castration procedures cause pain and other complications to convicts, so doctors are considered competent in the health sector. The profession of a doctor is to help heal sick people, reduce the pain suffered by patients and relieve the suffering of their patients, as well as increase the happiness of patients and/or their families so that they are under the Doctor's Oath and the Medical Code of Ethics which in principle are to do good, not harm, respect patient autonomy and fairness. Therefore, it is considered to have violated the Doctor's Oath and the Medical Code of Ethics, and there are no technical guidelines in the implementation stage of the execution of the sentence.²¹

The Indonesian Medical Ethics Code (*Kode Etik Kedokteran Indonesia*, KODEKI) in 2012 consists of 21 articles on the code of ethics, and the Medical Ethics Honorary Council (*Majelis Kehormatan Etik Kedokteran*, MKEK) which consists of 28 articles on the discipline of the Medical Discipline Honorary Council not allowing doctors to do or injure others on humanitarian grounds, as KODEKI Article 5 that "every act/advice of a doctor that may weaken psychological or physical endurance, must obtain the consent of the patient/family and only given for the benefit and good of the patient."²² The explanation of Article 5 KODEKI states that: "In the patient as a human being, the body/body and soul/mental relationship cannot be separated from each other. Weakening psychic and physical endurance is against the nature/duties of medical science because, if left unchecked, it will endanger

²¹ Ahmad Naufal Dzulfaroh, *Hukuman Kebiri Kimia, dari Wacana, Pro Kontra, Terbitnya Perppu, hingga vonis untuk Aris*, retrieved from: <https://www.kompas.com/tren/read/2019/08/26/101750165/hukuman-kebiri-kimia-dari-wacana-pro-kontra-terbitnya-Perppu-hingga-vonis?page=all> ; accessed on February 1, 2021

²² Majelis Kehormatan Etik Kedokteran, *Kode Etik Kedokteran*, <http://www.mkekpbidi.org/kodeki/> ; accessed on February 1, 2021

lives or exacerbate suffering. Unless there is a justification, these actions are allowed such as general pre-operative anesthesia, administration of pre-anesthesia/anesthesia drugs for seizures or unbearable pain.”

The existence of Government Regulation Number 70 of 2020 as an implementing regulation for chemical castration punishment against perpetrators of crimes of sexual violence against children has binding legal force. It must be obeyed as well as the Mojokerto District Court Decision Number: 69/Pid.Sus/2019/PN Mjk and the Surabaya High Court Decision Number: 695/Pid.Sus/2019/PN Sby, which has permanent legal force so that the executor must carry out chemical castration under applicable regulations. PP Number 70 of 2020 in Article 9 letter (b) explains that: “within a period of no later than 7 (seven) working days from the receipt of the conclusion as referred to in letter a, the prosecutor orders the doctor to carry out chemical castration actions against the perpetrators of sexual intercourse”. Therefore, if the Doctor has been appointed as the executor when the chemical castration is implemented, it must be carried out as a consequence of the law order. That is the justification.

The rules relating to justification are contained in Article 50 of the Criminal Code, which states, "Whoever commits an act to implement the provisions of the law, is not punished." Furthermore, Article 51, paragraph (2) of the Criminal Code states, "Anyone who commits an act to carry out an official order given by the competent authority will not be punished." Therefore, from this explanation, it is clear that the executor of chemical castration, in this case, is that doctors can perform chemical castration under the justification and based on the applicable legal provisions. However, the medical profession has a medical principle based on evidence that assesses the effectiveness of chemical castration is still a question because there have been no solid double-blind studies.²³

In connection with the rejection of IDI, which was conveyed through the Fatwa of the MKEK IDI Executive Board Number 1 of 2016 concerning Chemical Castration, as follows:

- 1) The Doctor's Oath very much binds the Doctor's Profession in Indonesia, so it cannot accept directly acting as an executor of chemical castration;
- 2) In-depth understanding and understanding for non-medical circles, especially for high state officials, people's representatives, lawmakers, and law enforcers, so that the medical profession is not directly involved as an executor in the additional weighting of punishment in the form of chemical castration;
- 3) So that doctors are always firm in carrying out the Doctor's Oath and are expected to get legal strengthening support from the Government. Therefore, in order not to include in the legislation or the explanation article that a doctor is an executor of chemical castration.

Implementing chemical castration is also considered to violate Human Rights, the most basic human rights owned by humanity as the highest gift of God Almighty, where humans live and become dignified creatures.²⁴ Chemical castration is a form of torture considered to be against human rights.²⁵ Normatively, the form of torture is explained as the 1945 Constitution Article 28 G paragraph (2) explains that “everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.” Furthermore, in Law Number 39 of 1999, Article 33 paragraph (1), “everyone has the right to freedom from torture, punishment or cruel, inhuman, degrading and degrading human dignity.” It means that the constitution does not justify the existence of any form of torture that is possible with the application of chemical castration against the perpetrator because it can degrade human dignity and status.

²³ Soetedjo, Julitasari Sundoro dan Ali Sulaiman, “Tinjauan Etika Dokter Sebagai Eksekutor Kebiri Kimia”, Jakarta: JEKI/Ilmiah.Id, *Jurnal Etika Kedokteran Indonesia (JEKI)*, Vol. 2, No.2, (2018), 67-71

²⁴ Alkostar, Artidjo, *Korupsi politik di negara modern*, (Yogyakarta: FH UII Press, 2008), 329.

²⁵ Kabar Laturharhary, *Mengupas Peraturan Pemerintah (PP) Kebiri Kimia dalam Perspektif HAM*, <https://www.komnasham.go.id/index.php/news/2021/2/1/1660/mengupas-peraturan-pemerintah-pp-kebiri-kimia-dalam-perspektif-ham.html> accessed on August 24, 2021.

According to the Head of the Legal Bureau of IDI, Nazrial Nazar, the implementation of chemical castration is carried out by using libido and emphasizing the ability of sexual activity, which causes side effects for the perpetrators.²⁶ Furthermore, Nazrial Nazzar said that there was no guarantee in the execution of chemical castration to the perpetrators that the perpetrators would temporary survive even though Government Regulation No. 70 of 2020 Article 5 states that chemical castration is imposed for a maximum period of 2 (two) years, but this is because doctors do not have experience injecting chemicals into humans. In addition to doctors' lack of experience, there is the possibility of mental problems and convicts committing more extreme crimes.²⁷

Suppose IDI still refuses to be the executor. In that case, the task is carried out by the Indonesian National Police through Police Medicine, who are professionals in their fields to carry out chemical castration. Normatively, Police Regulation Number 12 of 2011 Article 1 paragraph (1) states that Police Medicine, in the future abbreviated as Dokpol, is the application of medical science and technology along with supporting sciences for the benefit of police duties. This interest is law enforcement against criminal actors based on court decisions with permanent legal force. Chemical castration is carried out by a special team formed by the Dokpol. As for ethical responsibilities and other matters related to Dokpol, the state and state apparatus are only taken as executors after a fair trial process, and the judge upholds the principle of justice.²⁸

In addition to the Dokpol, senior nurses or nurses and other skilled personnel who are not bound by the oath of office can be executors. Nurses meet the criteria in providing health services as Law Number 38 of 2014 concerning Nursing Article 1 paragraph (3) states that nursing services are a form of professional service which is an integral part of health services based on nursing knowledge and tips aimed at individuals, family, group or community, whether healthy or sick.

Based on the description above, the executor is the constraint of implementing chemical castration. The executor, in this case, is a doctor through the IDI institution who refuses for several reasons. Therefore, other alternative medical personnel, police doctors from police agencies, and nurses are not bound by the professional oath so that the execution of chemical castration can be carried out under the laws and regulations in Indonesia.

V. Conclusions

1. The implementation of chemical castration in terms of criminal law by using the combined punishment theory that the purpose of the crime is to avenge the mistakes of the perpetrators of crimes and provide protection to the community by creating an order. The purpose of punishment based on the theory of paralysis is preventive action by reducing the opportunity to commit a crime. Concerning crime data, the number of crimes against sexual violence against children is the highest number of psychological and physical violence against children in Indonesia. Therefore, the state needs to provide legal protection by providing restitution and compensation, counseling services, medical services, or assistance to children as victims, and accountability of perpetrators through restitution and restoration of children's rights and criminal liability.

²⁶ Nibras Nada Nailufar, *Kebiri Kimia, Antara Ancaman Pedofilia dan Problem Etik Medis*, <https://www.kompas.com/tren/read/2019/08/29/061300865/kebiri-kimia-antara-ancaman-pedofilia-dan-problem-etik-medis?page=all>; accessed on February 1, 2021

²⁷ Rachmaningtyas A, *Tugas Dokter menyembuhkan alasan IDI tolak hukuman kebiri dinilai wajar*, retrieved from: <https://nasional.kompas.com/read/2016/06/14/12395231/%20tugas.Dokter.menyembuhkan.alasan.idi.tolak.hukuman.kebiri.dinilai.wajar>; accessed on February 1, 2021

²⁸ Saharuddin Daming, "Mengkaji Pidana Kebiri Kimia Dalam Perspektif Medis, Hukum dan HAM (Assessing Chemical Castrated Penal in Medical, Legal and Human Rights Perspective)", Bogor: FH Universitas Ibnu Khaldun, *JURNAL SUPREMASI HUKUM*, Vol.9, No.1, (2020): 22-29

2. The obstacle to the application of chemical castration in Indonesia in terms of the criminal law aspect is the execution and implementation of chemical castration against perpetrators of crimes of sexual violence against children. Doctors through the Indonesian Medical Association (*Ikatan Dokter Indonesia*, IDI) reject chemical castration against perpetrators of sexual violence against children because they are considered to have violated the Doctor's Oath and the Medical Code of Ethics.

VI. Suggestions

1. In this case, it is necessary to involve related institutions, namely the Indonesian Medical Association (IDI), as a medical consideration. To ensure the safety of the perpetrators' souls by considering the impacts of health, physical and psychological, and legal effects that can occur—used by the Government to manufacture legal products.
2. The Government, law enforcement, and the community can work together to make preventive and repressive measures against sexual violence against children. So they can reach all interests, both protection for victims and law enforcement against perpetrators of sexual violence crimes, so that the goal of the law can be achieved.

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