

Implementation of Chemical Castration Sanctions: Legal Obstacles and a Human Rights Based Reconstruction

Iza Rumesten¹, Firman Muntaqo², Henny Yuningsih³,
Desia Rakhma Banjarani⁴

Faculty of Law, Universitas Sriwijaya, Indonesia¹

Faculty of Law, Universitas Sriwijaya, Indonesia²

Faculty of Law, Universitas Sriwijaya, Indonesia³

Faculty of Law, Universitas Sriwijaya, Indonesia⁴

Author's Email Correspondent: desiabanjarani@fh.unsri.ac.id

ABSTRAK

Penerapan sanksi kebiri kimia memiliki berbagai kelebihan dan kekurangan yang memunculkan beragam gagasan agar pelaksanaannya lebih adil serta mampu mengurangi pro dan kontra. Salah satu kekurangannya adalah adanya konflik hukum antara Undang-Undang Perlindungan Anak dan etika kedokteran. Penelitian ini bertujuan untuk menganalisis penerapan sanksi kebiri kimia dalam putusan pengadilan serta mengidentifikasi hambatan dalam pelaksanaannya. Selain itu, penelitian ini juga merumuskan gagasan penerapan kebiri kimia yang berbasis pada konsep hak asasi manusia. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kasus dan perundang-undangan. Hasil penelitian menunjukkan bahwa penerapan sanksi kebiri kimia dalam putusan pengadilan didasarkan pada tiga putusan yang menjatuhkan sanksi tersebut kepada pelaku kekerasan seksual terhadap anak. Pertimbangan hakim dalam menjatuhkan sanksi ini dipengaruhi oleh berbagai faktor. Adapun hambatan utama dalam pelaksanaannya adalah penolakan dari berbagai pihak di Indonesia, seperti aktivis hak asasi manusia dan kalangan medis. Oleh karena itu, diperlukan perumusan ulang kebijakan kebiri kimia agar lebih komprehensif. Penelitian ini menawarkan pendekatan berbasis hak asasi manusia, yaitu penerapan kebiri kimia yang tidak hanya berorientasi pada hukuman, tetapi juga pada perlindungan pelaku dan rehabilitasi, yang diperkuat dengan adanya regulasi khusus mengenai kebiri kimia.

Kata Kunci: Kebiri Kimia,
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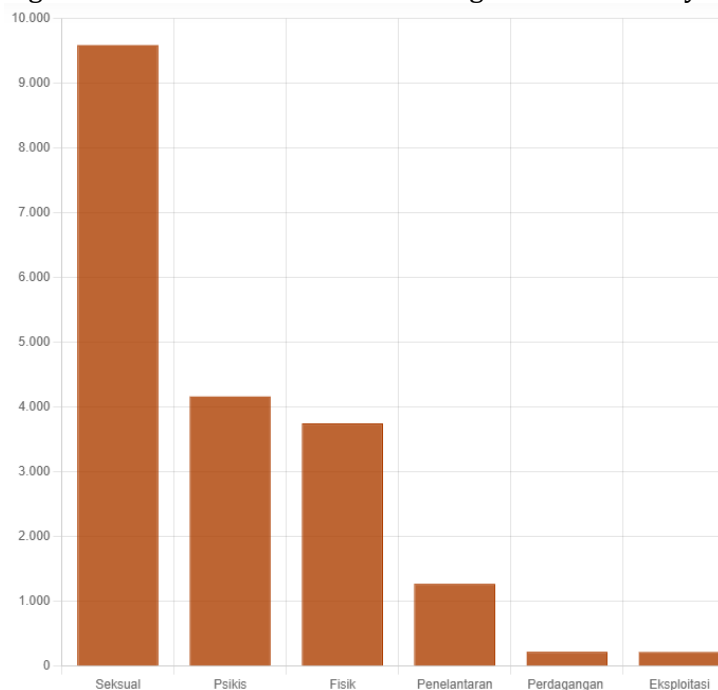
ABSTRACT

There are various pros and cons in the implementation of chemical castration sanctions, giving rise to ideas aimed at making their application more equitable and reducing controversy. One notable drawback is the legal conflict between the Child Protection Law and medical ethics. This research aims to analyze the implementation of chemical castration sanctions in court decisions and to identify the obstacles in their application. It also seeks to formulate an approach to implementing such sanctions based on human rights principles. This study is a normative legal research employing both case and statutory approaches. The findings propose a human rights based framework for enforcing chemical castration, an idea that has not been widely explored in prior research. The analysis is based on three court decisions that imposed chemical castration on defendants convicted of sexual violence against children, highlighting the various considerations judges take into account when issuing such sanctions. The main obstacles in implementing chemical castration include opposition from multiple groups in Indonesia, particularly human rights activists and medical professionals. In light of these challenges, this research suggests the need to reformulate the implementation of chemical castration sanctions in Indonesia using a human rights-based approach. This approach emphasizes not only punitive measures but also the protection and rehabilitation of offenders, supported by the establishment of a specific legal framework governing chemical castration.

A. INTRODUCTION

Violence against children is currently quite worrying for society so that violence against children should be a serious topic. Violence against children includes various types and forms. The Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia also released data on the highest number of victims of child violence in cases of sexual violence with a total of 9,588 children from all over Indonesia. This can be seen in Figure 1 below:¹

Figure 1. Cases Number of Violence Against Children By Type



Sources: <https://data.goodstats.id/statistic/jumlah-angka-kekerasan-terhadap-anak-berdasarkan-jenisnya-bloU0>

Based on Figure 1 above, it can be seen that the victims of psychological violence cases numbered 4,162 children throughout Indonesia. Then followed by victims of physical violence, the total of which was also quite large with a total of 3,746 children. Other cases of violence such as neglect, trafficking and exploitation were also reported with a total of 1,269 children, 219 children and 216 children respectively. The many cases of violence against children that occur in Indonesia are thought to be one of the signs of poor quality of security for children. So the idea emerged in the form of a policy of increasing punishment in the form of chemical castration with the aim of providing a deterrent effect to the perpetrators of sexual crimes committed against minors so that the perpetrators receive punishment commensurate with their actions and do not try to repeat their actions again.²

The Indonesian government has now ratified Government Regulation Number 70 of 2020 concerning the System for implementing Chemical Castration, Use of Electronic

¹ "Jumlah Angka Kekerasan Terhadap Anak Berdasarkan Jenisnya - GoodStats Data," accessed August 31, 2024, <https://data.goodstats.id/statistic/jumlah-angka-kekerasan-terhadap-anak-berdasarkan-jenisnya-bloU0>.

² Desi Sommaliagustina and Dian Cita Sari, "Kekerasan Seksual Pada Anak Dalam Perspektif Hak Asasi Manusia," *Psychopolytan: Jurnal Psikologi* 1, no. 2 (February 12, 2018): 122–31, <https://jurnal.univrab.ac.id/index.php/psi/article/view/510>.

Detection Devices, Rehabilitation, and Notification of the identity of perpetrators of sexual violence committed against minors. In addition, the type of castration punishment is used as a punishment and functions as an additional punishment listed in the Government Regulation in Lieu of Law (Perpu) No. 1 of 2016 concerning Child Protection, not only as a deterrent effect for perpetrators but it is recommended that rehabilitation efforts be carried out against criminal actors. So castration is carried out together with rehabilitation measures due to the increasing number of cases of sexual violence against children in Indonesia, the government has initiated a greater criminal sanction against perpetrators of violence against minors which aims to have a deterrent effect, namely in the form of chemical castration which aims to reduce the function of the perpetrator's testicles.³ However, since the legal regulations related to chemical castration were established, its implementation has actually given rise to various pros and cons debates.

Article 9 letter b of PP Number 70 of 2020 states that doctors are executors in the implementation of chemical castration crimes on the orders of the prosecutor.⁴ However, the Indonesian Doctors Association (IDI) rejected it by issuing a rejecting statements that doctors as castration executors which was considered to violate the professional oath, because the effectiveness of castration is still questionable and the risk of other complications that must be faced by convicts with castration punishment. The Indonesian Doctors Association (IDI) argued that between positive law and the code of ethics of the medical profession. It turns out that the substance is contradictory, there are principles that if executed by doctors will be violated.⁵

Different from the view of castration punishment seen from the existence of the medical profession in real life (*raison d'etre*) is to help cure sick people, reduce pain and ease the suffering of patients, and try to increase the happiness of patients or their families. This is in accordance with the doctor's oath and the code of medical ethics whose ethical principles are beneficence (doing good), non mefelicence (not harming), autonomy (respecting patient autonomy) and justice (fair). Doctors as a moral community (moral community) obey to maintain the nobility of the profession in accordance with the doctor's oath.⁶

However, this rejection received a response regarding the code of ethics of the application of chemical castration can be resolved through the theory of medical bioethics, moral ethics, other disciplines such as legal science that arise from the growth and progress in medical science, science and biotechnology. So it is possible that doctors can carry out castration or chemical castration as part of the implementation of the verdict of the legal panel that deserves to be respected. Article 5 of the Code of Ethics regarding Indonesian Medicine (KODEKI) it has been explained: all behavior or advice from doctors also has the potential to weaken psychological or physical resistance, must obtain permission from the patient and family and is only given for the benefit and good of the patient concerned.⁷

³ Anisa N Nur Solikhah, "Hukuman Kebiri Bagi Pelaku Kejahatan Seksual," *Jurnal Kewarganegaraan* 2, no. 2 (December 1, 2018): 30–33, <https://doi.org/10.31316/JK.V2I2.1293>.

⁴ Abdul Aziz Harahap and Athoillah Islamy, "Penolakan Peran Dokter Sebagai Eksekutor Sanksi Hukum Kebiri Di Indonesia: Perspektif Filsafat Hukum Islam," *Al-Izzah: Jurnal Hasil-Hasil Penelitian* 16, no. 1 (2021): 58–69, <https://doi.org/10.31332/ai.v0i0.2740>.

⁵ Soetedjo Soetedjo, Julitasari Sundoro, and Ali Sulaiman, "Tinjauan Etika Dokter Sebagai Eksekutor Hukuman Kebiri," *Jurnal Etika Kedokteran Indonesia* 2, no. 2 (June 12, 2018): 67, <https://doi.org/10.26880/JEKI.V2I2.18.s>

⁶ Peter Sahelangi Makassar, "Sudut Pandang Dari Segi Hukum Dan Kode Etik Kedokteran Gigi Dalam Praktik Kedokteran Gigi," *Makassar Dental Journal* 1, no. 2 (September 6, 2012), <https://doi.org/10.35856/MDJ.V1I2.52>.

⁷ Rana Citra Fika, Dedi Afandi, and Huriatul Masdar, "Penerapan Nilai Kode Etik Kedokteran Indonesia Pada Era Jaminan Kesehatan Nasional Di Kabupaten Pelalawan," *Jurnal Online Mahasiswa (JOM) Bidang*

This is also based on Article 32 of the Law Number 1 of 2023 concerning Indonesia Criminal Code (KUHP) which states that anyone who carries out an act in order to fulfill the requirements of the law, will not be punished or Article 32 of the Criminal Code which explains that anyone who carries out an act to carry out an official order given by an authorized authority, will not be punished. In the same opinion, Edward Omar Sharif Hiariej said that the execution of the chemical castration sentence for convicts that has been determined in the judge's verdict must be carried out by the executor. The executor is the prosecutor, but because the prosecutor does not have medical knowledge, he can ask for help from a doctor. For the prosecutor's office, this decision has become a norm and is binding.⁸

These pros and cons have an impact on the determination of chemical castration sanctions in judges' decisions in Indonesia. Since chemical castration was determined as a criminal sanction, namely since Perrpu No. 1 of 2016,⁹ only three judges' decisions have determined chemical castration as a criminal offense. The decisions are Decision Number 69/Pid. Sus/2019/PN.Mjk, Decision Number 2627/Pid. Sus/2019/PN.Sby, and Decision Number 42/PID/2021/PT.TJK.

The implementation of chemical castration must have considered the security aspect in order to always be able to live normally among the community. Based on this, the punishment of castration, especially the punishment of chemical castration, can be applied and used as an alternative criminal sanction for pedophiles in Indonesia, this is because the case is already an extraordinary crime. The imposition of punishment in the form of castration on actors of sexual crimes committed against minors is a punishment that is considered appropriate for the perpetrators as a form of state protection for children.¹⁰ The imposition of punishment in the form of chemical castration provides legal certainty regarding the perpetrator's actions, this does not mean that it can provide a deterrent effect or be effective but rather more towards legal certainty. The execution of the castration criminal verdict is contrary to the doctor who was assigned as the executor which will give rise to a conflict of norms, namely between the judge's decision and the fatwa of the honorary council and the code of medical ethics.¹¹

The existence of chemical castration sanctions on the theory of justice put forward by Hans Kelsen in the pure theory of law and state. Justice according to Kelsen is interpreted as legality, meaning that justice is legality if a rule must be published. Legal norms are part of the positive legal system, according to Kelsen, justice in the sense of legality is something that is fair and unfair is the same as legal or not legal, meaning that an action is fair if it is in accordance with applicable legal norms and has validity to assess the action.¹² The concept of justice in Indonesia is based on the second principle of Pancasila which refers to just and civilized humanity and the fifth principle which is

Kedokteran 4, no. 1 (January 6, 2017): 1-12, <https://jom.unri.ac.id/index.php/JOMFDOK/article/view/13426>.

⁸ Yosua V. S Tampi, "Melaksanakan Ketentuan Undang – Undang Sebagai Alasan Penghapus Pidana Berdasarkan Pasal 50 Kuhp," *LEX PRIVATUM* 8, no. 4 (October 20, 2020), <https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/view/30976>.

⁹ Kodrat Alam, "Menakar Keterlibatan Dokter Dalam Pelaksanaan Tindakan Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak," *Jurnal Hukum Unissula* 36, no. 2 (2020): 93-116, <https://doi.org/10.26532/jh.v36i2.7561>.

¹⁰ A.A.KT. Sudiana, "Sanksi Pidana Kebiri Dari Perspektif Hak Asasi Manusia," *Jurnal Advokasi* 7, no. 1 (2017): 72-86.

¹¹ Asyari Amir, "Tinjauan Yuridis Pidana Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Dalam Perspektif HAM," *Dinamika* 26, no. 2 (January 30, 2020): 198-207, <https://jim.unisma.ac.id/index.php/jdh/article/view/5540>.

¹² Sarip Sarip Mukhlisin Mukhlisin, "Keadilan Dan Kepastian Hukum: Menyoal Konsep Keadilan Hukum Hans Kelsen Perspektif 'Al-'Adl' Dalam Al-Qur'an," *Media Keadilan: Jurnal Ilmu Hukum* 11, no. 1 (April 30, 2020): 55-75, <https://doi.org/10.31764/JMK.V11I1.1954>.

social justice. The theory of justice has a scope that includes legal philosophy, legal theory, legal dogmatics or positive legal science and law along with legal practice.¹³ Therefore, from Hans Kelsen's perspective, chemical castration is legal because it is regulated by positive law, but it is questioned in the light of Pancasila values because it is considered contrary to humanity. As a result, a deadlock arises: the law exists, but its implementation is hampered by ethical objections, doubts from officials, and a lack of social acceptance.

Based on the pros and cons of the application of chemical castration sanctions, various ideas have emerged so that the application of this sanction is more just and reduces the pros and cons. The idea offered in this study is the application of chemical castration sanctions based on human rights. Basically, human rights is applied in the juvenile criminal justice system in Indonesia.¹⁴ While chemical castration is regulated in the child protection law, the motivation of these regulations is based on the protection of children's rights.

Thus, as described above, this is the background to the need for this research. The problems that will be discussed in this study are related to how the application of castration sanctions in court decisions in Indonesia and what the obstacles are. Then another problem is how the idea of implementing chemical castration sanctions is based on the concept of human rights. This research is normative legal research that uses a case approach and a statutory approach. Abdul Malik Mufty previously conducted research on the same topic, entitled "Legal Review of Chemical Castration for Child Rape Offenders under Indonesia's ICCPR and CAT Ratification".¹⁵ However, this study differs from Abdul's because it links chemical castration and restorative justice. Abdul's research, on the other hand, focuses on the normative regulation of chemical castration in Indonesian national law and international law.

B. DISCUSSION

1. Implementation of Chemical Castration Sanctions in Court Decisions

On December 7, 2020, the government issued Government Regulation Number 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 (hereinafter abbreviated as PP No. 70 of 2020). The government's consideration in issuing PP No. 70 of 2020 is to address sexual violence against children, provide a deterrent effect on perpetrators, and prevent sexual violence against children from occurring and to implement the provisions of Article 81A paragraph (4) and Article 82 paragraph (3) of Law No. 17 of 2016 concerning the Stipulation of Perppu No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law.¹⁶

The first case of the first castration verdict in Indonesia was handed down to Muh Aris, 20 years old, from Mengelo Hamlet, Sooko Village, Mojokerto Regency. Aris was proven to have raped 9 underage girls in the Mojokerto Regency/City area. The verdict

¹³ Ferry Irawan Febriansyah, "Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa," *DiH: Jurnal Ilmu Hukum* 13, no. 25 (August 1, 2017): 1, <https://doi.org/10.30996/DIH.V13I25.1545>.

¹⁴ Randy Pradityo, "Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Dan Peradilan* 5, no. 3 (2016): 319–30, <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

¹⁵ Mufty, A. M. Legal Review of Chemical Castration for Child Rape Offenders under Indonesia's ICCPR and CAT Ratification . Saree: Research in Gender Studies 7, no. 1 (2025): 1–15. <https://doi.org/10.47766/saree.v7i1.6017>

¹⁶ Nashru Nazar Rosyidi et al., "Penerapan Penjatuhan Hukuman Kebiri Kimia Serta Tata Cara Eksekusinya Pada Pelaku Kejahatan Pelecehan Seksual Terhadap Anak," *Wajah Hukum* 5, no. 1 (April 26, 2021): 354–62, <https://doi.org/10.33087/WJH.V5I1.405>.

was handed down by the Mojokerto District Court on May 2, 2019 with the decision number 69/Pid. Sus/2019/Pn. Mjk. At that time, Aris was sentenced to 12 years in prison and a fine of Rp100 million, subsidiary to 6 months in prison. The judge then gave an additional sentence to Aris, namely chemical castration. Aris also filed an appeal. However, the decision of the Surabaya High Court (PT) on July 18, 2019 upheld the verdict of the Mojokerto District Court. Aris was still given an additional sentence of chemical castration. Aris had been raping since 2015 with the mode of looking for young girls when the perpetrator came home from work. The rape was carried out in a deserted place.¹⁷ The judge's considerations in imposing chemical castration sanctions on the defendant are based on the following considerations:¹⁸

1. The legal basis for the judge's consideration in stating that the Defendant was proven legally and convincingly guilty of committing violence or threats of violence to force a child to have sexual intercourse with him was in accordance with Article 76D of Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law because it had fulfilled the elements of the article in accordance with the facts of the trial and had been stated in the decision, especially in the judge's considerations section.
2. In the decision, it was stated that the imposition of a criminal sentence on the Defendant was based on the consideration that the aggravating circumstances were that the act caused deep feelings of sadness in the victim's family and had greatly disturbed the community.
3. The judge gave an additional criminal sanction in the form of chemical castration because it was stated in the trial facts that the Defendant had sexual intercourse with different children 9 (nine) times, which is related to Article 81 Paragraph (5) in the element, causing more than 1 (one) victim. So that it is also related to Article 81 Paragraph (7) which states in the element 'the perpetrator as referred to in Paragraph (5) can be subject to action in the form of chemical castration', but the Judge did not mention Article 81 Paragraph (7) in the judge's legal considerations in the decision.

In the same year, there was a decision that sentenced the defendant to additional chemical castration in a case. The case in question was registered with the number 2627/Pid.Sus/2019/PN Sby. The case was handed down by the panel of judges to the defendant named Rahmat Santoso Slamet alias Memet. Memet is one of the educational staff in the field of scouting activities at several Elementary Schools and Junior High Schools in Surabaya. Memet himself was considered deserving of additional chemical castration punishment because he had committed indecent acts against 15 (fifteen) of his students. Memet was sentenced at the Surabaya District Court with a verdict of 12 years in prison and a fine of 100 million rupiah and an additional sentence of chemical castration for 3 months. The implementation of the additional sentence of chemical castration experienced a tug of war because there were no implementing regulations at that time. So for those who reject the policy of additional punishment of chemical

¹⁷ Nur Alfisyahrin Muhlis, Hambali Thalib, St. Ulfah, "Efektivitas Hukuman Kebiri Kimia Bagi Pelaku Kejahatan Kekerasan Seksual Terhadap Anak Dalam Efektif Hukum Pidana", *Journal of Lex Generalis (JLG)*, 4/1, 2023, hlm. 22.

¹⁸ Annisa Fianni Sisma and Widodo Tresno Novianto, "Analisis Dasar Pertimbangan Hukum Hakim Dalam Menjatuhkan Sanksi Pidana Tambahan Kebiri Kimia (Studi Putusan Pengadilan Negeri Mojokerto Nomor: 69/Pid.Sus/2019/Pn.Mjk.)," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 9, no. 1 (2020): 50–57, <https://doi.org/10.20961/recidive.v9i1.47392>.

castration, they stated that the existing legal events resulted in the loss of legal certainty and justice for the defendant.¹⁹

The judge's consideration in sentencing Memet to chemical castration was due to repeated sexual violence against 15 children, and the expert's statement regarding the impact of sexual violence committed by Mamet. The resulting impact was presented by a psychologist presented at the trial, namely Cita Juwita Alwani Rosano, S.Psi., M.Psi. The expert explained that the impact experienced by children as victims did not eliminate the possibility that the victims would become like perpetrators of sexual violence in the future.²⁰

In addition, another perpetrator of sexual violence who was given a chemical castration sanction was Dian Ansori. The perpetrator was proven to have raped a child and sold the victim to several lecherous men. The chemical castration verdict against Dian was read out during a trial held on Tuesday, February 2021 with the verdict number 287/Pid.Sus/2020/PN Sdn. In addition to chemical castration, Dian was also sentenced to 20 years in prison and to pay restitution to the victim of Rp 7.7 million.²¹ The judge's consideration for sentencing the defendant Dian to chemical castration was because the defendant's actions were carried out repeatedly with the victim's child Noviyani and were related to the defendant's work as a member of the Integrated Service Center for the Empowerment of Women and Children or P2TP2A (Legal and Medical Services Division).

However, Dian appealed to the high court because she objected to the chemical castration sentence that was imposed on her. Through decision number 42/PID/2021/PT TJK, the judge actually abolished the chemical castration law on the grounds that the defendant committed sexual violence against no more than one victim, namely only one victim. Based on these facts and circumstances, the imposition of an additional chemical castration sentence is not based on Article 81 paragraph (5) of Law Number 17 of 2016, which is an improper application of the law, so the High Court will correct and cancel the decision regarding the imposition of an additional chemical castration sentence.

When the decision to implement chemical castration sanctions was passed, the public was shocked by the attitude of the Indonesian Doctors Association (IDI) which refused to be the executor of chemical castration which is an additional sentence for perpetrators of sexual violence. The reason for the doctors' refusal was because chemical castration is a form of punishment, not a medical service. Therefore, it is not related to the duties of doctors and health workers. Doctors becoming executors of chemical castration have the potential to cause a conflict of norms, namely medical ethics because of the order of the World Health Organization (WHO),²² dan UU kesehatan melarang tindakan kebiri kimia tersebut.²³

¹⁹ Ferdinand Sujanto et al., "Penegakan Hukum Yang Berkeadilan Terhadap Hukuman Tambahan Kebiri Kimia (Studi Kasus Perkara Nomor 2627/PID.SUS/2019/PN SBY)," *The Juris* 4, no. 2 (December 29, 2020): 177-88, <https://doi.org/10.56301/JURIS.V4I2.120>.

²⁰ Ibid.

²¹ Fianni Sisma and Novianto, "Analisis Dasar Pertimbangan Hukum Hakim Dalam Menjatuhkan Sanksi Pidana Tambahan Kebiri Kimia (Studi Putusan Pengadilan Negeri Mojokerto Nomor: 69/Pid.Sus/2019/Pn.Mjk)."

²² The World Health Organization, popularly abbreviated as WHO, is a UN agency that acts as an international public health coordinator and headquartered in Geneva, Switzerland. WHO was founded by the UN on April 7, 1948. Fitrianty Fitrianty, Umi Oktyari Retnaningsih, and Yusnarida Eka Nizmi, "PERAN WORLD HEALTH ORGANIZATION (WHO) DALAM MENANGANI COVID-19 DI INDONESIA (2019-2021)," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 7 (December 14, 2021): 1889-1914, <https://doi.org/10.31604/JIPS.V8I7.2021.1889-1916>.

²³ Saharuddin Daming, "Mengkaji Pidana Kebiri Kimia Dalam Perspektif Medis, Hukum Dan Ham," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 9, no. 1 (July 9, 2020): 22-29, <https://doi.org/10.14421/SH.V9I1.1803>.

Although the imposition of a castration sentence is above the judge's authority, before making a decision, there is nothing wrong if the judge first consults a psychologist and a health doctor, because not all perpetrators' physical conditions are suitable for castration injection substances. If the castration sentence is indeed carried out, the state through law enforcement officers is obliged to respect the perpetrator's rights as a dignified human being by paying attention to the perpetrator's health development, providing counseling in the form of an understanding of the care that must be known and understood by the perpetrator to anticipate the bad impacts that arise after the castration process.²⁴

Based on the three decisions that imposed chemical castration sanctions on defendants who committed sexual violence against children, it can be seen that the judges' considerations in imposing chemical castration sanctions were due to several considerations, namely:

- 1) Fulfillment of the elements in Law Number 17 of 2016.
- 2) The emergence of deep feelings of sadness in the victim's family.
- 3) The defendant has sexual intercourse with different children (more than one victim).
- 4) Committing sexual violence repeatedly (more than once).
- 5) There is an expert statement regarding the impact of sexual violence committed by the perpetrator.
- 6) Causing feelings of unrest in the community.
- 7) The perpetrator sells the victim to another party.

2. Obstacles Factors in the Implementation of Chemical Castration Sanctions

In handling cases of violence against children, law enforcement officers still experience obstacles. In general, the obstacles faced are internal and external obstacles that can be described as follows:²⁵

- 1) The first obstacle faced internally, namely the number of activities, the wide scope of activities which covering all law enforcement institutions and work partners. The number of parties involved from various institutions and the scope of activities causes difficulties in monitoring the implementation of each activity. Therefore, solution steps are taken to overcome this problem. For example, consolidating, communication and information flows more effective. The work team requires internal consolidation and evaluation of appropriate and continuous activities. The work team from each activity and the Program Coordinator need to build equal perceptions, dynamic communication and a cohesive team. The Program Coordinator needs to understand the problems faced by partners, who are dealing with groups of participants such as law enforcement officers, academics and the wider community. Examples of problems are informal lobbying and different approach strategies, which still need to be carried out continuously towards law enforcement agencies. This is to penetrate the bureaucratic wall, gain participation and feedback from them, even to include the results of activities in the structure of their respective institutions. The second internal obstacle is a technical obstacle, namely the need to provide adequate and even digital information systems and the internet. However, this has been overcome well. The third internal obstacle is capacity. There are differences and gaps in work capacity in each work team institution, law enforcement and other participants, which often causes obstacles in

²⁴ Ibid.

²⁵ Temmanganro Machmud, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu Di Wilayah Kota PontianaK," *Jurnal Nestor Magister Hukum* 2, no. 2 (2012): 1-19.

implementing the program. Consolidation efforts within the work team can show where this capacity is lacking, and how the work team can overcome it.

2) External obstacles consist of several types, the first is the existence of differences in understanding. This has been anticipated since the beginning of designing the Program. Introducing the concept of a law enforcement system with a justice perspective, it was realized from the beginning that it would not be as easy as turning the palm of the hand. The solution taken, taking a participatory approach in all programs by involving all interested parties. Second, developing a strategy to align perceptions and assessments of programs that have been carried out by law enforcement institutions. Third, introducing the concept of a just law enforcement system by exploring the experiences of the parties involved in the Program in dealing with violence against children. In the process, the experience is then discussed together. The introduction of the concept of the integrated criminal justice system-handling of cases of violence against children is slowly carried out and discussed together until a common perception and understanding is achieved. Another obstacle is the bureaucratic obstacle related to not being a priority among policy makers. This is also related to the dynamics of the legal field in the social, economic, and political context. The statements from law enforcement officers that the author interviewed with the facts that occurred in the field are indeed far different. However, it is not wise if a stigma or assumption arises that the performance of law enforcement officers in handling cases of sexual violence against children is as written above because not all law enforcement officers act like that. It is just expected that law enforcement officers who handle cases of sexual violence against children are law enforcement officers who have a child perspective so that they can carry out their duties properly in accordance with applicable legal regulations so that they can ensnare the perpetrators according to their actions. Thus, law enforcement will be achieved, victims will feel protected and can answer the sense of justice in society.

Relatively, light punishment and weak law enforcement is requiring very high costs and mental sacrifices tend to make victims avoid the legal process. In cases of sexual violence against children, other countries have implemented the threat of the death penalty, castration, systems and various policies to curb the rate and explosion of sexual violence such as in South Korea, Turkey, and Moldova. While in Indonesia it seems to be going nowhere, especially because there is a culture of shame and not daring to admit this fact as a big problem.²⁶ In addition, the implementation of chemical castration for perpetrators of sexual violence against children also has several obstacles.

One of the obstacles in the implementation of chemical castration is the rejection from human rights activists in Indonesia. Since 2016, women activists have rejected the castration punishment. This rejection was made when the House of Representatives/DPR stipulated the Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection which regulates castration for perpetrators of sexual violence. The five reasons for rejecting the castration punishment consist of:²⁷

- 1) Castration punishment has not been proven to be able to prevent sexual violence. The implementation of this castration punishment is feared to make perpetrators of sexual violence use various means to avoid the legal process, including fostering the

²⁶ Diana Yusyanti, "Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 619-24, <https://doi.org/10.30641/dejure.2020.v20.619-636>.

²⁷ "5 Alasan Aktivistis Menolak Hukuman Kebiri - Konde.Co," accessed August 31, 2024, <https://www.konde.co/2021/01/6-alasan-mengapa-menolak-peraturan-pemerintah-tentang-kebiri/>.

practice of buying and selling punishment, and further distancing victims from access to justice and recovery.

- 2) The implementation of castration requires quite expensive costs. For 1 chemical castration for hormone injection, it costs around Rp. 700,000 with an effective injection period of only 3 months. If each convict is to be given several injections of drugs/hormones, for example in this case up to 8 times, then the state must provide a budget of Rp. 5.6 million for 1 castrated convict. Meanwhile, until now we are still facing difficulties due to the lack of a budget for a medical examination for victims of sexual violence. So far, the cost of medical examinations for victims of sexual violence has not been adequate and many are still charged to the victim. Each victim needs around Rp. 80 thousand - 500 thousand for medical examination costs. If the medical examination involves a specialist doctor, it will require around Rp. 500 thousand - 1 million. The cost of castration should be diverted to medical examination costs, as a form of state protection for victims of sexual violence. The medical examination is needed by the victim so that their case can proceed to court.
- 3) Castration is a violation of a person's right to life. Castration is a cruel, inhumane and degrading act. Therefore, both forms of punishment are considered to violate international human rights law. Indonesia has ratified the International Covenant on Civil and Political Rights through Law Number 12 of 2005, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, through Law Number 5 of 1998. As a country that has ratified it, Indonesia is obliged to comply with both human rights instruments for the application of castration for perpetrators of sexual violence, which is a disproportionate action for the crime itself and a step backward for the Indonesian Government in enforcing human rights.
- 4) Existing legal regulations for perpetrators of sexual violence have not been implemented optimally so far. There are still a number of obstacles experienced by victims in accessing justice, especially related to the perspective of law enforcement officers who are still gender biased in handling cases of sexual violence and the evidentiary mechanism that still makes it difficult for victims. This condition is intertwined with the practice of legal mafia which strengthens the impunity of perpetrators of sexual violence. The regulations needed now are those that are able to answer these problems, not add new forms of criminal punishment.
- 5) Violence responded to with violence is not a solution. Carrying out castration punishment means punishing the perpetrator with violence, and violence resolved with violence, is not a solution. The concern with this castration punishment is that we all forget the importance of recovery for the victim and their family. We are still focused on the perpetrator. The rights of the victim and their family are forgotten, even though they are the ones who suffer the most from the sexual violence they experience.

In accordance with regulation No. 1 of Law No. 39 of 1999 concerning Human Rights, Article 1 Paragraph (1) Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty which are His gifts which must be respected, upheld and protected by the state, law, government and every person. Article 1 paragraph (4) Torture is any act carried out intentionally, resulting in severe pain or suffering, either physical or mental, to a person in order to obtain a confession or information from a person or a third person. This causes every guilty person to not be punished which causes his/her equality rights with other human beings to be ignored. In addition, every human being also has the right to receive legal protection as protection for their dignity and honor as a human being. Humans have civil and political rights which include the right to life not to be tortured. Then, humans also do not have the right to receive slavery treatment and humans are free to have religion and beliefs. Humans must also receive equal treatment under the law. This is a limitation that becomes a

protection rule for perpetrators of social actions who will be punished by chemical castration. This problem becomes a dialectic because government regulations have limitations and limited by human.²⁸

Article 33 Paragraph (1) of Law Number 39 of 2009 concerning Human Rights states that humans have the right not to experience suffering and torture. It is because chemical castration is an act of torture that cause victims of chemical castration to suffer for the rest of their lives because the testosterone hormone they have will be slowly killed through this chemical effect. This is torture in the form of punishment. In accordance with this article, the act of chemical castration is still problematic because the applicable law still prioritizes Human Rights.²⁹

The mechanism for implementing chemical castration regulated in Indonesian law is not specific and detailed, such as determining the characteristics of the perpetrators who must be given chemical castration and in determining the executor of chemical castration. As mentioned in the previous sub-chapter, there was a rejection from the Indonesian Doctors Association or IDI to become the castration executor. This is because the chemical castration procedure causes pain and other complications for the convict, which is not the competence of doctors in the health sector. The profession of a doctor is to help cure the sick, reduce the pain suffered by patients and ease the suffering of their patients, and increase the happiness of patients and/or their families so that they are under the Doctor's Oath and the Code of Medical Ethics which in principle do good, do not harm, respect patient autonomy and justice. Therefore, it is considered to have violated the Doctor's Oath and the Code of Medical Ethics, and does not refer to the technicalities in the execution stage of the sentence.³⁰

The medical code of ethics stipulated that a doctor must be a protector of life based on Article 11 of the Medical Code of Ethics which states that "every doctor must always remember his obligation to protect human life." The thing that will be an obstacle for a doctor to act must be with the consent of the patient or his family for medical action. Without it, the doctor cannot perform medical action. The refusal of the IDI and the Honorary Council and the Medical Code of Ethics to become the executor of castration punishment which is contrary to the government's wishes has caused confusion and question marks from the public. The principle of medical ethics contained in the Hippocratic Oath, causing death or disability to someone is contrary to the principle of nonmaleficence or "do no harm".³¹

The role of doctors is to provide more refined procedural advice with the right dosage and method of drug administration and to be able to make more appropriate medical decisions in critical conditions, in order to reduce the pain that prisoners must experience. Doctors who participate in carrying out criminal sentences cannot simply be labeled as "immoral". The purpose of the participation of medical personnel is not to end the lives of others or cause permanent disability, but to reduce the suffering or complications of a legal decision that must be implemented. A surgeon in carrying out his duties also injures the patient, but that is not the purpose of his actions. The real purpose is to cure the patient's illness. Thus, a doctor's actions should not be considered "immoral" without looking at the ultimate goal of his actions. Although the role of doctors does not pose a major dilemma in the execution of the death penalty in

²⁸ Rika Saraswati, *Hukum Perlindungan Anak Di Indonesia* (Bandung: Citra Aditya Bakti, 2019).

²⁹ Aqnes Yurian Jayana, Aqnes Yurian Jayana, and Tantimin Tantimin, "Perspektif Ham Atas Sanksi Tambahan Hukuman Kebiri Kimia Terhadap Pelaku Kejahatan Seksual," *JUSTITIA Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (December 4, 2022): 2352–65, <https://doi.org/10.31604/justitia.v9i5.2352-2365>.

³⁰ Muhammad Mirza Ibrahim, "Chemical Castration Sanction Against Crimes Of Sexual Violence In Children Reviewing From Criminal Law Aspects," *UMPurwokerto Law Review* 3, no. 2 (September 19, 2022): 93–103, <https://doi.org/10.30595/UMPLR.V3I2.10233>.

³¹ Nabain Idrus, Gatot Dwi Hendrowibowo, and Kaharudin, "Sanksi Hukuman Kebiri Kimia Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal Kertha Semaya* 9, no. 12 (2021): 2483–92.

Indonesia, other punishments that cause functional disability are still a matter of debate.³²

3. Reconstruction of the Implementation of Chemical Castration Sanctions Using a Human Rights Approach

At a time like this, restorative justice is the most relevant solution in reducing the number of violence against children and providing a sense of justice and restoring the condition of the perpetrators and victims. This is in line with the principles of the restorative justice system by involving the perpetrators, victims, and families of victims/perpetrators and related parties related to the resolution of their crimes.³³

The concept of punishment with a Human Rights perspective can be carried out with a restorative justice approach, which punishment can be an alternative. The last resort that prioritized is the improvement of the recovery the victim with the concept of rehabilitation or with the process of compensation to the victim (restitution) as regulated in Article 7 of Law No. 13 of 2006 concerning Protection of Witnesses and Victims. This is as the concept of punishment in a human rights perspective which aims to be oriented towards several things, namely:³⁴

- 1) The perpetrator is responsible for the mistake.
- 2) The perpetrator of the crime does not repeat the same crime or other crimes in the future.
- 3) The perpetrator of the crime becomes a person who can live again as a member of society who upholds the law and the human rights of others.
- 4) Makes others afraid to commit crimes.

Thus, the reformulation of the application of chemical castration using a human rights approach is by implementing chemical castration that oriented towards protection for the perpetrator. However, before claiming equal protection for the perpetrator, it must first be determined which standards or reviews are used in the protection claim. The standards used can consist of:³⁵

- 1) Strict supervision involving the role of government in the formation of coercive laws and regulations with an orientation to protect convicts even if they have to undergo chemical castration.
- 2) Intermediate supervision requiring the role of government which is substantially regulated in the law.
- 3) Basic testing that rationally requires the legitimacy of government interests. At this stage it shows that there is a series of reasonable facts so that it is necessary to establish laws related to protection for chemical castration convicts.

So, the state must be able to facilitate victims to recover from trauma, both in the form of policy programs and special institutions that focus on rehabilitating the victims themselves. So that criminalization is not only taking action against the perpetrators but also how to handle the victims.³⁶ The reformulation with a corrective approach for the

³² Abdulkadir Muhammad, *Etika Profesi Hukum* (Bandung: Citra Aditya Bakti, 2014).

³³ Guruh Tio Ibipurbo, Yusuf Adi Wibowo, and Joko Setiawan, "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif," *Jurnal Hukum Republica* 21, no. 2 (2022): 155-78.

³⁴ Fadillah Sabri, "Perlindungan Hukum Dengan Restitusi Terhadap Anak Yang Menjadi Korban Tindak Pidana," *UNES Journal of Swara Justisia* 6, no. 4 (2023): 398-414, <https://doi.org/10.31933/ujsj.v6i4.293>.

³⁵ Matthew V. Daley, "A Flawed Solution to the Sex Offender Situation in the United States: The Legality of Chemical Castration for Sex Offenders," *Indiana Health Law Review* 5, no. 1 (January 1, 2008), <https://doi.org/10.18060/16522>.

³⁶ Ahmad Jamaludin 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>.

victim, in this case a child, is important considering that the impact on victims who experience sexual violence cannot be considered trivial.³⁷

Punishment becomes a criminal sanction that is fair to the victim and the perpetrator (human rights) but must also consider the possibility of a repeat the crime that will occur and the impact on society when the victim has finished serving his prison sentence. So that the aspect of the perpetrator's recovery is a mandatory consideration in imposing rehabilitation in addition to imprisonment. Basically, rehabilitation efforts have been regulated in Government Regulation No. 70 of 2020, but this Government Regulation only regulates perpetrators of sexual violence against children. Meanwhile, rehabilitation and similar actions against perpetrators of sexual violence against non-children have not been explicitly regulated.³⁸ In addition, PP No. 70 of 2020 has not yet clearly regulated the procedures for implementing psychiatric rehabilitation and social rehabilitation for chemical castration convicts. Therefore, a special law is needed that regulates the implementation of chemical castration which contains provisions related to the procedures for implementing psychiatric rehabilitation and social rehabilitation for chemical castration convicts.

C. CLOSING

The implementation of chemical castration sanctions against court decisions is based on three decisions that impose chemical castration sanctions on defendants who commit sexual violence against children, so it can be seen that the judge's considerations in imposing chemical castration sanctions are due to several considerations, namely: Fulfillment of the elements in Law Number 17 of 2016; The emergence of deep sadness in the victim's family; The defendant has had intercourse with different children (more than one victim); Committing sexual violence repeatedly (more than once); There is an expert statement regarding the impact of sexual violence committed by the perpetrator; Causing feelings of unrest in the community; The perpetrator sold the victim to another party.

The inhibiting factor in the implementation of chemical castration sanctions is the rejection from various parties in Indonesia such as human rights activists and doctors. Human rights activists believe that chemical castration is contrary to various legal provisions related to human rights in Indonesia. In addition, the legal regulations related to the mechanism for implementing chemical castration in Indonesian law are not specific and detailed, such as determining the characteristics of perpetrators who must be given chemical castration and in determining the executor of chemical castration. There is a rejection from the Indonesian Doctors Association or IDI to become the castration executor because the implementation of chemical castration in the form of criminal sanctions is contrary to the code of ethics of doctors. With these obstacles, it is necessary to reformulate the implementation of chemical castration sanctions in Indonesia which will be offered in this study, namely based on human rights. The implementation of chemical castration using a human rights approach is by implementing chemical castration that is oriented towards protection for perpetrators and oriented towards rehabilitation which is strengthened by a special law on chemical castration.

³⁷ Ghada F. Mohammed and Rania K.H. Hashish, "Sexual Violence against Females and Its Impact on Their Sexual Function," *Egyptian Journal of Forensic Sciences* 5, no. 3 (2015): 96-102, <https://doi.org/10.1016/j.ejfs.2014.08.004>.

³⁸ Ihipurbo, Wibowo, and Setiawan, "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif."

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