



## Juridical analysis of the implementation of chemical left sanctions in children sexual crime performers doctor in Indonesia

Hilmia Fahma<sup>1</sup>, Waluyo<sup>2</sup>

<sup>1</sup> Master of Law Student, Universitas Sebelas Maret, Indonesia

<sup>2</sup> Lecturer at the Faculty of Law, Universitas Sebelas Maret, Indonesia

### Abstract

This study aims to determine the view of the medical ethics code regarding the doctor's profession as the chemical castrator of child sexual offenders who has been decided by the court as mandated by Article 82 A paragraph (2) of Law Number 17 of 2016 concerning Child Protection in conjunction with Article 9 of Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installing Electronic Detection Devices, Rehabilitation and Announcement of the Identity of Perpetrators of Sexual Violence Against Children. This research is a normative legal research with legal material collection techniques using document study or literature study. Based on the results of this study, it is known that theoretically related to the authority of the medical profession as a party ordered by law to carry out the castration process for perpetrators of sexual abuse against children who have been decided by the court is contrary to the principles contained in the medical code of ethics and oaths. doctor, in this case the presence of such a thing makes the doctor feel that he is not doing his profession in accordance with the Code of Medical Ethics which has been agreed upon and highly upholds moral values, one of which is "informed consent" or consent from family or patient. all actions that result in a decrease in the patient's physical endurance, although not necessarily reduce his psychological endurance. Second, that chemical castration is not a type of medical service but a punishment, so it is not the domain of medical or health personnel to do it.

**Keywords:** chemical castration, code of medical ethics

### Introduction

Every year, crimes in the form of sexual violence in Indonesia have increased. The victims are not only adults, but now it has also spread to adolescents, children and even toddlers. The phenomenon of sexual violence against children is increasingly common and has become global in almost all countries. Cases of sexual violence against children continue to increase from time to time. The increase was not only in terms of quantity or number of cases, but also in terms of quality. And what is even more tragic is that most of the perpetrators are from the family environment or the environment around the child, including in his own house, school, educational institution, and the child's social environment. (Noviana, 2015) <sup>[1]</sup>

Still fresh in the memory regarding the case of sexual abuse against international kindergarten children in Jakarta, it really shakes the hearts of everyone who has a conscience. Moreover, the latest news shows that the victim did not experience sexual violence only once with more than one perpetrator. The school, which is said to be of international standard, with a payment of 20 million per month, has hundreds of CCTVs, is not a safe place for children. The JIS case seems to be an opening door for the disclosure of various cases of sexual violence against children. In Medan, a father had the heart to molest his 18 month old daughter. In Kukar, an elementary school teacher became a suspect in a sodomy case against a student. In Cianjur, pedophilia involved an unscrupulous elementary school teacher at the Al-Azhar Foundation. The perpetrator with the initials AS is suspected of sexually abusing dozens of his students.

Meanwhile in Aceh, a police officer was arrested after molesting 5 children. (Noviana, 2015) <sup>[1]</sup>

"2002 data show that children aged 6-12 years witnessed the most sexual and emotional abuse (33%) and emotional abuse (28.8%), compared to physical abuse" (24.1%). Commissioner Jasra Putra of the KPAI announced that his organization found 218 cases of child sexual abuse in 2015". (kpai.go.id)

Unlike other forms of abuse, "cases of sexual violence against children have a much more significant impact on children, both directly and in the long term, not only physically." Furthermore, this action will have a negative impact on emotional, social and emotional well-being. psychological victims of violence". (Hasanah & Sopyonyono, 2018) As it is known that in response to this, the Government issued a Government Regulation in Lieu of Law (Perpu) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to anticipate increased sexual abuse of children, known as Law Number 17 of the Year 2016 (hereinafter referred to as Law 17/2016) regulates the weight of sanctions for perpetrators of sexual crimes against children, including the death penalty, life imprisonment and a maximum imprisonment of 20 years, as well as alternative crimes in the form of announcing the identity of the perpetrator. In addition, the perpetrator can be threatened with actions such as chemical castration and rehabilitation of the installation of electronic detectors with rehabilitation".

According to the author's notes, so far the imposition of castration sanctions has never been applied in Indonesia

after the enactment of Law 17/2016, there are only two cases where judges used the punishment of castration before this research was conducted. *First*, in case No. 69 / Pid.sus / 2019 / PN.Mjk, In this case, the defendant Muhammad Aris was legally and convincingly proven to have committed crimes of sexual violence against 9 (nine) children in the jurisdiction of the Mojokerto Regional Police, as determined by the Mojokerto District Court and later strengthened by the Surabaya District Court. High Court Decision number 695 / PID.SUS / 2019 / PT.Sby. According to the facts of the case, "the perpetrator raped 9 (nine) children with an average age of 6-7 years and was found guilty. (regional.kompas.com) Based on a court ruling, convicted of sexual abuse and violence against children is sentenced to 12 years in prison, a fine of Rp. 100 million, and 6 months in prison".

*Second*, the decision of the Surabaya District Court which stated that "the convict Rahmat Slamet Santoso was sentenced to chemical castration". where since 2015, Rahmat was found guilty of molesting 15 children while working as a Scout Guide in six public and private elementary and junior high schools. The judge sentenced the defendant to 12 years in prison with a fine of Rp. 100 million, three months in prison and three years of chemical castration. (alinea.id)

However, it should be noted that there is no technical protocol yet to enforce the criminal sentence of castration against the two convicts at the time of the verdict. The new government passed a regulation regulating the technical implementation of castration sanctions on December 7, 2020, through "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 referred to as PP 70 / 2020)". (suara.com)

On the other hand, at first glance, it seems that the medical profession has a completely different relationship with the enforcement of the castration sanction, because each has very different meanings. However, "there is a connection, that castration is a form of punishment in the health sector while doctors are health workers who act as executors who are given the obligation to punish". It is not "clearly stated in Law 17/2016 that castration is carried out by doctors," but "as a profession in charge of health, it is clear that doctors are one of them." The following is contained in Article 82 A paragraph (2) of Law 17/2016: "The implementation of actions as referred to in paragraph (1) shall be under regular supervision by the ministry responsible for government affairs in the legal, social and health sectors".

Likewise, this lack of clarity is also contained in Article 9 of PP 70/2020 regarding the implementation of the castration process which states that the procedure for implementing the castration process is carried out as follows:

1. "The implementation of the chemical castration act is carried out after the conclusion as meant in Article 8 states that the perpetrator of intercourse is eligible to be subject to the act of chemical castration;
2. Within a period of not later than 7 (seven) working days from the receipt of the conclusion as referred to in letter a, the prosecutor will order the doctor to carry out the implementation of chemical castration to the perpetrators of intercourse;

3. The implementation of the Chemical Castration as referred to in letter b shall be carried out immediately after the convict has completed serving the main sentence;
4. the implementation of the chemical castration act is carried out at a government-owned hospital or a designated regional hospital;
5. The implementation of the Chemical Castration Act is attended by prosecutors, representatives from the ministry that administers government affairs in the legal sector, the ministry that administers government affairs in the social sector, and the ministry that administers government affairs in the health sector;
6. the implementation of the chemical castration action is stated in the minutes; and
7. the prosecutor notifies the victim or the victim's family that the chemical castration act has been carried out..

Based on the mandate of Article 9 PP 70/2020, the medical profession has a great possibility to carry out the castration process, because it is recognized that doctors are responsible for the health sector, so it is clear that doctors are one of them. Furthermore, the argument that "the castration that the medical profession will perform is that castration has two distinct forms of procedure, namely surgical and chemical processes are very convincing." The results of castration surgery, also known as testicular surgery, are permanent, in chemical castration. however, medications will be given regularly to reduce the amount of testosterone in the body, thereby reducing sex drive".

This type of procedure requires experienced personnel, so doctors with experience are the most qualified to perform the procedure. This shows that the purpose of the article above is related to the doctor's duties as the party who will execute. Therefore, the question that deserves to be raised is "what is the view of medical ethics on the matter of the doctor's profession as the executor of chemical castration, as it is well understood that doctors are driven by the lofty ideals of their profession, and this code of ethics becomes a guideline for every doctor to behave. and act. relevant to the profession".

### Research Methods

This research is a normative legal research, namely the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand. (Marzuki, 2016) <sup>[8]</sup> With regard to the normative legal research method, the technique of collecting legal materials used is document study or literature study. The approach used in this study is a statutory approach and a case approach. (Marzuki, 2016) <sup>[8]</sup> by studying and examining the views of the medical code of ethics regarding the responsibility as the party implementing (executor) of chemical castration sanctions on child sexual offenders.

### Discussion

#### Phenomenon of Chemical Castration Sanctions

Castration has been practiced for various reasons in human history. In his book A Brief History of Castration 2nd Edition, Victor T. Cheney claims that teal animals were castrated 8,000-9,000 years ago in the Eastern Mediterranean. The goal is to have more women than men. However, the authors cannot find a definite record of when castration was carried out on humans "" Castrated slaves

had a higher value in Egypt in 2,600 BC (BC) because they were considered to be more industrious and loyal to their masters ". Around 500 BC, similar acts were found in slaves in Greece, harem guards of Persian kings, treasurers, and a number of Chinese imperial officials. (Wahtuni, 2017) <sup>[9]</sup>

People who are castrated were known as eunuchs in ancient times. Men who have been castrated are known as Kasim. "Their testicles have been removed (intentionally or unintentionally) or are not functioning for any other purpose, so they lose fertility. The earliest evidence of castration for the purpose of producing eunuchs comes from the 21st century BC in the Sumerian city of Lagash. Since then, eunuchs have been court servants or equivalent domestic helpers, loud-voiced male singers, special religious officers, government officials, military commanders, and female bodyguards in different cultures for thousands of years. There are no slaves in the harem. (Djauhari, 2017) <sup>[10]</sup>

"The author must understand that castration on the other hand is an act that is carried out against animals, often done on the pretext of preventing the risk of crimes committed by humans or people who want to be castrated," he said. for a brief history of the above castration. Castration can also be seen as a form of punishment for people who are prone to committing crimes. "This interpretation is in line with the statement of Jean D. Wilson Claus Roehrborn in his book" that the early history of castration was carried out for various purposes, including punishment as a prisoner of war, and often carried out on animals ". (Roehrborn, 2019) Castration has two meanings for the implementation of castration. these are:

#### a. Surgical Castration

"This is done by amputating the rapist's external sex organs so that the perpetrator is deficient in the hormone testosterone. Lack of this hormone will greatly reduce the sex drive. In ancient times they tended to perform surgical or physical castration, which involved cutting the entire male genitalia, both the testes and the penis. This practice was so dangerous and often resulted in death from severe bleeding or infection that in some cultures, such as the Byzantine Empire, castration was equated with the death penalty. Cutting only the testicles reduces the risk of death".

#### b. Chemical Castration

Unlike surgical castration, "chemical castration introduces antiandrogen chemicals into a person's body to reduce the production of the hormone testosterone in their body. The end result is the same as physical castration, that is, it eliminates libido or sexual desire or the ability to have an erection. (hellosehat.com) In Russia, chemical castration is performed by injecting a depo-provera substance containing synthetic progesterone. With the addition of female hormones to the male body, the sexual desire in question will decrease

Observing the two types of castration above, it can be concluded that "Castration tends to be done on men, and castration is a procedure in which a man will lose testicular function, so they lose libido and are infertile". Castration has two distinct types of procedures, "namely by surgery and by chemical processes. In surgical castration, or testicular surgery, the effect is permanent. However, in chemical castration, drugs will be given periodically to

reduce the level of testosterone in the body, so that the sex drive will be reduced".

Chemical castration is usually done by injecting a drug every three months, with some drugs lasting up to a year. If the drug injection is not continued, sexual desire will return, as well as other side effects such as decreased bone density. "Chemical castration has a significant negative effect on the body. When used for chemical castration, drugs such as medroxyprogesterone acetate, cyproterone acetate, and LHR agonists can lower testosterone and estradiol levels in the body, in addition to lowering testosterone levels. Under normal circumstances, estradiol plays an important role in human physiology. Estradiol itself is the hormone estrogen, if it decreases it can reduce brain and cardiovascular function, and disrupt the metabolism process of glucose sugar and lipids (fat)". (linkedin.com)

As far as the author's review is concerned, it is known that Indonesia is not the first country in Asia to apply chemical castration punishment, in 2011 South Korea adopted chemical castration as an additional punishment for sexual crimes. In South Korea, the government uses the chemical castration method only if medical professionals testify that sex offenders are more likely to repeat the act. The chemical castration procedure will be carried out after a diagnosis from the psychiatrist, then the prosecutor will carry out the castration process. Not only South Korea, but there are also several other countries that apply chemical castration as a punishment, namely Denmark, Sweden, Finland, Norway, Poland, the United States, Argentina, Australia, Israel, New Zealand, Maldives, Estonia, and Russia. (tempo.com)

Russia is one of the countries that also imposes chemical castration penalties. The chemical castration procedure was carried out after the court asked for a forensic psychiatrist's report to follow up on medical steps against the perpetrator. Then the court will inject depoprovera which contains synthetic progesterone into the body of the patient. By injecting more female hormones into the male body this will reduce sexual desire. After undergoing chemical castration, the pedophile offender will serve a prison sentence. They can only apply for parole after serving 80 percent of the sentence. The punishment of castration in Russia is mandatory for every perpetrator found guilty by the court. (Mardiya, 2017) <sup>[15]</sup>

South Korea and Russia ask psychiatrists for help in diagnosing someone who will be sentenced to chemical castration. After getting a diagnosis, South Korea appointed the prosecutor to carry out the chemical castration execution. Whereas Russia, after receiving a report from a forensic psychiatrist, to follow up on the chemical castration sentence submitted to the court, so that the court who will be the executor of chemical castration. (Eddyono, *et al.*, 2016) <sup>[16]</sup>

#### The view of the medical code of ethics regarding the authority of doctors as executors of chemical castration sanctions

Today, various types of professional professions in Indonesia usually have a standard professional code of ethics. (Mispiyanti, 2016) <sup>[17]</sup> If it is related to the problem of chemical castration, as the theme that the author raises in this article, namely, there is a conflict between some of the ethics listed in the Code of Medical Ethics and the fact that doctors are a profession appointed by the court to be the executor of chemical castration. Doctors as a profession that

has competence in the health sector with the implementation of chemical castration punishment in Indonesia then face a dilemma related to the existing medical ethics review of this phenomenon. The Indonesian Doctors Association (hereinafter abbreviated as IDI) has issued a fatwa refusing doctors as executors of castration who are considered to injure the professional oath, given the questionable effectiveness of castration and the risk of other complications that convicts with castration have to face..

IDI Chairman Daeng M. Faqih said that IDI allowed Indonesia to impose a punishment in the form of chemical castration. However, IDI asks not to appoint medical personnel or health workers as executors. The reason IDI refuses to be the executor of chemical castration punishment is first, that chemical castration is not a type of medical service but a punishment, so it is not the domain of medical or health personnel to do it. Therefore, IDI has invited the government to appoint executors other than medical personnel. The second reason IDI refuses to be the executor is that the act of execution can lead to a conflict of norms, namely medical ethics, orders from the World Health Organization (WHO), and the Health Act which prohibits carrying out these actions, in this case, chemical castration. (ayobandung.com)

Castration or castration is a surgical procedure and / or the use of chemicals with the aim of eliminating the function of the reproductive organs in the form of testes in males and ovaries in females. Based on its understanding, the castration procedure is then classified into physical castration and chemical castration. In physical castration, the operator performs total removal of the reproductive organs, namely the testes and ovaries. In chemical castration, such an action is not carried out, but is replaced by giving chemical compounds that can weaken or eliminate the function of sex hormones. Pathophysiologically, chemical castration is carried out by injecting the hormone anti-testosterone into the body of the convicted person. This hormone works by suppressing the production and activity of testosterone so that it does not trigger a libido boost as long as the person is under the influence of the drug.

Today, castration is carried out with the aim of serving as a criminal sanction against perpetrators of sexual crimes such as rapists and pedophiles in various countries. Each country applies different methods of castration. The Czech Republic and Germany are examples of several countries that apply physical castration punishment, namely the removal of the testicles of pedophile offenders as an effort to control the perpetrators' abnormal sexual urges. Russia and South Korea have imposed chemical castration penalties for perpetrators of sexual crimes who are at risk of repeating their crimes after consultation with psychiatrists.

Based on the principles of medical ethics contained in the Hippocratic Oath, causing death or disability to a person is against the principle of nonmaleficence or "do no harm". Then, the criminal is also not in a situation that allows him to give informed consent or consent, which is part of the principle of autonomy in the Hippocratic Oath. (Soetedjo, *et al.*, 2017) <sup>[19]</sup> The fifth item on the hippocratic oath which reads "I will not use my doctor's knowledge for something that is against humanity even if threatened" adds to the basis of reinforcing reasons for doctors not to use their expertise whose impact is contrary to humanity. Not only violating the hippocratic oath, the execution of chemical castration punishment which if carried out by a doctor will also violate

the 2012 Code of Medical Ethics Article 5 which states that "Every action or advice that may weaken psychological or psychological endurance, must obtain the consent of the patient or his family and only be given. for the benefit and benefit of the patient."

These two things, the fifth item of the hippocratic oath and Article 5 of the 2012 Medical Code of Ethics is a clear description of the principles found in the medical profession, namely, the principle of "do no harm" and the principle of "informed consent." The two pillars of medical principles will be misled if the doctor executes the chemical castration sentence. Chemical castration considering its side effects in the form of decreased levels of the hormone testosterone which will affect the function of other organs, such as muscle atrophy, bone loss, reduced blood cells, and impaired cognitive function, of course it will be very dangerous for people affected so the principle of "do no harm" has been ruled out.

In the case of carrying out chemical castration executions of child sexual offenders, doctors do not need to seek approval from the person who will be executed because chemical castration is a clear punishment if it has been decided by the court against that person. The presence of such things makes doctors feel that they are not doing their profession in accordance with the Code of Medical Ethics that has been agreed upon and highly upholds moral values, one of which is "informed consent" or consent from family and patients for all actions that result in decline. physical endurance of the patient, although not necessarily reduce his psychological endurance. So what if the execution of chemical castration still has to be done by doctors, considering that doctors are a profession that is considered very competent to carry out chemical castration executions. So based on the description above, in the opinion of the author regarding the executive authority of perpetrators of child sexual abuse by doctors as contained in Article 82 A paragraph (2) of Law 17/2016 Juncto Article 9 PP 70/2020 can be said to be contrary or inconsistent with the principles of principles contained in the medical code of ethics and the doctor's oath.

## Conclusion

Based on the results of this study, it is known that theoretically related to the authority of the medical profession as a party ordered by law to carry out the castration process for perpetrators of sexual abuse against children who have been decided by the court is contrary to the principles contained in the medical code of ethics and oaths. doctor, in this case the presence of such a thing makes the doctor feel that he is not doing his profession in accordance with the Code of Medical Ethics which has been agreed upon and highly upholds moral values, one of which is "informed consent" or consent from family or patient. all actions that result in a decrease in the patient's physical endurance, although not necessarily reduce his psychological endurance. Second, that chemical castration is not a type of medical service but a punishment, so it is not the domain of medical or health personnel to do it.

## Reference

1. Ivo Noviana, Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya, Jurnal Sosio Informa 2015, 01(1).

2. Davit Setyawan. Tahun KPAI Temukan 116 Kasus Kekerasan Seksual Terhadap Anak. KPAI. Retrieved from <http://www.kpai.go.id/berita/tahun-2017-kpaitemukan-116-kasus-kekerasan-seksual-terhadap-anak>, diakses pada tanggal; 28 Februari 2021
3. Lihat dalam <https://regional.kompas.com/read/2019/08/27/10584281/putuskan-kebiri-kimia-pemerksosa-9-anak-hakim-sebut-tidak-langgar-ham?page=all>, diakses pada tanggal 28 Februari 2021
4. Putusan Hakim Pengadilan Negeri Mojokerto Nomor 69/Pid.sus/2019/PN.Mjk”
5. “Lihat dalam <https://www.alinea.id/nasional/vonis-kedua-kebiri-kimia-pada-kakak-pembina-pramuka-b1XpX9pjd>, diakses pada tanggal 28 Februari 2021”
6. “Lihat dalam <https://www.suara.com/health/2021/01/04/145521/joko-wi-sahkan-pp-kebiri-kimia-apa-itu-dan-apakah-efektif>, diakses pada tanggal 28 Februari 2021”.
7. 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
8. Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Kencana Prenada Media Group, 2016
9. “Fitri Wahtuni, Hukuman Kebiri Terhadap Pelaku Tindak Pidana Perkosaan Anak dan Kaitannya Dengan Hak Asasi Manusia (The Castration Punishment For Child Rapist And Its Relation To Human Right), Jurnal Hukum dan Peradilan, 2017, 6(2).
10. Jein Djauhari. Analisis Kebijakan Hukum Pidana Penjatuhan Sanksi Kebiri Pada Pelaku Kejahatan Seksual Terhadap Anak. Tesis Program Magister Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Islam Indonesia, 2017.
11. Jean D. Wilson Claus Roehrborn, Long-Term Consequences of Castration in Men: Lessons from the Skoptzy and the Eunuchs of the Chinese and Ottoman Courts, *Journal of Clinical Endocrinology & Metabolism*, 84(12).
12. Lihat dalam, “<https://helohehat.com/mengenal-proses-kebiri-kimia/>, di akses pada tanggal 01 Maret 2021”
13. <https://id.linkedin.com/pulse/perppu-uu-tentang-perlindungan-anak-efek-kebiri-kimia-wi-santysuharta>. Di akses pada tanggal 01 Maret 2021
14. “Hukuman Kebiri Kimia Pertama Untuk Pemerksosa Anak Belum Bisa Diterapkan Tanpa Petunjuk Teknis”, <https://www.tempo.co/bbc/4587/hukuman-kebiri-kimia-pertama-untuk-pemerksosa-anak-belum-bisaditerapkan-tanpa-petunjuk-teknis>, diakses tanggal 05 April 2021
15. Nuzul Qur’aini Mardiyah, “Penerapan Hukum Kebiri Kimia Bagi Pelaku Kekerasan Seksual Implementation of Chemical Castration Punishment For Sexual Offender,” *Jurnal Konstitusi*, 2017, 14.
16. Supriyadi Widodo Eddyono, Ahmad Sofian, Anugerah Rizki Akbari, Menguji Euforia Kebiri: Catatan Kritis atas Rencana Kebijakan Kebiri (Chemical Castration) Bagi Pelaku Kejahatan Seksual Anak di Indonesia, Institute for Criminal Justice Reform, Jakarta, 2016
17. Mispiyanti, “Peranan Etika Profesi dalam Perilaku Akuntan”, *Jurnal Fokus Bisnis*, 2016, 15(1).
18. Naufal Hafizh M. “Alasan IDI Tolak Jadi Eksekutor Kebiri Kimia Tersangka Kejahatan Seksual”, <https://www.ayobandung.com/read/2019/08/27/61771/ulasan-idi-tolak-jadi-eksekutor-kebiri-kimia-tersangkakejahatan-seksual>, diakses tanggal 20 April 2020
19. Soetedjo, Julitasari Soendoro, Pukovisa Prawiroharjo, “Tinjauan Etika: Dokter sebagai Eksekutor Hukum Pidana yang Menyebabkan Kematian, Kecacatan, atau Gangguan Kesehatan”, *Jurnal Etika Kedokteran Indonesia*, 2017, 1.