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Regulation And Implementation Of Chemical Castration Punishment Towards Child Sexual Abuse Perpetrator In Indonesia

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Abstract

Pro and contra in Indonesian community when the Law No.17/ 2016 about Child Protection has been enacted by Indonesian House of Representative together with government. A fascinating issue has arised in public was about that the perpetrator to child sexual abuse such as rape or sexual harassment will be punished not only in jail for years but also they will get chemical castration punishment as additional punishment. Inspite when the judge punished the suspect with chemical castration punishment, there arised a problem that who will execute chemical castration. Law No. 8/1981 about criminal procedure regulated that prosecutor as executor of conviction, however the prosecutor does not have skill to inoculate chemical castration. The doctors as a professional who have skill to do chemical castration refused to be the executor because chemical castration against an oath doctor. Moreover, the criminal conviction which had legal force must be executed to guarantee legal certainty. By using descriptive qualitative analysis, the results show that Indonesia aimed to enacted Law No. 17/2016 are to reduce the level of child sexual abuse, to create a deterrent effect to perpetrators, create a preventive element.

The factors that being obstacle to implementing conviction chemical castration punishment towards perpetrator of child abuse in Indonesia is the judicial decision already exist but there is no professional to execute of chemical castration. The Indonesian Doctors Association (IDI) refuses as the executor for carrying out additional punishment of chemical castration because Indonesian Doctors Association argued that doctors are prohibited from using their knowledge and competence for matters that are contrary with humanity. The government should regulate Professional for execute chemical castration, prosecutors as executor have competence to inoculate chemical castration.

Keyword : Chemical Castration, Child sexual abuse, Executor, Punishment.

Regulación E Implementación Del Castigo De Castración Química Hacia El Perpetrador De Abuso Sexual Infantil En Indonesia

RESUMEN

A favor y en contra de la comunidad indonesia cuando la Ley No.17 / 2016 sobre Protección Infantil fue promulgada por la Cámara de Representantes de Indonesia junto con el gobierno. Un tema fascinante que surgió en público fue que el autor del abuso sexual infantil, como la violación o el acoso sexual, será castigado no solo en la cárcel durante años, sino que también recibirá castigo por castración química como castigo adicional. A pesar de que el juez castigó al sospechoso con castigo de castración química, surgió el problema de quién ejecutará la castración química. La Ley N ° 8/1981 sobre el procedimiento penal regulaba a ese fiscal como albacea de la condena, sin embargo, el fiscal no tiene la habilidad para inocular la castración química. Los médicos como profesionales que tienen la habilidad de hacer castración química se negaron a ser el executor debido a la castración química contra un médico de juramento. Además, la condena penal que tenía fuerza legal debe ejecutarse para garantizar la seguridad jurídica. Al utilizar un análisis cualitativo descriptivo, los resultados muestran que Indonesia tenía como objetivo promulgar la Ley N ° 17/2016 para reducir el nivel de abuso sexual infantil, crear un efecto disuasorio para los perpetradores, crear un elemento preventivo. Los factores que obstaculizan la

implementación de la condena por castigo de castración química hacia el autor del abuso infantil en Indonesia es la decisión judicial que ya existe, pero no existe un profesional para ejecutar la castración química. La Asociación de Médicos de Indonesia (IDI) se niega como ejecutor por llevar a cabo un castigo adicional de la castración química porque la Asociación de Médicos de Indonesia argumentó que los médicos tienen prohibido usar su conocimiento y competencia para asuntos que son contrarios a la humanidad. El gobierno debe regular a los profesionales para ejecutar la castración química, los fiscales como ejecutores tienen competencia para inocular la castración química.

Palabra clave: Castración química, Abuso sexual infantil, Ejecutor, Castigo.

1. Introduction

The issuance of regulation to replace Government Legislation in Lieu of Laws No. 1/2016 which was legally passed into Law No. 17/2016 about child protection particularly concern to chemical castration as additional punishment to perpetrator of child sexual abuse. This regulation raises the pros and contras of the Indonesian society because it is against of human rights that are deemed inhumane and the right to continue descendants. This regulation was issued by the legislature had the initial purpose of providing a deterrent effect on sexual crimes against children (child sexual abuse) because pre-existing penalties had not a deterrent effect and unim-pactful. Moreover, the level of sexual violence against children in Indonesia was increasing year by year.

The phenomenon of sexual violence towards children is increasingly common and difficult to handle, even cases of child sexual abuse continue to increase from year to year. Based on research report from Indonesia's Coordinating Ministry for People's Welfare stated that from 2010 to 2014 there were 21,869,797 cases of child sexual abuse, it is spread in 34 provinces, and 179 districts and city.¹

1 Diesmy Humaira dkk, 2015, Kekerasan Seksual Pada Anak: Telaah Relasi Pelaku Korban dan Kerentaran Pada Anak, Jurnal Psikologi Islam (JPI) Vol. 12, No. 2, page: 5

Before Law No. 17/2016, child sexual abuse has been regulated in Law No. 35/2014 concerning amendments to Law No. 23/2002 concerning child protection from article 81 to 89 with sanction minimum 5 years imprisonment to maximum 20 years imprisonment. Subsequently, punishment for rape perpetrators of women who are not already in legal age (15 years old) is stated in article 287 verse (1) of the Criminal Code and subject to special crimes sanctions with a maximum imprisonment of 9 years² and also article 290 of Criminal Code regulates concerning inducement and indiscretion towards minors to maximum of 7 years imprisonment.³ Despite the regulation has regulate high sanction for perpetrators, but it was not yet giving deterrent effect. Therefore, the amount of child sexual abuse cases still in high level.

Based on the conditions above, the government form Law No. 17/2016 because the country ensure children's rights to survive, growth and develop, and protection from abuse and discrimination as stated in the 1945 Constitution of the Republic of Indonesia. Moreover, the reconsider rate of sexual violence against children is going up and threatens the strategic role of children as the future generation of the nation and state. Hence, after the government received critics and recommendations from society, it is necessary to increase criminal punishment and provide action against perpetrators of child sexual abuse as amended by Law No. 35/2014.⁴ Accordingly, the country needs to take optimal and comprehensive steps by not only imposing criminal punishment but also implement a form of prevention (preventive) by providing action in the form of chemical castration. To respond the phenomenon of sexual violence against children, it provides a deterrent effect on the perpetrators, and prevent sexual violence against children. The President of Republic Indonesia has enacted

2 Criminal Code Article 287 Verse (1)

"Barangsiapa bersetubuh dengan seorang wanita di luar pernikahan, padahal diketahui atau sepatutnya harus diduga, bahwa umurnya belum lima belas tahun, atau kalau umurnya tidak ternyata, bahwa belum mampu dikawin, diancam dengan pidana penjara paling lama Sembilan tahun."

3 Criminal Code Article 290 to 3

"Barangsiapa membujuk seseorang yang diketahui atau sepatutnya harus diduga, bahwa umurnya belum lima belas tahun atau kalau umurnya tidak ternyata, bahwa belum mampu dikawin, untuk melakukan atau membiarkan dilakukan perbuatan cabul, atau bersetubuh di luar pernikahan dengan orang lain."

4 Preamble Law Number 17 of 2016 about Determination of Local Government Regulation Number 1 of 2016 concerning Second Amendment Law Number 23 of 2002 concerning Child Protection to Constitution.

Government Regulation in Lieu of Law No. 1/2016 concerning Second Amendment to Law Number 23 Year 2002 concerning Child Protection on May 25, 2016.

Although the Law on the implementation of chemical castration punishment already exists, there are problems in terms of execution. The regulation states that the execution of chemical castration will be carried out by prosecutors.⁵ However, the prosecutors do not have competence to inject chemical castration. Professionals (doctors) are required to carry out the punishment but the Indonesian Doctors Association (IDI) refused because it was considered violating the code of ethics of medical practice contained in Law Number 29 of 2004 concerning Medical Practices and the effects of chemical castration which has danger effect.⁶ The effects of chemical castration is to reduce libido, but it also has serious side effects including osteoporosis, weight gain, and weakness in their entire life.⁷ however, according to implementation in Iowa, chemical castration injection relatively painless and the effect is not longer.⁸

Nowadays, the rape of 9 children case had occurred in Indonesia (Aris, 20 years old) in Mojokerto. Based on Judicial Conviction No. 695/PID. SUS/2019/ PT SBY, Aris was punished to 12 years imprisonment and chemical castration punishment as an additional punishment. In this decision there was a problematic according to Law No. 8/1981 regarding Criminal Procedure Article 270 stated existing judicial conviction must be carried out for the sake of legal certainty.⁹ There was a problem in term of execute especially who will be the executor, because the prosecutor that should be in charge is incompetence to inject chemical castration. Based on medical knowledge, chemical castration is a big deal that impactful to human body.

5 Law No. 8/1981 Article 270 concerning Criminal Procedure

6 Law No. 29/2004 Article 39 concerning Medical Practices.

7 Jane Perry, Indonesian Doctors Risk Losing License if They Castrate Pedophiles, *BMJ*, Vol. 355; p. i5762, 2016.

8 Ryan Cauley. Is Chemical Castration a Progressive or Primitive Punishment? Balls are in Your Court, Iowa Legislature. *Journal of Gender, Race and Justice*. Summer, 2014.

9 Criminal Procedure Law, Law Number 8 of 1981 on December 31, 1981, Chapter XIX concerning Implementation of Judicial Decisions Article 270:

"Pelaksanaan putusan pengadilan yang telah memperoleh kekuatan hukum tetap dilakukan oleh jaksa, yang untuk itu panitera mengirimkan salinan surat putusan kepadanya."

There are still many opponent disagree to Law No. 17/2016 particularly concerning chemical castration towards child sexual abuse. They argued it was against human rights especially the rights for descendant. Instead, the government should have their own reasons and goals in the law making Law No. 17/2016. Therefore, the aim of this study is to discover what are the reasons Indonesia government to enacted child abuse suspect with chemical castration as additional punishment and what factors being obstacle to implementing conviction chemical castration punishment towards perpetrator of child abuse in Indonesia.

2. Research Methods

The oncoming method in this research is normative juridical. The research is by looking for relevant legislations and literatures about chemical castration punishment in Indonesia and also comparative study with provision of the countries that particularly already implemented castration chemical punishment. Literature is supported by secondary data, there are Law Number 17 of 2016 about Determination of Local Government Regulation Number 1 of 2016 concerning Second Amendment Law Number 23 of 2002 concerning Child Protection Law Number 8 of 1981 Article 270 concerning Judicial Decisions in Criminal Procedure Law, and Law Number 29 of 2004 concerning Medical Practice, Oath Doctor and Doctor's Ethic Code.

3. Results and Discussion

3.1. The goals and reasons of Indonesia government to enacted child abuse suspect with chemical castration as additional punishment in Law No. 17/2016.

Based on consider of Law No. 17/2016 concerning Child Protection was created because the state secures children's rights to survive, growth and develop, as well as protection from agreements approved in the 1945 Constitution of the Republic of Indonesia.¹⁰ Along with the development of

¹⁰ Consider of Law No. 17/2016

globalization that have a negative impact on evolution of information and communication technology, sexual violence against children has increased significantly. So it is necessary to increase criminal punishment and provide action against perpetrators of sexual violence against children by changing Law No. 23/2002 concerning Child Protection as amended by Law No. 35/2014 concerning Amendment to Law No. 23/2002 concerning Child Protection.¹¹

Subsequently, we can discover more about reasons in the law making Law No. 17/2016 in the explanation of the Law No. 17/2016, that the state necessity to take optimal and comprehensive steps by not only giving weight to criminal punishment, but also apply the configuration of prevention (preventive) by providing actions in the form of chemical castration. Responding to the phenomenon of sexual violence against children, the president established Government Regulations in Lieu of Laws 1/2016 regarding the second amendment to Law 23 of 2002 on child protection on May 25, 2016. Which then Government Regulations in Lieu of Laws has received approval from the People's Legislative Assembly to then be passed into law about Establishment Government Regulations in Lieu of Laws 1/2016 Second Amendment to Law No. 23/2002 concerning Child Protection becomes Law based on the provisions of Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Law Number 17 of 2016 about Determination of Local Government Regulation Number 1 of 2016 concerning Second Amendment Law Number 23 of 2002 concerning Child Protection to Constitution has the main goal of which is to reduce the level of sexual violence against children, to create a deterrent effect on the perpetrators, and create a preventive element.¹² Through chemical castration punishment, it is expected that the offender can undo his intention to carry out acts of child sexual abuse given the severe punishment.

To discover more about reasons or goals in the law making, we can lead to some doctrines. Padmo Wajhono in his article, "Menyelisik Proses Terbentuknya Perundang-Undangan", defines that legal politics is the policy of state administrators about what is used as a criterion to punish something.¹³ Legal policy, including the process of making and implementing laws that

11 Ibid.

12 Explanation of Law No. 17/2016

13 Padmo Wahyono, *Indonesia Negara Berdasarkan atas Hukum*, Cet. II, Ghalia Indonesia, Jakarta, 1986, pg: 160

can indicate the nature and direction in which the law will be built. Political law provides the basis for a more appropriate process of law formation, situations and conditions, culture and values that develop in society by taking into account the needs of the community for the law itself.¹⁴

The politics of law is influenced by the globalization of criminal law. Globalization has an important role for the life of the nation because it helps people in their efforts to achieve prosperity in life. Various government policies can be immediately reached to the community. After that, people can give or submit responses and aspirations for these policies. That means, this encourages transparent democratic governance. Through globalization, legal policies and human rights enforcement can be accessed by the wider community. At the same time a means of control or supervision in upholding human rights.

The theory of legal politics according to Mahfud MD can be concluded as a process of legal formation, the purpose of the law is made, and the formation of laws that adapt to the development of society and the circumstances.¹⁵ The law making of castration punishment has purposes which are to reduce the level of child sexual abuse, create a wary effect for the perpetrators, and have a preventive or preventive action. The making of the regulation is also adjusted to the current development of society which is influenced by globalization such as information and communication technology, which one of the negative impacts is causing acts of sexual violence against children which increase significantly every year.

The formation of this law also looks at the situation and condition of the people who have not got a deterrent effect from the previous punishment regulations. Society, especially children, need more legal protection which creates a deterrent effect on the perpetrators of child sexual violence. As we know that in Explanation Law No. 17/2016 the goal of this regulation is to create a deterrent effect to the perpetrators. So, we can qualified from the goal of Law No. 17/2016 has the same goal with the recompense theory.

Besides relating to legal political theory, Law No. 1/2016 is also related to

14 Mahfud MD, *Politik Hukum Di Indonesia*, Rajawali Pers, Jakarta, 2009, page: 9

15 Ibid.

the theory of criminal purpose. The recompense theory or absolute theory is carried out because someone has committed a crime. Against the perpetrators of criminal offenses absolutely must be held in the form of criminal deterrent.¹⁶ It is suitable if doers of acts of child sexual abuse receive retribution for morals and ethics. For the will of man, it has become a demand that anyone who commits crime,¹⁷ he will accept something crime. Acts of child sexual abuse need to be repaid with additional criminal penalties in addition to imprisonment as the main crime in order to provide a deterrent effect. The purpose of criminal law towards perpetrators have a deterrent effect can see from Explanation Law No. 17/2016.

Law No. 17/2016 also concerning the goal theory of criminal punishment relative theory or improvement theory. Theories that include into relative theory justify (*rechtsvaardigen*) criminalization based or depends on the purpose of criminalization. The main purpose of criminalization is for community protection or prevention the occurrence of crime (*ne peccetur*). This theory acts deterrence.

Prevention of a crime by carrying out criminal threats that are severe enough to frighten potential criminals. By knowing that there is a serious treat, people who will commit crimes are expected to discourage them from doing that crime thing. Paul Anselm and Feuerbach stated this theory with the familiar named “*psychologische dwang*” or psychological coercion. In the case of chemical castration punishment, this regulation has function to scare off the offender who will commit the crime so that it is possible to undo his intention.

The adherent of this theory are Grolman, Van Krause, and Roder. Criminals are given “Education” so they can be accepted again in the community. These improvements can be in the form of; intellectual improvement, moral improvement, and juridical improvement. By the Law No. 17/2016 article 81 A verse (3) rehabilitation is carried out after carrying out the punishment so that the offender can be accepted back into society with a better mental.

Ferri and Garofalo adhere to the theory of Getting rid of criminals from the community association (*onschadelijk maken*), namely to criminals who have been immune to criminal threats to be deprived of their independence or sentenced to death. Chemical castration criminal can rob independence

17 E.Y. Kanter, S.R. Sianturi. *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Penerbit Stora Grafika, Jakarta, 2002, page: 60.

because it is considered inhumane and violates human rights. Combined theory is a compound of retaliation theory and goal theory. According to the combined theory, the theory of recompense and goal theory have their respective weaknesses.

There's no something new on chemical castration regulation, many countries had been regulate and implement chemical castration punishment towards child sexual abuse. For example, South Korea was the first country in Asia to apply chemical castration penalties for child sexual assault. South Korea applies chemical castration penalties to combat child sexual crimes.¹⁸ Denmark, Germany, and Norway allow castration if it can be proven that the subject can be forced to commit sexual crimes due to uncontrolled sexual drive.¹⁹ Also in USA, California was the first state implement the chemical castration law, any persons convicted for the second time of forcible or statuory rape will be automatically required to chemical castration as a condition of parole. From California section 645 of the California penal code. We can know that chemical castration had implemented for the second time forcible or statuory rape.²⁰ So, there are similar goals and reasons between Indonesia and several countries towards chemical castration punishment indirectly to give deterrent effect of perpetrator and to decrease the level of child sexual abuse.

Indonesia has regulate Law No. 17/2016 especially about chemical castration. Moreover has been implemented by Mojokerto District Court through the decision 695/PID.SUS /2019/ PT SBY. This conviction had legal force. However, this conviction arised problematic. The perpetrator and his family refuse to accept chemical castration punishment. Also human rights activist contra to this conviction. Moreover, we can know about goals and reasons of this conviction from public relation of Mojokerto District Court, Erhammudin, state that "this crime has done by Aris, 20 years old qualified as very serious crime and must be given deterrent effect and also to give the lesson for the society"²¹. Erhammudin expect that additional criminal punishment towards perpetrator (Aris) could be prevent the same case will not happen again in Indonesia. This conviction is related to the goal of

18 <https://edition.cnn.com/2012/09/05/health/chemical-castration-science/index.html>

19 <https://factcheckeu.info/en/article/salvini-ha-ragione-sulla-castrazione-chimica>

20 Vedije Ratkoceri, Chemical Castration of Child Molesters – Right or Wrong?, Europe Journal of Social Sciences Education and Research, South East European University, Vol. 11 Nr. 1, 2017, pg. 74

21 <https://news.detik.com/berita-jawa-timur/d-4681082/ini-alasan-hakim-tambah-vonis-kebiru-kimia-ke-predator-anak-di-mojokerto> access on September 27th, 2019 at 19.00

Law No. 17 Tahun 2016 concerning Child protection which is stipulated on Explanation of Law No. 17/2016 that the perpetrators will get deterrent effect. Also, this conviction is connected to the purpose theory of criminal.

3.2. Factors being obstacle and solution to implementing conviction chemical castration punishment towards perpetrator of sexual violence against children in Indonesia

The point of law enforcement actually rest in the factors that might influence it. These factors have a neutral meaning, the positive or negative impact based on these factors. These factors include:²²

1. The legal factor itself, in this case limited to the law only.
2. Law enforcement factors, those who establish and apply the law.
3. Factors of facilities, that support law enforcement.
4. Society factors, namely the area which the law applies or is applied.
5. Cultural factors, namely as a result of works, inventions, and tastes based on human initiative in the association of life.

These five factors are closely interrelated, because they are the quintessence of law enforcement, also a measure of the effectiveness of law enforcement. If castration chemical punishment as an additional criminal as regulated in Law Number 17 of 2016 is reviewed from the factors that influence the law enforcement stated by Soerjono Soekanto, the first factor, regarding the law, namely chemical castration punishment as an additional law has been regulated in Law Number 17 in 2016 article 81 verse (7), this article states that castration punishment is an additional punishment.²³

The second factor, regarding law enforcement factors. Talking about law enforcement is actually not only that form but also who applies the law. When the law has been formed, the execution must also be carried out as the main purpose of the law was formed.²⁴ However, this factor is of particular concern in implementation of chemical castration punishment, this factor can be said that unfulfilled because of several things, one of them is when the law has been established and as the executor of the sentence does

22 Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Rajawali Pers, Jakarta, 2014, pg. 9

23 Pasal 81 ayat (7) UU RI Nomor 17 tahun 2016

“Terhadap pelaku sebagaimana dimaksud pada ayat (4) dan ayat (5) dapat dikenai tindakan berupa kebiri kimia dan pemasangan alat pendeteksi elektronik.”

24 *Ibid*

not have the competence to execute it.

Laws (Laws) about chemical castration punishment have been established but, in practice it is hard to implement it because there is no (executor) who are willing to execute chemical castration punishment of sexual violence against children. The executor for the implementation of court decisions regarding criminal cases that have permanent legal force. In article 1 verse 6 of Law No. 8/1981 concerning the Criminal Procedure Code (KUHP) expressly stipulates that prosecutors are officials who are authorized by KUHP to act as executors of court decisions that have obtained permanent legal force. Chemical castration punishment, which was formed through government legislation and then ratified into Law actually from the very beginning it was formed does not yet have a clarity about who will execute it. Indeed, Law No. 8/1981 has regulated that prosecutor as execute of conviction. However, in chemical castration decision, prosecutor is incompetent to execute. Meanwhile, the doctor who has skill, refuse to become a executor of chemical castration.

Another factor, it could be detention to implementing chemical castration punishment is society. In this context The Indonesian Doctors Association (IDI) could be qualified as society, because they refuses as the executor for carrying out additional punishment of chemical castration which was regulated in Law No.17/2016. The Indonesian Doctors Association (IDI) has reasoned that doctors are prohibited from using their knowledge and competence for matters that are contrary with humanity.²⁵ They argued chemical castration to the perpetrator is not healing but torture or dying. Moreover, based on Law No. 29/2004 about medical practice, It could seen from verse 39 that medical practice is a doctor or dentist effort to make health care, disease prevention, health promotion, disease treatment and health recovery.²⁶ If the chemical castration is not a medical service, then doctors or other medical personnel such as nurses are not allowed to become executors.

Chairperson of the Indonesian Medical Association (PB IDI) Executive Board Dr. Daeng Muhammad Faqih was outspoken about the reason IDI

25 Puput Mutiara, IDI Refuses to Perform Chemical Castration, medcom.id, <<https://www.medcom.id/english/national-en/ybD14Dqk-idi-refuses-to-perform-chemical-castration>> diunggah pada tanggal 10 Juni 2016 14:31 WIB

26 Pasal 39 UU RI Nomor 29 Tahun 2004 tentang Praktik Kedokteran

Praktik kedokteran diselenggarakan berdasarkan pada kesepakatan antara dokter atau dokter gigi dengan pasien dalam upaya untuk pemeliharaan kesehatan, pencegahan penyakit, peningkatan kesehatan, pengobatan penyakit dan pemulihan kesehatan.

refused to be the executor of the castration penalty.²⁷ The chemical castration in addition (punishment) is in the form of punishment, it is not medical services, so it is not a doctor's job. This means it should be special work for the executor. Secondly, if a doctor is asked that there will be a conflict of norms, there is a universal ethical norm that doctors or health workers do not hurt someone, torture or make someone worse. That is not allowed, by medical ethic. Ethical norms must be obeyed by all medical personnel in Indonesia and even the world. Where medical personnel are not permitted to do things outside of medical services which are of a nature to provide assistance.

It is clear that there is no institutions to excute chemical castration punishment because the doctor who has skill to do it had rejected. This condition, will arise another problem in law enforcement. But the problem above could be tackled with anylsed in practice in several countries how they execute chemical castration punishment.

There are several countries that have implemented and carried out chemical castration penalties, including:

1. Kazakhstan

Kazakhstan began to used chemical castration on one of the pedophiles in the Turkestan region. The country began imposing this sentence and carried out its first chemical castration in 2016. Local officials announced that the chemical castration process by injection was overseen by the State Ministry of Health. Kazakhstan uses Cyproterone, an anti-androgen steroid that was developed to fight cancer and the procedure will be carried out in regional psychoneurological clinics.²⁸

2. Moldova

The law in force in Moldova states, if it is proven to carry out acts of pedophilia, both citizens and foreign countries will be punished with chemical castration punishment. The law takes effect in 2012 and is executed by the local police to punish sexual predators.²⁹

28 CNN Indonesia, IDI Tolak Jadi Eksekutor: Kebiri Kimia Bukan Layanan Medis

<<https://www.cnnindonesia.com/nasional/20190827174203-12-425112/idi-tolak-jadi-eksekutor-kebi-ri-kimia-bukan-layanan-medis>> diunggah pada 27/08/2019 18:50 WIB

29 Elizabeth M. Tullio, Chemical Castration for Child Predators: Practical, Effective, and Constitutional. pg. 191, 207 (2009).

3. Great Britain

In 1952, legendary mathematician Alan Turing was sentenced to undergo chemical castration by the police force. This action was carried out because Alan Turing was considered to have deviant behavior, namely homosexuals. However, the effects of chemical castration made him tortured until he decided to end his life at the age of 41 years with poison.

4. Alabama

The state of Alabama signs the entry of chemical castration actions into the law. Alabama began to apply this sentence in July 2019. The procedure for this sentence will be served under supervision of the Alabama Department of Public Health.

5. United States

Chemical castration has gained increasing fame within the United States. Although surgical castration has been performed on perpetrators in the United States as early as 1899, California was the first country to enact chemical castration legislation, almost one hundred years later, on September 17, 1996. Now, several states, including California, Montana, Florida, Louisiana, and Wisconsin allow judges to force a sex offender to undergo chemical castration.” Although Georgia and Oregon once allowed chemical castration, these laws have since been repealed. Chemical castration legislation has been proposed in at least sixteen states that have either proposed or adopted some type of chemical castration statute. Moreover, there were general Overview of Castration Statutes in Several countries.³²

No	State/R ef	Chemical Agent Specified	Required Medical or Psychiatric Evaluation	Informed Consent Issues	Required Counseling	Cessation of Treatment	Provider Liability Immunity
1.	California	MPA or its chemical equivalent	No	Must inform regarding side effects	No	Until it's no needed (until DOC demonstrates to Board of Prison Terms that it's not necessary)	Not specified
2.	Florida	MPA	Yes— court appointed "medical expert"	Not mentioned for MPA; for voluntary physical castration	No	Until no longer necessary	Not specified
3.	Georgia	MPA or its chemical equivalent	Yes— psychiatrist or qualified mental health professional for aggravated child molestation	Must be informed regarding side effects and consent to treatment in writing	Yes	Defendant must demonstrate no longer necessary	Not liable civilly or criminally if provider acts in good faith
4.	Iowa	MPA or "approved pharmaceutical agent"	Yes— "appropriate assessment" required to determine if treatment would be effective	Not addressed	No	Until the agency in charge of supervising the treatment determines that is no longer necessary	Not specified

5.	Louisiana	MPA or its chemical equivalent	Yes— "qualified mental health professional with experience in treating sexual offenders"	Must inform regarding uses and side effects with written acknowledgment of information	Yes (if in treatment plan)	Shall continue unless it is determined that the treatment is no longer needed	Not liable civilly or criminally if provider acts in good faith
6.	Montana	Sexual assault, sexual intercourse without consent, incest	<16-first offense; any age-second offense <16 and offender <3 years older	Chemical only	D—First offense if victim D—Second offense	State	Criminal contempt of court with incarceration of 10–100 years
7.	Oregon	Pilot program of 40–50 persons each year convicted of "sex crimes"	Any	Chemical only	M—For all offenders deemed "suitable" without a medical contraindication	Offender (all costs)	Parole violation; "subject to sanctions" if fails to cooperate with program or takes any chemical to counteract treatment
8	Texas	Indecency with a child, sexual assault Aggravated sexual assault	<17 <14	Surgical only	V—All offenses	State	Not applicable

9	Wisconsin	Sexual abuse of a child Second degree sexual assault of a child	<13 13-15	Chemical only	in D—All offenses	Not conceived	Not conceived
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Based on our research, it could be consider that there are 3 optional solutions to overcome the problem of chemical castration execution, are :

- a. Doctor of the Indonesian National Army (TNI)
Castration can be carried out by doctors of the Indonesian National Army (TNI) and Police doctors in accordance with their assignment. Although this is contrary to the principles in the Criminal Procedure Code, because the TNI and the police do not have the function of an executor. However, this is possible to applied in Indonesia
- b. Prosecutors as an executor
In Indonesia, doctor is not an executor for the implementation of court decisions regarding criminal cases that have permanent legal force. In verse 1 number 6 letter a of Law Number. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) expressly stipulates that prosecutors are officials who are authorized by KUHAP to act as executors of court decisions that have obtained permanent legal force. This mechanism, health procedure training could be given to presocutor until they have competency in inoculate chemical castration
- c. Establishment of new institutions
This mechanism is intended to create a special body that handles the execution of chemical castration. This is intended to ensure legal certainty regarding its practice, because when using a doctor outside this institution there will be a conflict with the doctor’s code of ethics and the authority of the prosecutor.
- d. Ministry of Health
Ministry of Health has resource such as doctor. They could establish special division for concern in chemical castration through government regulation. They have special order and they will responsible to Ministry of Health.
However, when this institution is formed, in practice the implementation

will not dispute the doctor's code of ethics or the authority of the prosecutor in executing, because this body is devoted to the process of executing castration chemical sentences.

In addition, both doctors and attorneys assigned to execute will get a warrant from the president. This is intended so that there will be no more problems with the doctor's code of ethics because the order is sent down by the president as the duty of the state.

4. Conclusion

The reasons Indonesia government to enacted child abuse suspect with chemical castration as additional punishment are to reduce the level of child sexual abuse, to create a deterrent effect to perpetrators, and create a preventive element. Through chemical castration punishment, it is expected that the offender can undo his intention to carry out acts of child sexual abuse given the severe punishment. The making of the regulation is also adjusted to the current development of society which is influenced by globalization such as information and communication technology, which one of the negative impacts is causing acts of sexual violence against children which increasing significantly every year.

The factors that being obstacle to implementing conviction chemical castration punishment towards perpetrator of child abuse in Indonesia is the judicial decision already exist but there is no professional to execute of chemical castration. The Indonesian Doctors Association (IDI) refuses as the executor for carrying out additional punishment of chemical castration because Indonesian Doctors Association argued that doctors are prohibited from using their knowledge and competence for matters that are contrary with humanity. The government should regulate Professional for execute chemical castration, prosecutors as executor have competence to inoculate chemical castration.

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