

IMPLEMENTATION OF CHEMICAL CASTARATION PUNISHMENT FOR SEXUAL VIOLENCE AGAINST CHILDREN PERPETRATOR

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Abstract

*The purpose of this research is to perform a legal evaluation of the implementation of Government Regulation No. 70 of 2020 on chemical castration punishment for offenders of sexual assault against children. The normative juridical technique was employed in the creation of this publication, which is a study centered on evaluating the rules or norms found in positive law. According to the research findings, the implementation of this regulation is intended to provide justice for victims, suppress the growth rate of cases, and provide a deterrent effect for perpetrators; these reasons are associated with criminal law theories such as retributive theory, deterrence theory, rehabilitation theory, and resocialization theory. Human Rights Law considers this penalty to be a breach of human rights, as outlined in the Universal Declaration of Human Rights and Human Rights Law No. 39 of 1999. Denmark, Sweden, Finland, Norway, Poland, the US state of California, Australia, New Zealand, Russia, South Korea, Israel, Estonia, and Moldova are some of the countries that have implemented this penalty. Countries that have implemented this penalty have two basic goals: first, to apply this punishment as a national punishment, and second, to apply this punishment voluntarily from the perpetrator. **Keywords: Chemical Castration, Punishment, Sexual Violence***

A. Introduction

In January 2021, the President ratified Government Regulation Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children, which is a significant step forward for the Indonesian Child Protection Commission and Service Centers Integrated Women and Children Empowerment (P2TP2A) in all regions of Indonesia. Incidents of sexual abuse against minors climbed dramatically in 2020, with 2,556 cases reported in July 2020 and 4,833 reported on August 18, 2020. According to SIMFONI statistics, the regions of Indonesia that contribute the most to sexual assault instances include East Java, East Kalimantan, North Sulawesi, and North Maluku. According to a review of statistics from the Indonesian Child Protection Commission (KPAI), incidences of sexual assault against children have consistently climbed in recent years, with 887 cases in 2011, 1028 cases in 2012, and 1226 cases in 2013.¹

Sexual violence against children, in general, is a type of behavior that includes juveniles who are legally allowed to engage in sexual activity and is

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¹ Ivo Noviana, "Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya," *Sosio Informa* 1, no. 1 (2015): 13–28, <https://doi.org/10.33007/inf.v1i1.87>.

carried out in collaboration with adults or persons of a higher age who comprehend sexual activity. Kissing or caressing a child's genital organs, exhibiting sex to children, and showing pornographic material or items to children are all examples of sexual abuse against children. In Article 1 point 1 of Law No. 35 of 2014 concerning Kid Protection, it is specified that a child is someone who has not attained the age of 18 years, including a child who is still in his mother's womb.²

Cases of sexual violence against children demand the government's complete attention since children who are victims of sexual abuse might suffer from severe psychiatric problems, disrupting their developmental patterns. A child's trauma as a victim of sexual abuse makes it tough for him to re-interact with his environment, making him close and difficult to trust the people around him.³ We may wonder why children are so prone to becoming victims. The answer is that youngsters are weak, scared, and easily dominated by adults. In incidences of sexual assault against children that have happened in Indonesia, the offenders are none other than those closest to the kid, whether they be teachers, parents, or neighbors. There are two factors that influence the occurrence of sexual violence against children: first, internal factors such as the perpetrator's proximity to the victim, including the perpetrator's role and the victim's position, and second, external factors such as the environment in which the action is carried out.⁴

Some of the cases that have occurred include the case of harassment at the JIS International School, the EMON case with 45 children as victims, the BABE case where the child who was the victim was mutilated, and so on. In light of the cases that have occurred, Indonesia has provisions for punishment for perpetrators and protection for victims in cases of sexual violence against children, namely Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 Concerning Child Protection, Law No. 11 of 2011 Concerning the Juvenile Criminal Justice System, and Law No. 17 of 2016 Concerning Amendments to Government Regulations in Lieu of Law No. 1 of 2016 Concerning the Second Amend (KUHP).⁵

Obscene acts against children are regulated in the Criminal Code in Article 290, and obscene acts against children of the same sex are regulated in Article 292; in Law no. 35 of 2014, which regulates sexual abuse of children and their criminal sanctions, namely Article 81 in conjunction with Article 76D, and Article 82 in conjunction with Article 76E; and in Law no. 11 of 2011, which is regulated in Articles 18 and 19. Then, with the existence of legal arrangements for cases of sexual violence against children, we wonder why every year cases of sexual violence against children always

² Ibid.

³ Ratih Probosiwi and Daud Bahransyaf, "Pedofilia Dan Kekerasan Seksual: Masalah Dan Perlindungan Terhadap Anak," *Sosio Informa* 1, no. 1 (2015), <https://doi.org/10.33007/inf.v1i1.88>.

⁴ Ibid.

⁵ Diesmy Humaira B et al., "Kekerasan Seksual Pada Anak: Telaah Relasi Pelaku Korban Dan Kerentanan Pada Anak," *Psikoislamika: Jurnal Psikologi Dan Psikologi Islam* 12, no. 2 (2015): 5–10, <https://doi.org/10.18860/psi.v12i2.6398>.

increase, whether the punishment is ineffective or there is no frightening effect for predatory children out there, what kind of punishment can create a deterrent and what kind of punishment can create a deterrent and what kind of punishment can create a deterrent and what kind of punishment can create a deterrent and what kind of punishment can create a deterrent and frightening effect for the perpetrators.⁶

In 2016, President Jokowi signed a Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection, which was then incorporated into Law No. 17 of 2016. The purpose of the amendment is to provide deterrent punishment for perpetrators of sexual violence against children by modifying the criminal sanctions and adding chemical castration punishment.⁷

Chemical castration is regarded as a necessary penalty for offenders of criminal acts of sexual violence against children, and it is anticipated that it will reduce the number of incidents of sexual violence against children. Article 81 paragraph 7 states that "the perpetrators as referred to in paragraphs 4 and 5 may be subject to action in the form of chemical castration and installation of electronic detection devices," as referred to in paragraph 4, namely "that there is an addition of one-third criminal threats for perpetrators who have committed acts of sexual violence against children". While paragraph 5 states that "if the perpetrator causes more than one victim, serious injury, mental disorders, infectious diseases, or disruption or loss of function of reproductive organs until death, the perpetrator may be sentenced to death, life imprisonment, or a minimum sentence of 10 (ten) years and a maximum sentence of 20 (twenty) years."⁸ President Jokowi then signed Government Regulation No. 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children in 2021.

According to Article 1 point 2 of Government Regulation No. 70 of 2020, the Chemical Castration Act is an act of giving chemical substances through injection methods or other methods to perpetrators who have been convicted of committing violence or threats of violence that force a child to have intercourse with himself or with a child another person, causing more than one victim, causing serious injury, mental disorders, sexually transmitted diseases. If previously Law no. 17 of 2016 only regulates chemical castration sanctions without any implementation procedures, then Government Regulation No. 70 of 2020 regulates chemical castration procedures starting

⁶ Anastasia Hana Sitompul, "Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia," *Lex Crimen* 4, no. 1 (2015): 46–56.

⁷ Messy Rachel Mariana Hutapea, "Penerapan Hukuman Tindakan Kebiri Kimia Dalam Perspektif Hak Asasi Manusia," *Jurnal Hukum Magnum Opus* 3, no. 1 (2020): 26–34, <https://doi.org/10.30996/jhmo.v3i1.2931>.

⁸ Dina Roszana, Emmilia Rusdiana, and Gelar Ali Ahmad, "Eksistensi Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Ditinjau Dari Pembentukan Norma Hukum Pidana," *Novum: Jurnal Hukum* 7, no. 3 (2020): 23–31, <https://doi.org/https://doi.org/10.2674/novum.v7i3.32337>.

from how the initial stages are, and who has the right to do it. In general, chemical castration is done by way of chemicals in the form of anti-androgens into a person's body so that the production of the hormone testosterone decreases and sexual desire decreases. In medicine, the hormone testosterone is a hormone that has a sexual function in the male genitalia, so when anti-androgens are inserted into the male genitalia, these substances will block the glands in the brain from producing the hormone testosterone, resulting in decreased sexual arousal.⁹

In its history, chemical castration has been carried out in ancient times with a specific purpose, in the Eastern Mediterranean civilization 8000-9000 years ago chemical castration was carried out to increase the growth rate of female livestock, but to be carried out on humans the evidence has not been confirmed, but in the Greek and Egyptian civilizations castration chemical was done to slaves and this was considered valuable because the slave would be more obedient to his master, the same phenomenon also occurred during the Chinese empire, and in European countries in the Middle Ages.¹⁰ At this time, there have been several countries that have implemented chemical castration punishment, including Denmark, Sweden, Finland, Norway, Poland, the United States of America states in California, Argentina, Russia, Moldova, Estonia, Australia, Israel, New Zealand, South Korea, and Germany. These countries certainly have reasons why chemical castration punishment is applied to legal regulations in their countries, they have the same reason, namely to reduce the number of cases of sexual violence against children, of course with different methods.¹¹

With the implementation of chemical castration, there are a number of different views that are pro and contra, one of which is human rights, a number of observers say that chemical castration is a sadistic punishment that violates human rights. In-Law No. 39 of 1999 states that human rights are a set of rights that are inherent in human beings, and are a gift from God, which must be upheld and respected by the state, so chemical castration is considered inhumane and degrading human dignity as regulated in the International Covenant on Civil and Political Rights.¹²

Amnesty International Indonesia stated that chemical castration is a revenge punishment that violates a person's human rights because actually repaying atrocities with cruelty is not the true essence of punishment and justice. Article 28I paragraph 1 of the 1945 Constitution states that every person or citizen has the right to the right to life, cannot be tortured, is free in thought and conscience, is free to choose religion, cannot be enslaved,

⁹ Taufik Nurhidayat, "Penerapan Hukum Kebiri Bagi Pelaku kejahatan Seksual Di Indonesia (Tinjauan Hukum Pelaksanaan Undang-Undang Nomor 17 Tahun 2016)," *SOSPOL: Jurnal Sosial Dan Politik* 24, no. 1 (2019): 75–86.

¹⁰ Nuzul Qur'aini Mardiyah, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual," *Jurnal Konstitusi* 14, no. 1 (2017): 213–33, <https://doi.org/10.31078/jk14110>.

¹¹ Ibid.

¹² Nurhidayat, "Penerapan Hukum Kebiri Bagi Pelaku kejahatan Seksual Di Indonesia (Tinjauan Hukum Pelaksanaan Undang-Undang Nomor 17 Tahun 2016)."

prosecuted on the basis of applicable law, and Such rights may not be reduced or eliminated under any circumstances by any other person.¹³

Related to the rejection from various parties regarding chemical castration punishment, of course, it creates a dilemma for the government in implementing the punishment, on the one hand, cases of sexual violence against children every year have increased and children who are victims have lost their future and their growth is stunted, but on the other hand, chemical castration is considered a retaliation that violates human rights. One of the cases of sexual violence in Indonesia that have been sentenced to chemical castration is the case of Aris Mojokerto, Aris was found guilty by the Mojokerto District Court for committing obscene acts against nine minors, and Aris was sentenced to 12 years and a fine of 100 million subsidiaries 6 months in prison.¹⁴

Based on Article 81 paragraph 7 of Law No. 17 of 2016 about Amendments to Government Regulations in Lieu of Law No. 1 of 2016, the District Court imposed an extra punishment, namely chemical castration. The Indonesian Doctors Association (IDI) categorically refuses to be the executor, in this case, citing a desire not to violate the oath of office, as well as a belief that this sentence clearly violates human rights as outlined in the Universal Declaration of Human Rights, the International Convention on Human Rights and Politics, and Law No. 39 of 1999.¹⁵

If you think deeply, thinking like a cloud person with a conscience and a person who is critical of law and justice will certainly produce different opinions, thus making this something difficult to put together. If by using conscience, it can be concluded that chemical castration is a cruel punishment that violates human rights, but on the other hand we have to look at children who have become victims, have been snatched away from their development period, their psyche is disturbed, they find it difficult to interact again with other people, surroundings, the pattern of development is disrupted, of course, this becomes a reference that the perpetrators of crimes must be given the appropriate punishment.¹⁶

Although Indonesia itself has laws regarding sexual violence against children with mature criminal sanctions, it does not provide a deterrent effect for child predators and does not reduce the number of cases of sexual violence against children every year. Of course, the thoughts above become a magnetic pole that is difficult to put together because of the rejection of one approach,

¹³ Gabriel J. Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," *University of Pennsylvania Law Review* 160, no. 6 (2012): 1789–1833.

¹⁴ Didi Hariyono, Slamet Suhartono, and Erny Herlin Setyorini, "Analisis Yuridis Putusan Nomor 69/Pid. Sus/2019/Pn. Mjk Terhadap Pelaku Kekerasan Seksual Di Pengadilan Negeri Mojokerto," *Jurnal Akrab Juara* 4, no. 5 (2019): 41–48.

¹⁵ Rosita Novi Andari, "Evaluasi Kebijakan Penanganan Kejahatan Kekerasan Seksual Terhadap Anak Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 1 (2017): 1–11, <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2017.V11.1-11>.

¹⁶ Hutapea, "Penerapan Hukuman Tindakan Kebiri Kimia Dalam Perspektif Hak Asasi Manusia."

namely human rights, but on the other hand, we also consider justice for children who have become victims.¹⁷

B. Identified Problem

The identified problem is needed to emphasize the problems to be studied, so that achieving the goals to be achieved becomes clear, firm, and directed. Based on this, the author identifies the problem in this study, as follows:

1. How is chemical castration applied in Government Regulation No. 70 of 2020?
2. What is the point of view of Human Rights Law in viewing the castration punishment?
3. How is the implementation of chemical castration in countries that have implemented it?

C. Research Methods

This research was conducted using a normative juridical approach, meaning that it focuses on the rules or norms in Indonesian positive law (laws and regulations).¹⁸ The stages of research used in the preparation of this journal are literature studies with qualitative analysis, meaning that they are sourced from laws and regulations and library sources.¹⁹

The method used in this writing is normative legal research based on literature research, namely the assessment of the level data. The second level of data includes legal files, libraries, and research products. Furthermore, the primary material in conducting this research study comes from primary legal materials and secondary.²⁰ The literature studied is used to answer the questions about the research problems posed. The data that has been collected, is then carried out a simple but in-depth analysis, with several stages. The analysis process is carried out simply, starting with the process of collecting data, then making data identification according to the desired categorization, so that it will produce a comprehensive analysis.²¹

The primary data used in this study are Government Regulation Number 70 of 2020 concerning Chemical Castration Procedures, Law

¹⁷ Cathryn Costello and Itamar Mann, "Border Justice: Migration and Accountability for Human Rights Violations," *German Law Journal* 21, no. 3 (2020): 311–34, <https://doi.org/10.1017/glj.2020.27>.

¹⁸ Agus Budiarto, "Legal Research Methodology Reposition in Research on Social Science," *International Journal of Criminology and Sociology* 20, no. 9 (2020): 1339–46, <https://doi.org/10.6000/1929-4409.2020.09.154>.

¹⁹ Elizabeth A. Cudney et al., "Systematic Review of Lean and Six Sigma Approaches in Higher Education," *Total Quality Management & Business Excellence* 31, no. 3–4 (2020): 231–44, <https://doi.org/10.1080/14783363.2017.1422977>.

²⁰ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/https://doi.org/10.14710/gk.7.1.20-33>.

²¹ Sulistyowati Irianto, "Metode Penelitian Kualitatif Dalam Metodologi Penelitian Ilmu Hukum," *Jurnal Hukum & Pembangunan* 32, no. 2 (2002): 155–72, <https://doi.org/10.21143/jhp.vol32.no2.1339>.

Number 23 of 2002 concerning Child Protection, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, and Law Number 3 of 2016 concerning the Third Amendment to Law Number 23 of 2002 concerning Child Protection.

D. Results and Discussion

1. Implementation of Chemical Castration in Government Regulation No. 70 of 2020

Prior to the Government Regulation no. 70 of 2020, regulations relating to chemical castration were formulated in Government Regulation in Lieu of Law no. 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, as stated in Article 81 paragraph 7, namely "against the perpetrators as referred to in paragraphs (4) and (5) may be subject to action in the form of chemical castration and installation of equipment electrocuting."²²

However, the Government Regulation in Lieu of Law no. 1 of 2016 and Law no. 17 of 2016 only states that the perpetrator can be subject to chemical castration if his actions are proven in accordance with the provisions in paragraphs 4 and 5, there is no regulation on the definition of chemical castration until the procedure for its implementation, only that Article 81A in paragraph (2) states that castration Chemistry is under the supervision of the ministry that carries out government affairs in the fields of law, social and health.

The formulation for this punishment for perpetrators was actually formulated in 2015 by the Minister of Social Affairs Khofifah Indar Parawansa, who reasoned that many countries had implemented this punishment as a libido controller for perpetrators of sexual violence against children, and the proposal was then welcomed by the Minister of Law and Human Rights Yasonna Laoly. [6] As a result, President Jokowi ratified the Government Regulation in Lieu of Law No. 1 of 2016 as an amendment to Law No. 23 of 2002 concerning Child Protection, which was later enacted into Law No. 17 of 2016, and four years later, President Jokowi signed Government Regulation No. 70 of 2020 as a guideline in the implementation of chemical castration punishment.²³

²² Hanafi Arief, "Rekonstruksi Hukum Tentang Hukuman Kebiri Bagi Pelaku Tindak Pidana Pelecehan Seksual (Kajian Analisis Yuridis-Sosiologis Perppu No. 1 Tahun 2016 Dalam Perspektif Kriminologi Hukum)," *Jurnal Khazanah: Jurnal Studi Islam Dan Humaniora* 14, no. 1 (2017): 110–32, <https://doi.org/https://dx.doi.org/10.18592/khazanah.v14i1.1052>.

²³ Andreas Adithya and Maharani Nurdin, "Penerapan Peraturan Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak," *Jurnal Kertha Semaya* 9, no. 4 (2021): 643–59, <https://doi.org/https://doi.org/10.24843/KS.2021.v09.i04.p08>.

Chemical castration is defined as "the act of giving chemical substances through the injection method or other methods to perpetrators of sexual violence who have been convicted of committing violence or threats to children in order to have intercourse with them or with other people, resulting in serious injury, mental disorders, sexually transmitted diseases, disruption or loss of the fetus to have intercourse with them or with other people, resulting in serious injury, mental disorders, sexually transmitted diseases, disruption or loss of the fetus too. In the case of the party authorized by Article 3 to carry out this action, namely the officer competent in his field in accordance with the prosecutor's order. Chemical castration is punishable by up to two years in prison, according to Article 5.²⁴

Chemical castration is carried out in three steps, according to Article 6 of Government Regulation No. 70 of 2020: clinical assessment, conclusion, and implementation. Clinical Assessment is controlled in Article 7, and this step is carried out by a qualified team in the medical and psychiatry professions, and clinical and psychiatric interviews, physical examinations, and supporting examinations are carried out during the clinical assessment stage. In the initial stage before the clinical assessment is carried out, namely, the ministry in charge of law enforcement submits a notification to the prosecutor, carried out no later than 9 (nine) months before the convict finishes serving the main sentence, the prosecutor then coordinates with the ministry in charge of the health sector to conduct clinical assessments, the clinical assessment begins no later than 7 (seven) working days after the notification, the clinical assessment begins no later than 7 (seven) working days after the notification, The conclusion stage, as defined in Article 8, comprises the clinical assessment stage's conclusions to evaluate whether or not the criminal is deserving of a chemical castration penalty, and this decision must be provided to the prosecutor no later than 14 (fourteen) days.²⁵

The implementation step, as outlined in Article 9, is when the prosecution instructs the doctor to carry out chemical castration after the conclusion stage determines that the defendant is deserving of a chemical castration penalty. Chemical castration is carried out at a government-owned or regional hospital designated by the prosecutor, with the prosecutor, representatives of the ministry of law, representatives of the minister of social affairs, and representatives of the ministry of health present at the moment of execution. This

²⁴ Galih Bagas Soesilo, "Telaah Kritis Kebiri Kimia Sebagai Pidana Tambahan Bagi Pelaku Pedofilia," *Amnesti: Jurnal Hukum* 3, no. 1 (2021): 15–24, <https://doi.org/https://doi.org/10.37729/amnesti.v3i1.892>.

²⁵ Adithya and Nurdin, "Penerapan Peraturan Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak."

implementation is detailed in the official report, and it is then communicated to the victim and his or her family.²⁶

In Article 10, if the perpetrator does not deserve to be given a castration sentence, it will be postponed for 6 (six) months, and during that time a re-clinical assessment and re-conclusion will continue to be carried out to re-confirm whether it is appropriate or not, but if the perpetrator still does not deserve to be punished chemical castration, the Prosecutor shall notify the court deciding the case of the first instance in writing by attaching the results of the reassessment and re-conclusion. If the perpetrator escapes, as stipulated in Article 11 states that the implementation will be postponed, and the prosecutor cooperates with the police in handling it, if the perpetrator is caught or surrenders, the prosecutor will re-coordinate with the ministry of law, ministry of social affairs, and ministry of health.²⁷

The use of aspects of criminal law at the time of imposing this sentence must be very careful, it is necessary to consider the cost and effectiveness of punishment, as well as consideration of the performance of law enforcement officers because it is feared that there will be an imbalance between the purpose of punishment and the practice of imposing it. If you look at the theories in criminal law, namely retributive theory, *deterrence* theory, rehabilitation theory, and resocialization theory associated with castration, the analysis is:²⁸

- a. Retributive theory: states that punishment is an absolute thing that must be imposed on people who have committed crimes as a consequence of their actions.
- b. *Deterrence* theory states that the purpose of imposing criminal penalties is not only revenge against the perpetrators, but the actual purpose of criminal law is to prevent violations, reduce crime rates, and reduce losses, so chemical castration is expected to reduce the number of cases of sexual crimes against children as well as a form of revenge against criminals.
- c. Rehabilitation theory: states that the purpose of punishment is to improve a person.
- d. Resocialization theory: states that the goal is to socialize the perpetrators of the crime, it is hoped that the punishment that has been handed down to the perpetrator has a deterrent

²⁶ Mashlahatul Azizah, "Sanksi Kebiri Kimia Bagi Pemerksosa Anak Perspektif Mashlahah Mursalah," *Al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2 (2017): 485–510, <https://doi.org/https://doi.org/10.15642/aj.2017.3.2.485-510>.

²⁷ Jusnizar Sinaga, "Penjatuhan Pidana Penjara Dan Kebiri Terhadap Pelaku Yang Dengan Sengaja Melakukan Kekerasan Memaksa Anak Melakukan Persetujuan," *Jurnal Pendidikan Tambusai* 6, no. 1 (2022): 1219–27.

²⁸ Tunggal S. and Nathalina Naibaho, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Terhadap Anak Dalam Perspektif Falsafah Pidana," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 329–43, <https://doi.org/http://dx.doi.org/10.21143/jhp.vol50.no2.2594>.

effect and when he returns to the community he will not repeat the act.

Then how exactly are the challenges that must be faced by the government with the enactment of Government Regulation no. 70 of 2016, the first is the party carrying out the execution, in the regulation, it is stated that the one carrying out the execution is a team that is competent in their field with the prosecutor's order, in this case, the competent party is the doctor and the medical team, IDI which is the institution that oversees Indonesian medicine firmly reject this sentence, so that in the future if a similar case occurs, the execution of this sentence will be difficult because of the refusal of the executor?²⁹ Second, the costs incurred for imposing this sentence are not small, Article 5 states that this sentence is valid for a maximum of 2 years, and drugs with special substances are required, so the overall cost is not cheap, so it is necessary to prepare a budget in the APBN and APBD related to this punishment. Third, public knowledge if there is socialization related to chemical castration punishment, in this case, it is feared that there is a misconception of understanding among the community regarding the intent and purpose of this punishment so that the government's role in overcoming this is by providing facts that are easily understood by the public, the wider community regarding what the intent and purpose of this punishment are, and how it is carried out.³⁰

2. Human Rights Law's Review on Chemical Castration

Basically, every human being has human rights that have been inherent since birth and are a gift from God. In its history, human rights developed in mainland Europe, with the issuance of the *Magna Charta* in 1215 in England, and in 1689 the *Bill of Rights was formed*, followed in the United States with the declaration of independence, then emerged the charters of human rights namely *The French Declarations*. In 1948, the United Nations established the Universal Declaration of Human Rights, a legal framework for human rights that includes the protection of human rights as well as the acknowledgment of rights that are included in human rights. The United Nations then redrafted a civil and political rights treaty in 1966.³¹

The United Nations states that human rights are universal rights meaning that they apply to all human beings, regardless of race, gender, ethnicity, religion, and others, therefore the protection of the dignity of human rights is very necessary, so every country is obliged to have legal rules that protect human rights - the rights of its citizens. Human rights

²⁹ Nurhidayat, "Penerapan Hukum Kebiri Bagi Pelaku Kejahatan Seksual Di Indonesia (Tinjauan Hukum Pelaksanaan Undang-Undang Nomor 17 Tahun 2016)."

³⁰ S. and Naibaho, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Terhadap Anak Dalam Perspektif Falsafah Pidana." "

³¹ Sarah Sarmila Begem, Nurul Qamar, and Hamza Baharuddin, "Sistem Hukum Penyelesaian Pelanggaran Hak Asasi Manusia (HAM) Berat Melalui Mahkamah Pidana Internasional," *SIGN Jurnal Hukum* 1, no. 1 (2019), <https://doi.org/10.37276/sjh.v1i1.28>.

are protected in Indonesia under Law No. 39 of 1999 concerning Human Rights, which states in Article 1 paragraph (1) that Human Rights are a set of rights inherent in humans as creatures of God Almighty and are a gift from Him, which must be respected, upheld, and protected by the state, law, and government for the sake of honor and protection of human dignity. Aside from Law No. 39 of 1999, the acknowledgment of human rights in Indonesia is incorporated in the 1945 Constitution in Articles 27 to 34, therefore in this situation, the protection of human rights in Indonesia has legal frameworks.

According to medical science, chemical castration is an action that inserts anti-androgen substances into the male reproductive organs, which will then cause a decrease in the production of the hormone testosterone, so that their sexual arousal will decrease. The types of drugs used include *medroxyprogesterone* and *cyproterone acetate*, which have an effect ranging from 40 hours to 3 months.³² There are side effects of chemical castration, namely experiencing premature aging, bone loss due to the stretching of bone density, causing excess fat which can cause heart disease, and swelling of blood vessels.³³

Some countries that have implemented this punishment, have the opinion that this punishment is an effective punishment for perpetrators of sexual violence against children. The implementation of the castration punishment for the perpetrators, causes debate among the community, many think that this punishment is a violation of human rights, but on the other hand, they think that this is a balance of justice for the victims. Children who become victims actually get legal protection, because their future has been snatched away. Article 58 of Law no. 39 of 1999, regulates the rights of children, namely:³⁴

1. All children have the right to protection from their parents, family, community, and state.
2. Children's rights are included in human rights, and for their interests, these rights are protected and recognized by law even from the time they are in the womb.

For the sake of justice for children who are victims of sexual violence, the government formulates chemical castration punishment because it considers that the previous punishment was considered less effective in reducing the rate of development of cases of sexual violence against children, and did not provide a deterrent effect for perpetrators. A lot of human rights practitioners disagree, claiming that this is a sort of human rights violation. Article 7 of Law No. 12 of 2005 Concerning the Ratification of the International Convention on Civil and Political Rights states that no one shall be subjected to torture, cruel and inhumane treatment, or punishment that degrades his/her dignity, and

³² Mardiya, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual."

³³ Ibid.

³⁴ Hutapea, "Penerapan Hukuman Tindakan Kebiri Kimia Dalam Perspektif Hak Asasi Manusia."

that no one shall be used as an object of experimentation, medical or scientific purposes without informed consent.³⁵

Indonesia has used chemical castration punishment, which is considered to be a violation of the ICCPR and CAT, because Indonesia has ratified the two documents into laws and regulations, obliging the state to respect and protect its citizens' human rights from acts of torture, cruel and inhuman treatment, and punishment that degrades human dignity. [8] Chemical castration is likewise regarded as a violation of Article 28G paragraphs (1) and (2), as well as Article 28I paragraph (1). (1). According to Article 33 paragraph (1) of Law No. 39 of 1999, everyone is free from cruel and inhuman treatment, torture, or punishment that degrades their dignity and worth. So, with the above legal basis, human rights activists conclude that this punishment is not appropriate to be applied.³⁶

The Indonesian Doctors Association refused to serve as the executor of this sentence because they considered that if they became the executor, it would be tantamount to abusing their position and violating their oath of office. Harkristuti Harkrisnowo is of the opinion that it is feared that one day the Implementation of this punishment will become a boomerang due to mistargeting, he argues that in general, perpetrators of sexual violence are considered to have high sexual desire or abnormal sex, but not all perpetrators of sexual violence have abnormal sex.³⁷

Chemical castration basically can reduce sex hormones, but if it is to be stopped for a long time it is necessary to cut the testicles. On the other hand, although the sexual urge stops, it is feared that it will return again because of the psychological memories that trigger sexual arousal, and the perpetrator is afraid that the perpetrator will become more aggressive in his social environment. However, there is no data to support that the Implementation of this punishment provides a deterrent effect from the previous punishment. In Indonesia, chemical castration was first carried out in the case of Aris, who was proven to have sexually abused 9 children, but when it was implemented, it was met with opposition from various parties on the basis of human rights.³⁸

If you link the previous opinion with the concept of classification of perpetrators of sexual crimes, it will certainly become a boomerang.

³⁵ George J. Annas, "Beyond Nazi War Crimes Experiments: The Voluntary Consent Requirement of the Nuremberg Code at 70," *American Journal of Public Health* 108, no. 1 (2018): 42–46, <https://doi.org/10.2105/AJPH.2017.304103>.

³⁶ Natasa Mavronicola, "Is the Prohibition Against Torture and Cruel, Inhuman and Degrading Treatment Absolute in International Human Rights Law? A Reply to Steven Greer," *Human Rights Law Review* 17, no. 3 (2017): 479–98, <https://doi.org/10.1093/hrlr/ngx019>.

³⁷ Maria Eriksson Baaz and Maria Stern, "Curious Erasures: The Sexual in Wartime Sexual Violence," *International Feminist Journal of Politics* 20, no. 1 (2018): 1–20, <https://doi.org/10.1080/14616742.2018.1459197>.

³⁸ Nurhidayat, "Penerapan Hukum Kebiri Bagi Pelaku Kejahatan Seksual Di Indonesia (Tinjauan Hukum Pelaksanaan Undang-Undang Nomor 17 Tahun 2016)."

Because not all perpetrators are pedophiles, therefore there are two types of perpetrators, the first being pedophiles, and the second being non-pedophiles.³⁹ Based on scientific studies, pedophile perpetrators have a high sexual interest in children, so if the perpetrator is near children it will bring up a fantasy and sexual urge that makes the production of the hormone testosterone increase, while those who are not pedophiles are only influenced by urgent factors because of passion, unresolved sex. Therefore, castration is appropriate for pedophiles, so that the production of sex hormones decreases and there are no more sexual fantasies. So what is said by the Professor of Indonesian Criminal Law is certainly true, it is feared to be the wrong target, but in Regulation no. 70 of 2020 as well as previous regulations, there is no classification of perpetrators who can be sentenced to chemical castration, therefore perpetrators, both those with pedophilia and non-pedophiles, may be subject to chemical castration.⁴⁰

On the basis of human rights, as well as viewpoints about the classification of offenders of sexual abuse against minors, it is possible to infer that this punishment is a type of violation of human rights. On the other side, children who are victims have been taken away from their growth and development by offenders, which is also a type of human rights violation, and children who are victims get legal protection from the state. As a result, this is an argument that will go on indefinitely.⁴¹

3. Implementation of Chemical Castration in Various Countries

Denmark, Sweden, Finland, Norway, Poland, the US state of California, Australia, New Zealand, Russia, South Korea, Israel, Estonia, and Moldova are among the countries that have used chemical castration on offenders of sexual assault against minors. There are two studies for countries that apply this punishment, firstly countries that require it and countries that apply it voluntarily from perpetrators. Countries that oblige include Poland, California, Florida, and Moldova, while countries that voluntarily apply from actors are Germany, Switzerland, South Korea, India, and England.⁴²

Russia imposed the punishment of chemical castration in 2011, this punishment is enforced nationally, the procedure is carried out by the local court requesting the forensic results of the perpetrator for medical steps, then the court injects Depo-Provera substance into the

³⁹ S. and Naibaho, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Terhadap Anak Dalam Perspektif Falsafah Pidana." "

⁴⁰ Craig A. Harper et al., "Humanizing Pedophilia as Stigma Reduction: A Large-Scale Intervention Study," *Archives of Sexual Behavior* 51, no. 2 (2022): 945–60, <https://doi.org/10.1007/s10508-021-02057-x>.

⁴¹ Dyah Rahmawatie Ratna Budi Utami and Erika Dewi Noorratri, "Prevention Children Sexual Abuse in Preschool with Picture Story Book," *Gaster* 19, no. 1 (2021): 31–42, <https://doi.org/10.30787/gaster.v19i1.669>.

⁴² Roszana, Rusdiana, and Ahmad, "Eksistensi Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Ditinjau Dari Pembentukan Norma Hukum Pidana."

body of the perpetrator after chemical castration is carried out, the perpetrator must then undergo imprisonment as determined by the court. In South Korea, implementing the chemical castration punishment that applies nationally, the procedure applied is to wait for the results of a psychiatrist's diagnosis on whether the perpetrator will have a tendency to repeat his actions or not.⁴³

Not all states in the United States apply this penalty, only the states of California, Florida, Oregon, Texas, Wisconsin, Georgia, Iowa, Louisiana, Montana, and Washington. California was the first state in its history to impose this penalty on criminals, doing so in 1996, followed by Florida in 1997. [8] The Californian government made efforts to compile chemical castration in Assembly Bill 3339 in response to the recidivism rate of child sexual abuse, which resulted in significant public opinion for harsher sentencing. Of course, this penalty was strongly opposed, with the American Civil Liberties Union claiming that it was cruel and unusual since it violated the perpetrator's right to privacy. Assembly Bill 3339 was approved by the voters of California in 1996, and it became law on January 1, 1997.⁴⁴

Every state has the same procedure, depending on the court's decision, but in general, every state authority in the United States states that chemical castration is appropriate for the perpetrators. Argentina was the first South American country to apply this punishment, but only in one province, namely the province of Mendoza, enforced by a provincial government decree in 2010, with a voluntary procedure on the part of the perpetrator so as not to be considered a violation of international human rights law, if the perpetrator has served his sentence. Chemical castration will be rewarded in the form of a reduced prison sentence.⁴⁵

England in its history has applied chemical castration punishment during World War II, at that time the British government banned the form of homosexuality so there was a stigma in society that homosexuality was a disease or sexual disorder, then in 2014, the UK has imposed this sentence on prisoners with a voluntary procedure from the perpetrator. In 2010 Australia only applied this sentence in some of its territories namely Queensland, Victoria, and Western Australia, with the voluntary procedure of the offender then determined by the court.⁴⁶

⁴³ Jo Ann S. Lee and Faye S. Taxman, "Using Latent Class Analysis to Identify the Complex Needs of Youth on Probation," *Children and Youth Services Review* 115 (2020): 1–10, <https://doi.org/10.1016/j.chidyouth.2020.105087>.

⁴⁴ Peter J Gimino, "Mandatory Chemical Castration for Perpetrators of Sex Offenses Against Children: Following California's Lead," *Pepperdine Law Review* 25, no. 1 (1997): 67–105.

⁴⁵ Wahyu Agus Hartono and Puguh Dwi Hananto, "Perbandingan Hukum Pidana Kebiri Bagi Pelaku Tindak Kekerasan Seksual Terhadap Anak Dibeberapa Negara," *Recidive* 2, no. 3 (2013): 290–300, <https://doi.org/https://doi.org/10.20961/recidive.v2i3.32716>.

⁴⁶ Nurhidayat, "Penerapan Hukum Kebiri Bagi Pelaku Kejahatan Seksual Di Indonesia (Tinjauan Hukum Pelaksanaan Undang-Undang Nomor 17 Tahun 2016)."

Several countries in Europe also apply chemical castration punishment nationally such as Poland (2010), Moldova (2012), Estonia (2012), Germany (1969) with physical castration, and Czech (2001). Israel was the first Middle Eastern country to implement the punishment of castration in 2009. So, in this case there are two references for countries that have implemented the punishment of castration, first setting this punishment as a national punishment, second setting this punishment voluntarily from the perpetrator so as not to violate international human rights law.⁴⁷

E. Conclusion

Based on the discussion, it can be concluded that Government Regulation No. 70 of 2020 was prepared to complete an in-depth discussion regarding chemical castration, as the previous regulation, namely Government Regulation in Lieu of Law No. 1 of 2016, which was later determined to be Law No. 17 of 2016, only briefly discusses the chemical castration penalty, as referred to in Article 81 paragraph 7. Of course, the ratification of Government Regulation no. 70 of 2020 has considered various aspects including justice for victims, reducing cases, and providing a deterrent effect for perpetrators, this is in accordance with theories in criminal law. Challenges that will be faced by this regulation include the costs to be incurred, the performance of law enforcement, the executor, and socialization with the community.

That the use of chemical castration was met with opposition from human rights activists because it was regarded as a violation of human rights, as stated in Article 7 of Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, Article 28G paragraphs (1) and (2), and Article 28I paragraph (1). Paragraph (1) of Article 33 of Law No. 39 of 1999. Children who are victims, on the other hand, have been deprived of their human rights and are entitled to governmental protection, as outlined in Article 58 and Article 28G paragraph (1) of Law No. 39 of 1999. So, this has led to an endless and contradictory debate. IDI, which was the executor, refused on the grounds that this punishment was the same as violating a medical oath and was a violation of a person's right to life.

Chemical castration is used in two ways in countries that have implemented it: first, as a national penalty, and second, as a voluntary punishment from the culprit. The procedure carried out remains the same, namely by asking the psychiatrist and medical personnel for the results of forensic health of the perpetrator whether the perpetrator is suitable or not for chemical castration, then if appropriate, the court will determine the punishment for the perpetrator for a further injection of chemical castration.

⁴⁷ Dustin A Lewis, "Unrecognized Victims: Sexual Violence Against Men in Conflict Settings Under International Law," *Wisconsin International Law Journal* 27, no. 1 (2009): 1–49.

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