
Harmonisation of Legal Rules on Chemical Castration as a Lex Specialist Based on The Principle of Legality in The Perspective of Criminal Law

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Abstract

Conflicts between several legal regulations and the existence of a legal vacuum make it problematic that chemical castration can be implemented, especially in Article 66 paragraph (1) of Law no. 1 of 2023 does not yet accommodate the implementation of chemical castration as an additional crime, so there is a need for changes and harmonisation of related legal regulations. The method used in this research is a qualitative method. The application of police medicine as an alternative to the execution of chemical castration has not yet received definite legality regarding the procedures and other rules for carrying out chemical castration in the police environment. In the implementation of chemical castration in Indonesia there are still several things that need to be clarified, especially for those carrying out the duties or executors. The existence of overlapping policies requires that efforts be made to harmonise both the health law perspective, medical practice, medical ethical code, human rights perspective, and also based on the Indonesian Criminal Code, and derivative legal regulations that must be harmonised.

INTRODUCTION

Sexual violence is a social problem that is increasingly worrying and increasing every year. The National Commission on Violence Against Women illustrates that a diverse spectrum of violence against women occurred throughout 2020 and there are the highest cases in new patterns that are quite extreme (Aflina Mustafainah, Aliatul Qibtiyah, Andy Yentriyani, Christina Yulita Purbawati, Dahlia Madanih et al., 2021).

The increase in cases is a clear indication that Indonesia is in the midst of a sexual violence emergency. (Wulandari & Suteja, 2019).. Cases of sexual violence against children in 2022 reached 9,588 cases, this number has increased from the previous year, namely 4,162 cases. (KemenPPPA: *Indonesia's Child Sexual Violence Emergency for 2022*, n.d).. Up to the data inputted on 1 January 2023 to 31 March 2023, which had been verified, there were 6,085 cases with 1,087 male victims, and 5,513 occurred against women, and 57.1% occurred in children aged 0-17 years. (*Number of Violence Against Children Cases*, 2023).

In response to the phenomenon of sexual violence against children, on 25 May 2016 President Joko Widodo signed Government Regulation in Lieu of Law Number 1 Year 2016 on the Second Amendment to Law Number 23 Year 2002 on Child Protection. Then, the Government Regulation in Lieu of Law was passed into Law Number 17 of 2019. The provision regulates the aggravation of punishment for perpetrators of sexual violence against children, namely the death penalty, life imprisonment, and a maximum imprisonment of 20 years, as well as additional punishment in the form of announcing the identity of the

perpetrator. In addition, the perpetrator can also be subject to additional punishment in the form of chemical castration and installation of electronic detectors. (E. Wahyudi & Joe, 2020). The presence of chemical castration is expected to be a real step in eradicating sexual violence crimes that have become a problem in Indonesia today, as well as an effort to rehabilitate the perpetrators by suppressing sexual desire.

Several court decisions have provided additional chemical castration punishment against perpetrators of sexual violence against children, from 2019 to 2021 there were 4 (four) people convicted of chemical castration. But apparently the public must be patient (Rachmawati, 2022). This is because even though there are regulations that ensnare him, even several judges' decisions have given chemical castration verdicts. However, until now the sanction has not been realised, among others, the convict must first complete the main sentence as stipulated in Article 81 paragraph (7) of Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection *Jo* Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. In addition, medical personnel, in this case doctors as executors of chemical castration, have limitations to carry out these actions.

The Indonesian Doctors Association (IDI) refuses to be the executor with the consideration that it is contrary to the Health Law and the doctor's oath, as well as the medical code of ethics which is conveyed in the Fatwa of the Medical Ethics Honour Council of the Executive Board of the Indonesian Doctors Association Number 01 of 2016 concerning Chemical Castration, which includes Law Number 17 of 2023 concerning Health Article 4 Paragraph (1), Article 5, Article 6, Article 22 Paragraph (1) letter c, Article 23, Article 55 letter a, Article 56, Article 156, Article 176, Article 198, Article 199, Article 274, Article 279 letter b, and Article 298. Meanwhile, in Law Number 29 of 2004 concerning Medical Practices, namely Article 1 Paragraph (1), Article 39, Article 45 Paragraph (5), Article 51 letter a, and Article 72.

This is certainly contrary to Article 9 letter b of Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children, which states that doctors carry out chemical castration on orders from prosecutors. Seeing how complicated it is to determine the executor of chemical castration as the spearhead of law enforcement as stipulated in the provision of

However, the Ministry of Health (MoH) has expressed the willingness of doctors from the Police Hospital, East Jakarta, to be the executor of chemical castration punishment for convicted perpetrators of sexual violence. In line with this, Brigadier General Asep Hendradana stated that Polri doctors are not only related to their professional oath as medical and health doctors, but also related to being members of the police as executors of the law. (Sulistiyawati, 2021).

By encouraging the involvement of the police in the execution of chemical castration, prosecutors are expected to be able to overcome the problem of executor vacancies through the

implementation of police medicine whose legality meets the requirements of Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children, has competence in the health sector. However, the transfer of chemical castration execution through the implementation of police medicine needs to obtain a legal umbrella as in the execution of death which is regulated through Presidential Decree of the Republic of Indonesia Number 2 of 1964 concerning Procedures for the Implementation of the Death Penalty Imposed by General and Military Courts, and National Police Chief Regulation Number 12 of 2010 concerning Procedures for the Implementation of the Death Penalty.

The process of synchronising the alignment of legislation as an integral part or subsystem of the legal system is needed to achieve legal objectives, where there are still imbalances from the statutory provisions regarding the executor of chemical castration, namely the medical profession with other health laws. Apart from that, the purpose of this research is to provide a clear tiered legal umbrella for law enforcement officials executor of chemical castration, alignment of legal rules, and provide input from the obstacles that will occur in the implementation of chemical castration.

METHODOLOGY

The research method applied is an empirical juridical approach. by examining the enactment or implementation of normative legal provisions directly on every legal event that occurs in society. (Muhammad, 2004). In this empirical juridical approach, it examines the implementation of 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 in its implementation cannot be implemented because of the many contradictions between laws and regulations, especially those related to the implementation of chemical castration.

RESULTS AND DISCUSSION

The implementation of chemical castration is a new punishment in Indonesia. This is because sexual violence against children has a much more serious impact, different from other acts of violence. Sexual violence against children does not only leave physical injuries. More than that, this anarchistic act will have a negative effect on the emotional, social, and psychological development of victims of sexual violence. (Rizal, 2021).

The provision of chemical castration sanctions given to the perpetrator has special conditions which include that the perpetrator is a *recidivist* or the crime committed by the perpetrator has been repeated, the number of victims is more than one, then another condition is if the perpetrator's actions result in damage to the victim's genitals or the victim suffers from sexually transmitted diseases and mental disorders. These provisions have been accommodated in Law Number 1 Year 2016 and Government Regulation Number 70 Year 2020. As a special provision in child protection, chemical castration is a serious problem. The reason is that in its

implementation, Indonesia has not implemented the castration action even though there have been several judges' verdicts stating that several perpetrators of sexual violence against children received additional sanctions in the form of chemical castration.

If calculated from the implementation of the basic punishment of imprisonment received by the convicts above, then chemical castration will at least be implemented in 2029 for 2 (two) convicts who received a judge's decision in 2019, including the Surabaya High Court Decision Number 695/Pid.Sus/2019/PT SBY, even since 2017 through the Banjarmasin High Court Decision Number 50/PID.SUS/2017/PT BJM, Tanjung Karang High Court Decision Number 42/PID/2021/PT TJK, Banjarmasin District Court Decision Number 858/Pid.Sus/2022/PN Bjm, It should be noted that on 2 January 2026 the Indonesian National Criminal Code will take effect, meaning that at the time of the implementation of chemical castration execution in 2029, the legal rules of Law Number 1 of 2023 have been applied, which is based on the transitional provisions of Article 613. This means that every existing law must adjust to Law Number 1 Year 2023, and looking at the closing provisions of Article 622 paragraph (1) letter n, that Article 81 paragraph (1) and Article 82 of Law Number 23 Year 2002 on Child Protection as amended several times, most recently by Law Number 17 Year 2016 on the Stipulation of Government Regulation in Lieu of Law Number 17 Year 2016 on the Second Amendment to Law Number 23 Year 2002 on Child Protection into Law, is revoked and declared invalid. In the event that the provisions of the Article regarding the Criminal Offence of Copulation or Molestation with a Child as referred to in paragraph (1) letter n refer to Article 81 paragraph (1) of the relevant law, the trigger is replaced with Article 473 paragraph (4) of Law Number 1 Year 2023.

If the implementation of additional criminal sanctions of chemical castration is carried out after Law Number 1 Year 2023 is enacted, then the sanction does not apply as the application of the *principle of lex posterior derogat legi priori*, where the new law negates the validity of the old law, which in its provisions both Law Number 17 Year 2016, and Law Number 1 Year 2023 have equal position. Therefore, the implementation of chemical castration must be carried out before the National Criminal Code comes into force, so as not to conflict with the existing provisions as described above, or changes regarding the addition of additional types of criminal sanctions in Article 66 paragraph (1) of Law No. 1 Year 2023.

1. Obstacles and Barriers to the Implementation of Chemical Castration Legal Sanctions in Indonesia

The problem of law enforcement is a problem related to the existence of law and humans (Amalia, 2023). The law cannot possibly realise its own will, because it is only a rule. Therefore, it requires the presence of humans (law enforcement officers) to realise the will of the law. (Hadi, 2022). IDI's policy that closes the role and involvement of doctors as executors of chemical castration is predicted to be one of the obstacles that requires prosecutors to prepare anticipatory steps, including by seeking technical support through the procurement of executor resources, especially those from law enforcement institutions, namely the police, one of whose duties is to administer police medicine. The implementation of police medicine is carried out by doctors who have the same qualifications and competencies as doctors and dentists in general based on Law No. 29 of 2004 concerning Medical Practice. Being under the auspices

of the same professional organisation, namely the Indonesian Doctors Association (IDI), but in an official manner tied to the police institution, it has its own characteristics and peculiarities that combine the role and position as a doctor and law enforcer simultaneously to support the implementation of police duties in accordance with Law No. 2 of 2002. (Alam, 2022, 2023).

In addition, chemical castration is considered risky, and creates difficulties in its implementation and is not effective in suppressing criminal acts of sexual violence against children. (Pamungkas, 2022). The various causes of sexual behaviour carried out by perpetrators of sexual violence make some medical circles doubt the effectiveness of chemical castration in suppressing cases of sexual violence. Chemical castration only controls one cause of a person's sexual drive, namely the hormone testosterone (Hafrida, 2021). (Hafrida, 2021) However, it does not solve the psychological problems faced by the perpetrator. Therefore, the Indonesian Medical Association, since the enactment of Perppu No. 1 Year 2016, has refused to carry out castration punishment because it is not in accordance with professional ethics which requires treating, not persecuting. However, the government argued that the chemical castration process would be carried out by government agencies, not professional organisations. (M. Z. Wahyudi, n.d.).

Other issues regarding the administration of anti-androgens for chemical castration can accelerate body aging, reduce bone and muscle mass density, and increase body fat which increases the risk of various diseases. (Adithya & Nurdin, 2021).. The effect of anti-androgen drugs is also temporary, when the drug administration is stopped the sexual drive and erectile ability of the castrated person will appear again (Meliala, n.d.). The temporary effect of anti-androgen drugs creates new complications, the lack of integration of population data and the absence of special markings makes castrated perpetrators of child sexual abuse can seek treatment from andrologists without the doctor knowing that the patient is a person who is serving a castration sentence because as PP No. 70 of 2020 that castration is carried out after the convict has served the main criminal sentence.

Another issue is that sexual drive is not only influenced by the hormone testosterone. General health conditions, psychology, and past sexual experiences also shape a person's sexual drive. this means that castrated people can still have sexual drive, whether or not they are able to have sexual intercourse. According to Nalini Muhdi, even though a castrated person has difficulty getting an erection and cannot penetrate, they can still channel their sexual desires through other means. other situations, and this can lead to new sexual violence due to the aggressiveness of the perpetrator who accompanies, or can commit various other acts of violence, not just sexual violence. (Ayu Taduri, 2021). Chemical castration is also believed to be costly, not only for the anti-androgen drugs used but also various medical, biological, and psychological examinations to assess whether the castration sentence that the court has imposed on the offender is enforceable.

2. Efforts to Harmonise Legal Rules for Chemical Castration Sanctions

The state legal system is the result of an integration process between various independent sectors, internal and external, which is carried out based on the principles of Pancasila and the 1945 Constitution. Within the framework of the national legal system, all laws and regulations are considered as a whole and complete unit. This situation requires a

good, coherent and integrated legal system based on Pancasila and the 1945 Constitution to create legal stability and protection. This means that harmonisation of laws and regulations is very important and urgent. (Slamet, 2004).

According to L.M. Gandhi, harmonisation in law includes adjustments to legislation, government decisions, judges' decisions, legal systems and legal principles with the aim of increasing legal unity, legal certainty, justice, usefulness and legal clarity, without obscuring and sacrificing legal pluralism if it is needed. Meanwhile, according to Moh. Hasan Wargakusumah, legal harmonisation is a scientific activity towards a written harmonisation process that refers to both philosophical, sociological, economic, and juridical values. (Suhartono, 2011).

From the discussion of legal harmony, the formulation of the ideal harmonisation stage is an effort to harmonise, adjust, balance, and consistency of the elements of the legal system in order to integrate various legal systems, so that they are arranged in a harmonious order with each other within the framework of the national legal system. Therefore, efforts to harmonise the national legal system are a *conditio sine qua non* for ensuring legal certainty, legal order, law enforcement, legal protection with justice and truth at its core.

The efforts to harmonise the laws and regulations regarding the provisions of chemical castration are:

a. Law Number 1 Year 2023 on the Criminal Code

The provision of chemical castration as an additional punishment in this law is not explained. Article 64 elaborates that punishment consists of main punishment, additional punishment, and special punishment for certain criminal offences stipulated in the law. Regarding the special punishment stipulated in the law is explained in Article 67, that the special punishment is intended for death penalty which is always threatened alternatively, not for the implementation of chemical castration. In addition, Article 66 paragraph (1) explains that the additional punishment as referred to in Article 64 letter b consists of revocation of certain rights, deprivation of certain goods and/or bills, announcement of judge's decision, payment of compensation, revocation of certain permits, and fulfilment of local customary obligations.

There is no regulation that specifically discusses chemical castration as a punishment in the National Criminal Code. If we look at the Closing Provision of Article 622 paragraph (1) letter n, that Article 81 paragraph (1) and Article 82 of Law Number 23 Year 2002 on Child Protection as amended several times, most recently by Law Number 17 Year 2016 on the Stipulation of Government Regulation in Lieu of Law Number 17 Year 2016 on the Second Amendment to Law Number 23 Year 2002 on Child Protection into Law, are revoked and declared invalid. In the event that the provisions of the Article regarding the criminal offence of intercourse or defilement with a child as referred to in paragraph (1) letter n refer to Article 81 paragraph (1) of the relevant law, the trigger is replaced with Article 473 paragraph (4). This means that the provision of Article 622 paragraph (1) letter n is a change made by the government to strengthen the protection of its citizens, especially children who are victims.

However, as an additional punishment, chemical castration has not been accommodated in Law No. 1 Year 2023. With the enactment of the new Criminal Code, it is expected to realise national legal development efforts that are carried out in a directed, integrated and planned

manner so as to support national development in various fields in accordance with the demands of development as well as the level of legal awareness and dynamics that develop in society, but if the situation and circumstances regarding the legality of the implementation of chemical castration are not accommodated then, the purpose of this chemical castration punishment will certainly not be achieved, especially for the protection and justice for victims and legal certainty for perpetrators of sexual violence.

b. Law Number 17 of 2016 Stipulating Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection into Law

The state guarantees children's rights to survival, growth and development, and protection from violence and discrimination as enshrined in the 1945 Constitution. It can be seen from the existence of aggravated sanctions against perpetrators of sexual violence, this is a reaction to the increasing and threatening strategic role for children as the next generation of the future of the nation and state.

Government Regulation No. 1/2016, which has now become a law, explains the amendment to Article 81 which is an aggravation including the announcement of the identity of the perpetrator, the installation of an electronic detection device, chemical castration, and the death penalty.

c. Law Number 17 Year 2023 on Health

The implementation of chemical castration will certainly have an effect on the perpetrator both physically and psychologically. The study and alignment between the implementation of chemical castration and health laws have certainly opened a polemic in the provision of chemical castration.

There are several legal provisions that are considered contrary to the implementation of chemical castration in the health law, among others: Article 4 Paragraph (1) explains the right of every person in the field of health which includes a healthy life physically, mentally, and socially; Article 5 explains that everyone is obliged to realise, maintain, respect the health of others, maintain, and improve the highest degree of public health; Article 6 that the central government and local governments are responsible for the implementation of quality health efforts, and safe for the community; Article 22 Paragraph (1) letter c explains that health efforts include reproductive health; Article 23 explains that the implementation of health is carried out with responsibility, safety, quality, nondiscrimination, and justice with due regard to morals, and ethics; Article 55 letter a explains that everyone has the right to live a reproductive and sexual life that is healthy, safe, and free from discrimination; Article 56 explains the responsibilities of the central government and local governments for reproductive health efforts; Article 156 explains about medical services for the benefit of the law for both living and dead people, but in the service of legal interests referred to, there is no mention of the provision or action of chemical castration, only forensic corpse examinations, laboratory examinations, and / or post-mortem virtual autopsies; Article 176 that health service facilities are required to implement patient safety standards; Article 274 explains that medical and health personnel in carrying out their practice are obliged to provide health services in accordance

with professional standards, professional service standards, standard operating procedures, and professional ethics, and must obtain consent from the patient or family for the actions provided; Article 279 explains that medical and health personnel are morally responsible for behaving and behaving in accordance with professional ethics.

Based on the above description, it is necessary to align the law on health with the implementation of chemical castration, or the addition of chemical castration provisions, by allowing chemical castration as a law enforcement interest with provisions adjusted to the legislation.

CONCLUSION

The implementation of chemical castration sanctions as a new form of sanction in Indonesia is an important step in providing a deterrent effect for perpetrators of sexual violence against children. In cases of sexual violence, victims not only suffer physical injuries, but also experience a much more serious impact on their emotional, social, and psychological development. Therefore, chemical castration as a legal sanction can provide a more effective effect in preventing perpetrators from committing acts of sexual violence that harm children.

The implementation of chemical castration is considered risky, and creates difficulties in its implementation and is not effective in suppressing criminal acts of sexual violence against children because there is no clear and firm policy in regulating the implementation of chemical castration, where chemical castration only controls a cause of a person's sexual drive, namely the hormone testosterone, but does not solve the psychological problems faced by the perpetrator or victim.

The author can outline some recommendations, that several things need to be clarified and harmonised, especially for the executor, such as establishing derivative regulations for police doctors to carry out chemical castration as well as carrying out the death penalty; conducting clinical trials when the offender is still in the investigation stage, so that it can provide an overview to the prosecutor during prosecution, and during detention. In addition, this will save the budget incurred because the cost of rehabilitation can be included in the court costs and/or fines that the offender must pay if the case is decided by the judge.

There is an effort to adjust the existing rules based on health law, medical practice, medical code of ethics, human rights, and based on the Indonesian Criminal Code which has not accommodated the provisions of chemical castration, especially in the provisions of Article 66 paragraph (1) regarding additional types of punishment; In Government Regulation No. 70/2020, there must be harmony in terms of the implementation of chemical castration, which mentions 2 (two) different executor clauses in Article 3 and Article 9 letter b. 70 of 2020, there must be alignment of terms regarding the implementation of chemical castration, which mentions 2 (two) different executor clauses in Article 3 and Article 9 letter b. In addition, there needs to be social rehabilitation or family therapy to provide provisions and increase soft skills to perpetrators of sexual violence against children, so that they can adapt and return home. If the perpetrator is not proven to be hypersexual during the clinical trial assessment, this rehabilitation can also be an option.

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