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# Imposing Additional Criminal Sanction of Chemical Castration against Child Sexual Violence Perpetrators

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## ABSTRACT

This paper aims to examine the fulfillment of the requirements for implementing the judge's decision Number: 69/Pid.Sus/2019/PN Mjk in providing additional punishment in the form of chemical castration and rationalization of the Indonesian Doctors Association (IDI) in approving the implementation of the decision. The results of the study indicate that the conditions for implementing the decision No. 69/Pid.Sus/2019/Pn Mjk in providing additional punishment for chemical castration has been fulfilled, because the conditions for the imposition of additional punishment in the form of chemical castration are imposed after the convict has served the principal sentence in accordance with Article 81A paragraph (1) of Law Number 17 of 2016 concerning child protection. The reason IDI is obliged to approve the implementation of Decision Number: 69/Pid.Sus/2019/PN Mjk is that when a regulation is included in the legislation, this provision is perfectly binding and must be obeyed. So, in practice, when a doctor is asked to perform chemical castration, the doctor must do so because this provision is a legal order

procedural law, and law and justice. Some of her works have been published on several journals such as *Tinjauan Yuridis terhadap Penyebaran Foto Porno di Media Sosial (Studi Putusan Nomor: 80/Pid. Sus/2021/PN SDA)* (Novum Jurnal Hukum, 2022), *Pemenuhan Perumusan Dan Penyelenggaraan Hukum Pidana Pada Pelanggaran Pajak Demi Pencapaian Tujuan Peraturan Perundang-Undangan Perpajakan* (Jurnal Suara Hukum, 2022), and *Implementasi Gerakan Anti Korupsi sebagai Upaya Pencegahan Korupsi pada Lembaga Anti Korupsi di Propinsi Jawa Timur* (Perspektif Hukum, 2020).

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and there is a justification for this. The decision Sus/2019/PN Mjk is when a regulation is included in the legislation, this provision is perfectly binding and must be obeyed.

## KEYWORDS

*Chemical Castration, Additional Criminal Sanction, Condition for Implementing Decisions, Child Sexual Violence*

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## 1 INTRODUCTION

Article 81 paragraph (7) Government Regulation in Lieu of Law (Perppu) No. 1 of 2016 concerning the Second Amendment to Law (UU) No. 23 of 2002 concerning Child Protection explains that perpetrators of sexual violence against children (pedophiles) can be subject to chemical castration. Chemical castration is an action against pedophiles by giving chemical substances through injection. The Perppu was later ratified into Law No. 17 of 2016 concerning the stipulation of Perppu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become a law and has been ratified as a form of response to the rise of cases of violence against children.<sup>1</sup>

The Criminal Code is the basis of criminal law in Indonesia and is still often used as a basis for criminalizing pedophiles. But the Criminal Code still has shortcomings in terms of fulfilling the rights of victims, one of which is the protection of victims. In addition to the Criminal Code, sexual violence against children is *lex specialis* regulated by Law No. 23 of 2002 concerning Child Protection, which aims to prevent children from falling into evil deeds and not becoming victims of

<sup>1</sup> Kevin Setiawan, and Aji Wibowo. "Menganalisis Penerapan Penjatuhan Sanksi Tindakan Kebiri Kimia Terhadap Pelaku Kejahatan Seksual Anak ditinjau dari Sudut Hak Asasi Manusia Pelaku dan Korban". *Jurnal Hukum Adigama* 2, No. 1 (2019). <http://dx.doi.org/10.24912/adigama.v2i1.5260>

violence.<sup>2</sup> However, the sanctions regulated in the child protection law have not been able to prevent the occurrence of pedophilia crimes and the perpetrators do not feel a deterrent effect against existing penalties. This reason also underlies the ratification of Law No. 17 of 2016 concerning Child Protection. This is also supported by the rise of children as victims of violence which has increased every year. Based on Komnas Perempuan's 2020 Annual Records data, in 2019 there were 1,417 cases of Violence Against Girls (KTAP). Then in 2020 KTAP jumped by 65% so that the number of cases became 2,341 cases.<sup>3</sup>

Significantly, cases of pedophilia continue to increase, this can endanger children and the biggest impact is the growth and development of children and children's lives will be damaged, where childhood is a period of growth and children should be protected instead of being used as an outlet for lust for perpetrators sexual crimes (Mardina, 2018). According to Lyness, sexual violence against children is sexual acts through touching, showing genitals, kissing sexual organs, showing pornography to children (Noviana, 2015). The following is data on children in conflict with the law based on data from the Indonesian Child Protection Commission as victims of violence in 2016-2020.

**Table 1. Data on Child Victims of Sexual Violence**

<b>Child as a victim</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Psychical Violence	64	62	51	32	119
Sexual Violence	192	188	182	190	419

Source: KPAI data for child victims of sexual violence in 2016-2020

These data indicate that cases of pedophilia require increased attention. Governments, communities and families have important responsibilities towards children. Especially for pedophiles, it is necessary to take firm action by giving appropriate punishments for their actions.

Ratification of Law No. 17 of 2016 is expected to be a comprehensive legal umbrella, not only giving weights in terms of punishment, but also implementing preventive measures for perpetrators of violence against children.<sup>4</sup> The additional

<sup>2</sup> Nur Hafizal Hasanah, and Eko Soponyono. "Kebijakan Hukum Pidana Sanksi Kebiri Kimia dalam Perspektif HAM dan Hukum Pidana Indonesia." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, No. 3 (2018): 305-317.

<sup>3</sup> Komnas Perempuan. *Kekerasan Meningkat: Kebijakan Penghapusan Kekerasan Seksual untuk Membangun Ruang Aman Bagi Perempuan dan Anak Perempuan (Catatan Kekerasan Terhadap Perempuan Tahun 2019)*. (Jakarta: Komnas Perempuan, 2019).

<sup>4</sup> Hasanah & Soponyono, 2018.

punishment of chemical castration which was passed in 2016 is the latest punishment carried out in Indonesia, so it is still reaping debate in its implementation until now.<sup>5</sup> However, after the law on child protection was enacted in Indonesia, the child protection law has not been able to run optimally because there has been no thorough preparation regarding the implementation of the law.

After the enactment of Law No. 17 of 2016, for the first time in Indonesia in history, in May 2019 in Mojokerto there was a case of sexual violence against children where the perpetrators of the violence were sentenced to chemical castration by the panel of judges at the Mojokerto District Court. The examination of the pedophilia case was carried out using the usual examination procedure at the Mojokerto District Court (PN). 69/Pid.Sus/2019/PN.Mjk dated May 2, 2019. The case of violence was perpetrated by An. Moh. Aris bin thanksgiving who has committed the act of raping 9 (nine) minors and has been declared a defendant for his actions. The chronology of the case was carried out on May 2, 2018, in Mojokerto in the bathroom of the Mojokerto district mosque, the act of sexual intercourse with a minor who was still sitting in kindergarten was carried out by the defendant to satisfy his lust. The defendant saw the victim walking alone on her way home from school, the defendant said "*hey, come with me*", then the victim's hand was pulled by the defendant and taken to the mosque bathroom. Then the defendant forced the victim's witness to have sexual intercourse with him. The victim's witness screamed but the defendant immediately strangled the victim's neck for fear of being heard by people.

The judge's decision must meet the legal requirements of the decision, namely material requirements and formal requirements, both of which are contained in Article 197 of the Criminal Procedure Code, namely:

- 1) The sentencing decision letter contains:
  - a. the head of the written decision reads: FOR JUSTICE BASED ON BELIEF IN THE ONE AND ONLY GOD;
  - b. full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the accused;
  - c. the indictment, as contained in the indictment;
  - d. considerations that are summarized in terms of facts and circumstances along with the tools evidence obtained from examination at the trial which is the basis for determining defendant's guilt,
  - e. criminal charges, as contained in the indictment;

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<sup>5</sup> Nuzul Qur'aini Mardiya, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual." *Jurnal Konstitusi* 14, No. 1 (2017): 213-233.

- f. Articles of laws and regulations that form the basis for punishment or action and articles of laws and regulations that form the legal basis of the decision, accompanied by aggravating and mitigating circumstances for the accused;
  - g. the day and date of the meeting of the panel of judges unless the case is examined by a single judge;
  - h. statement of the defendant's guilt, the statement has fulfilled all the elements in the formulation of the crime accompanied by its qualifications and punishment or action dropped;
  - i. provisions to whom court fees are charged by stating the amount certainty and provisions regarding evidence;
  - j. a statement that all letters are fake or a statement of where they are located the falsity, if there is an authentic letter is considered a fake;
  - k. an order that the defendant be detained or remain in detention or be released;
  - l. the day and date of the decision, the name of the public prosecutor, the name of the judge who made the decision and the clerk's name;
- 2) Failure to comply with the provisions in paragraph (1) letters a, b, c, d, e, f, h, j, k and l of this article result in the decision being null and void.
- 3) Decisions are implemented immediately according to the provisions of this law.

The judge's decision must be in accordance with the legal requirements of the decision. legal confusion in its implementation, in fact will complicate law enforcement, especially in the implementation of the judge's decision inkracht.

Government Regulation (PP) regarding the implementing provisions of Law No. 17 of 2016 concerning Child Protection has not been stipulated by the government at the time of decision no. 69/Pid.Sus/2019/PN.Mjk has been decided by the panel of judges and has been broken. So that the realization of the implementation of Article 81 paragraph (7) of Law No. 17 of 2016 concerning Child Protection has not been able to run effectively because there is no Government Regulation regarding instructions for implementing chemical castration punishment for pedophile perpetrators. Meanwhile, based on the principle of legality, the criminal procedure law cannot be applied retroactively.<sup>6</sup>

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<sup>6</sup> FJP Law Offices. "Asas Retroaktif di Indonesia", *Online*, 13 February (2020. Retrieved from <<https://fjp-law.com/id/asas-retroaktif-di-indonesia/>>. Actually, the principle is non-retroactivity, namely the principle that prohibits the retroactive application of a law. This principle is in accordance with Article 2 of Algemene Bepalingen van Wetgeving voor Indonesie (AB). In criminal law, this principle is reiterated in Article 1 paragraph (1) of the Criminal Code: "No act may be punished, but on the strength of the criminal provisions in the law, which preceded the act". Prof. Dr. Wirjono Prodjodikoro S.H. in his book "Principles of Criminal Law in Indonesia" states that the repetition of the inclusion of this principle in the Criminal Code shows that the prohibition of retroactive application by legislators is emphasized for criminal provisions. This retroactive

After the judge's decision at the Mojokerto District Court No. 69/Pid.Sus/2019/PN.Mjk. In 2020 PP No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration was only passed on December 7, 2020. Problems arose when the PP was ratified after the decision was made by the local district court in 2019, while the criminal procedure law cannot be applied retroactively (Rachmadsyah, 2010). In addition, the implementation of additional punishment in the form of chemical castration was also rejected by the Indonesian Doctors Association (IDI). Where IDI is the executor of the execution of the additional crime of chemical castration appointed by the prosecutor and is considered the right profession to carry out the execution because it is in accordance with its competence.

IDI officially issued the Fatwa of the Honorary Council of Medical Ethics, the Executive Board of the Indonesian Doctors Association (MKEK) No. 1 of 2016 concerning Chemical Castration. Where the content of the fatwa clearly explains that IDI is against being the executor of the chemical castration punishment. Existing research is the analysis of chemical castration punishment for pedophile perpetrators from the perspective of a penologist by Dina Roszana in 2020 and an analysis of judges' considerations for pedophiles by Nurliza Fitriyani in 2021 and regarding chemical castration punishment from the perspective of human rights and the health of the perpetrator by Ika Listya Mahanani in 2020, requires a continuation regarding the validity of Judge's Decision No. 69/Pid.Sus/2019/PN. Mjk regarding pedophilia because the judge's decision at the Mojokerto District Court was the first decision on chemical castration in Indonesia, also the decision was rejected by IDI as the executor and also the incompleteness of norms in implementing the decision. The incompleteness of norms and rejection of the IDI have an impact on the execution of the judge's decision execution process that has been inkrach, because the execution of a decision depends on the clarity of a legal norm.

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prohibition is to enforce legal certainty for the population, who should know what actions constitute a crime or not. However, there are deviations from the non-retroactive principle in the Criminal Code as referred to in Article 1 paragraph (2) of the Criminal Code, namely that a newer law can be applied retroactively, as long as the new law is more favorable to the suspect than the old law. This article applies if a criminal law violator has not yet been decided by the judge in the final decision. See also Prodjodikoro Wirjono, *Asas-Asas Hukum Pidana di Indonesia*. (Bandung: Refika Aditama, 2003); Yuli Asmara Triputra, and Rohman Hasyim. "Pelaksanaan Asas Hukum Retroaktif Terhadap Penegakan Hukum Pidana Matrill." *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum sumpah Pemuda* (2022): 25-30; Danel Aditia Situngkir, "Asas Legalitas dalam Hukum Pidana Nasional dan Hukum Pidana Internasional." *Soumatara Law Review* 1, No. 1 (2018): 22-42; Yarik Kryvoi, and Shaun Matos. "Non-Retroactivity as a General Principle of Law." *Utrecht Law Review* 17, No. 1 (2021); Anirut Chuasanga, and Ong Argo Victoria. "Legal Principles Under Criminal Law in Indonesia dan Thailand." *Jurnal Daulat Hukum* 2, No. 1 (2019): 131-138.

On the basis of the description above so that the writing of this article aims to conduct a study of fulfillment of the conditions for implementing the judge's decision Number: 69/Pid.Sus/2019/PN Mjk in providing additional punishment in the form of chemical castration and rationalizing the approval of the Indonesian Doctors Association in the execution of Decision Number: 69/Pid.Sus/2019/PN Mjk.

## 2 METHOD

This article leads to a normative juridical research because the decision of the Mojokerto District Court No. 69/Pid.Sus/2019/PN.Mjk has not been implemented until now due to the incompleteness of the norms for implementing castration regulations. Thus, this study will examine the applicable legal regulations so that it will be known whether the decision of the Mojokerto District Court No. 69/Pid.Sus/2019/PN.Mjk has complied with the legal requirements for the decision and the execution. The approach taken is a statute approach by examining Law no. 17 of 2016 concerning Child Protection and regulations related to the implementation of chemical castration, a conceptual approach (Conceptual Approach) by studying views and doctrines regarding the concept of chemical castration execution, and a case approach by examining the decision no. 69/Pid.Sus/2019/PN.Mjk to review the judge's considerations and the judge's decision on the execution. The analytical technique used is prescriptive to provide arguments for research results regarding legal events, legal theories, legal norms, doctrines, legal principles to be studied.<sup>7</sup> The primary legal material in this writing consists of the law on chemical castration and Court Decision No. 69/Pid.Sus/2019/PN. Mjk, secondary legal materials in the form of journals, articles, books, and non-legal materials derived from legal dictionaries, websites, non-legal books related to research to support the analysis process of legal materials.

## 3 RESULT AND DISCUSSION

### A. Additional Criminal Use in the form of Chemical Castration according to the Child Protection Act

Additional punishment of chemical castration is a punishment that is imposed together with the main punishment and is not independent. additional punishment

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<sup>7</sup> Mukti Fajar, and Yulianto Achmad. *Dualisme Penelitian Hukum Normatif dan Empiris*. (Yogyakarta: Pustaka Pelajar, 2010).

of chemical castration is regulated in Article 81 paragraph (7) of Law no. 17 of 2016 concerning Child Protection, namely "Against the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices".

Chemical castration is carried out by injecting antitestosterone substances into perpetrators of sexual violence against children with the aim of weakening the hormone testosterone. Testosterone is a hormone that has a sexual function. The additional criminal punishment of chemical castration cannot be carried out without implementing guidelines and cannot be imposed on everyone without a basis for imposing the punishment. The requirements for chemical castration are regulated in Article 81 paragraph (4) and (5) of Law no. 17 of 2016 concerning Child Protection, where the requirements for the additional criminal imposition of chemical castration are:

- 1) The act is carried out forcibly against the child;
- 2) Acts committed by recidivist perpetrators of sexual violence against children; and
- 3) Cause more than 1 (one) person to die, cause serious injury, mental disorder, infectious disease, impaired or lost reproductive function, and/or the victim dies.

The additional criminal punishment of chemical castration for perpetrators of sexual violence against children is related to the purpose of punishment, then chemical castration is imposed based on a combined theoretical perspective, namely:

- 1) The imposition of a crime is carried out for retaliation against the perpetrator of a crime as a result of the criminal act committed by the perpetrator; and
- 2) The imposition of a crime is not only based on retaliation but is also aimed at improving the perpetrator so that it will provide a sense of security and order in society.

## **B. Legality of Judge's Consideration in Decision Number: 69/Pid.Sus/2019/Pn Mjk**

In deciding on a criminal sentence, the judge must first consider the facts in the trial as well as the results of the evidence.<sup>8</sup> It has been set on Article 197 paragraph (1)

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<sup>8</sup> Nimerodi Gulo, "Disparitas dalam penjatuhan pidana." *Masalah-Masalah Hukum* 47, No. 3 (2018): 215-227. See also Komang Marga Triani, and Ni Nyoman Juwita Arsawati. "Tinjauan Yuridis Kedudukan Amicus Curiae Terhadap Anak Pelaku Pelecehan Seksual." *Jurnal Analisis Hukum* 4, No. 2 (2021): 271-282; Annisa Fiann Sisma, and Widodo Tresno Novianto. "Analisis Dasar Pertimbangan Hukum Hakim dalam Menjatuhkan Sanksi Pidana Tambahan Kebiri Kimia (Studi Putusan Pengadilan Negeri Mojokerto Nomor: 69/Pid. Sus/2019/Pn. Mjk.)." *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 9, No. 1 (2020): 50-57. <https://doi.org/10.20961/recidive.v9i1.47392>



letter f of the Criminal Procedure Code, namely "In making a decision the judge must consider the article of the legislation as the basis for the punishment or the action taken and the article of the legislation as the legal basis in making the decision, as well as consider things that are aggravating and lighten the sentence of the accused." In addition, the judge's considerations must also be supported by at least two pieces of evidence as contained in Article 184 paragraph (1) of the Criminal Procedure Code which consists of:

"Legal evidence is:

- a. Witness testimony
- b. Expert description
- c. Letter
- d. Instruction
- e. Defendant's statement

If the above considerations are proven, the defendant can be declared legally and convincingly guilty.

The evidence submitted by the public prosecutor in the trial in decision 69/Pid.Sus/2019/PN. The Court consists of 3 (three) witnesses, namely Suhartono, witness Farah Bilqis Magfiroh, and witness Sumarmi; a letter in the form of Visum et Repertum Regional General Hospital Prof. Dr. Soekandar Number: 357/2394/416-207-2018 and Farah Bilqis Magfiroh's birth certificate with Number: 3516-LT-2103013-0007; and the statement of the defendant, namely Muh. Aris bin Syukur. The evidence presented in the trial has met the requirements for valid evidence, so that the evidence has been fulfilled.

The judge's considerations consist of two, namely juridical and non-juridical considerations.<sup>9</sup> In the juridical consideration of the decision number 69/Pid.Sus/2019/PN. The judge considered that the defendant violated Article 76D in conjunction with Article 81 paragraph (2) of Law Number 17 of 2016 concerning Child Protection, the elements of which are as follows:

- a. Everyone's element
- b. the element of intentionally committing violence or threats of violence forcing the child to have intercourse with him or another person

The judge considered that the two elements had been fulfilled in accordance with the actions committed by the defendant. In addition to the above juridical

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<sup>9</sup> Syarifah Dewi Indawati, "Dasar Pertimbangan Hukum Hakim Menjatuhkan Putusan Lepas dari Segala Tuntutan Hukum Terdakwa dalam Perkara Penipuan." *Verstek: Jurnal Hukum Acara* 5, No. 2 (2017): 265-275.

considerations, the judge also considered that the perpetrators had sexually abused nine children. The judge considered that the perpetrator was also sentenced to additional punishment in the form of chemical castration. According to the author, this consideration is not appropriate because the basis for additional criminal sanctions of chemical castration is contained in Article 81 Paragraph (7) of Law No. 17 of 2016 is not mentioned in the judge's juridical considerations. so that the judge's consideration does not have legal certainty because the article which is the basis for the additional criminal punishment of chemical castration is not mentioned in the judge's juridical considerations, namely Article 81 paragraph (7) of Law No. 17 of 2016 concerning child protection.

### **C. Fulfillment of Conditions for Implementing Judge's Decision Number: 69/Pid.Sus/2019/PN Mjk in Providing Additional Criminal Sanction in The Form of Chemical Castration**

In the judicial process, the reading of the judge's decision is the final stage of the case being tried. Based on the judge's consideration in decision 69/Pid.Sus/2019/PN. The judge sentenced the defendant to a prison term of 12 (twelve) years, a fine of Rp. 100,000,000.00 (one hundred million rupiah) provided that if it is not paid, it is replaced with imprisonment for 6 (six) months and additional punishment in the form of chemical castration against perpetrators of sexual violence against children.

Judges have the freedom to decide a case. This is in accordance with Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power which states that "*Judges and constitutional judges are obliged to explore, follow, and understand legal values and sense of justice that lives in society.*" Freedom in this case means that there is no interference from the legislature and executive in the implementation of justice.<sup>10</sup>

The sentence handed down by the judge to the defendant consisted of imprisonment, a fine, and additional punishment in the form of chemical castration. The main crime is being carried out by the defendant at this time. However, until now the additional punishment of chemical castration has not been carried out, even though the basis for the imposition of chemical castration already has a legal umbrella, namely in Article 76D in conjunction with Article 81 paragraph (7) Law

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<sup>10</sup> Firman Floranta Adonara, "Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi." *Jurnal Konstitusi* 12, No. 2 (2016): 217-236.

Number 17 of 2016 concerning Child Protection which states that "Everyone who commits violence or threats of violence that force the child to have sexual intercourse with him or with other people may be subject to action in the form of chemical castration and installation of electronic detection devices".

The legal basis for the additional criminal castration of chemical castration already exists, however, the legal basis for the execution of chemical castration has not yet been issued at the time the decision was rendered. This becomes an obstacle to the execution of chemical castration, because the action of chemical castration should not be carried out arbitrarily without any procedures that regulate it.

In the authors' opinion, that the fulfillment of the requirements for implementing the judge's decision Number: 69/Pid.Sus/2019/PN Mjk in providing additional punishment in the form of chemical castration is appropriate, because it is based on several reasons:

*First*, additional criminal requirements in the form of chemical castration are imposed after the convict has served the main sentence, this has been regulated in Article 81A paragraph (1) of Law no. 2016 concerning Child Protection which reads as follows: The acts as referred to in Article 81 paragraph (7) shall be punished with a maximum period of 2 (two) years and subject to criminal sanctions issued after the convict has served the principal sentence.

So even though the decision has been handed down and is inkracht but there are no implementing regulations, it cannot make the conditions for implementing the decision unfulfilled. The convict will serve the main punishment that has been determined by the judge in advance, namely for 12 (twelve) years in prison, after which an additional punishment will be carried out in the form of chemical castration. As long as the convict is undergoing the sentencing process, the government can formulate implementing regulations for chemical castration as a guide for chemical castration actions to be taken against accused perpetrators of sexual violence against children.

*Second*, the criminal procedure law adheres to the principle of legality where the principle is contained in Article 3 of the Criminal Procedure Code which states that "criminal procedural law is carried out based on the law". In decision number: 69/Pid.Sus/2019/Pn Mjk the judge sentenced the perpetrators of sexual violence against children to additional punishment in the form of chemical castration based on Article 76D in conjunction with Article 81 paragraph (7) of Law No. 17 of 2016 concerning Child Protection.

The above legal rules have met the legality principle in Article 3 of the Criminal

Procedure Code that the crime of castration has a legal basis or there is already a law that regulates it, namely Law Number 17 of 2016 concerning Child Protection. Where regarding the implementation of chemical castration is regulated in Article 81A paragraph (1) of Law No. 17 of 2016 concerning Child Protection that additional punishment in the form of chemical castration is carried out after the main punishment is carried out. Therefore, the decision of the Mojokerto District Court is in accordance with the principle of legality.

*Third*, according to Kuntjoro Purbopranoto, the formal requirements related to the implementation of the decision are that the conditions related to the implementation of the decision are met.<sup>11</sup> In this case, the Government Regulation concerning Guidelines for the Implementation of Chemical Castration, namely PP Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, was ratified one year after the issuance of Decree Number: 69/Pid.Sus/2019/Pn Mjk down. According to Andi Hamzah, criminal procedural law should not apply retroactively.<sup>12</sup> However, because the additional criminal requirement for chemical castration is that after the convict has served the main crime, in 2019 the decision was handed down and the judge sentenced the defendant to 12 years in prison so that in 2031 the defendant could only commit additional criminal acts of chemical castration. Therefore, the stipulation of PP Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, which was ratified one year after the determination of number: 69/Pid.Sus/2019/Pn Mjk, did not change the sentence for that decision, meaning that chemical castration was still carried out. So that the conditions for implementing the decision have been met.

The additional sanction of chemical castration in decision number 69/Pid.Sus/2019/Pn Mjk is expected to provide a deterrent effect for the defendant. However, the effects of chemical castration injections had extraordinary effects on the defendant's body, including depression, anemia, infertility, erectile dysfunction.<sup>13</sup> The application of chemical castration is expected to deter the defendant, on the other hand, it can actually create a sense of concern that the side effects of chemical castration can risk making the defendant feel revenge and commit even more heinous acts.

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<sup>11</sup> Syofyan Hadi, and Tomy Michael. "Prinsip Keabsahan (Rechtmatigheid) dalam Penetapan Keputusan Tata Usaha Negara." *Jurnal Cita Hukum* 5, No. 2 (2017).

<sup>12</sup> Andi Hamzah, *Bunga Rampai Hukum Pidana dan Acara Pidana*. (Jakarta: Ghalia Indonesia, 1990).

<sup>13</sup> Dania Rachma, "Kebiri Kimia Untuk Pemerkosa Anak Mojokerto, Apa Efek Sampingnya?" *Tirto*, 27 August (2019). Retrieved from <https://tirto.id/kebiri-kimia-untuk-pemerkosa-anak-mojokerto-apa-efek-sampingnya-eg7s>

The cost of implementing chemical castration tends to be expensive. According to a urology specialist from the Asri Urology Center, dr, Arry Rodjani., SpU. it is stated that the cost of chemical castration injections ranges from Rp. 700,000 – Rp. 1,000,000 for one injection, and the drug can only work for up to 3 months (Collins, 2016).

Based on Article 5 of PP Number 70 of 2020 concerning Procedures for Implementing Chemical Castration Measures, it is stated that "Chemical Castration Measures are imposed for a maximum period of 2 (two) years". If the required cost is Rp. 1.000.000,- for single use and the reaction period is only 3 months, in 2 years the pedophile is injected 8 times at a cost of Rp. 8,000,000,-. The defendant in decision number 69/Pid.Sus/2019/Pn Mjk sexually abused 9 children because the defendant was addicted to watching pornographic videos and the defendant had never been in a relationship, so the defendant vented his lust for innocent children. The pornographic videos he saw will always be recorded in the defendant's mind unless the defendant received psychological treatment. So, another option that must be made against the defendant is to treat the psychological mindset of the defendant.

#### **D. IDI's Rejection as Executor of Chemical Castration with Its Release MKEK IDI Fatwa Number 1 of 2016 Regarding Chemical Castration**

Endorsement UU no. 17 of 2016 concerning the stipulation of Perppu No. 1 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning Child Protection has invited many pro and contra reactions from various parties, one of which is the Indonesian Doctors Association (*Ikatan Dokter Indonesia*, hereinafter as IDI) endorsement UU No. 17 of 2016 made IDI refuse because IDI was asked to be an executor in the additional crime.

The prosecutor's decision is indeed carried out by the prosecutor in accordance with the prosecutor's authority in Article 270 of the Criminal Procedure Code, namely "The implementation of a court decision that has obtained legal force is still carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him." However, in the case of chemical castration, the execution is carried out by a doctor who has competence according to his field. This is in accordance with Article 3PP No. 70 of 2020 concerning Procedures for Implementing Chemical Castration Actions, namely "The implementation of the Chemical Castration Action, the installation of electronic detection devices, and rehabilitation are carried out by officers who have competence in their fields on the orders of the prosecutor".

IDI assesses the effectiveness of chemical castration which is still in doubt because this is the first time this punishment has been imposed in Indonesia. This became one of the grounds for IDI's rejection of chemical castration. The rejection of IDI was then officially carried out by issuing "Fatwa of the Medical Ethics Council (MKEK) Number 1 of 2016 concerning Chemical Castration, in which IDI decided that:

- 1) The medical profession in Indonesia is very bound by the doctor's oath, so it cannot accept directly acting as an executor of chemical castration.
- 2) Deep understanding and understanding for non-medical circles, especially for high state officials, people's representatives, lawmakers, law enforcers so that the medical profession is not directly involved as an executor in additional eradication of punishment in the form of chemical castration
- 3) So that doctors are always firm in carrying out the doctor's oath and are expected to get legal strengthening support from the government. Therefore, in order not to include in the legislation or in the explanation article that a doctor is an executor of chemical castration."

In addition to the questionable effectiveness of castration, the side effects of injecting chemical castration are feared that IDI can cause defendants of sexual violence against children to become viler and will repeat the crime in more extreme ways.<sup>14</sup> And the execution of chemical castration is also contrary to the code of medical ethics and the doctor's oath. where in consideration of the MKEK IDI fatwa No. 1 of 2016 concerning chemical castration states that "there is not a single article of the 21 articles of the code of ethics, and 28 articles of the discipline of the honorary assembly for medical discipline that allow doctors to do or injure other people on humanitarian grounds." And "doctors as a moral community are obedient to maintain the nobility of their profession in accordance with the doctor's oath that has been recited: I will dedicate my life for the benefit of humanity. Where the doctor's oath is pronounced once and is valid for a lifetime and will be accountable to God Almighty."

In the 2012 Code of Medical Ethics Article 5 it is stated that "every act/advice of a doctor that may weaken psychological or physical endurance, must obtain the consent of the patient/family and only given for the benefit and good of the patient."

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<sup>14</sup> Ayu Rachmaningtyas. "Tugas Dokter Menyembuhkan Alasan IDI Tolak Hukuman Kebiri Dinilai Wajar". *KOMPAS*, 14 June (2016). Retrieved from <<https://nasional.kompas.com/read/2016/06/14/12395231/tugas.dokter.menyembuhkan.alasan.idi.tolak.hukuman.kebiri.dinilai.wajar?page=all>>

the explanation of the article explains that physically and psychologically weakening the patient is contrary to the code of medical ethics but can be excluded if there are justifications and excuses for the action.

Based on Article 1 of the 2012 medical code of ethics, it is stated that "Every doctor is obliged to uphold, live and practice the oath and or doctor's appointment." The oath as referred to in Article 1 reads:

"By Allah I swear that:

- 1) I will dedicate my life to the benefit of humanity.
- 2) I will carry out my duties in an honorable and ethical manner in accordance with the dignity of my job as a doctor.
- 3) I will preserve with all my might the dignity and noble traditions of the medical profession.
- 4) I will keep everything I know confidential because of my profession.
- 5) I will not use my knowledge for anything against humanity, even if threatened.
- 6) I will respect every human life from the moment of conception.
- 7) I will always put the patient's health first, by taking into account the interests of the community.
- 8) I will make every effort so that I am not influenced by considerations of religion, nationality, ethnicity, gender, politics, social position and type of illness in carrying out my obligations to patients.
- 9) I will give my teachers the respect and gratitude they deserve.
- 10) I will treat my colleagues like siblings.
- 11) I will obey and practice the Indonesian Medical Code of Ethics.
- 12) I take this oath solemnly and by risking my honor."

The oath is spoken once in a lifetime. The doctor's oath is also one of the reasons IDI refuses to carry out chemical castration which is contrary to the doctor's oath where the oath in carrying out his duty's doctors must be based on a sense of humanity. So, in this case, the action of chemical castration is against the duty of the doctor who aims to cure the patient, while removing one of the functions of the patient's body part is against the duty of the doctor. Likewise, what happened to castration, where the punishment was intended for the good of the community, but on the other hand the essence of chemical castration was to eliminate sexual hormones for a certain period of time, so that it can be said to eliminate the function of one part of the patient's body and contrary to the doctor's duties.

## **E. Rationalization Agreement IDI on the Execution of Decision Number: 69/Pid.Sus/2019/PN Mjk**

Execution of judge's decision number: 69/Pid.Sus/2019/PN Mjk must be implemented immediately, this is in accordance with Article 197 paragraph (3), namely "The decision is implemented immediately according to the provisions of this law." However, due to IDI's refusal to be the executor of chemical castration, the execution of the judge's decision number: 69/Pid.Sus/2019/PN Mjk cannot be carried out until now considering that IDI as the executor of chemical castration still refuses to carry out the task.

The executor's authority in criminal procedural law is the authority of the prosecutor, where in Article 1 number 6 letter a of the Criminal Procedure Code it is clearly stated that "the prosecutor is an official authorized by this law to act as a public prosecutor and carry out court decisions that have permanent legal force." However, in the additional criminal case in the form of chemical castration, the prosecutor must delegate his authority to doctors in order to carry out the execution of chemical castration.<sup>15</sup>

The action of chemical castration is carried out procedurally so that it is necessary for a competent party in their field to carry out the action, where only a doctor with appropriate expertise is able to carry out the castration. in this case it means in Article 3 PP No. 70 of 2020 concerning Procedures for Implementing Chemical Castration Actions namely "The implementation of the Chemical Castration Action, the installation of electronic detection devices, and rehabilitation are carried out by officers who have competence in their fields on the orders of the prosecutor."<sup>16</sup> It means that the doctor must agree to be the executor of chemical

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<sup>15</sup> Soetedjo Soetedjo, Julitasari Sundoro, and Ali Sulaiman. "Tinjauan Etika Dokter sebagai Eksekutor Hukuman Kebiri." *Jurnal Etika Kedokteran Indonesia* 2, No. 2 (2018): 67-71. See also Ari Purwita Kartika, Muhammad Lutfi Rizal Farid, and Ihza Rashi Nandira Putri. "Reformulasi Eksekusi Kebiri Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter dan Perlindungan Hukum Bagi Pelaku Pedophilia." *Jurnal Hukum Ius Quia Iustum* 27, No. 2 (2020): 345-366; Sofian Syaiful Rizal, "Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Anak dalam Perspektif HAM." *Legal Studies Journal* 1, No. 1 (2021).

<sup>16</sup> In considering points, PP No. 70 of 2020 states that this chemical castration rule was made to overcome sexual violence against children, provide a deterrent effect on perpetrators of sexual violence, and prevent sexual violence against children. See also L. Alfies Sihombing, and Yeni Nuraeni. "Implementasi Hukuman Tambahan Kebiri Kimia Terhadap Pelaku Kejahatan Kekerasan Seksual Terhadap Anak Berdasarkan PP No. 70 Tahun 2020 (Tinjauan Yuridis Putusan Perkara Pidana Khusus No. 69/Pid. Sus/2019/PN. Mjk)." *Pakuan Justice Journal of Law* 2, No. 2 (2021): 18-38; Dhita Mutiara Putri, et al. "Penerapan Hukuman Kebiri Kimia Menurut Peraturan Pemerintah



castration. By law, doctors cannot refuse to carry out chemical castration even without conditions, because these rules are laws that must be obeyed.<sup>17</sup>

The alternative in IDI's refusal is a police doctor, where the police doctor states that he is willing to take chemical castration on the accused of sexual violence against children if there is an order to carry out. This is based on the fact that one of the duties of the police is to carry out the decisions made by the supreme court.<sup>18</sup>

The crime of chemical castration is unavoidable, it is contrary to the code of medical ethics, because the nature of a doctor is to treat, not castrate. In the 11 codes of medical ethics explain that "Every doctor must always remember his obligation to protect the life of human beings." The explanation of Article 11 states that "Every doctor should act as a guardian or guardian and preserver of human life who is a person with human rights, starting from conception/at conception until death/buried. A doctor must do everything in his power to preserve the natural life of his patient and not to end it."

However, Article 12 of the medical code of ethics states that "In carrying out his work a doctor is obliged to pay attention to all aspects of health services (promotive, preventive, curative, rehabilitative, and palliative), both physical and psychosocial-cultural of his patients, as well as trying to become educators and service providers. true society." In the explanation of the article, it is explained that "doctors should be able to cooperate with all elements of the government, private sector and levels of society including inter and between any professional community". Where in the explanation the doctor is able to cooperate with all elements of government, the doctor may agree or refuse to be the executor of castration, but as long as it has become a general policy of the state where there are rules regarding the implementation of chemical castration, namely PP No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, the PP must be obeyed by doctors.

In addition, a rule contained in the law, then the rule has binding legal force and must be obeyed. Especially if there is now a PP that has been ratified as an implementing regulation for the additional criminal punishment of chemical

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Nomor 70 Tahun 2020." *ADIL: Jurnal Hukum* 12, No. 2 (2021): 157-171. <https://doi.org/10.33476/ajl.v12i2.2117>

<sup>17</sup> Syaiful Hidayatullah, Otto Yudianto, and Erny Herlin Setyorini. "Wewenang Dokter Sebagai Eksekutor Tindakan Kebiri Kimia." *Jurnal Akrab Juara* 5, No. 3 (2020): 1-18.

<sup>18</sup> Esthi Maharani. "Dokter Kepolisian Siap Jadi Eksekutor Hukuman Kebiri", *REPUBLIKA*, 14 June (2016). Retrieved from <<https://www.republika.co.id/berita/nasional/%0Ahukum/16/06/14/o8r876335-dokterkepolisian-siap-jadi-eksekutor-hukuman-kebiri>>.

castration, namely PP No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration. So that in practice, if a doctor is asked to carry out chemical treatment, the doctor must carry out the provision because the provision is an order from the law, where there is a justification for implementing the law and cannot refuse. The justification in question is contained in Article 50 of the Criminal Code (KUHP) which states: "Whoever commits an act to carry out the provisions of the law, will not be punished" and Article 51 paragraph (1) of the Criminal Code, namely "whoever commits an act to carry out an office order given by the competent authority, will not be punished".

## 4 CONCLUSION

The conditions for implementing the judge's decision Number: 69/Pid.Sus/2019/PN Mjk in providing additional punishment in the form of chemical castration have been fulfilled, because the conditions for the imposition of additional punishment for chemical castration are imposed after the convict has served the main sentence in accordance with Article 81A paragraph (1) UU no. 17 of 2016 concerning Child Protection. This decision was made in 2019 and the judge sentenced the defendant to 12 years in prison so that in 2031 the defendant could only carry out the additional punishment of chemical castration. Therefore, the stipulation of PP Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, which was ratified one year after the decision number: 69/Pid.Sus/2019/Pn Mjk was imposed and did not change the enforceability of the sentence on the decision, meaning that chemical castration remains conducted. Chemical castration was carried out after the defendant had served the principal sentence in which for now there was no party to be executed, however IDI as the executor of chemical castration from the beginning had refused to become the executor of chemical castration. IDI officially issued MKEK IDI Fatwa No. 1 of 2016 concerning chemical castration as a form of rejection of the execution of chemical castration, so that in this case a rationalization of IDI approval is needed for the execution of Decision Number: 69/Pid.Sus/2019/PN Mjk, namely when a provision is contained in the law, then the rule has perfect legal force. And now there is a government regulation that has been set as the implementing regulation for chemical castration, namely PP Number 70 of 2020. So, if one day a doctor is appointed to be the executor of this action.

## 5 DECLARATION OF CONFLICTING INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

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*Not only do I believe children  
can be reliable in sexual abuse  
cases, I believe the vast majority  
of them are reliable in those  
cases.*

*Nightline: When to believe a child's word (1996)*

**Stephen J. Ceci**