

COMPARATIVE POLICY OF CRIMINAL LAW OF CHEMICAL CASTRATION SANCTIONS FOR PERPETRATORS OF CHILD SEXUAL ABUSE BETWEEN INDONESIA AND THE UNITED STATES

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ABSTRACT

The rise of sexual crimes against children is a great challenge for every state to live a national and state life, Indonesia as a state of law has issued Law No. 17 of 2016 on the Establishment of Government Regulation as a replacement of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection Into a Law that implements the enforcement of criminal sanctions for perpetrators of sexual violence delivered by applying castration chemically. Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence against Children, while in the United States and its states caused by the common law (anglosaxsen) a rule of law does not need to be codified only need to be spoken in the panel of judges (courts), when compared to the enforcement of chemical castration sanctions in Indonesia and the United States has constraints in each country, in Indonesia is constrained by the Indonesian Doctors Association who does not want to carry out executions of chemical castration to perpetrators of child sexual crimes that have the power of permanent law while the United States has a lot of obstacles due to the use of medroxyprogesterone acetate (MPA) because the drug was never approved by the FDA for use as a treatment for sexual perpetrators. This research includes normative law research that is based on positive law assessment. This research uses primary law materials in the form of legislation, as the object of research.

Keywords: Comparison, Indonesia, United States, Chemical Castration, Sexual Abuse.

A. INTRODUCTION

Early in 2021 in Indonesia, the most frequently discussed among academics and legal practitioners is the ratification of Government Regulation No. 70 of 2020 on Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children. Precisely in January 2021 the President has passed Government Regulation No. 70 of 2020 on Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children, this is precisely an advance for the Indonesian Child Protection Commission and for the Integrated Service Center for Women and Children Empowerment (P2TP2A) in every region of Indonesia. According to Government Regulation No. 70 of 2020 concerning Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children, in Article 1 number 2 states that the act of chemical castration is an act of administering chemical substances through injection methods or other methods, which are given to perpetrators who have been convicted of violence or threats of violence that force children to intercourse with himself or with others, resulting in the victim of more than one person, resulting in severe injuries, mental disorders, sexually transmitted diseases, loss or disruption of reproductive organs, death, to suppress excessive sexual desire, accompanied by rehabilitation.

Furthermore, in response to the many phenomena of sexual violence (rape) against girls, President Jokowi on May 25, 2016 then signed the Government Regulation Replacement Law No. 1 of 2016 on the Second Amendment to Law No. 23 Year 2002 on Child Protection. The Replacement Government Regulation of Law No. 1 of 2016 was later passed into Law No. 17 of 2016 dated November 9, 2016 concerning the Determination of Perpu No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection Into Law, which regulates the enforcement of punishment for perpetrators of sexual crimes against children, namely the death penalty, life imprisonment, and a maximum of 20 years in prison and additional criminal charges in the form of identity announcement of the perpetrator. Furthermore, perpetrators can also be subject to actions in the form of chemical castration and electronic detection installation. Long before Indonesia imposed the sanctions on castration, some countries had imposed castration sanctions against perpetrators of child sexual crimes, but what was of concern was the enforcement of castration sanctions in the United States. The United States legal system is a federally administered legal system. Furthermore, the federal system is a system of government and law in which the national government is responsible for the power of states, provinces, or territories within certain boundaries each with its own rights. The United States is a federal state that fully pursues its federalism in earnest.

Then a question arises, what is the purpose of the sanction of this castration crime created? The purpose of the criminal sanction of castration is actually the same as the purpose of the law of creating what to do and what should not be done. The target of the law to be targeted is not only the person who is manifestly acting against the law, but the act that may be going on, and to the equipment of the state to act according to the law. This system of law works as a form of law enforcement.

Moreover, the issue is the basis of the philosophy of the nation and the State of Indonesia, is it contrary to the sanctions of castration crimes? Indonesia is a country of laws. As a country based on law, all joints of life in society, nation and state must be based on legal norms, because the law should be used as a way out in solving problems related to individuals and groups. Very different from the United States which has fundamentals of written law, it is the constitution of the United States and the constitution of each state. It became one of the sources of United States criminal law. Both federal and state constitutions establish and limit the power of the government, and these two constitutions deal with the formation and conduct of courts dealing with criminal and civil cases. Both constitutions are the source of criminal law that form the framework for the entire American criminal justice system. But both countries, Indonesia and the United States, have imposed sanctions on chemical castration, aimed at providing legal protection for the children of their country's successors.

The United States and a number of states have enacted chemical castration laws for perpetrators of sexual violence as well as pedophiles. California was the first state to implement a chemical castration law in 1996, when it made the procedure a probationary period for perpetrators. Currently, a number of states follow California including Montana, Iowa, Wisconsin, Louisiana, Oregon, and Florida. A number of states have gone further than California in adopting such laws. California requires perpetrators to undergo chemical castration if they commit multiple sexual crimes against victims under the age of thirteen. In addition the states of Iowa, Louisiana, California and Florida allow perpetrators not to be in chemical castration laws if they voluntarily undergo physical castration. While the state of Texas gave the decision to undergo physical castration as a condition of release and did not offer chemical castration as a choice the states have realized that more than just imprisonment is necessary to prevent perpetrators and pedophiles from repeating crimes, most of them realize that chemical castration is the most appropriate way out.

Criminal law policy in the case of criminal acts of sexual violence against children is to provide acts of chemical castration as a legal effort to provide a deterrent effect for perpetrators. Castration is also called emasculates a surgical procedure or using chemicals that aim to eliminate the function of the testicles in males or ovarian function in females and castration can be done both in animals and humans. Castration can be done physically, in addition castration can be done chemically i.e. technically. Chemical castration is done by inserting antiandrogen chemicals, either through pills or injections into a person's body to weaken testosterone hormone. Simply put, the chemicals that are incorporated into the body will reduce and even eliminate libido or sexual desire. Based on the background there are 3 questions that will be answered:

1. How is the positive law governing the criminal sanctions of chemical castration for perpetrators of child sexual abuse in Indonesia and in the United States?
2. What is the process of executing chemical castration criminal sanctions against perpetrators of child sexual abuse in Indonesia and the United States?
3. How is the comparative juridical analysis of the enforcement of chemical castration sanctions in Indonesia and the United States?

The objectives to be obtained from this study are as follows:

1. To analyze and convey about the positive laws governing the criminal sanctions of chemical castration for perpetrators of child sexual abuse in Indonesia and in the United States.
2. To analyze and compare the execution process of chemical castration criminal sanctions against perpetrators of child sexual abuse in Indonesia and the United States.
3. To analyze comparative juridical chemical castration sanctions provisions in Indonesia and the United States.

B. RESULT: POSITIVE LAW GOVERNING CHEMICAL CASTRATION CRIMINAL SANCTIONS FOR PERPETRATORS OF CHILD SEXUAL ABUSE IN INDONESIA AND IN THE UNITED STATES

Castration or often also called emasculate is a surgical procedure and or using chemicals aimed at eliminating testicles in males or ovarian function in females. Castration can be done in both animals and humans. Chemical castration is a method of castration by inserting chemicals in the form of antiandrogen into the human body through injections or capsules taken. This antiandrogen will later serve to weaken the testosterone hormone that men have so that it will make the sexual desire reduced and will even disappear. There are at least two commonly used drugs, cyproterone acetate (CPA) commonly used for chemical castration throughout Europe. While medroxyprogesterone acetate (MPA) is a drug used in the United States.

Based on Article 2 paragraphs (1), (2) and (3) of Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children can be seen, what exactly is the act of chemical castration, states "the act of chemical castration is the act of installing electronic detection devices, and rehabilitation is imposed on perpetrators of sexual intercourse based on the verdict who have a fixed legal force, then the act of installing electronic detection and rehabilitation devices imposed on the perpetrators of obscene acts based on the court's decision that has a permanent legal force and the implementation of the court's decision as referred to in paragraphs (1) and (2) shall be carried out on the orders of the prosecutor after coordinating with the ministry that organizes government affairs in the field of health, the ministry that conducts government affairs in the field of law, and ministries that conduct government affairs in the social sector.

Then the execution of convicted related to the implementation of chemical castration, the installation of electronic detection devices, and rehabilitation is carried out by officers who have competence in their fields on the orders of prosecutors. And the act of chemical castration is imposed for a period of no longer than 2 (two) years.

Actually, chemical castration punishment is a type of punishment based on legal norms because the punishment has been legalized through the law then the issue of the Indonesian Doctors Association (IDI) refuses to be the executor of the implementation of chemical castration punishment because the legislation stipulates that the executor is a prosecutor, not a doctor, the narrative becomes polemic in carrying out Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children, in addition there are no implementation instructions for doctors in the execution of chemical castration. Prosecutors also cannot carry out executions because they are outside their professional capacity.

1. Regulation on the Application of Chemical Castration Criminal Sanctions for Perpetrators of Sexual Violence Against Children in Indonesia.

Due to the increasing crimes against children, Mr. President Jokowi signed the Government Regulation Replacement Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection and subsequently the regulation was passed into Law No. 17 of 2016 in the hope that the change can provide deterrent effect punishment for perpetrators of sexual violence to children by adding chemical castration sanctions in it.

Efforts to combat sexual crimes against children now rely on the effectiveness of chemical castration sanctions, so that the punishment of chemical castration is considered as a necessity in the punishment for perpetrators of crimes of sexual violence to children, article that regulates the punishment of chemical castration namely Article 81 paragraph Article 7 of Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection states "that the perpetrators as referred to in paragraph 4 and paragraph 5 may be subject to acts of chemical castration and installation of electronic devices", referred to in paragraph 4, namely "that there is an addition of 1/3 criminal threat to perpetrators who have committed sexual acts against children", whereas what is meant in paragraph 5 is "that if the perpetrator causes more than one victim, inflicts severe injuries, mental disorders, infectious diseases, causes disruption or loss of reproductive organ function, death, then the perpetrator can be threatened with death penalty, life imprisonment, the shortest sentence of 10 (ten) years and a maximum of 20 (twenty) years. Then in order to carry out the sanctions of castration crimes, Government Regulation No. 70 of 2020 procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children in Article 1 number 2 states that the act of chemical castration is an act of administering chemical substances through injection methods and other methods, given to perpetrators who have been convicted of violence or threats of violence that force a child to have intercourse with himself or with others, resulting in the victim of more than one person, resulting in severe injuries, mental disorders, infectious sexual diseases, loss or disruption of reproductive organs, death, to suppress excessive sexual desire, accompanied by rehabilitation.

Then Article 1 paragraph (2) Government Regulation No. 70 of 2020 concerning Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children, states that the act of chemical castration is an act of administering chemical substances through injection methods or other methods to perpetrators of sexual violence who have been convicted of committing violence or threats to children to have sex with him/her or with others, resulting in more than one victim, resulting in severe injury, mental disorders, sexually transmitted diseases, loss or disruption of reproductive organs, death, to suppress excessive sexual desire, accompanied by rehabilitation. In the case of the authorities to carry out this action as stipulated in Article 3, namely competent officers in their fields according to the orders of the prosecutor. The period of validity of chemical castration penalty is a maximum of 2 (two) years, as stipulated in Article 5.

2. Regulation on the Application of Chemical Castration Criminal Sanctions for Perpetrators of Child Sexual Abuse in the United States

Discussing the regulation of chemical castration criminal sanctions in the United States related to the legal system embraced in the country, the legal system in the United States is a federally held legal system. Furthermore, the federal system is a system of government and law in which the national government is responsible for the power of states, provinces, or territories within certain boundaries each with its own rights. Then the United States was a federal state that fully pursued its federalism in earnest. The national government is based in Washington, and has fifty states. States have their own governments and their own capitals, and they have sovereignty over their territory, which is with full power. All states have different constitutions than federal constitutions. President Clinton initially changed the Jacob Wetterling Act by signing Megan's Law requiring every state under the United States to compile a list for perpetrators of sexual violence. States are required to disclose relevant information to the public about perpetrators who are in the state and compliance with such actions is considered so important that 15% of state federal funds are made dependent on similar laws in each state.

Regarding the application of castration sanctions in the United States not all of its states apply castration sanctions and California was the first state to impose this punishment for perpetrators namely in 1996, then the state of Florida imposed this punishment in 1997 based on that level of recidivism of child sexual abuse that resulted in a strong sentiment for the public to demand harsher punishment, the California Government took the step of drafting chemical castration in Assembly Bill 3339 so that it received a strong rejection from the American Civil Liberties Union stating that this punishment was cruel and unusual for violating the rights

of the perpetrator's privacy and Assembly Bill 3339 was passed by a vote in 1996 by California Governor Pete Wilson, and the law was enacted on January 1, 1996.

Castration in the United States itself has been a long debate since 1980 the injection of chemical liquids to perpetrators of child sexual crimes in the form of medroxyprogesterone acetate (MPA) is believed to lower testosterone levels which has implications for the decrease in sexual desire. It is the reason for the rejection by the Food and Drug Administration. The reason put forward by the Food and Drug Administration is to reduce this sexual desire, then the perpetrator of child sexual crimes should be injected chemical castration at a dose of 500 milligrams and given every week within a certain period of time to result in impotent perpetrators. According to this institution, there is no need to make perpetrators of child sexual crimes impotent, besides, injections of medroxyprogesterone acetate (MPA) can result in impaired function of reproductive organs in the perpetrators. Besides it will also cause more serious problems.

The Fourteenth Amendment of the United States guarantees that states will not revoke a person's right to life, liberty or property without due process, and the United States Supreme Court has interpreted the fourteenth amendment to include the right to individual freedom. This gives little issue when it comes to dropping an individual's decision to undergo chemical castration in the United States, as the procedure violates their fundamental right to have children, as well as the right to refuse medical care, both of which are protected under the United States fourteenth Amendment's right to privacy. However, because chemical castration is a mandatory condition of probation or parole, the verdict does not burden the rights of the perpetrator. The state has a legitimate interest in the safety of its children and chemical castration is the most correct way to limit the perpetrator's sexual attraction to children.

C. EXECUTION PROCESS OF CHEMICAL CASTRATION CRIMINAL SANCTIONS AGAINST PERPETRATORS OF CHILD SEXUAL ABUSE IN INDONESIA AND THE UNITED STATES

1. Execution Process of Chemical Castration Crimes in Indonesia

The execution of chemical castration crimes in Indonesia against perpetrators of child sexual crimes is carried out after a court ruling has a fixed legal force. This means that ordinary legal efforts such as appeals in the High Court and cassation in the Supreme Court have been passed by the convicted, while judicial review efforts cannot suspend executions, as they are extraordinary legal efforts.

The definition of chemical castration is the administration of chemical substances through injection or other methods, which are done to perpetrators who have been convicted of violence or threats of violence forcing the child to have intercourse with him or with others, thus causing the victim more than 1 (one) person, resulting in severe injuries, mental disorders, sexually transmitted diseases, loss or disruption of reproductive organs, death, to suppress excessive sexual desire, accompanied by rehabilitation.

The implementation of the execution of castration crimes is guided by Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children, because it is the implementing regulation of the legislation contained in Law No. 17 of 2016 on the Establishment of Government Regulations Replacement Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection that has been passed into law on November 9, 2016. The legal norm of Article that regulates the punishment of chemical castration, namely Article 81 paragraph 7 of Law No. 17 of 2016 concerning the Establishment of Government Regulation Replacement Law No. 1 of 2016 concerning the Second amendment to Law No. 23 of 2002 on Child Protection states "that against the perpetrators as referred to in paragraphs 4 and 5 may be subject to acts in the form of chemical castration and installation of electronic detection devices", then made clear in paragraph 4 that "there is an addition of 1/3 criminal threat to perpetrators who have committed sexual acts against children".

Meanwhile, in paragraph 5, "that if the perpetrator causes more than one victim, inflicts severe injuries, mental disorders, infectious diseases, causes disruption or loss of reproductive organ function, death, then the perpetrator can be threatened with death penalty, life imprisonment, or shortest sentence at least 10 (ten) years and a maximum of 20 (twenty) years. Actually, the process of chemical castration can be through the administration of pills or injections of anti-androgen hormones to the convicted child sexual crimes and castration can chemically damage and even gnaw the function of organs i.e. reduction of muscle function, osteoporosis, can even reduce the number of red blood cells, and interfere with the function of other cognitive organs. According to this, so far there is no data that supports if the application of castration chemically can have a deterrent effect more than the existing punishment.

Actually, chemical castration is not done by amputating the testicles, but by inserting antiandrogen chemicals into a person's body so that the production of testosterone hormone in their body is reduced. The end result is the same as physical castration, i.e. eliminating libido or sexual desire or erectile ability. Chemical castration punishment causes negative effects in the form of premature aging on the body. Antiandrogen fluid is known to reduce bone density so that the risk of bone loss or osteoporosis increases. Antiandrogen also reduces muscle mass thus increasing the body's chances of accumulating fat which in turn increases the risk of heart and vascular disease. Unlike physical castration, chemical castration is not permanent, so if the administration of antiandrogen substances is stopped, then the effect will also stop, and the rapist will regain his sexual function, both in the form of sexual desire, and erectile ability.

The execution process of the implementation of the verdict that has the force of law remains related to the sanctions of chemical castration as in Article 6 of Government Regulation No. 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual

Violence Against Children explaining the stages of chemical castration carried out through three stages, namely clinical assessment, conclusion, and implementation. Clinical assessment is regulated. Then continued in Article 7 Government Regulation No. 70 of 2020 on Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children explained that this stage is carried out by a competent team in the field of medical and psychiatry, and at the stage of clinical assessment conducted clinical and psychiatric interviews, physical examinations, and supporting examinations. The initial stage before the implementation of clinical assessment, namely the ministry in the field of legal implementation delivers notice to prosecutors, conducted no later than 9 (nine) months before the convicted finishes serving the principal criminal, within 7 (seven) working days after the notification, the prosecutor then coordinates with the ministry in the field of health to conduct a clinical assessment, then the clinical assessment begins no later than 7 (seven) working days after the coordination. The conclusion stage as stipulated in Article 8 contains the conclusion of the clinical assessment stage to ascertain whether the perpetrator is fit or not to be given a chemical castration penalty, and this conclusion must be submitted to the prosecutor no later than 14 (fourteen) days. Furthermore, the implementation process as stipulated in Article 9 of Government Regulation No. 70 of 2020, the implementation of chemical castration is carried out after the conclusion stage states that the perpetrator deserves to be given a punishment of chemical castration, then the prosecutor orders the doctor to carry out chemical castration, the implementation of chemical castration is carried out after the convicted finishes serving the principal criminal sentence.

Then the norm of Article 10 of Government Regulation No. 70 of 2020 concerning Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children states "if the perpetrator is not eligible to be given a castration penalty then it will be postponed for 6 (six) months, and during that time will continue to be conducted a clinical assessment and re-conclusion to ascertain whether it is appropriate or not, but if the perpetrator remains unfit to be given a chemical castration penalty, then the prosecutor informs the court that decides the first-degree case in writing by attaching the results of reassessment and re-conclusion. The punishment of chemical castration has been legalized through the law. The problem is, the Indonesian Doctors Association (IDI) refuses to be the executor of the execution of chemical castration punishment because the legislation stipulates that the executors are prosecutors, not doctors. In addition, there are no implementation instructions for doctors in the execution of chemical castration. Prosecutors were also unable to carry out the execution because it was outside its professional capacity.

2. Execution Process of Chemical Castration Crimes in the United States

There is no significant difference in the execution of chemical castration crimes in Indonesia and in the United States. The United States and some of its states have a common legal basis, in carrying out chemical castration executions against convicted child sexual crimes committed by giving or injecting Medroxyprogesterone Acetate (MPA) to perpetrators or convicts, although principal punishment or imprisonment has been applied to perpetrators, courts can also impose chemical castration sanctions. This means that chemical castration sanctions cannot eliminate other penalties. While physical castration is done by dissecting both testicles to eliminate the hormone testosterone as a controller of sexual desire, but physical castration is an alternative if chemical castration fails.

In fact, in the United States, pedophiles undergo a combination of counseling and chemical castration for pedophilia. In addition to the effectiveness of chemical castration, it is significantly cheaper than the cost of keeping the perpetrators as well as pedophiles in prisons and hospitals. Then one of the interesting things is the State of Florida applies chemical castration sanctions and surgical or physical castration while the other states mostly only apply one of them, chemical castration or physical castration only.

Chemical castration has been conducted since 1940 in the United States with the use of anti-androgens to lower levels of sexually harmful male testosterone. About two decades later Dr. John Money became the first person in the United States to administer the anti-androgen drug Medroxyprogesterone Acetate or hereinafter referred to as MPA against pedophiles. While other chemical agents have been given to perpetrators of such crimes worldwide Medroxyprogesterone Acetate (MPA) is the most common drug administered in the United States for chemical castration purposes.

In addition to the administration of Medroxyprogesterone Acetate (MPA) chemical castration can also be given through injections of the drug Depo Provera used by many women as a hormonal contraceptive. The reason why different effects are obtained in men undergoing such treatments is that women only receive 150 mg of the drug every 3 months. Sex offenders receive this drug every week, usually in higher doses. Medroxyprogesterone Acetate (MPA) may reduce the sexual desire levels of the perpetrator.

Medroxyprogesterone Acetate (MPA) is administered via weekly intramuscular injections of 100 to 1,000 milligrams of the drug, depending on the needs of the perpetrator. Medroxyprogesterone Acetate (MPA) inhibits the release of follicle stimulating hormones and luteinizing hormones from the anterior pituitary gland of the brain. The pituitary gland is a very important gland for the human body, serving as a regulator of the release of hormones.

The effect is a reduction in the level of testosterone in the blood of the perpetrator within one to two weeks, this low testosterone level greatly lowers the sexual drive of the perpetrator. The perpetrator will then temporarily experience impotence, when the drug is in full effect there is a decrease in orgasm, sperm production, sexual frustration, frequency as well as satisfaction of masturbation. One of the most interesting aspects of chemical castration is that the perpetrator is made calmer and more responsive. These injections suppress the perpetrator's sexual drive and sexual desire and make it easier for the patient to concentrate on therapy, control his behavior, and prevent relapse. If the perpetrator still has sexual attraction to children after the treatment is stopped, then it is likely that the perpetrator will be given an injection of Medroxyprogesterone Acetate (MPA) for the rest of his life.

Injections of Medroxyprogesterone Acetate (MPA) actually allow the perpetrator to be released from detention and even become a member of the public. A perpetrator who underwent injections of Medroxyprogesterone Acetate (MPA) stated that he no longer had a sex drive in him. The perpetrator is now trying to take part in many ways because he has more hope that the perpetrator will not get into trouble nor the crime. When comparing medroxyprogesterone Acetate (MPA) injections with all other treatments performed or experiments performed on perpetrators, chemical castration is clearly the least restrictive way to achieve the country's importance of protecting children from sexual assault. Therefore, regulations requiring convicted child molesters and pedophiles to undergo chemical castration do not violate the fourteenth amendment.

D. COMPARATIVE JURIDICAL ANALYSIS OF CHEMICAL CASTRATION SANCTIONS LAW ENFORCEMENT IN INDONESIA AND THE UNITED STATES

Comparing the United States with Indonesia certainly has the advantages and disadvantages of each country, but from the legal system can certainly be different, because the United States and all its states use the common law system as the legal system in the United Kingdom which is one of the main legal systems in the world.

Regarding a person accused of sexual crimes against a child or more in the United States any person accused of a crime who is threatened with a prison sentence of more than six months has a constitutional right to get a trial by jury, jury trials in several states are selected through registration using a form sent to a prospective jury to prequalify by asking a candidate to answer ten questions of citizenship, the ability of the disabled, the understanding of English, and whether they have the conditions or reasons for them to become a member of the jury and if they are deemed eligible, a summons will be issued. In contrast to Indonesia which uses the Continental European legal system or also often referred to as the civil law system that has the most important characteristic is codification, which indicates the judge is not bound to the president so that the law becomes a source of law especially so that the judicial system is inquisitorial.

Furthermore, the difference between the United States legal system and the civil law system in Indonesia is the main characteristic that becomes the basis of the civil law system that the law acquires binding power or provides a law certainty, because it is manifested in the rules in the form of laws and systematically arranged in codification so that these basic characteristics are embraced given that the main value that is the purpose of the law is law certainty. Law certainty can only be conveyed if human law actions in the association of life are governed by written law regulations. With the purpose of the law and based on the legal system embraced, judges can not freely create laws that have the power to bind the public. Judges only function to establish and interpret rules within the limits of their authority. The decision of a judge in a case only binds the litigants (doctrinal *res adjudicata*). Actually compared to the law system used by the United States, the law system embraced by Indonesia has a positive and negative aspect, which in terms of positivity is almost all aspects of people's lives and disputes that occur have been available law or the law is written, the impact of which resulted in cases arising can be solved easily, besides that with the availability of various types of written laws will guarantee more law certainty in the settlement process.

While the negative aspect or our defeat of the United States system is that many cases arising as a result of the progress of the times and human civilization, there is no law available, so this case cannot be resolved in court or written law at some point will be outdated due to its static nature. Therefore, the law system does not become dynamic and its application tends to be rigid because the duty of the judge is merely as a tool of the law.

Judges are like servants of the law who do not have the authority to interpret in order to obtain the value of justice. Actually there is a similarity of enforcement of castration sanctions in Indonesia based on Perpu No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection and the United States based on the Statute of the United States of America in 2018 is located on the basis of determining criminal acts that are for violent perpetrators, crime, or sexual offense, the type of chemical drug used is also the same anti-androgen namely medroxyprogesterone acetate (MPA), depoprovera, or depot medroxyprogesterone acetate (DMPA) which both serve as a decrease in sexual hormones.

Both provisions in Indonesia and the United States both include sanctions for acts that can be applied to perpetrators of violence, crimes, or sexual offenders. Both are also unable to abolish the basic criminal penalties or penalties that have been imposed before. Then together accompanied by surveillance and done repeatedly. While the difference from the provisions of chemical castration sanctions according to Perpu No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection and the United States Statute of 2018 is located at the age of victims and perpetrators. In Indonesia chemical castration sanctions are applied to adult perpetrators with child victims, while in the United States by adult or child abusers and victims are children and even adults. Then the sanctions of chemical castration in Indonesia are accompanied by the installation of electronic detection devices and rehabilitation while the United States does not. The last most striking difference from the application of chemical castration sanctions in these two countries is that Indonesia only applies chemical castration sanctions while the United States applies physical or surgical castration as an alternative to chemical castration.

1. Constraints on the Implementation of Chemical Castration Criminal Sanctions in Indonesia and the United States.

That to the execution of chemical castration against convicted child sexual crimes, The Indonesian Doctors Association (IDI) explained an action that will lead to a decrease in the production of testosterone hormone, so that the arousal of everyone to be castrated will decrease. In addition, the Indonesian Doctors Association (IDI) also expressed its refusal to be the executor of castration punishment for perpetrators of sexual crimes against children. This is according to IDI because the implementation of castration punishment by doctors is considered to violate the doctor's oath and the Indonesian Code of Medical Ethics. While in

the United States also can not be separated from the constraints in the application of sanctions for castration crimes against child abusers which also got a lot of challenges, medroxyprogesterone acetate (MPA now used in DMPA) the drug was never approved by the FDA for use as a treatment for child sexual perpetrator.

In some U.S. States such as Louisiana and Iowa have adopted castration as part of treatment and not punishment. In the United States itself has been a long debate about this castration since 1980 even far in the previous era of injecting chemical liquids to perpetrators of child sexual crimes in the form of medroxy, because progesterone acetate (MPA) is believed to lower the level of testosterone that has implications for the decrease in sexual desire of convicted child sexual crimes.

Should the administration of progesterone acetate (MPA) to child sexual offenders be rejected by The Food and Drug Administration, the reason presented by this institution is to reduce this sexual desire, then the perpetrator of child sexual crimes should be injected with chemical castration at a dose of 500 milligrams and given every week for a certain period of time to result in impotent perpetrator. Furthermore, according to this institution, there is no need to make perpetrators of child sexual crimes impotent, besides, injections due to progesterone acetate (MPA) can result in impaired function of reproductive organs in the perpetrators. Besides it will also cause more serious problems that are difficult to predict as the implications of circumcision due to progesterone acetate (MPA).

2. Effectiveness of The Application of Criminal Sanctions chemical castration in Tackling Sexual Crimes Against Children

There has been no implementation of court rulings that have the force of law in the execution of castration crimes, therefore the effectiveness of criminal sanctions castration can not be measured. While in America, 9 (Nine) states in this case including California, Florida, Oregon, Texas, and Washington apply castration penalties. According to the views of some circles, chemical castration sanctions are ineffective in tackling child sexual crimes and get a lot of resistance due to the use of medroxyprogesterone acetate (MPA, now used in DMPA) the drug was never approved by the FDA for use as a treatment for sexual perpetrators.

E. CONCLUSION

1. Positive laws governing the criminal sanctions of chemical castration for perpetrators of child sexual abuse in Indonesia and in the United States. In Indonesia based on Law No. 17 of 2016 concerning the Establishment of Government Regulation Replacement Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection Into Law, consideration of the issuance of Government Regulation Replacement Law No. 1 of 2016 concerning the Second Amendment of Law No. 23 of 2002 concerning Child Protection and the regulation of implementing the punishment of criminal acts contained in the Government No. 70 of 2020 on Procedures for The Implementation of Chemical Castration, Installation of Electronic Detection Equipment, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children. Whereas in the United States written rules are rarely found because the law system in the United States is anglosaxsen that results in the law does not need codification but when the legislative body of the United States or the state makes a law on the sanction of chemical castration crimes is referred to as "statute state", if implemented congress makes a kind of federal law, it is called the "Federal Statute" or "United States Statute" but when a city council or legislative body of a city including a municipality makes a law, it is called an "ordinance" but it is an endorsement, the law is in the judge to impose a penalty.
2. The process of executing chemical castration criminal sanctions against perpetrators of child sexual abuse in Indonesia and the United States. There is no striking difference between Indonesia and the United States and its states in carrying out the process of execution of chemical castration criminal sanctions against child sexual crimes namely (1) the implementation of chemical castration carried out after the conclusion as referred to in Article 8 states perpetrators of sexual intercourse deserve to be the subject of chemical castration, (2) within a period of no later than 7 (seven) working days from the receipt of the conclusion as referred to in letter a, the prosecutor instructs the doctor to carry out acts of chemical castration to the perpetrators of intercourse, (3) The implementation of chemical castration as referred to in letter b shall be carried out immediately after the convicted has finished serving the principal criminal, (4) The implementation of chemical castration shall be carried out in government-owned hospitals or designated regional hospitals, (5) the implementation of chemical castration shall be attended by prosecutors, representatives of ministries conducting government affairs in the field of law, ministries that conduct government affairs in the social sector, and the ministry that conducts government affairs in the field of health, (6) the implementation of chemical castration measures is outlined in the news of the event; and The prosecutor informs the victim or the victim's family that the chemical castration has been carried out.
3. Comparative juridical analysis of chemical castration sanctions law enforcement in Indonesia and the United States has its own advantages and disadvantages, but from the law system can certainly be different, because the United States and all its states use the common law system (anglosaxsen) while in Indonesia using the civil law system (continental Europe) in terms of comparison law enforcement. In Indonesia has constraints that is the rejection of the Indonesian Doctors Association as the executer of chemical castration while in the United States has the constraints of getting a lot of resistance due to the use of medroxyprogesterone acetate (MPA) because the drug was never approved by the FDA for use as a treatment for sexual perpetrators.

REFERENCES

- Abdul Manan, *Aspek-Aspek Pengubah Hukum*, Kencana, Jakarta, 2006.
- Amiruddin dan Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Edisi.Satu, Cetakan Ketujuh. Jakarta: Rajawali Pers,2013.
- Andi Hamzah, *Korupsi di Indonesia, Masalah dan Pemecahannya*, Jakarta : PT Gramedia, 1994.
- Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti: Bandung, 2005.
- _____, *Bunga rampai Kebijakan Hukum Pidana*, Cet.III, PT. Citra Bakti, Bandung, 2005.
- Bambang Sunggono, *Metodologi Penelitian Hukum (Suatu Pengantar)*, Cetakan IV, Jakarta: RajaGrafindo Persada, 2002.
- Bernard Arief Sidharta, “*Penelitian Hukum Normatif: Analisis Penelitian Filosofikal dan Dogmatikal*”, dalam Sulistyowati Irianto dan Shidarta (Editor), *Metode Penelitian Hukum Konstelasi dan Refleksi*, Cetakan kedua, Jakarta: Yayasan Pustaka Obor Indonesia, 2011.
- Burhan Ashshofa, *Metode Penelitian Hukum*, Jakarta, Rineka Cipta, 2010.
- Carl Joachim Friedrich. *Filsafat Hukum Perspektif Historis*, Bandung: Nuansa dan Nusamedia, 2004.
- Chemical Castration for Child Predators: Practical, Effective, and Constitutional*, *Chapman Law Review*, Volume 13, No. 1, Fall 2009.
- Ediwarman, *Monograf Metodologi Penelitian Hukum (Panduan Penulisan Tesis dan Disertasi)*, Yogyakarta: Genta Publishing, 2011.
- Erdianto Efendi . *Hukum Pidana Indonesia*. Refika Aditama. Bandung. 2011.
- Hadari Nawawi. *Metode Penelitian Bidang Sosial*, Yogyakarta: Universitas Gdjah Mada Press. 2003.
- Institute for Criminal Justice Reform ECPAT Indonesia Mappi FH UI Koalisi Perempuan Indonesia Aliansi 99 Tolak Perppu Kebiri, *Menguji Euforia Kebiri Catatan Kritis atas Rencana Kebijakan Kebiri (Chemical Castration) Bagi Pelaku Kejahatan Seksual Anak di Indonesia*, Jakarta, 2016
- Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Cetakan Keempat, Malang: Bayumedia Publishing, 2011.
- John Rawls. 1973. *A Theory of Justice*, London : Oxford University Press, 1973, yang sudah diterjemahkan dalam Bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo. 2006. *Teori Keadilan*, Yogyakarta: Pustaka Pelajar.
- Koerniatmanto Soetoprawiro, *Bukan Kapitalisme Bukan Sosialisme*, Yogyakarta: Kanisius, 2003.
- Leden Marpaung. *Asas Teori Praktik Hukum Pidana*. Sinar Grafika. Jakarta. 2012.
- Lexy J.Moleong, *Metodologi Penelitian Kualitatif*, Bandung : PT. Remaja Rosda Karya, 2004.
- Lilik Mulyadi. *Bunga Rapai Hukum Pidana Perspektif Teoritis dan Praktik*, PT. Alumni Bandung. 2008.
- Majjid Khadduri. *The Islamic Conception of Justice*, Baltimore and London: The Johns Hopkins University Press, 1984.
- M.Solly Lubis, *Filsafat dan Ilmu Penelitian*, Mandar Maju, Bandung, 1994.
- Muhamad Erwin. *Filsafat Hukum (Refleksi Kritis Terhadap Hukum Dan Hukum Indonesia Dalam Dimensi Ide Dan Aplikasi)*, Jakarta: PT. RajaGrafindo Persada.2015.
- Munir Fuady. *Dinamika Teori Hukum*, Jakarta: Ghalia Indonesia. 2007.
- Mukti Fajar N.D., dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, Pustaka Pelajar, 2010.
- Moleong Lexy J, *Metodologi Penelitian Kualitatif*, Remaja Rosdakarya, 1990.
- Niniek Suparni. “*Eksistensi Pidana Denda Dalam Sistem Pidana dan Pemidanaan*”. Sinar Grafika, Jakarta. 2007.
- Nurcholis Madjid. 1992. *Islam Kemanusiaan dan Kemoderenan, Doktrin dan Peradaban, Sebuah Telaah Kritis tentang Masalah Keimanan*, Cetakan kedua, Jakarta: Yayasan Wakaf Paramadina.
- Nuzul Qur’aini, *Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual* “ *Jurnal Konstitusi* 14, Nomor 1, tahun 2017.
- Peraturan Pemerintah Nomor 70 tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, dan Pengumuman Identitas Pelaku Kekerasan Seksual terhadap Anak.
- Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Surabaya, Kencana Penada Media Group, 2008.
- _____, *Penelitian Hukum (Edisi Revisi)*, Jakarta: Kencana Prenada Media, 2013.
- Rianto Adi, *Metode Penelitian Sosial dan Hukum*, Jakarta, Garanit, 2004,
- Ronny Hanitijo Soemito, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1990.
- Ronny Andri Prajitno, *Metode Penelitian Hukum dan Jurimetri*, Cetakan Keempat, Jakarta: Ghalia Indonesia, 2010.
- Ryan Cauley, “*Is Chemical Castration a Progressive or Primitive Punishment, Balls are in Your Court, Iowa Legislature*” *The Journal of Gender, Race and Justice*, Vol 493, 2014.
- Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti , Bandung, 2000.
- Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis*, Rajawali Press, Jakarta. 2008.
- Sayed Hassan Saadat, *A Review on Paraphilias*, International Journal of Medical Reviews, Volume 1, Issue 4, Autumn 2014.
- Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya Bakti, Bandung 1993.
- Sudiarto, *Mengumpulkan dan Membuka Kembali*, Rafika Aditama Press.
- Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1984.
- _____, *Pengantar Penelitian Hukum*, Cetakan Ketiga, Jakarta: UI-Press, 1986.
- _____, dan Sri Mamudji. 2003. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Cetakan Keenam. Jakarta: RadaGrafindo Persada.
- Sukarno Aburaera, Muhadar dan Maskun. *Filsafat Hukum (Teori Dan Praktek)*, Jakarta: Kencana Prenada Media Group. 2013.
- Theo Huijbers. *Filsafat Hukum Dalam Lintasan Sejarah*, Cet VIII, Yogyakarta: Kanisius. 1995.
- Teguh Prasetyo dan Abdul Halim Barakatullah. *Filsafat, Teori Dan Ilmu Hukum (Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat)*, Jakarta: PT. RajaGrafindo Persada. 2014.
- Undang-Undang Nomor 17 Tahun 2016 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Menjadi

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Wiranto Surakhmad, *Dasar dan Teknik Research*, Bandung: Transito, 1978.

Zainuddin Ali. *Metode Penelitian Hukum*. Edisi 1 (satu), Cetakan Pertama. Jakarta: Sinar Grafika, 2009.

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