

# THE IMPLEMENTATION OF CHEMICAL CASTRATION SANCTIONS AGAINST CONVICTS OF CHILD SEXUAL CRIMES IN INDONESIA BY DOCTORS

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## ABSTRACT

*The significant increase in the number of cases of sexual crimes against children in the last few decades has encouraged various countries in the world to enforce the proper rule of law. The chemical castration penalty as an additional sanction has been applied in Indonesia. Government regulations of implementing chemical castration sanction have appointed doctors to carry out this sanction on the convicts. It created controversy in its implementation that is not in accordance with the Indonesian Medical Practice Law and the Indonesian Medical Code of Ethics. This research is a normative study. It used secondary data. Analysis was conducted through a comparative approach. The researcher compared the laws of chemical castration in three countries to provide recommendations for establishing legal regulations that are collaborative, adaptive, reformative, and effective (C,A,R,E) for the appointment of doctors implementing chemical castration.*

**Keywords:** Chemical Castration, Indonesia, Medical Doctor

## INTRODUCTION

Various forms of crimes occur globally, including crimes against humanity that violate human rights and cause many victims that had made them experience physical and mental suffering and even lose their lives. Sexual crimes against children are a form of violence against children by committing acts or sexual harassment as a form of physical and psychological torture by asking children to forcibly engage in sexual activity by adult perpetrators, especially child and adolescent victims. Sexual crimes against children are serious crimes that violate human rights. It is committed by perpetrators who are immoral who have no conscience. Usually, they have psychological problems and become pedophiles (lovers of sex with children) due to the trauma of sexual torture as a child. They also have little understanding of low religious values, family disharmony, environmental factors, ease of accessing pornography from the internet, education level, and poverty (Rosyadi, 2016).

In October 2020, a report on data on the International Child Sexual Exploitation (ICSE, 2020) from the Criminal Police Organization (ICPO-Interpol) stated that there were 23,564 identified child victims and 10,752 child sexual offenders identified in sixty-four countries, I, [2]. World Health Organization had stated, quoted by the French News Agency in May 2020, that before the Covid-19 pandemic, a quarter of women in Europe and a third of children had experienced physical and sexual violence throughout their lives (WHO, 2021). Reports from various countries during the Covid-19 pandemic lockdown, sexual violence against children increased significantly. The European Union reported by Europol, as the law enforcement authority in the European Union, noted an increase in paedophile activity to exploit the exposure of children who use the internet during online schooling (Online Child Sexual Abuse, 2021).

In Indonesia, the number of cases of sexual violence against children continues to increase. There was a significant rise in cases of 58.7 % in 2020 compared to 2019. Based on data from The Ministry of Women's Empowerment and Child Protection Republic of Indonesia (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia), the number of sexual violence cases, from January to March 2021 out of a total of 3.354 cases of violence against children, has reached 1.068 cases (31.84%) (The Ministry of Women's Empowerment and the Child Protection Republic of Indonesia, 2021).

The sexual crime cases against children were very concerning to the world that encouraged various countries to implement appropriate penalties to reduce these crimes. Since the 20<sup>th</sup> centuries, many countries have implemented castration punishment. Denmark was the first European country to legalize castration sentence in the 20th century, which was initially performed acts surgery castration. However, the United States of America (USA) had practiced the castration on prisoners in the late 1800s (Scott & Holmberg, 2003). This action was criticized by many parties because it was considered to violate human rights with the result of many permanent side effects on the body and also psychologically to lead to depression and suicide (Stojanovski, 2011). Additional punishment for sexual offenders is Chemical Castration (CC) sanction which is considered more humane. It has been carried out since the 1940s for prisoners who had committed sexual offences in the USA. It used antiandrogen hormone, such as diethylstilbestrol. Meanwhile, Medroxyprogesterone Acetate (MPA) has been used since the 1960s (Stinneford, 2006).

Currently, thirty countries in the world legalize CC for convicted of sexual crimes against children. Indonesia was the second country in Asia that passed CC into Law Number 17 Of 2006. However, the Indonesian Government has passed the advanced regulation about the implementation of CC on child sexual offenders through Government Regulation Number 70 of 2009, which appoints doctors for applying CC. This appointment is not yet straightforward because there is no legal rule that explains the criteria for doctors who can carry out this sanction and appoint the executor yet. On the other hand, there are contradictions regarding doctors' appointment as criminal executors of CC by the prosecutors. Although several countries have enacted CC implementation, it has also raised controversy since it is against the Medical Code of Ethics if it is executed by medical experts (Soetedjo et al., 2018). There should be an arrangement regarding appointing the doctor who is in charge of and responsible for carrying out chemical castration, so the implementation will not conflict with the obligation of doctors in Indonesia, which is based on Law Number 29 of 2004 regarding Medical Practice.

For this reason, it is necessary to establish a rule that has legal force under the hierarchy of Indonesian statutory regulations appointing doctors as executors of CC by comparing the laws on the implementation of this sanction in other countries.

## LITERATURE REVIEW

### Chemical Castration Sanction

Research in the USA showed that from 1980 to 2000, the proportion of perpetrators of sexual crimes increased by 300 per cent. The consideration that most perpetrators were released ten years later increases the importance of effective tools to prevent and protect communities so that crimes did not recur. The victims of sexual offenders have a characteristic predatory pattern, multiple victims, increasingly aggressive crimes, and mostly against boys, with repeated frequency (Stone et al., 2000).

Another research stated that many countries had conducted cognitive and behavioral treatment of perpetrators of serious sexual crimes in the last few decades. It was explained that Central Nervous System (CNS) dysfunction and psychiatric disabilities resulted in deficiencies in

controlling the desire. If only given prison sentences were very dangerous when the perpetrators were released later in the community, they did not receive adequate treatment to reduce the risk of relapse (Maletzky & Field, 2003).

Around 1944, some research in the USA used diethylstilbestrol (DES) to decrease testosterone, men's hormone. Since the 1960s, some researchers had used chemical treatment by prescribing antiandrogen hormone, which was referred to as Androgen Deprived Therapy (ADT), to treat sexual offenders. Some types of ADT used to treat sexual paraphilic disorders in Germany and commonly used in Europe are Cyproterone Acetate (CPA) and triptorelin. Another drug that has been used in Canada and South Korea is leuprolide, while MPA is a contraceptive hormonal therapy widely used in the USA. In Australia, the antiandrogen hormone that is used is CPA and also Selective Serotonin Re-Uptake Inhibitor (SSRI) as an antidepressant drug (Scott & Holmberg, 2003) (Çöpür & Çöpür, 2020).

To date, about twenty-eight countries have enacted chemical castration as an additional punishment. It shall be a part of the sentence or to reduce the sentence. (See Table 1). Comparative analysis research showed three patterns of CC which are mandatory, discretionary, and voluntary. It is a voluntary CC if the convict gives consent or is a part of treatment or rehabilitation. It is discretionary if CC is determined as an open sentencing option by the judge. If CC is the court's order, so it is mandatory. The ruling mainly made based on the fact of committing repeated sexual offences (Tilemann, 2016). However, the application of CC to sexual offenders has some perspective that raises some issues such as a punishment, a treatment, and scientific research that creates a bioethical dilemma about autonomy, health, and their right to the sexuality of them (Maia et al., 2014).

<b>Table 1</b> <b>APPLICATION OF CHEMICAL CASTRATION SANCTION IN SEVERAL COUNTRIES</b>				
<b>Countries</b>	<b>Year</b>	<b>Punishment Criteria</b>	<b>Criminal Criteria</b>	<b>Victim Criteria</b>
Argentina	2010	Voluntary, reduction of sentences	Serious sexual offenders (rape)	No specific age
Australia				
- Queensland	2003, applied 2008	Voluntary; on release from prison	Serious sexual offenders, or sexual offenders with punishment > 7 year	< 18 years old
New South Wales	2006, applied 2017	Voluntary, condition of release from detention under a supervision order.	High-risk sexual offenders, >18 years old	< 16 years old
- Western Australia	2006	Mandatory; on release from prison	Dangerous sexual offenders	<18 years old
- Victoria	2006, applied 2019	Condition of parole	Offender likely to commit a relevant offence, > 21 years old	< 18 years old
Belgium	2016	Voluntary, paroled from prison	Repeat sexual offenders (recidivists)	No specific age
Canada	2006	Voluntary, condition of parole	Repeat sexual offenders (recidivists)	No specific age

Denmark	1967	Voluntary, conditions for early release from prison	Repeat sexual offenders (recidivists)	No specific age
England	2007	Voluntary	Repeat sexual offenders (recidivists)	No specific age
Estonia	2012	Voluntary as an alternative of imprisonment; precondition to be released on parole	Sexual offenders	No specific age
Finland	2009 (proposed)	Voluntary, an alternative of more extended imprisonment	Sexual offenders, >23 years old	No specific age
France	2005	Voluntary	Violent sexual offenders include child sexual offenders	No specific age
Germany	1969	Voluntary	Serious sexual offenders, >25 years old,	No specific age
Hungary	2020 (proposed)	Optional for the first conviction, mandatory for the second conviction	Serious sexual offenders include child sexual offenders	No specific age
Indonesia	2016	Mandatory, six months before release from prison	Repeat child sexual offenders	< 18 years old, More than one person, causing serious injuries, mental disorders, infectious diseases, disturbed or loss of reproductive function, and/or victims die
Israel	2010	Voluntary	Child sexual offenders	< 12 years old
Italy	2019 (proposed)	Voluntary, alternative of long imprisonment	Violent sexual offenders	No specific age
Kazakhstan	2018	Mandatory	Child sexual offenders	< 18 years old
Lithuania	2012			
Moldova	2012	Mandatory	Violent child sexual offenders	< 15 years old
New Zealand	2004	Voluntary	Child sexual offenders	< 16 years old
North Macedonia	2014	Voluntary: first conviction, on release from prison, reduced sentenced	Child sexual offenders	< 14 years old

		Mandatory: second conviction, recidivists		
Norway	2004	Voluntary	Serious sexual offenders (rape, sexual abuse, child sexual offence)	No specific age
Pakistan	2020	Mandatory	Child sexual offenders	< 12 years old
Poland	2009, applied 2010	Mandatory, after releasing from prison	Chid Sexual Offenders include rape of an immediate family	< 15 years old
Russia	2011	Mandatory	Child sexual offenders	< 14 years old
South Korea	2010, applied 2011	Mandatory, two months before release	Child sexual offenders, highly likely to repeat sex crime, ≥19 years old	< 16 years old
Sweden	2003, applied 2011	Voluntary	Sexual offenders, >15 years old	No specific age
Turkey	2016	Mandatory	Child sexual offenders	< 12 years old
Ukraine	2019		Child sexual offenders between 18 until 65 years old	< 14 years old
USA				
California	1996	Condition of parole for the first offence;  Mandatory for the second conviction	Child sexual offenders	< 12 years old
Florida	1997	mandatory for the second conviction	sexual battery	No specific age; child, serious physical injury, physically or mentally incompetent person
Iowa	2006	mandatory for the second conviction	serious sex offenders	≤ 12 years old
Montana	2006	condition of parole for the first offence; mandatory for the second conviction	specific sex offenders	≤ 15 years old
Oregon	2006	condition of parole; post-prison supervision	sexual offenders	No specific age
Wisconsin	2006	mandatory; release or parole after two- thirds of the sentence	serious child sex offender	< 13 years old (first-degree assault)  <16 years old (second-degree assault)

Louisiana	2006	condition of parole for the first offence; mandatory for the second conviction	specific sex offenders	< 12 years old, adult (second offence)
Alabama	2019	conditions of parole	sexual offenders > 21 years old	< 13 years old

## Legal Issues of Chemical Castration Sanction in Indonesia

The Criminal Code guides the provision of punishment for child sexual crimes perpetrators in Indonesia. In May 2016, the Indonesian Government passed Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 Year 2016 concerning the Second Amendment of Law Number 23 Year 2002 concerning Child Protection Law (L17/2016). Article 81(7) stated that "of the perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of chemical castration and the installation of electronic detectors." The additional punishment is applied to perpetrators of sexual crimes against children who have been convicted of committing violence or threats of sexual violence by having intercourse with the child with them or other people, causing more than one victims. The violence resulted in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and/ or the victim dies. In 2019, a child sex offender was sentenced to CC by the Surabaya High Court, Indonesia, after raping nine minors. Besides receiving a maximum sentence of 12 years in prison. This case has created some controversy about further technical implementation by the executor (CNNIndonesia, 2019).

The implementation of CC has recommended the imposition of a new sentence in response to a tremendous public demand for the heaviest punishment because the existing rules of criminal law and child protection are not optimal so that a way to control crimes of sexual violence against children is necessary. One of them is making the rule of law with a policy based on sociological consideration, hoping that it will become an effective rule (Mardiya, 2017).

On the other hand, in the course of establishing this legal rule, especially concerning the implementation of CC, which is considered inhuman and violates human rights, making it a punishment that is an attempt to revenge and is not effective in reducing cases of sexual crimes against children (Tunggal & Naibaho, 2020). The CC in L17/2016 is likened to a classical stream that is retributive and regressive and only focuses on the perpetrator's behavior but does not pay attention to the impact that is caused by the implementation of castration law. However, criminal law in Indonesia does not adhere to the classic attitude oriented towards behavior instead of not trying to correct the perpetrator. The applicable criminal law must still pay attention to the situation and give justice to the victims of sexual crime (Hasanah & Soponyono, 2018).

The legal issue arises regarding the executors of CC by using hormone injection, a medical intervention whose expertise competencies are under the authority of medical doctors. It has sparked controversy over the objection of the Indonesian Medical Association (Ikatan Dokter Indonesia), or IMA has issued an objection fatwa since the implementation of CC by doctors against the Indonesian Medical Code of Ethics. The fatwa states that "The reasons for the existence of the doctor profession in life are the real (*raison d'être*) is to help heal the sick, relieve pain and alleviate the suffering of his patients, and try to increase patient or family happiness.... Doctor oaths very much bind the medical profession in Indonesia that it cannot accept to act directly as a chemical castration executor.... Therefore, so as not included in legislation or article explanation, the doctor is the executor chemical castration" MKEK, 2016). Injection of antiandrogen hormones as a sanction violates the four principles in medical bioethics. It violates beneficence, non-maleficence, autonomy, and justice. It does not provide beneficence (for the

good of the patient), non-maleficence (not worsen the patient's condition), autonomy (respecting the patient's rights or the rights to self-determination), and justice (fairness in equal treatment for patients) (Beauchamp & Childress, 2001). Another reason, since it is a medical treatment, according to medical principle, it should be an evidence-based medicine by using a double-blind test to know the effectiveness of chemical treatment to sex offenders, which has not been conducted in Indonesia yet (Soetedjo et al., 2018). In several countries such as the USA, Germany, England, Canada, Denmark, France, Australia, Netherlands, and South Korea have already conducted some research using antiandrogen treatment to prove the effectiveness of CC to sexual offenders, including monitoring the adverse effects (Çöpür & Çöpür, 2020).

On December 7, 2020, the Indonesian Government passed Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installing Electronic Detection Devices, Rehabilitation, and Announcing The Perpetrators' identity Sexual Violence against Children (GR70/2020). Article 3 of the GR70/2020 states that "the implementation of chemical castration, the installation of electronic detection devices, and rehabilitation carries out by officers who have competence in their fields at the behest of the prosecutor".

Article 9b further mentioned that "the implementation as referred to in Article 6c shall be the following procedure: 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 orders the doctors to carry out the chemical castration act against the perpetrators of intercourse." Those statements refer to a doctor, but there is no further explanation about the type of authorized doctors with their particular expertise or specialization.

Apart from the Indonesian Medical Association (IMA) rejection, there was an opinion from a doctor who joined the Republic of Indonesia Police Unit (Kepolisian Republik Indonesia) that they were willing to carry out the procedure when ordered by law. It is based on the police's duties which must be carried out if there is already a legal provision from the Supreme Court (Maharani, 2016). Then, they stated that they refused to become executors of chemical castration because they prefer obeyed the IMA professional code of ethics (Rahma & Hantoro, 2019).

Article 6c GR70/2020 has already stated that the prosecutor instructs doctors to perform CC. But there are no further rules whether the prosecutor needs to propose a doctor with a particular specialist and his/her name who can perform CC. Furthermore, the implementation of this sanction contradicts the obligations of doctors of Indonesia that bounded by Law Number 29 of 2004 regarding Medical Practice (L29/2004). Article 51a states that "In carrying out medical practices, doctors or dentists provide medical services under professional standards and standard operating procedures as well as patient medical needs." Article 52 figures on patients' rights and obligations. It is stated that "In receiving services in a medical practice, patients have the right to obtain a complete explanation of the medical actions referred to in Article 45 paragraph (3)".

Further explanation in Article 45 paragraph (1) to (5) says that every medical action taken by a doctor on a patient must obtain written consent. The patient will receive a complete explanation, including the diagnosis and procedure for medical action, the purpose of the medical action taken, other alternative measures and risks, risks and complications that may occur, and prognosis for the action take. It is clearly stated that the doctor's obligation is to the patient and must provide informed consent before taking medical action.

In the case of CC implementation, which is also a medical action, doctors in Indonesia are bound by doctors' obligations in L29/ 2004. It is not clear whether doctors can position the sex crime inmates as patients. The debate regarding the Medical Code of Ethics among doctors by IMA has hampered the implementation of CC. These obstacles occur in the absence of doctors who want to perform chemical castration against perpetrators of sexual crimes against children. The implementation of chemical castration can be solved using medical bioethics as a bridge of argumentation between medical science, ethics, morals, and the discipline of law. In

addition, discussions and arguments between related organizations that pay attention to ethical, legal and social issues that arise as a result of the development of science, medicine, and biotechnology can open the possibility for doctors to perform CC sanction and answer discourses in terms of ethics, medicine and law (Tunggal & Naibaho, 2020).

## **Related Legal Theories of The appointment of Doctors**

Some legal theories can be used to discuss these legal issues. Although doctors in Indonesia carry out their duties are bound by L29/2004, but with the mandate of L17/2016 and GR 70/2020, doctors are legally required to carry out CC to convicts of sexual crimes against children.

The elements in the rule of law are the supremacy of law, equality before the law, and due process of law. Supremacy of law is the domination of legal regulations to oppose and eliminate arbitrariness or free or broad authority from the Government. Equality before the law is that all people from all groups have the same position in the law and are obliged to obey the same law as the ordinary law of the land implemented by a regular court. Due process of law guarantees human rights stated in the constitution will be performed in court. Human rights must be protected due to individual rights formulated and affirmed by the judiciary (Dicey, 1982).

On the other hand, it still needs an appropriate legal, regulatory mechanism for legal certainty. Forming legal rules are based on the main principle of legal certainty to create clarity on legal regulations. It becomes a guarantee that the law must be carried out in a good manner. Legal certainty is an effort to regulate law in legislation formulated by competent authorities. These rules have a juridical aspect that the law functions as a regulation must be obeyed. Legal certainty becomes a legal condition that is certainly because of the real power of the law. The existence of the principle of legal certainty is a form of protection for justice seekers against arbitrary actions to obtain something expected in the form of justice in certain situations (Mertokusumo, 1993).

## **Chemical Castration Laws in the USA**

United States of America has eight states that pass CC into law for sexual offenders (see Table 1). In 1996, the first state with ratified chemical castration law was California, California's Penal Code Section 645. By the law, the courts can order CC at the first crime of sexual offences committed against children under age 13 receiving MPA or other chemical treatment (ADT) before the prisoners are paroled. The recidivists on parole also receive treatment before parole. These convicts can choose surgical castration instead of chemical ones, one week before their release from the state prison or specific institution, they should receive MPA treatment. The period of MPA given depends on the Department of Corrections (DOC) determines and demonstrates to the Board of Prison that the treatment is no longer needed and can be stopped (California Code, 2011).

Florida had also ratified chemical castration law in 1997. Florida Statute S-794.0235 states that the court sentenced the convicted of sexual battery or the prior one stated in S-794.011 to undergo MPA treatment. Sexual battery is defined as penetration by oral, anal, or vaginal or union of the sexual organ of another person or the anal or vaginal with penetration by any other object. The court or discretion should specify the duration with the specific term of years of treatment. It may go up to the life of the convicts (Florida Statute, 2005). It is said that the court appoints a medical expert to determine whether the convict is proper for the treatment within 60 days after the conviction. The DOC provides the services to administer the treatment (Findlaw, n.d.).

The four states, California, Florida, Louisiana, and Iowa, allow sexual offenders to choose surgical castration as an option if they may undergo MPA treatment. Iowa and Louisiana require that the sex offenders be responsible for paying the costs associated with MPA treatment. Iowa, Montana, and Louisiana, same as Florida, have passed chemical castration law that was similar to California's law (Stinneford, 2006). Iowa Code S-903B.10 allows MPA treatment for crimes indecent contact to the sexual exploitation of a child. The DOC has to consult with the Board of Parole before the sex offenders undergo MPA treatment or equivalent. The treatment should begin before the parole or work release of serious sex offenders as a condition of release. The judicial district DOC establishes standards for the supervision of the treatment services during the release period and determines that the treatment is no longer necessary (Iowa Code, 2021).

Montana Code Ann. S-45-5-12 permits the court to convict sexual offenders at least three years older than the victim less than 16 years to undergo MPA, chemical equivalent, or other medically safe drug treatment. It will reduce sexual drive, sex fantasies, or both of the offenders that commit sexual harassment, rape, or incest against a child. If the offenders are acquitted of the treatment, they may voluntarily receive the treatment administered by the DOC or its agent paid by the DOC. A professional medical person who is also a state employee should not be forced to administer the chemical treatment. It should be administered one week before the convicts' release from prison and continued until the DOC determines that it is no longer needed. In Montana, the implementation of CC is carried out by state employees who are medical professionals, but if the employee refuses, then there should not be forced (Montana Code, 2017).

Louisiana's chemical castration law is entitled, Stat Ann. S-15:538. Under this law, the first conviction of sexual offenders against children under 12 years old or younger, which includes specific recurrence sexual offenders, have to receive a mental health evaluation and treatment plan before the eligibility for parole, probation, or suspension of sentence, or a reduction, but not for the serial offenders. The treatment plan includes MPA treatment or its chemical equivalent, the component of defined behavioural intervention for the appropriate sex offenders. The MPA treatment is ordered by the court or a qualified mental health professional and medical staff. It begins six weeks before their release and is carried out until it is determined no longer necessary. The state administers the MPA treatment through a licensed medical practitioner (Louisiana Statute, 2011).

Oregon Stat. Ann. S-144.625 is titled Hormone or Anti-Androgen Pilot Treatment Program. The DOC should establish a pilot treatment program for the appropriate convicts of a sexual offence for parole and post-prison surveillance. It is an annual program that takes 40 to 50 sex offenders to undergo MPA treatment to reduce the risk of recurrence after parole or post-prison surveillance. Then, The State Board of Parole and Post-Prison Supervision should require antiandrogen hormone treatment for all or part of parole supervision or post-prison as a condition of the release (Oregon Statute, 2011).

Under Wisconsin Stat. S- 304.06, a serious child sex offender undergoes antiandrogen or chemical equivalent treatment as a condition of parole and a condition of probation required by a parole commission or the Department of Correction. Another requirement is the court should order the DOC to draw up a chemical castration treatment plan after release before the court grants the petition for release from civil commitment under the Wisconsin Sexual Assault Persons Commitment Act. Based on both the parole and civil commitment arrangements, the decision of release should be independent of the judgment of undergoing the chemical treatment (Wisconsin Statute, 2021).

In Alabama's Law HB 379, the court shall order the sexual offenders who commit against children under 13 years old to undergo chemical castration treatment (MPA or chemical equivalent) as a condition of parole. It begins one month before his or her release from custody

of the DOC and receives the treatment until the court determines that it is no longer necessary. The court has to inform the effect and side effect before the administration of the treatment. The parolee should sign a written acknowledgement of the information and pay for the treatment cost (Alabama Law, 2019).

## Chemical Castration Law in Australia

In Australia, CC is not a specific punishment option that includes a punitive order made by the court. Such disciplinary charges are made exclusively because the person to be treated consents to the treatment. It appears that currently, no jurisdiction has a law that explicitly provides for CC as a sentencing option for a convicted person. In New South Wales, Western Australia, Queensland and the courts mandate the chemical castration for dangerous sexual offenders on release from prison. Otherwise, in Victoria, antiandrogen treatment can be made as a condition of parole by the Parole Board (Hall, 2014).

New South Wales (NSW) has legalized the law entitled "Crime (High-Risk Offenders) Act". In late 2015, the Government announced statutes that allow chemical castration as a sentencing option. It also appears that in at least some jurisdictions, judges may and do make orders relating to CC in their sentencing orders (New South Wales Act, 2017). Under this law, extended surveillance orders or temporary surveillance orders can direct sexual offenders to comply with conditions the Supreme Court deems appropriate, including, not limit to, directives requiring the sexual offenders to participate in treatment and rehabilitation programs (New South Wales Act, 2006). NSW Bar Association submitted to the Committee for the NSW report that antiandrogen treatments shall be used with the consent of the sexual offender as a condition of release from prison with a supervision order (New South Wales Act, 2006b). Furthermore, the convicted of sex offenders against children may voluntarily undergo the treatment under reforms introduced by the NSW government in 2017 (New South Wales Act, 2006c)

In 2006, Western Australia (WA) had legalized the "Dangerous Sexual Offenders Act". Under the law, the Director of Public Prosecutions (DPP) applies for a Continuous Detention Order (CDO) to the Supreme Court. The court orders sexual offenders to undergo the antiandrogen treatment based on the reports of examinations by two qualified experts. At least one of them has to be a psychiatrist named by the court. The sexual offenders are administered the treatment just before release from prison (Western Australia Act, 2006). The submission has been made by the Western Australian Department of Justice (Correctional Services) to assess the perpetrator properly suitability for drug administration. It also seeks medical doctors with the necessary expertise to prescribe drugs regularly, monitoring drug administration properly. It shall properly monitor side effects and health; funding and hiring medical doctors are appropriately trained by the Government if the Government will administer the whole system itself; and ethical considerations (Tilemann, 2016).

In 2003, Queensland legalized the law named "Dangerous Prisoners (Sexual Offenders) Act" that enabled a voluntary chemical castration program for the sexual offenders recommended by the psychiatrists who treat them. It is a similar regulation to Western Australia's law. The court orders the convicts to be examined by two psychiatrists named by the court to prepare independent reports. Queensland has a unique indeterminate detention scheme for sexual offenders, allowing the Attorney General to apply to the court to order continuing detention after a prison term (Queensland Act, 2003).

In Victoria, the chemical castration law is entitled by the "Serious Sex Offender Monitoring Act," released in 2005." Under the law, Adult Parole Board (APB) is authorized to direct that the appropriate sexual offenders get supervised and receive treatment or rehabilitation programs or other activities that must attend and participate by the offenders; also called Continuing Detention Order is ordered by the court. The court may have regarding the offender's

cooperation by preparing an assessment report by medical experts (psychiatrist, psychologist, or other health service provider of a kind prescribed for the purposes) (Sullivan et al., 2005). The law also states that psychiatrists, psychologists, or health service providers of a kind prescribed to make the assessment reports to APB. The court may order the antiandrogen treatment to serious sexual offenders, age over 21 years old was a condition of parole by the Parole Board (Victoria Act, 2006).

## **Chemical Castration Law in South Korea**

South Korea has passed chemical castration law entitled "South Korean Act on the Prevention and Treatment of Habitual Child Sex Offenders" since 2010 (Lee & Cho, 2013). Then, the title of the Act has changed into "The Act on Drug Treatment for Sex Offenders." South Korea became the first country in Asia that effectively implement CC to child sexual offenders in July 2011 (Cho, 2012). It is said that the court orders the treatment after determining the period of treatment, includes the case of imprisoned sex offenders. The subjects are sexual offenders aged 19 years old and above who commit sex crimes against children under 16 years old. The treatment should be medically verified, including not having severe physical side effects. Chemical castration is undergone within two months before the offender's release from prison. The treatment is given in a maximum of 15 years and may extend if necessary by the court (National Assembly of the Republic of Korea, 2010). Two agents of Androgen Deprived Therapy has been approved, which are CPA and leuprolide acetated. There was research in South Korea on prior detainees at the National Forensic Hospital under consideration for parole or probation as candidates for voluntary treatment. The study has shown that ADT effectively reduces sexual drive in Korean sexual offenders with minimal side effects (Koo et al., 2013).

## **RESEARCH METHOD**

The authors use normative legal research, which is carried out by examining secondary data library materials such as laws, legislation, and legal theory using comparative approaches of other chemical castration law and regulation in other countries. These countries are the USA (California, Florida, and Alabama), Australia, and South Korea, considering that the USA has been undergoing this rule of law for a long time. Australia is a close neighbour to Indonesia, which also has implemented CC, while South Korea is the same and the first country in Asia which has also legalized the chemical castration law.

The data analysis technique was to analyze legal materials with the content analysis. The researcher uses descriptive-prescriptive writing techniques with a detailed and systematic explanation to provide recommendations for legal arrangement about doctors' appointment to implement CC in Indonesia. This study has several limitations, including the deepening of the data, which may have deficiencies in understanding legal foreign languages. In addition, the differences in legal systems between countries may affect the technical rules of law established regarding the issues discussed in this legal research

## **RESULT AND DISCUSSION**

The mechanism for the appointment of a chemical castration agent in various countries varies according to their respective laws. A review of the implementation of chemical castration law in Victoria, Australia, states that the doctor's dual role under this law could affect the

therapeutic relationship. The treating doctor can be seen not as an independent doctor but as a monitoring, social control, and surveillance agent for prisoners undergoing the treatment.

Legal issues discussed in this study related to the absence of further regulation regarding the High Court or the Supreme Court in Indonesia may order competent doctors or medical experts to perform CC. Article 9 (b) GR70/2020 states that "Within a period of no later than seven working days from the receipt of the conclusion as referred to in letter a, the prosecutor orders the doctor to carry out the chemical castration treatment to the perpetrator of intercourse". This statement is not clear yet, because there is no rule in the law in Indonesia, including in Law Number 16 of 2004 regarding The Prosecution of The Republic of Indonesia that states concerning the duties and powers of a prosecutor, which he or she can give orders to other professions to carry out punitive sanctions. Therefore, the Indonesian Government should arrange a new regulation based on the hierarchy of laws and regulations in Indonesia as legal certainty.

### **The Collaborative, Adaptive, Reformatory and Effective Regulation**

Many countries have enacted chemical castration law to reduce repeat sexual crimes, especially against children and give better protection for the community. These countries have passed specific laws according to their legal system. Some of the technical regulation of implementing CC have already stated in the legislation. As in several states in the USA and Australia, it is stated in the laws that the court orders specific departments that have the authority to carry out CC by appointing certain doctors.

To reduce sexual crimes and to prevent recidivists, various countries have passed laws to provide them with appropriate penalties. In the USA, Australia, and South Korea, the laws relating to CC for sexual offenders showed that to order chemical castration, the courts must receive a recommendation from the relevant board agency or Department. It will report whether the prisoners of sexual crimes are eligible to undergo the punishment, including reports of assessment from medical experts. The court also orders or appoints a particular department to implement the execution that may involve a doctor who is the Department's employee, a state employee, or even any medical expert as the Department's agent (See table 2).

Chemical castration law in Indonesia, L17/2016, has stated that the implementation of chemical castration under regular supervision by the ministry administers the law, social and health. GR70/2020 also states that before the chemical castration is carried out, a clinical examination is carried out. The prosecutor delivers a notification and coordinates with the ministry that administers government affairs in the health sector to conduct a clinical assessment. A psychiatrist and another medical specialist also perform this examination to assess the eligibility of the convicts of child sex crimes to undergo CC.

These facts have shown that to implement CC; it should be a collaborative rule. GR 70/2020 states that the prosecutor orders the doctor to perform the chemical castration treatment. So, there has to be another regulation that states the prosecutor should determine the doctors' competency or medical specialist. In this case, the prosecutor must propose to the court the names of doctors obtained after consulting with related collegiate of medical specialist in Indonesia who has the authority or clinical competence to administer anti androgen hormone injections, including monitoring the drug reactions arise. It also shall state that if the appointed medical specialist is unable to implement the provision, it can be delegated to another specialist listed in the list of doctors submitted by the prosecutor.

Another scheme for the new regulation is preferable if the appointed specialist doctor is a medical specialist who is an employee of the Attorney General's Office Hospital of the Republic of Indonesia (Rumah Sakit Umum Adhyaksa). It will become one of the referral hospitals for criminal suspects handled by the Attorney General's Office and other law enforcers.

It will also be easier to facilitate the bureaucracy of administering the medical procedures, but this is possible if a child sex offender prisoner is imprisoned in the capital's prison. Article 9 (d) GR70/2020 states that the chemical castration is carried out at a government hospital or a designated regional hospital. It will be more effective that the Indonesian Government, through the Ministry of Law and Human Rights, the Attorney General, in coordination with the Ministry of Health, and related collegiate of medical specialist, compile a certified training program for doctors implementing CC.

In carrying out medical practice, doctors in Indonesia are bound by L29/2004, which states the obligation to patients. There is no regulation regarding the implementation of punitive sanctions in the form of medical intervention. Therefore, the Indonesian Government should arrange an adaptive rule that authorizes certain doctors who perform CC as a new regulation. It shall base on the hierarchy of the formation of laws and regulations in Indonesia as legal certainty. This new regulation must comply with the rules in Law Number 12 of 2011 concerning The Formation of Laws and Regulation, below the Government Rules. The rules shall be stated in the form of Supreme Court Regulation. It is in accordance with the primary task and function of the Supreme Court in Indonesia, namely to be able to regulate further the matters necessary for the smooth running of the judiciary if there are things that are not sufficiently regulated as a complement to fill the necessary legal gaps for the smooth running of the judiciary. It is stated in Article 79 of Law Number 14 of 1985 regarding The Supreme Court.

The chemical castration implementation is a part of a reformative regulation that using medical competency to execute child sex offenders from repeating their crimes in Indonesia. This regulation should state that a team that consists of the Ministry of Law and Human Rights, the Ministry of Health, and related Collegiate of Medical Specialist (Urology, Internist, Psychiatry) must be established. They will formulate guidelines for implementing chemical castration that uses the antiandrogen treatment for child sex crime convicts in Indonesia. The guideline should contain the procedure of performing chemical castration. It should contain the type of drug used, the dosage, the delivery technique, and how to monitor the effect of the chemical castration treatment. The convicts may not get the informed consent of the treatment because it is a mandatory punishment. For example, in California, USA, although CC is mandatory for a second conviction, the court should inform the prisoner about the effects and side effects of CC. The prisoner should acknowledge receipt of the information, but it is not as consent.

One of the concerns that arise if there is no clarity on the procedure, then an unexpected effect occurs and endangers the prisoner's life whether it will cause the doctor implementing CC to be sanctioned. It should also be written in the new technical regulations that there should not be any sanction to the doctor who has carried out the CC procedure according to the guidelines. It means that if an unexpected side effect occurs, there is no sanction imposed on the doctor according to the law he law based on carrying out statutory order. The technical regulation regarding the appointment of CC doctors with a clear context and the preparation of guidelines for the implementation of CC and ratified according to the rules for the formation of laws and regulations in Indonesia will provide legal certainty. It will be an effective regulation so that there will be no doubt for these doctors because it does not violate the law of Indonesian medical practice, L29/2004.

Compared to other countries that have enacted the CC law, most of them have carried out some research on sexual offenders to monitor the effectiveness of the treatment to avoid repeated sexual crimes. Indonesian Government needs to start a specific treatment program using antiandrogen treatment and psychotherapy, which is clinical research that can involve other sexual crime perpetrators who voluntarily participate while in prison. It will be easier to monitor the effectiveness of the program in controlling excessive and abnormal sexual desire. The medical researchers can provide feedback on the results of research that provide

recommendations on the effectiveness of sexual crime control measures in Indonesia. This specific program must also be legalized in a particular regulation.

Table 2

## THE COMPARISON OF SEVERAL COUNTRIES IN PERFORMING CHEMICAL CASTRATION BASED ON THE LAWS

Specification	Countries								
	Australia				USA			South Korea	Indonesia
	Queensland	New South Wales	Western Australia	Victoria	California	Florida	Alabama		
Law	Dangerous Prisoners (Sexual Offenders) Act 2003 (QLD)	Crimes (High-Risk Offenders Act) 2006 (NSW)	Australian Dangerous Sexual Offenders Act 2006 (WA)	Serious Sex Offender Monitoring Act 2005 (VIC)	California Penal Code S-645	Florida Stat. S - 794.0235	Alabama HB 379	Act on the Prevention and Treatment of Habitual Child Sex Offenders 2010	Law No. 17 of 2016; Government Regulation No.70 of 2020
Mechanism of implementing CC	Department of Justice (correctional service) selects the medical expert	The court orders CC, DOC's authority to administer CC	The court orders CC, intervention prescribed by DOC	The court orders CC, the Department of Justice's Secretary select the treating doctor	The court orders DOC; employee of DOC, no need a doctor and surgeon licensed	The court orders DOC to provide the medical expert	The court orders Department of Public Health; a bona fide employee	The court appoints the medical expert	Not clear, the prosecutor orders the doctors to implement CC
Medical Assessment	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes
Chemical Agent used	CPA, SSRI	CPA, SSRI	CPA, SSRI	CPA, SSRI	MPA	MPA	MPA	CPA, leuprolide acetate	Not clear
Duration of treatment	The court orders the period of CDO (treatment), first review after two years	Not exceed five years as specified in the supreme court's order	DPP may discontinue CDO (treatment), no specified time duration	Up to 15 years, if renewable, need subject to review	Until DOC demonstrates it is no longer necessary to Board of Prison Terms.	Specific term of years, or in the discretion of the court, up to the life of the defendant	Until the court determines no longer necessary	Maximum 15 years, maybe extended if necessary	Maximum 2 years
Informed consent	Yes	Yes	Informed: yes Consent: no	Yes	Informed: yes Consent: no	Informed: yes Consent: no	Informed: yes Consent: no	No	Not clear

## CONCLUSION

The formation of a technical legal rule for the appointment of a doctor as an executor of CC must be in accordance with the provisions of other regulations. It should be a collaborative CC regulation that involves various elements in making the rule. The prosecutor needs to propose a specific medical expert or medical specialist to CC to the court after coordinating with the relevant Collegiate Medical Specialist in Indonesia. It is recommended that the doctor, preferably the civil servant of the Attorney General Hospital of the Republic of Indonesia. Meanwhile, there should be formulated a National Guideline for the implementation and treatment procedures of CC against child sexual offenders, which compiled by the Team of the Indonesian Ministry of Health, Ministry of Law and Human Rights, Ministry of Social, Indonesian Medical Association, and related Specialist Collegiate Medical Doctor. The drafted regulations are adaptive (A) to the above statutory provisions that appoint doctors without violating the Indonesian Medical Practice Law, a Supreme Court Regulation. The content of the regulation for imposing CC is a reformative Regulation (R) using medical competence to prevent the child sex offenders from repeating their crimes. The imposition of CC by appointing competent medical experts based on the rule according to the hierarchy of constituting laws so that they have legal certainty is an Effective (E) regulation, which does not raise any doubt in its implementation. The rule of law for doctors' appointment to implement CC in Indonesia is a Collaborative, Adaptive, Reformatory, and Effective (C,A,R,E) regulation.

## ACKNOWLEDGEMENT

The authors would like to thank the people who supported the completion of this paper. There is also no conflict of interest in research and writing this article.

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