

Legal Certainty and Medical Ethics for Physicians in the Implementation of Chemical Castration Law

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Abstract

Chemical castration as an additional punishment for perpetrators of sexual violence against children has been regulated under Law No. 17 of 2016, further elaborated in Government Regulation No. 70 of 2020. However, its implementation creates a normative conflict between positive law and medical ethics codes. This study aims to analyze the ethical and legal standing of physicians implementing chemical castration, as well as their corresponding ethical and legal responsibilities. Using normative legal research with statutory, conceptual, and case approaches, this study finds that ethically, physician involvement as castration executors contradicts the principles of non-maleficence, beneficence, autonomy, and justice as enshrined in the Indonesian Medical Code of Ethics (KODEKI) and the Hippocratic Oath. Legally, there is a conflict between the obligations mandated by Government Regulation No. 70 of 2020 and the physician's function as a healthcare professional under Law No. 29 of 2004 on Medical Practice. The MKEK IDI Fatwa No. 1 of 2016 affirms the medical profession's rejection of such an executor role. The author concludes that physicians should be positioned as medical evaluation and rehabilitation experts rather than castration executors, and that regulatory harmonization involving the IDI, academics, and legislators is necessary to resolve existing normative conflicts.

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1. INTRODUCTION

Child protection in Indonesia has a strong constitutional basis, as stipulated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees every child's right to survival, growth, development, and protection from violence and discrimination. However, in reality, incidents of sexual violence against children continue to increase significantly from year to year, indicating that existing legal mechanisms are not yet capable of providing adequate deterrence.

In response to these conditions, the government issued Government Regulation in Lieu of Law (PERPU) Number 1 of 2016, which was later ratified as Law Number 17 of 2016 concerning Child Protection. This law introduced additional penalties in the form of chemical castration for perpetrators of sexual violence against children. The technical implementation procedures are further regulated through Government Regulation Number 70 of 2020.

Chemical castration is a procedure involving the administration of antiandrogens, specifically medroxyprogesterone acetate (MPA) and cyproterone acetate, to lower testosterone levels and thereby reduce the perpetrator's sexual drive. Unlike surgical castration, which is permanent, chemical castration is reversible, and its effects usually subside after treatment is discontinued.

This policy has sparked widespread debate, particularly within the medical profession. The Indonesian Medical Association (IDI), through its Medical Ethics Honorary Council (MKEK), issued a fatwa rejecting the involvement of doctors as executors of chemical castration, arguing that such an action violates the medical oath and the Indonesian Code of Medical Ethics (KODEKI). Meanwhile, the World Health Organization (WHO) and the National Commission on Human Rights (Komnas HAM) have also expressed objections to this procedure from a human rights perspective.

There is a fundamental conflict between the legal obligations imposed on doctors through Government Regulation No. 70/2020 and the ethical principles of the medical profession. This situation creates legal uncertainty for doctors and has the potential to create a legal vacuum if doctors refuse to perform chemical castration. The first chemical castration ruling in Indonesia, in the case of M. Aris in Mojokerto, demonstrates that this issue is not merely theoretical but is already being faced in practice.

Previous research has highlighted various aspects of this issue. Fahma (2021) analyzed chemical castration sanctions from the perspective of medical ethics and found them to conflict with the principles of autonomy, non-maleficence, and beneficence. Hidayatullah et al. (2022) examined the authority of doctors as executors and found that prosecutors delegated their authority without reservation, despite the Indonesian Doctors Association (IDI)'s objections. Azhar (2023) examined the existence of chemical castration sanctions against criminal purposes and identified various implementation challenges. Meanwhile, Adeline (2022) identified a legal vacuum resulting from doctors' objections.

Referring to this debate, this study aims to: (1) analyze the ethical and legal position of doctors who carry out chemical castration as an additional punishment for perpetrators of sexual violence against children; and (2) analyze the ethical and legal responsibilities of doctors who carry out chemical castration.

2. RESEARCH METHOD

This research is a normative legal research that examines legal norms in legislation, legal principles, legal theory, and legal doctrine. The approaches used include: (1) a statute approach by examining all regulations related to chemical castration, medical practice, and child protection; (2) a conceptual approach to examine the concept of legal certainty, medical professional ethics, and legal accountability; and (3) a case approach through a review of related court decisions.

The data used are secondary, consisting of primary legal materials (statutory regulations, MKEK IDI fatwas, KODEKI), secondary legal materials (books, journals, scientific articles), and tertiary legal materials (legal dictionaries, encyclopedias). The analysis is conducted qualitatively-prescriptively, using the principles of *lex superior derogat legi inferiori*, *lex posterior derogat legi priori*, and *lex specialis derogat legi generali* to analyze existing norm conflicts.

3. RESULTS AND DISCUSSION

3.1 Overview of Chemical Castration in the Indonesian Legal System

Chemical castration in the Indonesian legal system has a normative basis through Law Number 17 of 2016, specifically Article 81 paragraph (7), which allows for the imposition of chemical castration and the installation of electronic detection

devices for perpetrators of sexual violence against children. This provision is also emphasized in Article 81A, which regulates the implementation mechanism.

Medically, chemical castration works by suppressing testosterone production by Leydig cells in the testicles. Antiandrogen drugs accelerate the metabolism of natural testosterone and alter hormonal responses in the endocrine system. These effects include decreased libido, erectile dysfunction, and reduced aggressive sexual behavior. However, this procedure also has the potential for serious side effects, including decreased bone density (osteoporosis), decreased muscle mass, an increased risk of cardiovascular disease, impaired lipid and glucose metabolism, and psychological disorders such as depression.

Government Regulation Number 70 of 2020 regulates the implementation of chemical castration through three stages: a medical evaluation by a doctor appointed by the prosecutor, the preparation of a medical conclusion, and the implementation of the procedure. Chemical castration can only be applied to perpetrators suffering from pedophilia and is carried out after the convict has served his or her principal sentence.

3.2 Ethical Position of Doctors in the Implementation of Chemical Castration

Ethically, doctors face a fundamental dilemma when asked to perform chemical castration. The medical profession is inherently dedicated to maintaining health, curing disease, and preventing human suffering. Involvement in performing chemical castration potentially conflicts with the four bioethical principles that underpin the medical profession.

First, the principle of non-maleficence, or "do no harm." Chemical castration inherently causes physical and psychological harm to its subjects. Scientifically documented side effects demonstrate that this procedure is not medically neutral. The Hippocratic Oath explicitly prohibits physicians from performing any action that could endanger a person's life or well-being.

Second, the principle of beneficence requires that a doctor's actions benefit the patient. Chemical castration is intended as punishment, not therapy, so its primary purpose is not to improve the health or well-being of the convict. This directly violates the essence of the principle of beneficence.

Third, the principle of autonomy requires informed consent. Article 5 of the CODEKI (Indonesian Medical Code) stipulates that any medical action or advice that may weaken psychological or physical endurance must obtain the consent of the patient or their family and is given only for the benefit and well-being of the patient. In the context of chemical castration as a criminal offense, there is no valid informed consent from the convict because the action is based on a court decision, not medical approval.

Fourth, the principle of justice demands fair and equal treatment. The involvement of doctors in the criminal justice system has the potential to distort public perception of the medical profession as a healing-oriented profession.

The Indonesian Medical Association's Medical Ethics Honorary Council (MKEK) Fatwa Number 1 of 2016 emphasized that physicians should not perform or facilitate chemical castration, as it contradicts the primary purpose of the medical profession. The WHO and global health regulations also prohibit similar procedures. International medical professional organizations have consistently stated that physician involvement in the implementation of criminal acts that are harmful is contrary to the medical profession's identity.

3.3 Legal Position of Doctors in the Implementation of Chemical Castration

From a positive legal perspective, chemical castration enjoys considerable legitimacy through a hierarchy of laws and regulations. Law No. 17 of 2016, as the *lex specialis* for child protection, provides the basis for imposing chemical castration

sanctions, while Government Regulation No. 70 of 2020, as the implementing regulation, regulates the technical mechanisms for involving doctors.

However, the legal status of doctors in this context raises a number of significant legal issues. First, Article 1, number 2 of Law Number 29 of 2004 concerning Medical Practice defines medical practice as a series of activities performed by doctors on patients in the context of health care. Chemical castration is not part of health care, but rather a form of criminal execution. There is a normative vacuum regarding the status of medical action in this non-therapeutic context.

Second, the issue of criminal liability for doctors who refuse to perform chemical castration arises. Theoretically, refusing a lawful order from an authorized official could be linked to Article 216 of the Criminal Code or Article 353 of the New Criminal Code. However, to date, there are no regulations explicitly sanctioning doctors who refuse.

Third, there is a conflict of norms between Government Regulation No. 70 of 2020 and the Code of Ethics (KODEKI). Under the principle of *lex superior derogat legi inferiori*, laws have a higher status than codes of ethics. However, under the principle of *lex specialis derogat legi generali*, KODEKI, as a specific regulation for the medical profession, should receive special treatment in regulating medical procedures. This conflict creates unresolved legal uncertainty.

The case of M. Aris in Mojokerto, the first chemical castration ruling in Indonesia, demonstrated the complexity of implementing this provision. The lack of doctors willing to perform the sentence presents a significant obstacle to the implementation of court decisions, which has implications for legal certainty.

3.4 Legal Responsibilities of Doctors in the Implementation of Chemical Castration

The legal responsibility of doctors in the context of chemical castration can be analyzed from the perspective of Hans Kelsen's theory of legal responsibility, which distinguishes between individual, collective, fault-based, and absolute liability. Referring to Government Regulation No. 70 of 2020, the appointed doctor has individual responsibility for conducting medical evaluations, determining the fitness of the convict, implementing procedures according to medical standards, and post-procedure health monitoring.

In a criminal context, the implementation of court decisions falls under the authority of the prosecutor, as stipulated in Article 270 of the Criminal Procedure Code. The involvement of doctors is technical and medical, delegated by the prosecutor. According to the *Fautes de Services Theory*, if harm occurs during the execution process involving institutional mechanisms, responsibility may rest with the institution issuing the order, not solely with the executing doctor.

The issue of legal liability becomes more complex when serious medical side effects occur in the convict. The doctrine of medical malpractice requires doctors to act according to the professional standard of care. However, in the context of chemical castration, the applicable medical standard may differ from the punitive purpose of the action, creating ambiguity in determining liability.

3.5 Ethical Responsibilities of Doctors in the Implementation of Chemical Castration

Ethically, doctors remain bound by their professional oath and the CODEKI (National Code of Ethics) regardless of the context in which the procedure is performed. There are three fundamental forms of ethical conflict in the involvement of doctors as chemical castration executors.

First, it conflicts with the principle of autonomy due to the lack of informed consent from the convict. Medical procedures without valid consent are ethically fundamental violations of the patient's dignity and rights.

Second, it conflicts with the principle of non-maleficence because chemical castration causes side effects such as decreased muscle mass, osteoporosis, metabolic disorders, and even serious psychological disorders. Doctors who perform procedures that cause measurable harm without a therapeutic purpose may be considered in violation of this principle.

Third, the principle of beneficence conflicts because the action is not intended to improve the patient's health. Within a bioethical framework, the justification for invasive medical procedures is the therapeutic benefit to the patient, which is absent in the context of chemical castration as a crime.

The Indonesian Doctors Association (IDI)'s MKEK, through fatwa number 1 of 2016, explicitly stated that doctors may not act as executors or facilitators of chemical castration. This fatwa is ethically binding for IDI members and serves as a reference for enforcing discipline in the medical profession.

3.6 Analysis of Norm Conflict and Harmonization Solutions

Based on the above description, there is a clear normative conflict between Law No. 17 of 2016 and Government Regulation No. 70 of 2020 on the one hand, and the KODEKI (Indonesian Medical Association) decree, the MKEK Fatwa (Indonesian Doctors' Consultative Assembly) on the other, and Law No. 29 of 2004 concerning Medical Practice on the other. This conflict is not merely a technical difference, but touches on fundamental questions regarding the role and identity of the medical profession within the legal system.

Using the Dignified Justice approach developed by Teguh Prasetyo, the law must guarantee justice that humanizes individuals by balancing aspects of fairness, utility, and legal certainty. In this context, the goal of child protection through chemical castration deterrence must be balanced with the humanitarian values inherent in the medical profession and the basic rights of convicts.

The author believes that the most appropriate solution is to reposition the role of doctors from executors to medical consultants and rehabilitation workers. In this position, doctors are responsible for: (1) medical evaluation of the convict's suitability for chemical castration; (2) monitoring their health condition during the procedure; and (3) administering psychological and medical rehabilitation programs. The technical implementation of antiandrogen injections can be delegated to trained, non-physician health workers who are specifically qualified for this purpose.

Furthermore, comprehensive regulatory harmonization is needed. The development of sound legislation, as mandated by Article 5 of Law No. 12 of 2011, requires the involvement of all stakeholders, including the Indonesian Doctors Association (IDI), health law academics, the Ministry of Health, and the Ministry of Law and Human Rights. This harmonization must produce operational regulations that do not create conflicting norms and can be implemented without violating the integrity of the medical profession.

From a human rights perspective, the implementation of chemical castration also needs to be assessed for its compliance with the ICCPR and the Convention Against Torture, which Indonesia has ratified, considering the prohibition against cruel, inhuman, or degrading punishment as guaranteed in Article 28I paragraph (1) of the 1945 Constitution.

4. CONCLUSION

Based on the research results and discussion, the following conclusions can be drawn:

First, ethically, the involvement of doctors as executors of chemical castration violates the basic principles of medical bioethics, namely non-maleficence, beneficence, autonomy, and justice. Article 5 of the Indonesian Medical Association (KODEKI) and the Hippocratic Oath expressly prohibit actions that weaken physical or psychological conditions without informed consent and without therapeutic purpose. MKEK IDI Fatwa Number 1 of 2016 affirms the medical profession's official rejection of such executor roles.

Second, legally, there is a conflict between the obligations mandated by Government Regulation No. 70 of 2020 and the role of doctors as healthcare professionals under Law No. 29 of 2004 concerning Medical Practice. Chemical castration is not a therapeutic procedure and therefore falls outside the scope of legitimate medical practice. The refusal of doctors to perform castration creates a legal vacuum because there are no explicit provisions governing sanctions for doctors who refuse.

Third, doctors should be positioned as experts in medical evaluation, health monitoring, and rehabilitation, not as the primary executors of chemical castration. The government needs to immediately harmonize regulations by involving the Indonesian Doctors Association (IDI), academics, and lawmakers to resolve existing normative conflicts to achieve legal certainty and maintain the integrity of the medical profession.

5. SUGGESTION

Based on the above conclusions, the author recommends: (1) the government needs to immediately revise PP No. 70 of 2020 to clarify the role of doctors to be limited to medical evaluation and rehabilitation, not executors; (2) it is necessary to form special regulations that regulate trained non-physician health workers as technical implementers of antiandrogen injections; (3) IDI, the Ministry of Health, and the Ministry of Law and Human Rights need to form a cross-sector team to formulate harmonized operational guidelines; (4) it is necessary to conduct a comprehensive study on the effectiveness of chemical castration as a deterrent instrument based on empirical data; and (5) strengthening child protection programs through a more comprehensive rehabilitation and community education approach.

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