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CONTESTATION OF CHEMICAL CASTRATION PUNISHMENT FOR CHILD SEX OFFENDERS: CASE IN INDONESIA

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ABSTRACT

Children as national assets must receive significant concerns from their families, neighborhoods, and the state. Based on these circumstances, a variety of regulations are made, including the protection of children from sex offenders. Various arguments, both pro and contra, emerge in the regulation, which provides chemical castration punishment for child sex offenders. The objective of this article is to analyze the contesting of the chemical castration paradigm, both from theoretical and practical dimensions. It used a conceptual and legislative approach, through the analysis of several relevant books and articles as well as the opinions of qualified experts, which were then linked to one another. This paper argued that regardless of human rights perspectives, Indonesia's future which lies in its future generations must receive more considerable attention. Therefore, the limitation of the perpetrators' human rights should not be considered a human rights violation. Instead, this castration punishment protects the

perpetrators' human rights from a cruel retributive action from the victims' family.

Keywords: Contestation, chemical castration, sex offender, human rights violation, children protection.

INTRODUCTION

The Indonesian Government issued Law No. 17 of 2016 on the Ratification of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection for battling sexual violence on children (hereinafter referred to as Law on Child Protection of 2016). This normative rule was established since child sex violence has increased dramatically, threatening and endangering children's lives, causing harm to children's personal life and growth, and causing a feeling of unease, insecurity, and lack of compliance with the law. In some cases, minors were sexually assaulted, which prompted the enactment of this Law. For example, on April 2nd, 2016, Yuyun, a 14-year-old Junior High School female student, was raped and murdered by 14 men, and her body was thrown at a rubber plantation (Kwok, 2016); Enno Parinah, a Junior High School female student, was raped and murdered by three offenders (The Jakarta Post, 2016); and three kindergarten-aged boy students of Jakarta Intercultural School were raped by their teachers, Ferdinand Tjong and Neil Bantleman (Jenkins, 2016). When signing this regulation, President Joko Widodo stated that child sex violence is an exceptional act of criminality that requires extraordinary steps to discourage offenders and prevent sexual crime against children (Remarks of President of the Republic of Indonesia on Law on Child Protection of 2016 at the State Palace, Jakarta on 25 May 2016, n.d.). As a result, the Law on Child Protection of 2016 clearly states severe punishment, additional punishments, and other necessary measures for sexual assault offenders. The severe punishment consists of one to three years or more of jailtime, capital punishment, a life sentence, or a minimum of 10-year to a maximum of 20-year prison sentence (Law on Child Protection of 2016, v. 81 (5)). Meanwhile, the court is empowered to publicize the offenders' names, to use chemical castration, and to install electronic surveillance devices on them as a means of additional punishment. The controversies over the use of chemical castration as a means of punishment for sex offenders have emerged. The Institute for Criminal Justice Reform (ICJR), a

coalition of Indonesian non-governmental organizations, has opposed the use of chemical castration on child sex offenders (The Jakarta Post, 2015). Chemical castration, according to ICJR, violates human rights as enshrined in numerous international instruments, consisting of Torture Convention, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child, all of which have been ratified by Indonesia (ICJR, 2015).

Furthermore, a member of the House of Representatives of the Republic of Indonesia expressed opposition to chemical castration punishment. The member, who was Vice Speaker, claimed that the law ought not to be based on emotions; it should take into account citizens' rights granted by the Constitution, and it should not infringe on human rights (Kompas Cyber Media, 2015). The Indonesian Medical Association (IDI) has also turned down the proposal, confirming that its members will not conduct chemical castration because it is ineffective and goes against their ethical code (The Indonesian Medical Association, 2016, pt. 2.4). Furthermore, the Chairman of IDI claimed that it is medical doctors' responsibility to heal patients, not to punish them, as stated in the medical ethics code (ADY, 2016). Correspondingly, the Chairman of the Honorary Council of Medical Ethics in Indonesia claimed that a doctor who breaches the Hippocratic Oath and the code of conduct will have his/her license terminated (ADY, 2016). Despite oppositions from the Indonesian Human Rights National Commission, members of the House of Representatives, the Indonesian Medical Association, and non-governmental organizations (NGOs), Indonesia's Parliament eventually passed laws approving chemical castration on November 9th, 2016. The challenges of implementing chemical castration punishment in Indonesia become the topic of this article, which focuses on two contesting paradigms: pro-chemical castration and anti-chemical castration.

THE ORETICAL FRAMEWORK: INTERNATIONAL PRACTICE OF CASTRATION PUNISHMENT REGULATIONS

In the United States (US), nine states require sex offenders released into the society to undergo mandatory castration as part of their parole or probation supervision (Nair, 2016, p. 762). Texas is the only state that offers voluntary surgical castration as a treatment alternative (Texas Government Code Annotated § 501.061 & § 508.226, 2003). Neither chemical castration nor surgical castration are allowed in

California (California Penal Code § 645, 2003), Florida (Fla. Stat. Ann. § 794.011 & § 794.0235, 2002), Iowa (Iowa Code § 903B.1, 2003), and Louisiana (La. Adm. Code 22:I.337, 2000) (La. Rev. Stat. Ann. § 15:538, 2003). Only four states allow chemical castration to be used: Georgia (Ga. Stat. Ann. § 16-6-4, 2002 & § 42-9-44.2, 2002), Montana (Mont. Code Ann. § 45-5-512, 2002), Oregon (Ore. Rev. Stat. § 144.625, § 144.627, § 144.629, § 144.631, 2001), and Wisconsin (Wis. Stat. Ann. § 301.03, § 304.06, § 980.08, § 980.12, 2002). Denmark, Germany, Norway, Sweden, and Switzerland all use surgical or chemical castration in some manner (Druhm, 1997, p. 285).

Western Australia, Victoria, Queensland, and New South Wales are among the Australian states that have introduced voluntary chemical castration (Lai, 2014, p. 12). Under the Crimes (High-Risk Offenders) Act 2006 (The Crimes (Serious Sex Offenders) Act, 2006), by taking into account the probability of reoffending from psychiatric or psychological assessments, the Supreme Court of New South Wales can order high-risk sex predators to engage in chemical castration surgery as a treatment of an extended monitoring order (The Crimes (Serious Sex Offenders) Act, 2006, sec. 9). Sex offender program psychologists on Corrective Services of New South Wales conduct chemical castration under their supervision (New South Wales Government, 2014). Sex offenders are referred to the Justice Health department by psychologists, who then assess the offenders' suitability for chemical castration by a team of Justice Health clinicians (Lai, 2014, p. 13).

Indonesia Law

Based on the Law on Child Protection of 2016, Indonesian judges have the authority to order involuntary chemical castration as a treatment for someone who commits reoffending of violence or threatens to commit reoffending of violence by forcing a child under the age of 18 years to engage in sexual intimate interactions with him or others, or commits sexual crimes against more than one child, resulting in severe injury, mental illnesses, pathogenic illnesses, diminished or lost reproductive functions, and/or death of the child victim (Law on Child Protection of 2016, s. 81). Chemical castration is a supplementary medical action accompanying the initial sentence (temporary imprisonment) whose implementation is determined by the verdict (Law on Child Protection of 2016, s. 81 (8)).

Chemical castration will be enforced for a duration of two years after the prisoner has completed the initial sentence (Law on Child Protection of 2016, s. 81A (1)). It is regularly supervised by the government ministries with legal, social, and health portfolios (Law on Child Protection of 2016 s. 81A (2)). Following the implementation of chemical castration, rehabilitation is carried out. Furthermore, a Government Regulation will govern additional treatment protocols for chemical castration and recovery steps (Law on Child Protection of 2016, s. 81A (4)). According to this normative regulation, the chemical castration procedure in Indonesia is only obligatory for sexual crimes against children committed by a mature offender. This normative regulation has taken into effect since its enactment date on November 9th, 2016. Moreover, on December 7th, 2020, the Government Regulation No. 70 of 2020 on the Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of Identity of Perpetrators of Sexual Violence Against Children was published by the Government. Although in 2019, the regulation on its implementation had not yet been issued by the Government, the Mojokerto District Court ruled the first chemical castration in Indonesia to a perpetrator of sexual violence on May 2nd, 2019 (McCleery, 2019). The Mojokerto District Court judges' considerations to impose chemical castration as an additional punishment on the perpetrator was to curb the tendency (desire) of the perpetrator to commit acts related to sexual crimes against children and as a form of prevention so that sexual violence against children would not occur. On November 18th, 2019, the Surabaya District Court also sentenced a child sex offender to chemical castration (CNN Indonesia, 2019). As of this writing, those two were the only decisions that have applied chemical castration to sex offenders in Indonesia.

RESULTS AND DISCUSSION

CONTESTATION OF CHEMICAL CASTRATION: THE PUBLIC INTEREST VS. THE INTERESTS OF A SEX OFFENDER

The judicial system faces a difficult task in balancing the public interest (including child protection) and the rights of sex offenders (Pegg & Davies, 2016, p. 187). On the one side, the legal system

is obliged to prosecute those who breach others' rights in the public interest, particularly when there is a persistent threat (Basdekis-Jozsa et al., 2013, p. 313). A sexual predator, on the other side, has human rights to be treated equally, even though he or she violates the rights of others (Ward et al., 2007, p. 197). The penalty for a sexual offender is based on populist measures designed to alleviate public concerns about sexual offenses, yet it runs contrary to the government's larger community safety agenda (Matravers, 2013, p. xv). Therefore, in every edge of the world, these two paradigms are contradictory to each other, especially in the context of chemical castration.

Protection of the Public from Sexual Offenses

The phrase "sex offenders" refers to persons, whether adults or minors, boys or girls, of any age who have committed crimes as diverse as child sex assault, rape, indecent exposure, and possession or dissemination of pornographic materials depicting minors (Terry, n.d.). Sexual violence has negative consequences for individuals, families, and societies, not only in terms of psychological consequences but also in terms of economic impact (Kilmartin & Allison, 2007, p. 69). Property damage and loss, lost productivity, medical care, mental health treatment, and other treatment programs for victims are all examples of tangible economic costs (T. R. Miller, 1996, p. 4). Furthermore, intangible costs arise as a result of the victims' loss of quality of life, pain, and suffering (T. R. Miller, 1996, pp. 4–5). These costs will be borne in the short and long terms by offenders, crime victims, their families, and taxpayers (Loya, 2015, p. 2803).

Post-traumatic stress disorder (PTSD) (Kilpatrick et al., 1989, p. 200), fear, anxiety, depression, diminished self-esteem, sexual problems, social problems (Elliott et al., 2004, p. 204), and substance abuse (illicit drug use, drinking problem) (Resnick et al., 2007, p. 2033) are all mental health effects of sexual abuse. Sexual violence on children has more physical and mental effects as therapy and support following child sex abuse are scarcer or more costly for most survivors (Sarah, 2016, p. 1). Sexual assault management for children is more complex since children must be joined by their families to enhance their capacity (Nathanson et al., 2016, p. 14). Survivors of child sex abuse have been shown to have a higher prevalence of never-married, separated, and cohabited relationships (Roberts et al., 2004, p. 530),

low academic achievement, unemployment (Currie & Spatz Widom, 2010, p. 111), alcohol and drug misuse (Kendler et al., 2000, p. 953), poor physical health (Leserman et al., 1997, p. 155), PTSD (Cutajar et al., 2010, p. 814), lifetime anxiety disorders (Chen et al., 2010, p. 625), and a higher likelihood of sexual assault as an adult (Widom & Wilson, 2015, p. 32).

Due to the negative consequences of sex offenses above, the sex offender is known as *homo sacer* (Spencer, 2009, p. 220), the Latin term for a person who is deemed by the entire community to be so morally depraved that he or she has no place in society (Thomas, 2015, p. 216). Several states have adopted new laws to address this problem, with the goal of reducing sex offenses against children and preventing reoffending (La Fond, 2005, p. 28). For instance, several states use death penalty, mandatory life sentences, longer prison terms for sex offenders, civil commitment for sex offenders, mandatory reporting, public notice, predator-zero neighborhoods, GPS monitoring and surveillance of sex offenders, residency limits, and castration for sex offenders (Wright, 2008, p. 18). In a punitive sense, the latter approach causes a dispute because it poses legal, social, and moral problems (Vanderzyl, 1994, p. 114). Judges and sex offenders can prefer castration over incarceration as a penalty (Vanderzyl, 1994, p. 114), which deprives male testicles and female ovaries of their functions (Goswami, 2014, p. 72). Castration can be done in two ways: surgical or chemical castration, and it can be done in either a mandatory or voluntary manner. However, some defenders' human rights, such as the right to bodily integrity and the right to breed, are regarded as being violated by this approach (Widagdo, 2016).

From the lens of public law, this assumption is actually false because opponents of chemical castration will lead to the opinion that the chemical castration threat is considered as a human rights violation. This framing has succeeded in igniting public anger as an emotional and rational reaction to immoral actions toward the values of humanity and dignity of the sex offender. It will look different when the public interests and the perpetrators' considerations are balanced. Accordingly, the State's presence by applying chemical castration seems to be necessary for protecting the perpetrators' human rights from society menace and more cruel retaliation from victims' families. The implementation of chemical castration is necessary to protect the

public from the sexual offenders' threat. The high number of sexual harassment cases in 2020 forced President Joko Widodo to emphasize the need for strict legal action against sex offenders (Pinandhita, n.d.). Based on several research results, the implementation of chemical castration in South Korea has been successful in reducing recidivism rates to 2 percent – 5 percent as compared with expected rates of 50 percent (Lee & Cho, 2013). Schmucker and Lösel stated that in the studied samples including in the US, recidivism rates are reduced significantly on average. The odds of sexual reoffending were 1.41, relatively low in the treated groups as compared to the control groups. This measure equates to a sexual recidivism rate of 10.1 percent for treated offenders versus 13.7 percent for non-treated offenders. The mean rates of overall recidivism were higher, but treatment reduced it by roughly a quarter (2017, p. 5).

Sex Offender's Rights

Sex offenders are viewed as the lowest species of society, making it impossible to claim that they are entitled to equal rights under the law (Harrison & Rainey, 2009, p. 47). Many states' constitutions, as well as the international human rights law, secure the rights of sex offenders. Opponents of castration as a punishment claim that it infringes human rights such as the right to bodily integrity and the right to procreative freedom.

The Bodily Integrity Rights

The phrase "bodily integrity" means "freedom from invasion upon the material substance of the person" (Beyer, 1980, p. 520). It necessitates a person's ability to make all health-related decisions (Viljoen & Precious, 2007, p. 69). Furthermore, the body's physical and legal borders are considered equivalent to a nation-state's physical and legal borders (Miller, 2016, p. 57). Moreover, the protection of the body from external interferences, regardless of the effects or intentions, is an essential part of the right to bodily integrity (Douglas, 2014, p. 106). Informed consent to medical procedures is based on this definition, and it is based on the patient's individual autonomy and personal integrity (Akbaba, 2015, p. 73). Doctors must "ensure that the patient is properly informed, has the legal capacity to give consent, and does so voluntarily (i.e., without coercion)" in order to receive legitimate consent from their patients (Wilkinson et al., 2008, p. 70).

Doctors may conduct medical treatments such as opioid injections or other physically invasive procedures after obtaining a valid consent from their patients.

Under international law, recognizing bodily integrity and autonomy is a central aspect of upholding human dignity (Cassimatis, 2007, p. 26) as declared on the preamble of 1948 Universal Declaration of Human Rights (UDHR), which states: “Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world” (Universal Declaration of Human Rights, 1948, v. 1). It can also be discovered in the Universal Declaration on Bioethics and Human Rights (UDBHR), which declares for respecting human dignity, human rights, and fundamental freedoms (Universal Declaration on Bioethics and Human Rights, 2005, v. 3 (1)). UDBHR also recognizes individual autonomy and decision-making responsibility (Universal Declaration on Bioethics and Human Rights, 2005, v. 5). In terms of patient consent, UDBHR states that all medical interventions must be carried out only “with the prior, free, and informed consent of the person concerned, based on adequate information” (Universal Declaration on Bioethics and Human Rights, 2005, v. 6 (1)). Likewise, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine also stipulates patient consent that states “An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it” (Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, 1997, v. 5).

Furthermore, the right to bodily integrity is applied not only to routine therapeutic medical procedures, but also to medical corrections such as castration punishment (Douglas, 2014, p. 107). It means that sex offenders have a right to bodily integrity, which can be used as a legal justification for opposing castration as a punishment, especially if it is imposed as a mandatory punishment. Basically, physicians or other medical professionals cannot castrate sex offenders without their permission, according to this principle. The situation is different from voluntary castration as a condition of parole or early release, in which sex offenders give their consent for the implementation of castration, either chemical or surgical. However, the sex offenders’ consent to receiving castration as an alternative to incarceration has also been

criticized because they do not have freedom of choice. They are faced with two options: a lengthy prison sentence or a castration punishment (Green, 2017, p. 196). As a result, the consent given is ‘inherently coercive’ (Vanderzyl, 1994, p. 140). On the other hand, the proponent of castration as rehabilitation measures has an argument which states that “the state may permissibly do things to criminal offenders without their consent that it could not permissibly do to others without (and in some cases even with) consent” (Douglas, 2014, p. 105). The ‘do things’ include the implementation of chemical or surgical castration, either mandatorily or voluntarily.

The Right to Procreate or Breed

Article 16 of UDHR mainly safeguards the right of individuals to marry and establish a family that states: “[m]en and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family” (Universal Declaration of Human Rights, 1948, v. 16). In the same context, Article 23 of ICCPR also recognizes a married person’s right to marry and to establish a family (International Covenant on Civil and Political Rights, 1966, v. 23). Additionally, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognizes the procreative right which declares that “[t]he widest possible protection and assistance should be accorded to the family..., particularly for its establishment and while it is responsible for the care and education of dependent children” (International Covenant on Economic, Social, and Cultural Rights, 1966, v. 10 (1)). The right to procreate is not explicitly stated in these international treaties; however, it does imply the right to marry and start a family (Dillard, 2007, p. 28). In Indonesia, the procreation right is stipulated in Paragraph (1), Article 10 of Law No. 39 of 1999 on Human Rights, which states that “Everyone has the right to marry legally, to found a family, and to bear children” (Vanderzyl, 1994, p. 122; Stinneford, 2005, p. 596), which is considered to be the basis for the human race’s existence (Fromson, 1993, p. 318). Surgical castration, in particular, prevents a sex offender from engaging in a marital sexual relationship or engaging in some other sexual activity that is lawful (Davidson et al., 1983, p. 263).

Castration, whether surgical or chemical, is considered a violation of a person’s right to procreation (Vanderzyl, 1994, p. 122). It is

because castration, either chemical or surgical, revokes testosterone in the body and brain, which reduces or removes the sex offender's capacity to experience and deliberate in a sensual means, to engage in sexual action, and to propagate (Stinneford, 2005, p. 596), which is considered to be the root for the human race's presence and persistence (Fromson, 1993, p. 318). Surgical castration, in particular, prevents a sex offender from engaging in a marital sexual relationship or engaging in some other sexual activity that is lawful (Davidson et al., 1983, p. 263). A man with removed testes or a woman with removed ovaries will never be able to reproduce, and thus will be denied the opportunity to marry and start a family (Stojanovski, 2011, p. 19). The sexual effects of sex offenders punished with surgical castration are evidently irreversible while the sexual effects of sex offenders punished with chemical castration tend to be reversible (Stinneford, 2005, pp. 596–597). While chemical castration has only a temporary effect, it still violates the sex offenders' right to enjoy the essential rights of reproduction and sex (Stinneford, 2005, p. 596).

Challengers of castration punishment contend that it is a cruel penalty based on the sex offenders' rights outlined previously. It goes against many international agreements, including the Torture Convention and the International Covenant on Civil and Political Rights. The Torture Convention imposes on the State the following obligations:

to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture as defined in Article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, p. 16)

The ICCPR (International Covenant on Civil and Political Rights, 1966, v. 7) and the UDHR (Universal Declaration of Human Rights, 1948, v. 5) also prohibit state parties from treating or punishing persons in this manner. Indonesia has a responsibility to respect, defend, and implement the prohibition of harsh, heartless, or demeaning treatment or punishment as a nation that has ratified the ICCPR and the Torture Convention. When chemical castration is used to punish sex criminals,

Indonesia is deemed to be violating its obligations under the ICCPR and the Torture Convention. Despite the fact that the Indonesian Human Rights National Commission, members of the House of Representatives, the Indonesian Medical Association, and NGOs considered Indonesia to have breached international obligations when it introduced the Government Regulation in Lieu of Law on chemical castration for sex criminals, Indonesia's Parliament permitted regulations approving chemical castration on November 9th, 2016. In addition, laying on the human rights-based arguments above, the opponents of chemical castration have claimed that no empirical and scientific validity reveals the successful rate of chemical castration in reducing the number of sex offenses. Chemical castration injections are actually possible to have an adverse effect on nerve function in sex offenders. Therefore, chemical castration should not be carried out. The debate on the imposition of surgical castration for sex offenders, which has been seen as the controversial approach related to violation of procreation right, due to the removal of testes or ovaries. It is different from chemical castration, in which the sexual effects to sex offenders punished are apparently reversible.

For fulfilling the procreation rights of castrated sex offenders, the medical solution is the use of in vitro fertilization (IVF) and sperm storage. It is because direct sexual intercourse with their spouse may give top security risk and internal disorder to the correctional institution (Guidice Jr, 2001, p. 2327). For instance, if the correctional institution permits a male sex offender to exercise his right to procreate by sperm storage, it may face intense pressure from female sex offenders seeking IVF. Furthermore, the correctional institution would have to allow physicians to enter for collecting semen, or if women sex offenders want to use artificial reproduction, this would require access to outside medical facilities. Besides, some sex offenders will be released and join their spouses and children, and others will spend the rest of their life in prison. This single-parent family might burden the community. When the castration punishment is compared with incarceration, there is an argument that states "incarceration is considered as the punishment for an injury to society, and society should not bear the costs of subsidizing inmates and their families created by allowing inmates to procreate with not imprisoned spouses" (Guidice Jr, 2001, p. 2322). This argument can also be applied to castration punishment, and castration punishment deprives sex offenders and their spouse's rights, such as the right to procreate.

PROBLEMS AND CHALLENGES IN IMPLEMENTING CHEMICAL CASTRATION

The debate on the two opposing paradigms will indirectly affect law enforcement in the context of the implementation of chemical castration in Indonesia. Although chemical castration has been clearly stated in the Law on Child Protection of 2016, at the practical level, there are still some hindrances as follows.

The Problems of the Mandatory Chemical Castration

There are concerns as to whether it is legal to make medical care a mandatory part of a criminal punishment. The treatment is described as “the process of providing medical care” (*Treatment Definition and Synonyms, Macmillan Dictionary*, n.d.). In addition, the aim of medical treatment is:

to help the sick and to alleviate the pain and suffering of all individuals regardless of their social status [...] [M]edical care should never be used as an instrument to injure patients, and physicians are duty-bound to keep themselves free from intentional wrongdoing and harm. (Vaughn & Carroll, 1998, pp. 3–4)

In short, medical care improves the lives of sick people (Johnstone, 1996, p. 4) and treatment’s primary purpose is to alleviate pain, correct disability, or fight an illness. (D, 1977, p. 88). Medical therapy, on the other hand, can be used as medical correctives as a condition of parole or early release (Douglas, 2014, p. 104) and is administered by or under the supervision of physicians, therapists, and psychologists (Akbaba, 2015, p. 41). The issue occurs where involuntary castration is combined with the goal of psychiatric attention and the consent of the sex abuser.

The Strain in Imposing Mandatory Castration

Surgeons from several US states have flatly refused to perform castration, whether voluntary or compulsory. In 2007, North Carolina’s medical panel issued a statement threatening providers

who participated in castration punishment; as a result, the state of California had trouble in finding surgeons to execute it (Appel, 2012, p. 90). Members of Heaven's Gate, who wanted to undergo voluntary castration but could not find a doctor in California who would do it, went to Mexico for the procedure (Gawande, 1997). California's law addresses this issue by allowing state employees to inject chemical castration drugs without medical supervision, as long as the adverse side effects are controlled and the proper doses are administered (Gawande, 1997). Another challenge is ensuring that released convicts receive injections or medications on a weekly basis, particularly in cases where sex offender convicts have refused to agree to this protocol, which makes permanent care impossible (Gawande, 1997).

In the context of Indonesia, administering mandatory chemical castration is more difficult because:

1. The Indonesian Medical Association, like the California physicians, has declared that its members will not perform chemical castration because it breaches their ethical code. It is doctors' responsibility to heal patients rather than to punish them. Furthermore, doctors who break the code of ethics or the Hippocratic Oath will have their license removed by the Indonesian Medical Association. In California, sex offenders will be transferred to Mexico, which is just a short distance away. How about Indonesia? Australia is the closest nation that performs chemical castration. Owing to the high cost of transportation, it is difficult to transfer the sex offenders to Australia. In 2016, Indonesia's Vice President confirmed that police doctors may be ordered to perform chemical castration (Pratama, n.d.). However, after two District Courts ruled in favor of chemical castration for sex offenders in 2019, the police doctors declined to carry out the procedure because they are already bound by a code of medical ethics (Tempo, 2019). Therefore, in Indonesia, who will conduct chemical castration?
2. In relation to sex offenders' compliance in captivating their treatment or injection for chemical castration, sex crime felons who refuse to be treated with chemical castration after being released from jail will flee to other provinces in Indonesia. It may pose a new problem for police or related authorities in terms of searching them.

Legal Reasoning and Application of Mandatory Chemical Castration

Legal Reasoning

- a. The informed consent boundary.

Informed consent is described as:

legal rules that prescribe behaviors for physicians and other healthcare professionals in their interactions with patients and provide for penalties, under given circumstances, if physicians deviate from those expectations; to an ethical doctrine, rooted in our society's cherished value of autonomy, that promotes patients' right of self-determination regarding medical treatment; and to an interpersonal process whereby these parties interact with each other to select an appropriate course of medical care. (Berg et al., 2001, p. 3)

The definition of informed consent entails a patient's agreement for therapeutic care based on all available facts about the medical dealing; the consent should not be influenced by several outside influences; and the consent requires the patient's approval for the medicinal interference (Faden & Beauchamp, 1986, p. 54). However, there are exceptions to the informed consent provision that allow a medical operation to be performed without the patient's consent: infants, young people under the age of 18, and people who are still in a situation where they need to be cared for by others (Mill, 1863, p. 22); those who are sick, mentally ill, cataleptic, or disordered; community healthiness policies; the disclosure of private data to medical authorities; and those who are under compulsion or restraint (Dworkin, 1988, pp. 115–116). As previously stated, involuntary castration is classified as a punishment, but it can also be seen as a therapy in cases where sex offenders are thought to have an abnormally strong sexual desire. Sex offenders may be classified as having a mental illness based on the belief that they have an abnormally strong sexual drive, especially pedophilic disorder, which can be seen as an impediment to their autonomy (Akbaba, 2015, pp. 78–79). As a result, a medical intrusion requiring chemical castration for the superlative comforts of the sex offender may be carried out regardless of their permission.

b. The common happiness.

Opponents of involuntary chemical castration contend that it infringes on the autonomy of sex offenders. Obligatory injection or ingestion of the drug is considered a breach of the sex offenders' self-rule in the case of mandatory chemical castration. Nevertheless, there are other moral values that are taken into account in the criminal justice system, such as public safety, liberty, justice, and fairness (Pugh & Douglas, 2017, p. 105). These considerations become moral justifications for chemical castration. In terms of public health, this procedure may be more effective in promoting recovery and avoiding recidivism than imprisonment, and it may also be less expensive (Pugh & Douglas, 2017, p. 104). In addition to safeguarding the public's welfare, mandatory chemical castration can also help offenders (Ryberg, 2013, p. 232). Furthermore, penal-theoretic considerations such as retributive, deterrent, incapacitation, and recovery theory should be integrated into this mandatory treatment.

Implementation

As previously mentioned, locating a doctor who might perform mandatory castration is difficult, despite the fact that the roles of doctors and/or other medical professionals are critical in ensuring the procedure's success. Medical professionals' role is to assess an individual's ability during a chemical castration procedure. The critics of the mandatory chemical castration legislation say that it does not include providers' liability immunity. However, several states, such as Georgia and Louisiana, offer civil and criminal protections to treating doctors only if they behaved in good faith, while Texas provides absolute immunity to doctors unless they are found negligent (Busto & Harlow, 2011, p. 552). This immunity is critical in addressing complaints to providers about malpractice lawsuits for castration-related side effects or when an offender re-offends a sex offence during treatment (Scott & Busto, 2015, p. 211).

Article 50 of the Indonesian Penal Code states "not punishable shall be the person who commits an act for the execution of a statutory provision" (Penal Code of Indonesia, 1982, v. 50). Essentially, Indonesian doctors are exempt from criminal responsibility under this

law because they conduct an act for the purpose of carrying out a court order and a statutory provision. In terms of civil responsibility, the Indonesian Civil Code asserts that “every unlawful action which causes loss to another person, obliges the person by whose fault the loss has resulted, to compensate that loss” (Civil Code of Indonesia, 1927, v. 1365). Furthermore, the term ‘unlawful’ is defined as acts that violate another’s subjective right (e.g., freedom, reputation or property), lawful obligations of individuals, public morality, and principles of respectability, judiciousness, and rational attention (Santosa et al., 2012, p. 194). Moreover, based on the Government Regulation No. 70 of 2020, the implementation of the court rulings on chemical castration shall be carried out by order of the prosecutor after coordinating with Ministries that administer Government affairs in the health, legal, and social sectors (Law on Child Protection of 2016, v. Article 2, Paragraph (3)). At the request of the prosecutor, competent officials will carry out the chemical castration. Paragraph (2), Article 7 of the Regulation states that “the clinical assessment includes clinical and psychiatric interviews, physical examination, and supporting examinations”. Indonesian medics who perform obligatory chemical castration cannot be sued by sex criminals under this provision because their actions are legitimate. The Government, on the other hand, cannot force the medics to perform the obligatory chemical castration. If no medic wants to do it, the Government can assign someone else to do the issue; however, a medic is still required to provide an examination of the sex offender’s conditions before, during, and after the chemical castration.

According to the discussion above, medical doctors do not face any legal problems when performing Indonesia’s mandatory chemical castration. Nevertheless, it remains a moral and human rights issue whether mandatory chemical castration violates knowledgeable agreement code, medical conduct principles, and the Hippocratic Oath. Moreover, Indonesia should consider the following factors before introducing chemical castration: medications for chemical castration, sex offenders’ medical or psychological examination *ex ante*, during, and *ex post* the chemical castration period, and treatment interval, and confirm the legislation that gives legal protection to providers and doctors who conduct chemical castration (Scott & Busto, 2015, pp. 202–203).

CONCLUSION

For sex offenders, chemical castration may reduce testosterone levels, reduce sex drive, and help repeat sex offenders escape recidivism. Meanwhile, critics of chemical castration contend that involuntary care violates the rights of sex offenders. It seems to be justified by many research-based claims that it will reduce sex offender recidivism, as well as the Government's legitimate interest in achieving public well-being. Although there are moral questions when medics in Indonesia conduct compulsory chemical castration, doctors can perform mandatory chemical castration based on legal requirements, and Indonesian law grants them civil and criminal immunity.

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