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## Integrating Psychiatric Assessment in Chemical Castration Sanctions for Child Sexual Offenders in Indonesia

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### Article

### Abstract

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Sanction; Paedophile;  
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Indonesian Law No. 17 of 2016 was enacted to aggravate sanctions with chemical castration sanctions for sexual offenders against children. Viewed from a psychological perspective, a paedophile can also commit this sexual crime, so it is certainly not appropriate to impose this sanction on the person found to be a paedophile. For these facts, this current study provides a solid understanding of why it is necessary to involve the psychiatrist in the legal process of sexual crimes against children. To achieve this understanding, the data were collected from the texts of the verdicts concerning sexual crimes against children issued by the Mojokerto District Court on 2 May 2019, the Surabaya District Court on 18 November 2019, and the Sumenep District Court on 9 December 2025. The collected data were then analysed using the model developed by Miles and Huberman (1994). The result of the analysis reveals that because of the lack of involvement of the psychiatrist in the legal process of sexual crime against children, the three verdicts does not state that the perpetrators of sexual crime against children are paedophiles. Therefore, it is necessary to involve the psychiatrist in the legal process of sexual crimes against children. From the perspective of comparative law, the involvement of psychiatrists in the implementation of chemical castration is manifested in two forms: firstly, providing opinions by considering the mental state of the Defendant (judicial process), and secondly, in the form of observation, monitoring, and post-chemical castration recommendations (as the executor of the Court's decision).

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## INTRODUCTION

Sexual violence against children is a serious crime that is increasing over time. According to the Ministry of Women's Empowerment and Child Protection, in 2021, sexual violence against

children numbered 4.162 cases and increased in 2022 to 9.588 cases.<sup>1</sup> The rampant cases of sexual crimes against children finally led to the ratification of Government Regulation in Lieu of Law Number 1 of 2016<sup>2</sup>; which was subsequently passed into Law No. 17 Year 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Protection of Children into Law (hereinafter referred to as Law No. 17 Year 2016 which stipulates chemical castration sanction for the perpetrator of sexual crimes against children). In this regard, following Almusawi, it appears that legislators have enacted sufficient legal safeguards for families, particularly children, who are victims of sexual violence.<sup>3</sup>

After the enactment of Law Number 17 of 2016, there are still cases of sexual crimes against children. For example, on 2 May 2019, the Mojokerto District Court, with the Verdict Number: 69/Pid.Sus/2019/PNMjk imposed the chemical castration sanction on Muhammad Aris, the Defendant, who was proven to have committed sexual violence against nine kindergarten school children. Then, on 18 November 2019, the chemical castration sanction was imposed on Rahmat Slamet Santoso by the Surabaya District Court with Verdict Number 2627/Pid.Sus/2019/PNSby for being proven to have committed a sexual crime against 15 elementary and junior high school students. Additionally, the latest decision of the Sumenep District Court No. 136/Pid.Sus/2025/PNSmp dated 9 December 2025 imposed chemical castration and the installation of an electronic monitoring device for 2 (two) years on Moh. Sahnan M Bin Maulidin, who was found guilty of sexually abusing 8 of his students. Chemical castration is a criminal measure involving the administration of chemical substances aimed at suppressing sexual desire by reducing testosterone levels. Chemical castration in the Indonesian legal context is classified as an additional sanction that is imposed on perpetrators of sexual crimes against children, alongside principal criminal sanctions such as imprisonment. The stated purpose of this measure is not only to provide a deterrent effect, but also to prevent recidivism and protect children by controlling the excessive sexual impulses of offenders.

For some scholars, the implementation of chemical castration sanctions for perpetrators of sexual crimes against children appears to have become an appealing topic that draws their attention to their work studies. *First*, research entitled “Chemical Castration Penalty for Sex Offenders in Indonesia”<sup>4</sup> looks more at three points, namely, the types of punishment for sexual crimes before Government Regulation in Lieu of Law Number 1 of 2016, the people’s perception of chemical castration sanction, and which institution should be the executor of chemical castration sanction; *Second*, research entitled “The Implementation of Chemical Castration Penalties towards Paedophilia Crime Perpetrators”, express more concern with the

<sup>1</sup> CNN Indonesia, “KemenPPPA: RI Darurat Kekerasan Seksual Anak, 9.588 Kasus Selama 2022,” 2023, <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasan-seksual-anak-9588-kasus-selama-2022>.

<sup>2</sup> Diana Yusyanti, “Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual,” *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 619–36, <https://doi.org/10.30641/dejure.2020.v20.619-636>.

<sup>3</sup> Bassim Jamceel Almusawi, “Criminal Protection of the Family in the Iraqi Legislation,” *Hasanuddin Law Review* 7, no. 1 (2021): 21–30, <https://doi.org/10.20956/halrev.v7i1.2167>.

<sup>4</sup> M. Hamdan, “Chemical Castration Penalty for Sex Offenders in Indonesia,” *The Social Sciences* 12, no. 11 (2017): 2040–43, <https://doi.org/10.36478/sscience.2017.2040.2043>.

application of chemical castration sanctions on crime offenders with pedophilia<sup>5</sup>; *Third*, research entitled "The Case against Chemical Castration for Sex Offenders" review several state chemical castration bills, including California's, Georgia's, and Montana's chemical castration bills<sup>6</sup>; and *fourth*, research entitled "Chemical Castration of Child Molesters – Right or Wrong?", examines such things as pedophilia, chemical castration procedure, and the growing trend by legislators towards favouring castration as a sentencing alternative.<sup>7</sup> These former studies certainly prove that chemical castration for perpetrators of sexual crime against children is still a seminal topic that can lead other scholars to conduct another study with a different focus. Different from the previous studies, this current study is more focused on providing a solid understanding of the necessity of the psychiatrist's role in the process of examining cases of sexual crime against children.

## RESEARCH METHODS

This research is based on legal research methodology using primary and secondary legal materials, as well as non-legal materials.<sup>8</sup> This method analyses the implementation of Law Number 17 of 2016 in resolving the cases of sexual crime against children taking place in Mojokerto, Surabaya, and Sumenep, Indonesia. To meet the analysis, the research is focused on the question of why it is necessary to involve the psychiatrist in the process of examining these three cases of sexual crime against children.

In analysing the focus, the researchers adopted the procedures for analysis developed by Miles and Huberman: data collection, data reduction, data display, conclusion drawing, and verification.<sup>9</sup> *First*, data collection. For the analysis of the implementation of Law Number 17 of 2016 in resolving the cases of sexual crime against children taking place in Mojokerto, Surabaya, and Sumenep, East Java, Indonesia, where the data were collected from the three verdicts, namely, those issued by the Mojokerto District Court with the Verdict Number: 69/Pid.Sus/2019/PNMjk; the Surabaya District Court with the Verdict Number 2627/Pid.Sus/2019/PNSby; and the Sumenep District Court No. 136/Pid.Sus/2025/PN Smp; *Second*, data reduction. In this procedure, the researchers selected authentic copies of the verdicts issued by the Courts. From these verdicts, only the data on whether the psychiatrist is involved in the legal process of the case of sexual crime against children was selected; *Third*, data display. The next step is displaying the data. In this step, the data representing the involvement of the psychiatrist in the process of examining the case of sexual crime against children taking place in Mojokerto, Surabaya, Sumenep, East Java, Indonesia, in 2019 was presented on display. The display is shown in Tables 1 and 2 in the findings section below. And *Fourth*, verification. This procedure is the last step of the analysis. In this step, the researchers

<sup>5</sup> Kartono Kartono and Aji Mulyana, "The Implementation of Chemical Castration Penalties towards Paedophilia Crime Perpetrators," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 13, no. 4 (2019): 321, <https://doi.org/10.25041/fiatjustisia.v13no4.1683>.

<sup>6</sup> Ken Kyle and Tania Israel, "The Case against Chemical Castration for Sex Offenders," *Humanity & Society* 22, no. 2 (May 1, 1998): 155–87, <https://doi.org/10.1177/016059769802200203>.

<sup>7</sup> Vedije Ratkoceri, "Chemical Castration of Child Molesters – Right or Wrong?," *European Journal of Social Sciences Education and Research* 11, no. 1 (2017): 70–76, <https://doi.org/10.26417/ejsr.v1i1.p70-76>.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed. (Jakarta: KENCANA, 2017).

<sup>9</sup> Esubalew Aman Mezmir, "Qualitative Data Analysis: An Overview of Data Reduction, Data Display and Interpretation," *Research on Humanities and Social Sciences* 10, no. 21 (2020): 15–27, <https://doi.org/10.7176/rhss/10-21-02>.

concluded the meaning of the displayed data. Based on Table 1 and Table 2, for example, the data were interpreted with questions about what they meant, and which one described whether the psychiatrist was involved in the process of examining the case of sexual crime against children. In detail, authors are discussed in the discussion section

## ANALYSIS AND DISCUSSION

### The Verdicts Concerning Chemical Castration Sanctions Imposed on the Perpetrators of Sexual Crime Against Children

There are three verdicts presented in this section. One concerns the verdict issued by the Mojokerto District Court, Verdict Number 69/Pid.Sus/2019/PNMjk, the Surabaya District Court, with the Verdict Number 2627/Pid.Sus/2019/PNSby and the Verdict of the Sumenep District Court with Number: 136/Pid.Sus/2025/PNSmp. The main points of each verdict are shown in the following tables.

**Table 1. The Verdict of the Mojokerto District Court with Number: 69/Pid.Sus/2019/PNMjk**

Main Points	Information
Perpetrator's name/age/sex/work	Muh. Aris Bin Syukur/20 years/Male/Unemployed
Number of victims	Nine female children
Victim's age	About six years
Time of occurrence	In May 2018, and previously, the Defendant had intercourse with and molested nine children
Scene	The jurisdiction of the Mojokerto District Court
Expert's important information	The doctor's written statement ( <i>Visum et Repertum</i> ), which explains the sexual intercourse with the victim.
Indictment of the Public Prosecutor	Primary: committing violence or the threat of violence and forcing children to have sex. Subsidiary: committing violence or threat of violence, force, deception, a series of lies, or persuading children to commit or allow obscene acts.
Criminal Prosecution by the Public Prosecutor	Imprisonment for fifteen years and a fine of one hundred million rupiah (note: no demand for chemical castration sanction)
Judge's incriminating consideration	The Act has caused deep feelings of sadness in the victim's family. The Defendant's actions are very disturbing to the community.
Judge's lightning consideration	None
Judge's Decision	Imprisonment for twelve years and a fine of one hundred million rupiah, and additional chemical castration penalties

*(Source: Author's Analysis)*

**Table 2. The Verdict of Surabaya District Court with Number: 2627/Pid.Sus/2019/PNSby**

Main Points	Information
Perpetrator's name/age/sex/work	Rahmat Santoso Slamet (Memet)/31 years/ male/scoutmaster
Number of victims	Twelve male victims
Victim's age	Not 18 years old yet
Time of occurrence	End of 2017 and beginning of 2018, or at least in 2017 until 2018
Scene	The jurisdiction of the Surabaya District Court
Expert's important information	Psychologist: - The victim's condition can be recovered by using psychotherapy, and it takes approximately three months to address her psychological condition. - 90% of victims can be like perpetrators. - The Defendant's actions are sexual disorientation and can be repeated.
Indictment of the Public Prosecutor	Single indictment: committing violence or threat of violence, force, deception, a series of deceit, or persuading the child to commit or allow an obscene act to be

Criminal Prosecution of the Public Prosecution	carried out.
Judge's incriminating consideration	Imprisonment for fourteen years, a fine of one hundred million rupiahs, and a castration sanction for three years <ul style="list-style-type: none"> <li>- The Defendant's actions caused the children/ victims trauma, shame and fear</li> <li>- The Defendant's actions ruin the children's future</li> <li>- The Defendant has never been convicted</li> <li>- The Defendant was polite in Court</li> <li>- The Defendant regretted his actions</li> </ul>
Judge's lightning consideration	
Judge's Decision	Imprisonment for twelve years, a fine of one hundred million rupiahs and a chemical castration sanction for three years

*Source: Author's Analysis*

**Table 3. The Verdict of the Sumenep District Court with Number: 136/Pid.Sus/2025/PNSmp**

Main Points	Information
Perpetrator's name/age/ sex/work	Moh. Sahnan M Bin Maulidin/50 years old/Male/Self-employed
Number of victims	eight female children
Victim's age	Under 18 years old
Time of occurrence	Sexual abuse and intercourse with the victim from 2016 to 2025 (arrested and detained on 10 June 2025) (sexual offences committed continuously from 2016, 2018, 2020, 2021, 2022) sexually abused eight children.
Scene	The jurisdiction of the Sumenep District Court
Expert's important information	The doctor's written statement (Visum et Repertum), which explains the sexual intercourse with the victim.
Indictment of the Public Prosecutor	Alternative charges, namely <ul style="list-style-type: none"> <li>- First alternative charge: Article 81(3) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law - 'committing violence or threats of violence to force a child to have sexual intercourse with him or her or with another person committed by a parent, guardian, person with family ties, caregiver, educator, educational staff, child protection officer, or committed by more than one person jointly;</li> <li>- Second alternative charge: Article 82 paragraph (2) of Law No. 17 of 2016 amending Law No. 35 of 2014 on child protection 'deliberately committing violence, coercion, deception, a series of lies, or persuading a child to commit or allow indecent acts to be committed, committed by parents, guardians, persons having family relations, caregivers, educators, educational personnel, officials handling child protection, or committed by more than one person jointly;</li> <li>- Third alternative charge: Article 81 paragraph (2) of Law No. 17 of 2016 amending Law No. 35 of 2014 on child protection "deliberately deceiving, lying, or persuading a child to have sexual intercourse with him or her or with another person".</li> <li>- Fourth alternative charge: Article 81(1) of Law No. 17 of 2016 amending Law No. 35 of 2014 on child protection, "deliberately committing violence or threats of violence to force a child to engage in sexual intercourse with him or her or with another person".</li> <li>- Fifth alternative charge: Article 82 paragraph (1) of Law No. 17 of 2016 amending Law No. 35 of 2014 on child protection "deliberately committing violence, coercion, deception, a series of lies, or persuading a child to commit or allow indecent acts to be committed".</li> </ul>
Criminal Prosecution by the Public Prosecutor	Sentencing the Defendant to 17 (seventeen) years imprisonment
Judge's incriminating consideration	The Defendant's actions resulted in the following consequences for the child victims: <ul style="list-style-type: none"> <li>- Loss of innocence; deep trauma; profound and prolonged psychological suffering for the victims and their parents; damage to their future.</li> <li>- The Defendant failed to fulfil his obligations as an educator to care for, educate, nurture, guide and protect the child victims.</li> <li>- The Defendant was evasive, obstructed the trial, did not admit to or regret his</li> </ul>

Judge's lightning consideration	actions; and the Defendant's actions caused public unrest. None
Judge's Decision	The Defendant was found guilty of committing the crime of forcing a child to have sexual intercourse with him, which an educator committed. (based on Article 81 paragraph (3) of the Child Protection Law) <ul style="list-style-type: none"><li>- Imprisonment for 20 (twenty) years and a fine of Rp5,000,000,000.00 (five billion rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 6 (six) months;</li><li>- Imposing an additional penalty: announcing the identity of the Defendant as a perpetrator of sexual violence against children in the national and regional print media once at the expense of the Convict;</li><li>- Imposing a penalty on the Defendant in the form of chemical castration and the installation of an electronic detection device for a period of 2 (two) years.</li></ul>

**Source: Author's Analysis**

Concerning the necessity of psychiatrists in the process of examining the cases of sexual crime against children, the three verdicts above indicate that no doctors or psychiatrists were involved in the process of examining the cases focused on the perpetrators. Due to this fact, the verdict cannot determine the main cause of the perpetrators' sexual crimes against children. As a result, no information in the verdicts states that the perpetrators of the sexual crime against children are people with paedophilia.

It should be noted that subsequent to these judicial decisions, the Government enacted Government Regulation No. 70 of 2020, which regulates the procedures for implementing chemical castration, electronic monitoring, rehabilitation, and the announcement of offenders' identities. The Regulation explicitly mandates clinical assessment involving medical and psychiatric professionals (See Articles 6–8). However, such an assessment is designed to be conducted at the post-conviction stage, particularly during the execution phase after the offender has completed the principal sentence. As a result, the Regulation does not address the absence of a psychiatric examination at the adjudication stage, as reflected in the decisions of the Mojokerto, Surabaya, and Sumenep District Courts.

### **Sexual Crime Against Children from the Psychiatric Perspective**

Sexual crimes against children can be committed by anyone. However, from the perspective of psychology, such crimes are vulnerable and potentially committed by offenders with paedophilic sexual preference disorders. According to the International Statistical Classification of Diseases and Similar Health Problems, paedophilia is a sexual act against children, most of whom are still in preadolescence or early puberty.<sup>10</sup> In the medical dictionary, paedophilia is defined as: 1) abnormal preference for children; adult sexual activity towards children; 2) sexual acts that are not fair where there is a strong or repetitive impulse or fantasy in the form of sexual relations with pre-pubertal children.<sup>11</sup> Paedophilia is a clinical diagnosis, made by a psychiatrist or psychologist, that is, for a period of at least six months, a strong sexual urge to or arousal by a child who is 13 years of age or younger; people with paedophilia are at least 16

<sup>10</sup> Željko Bjeljac, Boro Merdović, and Božidar Banović, "Pedophilia - the Need for New Research and a New Solution to the Problem," *Nauka, Bezbednost, Policija* 25, no. 3 (2020): 1–14, <https://doi.org/10.5937/nabepo25-28362>.

<sup>11</sup> Difa Danis, *Kamus Istilah Kedokteran* (Jakarta: Gitamedia Press, 2009).

years and at least five years younger than the victim.<sup>12</sup> Therefore, in this research, the terms people with paedophilia or perpetrators with paedophilia are used.

Paedophilia, a sexual preference disorder, is classified as a mental disorder as specified in the International Classification of Diseases-10 (ICD) published by the World Health Organisation (WHO) and the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM) published by the American Psychiatric Association (APA). Paedophilia classification according to DSM-IV Text Revision Classification is included in the paraphilia group with code 302.2, while the classification of paedophilia according to ICD-10 is with code F65.4.<sup>13</sup> The latest revised code for the ICD and DSM standard systems has been changed; however, despite significant differences, the guidelines can be compared, as all categories used in DSM-IV are found in ICD-10, but not all ICD-10 categories are in DSM-IV.<sup>14</sup>

Referring to the standard of diagnosis of mental disorders as a reference commonly used in the world, namely the DSM and ICD, and PPDGJ as a reference in Indonesia, sexual violence against children has the potential to be committed by people with "paedophilia" sexual preference disorders. Paedophilia is a mental disorder that is included in the category of paraphilic disorders.<sup>15</sup> Paraphilia is a condition that mainly occurs in men, and because it targets children, this action is taken more seriously and strives to pursue the perpetrators of paedophilia compared to other forms of paraphilia.<sup>16</sup> Paedophilia as one of the sexual preference disorders targeting children, of course, threatens and endangers children. From the perspective of victims and potential victims, efforts to protect every child must be the focus of all parties; while from the perspective of the offender, a psychiatric examination is needed to determine the presence or absence of paedophilia and sexual preference disorders.<sup>17</sup>

Decisions of the Mojokerto, Surabaya, and Sumenep District Court, which do not involve doctors or psychiatrists, of course, cannot determine the main cause of the perpetrators of sexual crimes against children. In fact, if examined from the signs of sexual preference disorder between the age of the child as the victim and the offender, it is possible that the offender is a person with paedophilia.<sup>18</sup> However, in the Decision of the Mojokerto District Court, which has permanent legal force, the judge stated in his judgment that the defendants were child

<sup>12</sup> Ricarda Münch, Henrik Walter, and Sabine Müller, "Should Behavior Harmful to Others Be a Sufficient Criterion of Mental Disorders? Conceptual Problems of the Diagnoses of Antisocial Personality Disorder and Pedophilic Disorder," *Frontiers in Psychiatry* 11, no. September (2020): 1–15, <https://doi.org/10.3389/fpsyg.2020.558655>.

<sup>13</sup> Rebeca Robles, Tania Real, and Geoffrey M. Reed, "Depathologizing Sexual Orientation and Transgender Identities in Psychiatric Classifications," *Consortium Psychiatricum* 2, no. 2 (2021): 45–53, <https://doi.org/10.17816/cp61>.

<sup>14</sup> Benjamin J. Sadock, Harold I. Kaplan, and Virginia A. Sadock, *Kaplan & Sadock's Synopsis of Psychiatry: Behavioral Sciences/Clinical Psychiatry* (United States: Lippincott Williams & Wilkins, 2007).

<sup>15</sup> Tania Ariza, Raúl Quevedo-blasco, and Gualberto Buela-casal, "The European Journal of Psychology Applied to Legal Context European Higher Education Area," *The European Journal of Psychology Applied to Legal Context* 6, no. 1 (2014): 9–16, <https://doi.org/10.5093/ejpalc2022a8>.

<sup>16</sup> Sadock, Kaplan, and Sadock, *Kaplan & Sadock's Synopsis of Psychiatry: Behavioral Sciences/Clinical Psychiatry*.

<sup>17</sup> Stephanie Kewley, Rosemary Mhlanga-Gunda, and Marie Claire Van Hout, "Preventing Child Sexual Abuse before It Occurs: Examining the Scale and Nature of Secondary Public Health Prevention Approaches," *Journal of Sexual Aggression*, 2021, 1–33, <https://doi.org/10.1080/13552600.2021.2000651>.

<sup>18</sup> Pambudi Rahardjo and Kaniya Puri, "Pedophilia (Overview of the Causes and Aspects of Psychological Dynamics)," *Psimphoni* 1, no. 2 (2021): 59–66, <https://doi.org/10.30595/psimphoni.v1i2.8136>.

predators. Likewise, the Surabaya District Court's Decision stated that the actions of the accused caused the children/victims trauma, shame and fear.

The term child predator is not a scientific term used to refer to sexual preference behaviours. ICD, DSM, and PPDGJ do not recognise the term child predator as a form of sexual preference. Referring to the Decision of the Mojokerto District Court, the Surabaya District Court, and the Sumenep District Court, if a psychiatrist is involved in the process of examining a case as part of a scientific investigation, of course the mental condition of the offender can be mentioned in accordance with his scientific characteristics, which can be relied upon, as well as his scholarship, because criminal law cannot escape from the development of scientific disciplines other than criminal law. Therefore, doctors and/or psychiatrists should be involved in the pre-trial examination phase and also the adjudication phase in cases of sexual crimes against children. This is because sexual offences are very likely to be carried out by people with paedophilia.<sup>19</sup> And clearly, paedophile behaviour is contrary to religious, cultural, moral and legal values<sup>20</sup>; in addition, it has the potential to disrupt the orderly lives of the people, hampering national development and endangering the nation's future. However, the threat of chemical castration sanctions in Law No. 17 of 2016 needs to be examined, especially in relation to the perpetrators who suffer from paedophilia.

Associated with paedophiles who commit sexual crimes against children, the imposition of imprisonment is an act of community interest in order to protect them from the perpetrators' evil deeds.<sup>21</sup> Likewise, although it is not proven that the possibility of perpetrators of paedophilia is related to the imposition of imprisonment in the Decision of the Mojokerto District Court, the Decision of the Surabaya District Court, and the Decision of the Sumenep District Court, the imposition of imprisonment has indirectly provided an aspect of community protection. However, for offenders who have been identified as paedophiles, imprisonment cannot eliminate their interference with their sexual preferences. It is a psychiatric therapy that can reduce or even cure paedophilic sexual preference disorders.

**Existence of a Psychiatrist's Diagnosis and Prognosis of Sexual Crimes Against Children**  
In cases of sexual offences against children, a psychiatric examination is needed to determine whether or not there is a paedophilic sexual preference disorder, as well as to determine the offender's ability to be responsible. The components of the ability assessment are responsible in psychiatry, useful as an operational concept to determine the existence of mental disorders such as paedophilic sexual preference, which is prognostically useful for determining sanctions that can be imposed. At the level of diagnosis, an evaluation of the mental condition of a sexual

<sup>19</sup> Flavia Glina et al., "Lay People's Myths Regarding Pedophilia and Child Sexual Abuse: A Systematic Review," *Sexual Medicine Reviews* 10, no. 4 (October 1, 2022): 596–619, <https://doi.org/10.1016/j.sxmr.2022.06.010>.

<sup>20</sup> Sergei Levin, "The Moral Duty to Reduce the Risk of Child Sexual Abuse," *Human Affairs* 29, no. 2 (2019): 188–98, <https://doi.org/10.1515/humaff-2019-0015>.

<sup>21</sup> Adella Aldionita Chairi, Ivan Zairani Lisi, and Rini Apriyani, "Penerapan Sanksi Pidana Tambahan Kebiri Kimia Ditinjau Dari Perspektif Keadilan," *Risalah Hukum* 16, no. 2 (2022): 106–14, <https://doi.org/10.30872/risalah.v16i2.203>.

offender against a child can be based on a psychodynamic examination, which reflects psychological dynamics that produce mental disorders or mental illness.<sup>22</sup>

From the aspect of criminal law, the examination and determination of the presence or absence of paedophilia sexual preference disorders is part of an assessment of the ability to be responsible<sup>23</sup>; while the components of determining one's criteria are declared capable of being responsible, from the aspect of psychiatry, they include: a component of awareness, an understanding of the value of an action and its risks, as well as a component of the ability to choose and direct his will.<sup>24</sup> A person with paedophilia who realises, understands, and then is able to choose and direct his will, even though he does not get the opportunity to do so because of a strong impulse to commit sexual crimes against children, is essentially seen in the criminal law as having an element of fault, so it can be accounted for.<sup>25</sup>

Sexual crimes against children by offenders with paedophilia, in addition to the subjective element of reproach, are also based on the mistakes of the offender, who is able to take responsibility. Therefore, sexual crimes against children by paedophiles must be accounted for and be subject to criminal sanctions.<sup>26</sup> Criminal liability against a paedophile for sexual crimes against children, in line with the purpose of criminal law to protect the public from crimes, in accordance with the *postulate le salut du people est la supreme loi* (the highest law is the protection of society).

Forensic psychiatric examination at the prognostic level relates to an opinion about the possibility of immediate and future travel, the level and consequences of the disorder.<sup>27</sup> Based on the concept of classification of mental disorders as specified in the PPDGJ, the prognosis in forensic psychiatric examinations can be implemented in determining the types of sanctions for the appropriate actions that can be imposed on sex offenders against children. Psychiatry, as a branch of psychology with a forensic function,<sup>28</sup> plays an important role in enforcing criminal law sanctions. Scientific investigation carried out through forensic psychiatric examinations helps determine the right time, place, type, and expert to provide psychiatric therapy measures.<sup>29</sup> The existence of sanctions for rehabilitation measures carried out through expert studies is scientifically reliable and truthful.

<sup>22</sup> R. Eher, M. Rettenberger, and D. Turner, "The Prevalence of Mental Disorders in Incarcerated Contact Sexual Offenders," *Acta Psychiatrica Scandinavica* 139, no. 6 (June 9, 2019): 572–81, <https://doi.org/10.1111/acps.13024>.

<sup>23</sup> Yudi Gabriel Tololiu and Gde Made Swardhana, "Pemidanaan Terhadap Pelaku Dengan Gangguan Seksual," *Kertha Semaya : Jurnal Ilmu Hukum* 8, no. 10 (2020): 1516, <https://doi.org/10.24843/ks.2020.v08.i10.p03>.

<sup>24</sup> Wahjadi Darmabratra, *Psikiatri Forensik* (Jakarta: Penerbit Buku Kedokteran EGC, 2003).

<sup>25</sup> Wilhelmus Renyaan, Baharudin Saleh Ingratubun, and Suheriyono, "Kajian Kriminologi Terhadap Kejahatan Pedofilia Di Wilayah Hukum Polres Keerom," *Jurnal Ius Publicum* 2, no. 2 (2022): 161–72, <https://doi.org/10.55551/jip.v4i4.32>.

<sup>26</sup> Beni Prihatmo, Gunarto Gunarto, and Amin Purnawan, "The Criminal Sanctions of Child Rape with Implications of Impacts Suffered by the Victims," *Ratio Legis Journal* 1, no. 3 (2022): 260–67, <https://doi.org/10.30659/rlj.1.3.%25p>.

<sup>27</sup> Sadock, Kaplan, and Sadock, *Kaplan & Sadock's Synopsis of Psychiatry: Behavioral Sciences/Clinical Psychiatry*.

<sup>28</sup> Josanne D.M. van Dongen and Ingmar H.A. Franken, "Neuroscience in Forensic Psychiatry and Psychology: An Introduction to the Special Issue," *International Journal of Forensic Mental Health* 18, no. 3 (2019): 179–86, <https://doi.org/10.1080/14999013.2019.1652708>.

<sup>29</sup> Y.A. Triana Ohoiwutun, *Ilmu Kedokteran Forensik (Interaksi Dan Dependensi Hukum Pada Ilmu Kedokteran)* (Jember: Universitas Jember, 2016).

The practical application of psychiatry and/or psychology in rehabilitation measures indicates that criminal law cannot avoid psychological factors. However, criminal law must not lose its basis that sexual crimes against children are based on the principle of legality, there are laws and regulations as a basis for the foundation to sue the perpetrator; whereas in determining criminal liability, criminal liability is based on the perpetrators' mistakes, namely not being convicted without any mistakes or commonly called the principle of "*geen straf zonder schuld*".<sup>30</sup>

The urgency of a forensic psychiatric examination, in addition to determining the presence or absence of paedophilia sexual preference disorders, is actually also related to the choice or alternative sanctions that the judge can impose in deciding a case.<sup>31</sup> Law No. 17 of 2016, sexual crimes against children are punishable acts with basic sanctions, namely capital punishment, and imprisonment, while other sanctions include chemical castration, installation of electronic detection devices and rehabilitation. It is in the implementation of sanctions for rehabilitation measures that the application of psychiatric and/or psychological science assistance is required by criminal law as part of a scientific investigation, particularly in the context of fulfilling the nature of sanctions.<sup>32</sup> Law No. 17 of 2016 adheres to the concept of the double-track system as stipulated in Article 81(8), which provides that sanctions for actions are determined together with the principal crime. However, Law No. 17 of 2016, in Article 81A (1), stipulates that sanctions for actions are imposed for a maximum period of 2 (two) years and are carried out after the convicted has committed the principal crime.

In the author's opinion, the imposition of sanctions for the castration of chemicals against paedophiles is ineffective and inefficient if the perpetrators' actions are caused by sexual preference disorders, which are non-organic factors. Therefore, if, during a forensic psychiatric examination, indications can be found that the offender is a paedophile, the psychiatrist can recommend the implementation of psychiatric therapy, both through psychotherapy and pharmacotherapy. The examination by the psychiatrist is to determine the right prognosis for sexual offenders against children.<sup>33</sup> The effectiveness and efficiency of therapy can be jointly assessed by psychiatrists and psychologists across the pre-adjudication, adjudication, and post-adjudication stages. Imprisonment, as a sanction for deprivation of liberty, cannot change the sexual desires and fantasies of someone with paedophilia. Only the right psychiatric therapy by a psychiatrist can change the sexual desires and fantasies of someone with a paedophilia sexual preference disorder. Therefore, the existence of psychiatric assistance is needed in the examination of every case of sexual crimes against children.

In the adjudication phase, Indonesian criminal law uses a descriptive-normative system, in which judges assess a defendant's capacity to be responsible by referring to a psychiatrist's

<sup>30</sup> Muhammad Heriyansyah, Amin Purnawan, and Achmad Sulchan, "The Application of Principle of Mistake as Legal Liability on the Criminal Theft," *Law Development Journal* 4, no. 1 (2022): 92–98, <https://doi.org/10.30659/ldj.4.1.92-98>.

<sup>31</sup> Y. A. Triana Ohoiwutun and Surjanti Surjanti, "Urgensi Pemeriksaan Ahli Jiwa Dalam Kasus Kekerasan Psikis Dalam Rumah Tangga," *Jurnal Yudisial* 11, no. 3 (December 26, 2018): 327–45, <https://doi.org/10.29123/jy.v11i3.300>.

<sup>32</sup> Y.A. Triana Ohoiwutun, Evoryo Carel Prabhata, and Pyali Chatterjee, "Forensic Approach to Optimise Children's Right to Opinion in Indonesian Courts," *Lentera Hukum* 10, no. 1 (May 10, 2023): 45, <https://doi.org/10.19184/ejlh.v10i1.37495>.

<sup>33</sup> Ohoiwutun, Prabhata, and Chatterjee.

opinion.<sup>34</sup> Descriptive refers to the opinion of a psychiatrist who confirms that the Defendant is suffering from a mental disorder, and normatively, the judge's job is to assess whether or not the mental disorder exists. In a normative descriptive system, the judge assesses the correlation between paedophilia, sexual preference disorders and sexual crimes against children.<sup>35</sup> The existence of paedophilia disorders that refer to the opinion of a psychiatrist, that is, by confirming the opinion of a psychiatrist, and if there are indications that the offender is a paedophile, rehabilitation sanctions can be imposed together with imprisonment.

The original purpose of the sanctions, according to Lippman, is to reform the perpetrators and turn them into law-abiding and productive members of society. Rehabilitation through sanctions for psychiatric actions against perpetrators of sexual crimes against children is based on the idealistic idea that every individual is basically good, so psychiatric therapy is expected to change their lives when encouraged and given support.<sup>36</sup> To reform and change the offender's behaviour, a psychiatrist's opinion is needed to determine the appropriateness, success, and effectiveness of a sanction. Psychiatric examination, particularly through forensic psychiatric examinations carried out through diagnosis to determine the presence or absence of paedophilic sexual preference disorders, and prognosis related to the way of determining the actions of psychiatric therapy. The application of forensic psychiatric examinations at the prognostic level is related to an opinion about the possibility of immediate and future travel, the level, and the consequences of sexual behaviour disorders in a person suffering from paedophilia.

Forensic psychiatric examination needs to be done to determine whether or not there is an indication of paedophilia-type "paraphilia" disorder. Prognostically, it can be useful for determining the type, place, timing, and by whom psychiatric therapy will be performed. In determining sanctions for actions, the philosophical basis is the effort to rehabilitate or improve the conditions of the perpetrators of crimes, so that the conditions in which they are rehabilitated are important to ensure that these places are in accordance with their needs.<sup>37</sup> From the perspective of criminal law based on the purpose of punishment, the prognosis of psychiatric treatment sanctions can be carried out in conjunction with imprisonment sanctions that are tailored to the needs of paedophile offenders. The implementation of sanctions for rehabilitation through psychiatric therapy refers to the results of a forensic psychiatric examination, including diagnosis and prognosis. Psychiatric therapy actions based on the prognosis of psychiatrists can be done through psychotherapy and/or pharmacotherapy. The sexual impulses of a person with paedophilia can be changed through psychiatric therapy. A

<sup>34</sup> I. Dewa Made Suartha, I. Dewa Agung Gede Mahardika Martha, and Bagus Hermanto, "Between Mental Illness, Criminal Policy Reform, and Human Rights: Discourse on Reformulation of Article 44 of the Indonesian Criminal Code," *International Journal of Criminal Justice Sciences* 17, no. 1 (2022): 1–21, <https://doi.org/10.5281/zenodo.4756086>.

<sup>35</sup> Yusyanti, "Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual."

<sup>36</sup> Matthew Lippman, *Contemporary Criminal Law: Concepts, Cases, and Controversies*, 5th ed. (United States: Sage Publications Inc, 2018).

<sup>37</sup> Eva Achjani Zulfa, Anugerah Rizki Akbari, and Zakky Ikhsan Samad, *Perkembangan Sistem Pemidanaan Dan Sistem Pemasyarakatan* (Jakarta: Raja Grafindo Persada, 2017).

psychiatrist is needed in the legal process.<sup>38</sup> The existence of forensic psychiatric examinations in handling cases of sexual crimes against children is useful in choosing the right steps related to determining criminal liability and sanctions that can be imposed. A forensic psychiatric examination can be concluded based on a diagnosis related to sexual crimes against children. A psychiatric diagnosis can be utilised in the pre-trial examination phase to describe the mental health condition of an offender;<sup>39</sup> whereas in the examination phase, the adjudication can assist the judiciary or the judge in determining whether or not there is a disturbance in the sexual behaviour of paedophiles related to criminal liability and the accuracy of sanctions that the judge can impose; whereas in the post-adjudication phase, it is useful in implementing sanctions, both basic criminal sanctions and rehabilitation measures.

If it can be proven in the adjudication phase, based on forensic psychiatric examinations, that the perpetrators of sexual crimes against children are people with paedophilia, then the offender is sentenced to imprisonment. With reference to Law No. 17 of 2016, the time for implementing the sanction of rehabilitation measures will be given during and/or after the convicts undergo imprisonment.<sup>40</sup> In cases of sexual crimes against children by paedophiles, therapeutic measures can be carried out in conjunction with imprisonment sanctions based on a psychiatric recommendation. Sanctions for rehabilitation actions based on psychiatric therapy carried out in conjunction with imprisonment sanctions are useful in supporting the effectiveness of sanctions.

The application of psychiatric therapy to perpetrators of paedophilia will be more effective if it is decided by the judge together with sanctions of imprisonment. Cases of sexual crimes against children are concrete events committed by a paedophile. In contrast, paedophilia is included in the category of mental disorders, both according to the DSM, ICD and PPDGJ. The judge should properly consider the importance of the imposition of psychiatric actions against paedophiles, along with imprisonment. Only the judge has the authority to make a decision.

The development of classification and diagnosis of mental disorders in the DSM, ICD or PPDGJ is a concrete phenomenon that can be accounted for scientifically. Diagnosis and prognosis through mechanisms of criminal law for perpetrators of sexual crimes and people with paedophilia will benefit both the perpetrator and the community. From a criminal law perspective, the judge's verdict ordering people to undergo psychiatric treatment and imprisonment is expected to affect the behaviour of those subject to the law. The judiciary, through the authority of judges in deciding cases, represents the state in settling legal cases, and only the state determines it through legal regulations. Legal regulations are the norm; more precisely, they are the norm that imposes sanctions.<sup>41</sup>

<sup>38</sup> William E. Foote, Jane Goodman-Delahunty, and Gerald Young, "Civil Forensic Evaluation in Psychological Injury and Law: Legal, Professional, and Ethical Considerations," *Psychological Injury and Law* 13, no. 4 (2020): 327–53, <https://doi.org/10.1007/s12207-020-09398-3>.

<sup>39</sup> Penelope Brown et al., "Prevalence of Mental Disorders in Defendants at Criminal Court," *BJPsych Open* 8, no. 3 (2022): 1–8, <https://doi.org/10.1192/bjo.2022.63>.

<sup>40</sup> Muhammad Firdauz Ibnu Pamungkas, "Urgensi Pengaturan Dan Penerapan Sanksi Kebiri Kimia Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak," *Jurnal Lex Renaissance* 7, no. 3 (2022): 545–58, <https://doi.org/10.20885/jlr.vol7.iss3.art7>.

<sup>41</sup> B. A. Sidarta, *Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana* (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia RI, 2014).

The state is a legal subject that has the right to impose sanctions (*jus puniendi*) with all the consequences. Therefore, judges, as state representatives, have a strategic position in imposing sanctions, in this case, psychiatric sanctions against paedophiles carried out in conjunction with imprisonment sanctions.

### **Judge Authority (Application of the Double Track System Concept) in Cases of Sexual Crimes Against Children**

Criminal justice against paedophiles and the imposition of psychiatric therapy actions occupies an important and strategic position in efforts to tackle crime. Crime-prevention efforts through criminal law aim to maintain an orderly life among citizens. This indicates one of criminal law's functions as a subsystem of social control. The movement of criminal law in the application of sanctions must be balanced to protect people's lives. For this reason, it is necessary to apply the principle of mono-dualistic balance, which balances the interests of the individual and the interests of the community, the interests of individual actors and the interests of victims, leading to the interests of the community.

Referring to the nature of the imposition of sanctions in criminal law, the imposition of sanctions of imprisonment against perpetrators of sexual offenses against children by paedophiles is to impose "special suffering" for the actions he has done; and the imposition of sanctions for psychiatric therapy is aimed at protecting and educating those oriented to the interests of providing benefits or improving the "behaviour" of the offender. Therefore, in the case of sexual crimes against children with paedophilia, the effectiveness and efficiency of sanctions in criminal law can be achieved by the imposition of imprisonment sanctions together with sanctions for psychiatric therapy. Starting with the nature of the imposition of sanctions in criminal law, namely the imposition of sanctions of imprisonment oriented to "special suffering", and the imposition of sanctions for actions oriented to the interests of "providing benefits or improving the perpetrators". Implementation of the double track system, as determined in Law No. 17 of 2016, in cases of sexual crimes against children with paedophiles, can be carried out in conjunction with imprisonment, which depends on the diagnosis and prognosis of psychiatrists.

The sanctions for psychiatric treatment of sex offenders against children with paedophiles, in their technical implementation and implementation, can be integrated and harmonised with sanctions of imprisonment. For actors who are indicated as suffering from paedophilia, on the recommendation of a psychiatrist, psychiatric therapy can be done with the consent/willingness of the perpetrators themselves, while still in legal proceedings. In the pre-adjudication phase, during the investigation and prosecution stages, if the offender refuses to undergo psychiatric therapy, psychiatric therapy can be ordered in the adjudication phase, which is the process of proof in Court. The judge's broader powers in hearing trials in accordance with the rule of law allow the parties to take certain actions. Even though the law is a general prohibition on coercion, as an exception, it is permissible to use coercion as a sanction under certain conditions and for certain individuals.<sup>42</sup> The judge's jurisdiction in criminal procedure law encompasses all aspects of criminal cases. The strategic role of the judge can determine the

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<sup>42</sup> Sidarta.

specific actions taken during the adjudication examination phase. The judge, with his authority, can order a psychiatric examination. Only a psychiatrist can explain the mental health condition of the perpetrator, and the ruling judge evaluates his statement.

Judges' orders are indeed coercive; the law and coercion are not in conflict with each other; therefore, it is concluded that the law is a coercive organisation, and that judges' power is absolute in the negative system of women.<sup>43</sup> An order is binding not because the ruling individual has greater real power, but because he is authorised to issue binding orders.<sup>44</sup> Almost all jurists with a dogmatic view of law regard law as a sanctioned method sanctioned by the highest authority in their society.<sup>45</sup>

Relating to sexual crimes against children and the absence of orders under Law No. 17 of 2016 to involve mental experts in case trials, the judge, with his authority, has the full authority to summon and examine mental experts in order to establish judges' confidence in deciding cases. The absolute authority of judges in examining and deciding cases is a juridical consequence of the adoption of the *negatief wettelijke bewijstheorie* in the Indonesian Criminal Procedure Code.<sup>46</sup> Therefore, despite Law No. 17 of 2016, it does not regulate the urgency of a psychiatric examination of perpetrators of sexual crimes against children. However, the judge, with his authority, can order a psychiatric examination.

The judiciary, as a state representative in criminal cases, plays an important role in crime prevention. However, in essence, the law must be balanced to provide protection to the community or serve as a means of social control.<sup>47</sup> The threat of imprisonment as the primary punishment, along with additional sanctions such as chemical castration, electronic monitoring devices, and rehabilitation, is intended to maintain public order. The protection of individuals, society, and the state is an interest protected and directed by criminal law norms.<sup>48</sup> According to Yoserwan, criminal law enforcement requires procedural rules that are broad in scope and within the framework of the criminal justice system.<sup>49</sup> Basically, criminal cases examined in Court include several aspects, namely: what facts are proven and what is the nature of the accused's guilt for the crimes charged; then, from the facts and the Defendant's guilt for the crimes charged will lead to what the law is, which then ends in determining whether the sentence is appropriate.<sup>50</sup>

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<sup>43</sup> Sidarta.

<sup>44</sup> Sidarta.

<sup>45</sup> Achmad Ali, *Menguak Tabir Hukum Edisi Kedua* (Jakarta: Prenada Media Group, 2015).

<sup>46</sup> Rian Saputra, Josef Purwadi Setiadi, and Jaco Barkhuizen, "Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with the United States)," *Journal of Indonesian Legal Studies* 8, no. 1 (May 31, 2023): 243–88, <https://doi.org/10.15294/jils.v8i1.67632>.

<sup>47</sup> M Guffar Harahap, Muhammad Hizbullah, and Haidir, "Hukum: Justifikasi Sosial, Kontrol Sosial Dan Engeniering Sosial," *Taqnun: Jurnal Syariah Dan Hukum* 03, no. 02 (2021): 12–23.

<sup>48</sup> Elena MacUlan and Alicia Gil Gil, "The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts," *Oxford Journal of Legal Studies* 40, no. 1 (2020): 132–57, <https://doi.org/10.1093/ojls/gqz033>.

<sup>49</sup> Yoserwan, "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Di Bidang Ekonomi Di Indonesia\*," *Masalah-Masalah Hukum* 40, no. 2 (2011): 123–32.

<sup>50</sup> Ariman Sitompul, "The Crime of Prostitution in View of the KUHP and Law No 19 Year 2016," *Budapest International Research and Critics Institute-Journal* 5, no. 4 (2022): 3080–69, <https://doi.org/10.33258/birci.v5i4.7266>.

In answering case aspects in criminal law, based on Article 184, Paragraph (1), of the Criminal Procedure Code, the predetermined evidence is examined, namely: witness statements, expert statements, letters, instructions, and statements of the accused. Expert testimony, as one of the forms of evidence specified in Article 184 Paragraph (1) of the Criminal Procedure Code, does not have binding evidence as a consequence of *negatieve wettelijke bewijstheorie*. Evidence-based on the law is negative, placing the judge's conviction in deciding a case on the evidence set out in the law, so that the juridical consequences are that the judge has absolute power and there is subjective discretion in deciding each criminal case.

According to Christianto, "The judge as a law enforcer owns flexible space in comprehending applicable laws".<sup>51</sup> It means that, for judges, the law is an interpretive concept; there is room for interpretation in the selection, placement, and application of the law. The task of the judge, who not only applies the law and the existence of an interpretative concept in the examination of criminal cases but also represents the absolute power of the judge in applying Law No. 17 of 2016. The absolute power of the judge in the examination of criminal cases allows the judge to override the information of mental experts in cases of sexual crimes against children if the judge does not believe it. Vice versa, if the judge believes the psychiatrist's information, it can be used as a basis for deciding a case.

Judges' confidence in deciding cases is also confirmed in Law No. 4 of 2004 concerning Judicial Power, Article 4, which was later revoked by Law No. 48 of 2009 concerning Judicial Power, Article 6, Paragraph (2). The Judicial Power Law stipulates that no one can be convicted of a criminal offence unless the Court is based on a valid legal instrument in accordance with the law, and the judge is satisfied that a person is responsible and has been guilty of the Act charged against him. The provisions of judicial power clearly state that judges, based on their beliefs, can impose criminal sanctions on someone if there is an element of error, and that person can be held accountable.

The examination of perpetrators of sexual crimes against children should be based on scientific investigations involving psychiatrists. In addition to stating disturbed mental states due to paedophile sexual preferences, it must also assess the relationship between these psychiatric conditions and sexual crimes committed against children.<sup>52</sup> Based on the psychiatrists' examination results, the perpetrators may be subject to basic criminal sanctions (including prison sentences) as well as sanctions for rehabilitation measures. Thus, judges, in making decisions, should rely on psychiatrists' information, but based on subjective discretion, the judge has full authority to accept or reject that information based on their beliefs. In other words, expert testimony has the power of free proof, meaning that the judge is free to judge, and there is no binding obligation to accept the truth of expert testimony.<sup>53</sup>

<sup>51</sup> Hwian Christianto, "Measuring Cyber Pornography Based on Indonesian Living Law: A Study of Current Law Finding Method," *International Journal of Law, Crime and Justice* 60 (March 2020): 1–13, <https://doi.org/10.1016/j.ijlcj.2019.100348>.

<sup>52</sup> J.M. Cantor et al., "Independent Component Analysis of Resting-State Functional Magnetic Resonance Imaging in Pedophiles," *The Journal of Sexual Medicine* 13, no. 10 (October 2016): 1546–54, <https://doi.org/10.1016/j.jsxm.2016.08.004>.

<sup>53</sup> Tony Ward, "Explaining and Trusting Expert Evidence: What Is a 'Sufficiently Reliable Scientific Basis'?", *International Journal of Evidence and Proof* 24, no. 3 (2020): 233–54, <https://doi.org/10.1177/1365712720927622>.

The *negatief wettelijke bewijstheorie* used in the Criminal Procedure Code gives the judge the authority to decide cases based on at least two pieces of evidence determined by law and on the judge's belief in the accused's guilt.<sup>54</sup> The consequences of the negative nature of the women put the judge in a central position in deciding each criminal case based on his conviction. Forensic psychiatric examination is evidence of expert statements that concluded that the Defendant, as a paedophile, can be used as a *ratio decidendi* by the judge in deciding a case. Therefore, in cases of sexual crimes against children, psychiatric examinations occupy an urgent position.

Imprisonment and rehabilitation measures for perpetrators of sexual crimes against children should be based on the information of a psychiatrist. The existence of knowledge outside of criminal law that is used in criminal law enforcement indicates that the criminal justice system has an interface (interaction, interconnection and interdependence). The use of other disciplines outside criminal law contributes to finding the truth, as addressed in every criminal case examination. However, the choice of experts outside the legal discipline must be made carefully, precisely, and selectively so that it can achieve the goal of seeking and finding the truth.

The main cause of paedophilia, as a sexual preference, is a factor causing sexual crimes against children, and should be addressed through a functional psychiatric approach, through a forensic psychiatric examination. Thus, the judge can precisely determine the choice of sanctions for the rehabilitation of perpetrators of sexual crimes against children, as determined in Law No. 17 of 2016.

Judges play a strategic role in determining the types and methods of imposing sanctions to achieve criminal objectives.<sup>55</sup> Judges are given freedom to determine the basis for the philosophy of imprisonment by considering the Defendant's state,<sup>56</sup> because judges are in charge of law enforcement *in concreto*. Moreover, the Indonesian verification system adheres to the negative status of women. Judges' decisions that impose sanctions of imprisonment and rehabilitation simultaneously against a paedophile can be examined from the perspective of a utilitarian theory of justification of punishment. Utilitarian theory views the goal of punishment as achieving outcomes that are useful for protecting society and promoting prosperity.<sup>57</sup>

The purpose of criminal sanctions, from a utilitarian perspective, is to protect the community, namely by separating the perpetrators from the community, as in the literature called incapacitation.<sup>58</sup> Placement of perpetrators of sexual crimes against children in prison aims to prevent the possibility of a crime being committed again and is a means of providing

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<sup>54</sup> Triantono Triantono and Muhammad Marizal, "Parameter Keyakinan Hakim Dalam Memutus Perkara Pidana," *Justitia et Pax* 37, no. 2 (December 22, 2021): 267–86, <https://doi.org/10.24002/jep.v37i2.3744>.

<sup>55</sup> Mohammad Darudin, "Criminal Sanctions As an Eradication Strategy Of Corruption: A Critical Study from the Perspective of Islamic Criminal Law," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 1 (2018): 1–12, <https://doi.org/10.22515/alahkam.v3i1.1345>.

<sup>56</sup> Apripari Irham, "Penegakkan Yurisdiksi International Criminal Court Atas Kejahatan Agresi Pasca Kampala Amendments Diadopsi Dalam Rome Statute," *SASI* 26, no. 4 (2020): 540–56, <https://doi.org/10.47268/sasi.v26i4.272>.

<sup>57</sup> Hend Hanafy, "Bentham: Punishment and the Utilitarian Use of Persons as Means," *Journal of Bentham Studies* 19, no. 1 (2021), <https://doi.org/10.14324/111.2045-757x.048>.

<sup>58</sup> Mfonobong Udoudom, "The Value of Nature: Utilitarian Perspective," *An Interdisciplinary Journal of Human Theory and Praxis* 4, no. 1 (2021): 31–46.

community protection, while rehabilitation measures while the Convict is serving a prison sentence are useful for providing psychiatric therapy. Imprisonment, along with rehabilitation measures, will provide many benefits for perpetrators. Rehabilitation, in the form of psychotherapy and/or pharmacotherapy, carried out in conjunction with imprisonment sanctions, makes sanctions work more effectively and efficiently.

The theory of punishment's goal, as proposed by J. Bentham, is reformatory: a criminal system that aims to transform perpetrators into useful citizens. On the other hand, J. Bentham stated that there are three strategies to prevent someone from committing another crime, namely: a. removing the potential for physical strength to commit a crime; b. removing the desire to do evil, and c. making it a deterrent to committing crimes. Thus, the formulation of Law No. 17 of 2016 threatens imprisonment and rehabilitation measures from the perspective of the utilitarian theory, as stated by J. Bentham, namely rehabilitation aimed at eliminating the potential physical force of the offender from committing a crime again and eliminating the desire to commit a crime. In contrast, criminal sanctions are intended to deter sexual offenders against children.

The prevention of sexual offences against children by offenders with paedophilia is not enough to rely on the means of imprisonment. Impaired sexual behaviour in a person with paedophilia can only be cured through proper psychiatric therapy. The accuracy of psychiatric therapy in mental health is part of the sanctions for rehabilitation in criminal law. The application of sanctions of imprisonment, together with rehabilitation measures, will be useful if based on considerations that benefit both the perpetrators and the community. For the perpetrators, rehabilitation measures are beneficial for getting mental health services, while sanctions of imprisonment can protect the community, especially children, from dangerous sexual crimes. Thus, viewed through the utilitarian lens of J. Bentham, the imposition of sanctions for rehabilitation and imprisonment is beneficial for both perpetrators and the community.

In criminal law, sanctions are distinguished between criminal sanctions (*straf*) and sanctions (*maatregel*).<sup>59</sup> Criminal sanctions are based on "why criminal acts are held?", while actions are based on the basic idea of "why criminal acts are held".<sup>60</sup> The difference in basic ideas regarding criminal sanctions and sanctions acts is one of the characteristics of modern criminal law. The nature of prospective sanctions, which are future-oriented, strengthens the position of sanctions as a means of rehabilitation in criminal law. Principal criminal sanctions decided by the judge, together with sanctions for rehabilitation measures under Law No. 17 of 2016, in line with the paradigm shift in the purpose of punishment, are directed at people, not at acts.

Paedophilia is an abnormal behaviour and is classified as a mental disorder, so in addition to the imposition of imprisonment sanctions, psychiatric therapy is also needed.<sup>61</sup> In line with the criminal objectives paradigm, the orientation toward imposing sanctions is prospective and

<sup>59</sup> Hanafy, "Bentham: Punishment and the Utilitarian Use of Persons as Means."

<sup>60</sup> H Haeranah et al., "Sanctions Against Children Who Commit Criminal Offense in Indonesia," *Tadulako Law Review* 5, no. 1 (2020): 76–88.

<sup>61</sup> Y A Mangesti and S Suhartono, "Chemical Castration Sanctions in an Ethical Perspective," *Jurnal Magister Hukum Udayana* ..., no. 17 (2022): 507–23, <https://doi.org/10.24843/JMHU.2022.v11.i03.p03.I>.

future-oriented.<sup>62</sup> In addition, from the point of view of the flow in criminology, which requires the individualisation of criminals, each criminal receives a treatment that suits their personality.<sup>63</sup>

Conformity between the sanction and the criminal's personal character or condition is a manifestation of the paradigm shift in the purpose of punishment and the concept of criminal individualisation. Thus, the ideal sanction can be achieved as intended in criminal law. For this reason, when imposing criminal sanctions, judges must consider the nature of the perpetrators.<sup>64</sup> In line with the paradigm of the purpose of punishment and referring to the concept of criminal individualisation that prioritises the characteristics, character, and personality of a sex offender against a child, it is necessary to ensure the suitability and accuracy of the imposition of sanctions against paedophiles whose mental condition is disturbed.

The legal process that ends with the imposition of sanctions in cases of sexual crimes against children requires high social costs; it should be carried out with the principle of prudence, accompanied by consideration of the high costs and benefits obtained, so that the effectiveness and efficiency of a sanction are achieved. Appropriate psychiatric action measures based on the prognosis of psychiatrists in cases of sexual crimes against children will be effective and efficient. This is part of implementing the precautionary principle, which is supported by high costs and benefits. Thus, the goal of punishment and effectiveness of sanctions can be achieved by implementing sanctions of imprisonment in conjunction with rehabilitation measures, especially psychiatric therapy. The orientation toward improving the perpetrators in the future is the goal of punishment and is also based on the concept of criminal individualisation.

The concept of punishment that has shifted to the sense of justice that must be obtained by all parties, both perpetrators, victims and the community, must be realised in cases of sexual crimes against children. This illustrates that justice must be felt by all parties involved in criminal conflicts. Justice for perpetrators of sexual crimes against children can be assessed from the perspective of a sanction oriented to the interests of perpetrators in the future, because the nature of the imposition of sanctions is directed at people and not at the criminal acts that have been committed. Justice towards victims is realised by imposing criminal sanctions on perpetrators; indirectly imposing such sanctions is a manifestation of community protection that reflects justice for the community. All parties involved in criminal conflicts can feel that they receive (perhaps) equal justice. Thus, the imposition of sanctions means that judges are not only satisfied to convict perpetrators, or that victims are satisfied with the judge's verdict, but also that perpetrators have the opportunity to improve themselves and that the community is satisfied with the judge's decision.

<sup>62</sup> Beatriz E Mayans-Hermida and Barbora Holá, "Punishing Atrocity Crimes in Transitional Contexts: Advancing Discussions on Adequacy of Alternative Criminal Sanctions Using the Case of Colombia," *Oxford Journal of Legal Studies* 43, no. 1 (2023): 1–31, <https://doi.org/10.1093/ojls/gqac022>.

<sup>63</sup> N. K. Tharshini et al., "The Link between Individual Personality Traits and Criminality: A Systematic Review," *International Journal of Environmental Research and Public Health* 18, no. 16 (2021): 1–12, <https://doi.org/10.3390/ijerph18168663>.

<sup>64</sup> Husnulhotima Sauri, "Analysis of Judge's Decision in Imposing Child Abuse Crime," *Estudiante Law Journal* 5, no. 1 (2023): 85–95, <https://doi.org/10.33756/eslaj.v5i1.19882>.

## The Implementation of Chemical Castration Sanction in Comparative: Regulation and Mechanism

There is an ongoing debate regarding the implementation of chemical castration in several countries worldwide. Although chemical castration has been recognised since the early 20th century throughout its history, opposition to its implementation is undoubtedly rooted in the human rights perspective, specifically concerning the right to be free from any form of torture. David Feldman contends that the central issue influencing human rights considerations in the use of castration for paedophiles is the concept of human dignity. According to Feldman, dignity holds particular significance in defining the human condition.<sup>65</sup> However, he asserts that dignity, in itself, is not a human right but rather a goal that human rights frameworks aim to safeguard. While this Article does not delve into the verification of this argument or the support for an international human rights framework, it suggests that documents such as the International Covenant on Civil and Political Rights (ICCPR) of 1966 are intended to uphold the "inherent dignity" of all individuals.<sup>66</sup> The assertion is made that human rights endorse the preservation of "inherent dignity" for everyone, including sex offenders, which should be a consideration in shaping legal developments. If "inherent dignity" encompasses elements such as the right to a private and family life under Article 8 of the European Convention on Human Rights (ECHR) 1950, and the right to initiate a family under Article 12 of the ECHR, it must be taken into account in the evolution of the law. Taking a closer look at the concept of torture itself, we can refer to the provisions of the International Covenant on Civil and Political Rights ("ICCPR"), which states in Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." In addition, in the context of the International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"), which has also been ratified by several countries enforcing chemical castration sanctions, explicitly states in Art. 16 that "each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture...".

Specifically, the provisions regarding chemical castration in a comparative legal approach can be categorised into two broad concepts: as a punishment for crimes committed by the perpetrator or as a method of treatment/care for mental issues experienced by the offender. These two aspects of chemical castration differ in their characteristics. The application of chemical castration as a punishment is coercive and mandatory, while its application as a form of treatment is voluntary. In its development, some countries consider mitigating the punishment for sexual offenders as long as they voluntarily undergo chemical castration treatment. These variations in regulations indirectly reflect the state's perspective, as expressed by its lawmakers, on the existence of chemical castration. The first country in the world to

<sup>65</sup> David Feldman, "Human Dignity as a Legal Value - Parts I and II," *Public Law*, 1999, 61–71.

<sup>66</sup> Hazel Kemshall and Kieran McCartan, "Managing Sex Offenders in the UK: Challenges for Policy and Practice," in *Responding to Sexual Offending* (London: Palgrave Macmillan UK, 2014), 206–26, [https://doi.org/10.1057/9781137358134\\_11](https://doi.org/10.1057/9781137358134_11).

implement chemical castration as a punishment for sexual offenders was Denmark in 1929.<sup>67</sup> The application of chemical castration is regulated as an alternative to imprisonment for offenders who willingly undergo the procedure.<sup>68</sup> Apart from Denmark, chemical castration has also been implemented in other European countries, including Sweden in 1944, Finland in 1970, Norway in 1977, and Poland in 2009. Additionally, in Asian countries, the Republic of Korea has been utilising chemical castration since 2011. The history of implementing chemical castration as a punishment for perpetrators of child sexual crimes in the Republic of Korea is closely tied to a significant event that garnered public attention and concern. This event was in response to a high-profile case where a 58-year-old man raped and assaulted an 8-year-old girl. The horrifying attack evoked widespread shock and left the victim with enduring physical injuries. Following this incident, there was a growing demand for stricter punishments for perpetrators of child sexual crimes, particularly through the implementation of chemical castration. This call for stringent measures has been echoed since 2008 and subsequently resulted in the enactment of regulations on chemical castration, outlined in the Act on the Medication against Sexual Impulses of Sexual Assault Offenders. In terms of giving a clearer understanding of the global regulations on chemical castration, including those in the United States, Australia, the Republic of Korea, and Russia, the following details will be presented in the tables below:

### ***The United States***

Given that in the mid-1990s, various states enacted legislation allowing chemical castration (See Table 3).

**Table 3. The legislation of chemical castration in the US**

States	Description	Statutes
California	In California, the legal ground of chemical castration is stipulated through California Penal Code Section 645, which states that individuals convicted of specific offences may be required to undergo Medroxyprogesterone Acetate (MPA) treatment. This legal provision was enacted in California to address certain types of offences and mandate MPA treatment as part of the sentencing process.	Article 645 (a) California Penal Code: "The Court may order that a person, upon parole, undergo MPA treatment if convicted of a first specified offence. Thus, for the first offence, the sentence is discretionary." Article 645 (b) California Penal Code: "Person guilty of a second offence shall undergo MPA treatment. Thus, if there is a second conviction for a specified offence, MPA treatment is mandatory. Alternatively, a person may undergo voluntary and permanent surgical treatment." Article 645 (d) California Penal Code: "Provides that treatment shall begin one week prior to release; and shall continue until the Department of Corrections demonstrates to the Board of Prison Terms that this treatment is no longer necessary." Article 645 (f) California Penal Code: "Provides that the Department of Correction shall "administer this section and implement the protocols required by this section." Paragraph (f) further provides that nothing in those protocols shall require a physician or surgeon to participate against his or her will in the

<sup>67</sup> W. Winslade et al., "Castrating Pedophiles Convicted of Sex Offenses against Children: New Treatment or Old Punishment?," *SMU Law Review: A Publication of Southern Methodist University School of Law* 51, no. 2 (1998): 349–411.

<sup>68</sup> Louis Le Maire, "Danish Experiences Regarding the Castration of Sexual Offenders," *The Journal of Criminal Law, Criminology, and Police Science* 47, no. 3 (1956): 294, <https://doi.org/10.2307/1140320>.

Louisiana	Louisiana Revised Statutes, Title 14, Chapter 43.6, Criminal Law: Administration of MPA to certain sex offenders.	administration of the provisions of section 645. Paragraph (f) also provides that the protocols shall include, but not be limited to, a requirement to inform the person about the effects and side-effects of treatment”
Florida	In Florida, a law that took effect in October 1997 includes provisions for Chemical Castration as a separate sentence that the Court has the discretion to impose, and in certain situations, it is mandatory. <sup>69</sup> The legal reference for this law is Florida Statutes 794.0235, titled "Administration of MPA to persons convicted of sexual battery." Similar to the law in California and also Louisiana, it outlines the specific drug, MPA, to be utilised. The structure of this law closely resembles that of the California law.	RS 14:43.6 B of Louisiana Criminal Law: “If a person is convicted of a second specified offence, the Court shall sentence the offender to be treated. Thus, the sentence is mandatory.” RS 14:43.6.2 of Louisiana Criminal Law: “The Court may order physical castration if the defendant consents.”  Section 794.0235 of Florida Statutes: “(1) The court ... may sentence a defendant to be treated with medroxyprogesterone acetate (MPA) ... if the defendant is convicted of sexual battery ....” (2) The Court shall sentence a person to be treated with MPA upon a second conviction for sexual battery. Thus, for a second offence of sexual battery, the sentence is mandatory. (3) The Department of Corrections shall provide the services necessary to administer MPA treatment.”

**Source: Author's Analysis**

The legal consideration behind the implementation of the chemical castration statute in the United States is based on the belief that the rehabilitation of sex offenders and the safety of the citizens are substantial justifications for incorporating chemical castration as a condition for the release of convicted sex offenders. This approach is designed to address concerns related to the potential reoffending of sex offenders and aims to enhance public safety by utilising chemical castration as a preventive measure. From a regulatory perspective, the imposition of chemical castration punishment in the United States for perpetrators of underage sexual crimes will only be mandated by a judge if the crime is not a first-time occurrence (recidivism). In such cases, the law compels the judge to order chemical castration for the Defendant, considering input from the Department of Corrections.

The execution of the verdict on chemical castration will be entirely managed by the Department of Corrections, overseeing the process from monitoring to treatment and other recommendations in the treatment procedure. On the other hand, voluntary chemical castration can also be undertaken, and its implementation will adhere to protocols established by the Department of Corrections.

**Australia**

As of now, it seems that no jurisdiction in Australia has a law explicitly outlining chemical castration as a sentencing option for convicted individuals. However, in late 2015, it appears that judges in certain jurisdictions may exercise the authority to include orders for various forms of chemical castration in their sentencing decisions.

**Table 4. The legislation of chemical castration in Australia**

<sup>69</sup> Ryan Cauley, “Is Chemical Castration a Progressive or Primitive Punishment - Balls Are in Your Court, Iowa Legislature,” *Journal of Gender, Race & Justice* 17 (2014): 1–493.

States	Description	Statutes
Queensland	The Queensland Umbrella Act related to the chemical castrations was the Dangerous Prisoners (Sexual Offenders) Act of 2003.	<p>Section 3 Object of the Sexual Offenders Act:  <i>"(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation."</i></p> <p>Section 13 Final Orders (Division 3) Sexual Offenders Act: "(1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division3 order (a danger to the community)."</p> <p>Section 13 Subsection (5) of the Sexual Offenders Act: "If the Court is satisfied as required under subsection(1), the Court may order</p> <p>(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (continuing detention order)."</p> <p>Section 16B (Other Directions) Sexual Offenders Act: "(1) A corrective services officer may give a released prisoner a reasonable direction about—</p> <p>(a) the prisoner's accommodation; for example— a direction that the released prisoner may only reside at a place of residence approved by a corrective services officer (b) the released prisoner's rehabilitation, care, or treatment; or example—a direction that the released prisoner participates in stated treatment programs"</p>
Western Australia	The legal ground of chemical castration in Western Australia is the Dangerous Sexual Offenders Act 2006 ("DSO Act").	<p>Section 4 (Objects of this Act) of the DSO Act: "(a) to provide for the detention in custody or the supervision of persons of a particular class to ensure adequate protection of the community and of victims; and (b) to provide for continuing control, care, or treatment, of persons of a particular class."</p> <p>Section 7, Paragraph (3) of the DSO Act: "(a) any report that a psychiatrist prepares as required by section 37 for the hearing of the application and the extent to which the person cooperated when the psychiatrist examined the person; and (b) any other medical, psychiatric, psychological, or other assessment relating to the person."</p>
New South Wales (NSW)	The legal basis of chemical castration in NSW is stipulated through the Crimes High Risk Offenders Act 2006 No 7 (High Risk Offenders Act).	<p>Section 5 (Definitions of "serious sex offence" and "offence of a sexual nature") of the High Risk Offenders Act: "(1) For the purposes of this Act, a serious sex offence means any of the following offences (a) an offence under Division 10 of Part 3 of the Crimes Act 1900, where— (i) in the case of an offence against an adult or a child, the offence is punishable by imprisonment for 7 years or more, Section 11 (Conditions that may be imposed on supervision order) of the High-Risk Offenders Act."</p> <p>"(1) An extended supervision order or interim supervision order may direct an offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) directions requiring the offender... (d) to participate in treatment and rehabilitation programs, or..."</p>

**Source: Author's Analysis**

According to the Dangerous Prisoners Act 2003 in Queensland, it can be inferred that medical intervention, specifically Chemical Castration, requires the recommendation of the offender's treating psychiatrist and the agreement of the offender. The policy stance regarding this medication is outlined as being beneficial as a supplementary element to intervention programs.

Moreover, the treatment is suggested to be considered only when recommended by clinicians and consented to by the offenders. Chemical castration is also positioned as a government tool aimed at preventing recidivism by providing a curative approach and overseeing the treatment process. Specifically, Western Australia's Court, upon being convinced by specific criteria supported by evidence, including reports from two psychiatrists, may issue such an order. These orders are capable of containing a condition that mandates the offender to undergo anti-libid (*psychiatrists involved in the judge's decision*)

**Republic of Korea**

The Republic of Korea reportedly was the first jurisdiction in Asia to introduce laws providing for chemical castration in 2010 and 2011 by passing the Act on the Medication against Sexual Impulses of Sexual Assault Offenders entitled "The Act on Pharmacologic Treatment of Sex Offenders' Sexual Impulses with the latest amended through Act No 16915 on February 4, 2020 ("Sex Offenders Act") (See Table 5).

**Table 5. The legislation of chemical castration in the Republic of Korea**

States	Statutes
Republic of Korea	<p>Chapter I (General Provisions) Article 1 (Purpose) of Sex Offenders Act: "The purpose of this Act is to prevent recidivism of sex crime by sexually deviant patients who have committed sex offenses and who are deemed likely to commit a sex crime again and to promote their return to society, by providing them with pharmacologic treatment."</p> <p>Chapter I (General Provisions) Article 2 Paragraph 3 of Sex Offenders Act: "The term 'pharmacologic treatment of sex impulse' (hereinafter referred to as "pharmacologic treatment") means treatment to suppress abnormal sexual impulses or desire, which is conducted by administering medication and psychotherapy, etc. to sexual deviants for weakening or normalising sexual function."</p> <p>Chapter II (Request and Judgment for Orders for Pharmacologic Treatment) Article 1 of the Sex Offenders Act: "(1) A prosecutor may request a court to issue an order for pharmacologic treatment (hereinafter referred to as "medical treatment order") to a person aged 19 or more who is a sexual deviant, has committed sexual assault against a person, and is deemed likely to recommit sexual assault. (Amended by Act No. Act No. 11557, Dec. 18, 2012); (2) A prosecutor shall request a medical treatment order after a person subject to a medical treatment order (hereinafter referred to as "recipient of medical treatment order") is diagnosed or assessed by a mental health professional. (Amended by Act No. 11005, Aug. 4, 2011); (3) The request for a medical treatment order pursuant to Paragraph (1) shall be made by the time of closing of oral proceedings at the appellate trial of a sex assault case (hereinafter referred to as "accused case") for which public prosecution has been instituted or for which medical treatment in custody has been separately requested; (4) Where the Court deems it necessary to give a medical treatment order as a result of trial for the accused case, the Court may ask the Prosecutor to request a medical treatment order; (5) No medical treatment order shall be requested, after 15 years have passed from the time public prosecution is instituted or medical treatment in custody is separately requested without a final and conclusive judgment on the accused case; (6) Matters necessary for diagnosis and assessed by mental health professionals pursuant to Paragraph (2) shall be prescribed by Presidential Decree. (Amended by Act No. 11005, Aug. 4, 2011)."</p>

*Source: Author's Analysis*

The implementation of chemical castration punishment in the Republic of Korea essentially shares similar considerations with the United States and Australia, where the penalty aims to prevent the recurrence of offences committed by perpetrators of child sexual crimes (recommit / recidivism). In practice, before imposing a chemical castration sentence on the Defendant, the Prosecutor will request the Judge's Panel to order medical treatment for the Defendant.

Subsequently, the Judge's Panel will instruct a mental health expert (psychiatrist) to examine the Defendant's mental health. If, during the trial process, the medical examination reveals that the individual requires medical treatment (chemical castration), the judge may decide to proceed with chemical castration for the Defendant. In cases where the Prosecutor does not request a mental health examination for the Defendant, the Judge's Panel, based on its discretion, can instruct the examination of the Defendant by summoning a psychiatrist.

**Russia**

Russia has laws that provide for the existence of chemical castration. The legal ground for chemical castration is stipulated in Article 63 of the Criminal Code of the Russian Federation

No. 63-FZ of June 13, 1996, as amended and supplemented on March 1, 2012 ("Russian Criminal Code") (See Table 6).

**Table 6. The legislation of chemical castration in Russia**

States	Statutes
<i>Russia</i>	<p>Chapter 4 (Person Subject to Criminal Liability) Article 19 of the Russian Criminal Code: "General Conditions for Criminal Liability only a sane natural person who has reached the statutory age envisaged by this Code shall be subject to criminal liability."</p> <p>Article 20 of the Russian Criminal Code: "The Age of Criminal Liability: 1. A person who, before the commission of a crime, has reached the age of 16 years; 2. Persons who, before the commission of a crime, have reached the age of 14 years."</p> <p>Chapter 15 (Compulsory Measures of a Medical Nature) Article 97 of the Russian Criminal Code: "1. Compulsory measures of a medical nature may be imposed by a court of law on the following persons: e) those who have made at the age of eighteen plus an offence against sexual integrity of minors under fourteen years old and who suffer from sexual preference disorder (paedophilia) that does not qualify as insanity. 2. Compulsory measures of a medical nature shall be imposed on persons referred to in the first part of this Article only in cases where their mental derangement threatens the possible infliction on these persons of further damage, or danger to themselves or other persons."</p> <p>Chapter 15 Article 100 Russian Criminal Code: "Compulsory Out-patient Observance and Treatment by a Psychiatrist Compulsory out-patient observation and treatment by a psychiatrist may be imposed in the presence of the grounds envisaged by Article 97 of this Code, if the person, due to his mental state, is not in need of treatment in a mental hospital."</p> <p>Chapter 15 Article 102 Russian Criminal Code: "The use of compulsory medical measures may be prolonged, changed, or terminated by a court of law upon the proposal of the management of the institution which carries out obligatory treatment or of the penal inspectorate exercising control over taking compulsory measures of medical nature on the basis of the opinion of a committee of psychiatrists."</p>

**Source: Author's Analysis**

The Russian Government views that even in the case of a perpetrator of child sexual crimes who is a podophile, criminal accountability must be sought. The difference in the implementation of chemical castration punishment in Russia compared to other countries lies in the fact that the Regulation of chemical castration punishment is not based on the fear of the perpetrator repeating the offense but is solely an effort to provide legal protection to the minor community.<sup>70</sup>

This is why the Judge's Panel is obliged to impose chemical castration punishment (compulsory by the statute to give the measure of a medical nature), even if the individual has committed such an act for the first time, as long as it is committed by someone who is eighteen years or older and a podophile who, based on the expert opinion of a health professional (psychiatrist), still poses a threat to a child under the age of 14.

The execution process of the Court's decision mandating chemical castration will be carried out by psychiatrists affiliated with the Russian Committee of Psychiatrists. This committee is authorised to provide legal opinions or recommendations to extend, modify, or terminate the chemical castration treatment process for the convicted individual.

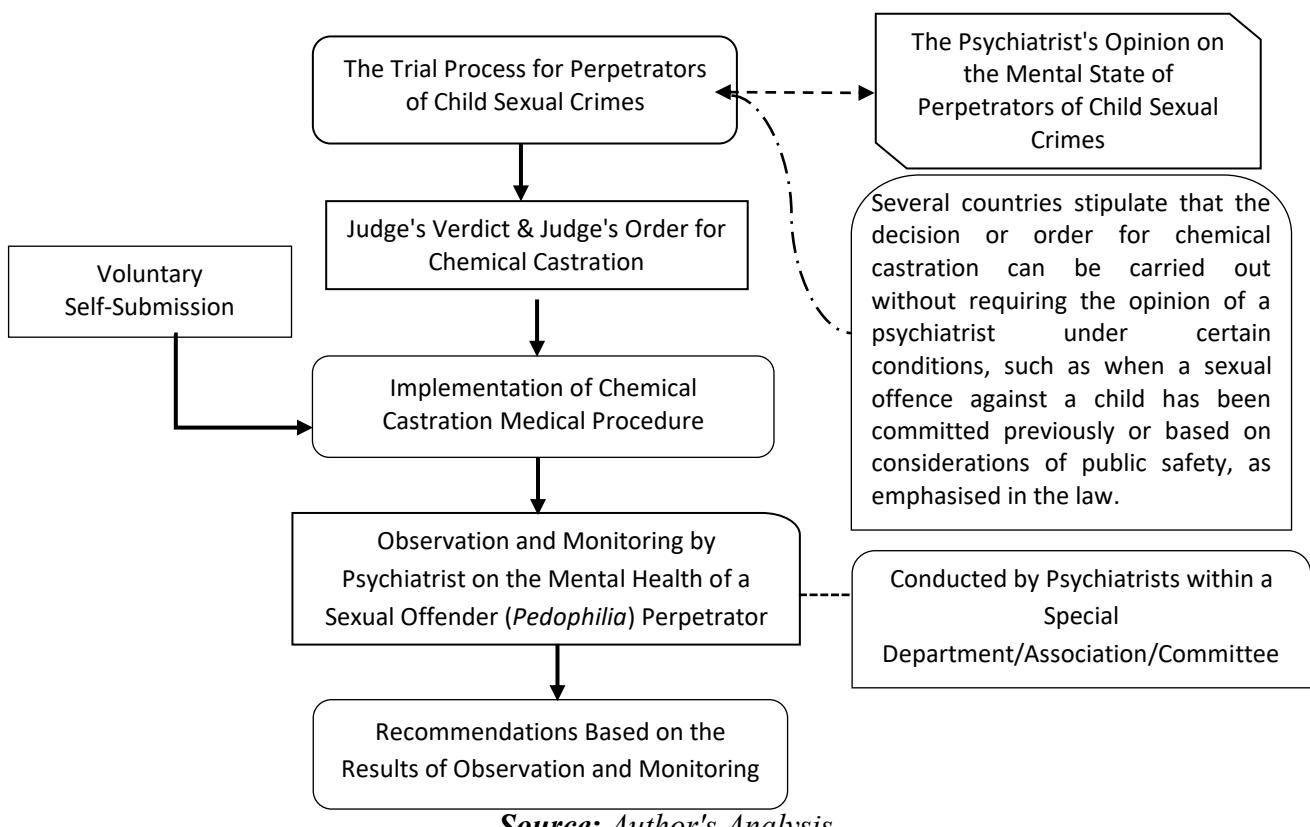
Based on the comparison explained above, it can be observed that the regulatory foundation allowing the implementation of chemical castration punishment in several countries is formulated with different legal phrases such as "*to under MPA treatment*" (United States), "*to giving the treatment Programs*" (Australia), "*to issue an order for pharmacologic treatment*

<sup>70</sup> Rian Saputra et al., "Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)," *Lex Scientia Law Review* 7, no. 1 (2023): 61–118, <https://doi.org/10.15294/lesrev.v7i1.64143>.

(Republic of Korea)", and "compulsory measures of a medical nature shall be imposed" (Russia). Despite these formulation differences, a common thread that can be discerned is that the application of chemical castration worldwide may be based on several objectives, namely: 1) To prevent the recurrence of sexual crimes against children. 2) To facilitate the rehabilitation of perpetrators of child sexual crimes. 3) To ensure the safety of the minor community (children) when the convicted individual reintegrates into social life.

Regarding the purpose of chemical castration, theoretically, by examining the pattern of formulation based on its legal basis as outlined in the Table above, it can be interpreted that the legislative perspective is divided into three main viewpoints. First, those who view chemical castration as a mandated punishment to be imposed by the judge. Second, chemical castration is viewed as a treatment that the judge must administer. Third, it can be considered a treatment that may be provided with the perpetrator's voluntary agreement. In the implementation of chemical castration punishment/treatment for perpetrators of child sexual crimes in several countries worldwide (the United States, Australia, the Republic of Korea, and Russia), the involvement of psychiatrists plays a crucial role. Psychiatrists may act as experts providing legal opinions on the mental condition of the accused to the panel of judges (pertaining to the necessity of chemical castration) or serve as implementers of the verdict, tasked with conducting observation, monitoring, and issuing recommendations (extension of treatment duration or cessation of treatment) regarding the mental condition of the convicted individual after undergoing chemical castration. To enhance comprehension of the role of psychiatrists in the overall concept of implementing chemical castration for convicts from a comparative perspective, the figure 1 elaborate the process.

**Figure 1: The Process of Psychiatrist Involvement in Chemical Castration**



*Source: Author's Analysis*

Figure 1 outlines the legal and medical procedures related to the handling of perpetrators of child sexual crimes, particularly focusing on the process of chemical castration. It begins with the trial process for perpetrators of child sexual crimes. In some cases, perpetrators may voluntarily submit to the legal authorities. Following this, the Court proceeds to the judge's verdict and an order for chemical castration. This is followed by the implementation of the chemical castration medical procedure, which is a process designed to reduce the sexual drive of the offender through hormonal treatment. After the procedure, the offender's mental health is closely monitored. This involves observation and monitoring by a psychiatrist, specifically on the mental health of the sexual offender, particularly those diagnosed with paedophilia. Based on the outcomes of this observation and monitoring, recommendations are made regarding the offender's mental state and any further necessary actions. Figure 1 also notes the role of psychiatrists' opinions in the process. In certain countries, the decision or order for chemical castration does not require a psychiatrist's input, particularly if the crime committed against a child has a previous record or if there are strong public safety concerns as outlined in the law. However, when psychiatric evaluation is involved, it is conducted by psychiatrists who are part of a special department, association, or committee dedicated to such cases.

In addition, it is discerned that the involvement of psychiatrists can be conceptually divided into two distinct phases: before and after the decision. Regulatory frameworks across countries exhibit nuanced disparities, reflecting societal circumstances and the overarching objectives of their respective national criminal systems. In Republic of Korea, for instance, the public Prosecutor or panel of judges is empowered to solicit a psychiatric evaluation of the Defendant's mental state before adjudicating on the directive for the individual to undergo chemical castration treatment. Conversely, certain jurisdictions do not mandate the solicitation of a psychiatrist's opinion prior to the implementation of chemical castration, as specific exigencies are codified in their legislation. Illustratively, the United States administers chemical castration to recidivists involved in sexual crimes against children, while Russia justifies this measure because such actions do not denote a mental disorder but rather constitute a grave social offence imperilling the minor community

## CONCLUSION

Although Government Regulation No. 70 of 2020 provides a formal procedural mechanism for implementing chemical castration, it does not fully regulate the requirement for a psychiatric examination at the adjudication stage. To date, sanctions involving chemical castration remain controversial in Indonesia. Judges in the Mojokerto, Surabaya, and Sumenep District Courts have issued rulings on sanctions for chemical castration against sex offenders against children. These decisions were made without a doctor's examination, raising questions about their accuracy. To ensure sanctions align with the concept of criminal individualisation, their existence is very important. In cases of sexual crimes against children, the involvement of a medical expert is necessary to provide a diagnosis or prognosis for the perpetrators. According to classifications in the ICD, DSM, and PPDGJ, there is a possibility that the offender suffers from paedophilia. This condition can lead to and threaten the safety of children. The sexual orientation of individuals with paedophilia can only be properly assessed by a psychiatrist through forensic psychiatric examination, which may facilitate therapy through

pharmacotherapy and/or psychotherapy. The participation of psychiatrists indicates that criminal law sanctions are grounded in scientific investigation, intended to support their enforcement. With a psychiatrist involved in the examination process of sexual crimes against children, it is possible to reduce the imposition of controversial chemical castration sanctions. Although the Child Protection Act does not explicitly emphasise the necessity of medical examinations of perpetrators in such cases, Indonesian judicial authority allows judges to exercise their discretionary power to request psychiatric evaluations during cases of sexual crimes against children. Thus, the involvement of medical professionals, especially psychiatrists, can serve the goals of criminal law by protecting society at large and, in particular, children. From a comparative law perspective, the role of psychiatrists in implementing chemical castration manifests in two ways: first, providing opinions on the Defendant's mental state within the judicial process; and second, through observation, monitoring, and post-castration recommendations, as the executing authority of the Court's decision.

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