



The Implementation of *Chemical Castration* for Pedophilia Offenders in The Review of Law No.17 Of 2016 And Islamic Criminal Law

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Abstract - This study looks at the Law No. 17/2016's provisions regarding chemical castration as a penalty for pedophilia and contrasts them with Islamic criminal law. This study examines pertinent laws and literature using a normative juridical framework to determine the acceptability and efficacy of chemical castration. The research findings reveal that chemical castration, as an additional punishment in Law No. 17/2016, aims to provide a deterrent effect and protect victims from sexual crimes. However, from the perspective of Islamic criminal law, there are significant differences regarding the permissibility and effectiveness of this punishment, which emphasizes justice, victim recovery, and proportional punishment. This study concludes that although chemical castration is considered a preventive measure in Indonesia's positive legal system, its implementation needs to be further considered in order to comply with the principles of justice in Islamic criminal law.

Keyword: Sexual Violence, Islamic Criminal Law, Human Rights.

I. INTRODUCTION

The future of a nation largely depends on the physical and mental health of its young generation, who are the most valuable assets for the progress of a nation. Therefore, safeguarding their mental and spiritual well-being is the primary responsibility of the state, so that they can grow into individuals who are able to contribute in building a brighter future. As a developing country, the government in this case has an obligation to be able to protect children who are the main pillars for the progress of the nation. The protection of children as the nation's successors is a fundamental right that must be constitutionally guaranteed, as it is an integral part of human rights. However, the threat of sexual crimes against children, especially those committed by pedophiles, has raised serious concerns in the community.

Sexual crimes, which the Big Indonesian Dictionary (KBBI) defines as behavior that goes against the values and norms of the law, are one of the most horrific forms of crime and have a profound impact, both physically and psychologically on victims. In cases of child abuse and rape, perpetrators often come from the victim's immediate environment, which exacerbates the suffering and trauma experienced. (Hanifah, 2018). Sexual crimes against children have become a major global issue, and in Indonesia, the government responded by passing Law No. 17 of 2016, which approved Government Regulation in Lieu of Law (PERPU) No. 1 of 2016 to modify Child Protection Law No. 23 of 2002. This law includes chemical castration penalties for perpetrators of sexual crimes against children, aimed at providing a deterrent effect and protecting children from future threats. (Chariansyah, 2023).

However, the application of chemical castration has sparked debate about its effectiveness in preventing similar crimes and its compatibility with the principles of Islamic criminal law. (Bustamam & Putra, 2022). Islamic criminal law has its own provisions for sexual

crimes. Thus, it is crucial to consider Law No. 17/2016 and Islamic criminal law while analyzing the use of chemical castration as a punishment. The purpose of this study is to offer a thorough understanding of the efficacy, impact, and validity of chemical castration as a punishment in the Indonesian judicial system (Chariansyah, 2023).

II. METHOD

This research adopts a normative juridical approach, which places the law as the main focus of analysis, accompanied by an examination of relevant legal theories and international instruments. (Nazir, n.d.). In addition, a statutory approach was used to examine all regulations relating to the legal issues discussed. Data was collected through a desk study, which involved researching literature from various reliable references. This approach's primary goals are to examine the Indonesian legal system's regulations pertaining to the punishment of sexual offenders against minors and to comprehend Islamic criminal law's viewpoint on the use of chemical castration as a form of punishment. After the data is collected, the analysis is carried out descriptively by drawing conclusions from general concepts to more specific details, as well as with comparison techniques to identify similarities and differences in the data obtained. (Marzuki, 2017).

III. RESULT AND DISCUSSION

1. Application of Chemical Castration Punishment according to Positive Law

In the Indonesian criminal law system, criminal sanctions are divided into two important categories: main criminal sanctions and additional criminal sanctions. According to Article 10 of the Criminal Code (KUHP), the principal penalties for crimes are capital sentence, incarceration, confinement, fines, and closure. To reinforce the deterrent effect, further criminal consequences include the seizure of property, the revocation of specific rights, and the public disclosure of the judge's decision. Although additional sanctions are usually applied alongside the principal sanctions, the law also provides flexibility to emphasize rehabilitation or deterrence without involving corporal punishment. This approach reflects Indonesia's legal system which focuses not only on punishment, but also on improving the behavior of convicted offenders.

The shift in perspective towards the application of criminal sanctions in Indonesia now places justice at the center, where consideration of the appropriateness of punishment is based on the level of guilt of the perpetrator and the impact caused. This shift marks a new era in Indonesia's criminal law system, which is no longer merely oriented towards punishment, but also includes aspects of recovery and prevention of future crimes. Along with that, the protection of human rights in criminal law enforcement is a top priority. In order to ratify the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Indonesia passed Law Number 5 of 1998, citing international values. In addition, torture and any other cruel or inhumane punishments including medical experiments without informed consent are specifically forbidden by Article 7 of Law Number 12 of 2005, which ratifies the International Covenant on Civil and Political Rights.

In the context of the child protection that is ensured by the Indonesian constitution through Article 28B paragraph (2) of the 1945 Constitution, this rule is extremely pertinent. Every kid has the right to a healthy life, to develop to the fullest extent possible, and to be shielded from discrimination and violence, according to the article (Sidauruk, 2023). Article 1 number 2 of Law Number 23 of 2002 on Child Protection, which highlights the significance of measures to ensure and protect children so that they can live, grow, develop, and engage maximally in accordance with human dignity, further strengthens this protection (Hafrida, 2021). To protect children from increasing sexual crimes, Indonesia passed Law No. 17/2016 as a revision of PERPU No. 1/2016, which amended the Child Protection Law. This revision is a response to the surge in cases of sexual violence against children.

The law stipulates a minimum five-year and maximum 15-year prison sentence, as well as a fine of up to five billion rupiah for perpetrators. If the offender and the victim have a unique relationship, such as a parent or guardian, the punishment may increase by one-third of the

original threat. In cases that cause serious repercussions, penalties may be enhanced to death, life in prison, or incarceration for a maximum of 20 years in cases of severe damage, mental illness, infectious disease, loss of reproductive function, or death. In addition to the main penalties, the law also includes additional penalties such as disclosure of the offender's identity and chemical castration. Chemical castration is a novel criminal law measure in Indonesia, aims to suppress the sexual desire of the perpetrator using a chemical substance, but its application is still controversial and has drawn debate in the community.

According to (Kusumawati & Poernomo, 2024). The passing of Law No. 17/2016, which replaces PERPU No. 1/2016, represents a response to the high rate of sexual violence against children in Indonesia. To increase the deterrent effect of criminal sanctions that were previously considered less frightening, the government implemented harsher penalties, including chemical castration. However, the implementation of chemical castration faces significant challenges, especially in terms of human rights protection, as stipulated in Article 16 of Law Number 5 of 1998 which ratified the Convention Against Torture. (Ceswara & Wiyatno, 2018). Chemical castration, as a new policy, requires in-depth research into its benefits and impacts. A major obstacle is the rejection of the Indonesian Medical Association (IDI), which considers that chemical castration violates medical ethics and human rights.

This rejection led to a vacuum in the implementation of the sentence as prosecutors lacked the authority to carry it out. The resulting legal uncertainty may affect the effectiveness of chemical castration, adding to concerns in the community about the application of this punishment in protecting children from sexual crimes. (Putri et al., 2021). Although Law No. 17/2016 is expected to address sexual violence against children, data from the Indonesian Ministry of Women's Empowerment and Child Protection shows that the problem remains serious. Between 2019 and 2023, the number of child victims of sexual violence increased dramatically, peaking with 18,175 cases in 2023. Although there was a significant decrease in 2024 with 7,041 victims, the figures still show the need for more attention and effective handling.

Chemical castration is governed by Law No. 17/2016, notably Article 81 Paragraph (7) and Paragraphs (4) and (5) of the positive legal framework in Indonesia. regulation enforcement and the general public have different interpretations of this regulation since it does not provide a detailed explanation of how chemical castration is carried out. In an attempt to dissuade offenders and stop such acts in the future, chemical castration was instituted (Yuliana, 2016). Government Regulation No. 70/2020 regulates the implementation of chemical castration, which is carried out after the offender has completed his/her basic criminal period. This procedure includes an implementation period of between six months and two years, as well as supervision by a medical team appointed by the government.

The medical team is responsible for ensuring that chemical castration is carried out according to procedures and monitoring the physical and psychological condition of the offender during and after the implementation of the sentence. (Dahwir & Barhamudin, 2021). Although the chemical castration policy is expected to provide a strong deterrent effect, its implementation faces major obstacles. Rejection from the Indonesian Medical Association (IDI) and criticism from human rights activists show that this policy is not only considered to violate human rights, but also has the potential to aggravate the psychological condition of the perpetrator (Eddyono et al., 2016). Critics argue that chemical castration is more an act of revenge than rehabilitation, with the risk of negative impacts on the mental and physical health of the offender, as well as long-term effects that are not yet fully understood.

In addition, there are concerns that chemical castration may not be effective in preventing child sex crimes if the root causes, such as childhood trauma and social factors, are not addressed. Legal experts and criminologists suggest a more holistic approach, which includes prevention, rehabilitation and reintegration of the offender into society. (Aswad, 2023). Overall, although chemical castration is a drastic legal measure in addressing sexual crimes against children, its implementation in Indonesia still faces various legal, ethical, medical, and social challenges. (Jultika et al., 2023). A balance between strict law enforcement and respect for human rights is essential. The increase in child sexual abuse cases

demonstrates the urgent need for more effective action. Cooperation between the government, law enforcement, and the community is necessary to ensure these policies truly protect children and prevent future crimes.

2. Analysis of Islamic Criminal Law on Chemical Castration

Article 29 of the 1945 Constitution, Articles I and II of the Transitional Rules of the 1945 Constitution, and Pancasila, particularly the first principle, serve as the foundation for the application of Islamic law in Indonesia as positive law. There are two main reasons for the application of Islamic law in Indonesia: first, it is applied normatively, which means that there are social sanctions if it is violated; second, it is applied juridically formally, which regulates relations between humans and between humans and other creatures. Based on these reasons and references from Islamic legal sources, Islamic law prescribes punishments for acts that are deemed damaging to the social system or contrary to sharia. Crimes such as pedophilia, which is categorized as a sexual crime and is one of the reasons for the introduction of chemical castration in the Islamic perspective, is considered a serious violation of human decency and honor.

Islam strictly prohibits all forms of sexual deviance. Acts of pedophilia, which can be equated with rape because they involve coercion and physical violence that affects the victim physically and psychologically, should be subject to severe punishment. This punishment is equivalent to the punishment for adultery and *ta'zir* punishment. *Ta'zir* punishment is a punishment determined by the judge, with the severity adjusted to the type of crime committed. (Kifli & Ismail, 2022). Islamic law is a well-structured legal system, based on the revelation of Allah SWT and the sunnah of the Prophet SAW as its main source. This system includes legal rules that regulate human behavior as *mukallaf*, and must be believed and fully implemented by every Muslim, as did the Prophet Muhammad SAW. Sharia includes the laws established by Allah SWT for His servants and taught by the Prophet, covering aspects of *aqidah*, *muamalah*, and worship *amaliyah*. (Mardani, 2009).

The definition of law according to several scholars is as follows:

- 1) Imam Taj al-Din al-Subki
A legal issue that is general (*kully*) and can be applied to more specific parts (*juz'i*) to understand its rulings.
- 2) Imam Mustafha al-Zarqa
The general principles of *fiqh* (*kully*) expressed in concise texts that serve as the basis of law, covering a wide range of cases of sharia law that fall within the scope of these rules.
- 3) Imam Ali Ahmad al-Nadwi
Shari'ah rulings relating to general issues to understand the rulings included in the scope of the rule. The basis of *fiqh* that is general (*kully*) which includes the laws of Shara in various discussions of various issues that are included in the scope of the rule.

In Islamic law, the primary sources are the Qur'an and sunnah. When the Qur'an or sunnah has established the rules on a matter, applying a law that contradicts the provisions of sharia is considered haram. This is confirmed in the Qur'an in Surah Al-Ahzab verse 36, which states that it is unfit for a believer, whether male or female, to make decisions outside the decrees of Allah and His Messenger. To deviate from the decrees of Allah and His Messenger is to go astray (QS Al-Ahzab [33]: 36). This verse clearly prohibits the establishment of new laws when there are already sharia provisions in place. Therefore, according to Islamic law, the application of castration punishment for perpetrators of sexual violence is considered incompatible with sharia principles and therefore haram. (Hasanah & Soponyono, 2018).

In determining the law, *ijma'* is required from the scholars. According to Muhammad Abduh, *ijma'* is a unanimous agreement obtained from the deliberations of the *ahlul halli wal 'aqdi or ulil amri*, which in this case are the representatives of the people in the field of

knowledge. Ulil Amri, according to Muhammad Abduh, are the representatives of the people who are trusted and elected to fight for and take care of the public interest.

Sexual violence against children is prohibited in Islamic law. Perpetrators of sexual violence may be subject to *Ta'zir* punishment, which includes several elements:

- 1) Formal element (*al-ruknu al-syar'i*): The existence of a prohibition or action that comes with a threat of punishment.
- 2) Material Element (*al-ruknu al-madi*): The act that causes the crime to occur.
- 3) Moral Element (*al-ruknu al-abadi*): An offender who can be held accountable for his or her actions.

The main purpose of Islamic law is for the benefit of mankind, both in this world and the hereafter, which is detailed in five main objectives, namely *maqashidu al-khamsah* or *al-maqasid as-syar'i*: (1) Maintaining Religion, (2) Maintaining Soul, (3) Maintaining Intellect, (4) Maintaining Offspring, (5) Maintaining Property. (Maulana & Suparmin, 2023). Scholars have stated that castration punishment for perpetrators of sexual violence is haram, as Islamic law has stipulated certain punishments for this type of crime. These punishments are as follows: (1) The penalty for sexual violence in the form of adultery is had az-zina, which entails stoning for married individuals (*muhsan*) or flogging a hundred times for single people; (2) The penalty for *liwath*, or homosexuality, is death; (3) The *Ta'zir* penalty is applied for sexual harassment (*at-taharusy al-jinsi*), which does not involve adultery or homosexuality.

Ta'zir is defined as prevention or education. According to Wahbah Zuhaili, *Ta'zir* serves to prevent perpetrators from repeating their actions, while Al Mawardi calls it an educational punishment for sins that are not specifically regulated by sharia. Scholars agree that castration, either physical or chemical, for perpetrators of sexual violence is haram, as confirmed by Imam Ibn Abdil Barr, Ibn Hajar Al Asqalani, Imam Badruddin Al 'Aini, Imam Al Qurthubi, Imam Shan'ani, and Sheikh 'Adil Mathrudi. The sahih hadith from Imam Ahmad bin Hanbal's Musnad that narrates the prohibition of castration by the Prophet shows that this action is not allowed. Some scholars in Indonesia have different views on chemical castration for sexual offenders. Some argue that judges can use chemical castration as an additional punishment in consideration of deterrence, while others consider chemical castration haram because it can alter male hormones, which is prohibited in Islamic law.

The hadith narrated by Bukhari that prohibits men from resembling women emphasizes that the medium that causes this prohibition is also considered haram. Islamic law clearly sets out the sanctions for perpetrators of sexual violence. According to Abdurrahman Al Maliki, the details of the punishment for pedophilia are as follows: if the act falls under the category of adultery, then the punishment applied is the hadd punishment. For adultery by a married person (*zina muhsan*), the sanction is stoning, while for adultery by an unmarried person (*zina ghairu muhsan*), the sanction is one hundred lashes. If the act is a homosexual crime (*liwath*), The offender can face the death penalty. In the meantime, the offender may face *ta'zir* penalty if the crime is sexual harassment (*at-taharusy al-jinsi*), which excludes *zina* or *liwath*.

3. Effectiveness of Chemical Castration as a Punishment

Although the additional penalty of chemical castration was implemented on May 25, 2016 through the Child Protection Law, the number of cases of sexual violence against children actually experienced a sharp spike from 2019 to 2021. Data from the Ministry of Women's Empowerment and Child Protection (Kemen PPA) revealed that reported cases of violence against children jumped from 11,057 in 2019 to 14,517 in 2021, with around 45% of them being cases of sexual violence. This surge indicates that although child protection regulations are in place, their effectiveness in addressing the problem of sexual violence has not been optimal, reflecting shortcomings in law enforcement in Indonesia. (Budiarti et al., 2022). Law enforcement is the main key in crime prevention, including sexual violence against children.

The success of law enforcement is influenced by various factors: the existence of effective laws, the performance of law enforcers, supporting facilities, and community environmental factors. However, in practice, the implementation of chemical castration

punishment has not shown satisfactory results. One of the main causes is the debate over its implementation and the government's delay in issuing relevant technical regulations, with Government Regulation No. 70/2020 only being passed four years after the law was enacted. (Wisnuboto, n.d.). A concrete example of the application of chemical castration punishment can be seen from the Mojokerto District Court verdict Number 69/Pid.Sus/2019/PN.Mjk, where the perpetrator M. Aris was sentenced to chemical castration. Another case is the rape by Herry Wirawan involving 13 female students in Bandung, where the perpetrator was charged with the death penalty, chemical castration, identity announcement, as well as fines and asset auctions for the needs of victims. This case is still in the trial process.

In Herbert L. Packer's view, the purpose of punishment can be seen from two main perspectives: absolute or retributive theory, which assesses punishment as a form of retribution for wrongdoing based on moral responsibility, and relative or utilitarian theory, which assesses punishment in terms of the benefits or results to be achieved. (Alin, 2017). The application of chemical castration punishment against those who commit sexual assault against minors is intended to serve as both an ideal and comprehensive measure, as well as a deterrence, according to the philosophy of the purpose of punishment. The goal is not only to provide severe criminal sanctions, but also to implement preventive measures against sexual violence. However, in practice, the provision of additional sanctions in the form of chemical castration is considered less effective for several reasons:

- 1) Since the enactment of the Child Protection Law, the number of cases of violence against children has continued to increase from 2016 to 2021, indicating that the application of chemical castration has not succeeded in reducing the number of sexual violence against children.
- 2) Chemical castration as a form of punishment has received a lot of resistance, especially from human rights organizations who consider it inconsistent with the national criminal law system and violates human rights. They argue that castration is a form of torture that dehumanizes, and is ineffective in addressing the root causes of sexual violence against children.
- 3) The effects of chemical castration are not permanent; if the chemical injections are stopped, sexual urges may return. The psychological factors that can give rise to sexual urges also remain, and may even make the offender more aggressive due to negative feelings such as hurt, anger, and resentment.

Anthony Allott, a jurist from the University of London, explains that the purpose of law is to regulate and shape society's behavior by establishing what is allowed and prohibited, and by establishing more effective legal institutions and processes. The effectiveness of the law is measured by its ability to achieve these goals. In dealing with criminal acts of violence against children, law enforcement needs to be optimized by taking into account the best interests of children, as well as ensuring that existing regulations are able to protect and restore child victims physically and mentally. However, in the development of criminal law in Indonesia, legal protection for victims is often limited to their role as a reporter or witness. In the justice system, victims are often considered as "mere evidence," and are not directly involved as parties who have an interest in the legal process. (Cahyaningsih, 2020).

IV. CONCLUSION

The conclusion of this research reveals that there are differences in the approach to handling perpetrators of sexual violence against children between Indonesian positive law and Islamic Criminal Law. Law No. 17/2016 regulates chemical castration as an additional punishment to suppress the sexual desire of pedophile offenders and prevent repeated violence, with the aim of protecting children through strict sanctions such as death penalty, life imprisonment, or long-term imprisonment. On the other hand, Islamic Criminal Law forbids castration, both physical and chemical, and prescribes stoning, flogging, or *ta'zir* according to the type of offense. This difference reflects the contrasting views on justice and victim protection in the two legal systems.

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