

CHEMICAL CASTRATION FOR SEXUAL VIOLANCE CONVICTS IN INDONESIA: The *Hifz}al-Nafs* and *H}quq al-Insan* Review

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Abstract: The number of sexual harassment against children and women in Indonesia has increased significantly. This shows that women and children are currently insecure. To respond to this, the Indonesian government came up with Law Number 23 of 2002, Government Regulation in Lieu of Law Number 1 of 2016, Law Number 17 of 2016, and Government Regulation Number 70 of 2020 to eliminate the increasing number of victims and provide a deterrent effect for perpetrators. On the other hand, there have been pros and cons from all levels of Indonesian society regarding the chemical castration punishment. To consider the effectiveness of chemical castration, this study will look at the perspective of *hifz}al-nafs* (guarding the soul) and *h}quq al-insan* (human rights) as the basic rights that should not be violated. The results of the research showed that chemical castration is effective because it is able to provide *maslahah* values in the form of a deterrent effect for perpetrators and security and safety especially for children and women, although there are few problems in the area of human rights, where perpetrators of sexual crimes have the right to be treated fairly before the law.

Keywords: sexual violence, chemical castration, *hifz} al-nafs*, *h}quq al-insan*, and *maslahah*

Abstrak: Angka pelecehan seksual terhadap kelompok anak-anak dan kaum perempuan di Indonesia mengalami peningkatan secara signifikan. Ini menunjukkan bahwa saat ini kaum perempuan dan anak-anak sedang tidak aman. Untuk merespon hal ini, pemerintah Indonesia hadir dengan Undang-Undang Nomor 23 tahun 2002, Perppu Nomor 1 Tahun 2016, Undang-undang Nomor 17 Tahun 2016, dan Peraturan Pemerintah Nomor 70 Tahun 2020 untuk mengeliminir jumlah korban yang semakin banyak dan memberikan efek jera bagi pelaku. Pada sisi

lain telah terjadi pro dan kontra dari seluruh lapisan masyarakat Indonesia tentang hukuman kebiri kimia tersebut. Untuk menimbang efektifitas hukuman kebiri kimia, maka, dalam penelitian ini akan melihat dalam perspektif *hifzjal-nafs* (menjaga jiwa) dan *hquq al-insan* (hak asasi manusia) sebagai hak dasar yang tidak boleh dilanggar oleh siapapun termasuk negara. Hasil penelitian menunjukkan bahwa kebiri kimia adalah efektif karena mampu memberikan nilai masalah berupa efek jera bagi pelaku dan keamanan dan keselamatan terutama bagi kaum anak-anak dan perempuan, meskipun sedikit ada persoalan di wilayah hak sasasi manusia, dimana pelaku kejahatan seksual memiliki hak untuk diperlakukan secara manusiawi di depan hukum.

Kata Kunci: Kekerasan seksual, kebiri kimia, *hifzjal-nafs*, *hquq al-insan*, dan *masalah*

Introduction

Recently, sexual harassment and violence have become an actual issue in several electronic and social media in Indonesia.¹ This issue became more and more widespread after the issuance of the Regulation of the Minister of Education and Culture (Permendikbud) of the Republic of Indonesia Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education. The National Commission on Violence against Women (Komnas Perempuan) noted that there were 431,471 cases of violence against women that occurred throughout 2019, of which 4,989 cases were sexual violence. In fact, the number of cases has increased significantly to 700 percent in 2020. Another data explains that 82 percent of Indonesian women have experienced sexual harassment and violence, and this was done in public spaces.

During the Covid-19 pandemic throughout 2020, the number of sexual violence has also increased.² In 2020, The National Commission on Violence against Women received 461 reports of sexual violence, and reported 371 cases of harassment, 229

¹ Sutiani Choirunnisa, "Legal Protection against Women Victims of Sexual Harrassment through Social Media (Cyberporn)," *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (September 2021): 368.

² Sali Susiana, "Domestic Violence in Covid-19 Pandemic," *Social Welfare Division: A Brief Study of Actual and Strategic Issues* XII, no. 24 (Desember 2020): 15.

cases of rape, 181 cases of sexual harassment, 166 cases of sexual abuse, 10 cases of attempted rape, and 5 cases of sexual intercourse. And the most tragic is that this sexual harassment and violence takes place in an educational institution where they should have been the gatekeeper of morality.³

Different from the results of the survey of the National Commission on Violence against Women, the Ministry of Women's Empowerment and Child Protection (KPPPA) recorded as many as 8,800 cases of sexual violence occurring from January to November 2021. At least, two survey results show that the number of cases of sexual violence, particularly those that occur in children, shows an increasingly graph from time to time. In fact, these cases occur in various places that have been considered safe, such as schools, universities, to Islamic boarding schools. The victims also varied, ranging from students of formal educations, students of informal education, employees in state institutions, and wives of prisoners to people with disabilities. However, children are often the victims of sexual violence because they are very vulnerable, physically they are weak, and intellectually they are still easy to deceive.

The data above shows that at present the Indonesian people, especially women and children, are not safe because sexual predators usually carry out their evil intentions against this group of people. Therefore, constitutionally, the Indonesian government, in cooperation with all levels of society and other social institutions, must be fully present to protect and save the victims from increasing. As a form of responsibility, the government of the Republic of Indonesia enacted Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

However, in its implementation, many people think that Law Number 23 of 2002 concerning Child Protection, which was in effect, has not been able to reduce the number of sexual violence

³ Abdul Rohman, "Maraknya Pelecehan Seksual di Indonesia, Pendidikan Karakter Gagal?," diakses 11 November 2021, <https://www.suaramerdeka.com/opini/pr-042039681/maraknya-pelecehan-seksual-di-indonesia-pendidikan-karakter-gagal>.

against children. Therefore, the government needs to take a more optimal way, which is in addition to weighting sanctions, also taking precautions in the form of chemical castration, installation of electronic devices and rehabilitation, as contained in Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002.

Subsequently, a debate arose regarding the chemical castration. This is because even though it is called an action, the nature of the chemical castration is retributive so it looks more like punishment.⁴ This is still being debated because there is no clarity regarding this chemical castration as an act or a crime. Therefore, more technically, on December 7, 2020 the government, in this case President Joko Widodo, ratified the Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children.

However, in its development, many polemics have occurred among the public regarding the presence of this Government Regulation on Chemical Castration. One of the polemics that has arisen is that chemical castration can reduce organ function, namely muscle wasting, osteoporosis, reducing the number of red blood cells, and disrupting the function of other cognitive organs.⁵ With such a big risk to the perpetrator's body, there is no data that can show that giving a person chemical castration can have a deterrent effect. Therefore, there is a need for further understanding related to chemical castration and the existing regulations as positive law.⁶

⁴ Dina Silvia Puteri dkk., "Chemical Castration From Criminal Law And Human Rights," *Cepalo* 4, no. 1 (Juni 2020): 68.

⁵ Lembah Nurani Anjar Kinanthi, Achmad Irwan Hamzani, dan Kus Rizkianto, *Pidana Kebiri Kimia bagi Pelaku Pemerkosa Anak* (Pekalongan: Nasya Expanding Management, 2022), 113–15.

⁶ Azmi Syahputra, *Bunga Rampai Tindak Pidana Korupsi* (Bandung: Alumni, 2022), 148–49.

Many groups responded positively to the constitutional action of the government. However, there are also those who think that what the government did is less effective. People who are against the punishment think that the government has violated human rights. Executive Director of the Institute for Criminal Justice Reform (ICJR), Supriyadi Widodo Eddyono considered that the Government Regulation in Lieu of Law Number 1 Year 2016 concerning chemical castration against perpetrators of sexual crimes was not progressive because the Government Regulation in Lieu of Law ignores the victim and focuses more on the perpetrator. There should be additional government actions that are progressive in nature, for example, by requiring the state to provide financial compensation to victims for physical treatment and psychological rehabilitation.

Meanwhile, the Chair of the Indonesian Child Protection Commission, Asrorun Ni'am Sholeh, appreciated President Jokowi's steps in issuing the Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. According to him, through this Government Regulation in Lieu of Law, the state is present in protecting Indonesian children from the threat of sexual violence. According to Asrorun, the President took a very radical decision and could become a pioneer in child protection within the polemic over the urgency of the issuance of the Government Regulation in Lieu of Law.⁷

The pros and cons of all levels of Indonesian society regarding chemical castration punishment, as regulated in the Government Regulation in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 and the Government Regulation Number 70 of 2020, show that there are still problems remaining from these government regulations. As

⁷ Ahmad Naufal Dzulfaroh, "Hukuman Kebiri Kimia, dari Wacana, Pro Kontra, Terbitnya Perppu, hingga Vonis untuk Aris," diakses 13 November 2021, <https://www.kompas.com/tren/read/2019/08/26/101750165/hukuman-kebiri-kimia-dari-wacana-pro-kontra-terbitnya-perppu-hingga-vonis?page=all>.

a country based on “Belief in One Supreme God” (the first principle of *Pancasila*), it is necessary to involve religious values originating from various religions, especially Islam as the religion embraced by the majority of Indonesian people. In this case, *hifz}al-nafs* is one of the features in the *maqas}d al-shari’ah* study that offers several indicators to be used in observing the level of effectiveness of the government regulation. In addition, to be more complete, this research also looks at the perspective of *h}quq al-insan* (human rights) as a basic right that should not be violated by anyone,⁸ including the state.

From *Hifz}al-Nafs* to *H}quq al-Insan*

Hifz}al-Nafs is one of the features in *maqas}d al-shari’ah* (the purposes of Islamic law). The meaning of *hifz}al-nafs* is that Islamic law aims to realize benefit, especially to keep the human soul safe from damage, danger and destruction, whether damage caused by oneself, others, or nature. Therefore, in the hierarchy of *maqas}d al-shari’ah*, *hifz}al-nafs* ranks the second after *hifz}al-din* (guarding religion). Indeed the order in *maqas}d al-shari’ah* becomes important. However, this structure is not absolute. For example, in famine conditions, safeguarding property occupies a more crucial position than protecting the soul. Or in conditions of war, protecting the soul should be a priority, even, rather than guarding religion and so on.

In the context of protecting the soul, the Muslim scholars, in the books of *hadith* and *fiqh*, do not miss the discussion on issues of medicine, health, treatment, and disease prevention. On each of the *fiqh* laws associated with it. Including the discussions about infectious diseases and disease outbreaks, Islam gives quite intense attention to all cases happened since it should have been the solution to every human problem. This shows how Islam brought by the Prophet Muhammad SAW is a perfect religion, complete, and

⁸ Hanang Hendra Pradana, “A Discourse of Chemical Castration Punishment: How We Protect Our Children from the Rapist?,” *Journal of Law and Legal Reform* 2, no. 2 (2021): 267.

covers all aspects of life, including protecting the human soul. In addition, Islam is supposed to *rahmatan li al-alamīn* (mercy for the whole universe).

In al-Qur'an, there are many verses that talk about the importance of maintaining the safety of the soul, as in chapter *al-Baqarah* verse 195: "And spend (your possessions) in the way of Allah, and do not throw yourself into destruction, and do good, for verily Allah loves those who do good". According to the commentators, there are five interpretations of the word "Let us not destroy yourselves into destruction", one of which is entering (attacking) an army that you are unable to deal with. Furthermore, it is also mentioned in chapter *al-Nisa* verse 49: "Do not kill yourselves, verily Allah loves you".

In addition to being sourced from al-Qur'an, there is also a hadith of the Prophet which states: *la>ḍarara wa la>ḍjara* (there should be no danger or actions that can harm both oneself and others). In another hadith narrated by Imam al-Hakim and Baihaqi, it is also stated: "whoever harms others, Allah SWT will repay the harm to him and whoever makes it difficult or difficult for others, Allah SWT will make it difficult for him". This verse and text explicitly and clearly state that Muslims are ordered to avoid danger or they should not take dangerous actions that can harm themselves or others.

To parse *hifz}al-nafs* into an approach in viewing a case or event that is happening in society, there are several universal values that can be raised from this principle, namely the values of spirituality, honor, dignity, basic rights, human rights, equality, justice, morality, brotherhood, freedom, creativity, and family education. These universal values will be used as indicators in seeing cases of chemical castration punishment for perpetrators of sexual crime, especially to children. Whether the punishment set by the government has fulfilled the *maslahah* aspect for the perpetrator and the victim or not.

Protecting the soul (*hifz}al-nafs*) is also closely related to guaranteeing human rights in the form of the right to life. The right

to life is a human right as a whole without exception. This is stated in al-Qur'an chapter *al-Maidah* verse 32: "... and whoever preserves the life of a human being, it is as if he has preserved the life of all humans". So far, *fiqh* and its implications in social institutions are still considered to be too rigid, so that, they are less responsive to the challenges and demands of the times, especially those related to *hudud* issues, human rights, public law, gender and others.⁹ Therefore, it is necessary to have a dialogue between the understanding of classical *fiqh* and new sciences to be able to answer various global issues. Responding to this problem, Mahmoud Mohammed Taha (d. 1985 AD) wanted to contribute through the evolutionary approach of *shari'ah* (*tatwiz-al-tashri*), which put more emphasis on the Mecca period because it was more principle and contained universal and fundamental values as the basic spirit in the association of the world. He places more emphasis on the values of justice, equality, human dignity without distinction of gender, creed, religion, race, and others.

According to An-Na'im, the encounter between Islamic law (*shari'ah*) in the context of history¹⁰ and the conception of human rights (HAM) in modern terminology can be brought together through basic human values in the modern order of life on a national, regional, and international law through a wise attitude and adequate worldview from contemporary Islamic law scholars.¹¹ Jasser Auda interprets the wisdom attitude and worldview referred to by An-Na'im with the importance of the reform agenda (*tajdid*/renewal) of Islamic law methodology which is linear with the Declaration of Universal Human Rights (UDHR).¹² Thus, according to Auda, the sources of contemporary Islamic law are: (1) al-Qur'an; (2) al-Sunnah; (3) *maslahah* derived from the text; (4)

⁹ Jasser Auda, "Europe a Land of Islam," diakses 19 November 2021, Europe a Land of Islam", within <http://islamstory.com/en/node/38951>.

¹⁰ Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979), 79.

¹¹ Abdullah Ahmed An Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990), 170–73.

¹² Jean Jacques Waardenburg, *Islam: Historical, Social, and Political Perspectives* (Berlin: Walter de Gruyter, 2002), 196–97.

ijtihad of the priests of the schools; (5) human ratio; (6) universal values contained in the declaration of human rights both on a national and international scale.¹³

Through the *maqasid* approach, several *maqasidiyyun* figures are also enthusiastic to contribute to the progress of Muslims on the one hand and to further strengthen the position of human development and human rights developed by the United Nations. In this case, Ibn 'Ashur offers *hifz al-usrah* (keeping the family), *al-hurriyyah al-i'tiqadiyyah* (religious freedom), orderliness, civility, human rights, freedom, and equality as the highest goals of Islamic law.¹⁴ Furthermore, in the contemporary era, Yusuf al-Qardawi added several important points such as social welfare, freedom, and human dignity. Meanwhile, Hashim Kamali contributed to the addition of the values of freedom and independence, safeguarding human rights, economic development and research, development of science and technology. According to Auda, the universality values explored through the *maqasid* approach are a concrete form as a manifestation of the seriousness of Muslims in realizing justice, equality, peace, tolerance, human resource development, gender problems faced by mankind both on a micro and macro scale.

The Practice of Castration in Historical Trajectory

Based on historical records, castration for perpetrators of sexual crimes has been carried out by humans since ancient times. Usually, this practice was carried out on the basis of religious or social reasons in the culture. Among the motives for the punishment of castration was to produce eunuch (man who have been castrated).¹⁵ This practice had been widely practiced in several cities

¹³ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A System Approach* (Herndon: The International Institute of Islamic Thought, 2010), 147.

¹⁴ Halim Rane, *Islam and Contemporary Civilization: Evolving Ideas, Transforming Relations* (Melbourne: Melbourne University Press, 2010), 94–95.

¹⁵ Kasim is a term for palace maids who served as bed guard for the royal family. To become eunuch, they must be castrated so that their sexual desire is lost. This was done by the royal party so that in carrying out their duties they did not commit adultery with the princess or the king's concubine. See: Joseph Bajada, *Sexual Importance: The*

such as the cities of Lagash and Sumer, about 4,000 years ago. Eunuch was usually more trustworthy because he would not impregnate his female employer. In China, the eunuch system,¹⁶ which had been around for a long time, was deeply entrenched in imperial culture and endured through two dozen dynasties until 1911, when the last emperor was deposed. Castration was carried out not only as a punishment but also as a prerequisite for entering imperial service.

The word eunuch was derived from the Greek words: “eune” (bed) and “ekhein” (to guard). So, the word eunuch means “keeper of the bed”. Servants or slaves were usually castrated to make them safe servants in the royal court, where physical access to rulers could make them very influential. However, the domestic work they do seems low, such as making the bed, bathing the king, cutting his hair, removing his excrement or even forwarding messages to the king. In short, they functioned as the “ears of the king”, and could therefore confer power on lowly but trusted servants. They generally came from lowly families and started their positions as servants guarding the entrance to an official’s study room. From there, many later succeeded in occupying important positions.

The culture of eunuch was also practiced in the Ottoman Caliphate of Turkey, especially for people who would be employed in the palace environment.¹⁷ They were usually slaves who came from various backgrounds such as Christians, Africans, and some whites. This practice persisted into the 18th century. In early modern times, human civilization began to attach importance to the side effects of castration. Jane Hathaway, in her book entitled “The Chief Eunuch of the Ottoman Harem from African Slave to Power-Broker” mentions that the practice of eunuch in the Ottoman

Contribution of Paolo Zacchio (1584-1659) (Roma: Editrice Pontificia Universita Gregoriana, 1988), 101–2.

¹⁶ Towards the end of the Ming Dynasty in the mid of the 17th century, about 70,000 eunuchs were employed to serve the emperor. The last known eunuch of the Chinese imperial court, Sun Yaoting, died just before his 94th birthday in 1996.

¹⁷ George H. Junne, *The Black Eunuchs of the Ottoman Empire Networks of Power in the Court of the Sultan* (New York: Bloomsbury Publishing, 2016), 112–13.

Caliphate was specifically for those who were employed as royal servants from various countries in the world, especially Africans.¹⁸ A person will lose sexual desire if he is castrated after puberty. In addition, he will also experience physical and psychological changes, muscle mass, physical strength, and body hair are usually reduced. Eunuch is usually beardless and breast enlargement.

In the Church tradition of the 16th century, women were forbidden to sing in the church choir or on the stage. Instead of their roles, they choose men. This eunuch practice was done so that boys can preserve their soprano voice. And this practice was considered commonplace in Europe. In Italy, boys who were castrated to sing were called castrati and they took the place of female singers. Castrati are castrated before reaching puberty so their bodies don't produce enough testosterone. Lack of this hormone makes their larynx not change like other men. Because of that, even his high voice persisted.¹⁹

Professor of Criminology from Utrecht University, Dina Siegel, in her article "Crime and Music", said that at first, the church did not approve of any kind of castration practice. However, in 1589, Pope Sixtus V authorized the recruitment of castrati for Cappella Giulia. In 1599, Pope Clement VIII even consecrated castrati who entered the church choir. This practice grew in popularity throughout the 17th to 18th century. During the time of Pope Innocent XI (1676-1689), for example, thousands of boys in Italy were deliberately castrated by Vatican officials who employed them in church choir group.²⁰

Not only churches, opera groups also use castrati for business. In various parts of Europe, many poor families deliberately

¹⁸ Jane Hathaway, *The Chief Eunuch of the Ottoman Harem From African Slave to Power-Broker* (Cambridge: Cambridge University Press, 2018), 55–56.

¹⁹ Guy Graybill, *Italy's Primacy in Musical History* (Cambridge: Cambridge Scholars Publishing, 2019), 123–24.

²⁰ Tyson Tirta, "Sejarah Kebiri: dari Bentuk Hukuman hingga Bisnis Kontroversial," diakses 10 November 2021, <https://tirto.id/sejarah-kebiri-dari-bentuk-hukuman-hingga-bisnis-kontroversial-f9gg>.

castrate their sons to be directed to become opera singers.²¹ Many of the poor castrati later became some kind of celebrity. They sang in magnificent opera houses and were even invited to perform before the kings of Europe. "In opera performances in the 18th century, the majority of the male singers were castrati. The most famous Italian Castrati is Carlo Broschi, whose stage name is Farinelli".²² Here are some countries in the world that practice castration for sex offenders along with the latest developments.²³

Table 1
List of World Countries that Practice Chemical Castration
and Community Response

No	Country	Note
1	South Korea	South Korea became the first country in Asia to legalize the punishment of castration in 2011. There were two men who served this sentence because it received a lot of criticism from various parties in the country.
2	UK	The UK is among the countries that have long implemented castration with various motives, especially for perpetrators of sexual crime
3	USA	There are 9 states, including California, Flirida, Oregon, Texas, and Washington

²¹ John Robbins, *Diet for a New America 25th Anniversary Edition: How Your Food Choices Affect Your Health, Your Happiness, and the Future of Life on Earth* (California: New World Library, 2012), 89.

²² Farinelli was born into a fairly wealthy musician family, in contrast to the other castrati who were generally poor. Since childhood, he was directed and trained to be an opera singer. It is likely that he was castrated after his father died young and soon thereafter became the economic support of his family. The practice of castrati was banned by Pope Leo XIII in 1878, although he himself only dissolved castrati in the Sistine Chapel in 1902.

²³ Kinanthi, Hamzani, dan Rizkianto, *Pidana Kebiri Kimia bagi Pelaku Pemerkosa Anak*, 107-11.

		that have castration. Faced with many challenges for using drugs that are not approved by the FDA for use as a treatment for sexual offenders
4	Russia	Rusia Legalizes castration of sex offenders or pedophiles after obtaining medical recommendation. The Russian parliament passed chemical castration in October 2011, especially for sex offenders who attack children under the age of 14.
5	Poland	Has imposed castration since 2010.
6	Moldova	Has been using castration since 2012. It was condemned by Amnesty International as inhumane
7	Estonia	Has imposed castration since June 5, 2012
8	Israel	It is not known exactly when the country implemented the castration penalty but in fact the country has implemented castration penalty
9	Argentina	Has imposed castration since 2010
10	Australia	Has imposed castration only in a few states such as Western Australia, Queensland, and Victoria
11	Jerman	Have recognized castration not as a punishment but a treatment. Received criticism from the Council of Europe for being inhumane
12	Norwegia	Has imposed castration since World War II
13	Denmark	Has imposed castration since World War II
14	Sweden	Has imposed castration since World War II

15	Finland	Has imposed castration since 1970
16	India	Court recommends enacting laws against sexual criminals
17	Taiwan	Has imposed castration on pedophiles
18	Turkey	Will possibly impose castration on pedophiles
19	Dutch	Perpetrators of sexual crimes can choose between imprisonment or castration
20	France	Perpetrators of sexual crimes can choose between imprisonment or castration
22	Belgium	Perpetrators of sexual crimes can choose between imprisonment or castration
23	Czech	Has imposed castration punishment for a long time
24	Portuguese	Has imposed castration punishment since 2008
25	New Zealand	Has imposed castration since 2000. Many have been criticized by human rights activists
26	Macedonia	Has imposed castration punishment since 2013

In Indonesia, the rules regarding the punishment of castration are contained in the Government Regulation (PP) No. 70 of 2020 concerning: (1) Procedures for the implementation of chemical castration; (2) Installation of electronic detection devices; (3) Rehabilitation; and (4) Announcement of the identity of perpetrators of sexual violence against children. This Government Regulation is a derivative regulation of Article 81A paragraph 4 and Article 82A paragraph 3 of Law Number 17 of 2016 concerning Child Protection. This Government Regulation was inaugurated by President Joko Widodo on December 7, 2020. Article 2 paragraph 1 states that perpetrators of sexual intercourse with children who have legal force can still be subject to chemical castration, installation of electronic detection devices, and rehabilitation.

From the Law Number 23 of 2002 to the Government Regulation Number 70 of 2020

As Indonesian citizens, children have the same rights as adults. Included in the rights of children to the state is that the state must guarantee their lives and provide them with a sense of security. In addition, the state must also attend to how to provide educational facilities for their academic development. Therefore, as a form of this responsibility, the government has made a special law dealing with the protection of children's human rights as national assets of the future. The law on child protection was passed on October 22, 2002 by President Megawati Soekarno Putri in Jakarta.

Law Number 23 of 2002 concerning Child Protection was promulgated on October 22, 2002 by Bambang Kesowo, State Secretary of the Republic of Indonesia. Law Number 23 of 2002 concerning Child Protection is placed in the State Gazette of the Republic of Indonesia of 2002 Number 109 and an explanation of Law 23 of 2002 concerning Child Protection is placed in the Supplement to the State Gazette of the Republic of Indonesia Number 4235, so that all Indonesian people are aware of it. As we all know that the Law on Child Protection Number 23 of 2002 was later amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Some legal considerations regarding the importance of Law Number 23 of 2002 concerning Child Protection are:

1. That the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights;
2. That the children are a mandate and gift from God Almighty, who has inherent dignity and worth as a whole human being;
3. That children are buds, potentials, and young generations who will succeed the ideals of the nation's struggle, have a strategic role and have special characteristics that ensure the continuity of the existence of the nation and state in the future;

4. That in order for every child to be able to take on these responsibilities, it is necessary to have the widest possible opportunity to grow and develop optimally, physically, mentally and socially, and to have noble character. Providing guarantees for the fulfillment of their rights as well as treatment without discrimination;
5. That in order to realize the protection and welfare of children, it is necessary to have institutional support and laws and regulations that can guarantee its implementation;
6. That various laws only regulate certain things regarding children and have not specifically regulated all aspects related to child protection;
7. That based on the considerations in letters a, b, c, d, e, and f, it is necessary to stipulate a law on child protection.²⁴

Meanwhile, the legal bases of Law Number 23 of 2002 concerning Child Protection are as follow:

1. Article 20, Article 20A paragraph (1), Article 21, Article 28B paragraph (2), and Article 34 of the 1945 Constitution of the Republic of Indonesia;
2. Law Number 4 of 1979 concerning Child Welfare (State Gazette of 1979 Number 32, Supplement to the State Gazette Number 3143);
3. Law Number 7 of 1984 concerning the Elimination of All Forms of Discrimination Against Women (State Gazette of 1984 Number 29, Supplement to the State Gazette Number 3277);
4. Law Number 3 of 1997 concerning Juvenile Court (State Gazette Year 1997 Number 3, Supplement to State Gazette Number 3668);
5. Law Number 4 of 1997 concerning Persons with Disabilities (State Gazette of the Republic of Indonesia Number 9 of 1997, Supplement to the State Gazette Number 3670);

²⁴ Attachment to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

6. Law Number 20 of 1999 concerning Ratification of the ILO Convention Number 138 Concerning Minimum Age for Admission to Employment (ILO Convention on Minimum Age to be Admitted to Work) (State Gazette Number 56 of 1999, Supplement to State Gazette Number 3835);
7. Law Number 39 of 1999 concerning Human Rights (State Gazette Number 165 of 1999, Supplement to the State Gazette Number 3886);
8. Law Number 1 of 2000 concerning Ratification of ILO Convention Number 182 concerning The Prohibition and Immediate Action for The Elimination of The Worst Forms of Child Labor (ILO Convention Number 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) (State Gazette Number 30 of 2000, Supplement to the State Gazette Number 3941)²⁵

Children are the assets of the family and the state, because in their hands, the future of a country will be determined. In addition, children are a mandate as well as a gift from God Almighty, which must always be protected because they have inherent value, dignity, and rights as human beings that must be upheld.²⁶ Children's rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generations of the ideals of the nation, so that every child born has the right to survive, grow and develop, participate and have the right to protection from acts of violence and discrimination as well as civil rights and freedoms.

The presence of Law Number 39 of 1999 concerning Human Rights has included the rights of children, the implementation of the obligations and responsibilities of parents, families, communities, governments, and the state to provide protection to children still requires a law on child protection as a juridical basis for the implementation of these obligations and

²⁵ Ibid.

²⁶ Wahyu Saefudin, *Mengembalikan Fungsi Keluarga* (Jakarta: Ide Publishing, 2019), 128.

responsibilities. Thus, the formation of this law is based on the consideration that child protection in all its aspects is part of national development activities, especially in advancing the life of the nation and state.²⁷

The implementation of Law Number 39 of 1999 is not only the task of the government. However, as stated in the law, parents, family, community, government and state must work together in carrying out this responsibility. This supervision and protection activity is a series of activities that are carried out continuously for the protection of children's rights. The series of activities must be sustainable and directed to ensure the growth and development of children physically, mentally, spiritually and socially. This action is intended to create the best life for children who are expected to be the nation's successors who are potential, tough, have nationalism inspired by noble character and *Pancasila* values, and are strong-willed to maintain the unity and integrity of the nation and state in the future.²⁸

As mandated by law, efforts to protect children must be carried out as early as possible, namely from the fetus in the womb until the child is 18 years old, where they have reached adulthood and are considered capable of acting legally. Starting from the concept of complete and comprehensive child protection, this law places the obligation to provide protection to children based on the following principles: (1) non-discrimination; (2) the best interests of the child; (3) the right to life, survival, and development; and (4) respect for children's opinions.²⁹

Currently, laws on child protection are urgently needed considering they are often the target of crimes. One of the crimes against children that has become a public concern is sexual crimes that have recently occurred around us, sometimes even by people who are close to the child that we have never thought of, such as

²⁷ Tim Visi Yustisia, *Konsolidasi Undang-undang Perlindungan Anak UU RI No. 23/2002 & UU RI No. 35/2014* (Jakarta: Visimedia Pustaka, 2016), 50.

²⁸ Tim Visi Yustisia, 51.

²⁹ Ibid.

sexual crimes committed by a father to his child (both biological father and adoptive father). In fact, in 2014 there was a case that shocked the world of education, namely a sexual crime that occurred in one of the schools which was said to be of "international standard" which was "allegedly" committed by unscrupulous educators. There are many other cases of sexual crimes that occurred in various parts of the archipelago.

The rise of cases of sexual crimes has become a public concern, so that the public also urges that the punishment for perpetrators of sexual crimes be more severe and the minimum provisions be increased.³⁰ In Law Number 23 of 2002, the threat of sexual crimes is only punishable by a maximum of 15 years, a minimum of 3 years and a maximum fine of IDR. 300,000,000 and a minimum of IDR. 60,000,000. This punishment is considered too light, so that it is not uncommon for perpetrators of sexual crimes not to be deterred and repeat the act. Therefore, there needs to be a more severe punishment as stipulated in Law Number 35 of 2014 that the maximum criminal penalty is 15 years and the minimum penalty is 5 years and a maximum fine of IDR. 5,000,000,000.³¹ If the perpetrator of rape or obscenity is committed by a parent, guardian, child caretaker, educator, the penalty is increased by 1/3 (one third). This is the specificity of Law Number 23 of 2002 with the hope that it can cause a deterrent effect for perpetrators of sexual crimes, especially children. This law became the forerunner of the birth of the Government Regulation (PP) Number 70 of 2020 concerning chemical castration punishment for perpetrators of sexual crimes against children.

Chemical Castration Techniques for Sexual Violence Perpetrators

³⁰ Dandhy Dwi Laksono, *Jurnalisme Investigasi: Trik dan Pengalaman Para Wartawan Indonesia Membuat Liputan Investigasi di Media Cetak, Radio, dan Televisi* (Bandung: Kaifa, 2010), 59.

³¹ Laksono, 59.

Regarding the technical implementation of castration for perpetrators of sexual crimes, especially to children, President Joko Widodo has issued Government Regulation Number 70 of 2020 on December 7, 2020. The regulation regulates procedures for chemical castration, installation of electronic detection devices, rehabilitation and announcement of identity of the perpetrators of sexual violence against children. Actually, among the Indonesian people, there are pros and cons regarding this Government Regulation, especially from the Indonesian Doctors Association (IDI).³² The chairman of the Honorary Council for Medical Ethics, Priyo Sidipratomo, said that it is impossible for doctors to use their knowledge to take actions that are against human rights and humanity. Although IDI's stance poses a dilemma, this attitude does not reduce the government's intention to issue the law considering that most Indonesians want it and considering the great danger that threatens the safety of children.³³

As explained in the previous sub-chapter, namely based on Article 1 point 2 of the Government Regulation on Chemical Castration, it is stipulated that castration is a punishment for perpetrators of sexual crimes against children by giving chemical substances through injection or other methods carried out to perpetrators who have been convicted. This is done because the perpetrator commits violence or threats of violence forcing the child to have intercourse with him or another person. The result is causing more than one victim, serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies. This includes suppressing excessive sexual desire, which is accompanied by rehabilitation. This punishment is intended so that perpetrators of sexual crimes are deterrent and do not repeat the act. At least, this chemical castration punishment can suppress the sexual desire of the perpetrators of an explosive crime.

³² Puteri dkk., "Chemical Castration From Criminal Law And Human Rights," 68.

³³ Mohamad Fadhilah Zein, *Anak dan Keluarga dalam Teknologi Informasi* (Jakarta: Mohamad Fadhilah Zein Publisher, 2019), 162.

Based on the above understanding, it can be seen that there are several conditions related to chemical castration, namely: (1) the perpetrator has been convicted of committing violence or threats of violence to have intercourse with him or another person; (2) more than one victim; (3) causing serious injury, mental disorders, infectious diseases, disruption or loss of reproductive function, and/or the victim dies; (4) the aim is to suppress one's excessive sexual desire; and (5) must be accompanied by rehabilitation.

In Article 2 point 1, it is explained that the act of chemical castration against the perpetrators of sexual intercourse must be carried out based on a court decision that has permanent legal force. Then, in point 3 it is stated that the implementation of the court's decision, whether castration, electronic detection, or rehabilitation, is carried out on the order of the prosecutor after coordinating with the relevant ministries, mainly, the ministry that carries out government affairs in the field of health, law, and social. In Article 3, the chemical castration action is carried out by officers who have competence in their fields on the order of the prosecutor. Meanwhile, in Article 4, it is stated that perpetrators who are still children cannot be subject to these actions.³⁴

Article 5 states that this action is imposed for a maximum period of 2 years. The stages and implementation of chemical castration begins with a clinical assessment carried out by a team consisting of officers who have competence in the medical and psychiatry field. The clinical assessment in question is in the form of clinical and psychiatric interviews, physical examination, and supporting examinations. The medical and psychiatry team then concludes the results of the clinical assessment to determine whether the perpetrator is eligible or not to be subjected to chemical castration. This conclusion is then submitted to the Attorney

³⁴ "Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children," t.t.

General to be followed up by the health team that has been assigned to execute.³⁵

In Article 9 point a, the implementation of chemical castration is carried out after the perpetrator of sexual intercourse is declared eligible to be subjected to chemical castration according to the conclusion of the clinical assessment. Then point b states, within a period of no later than seven working days from the receipt of the conclusion, the prosecutor ordered the doctor to carry out the chemical castration action against the perpetrators of sexual intercourse. Point c states that the implementation of the chemical castration action is also carried out immediately after the convict has finished serving the main sentence. Chemical castration is also carried out in government-owned hospitals or designated regional hospitals, which are listed in point d. Furthermore, the implementation of chemical castration must also be attended by the prosecutor, representative of the ministry that carries out government affairs in the legal, social and health field.³⁶

Polemic of Chemical Castration for Perpetrators of Sexual Violence

Based on the Government Regulation Number 70 of 2020, chemical castration is imposed on perpetrators of sexual intercourse based on a court decision that has permanent legal force, given for a maximum period of two years accompanied by rehabilitation and financed by the state. As with the applicable criminal law in Indonesia, interpretations that are extensive in nature and can cause harm to the perpetrator are not allowed. In addition, the

³⁵ "Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children."

³⁶ "Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children."

requirements for chemical castration have been determined in a limitative manner, so these conditions cannot be expanded.

Therefore, if a person has never received a crime before and commits a very serious sexual assault, he could have been subjected to chemical castration. The perpetrator must receive the principal sentence first in order to be sentenced to chemical castration. In practice, it is possible that someone who commits sexual violence does it to only one person repeatedly. If referring to Article 1 number 2 of the Government Regulation on Chemical Castration, it can be interpreted that the conditions contained in the definition of the Chemical Castration Action are cumulative alternative. And if the terror perpetrated by the perpetrator causes the victim to suffer serious injuries, it appears that there is causality between the actions taken by the perpetrator and the resulting consequences. Therefore, even if the victim is only one person, with the occurrence of the qualified consequences, the perpetrator can still be sentenced to chemical castration in accordance with legal provisions.

Philosophically, the Indonesian Criminal Code follows two legal schools with different orientations and formal forms of punishment. The two main streams that have developed in Indonesia are the retributive and utilitarian schools. These two schools of law form the theories of sentencing objectives, namely retributive theory, deterrence/prevention theory, rehabilitation theory, resocialization theory and integrative theory. The retributive theory, often referred to as retaliation, says that people who have committed crimes must get punishment as a consequence, so that the punishment received by a person is already an inseparable part of the crime he has committed commensurately.³⁷

The second is the theory of deterrence or revenge. In addition to revenge for the perpetrators of crime, this theory actually has another very principle goal. In this case, Jeremy Bentham argues that the criminal has several objectives such as: (1) to prevent all violations; (2) to prevent the most evil of transgressions; (3) to

³⁷ Ade Mahmud, *Pengembalian Aset Tindak Pidana Korupsi Pendekatan Hukum Progresif* (Jakarta: Sinar Grafika, 2020), 57–58.

suppres crime; and/or (4) to reduce losses at the lowest possible cost. Furthermore, the theory of rehabilitation, departs from the view that the cause of people committing crimes is due to an illness, so that sentencing aims to improve the perpetrator's self as a form of social and moral treatment for the convict, so that he can re-integrate into society and contribute positively in building security and peace.³⁸

From the two theories above, the purpose of punishment in the imposition of chemical castration in Indonesia as stipulated in Law Number 17 of 2016 and Government Regulation Number 70 of 2020 is to overcome sexual violence against children, provide a deterrent effect on perpetrators, and prevent sexual violence against children.³⁹ Furthermore, the imposition of chemical castration will be accompanied by the installation of detection equipment and rehabilitation for perpetrators. Based on the research, it was found that chemical castration will be effective if it is imposed on sex offenders who suffer from pedophilic disorder. Perpetrators of sexual intercourse with children who suffer from pedophilic disorders are those who experience health problems. Therefore, they need to be treated to prevent similar crimes. The healing process can be applied by reducing the perpetrator's hormone production and doing psychological rehabilitation, both of which can eliminate the perpetrator's deviant sexual urges.

The thing that is being debated today is that chemical castration is qualified as an act or a crime. If you look at the terminology in the Government Regulation on Chemical Castration, it is clear that chemical castration is an action. This action is different from a criminal which is more punishing because in general, it is more of rehabilitation. Before explaining further about chemical castration, it is necessary to understand in advance about sexual violence against children, sexual intercourse, and obscene acts. Sexual violence is a word or deed done by a person to manipulate another person, so that the person is involved in an

³⁸ Mirko Bageric, *Punishment & Sentencing* (London: Taylor & Francis, 2001), 138.

³⁹ Attachment to Law Number 17 of 2016 and Government Regulation Number 70 of 2020.

unwanted sexual activity. Children can also be the victim of sexual violence. With regard to the notion of sexual intercourse and obscenity, there is no definition regulated in the laws and regulations, so in this regard, it still refers to doctrine. Sexual intercourse in general is the penetration of the genital of a man to a woman and the victim can be a child. Obscene acts are all acts that violate decency related to lust, such as kissing and touching the genital.

So, for perpetrators who suffer from pedophilic disorders, chemical castration aims to rehabilitate or cure the “disease” contained in the perpetrator that causes him to commit a crime. This sanction will be retributive if chemical castration is imposed on perpetrators of sexual violence who do not suffer from pedophilic disorders. The application of chemical castration for perpetrators who do not have pedophilic sexual deviations will not be effective and will actually create trauma and fear for the perpetrators.⁴⁰ Therefore, in an effort to respect the basic rights of the perpetrators, prior to the prosecution process in the criminal justice system, it is necessary to carry out a comprehensive health and mental examination of the perpetrators as a mitigation effort in order to reduce the risk of other unexpected impacts after the implementation of chemical castration. In other words, chemical castration must pay attention to human rights as a gift from God

List of Sentences of Castration for Defendants of Sexual Violence in Indonesia

Sexual crimes against children (pedophilia) in Indonesia from year to year have increased alarmingly, so the government made Government Regulation in Lieu of Law Number 1 of 2016 which has been stipulated as Law Number 17 of 2016 by providing additional punishment in the form of chemical castration for perpetrators of sexual violence. The emergence of the Government Regulation Number 70 of 2020 further strengthens the punishment

⁴⁰ Azhari Akmal Tarigan, “Chemical Castration for Pedophiles: Study of Fiqh Problems in Indonesia,” *Al-Ahkam* 30, no. 2 (2020): 144.

for chemical castration in Indonesia. The main purpose of this Government Regulation is to overcome sexual violence against children, to provide a deterrent effect on perpetrators, and to prevent sexual violence against children. Examples of several cases of chemical castration punishment given to perpetrators of sexual violence that have occurred in Indonesia are as follows:

First, Herry Wirawan, the rapist of female students of Islamic boarding house (*pesantren*), was sentenced to castration. The defendant Herry Wirawan, the perpetrator of the rape of 12 female students in Bandung, was sentenced to death with additional punishment in the form of chemical castration by the Public Prosecutor. This demand was conveyed by the prosecutor in a trial held at the Class IA District Court in Bandung, West Java, Tuesday (11/1). The Prosecutor, who is the Head of the West Java Prosecutor's Office, Asep N. Mulyana, assessed that Herry was found guilty of committing an act of obscenity. Herry was suspected of having violated a criminal offense in Article 81 paragraph (1), paragraph (3) in conjunction with Article 76.D of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 65 paragraph (1) of the Criminal Code. One of the reasons for the prosecution was that the defendant's actions were considered to have been categorized as sexual violence by referring to the United Nations convention against inhumane torture.⁴¹

The second is Muh Aris bin Syukur, the defendant in the case of raping nine children in Mojokerto, Muh Aris bin Syukur was sentenced to chemical castration by the Panel of Judges at the Mojokerto District Court, in August 2019. Aris was found guilty of committing a crime with violence by forcing nine children to commit sexual intercourse. Aris is considered to have violated Article

⁴¹ Huyogo Simbolon, "Pemerksa Santriwati Herry Wirawan Dituntut Hukuman Mati dan Kebiri," diakses 17 November 2021, <https://www.liputan6.com/news/read/4856634/pemerksa-santriwati-herry-wirawan-dituntut-hukuman-mati-dan-kebiri>.

76D in conjunction with Article 81 paragraph (2) of Government Regulation in Lieu of Law Number 1 of 2016 regarding the second amendment to Law Number 23 of 2002 on Child Protection. In the verdict, the judge stated that Aris's action was strengthened by evidence in the form of a green and yellow school uniform along with a yellow scarf, one piece of pink underpants with blood stains on them, and a green T-shirt. Aris is said to have committed a heinous act since 2015 in Mojokerto. However, the police only managed to arrest Aris in October 2018 after his actions were caught on CCTV surveillance camera.⁴²

The third is Rahmat Slamet Santoso. Rahmat is a scout coach at a school in the city of Surabaya. He was sentenced to 12 years in prison and an additional 3 years of chemical castration by the Surabaya District Court Judges in November 2019. The judge stated that Rahmat was legally proven to have sexually abused 15 of his students. In their ruling, the panel of judges also sentenced the 30 years old man to a fine of IDR. 100 Million, subsidiary for three months. Rahmat is considered guilty as regulated in Article 80 and Article 82 of the Republic of Indonesia of Law Number 17 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection.⁴³

Fourth is Dian Ansori. The panel of judges at the Sukadana District Court, East Lampung, sentenced the defendant Dian Ansori to 20 years in prison and chemical castration. Dian, who is an assistant at the Integrated Service Center for the Empowerment of Women and Children or the Safe House of East Lampung, was found guilty of molesting a minor with the initials NV (13 years old). This was later called the Panel of Judges, which made the perpetrator's actions even more burdensome considering the status of the victim at that time was asking for assistance in a safe house for

⁴² Admin, "Pemerksa Sembilan Anak di Mojokerto Dihukum Kebiri Kimia," diakses 17 November 2021, <https://www.cnnindonesia.com/nasional/20190823173140-12-424146/pemerksa-sembilan-anak-di-mojokerto-dihukum-kebiri-kimia>.

⁴³ Admin, "Pembina Pramuka Cabuli 15 Siswa Divonis Kebiri Kimia," diakses 19 November 2021, <https://www.cnnindonesia.com/nasional/20191118191203-12-449464/pembina-pramuka-cabuli-15-siswa-divonis-kebiri-kimia>.

the rape case that had been experienced by him. Dian was charged with Article 81 paragraph 1 of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection juncto Article 76 d of Law Number 35 of 2014 concerning amendments to Law Number 22 of 2002 concerning Child Protection.⁴⁴

The verdict of the panel of judges is heavier than the demands of the Public Prosecutor (JPU) of the East Lampung Kejari. The public prosecutor, who consisted of Ana Marlinawati and Afina Mariza, in the previous trial, demanded that the defendant Dian Ansori be sentenced to 15 years in prison. Then, the Public Prosecutor also requested that the panel of judges impose a sentence so that the defendant pays a fine of IDR. 800 million subsidiary 3 months in prison, imposes an additional penalty in the form of paying restitution of IDR. 22,330,000, if it is not paid, it is replaced with imprisonment for 1 month, and imposes court fees on the amount of IDR. 5,000.

From the series of events above, it shows that Indonesian children are in unsafe conditions because they are often victims of sexual violence. Some of the names above are only a small number of hundreds if not thousands of cases that afflict children. Sexual crimes against children (pedophilia) in Indonesia, which has increased from year to year, are quite alarming. So with the presence of Law Number 23 of 2002, Government Regulation in Lieu of Law Number 1 of 2016, Law Number 17 of 2016, and Government Regulation Number 70 of 2020 as a legal umbrella, makes the Indonesian government more stable in implementing the law as an integral part of the development of Indonesian people as a whole.

The Effectiveness of Castration for Defendants of Sexual Violence in Indonesia: the *Hibquq al-Insan* dan *Hifz al-Nafs* Review

⁴⁴ Iwan Sutiawan, "Kejagung Apresiasi Vonis 20 Tahun Bui & Kebiri Kimia," diakses 17 November 2021, <https://www.gatra.com/news-503506-hukum-kejagung-apresiasi-vonis-20-tahun-bui-kebiri-kimia.html>.

Chemical castration punishment for perpetrators of sexual crimes against children and women in Indonesia reaps pros and cons. Rais Syuriah, the Executive Board of *Nahdlatul Ulama* (NU), Masdar Farid Mas'udi, argued that the sentence was appropriate and had fulfilled the aspect of justice because the consequences of the act were very destructive to children, prolonged trauma, and could be categorized as crimes against humanity.

In contrast to NU's figures, the General Secretary of the *Muhammadiyah* Central Executive, Abdul Mukti, considered that the chemical castration is problematic from the point of view of human rights and Islamic law because it will make people lose their human nature and experience disabilities throughout their lives. Meanwhile, the chairman of the National Commission on Human Rights (Komnas HAM), Imdadun Rahmat, still doubts that chemical castration can be a solution for eradicating sexual crimes, because it is not only related to genital matters. So according to human rights activists, this punishment is not only ineffective but also inhumane.⁴⁵

Regardless of the pros and cons of chemical castration, sexual violence against children is a serious crime and a violation of human rights. Moreover, the punishment is aimed at anticipating an increase in sexual violence against children. It has been explained that the Government Regulation in Lieu of Law regulates the existence of criminal acts. The action referred to in the Government Regulation in Lieu of Law is in the form of chemical castration accompanied by rehabilitation.

Meanwhile, among the reasons of the groups that were against chemical castration was that in the history of criminal law in Indonesia, only perpetrators of sexual crimes against children were sentenced to castration. From a human rights perspective, this sanction is contrary to human rights because it is considered to rob

⁴⁵ Zahara Tiba, "Pro Kontra Hukuman Kebiri," diakses 20 November 2021, <https://www.benarnews.org/indonesian/berita/prokontra-hukuman-kebiri-05122016135817.html>.

the human rights of a citizen, namely a convict of sexual crimes against children. Rules related to human rights in Indonesia have been contained in Law Number 39 of 1999 concerning Human Rights. Another reason of National Commission on Human Rights (Komnas HAM) opposes chemical castration since it is a form of torture.

The legal basis they use is Article 28 G paragraph (2) of the 1945 Constitution of the Republic of Indonesia which does not justify the existence of Indonesian citizens who are subjected to torture, and/or acts that are inhumane and demeaning human dignity or citizens. In addition, Article 33 paragraph (1) of Law Number 39 of 1999 concerning Human Rights states that everyone has the right to be free from torture. Article 9 paragraph (2), everyone has the right to live happily, physically and mentally prosperous; Article 10 paragraph (1), everyone has the right to form a family and descendants; and Article 21, every person has the right to personal integrity both spiritually and physically and therefore cannot be used as an object of research without his/her consent.

The effectiveness of chemical castration punishment for accused of sexual violence in the perspective of *hifz} al-nafs* is analyzed through several universal values extracted from the features of *hifz} al-nafs* in *maqas}d al-shari}ah*, namely spiritual principles and values, realization of human dignity, fulfillment of basic human rights, equality, justice, morality, and family education. These universal values are used as indicators in looking at cases of chemical castration punishment for perpetrators of sexual crime, especially to children. Whether the punishment set by the government has fulfilled the *maslahah* aspect for the perpetrators and victims or not.

Based on the principle of spirituality, children are entrusted by Allah SWT to be protected, cared for, and educated as best they can so that they will become human beings who believe in God Almighty, obey Allah's messengers, and are devoted to their parents. In addition, the great hope is that they will become physically and spiritually strong individuals and be able to contribute positively for many people. On the other hand, acts of sexual violence against

children will actually cause trauma for them. Trauma often makes a person feel hopeless in facing life. In fact, spiritually, this condition often makes a person begin to question where God is and why this is happening to them. The peak of this deteriorating spiritual condition is when a person no longer believes in the Most Just. Therefore, castration for perpetrators, apart from creating a deterrent effect and minimizing more victims, also makes victims more convinced that God's Justice in the form of severe punishment will surely come to those who commit crimes.

In the perspective of maintaining human dignity, the punishment of castration on perpetrators of sexual crimes is very appropriate. This is because sexual crimes, especially against children who do not have the ability to defend themselves, seriously injure human values and dignity as God's holy creatures. A sexual crime against children is categorized as an unfair act, where the perpetrator, with his intelligence and strength, carries out legal actions against the victim in inhuman and cunning ways. In addition, this action also clearly pollutes the dignity of the victim, parents, and family. In this case, parents have the responsibility to maintain the honor and dignity of their children as family members. By imposing the punishment of castration on the perpetrator, it means saving the honor and dignity of other children and anticipating for parents to be more careful in caring for their children.

Chemical castration is the most severe punishment for some because it is considered inhumane. At the same time, equal rights and obligations of a person as a member of society and as a citizen are guaranteed by applicable law. By severely punishing the perpetrators, it means that the principle of justice for everyone before the law has been realized. Whoever is guilty, and then he must be held accountable for his actions. The greater the effects and suffering experienced by the victim, the greater the punishment that should be received by the perpetrator. If castration is considered an inhumane punishment, it actually snatches the joy of children, creates prolonged trauma in children, destroys the future of children

are also acts that are far inhumane. In the context of education for children, castration will foster an awareness that a person must maintain the dignity and worth of each other, not take actions that can harm others, and dare to take responsibility for the actions he has committed.

Furthermore, Prophet Muhammad SAW said: “*la>dāḥara wa la>dīḥara*” (a person should not do an action that can harm himself and others). And the *fiqh* rule also mentions “*dar-ul mafasid muqaddam 'ala>jalbi al-masāḥib*” (avoiding harm must take precedence over taking benefits). Committing a sexual crime is contrary to Islamic teachings because apart from harming others as victims, they are also harming themselves as perpetrators who are entitled to receive appropriate punishment, although this is seen by some groups as an inhumane act. By imposing severe punishments means avoiding further dangers to the victims. Islam sees that justice must be proportionally enforced. Justice in Islam does not only look at whether the punishment is humane or not, but looks far ahead so that the perpetrators are deterrent and do not repeat it.

Conclusion

The trend of sexual abuse against children and women in Indonesia has increased significantly. This shows that women and children are currently insecure. Seeing this, the government is present in the midst of the problems that are being experienced by many people by enacting Law Number 23 of 2002, Government Regulation in Lieu of Law Number 1 of 2016, Law Number 17 of 2016, and Government Regulation Number 70 of 2020. This step was taken in order to eliminate the increasing number of victims and provide a deterrent effect for the perpetrators.

On the other hand, chemical castration punishment for perpetrators of sexual crimes has created pros and cons from all levels of Indonesian society. In the perspective of *hifz}al-nafs* (keeping the soul) chemical castration is quite effective because it will offer *maslahah* values in several aspects, namely spirituality, maintaining

human dignity, fulfilling basic human rights, equality, justice, morality, and family education particularly for children and women who often become a victim. The results showed that chemical castration was effective because it was able to provide *masalahah* values in the form of a deterrent effect for perpetrators and security and safety, especially for children and women. However, based on *hūquq al-insān* (human rights) as a basic right that cannot be violated by anyone including the State, there are still few records, where chemical castration punishment is considered to injure human rights and perpetrators of sexual crimes have the right to be treated humanely before the law.

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