



Jurnal Studi Ilmu Hukum Islam dan Pranata Sosial



journal homepage : ejournal.iainkendari.ac.id/al-adl

Chemical Castration Sanctions for Perpetrators of Child Sexual Violence in the Frame of Islamic Criminal Law

Rachmadani¹, Sarwo Zulfahmi Muhammad Daming²

¹Ahwal Al Syakhsiyyah (Islamic Family Law), Faculty of Sharia, IAIN Kendari, Indonesia

²Madrasah Tsanawiyah Negeri 3 Buton Tengah, Indonesia

E-mail: rachmadani@iainkendari.ac.id¹ sarwokira@gmail.com²

ARTICLE INFO

Article History :

Received: 2021-04-14

Accepted: 2021-04-16

Published: 2021-07-31

Keywords :

Chemical Castration,
Children, Islamic
Criminal Law, Sexual
Violence

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ABSTRACT

This article discusses the review of Islamic criminal law regarding sanctions castration chemistry for the perpetrators of sexual violence against children. It is motivated by the rampant cases of sexual crimes against children have increased every year. As a response to the things that President Joko Widodo has issued Government Regulation No.. 70 Year 2020 about procedures for the Implementation of the Action Castration Chemistry, the Installation of the Detector Electronics, Rehabilitation and the Announcement of the Identity of the Perpetrators of Sexual Violence against Children. This rule gave authority to the state to be able to impose sanctions castration chemistry for the perpetrators of sexual violence against children. As for the problem studied in this research is how the forms of sexual violence in children? and how the determination of sanctions castration chemistry for the perpetrators of sexual violence against children is viewed from the perspective of the criminal law of Islam? This study uses the approach of normative juridical to discover the basics of the law of the criminal law of Islam-

related sanctions gelding chemical. While methods of data collection using the method of literature, after the data collected then analyzed and interpreted by means of deductive. The results showed sanctions gelding chemical was done as an attempt of recovery of sexual disorders, so it can be said this punishment is not as torture against the perpetrators. As for the sanctions gelding chemical in the perspective of Islamic criminal law can be categorized punishment ta'zir which is a sentence that has a minimum and a maximum that is determined by a judge. The judge reserves the right to impose a penalty gelding chemical if the defendant is convicted of a violation based on the applicable law, because of the type of punishment is not in the nash.

A. Introduction

In Indonesia, cases of sexual violence against children has increased each year. The institute for the Protection of Witnesses and Victims (LPSK) recorded in the year 2018 there were 206 cases of sexual violence against children, and in the year of 2019 increased to 350 cases. Based on Online Information System for the Protection of Women and Children (SIMPONI PPA) show up to June 2020 number of victims of child sexual abuse increased significantly. Since 1 January to 19 June 2020 there were 3.087 cases of violence on children in Indonesia with the details 852 physical violence, 768 victims of psychological violence, and 1.848 victims of sexual violence. In response to this, President Joko Widodo has issued Government Regulation No.. 70 Year 2020 about procedures for the Implementation of the Action Castration Chemistry, the Installation of the Detector Electronics, Rehabilitation and the Announcement of the Identity of the Perpetrators of Sexual Violence against Children as a derivative of the Act No. 17 Year 2016 on the Protection of Children. This rule gave authority to the state to be able to impose sanctions castration chemistry for the perpetrators of sexual violence against children, namely the provision of a chemical substance through injections or by using another method.

Based on law No. 17 Year 2016 and PP. 70 Year 2020 can be known that the purpose of the addition of the provisions of the act of castration chemistry, the installation of the detector and rehabilitation is to address sexual

violence against children, provide a deterrent effect to the perpetrators and prevent the occurrence of sexual violence against children. Furthermore, the imposition of measures gelding chemical will be coupled with the installation of the detector and rehabilitation for the offender.

Chemical castration sanctions will be effective if imposed on perpetrators suffering from pedophilia disorder. Perpetrators of child sexual abuse who suffer from pedophilia disorders are perpetrators who have health problems, therefore it needs to be treated to prevent similar crimes from reoccurring. The healing process can be applied by reducing the production of the offender's hormones while doing psychological rehabilitation, both actions can eliminate the sexual urges of deviant perpetrators. Whereas in the event that the perpetrator is not a pedophile disorder sufferer, then the perpetrator does not have a health disorder that needs to be treated. Thus, chemical castration is not only provide a sanction aimed at rehabilitation, but also has the purpose as retaliation and a form of accountability for the crimes that have been committed.¹

Action castration chemistry aims of rehabilitation if dropped against the perpetrators who suffer from the disorder pedophilia, because of the sanctions is intended to cure the disease contained in the actors themselves. But, these sanctions will be retributive if the act of castration chemical meted out to perpetrators of sexual violence who do not suffer from a disorder of pedophilia. The application of the act of castration chemistry for participants who do not have a sexual deviation will be a thing of no value and only provides a sense of fear for the actors. Therefore, in order to respect the basic rights of the offender, it is necessary to do a preliminary examination of health and mental thoroughly to reduce the risk of the impact of other unwanted after the implementation of the action gelding chemical.

In Islam, the provision of penalties against the perpetrators of the crime should be in accordance with the objectives of Islamic law, which contains the benefit by paying attention to five aspects, namely the safety of religion, soul, mind, or family descendants and wealth.² Chemical castration sanctions for perpetrators of sexual violence against children when viewed from the side of

¹Nathalina Naibaho dan Tunggal S, *Polemik Kebiri Kimia bagi Pelaku Kekerasan Seksual*, <https://law.ui.ac.id/v3/polemik-kebiri-kimia-bagi-pelaku-kekerasan-seksual-oleh-nathalina-naibaho-dan-tunggal-s/>, accessed on 07 April 2021.

²Muh. Tahmid Nur, "Maslahat dalam Hukum Pidana Islam", *Jurnal Diskursus Islam*, Vol. 1, No. 2, Agustus 2013, p. 290.

Islamic criminal law belongs to the category of *ta'zir*, namely *jarimah* determined by the authorities for public benefit. In this case, the value of Islamic teachings is taken into consideration for the determination of general benefit.³ Chemical castration sanctions for perpetrators of child sexual abuse are different from sanctions for adulterers. This study used a normative juridical approach to trace the basics of Islamic criminal law relating to chemical castration sanctions. The method of data collection using the library method, after the data is collected is then analyzed and interpreted in a deductive way. Based on the background above, it is interesting to review the application of castration sanctions for perpetrators of child sexual abuse reviewed from Islamic criminal law.

B. Discussion

1. Chemical Castration

Castration or castration is the surgical procedure using chemicals aimed at eliminating testicular function in males or ovaries in females. Chemical castration by giving special drug injections, with various methods that have different physical and psychological side effects. Procedurally, there are 2 (two) methods commonly used in the castration process, namely *Surigical castration* is the process of reducing or even eliminating the sense of sexual arousal of both men and women. Surgical castration is very effective in achieving the goal of sexual violence perpetrators and to prevent recidivism. Surgical castration has infertility side effects, loss of ability to achieve erection or desire, difficulty in undergoing sexual contact with the opposite sex, inability to produce testosterone hormones and long-term infection.⁴

While *Chemical Castration* is the injection of anti-testosterone substances into the male body to reduce the levels of testosterone hormone produced by *lydig* cells in the testicles. Chemical castration has the side effect of lowering sexual arousal for a while, so when anti testosterone

³H. A. Djazuli, 1997, *Fikih Jinayah (Upaya Menanggulangi Kejahatan dalam Islam)*, Cet. 2, RajaGrafindo Persada, Jakarta, p.13.

⁴Fitriyani, 2016, *Analisis Hukuman Kebiri Terhadap Pelaku Kekerasan Seksual pada Anak dalam Kajian Hak Asasi Manusia*, Tesis, Universitas Lampung, p. 48.

administration is stopped then the offender will have the same sexual desire or arousal as before.⁵

Chemical castration sanctions are considered as an answer to the high public demands on punishment against perpetrators of sexual crimes, because so far it is known that the enforcement of child protection laws in Indonesia has not been optimal. Indonesia is not the first country in Asia to apply chemical castration. In 2011, South Korea adopted chemical castration as an additional punishment for sexual crimes. The South Korean government uses chemical castration methods only if health experts provide the results of an examination that the perpetrator of a sexual crime is likely to repeat his or her actions.⁶

Chemical castration procedures in South Korea will be performed after a diagnosis from a psychiatrist, after which the prosecutor will conduct the castration process. Psychiatrists are psychiatric specialists who have clinical skills in diagnosing, treating, treating and preventing mental health problems. Thus, it can be concluded that the South Korean government only uses medical personnel or doctors as advisory opinions. The party that carried out the execution of chemical castration is still law enforcement officials.

Beside South Korea, there are several other countries that apply chemical castration as punishment, namely Denmark, Sweden, Finland, Norway, Poland, the United States, Argentina, Australia, Israel, New Zealand, Moldova, Estonia, and Russia.⁷ However, what remains to be seen in the implementation of chemical castration is the approval of perpetrators of sexual violence for the actions taken. Perpetrators must be informed precisely and thoroughly of the consequences and effects of chemical castration, in order to further give consent without coercion. The

⁵Supriyadi Widodo Eddyono dkk, 2016, *Menguji Euforia Kebiri: Catatan Kritis Atas Rencana kebijakan Kebiri (Chemical Castration) Bagi Pelaku kejahatan Seksual Anak di Indonesia*, Institute for Criminal Justice Reform (ICJR), Jakarta, p. 9.

⁶Ari Purwita Kartika, M. Lutfi Rizal Farid, dan Ihza Rashi Nandira Putri, "Reformulasi Eksekusi Kebiri Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter dan Perlindungan Hukum Bagi Pelaku Pedofilia", *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 27, No. 2, Mei 2020, p. 355.

⁷Aditia Arief Firmanto, "Kedudukan Pidana Kebiri Kimia dalam Sistem Pemidanaan di Indonesia (Pasca dikeluarkannya Perpu No.1 Tahun 2016)", *Jurnal Hukum Novelty*, Vol. 8, No. 1, Februari 2017, p. 13.

most important thing is also a thorough medical examination before and after the implementation of chemical castration.

The application of chemical castration has taken into account various aspects of protection, one of which is so that perpetrators can still live normally in the community and on the other hand this can also increase protection to the community. The implementation of chemical castration sanctions should be implemented responsibly and in accordance with correct medical ethics. If you expect the perpetrator of sexual crimes to show respect and respect for others, then it should be in the implementation of chemical castration also put forward a sense of respect for human dignity

Education and counseling by psychiatry is also needed as an effort to return the perpetrators to the community, considering the effects of drug administration can be *reversible* after being stopped to the perpetrator. This means that the perpetrator can again have sexual desire that is expected to be controlled after undergoing chemical castration sanctions for a certain period of time according to the assessment of the clinicians. Based on Government Regulation No. 70 of 2020 implemented in Indonesia, chemical castration sanctions are carried out over a period of 2 years and will be followed by rehabilitation efforts thereafter. Rehabiltasi conducted for perpetrators include: psychiatric rehabilitation, *social* and *medic*.

2. Child Sexual Violence

Pedophilia is a form of sexual violence committed by adults in minors. Pedophilia is different from sodomy, sodomy is done momentarily by the perpetrator to the potential victim. As for pedophilia, the perpetrator performs actions slowly such as giving gifts to the child who will be targeted, after there is a chance that the paedophile performs his actions continuously⁸.

Etymologically, the word pedophilia comes from the Greek word *pais* which means "children" and *philia* means "friendly love or friendship". While the terminology, pedophilia is defined as a psychiatric disorder in adults (age 16 years or older) is usually characterized by a primary or exclusive sexual interest in pre-pubescent children (generally age 13 years

⁸M. Nurul Irfan, 2014, *Grafitasi dan Kriminalitas Seksual dalam Hukum Pidana Islam*, Amzah 2014, Jakarta, p. 119.

or below).⁹ In general pedophilia is defined as a person who gains sexual gratification through contact with a minor. Paedophile behavior is not always synonymous with children, as it can also occur through imagination/sexual fantasies and through internet use.

The World Health Organization (WHO) defines that clinically pedophilia is a mental and behavioral disorder, a sexual attraction choice disorder that indicates sexual attraction to children, men, women or both, generally pre-puberty and early puberty. In terms of the law, the definition of pedophilia looks stricter than its clinical and academic definitions, as it focuses on the offences committed rather than the perpetrators.¹⁰

Violence against children is an intentional act that causes harm or harm to children (both physically and emotionally). Forms of violence against children can be classified into physical violence, psychological violence, sexual violence and social violence. This action is done using coercion, threats, bribes, deceptions and/or pressure. Child sexual violence activities are not limited to sex alone, but also actions that lead to sexual activity against children, such as: touching the child's body sexually (whether the child is wearing clothes or not), making or forcing the child to engage in sexual activity and showing the child images or films showing sexual activity.

According to Russell's view there are 3 (three) categories of sexual violence against children, namely:¹¹

- a. Very serious sexual violence, i.e. anal sexual intercourse, oral and oral genital sex
- b. Serious sexual violence, namely by showing sexually explicit scenes in front of a child, exposing pornographic sites and images to a child, telling the child to hold the offender's genitals for the purpose of obtaining gratification, or other sexual activities but not yet reaching for sex such as very serious sexual violence.
- c. Sexual violence is quite serious, namely touching the child's sexuality (child's privacy) or by forcibly undressing the child.

⁹Santhos Wachjoe, 2015, *Hukuman Kebiri Bagi Pelaku Pedofilia, Suatu Tinjauan Yuridis Sosiologis*, IKAHI, Jakarta, p. 45-46.

¹⁰Regia Vandra, 2015, *Pemaknaan Kaum Ibu Terhadap Kasus Pedofilia*, Tesis, Universitas Indonesia, p. 33-34.

¹¹Yohannes Ferry, 1997, *Kekerasan Seksual pada Anak dan Remaja*, PT. Rajawali, Jakarta, p. 2.

Child sexual abuse can be defined as an act of coercion to have sexual intercourse or other sexual activity committed by adults against children with violence or not that can occur in various places regardless of culture, race and strata of society. The victims can be boys or girls, but generally girls under 18 years of age.¹²

Sexual violence tends to have a traumatic impact on both children and adults. However, cases of sexual violence often go unreported due to denials by perpetrators and victims of sexual violence events that have occurred. Even more difficult is if this sexual violence occurs in children, because the child victim of sexual violence does not understand that he or she is the victim. The victim has difficulty trusting others, thus keeping secret the events of sexual violence she experienced. If child sexual violence is not taken seriously, it can have a broad social impact on society. The healing of psychological trauma from sexual violence should receive great attention from all parties involved.

3. Chemical Castration Sanctions in the Perspective of Islamic Criminal Law

Conceptually, chemical castration sanctions for perpetrators of child sexual abuse are not regulated in Islamic criminal law. Therefore, this punishment falls into the category of *ta'zir*. The punishment in *jarimah ta'zir* is not determined by its size or degree, meaning that to determine the lowest and highest limits is handed over completely to the judge (head of state). The resolution of the punishment *ta'zir* are:¹³

- a. Preventive, namely sanctions *ta'zir* should have a positive impact on others so as not to commit the same crimes as punished.
- b. Repressive, namely sanctions *ta'zir* should have a positive impact for the condemned as a deterrent effect so as not to repeat his actions.
- c. Curative, namely *ta'zir* sanctions bring improvements in attitudes and behaviors to the condemned.
- d. Educative, namely sanctions *ta'zir* give an impact for the condemned to change their lifestyle to avoid sin because they are not happy with the crime.

¹²N. Katjasungkana, 2000, *Penyalahan Seksual pada Anak*, Mitra Wacana, Jakarta, p. 14.

¹³H.A. Djazuli, *op.Cit.*, p.54.

Basically acts of sexual violence against children are categorized as crimes of decency that concern human honor. The punishment of the perpetrators of sexual crimes must be in accordance with the purpose of Islamic law, namely the benefit by paying attention to five aspects, namely the salvation of religion, soul, reason, family or descendants and property. The basics that realize the purpose of punishment are as follows:¹⁴

- a. The punishment imposed can prevent everyone to commit a criminal offence, before the crime occurs.
- b. The limitation of punishment is for the needs and benefit of the community.
- c. If to protect the community from the crime of the perpetrator, the perpetrator is required to be killed or the crime is prevented from the community, the punishment that must be imposed is the death penalty or imprisonment until the perpetrator dies as long as he has not repented and the situation has not been good.
- d. All punishments that result in the benefit of individuals and maintain the benefit of the community are prescribed punishments.
- e. Educating the perpetrator of a crime does not mean a form of revenge on him, but rather as an improvement of himself.

While there are no rules regarding chemical castration in Islamic criminal law, that does not mean it is prohibited. If from the perspective of the perpetrator, the punishment of castration can be used as an alternative to give a deterrent effect and anticipate the act no longer befalls others. According to the authors, chemical castration sanctions deserve to be given to perpetrators of child sexual abuse, because given the current conditions are very troubling and do not provide a sense of security for the world of children. In addition, the removal of chemical castration measures will be accompanied by the installation of detection and rehabilitation tools for perpetrators. Chemical castration sanctions are carried out as an effort to restore sexual disorders, so it can be said that this punishment is not as torture against the perpetrator.

¹⁴Abdul Qadir Audah (ed.), *Ensiklopedia Hukum Pidana Islam*, terj. Ahsin Sakho Muhammad dkk dari *Al tasryi' Al-jina'I Al-Islami*, 2008, PT Kharisma Ilmu, Jakarta, p. 20.

Islamic Criminal Law has provisions that can be considered whether an act can be categorized as *jarimah* form, which meets the following three elements:

- a. The existence of a formal element (*al-rukn al-syar'i*), the existence of prohibitions or a certain act accompanied by the threat of punishment in accordance with the *nash*.
- b. Material element (*al-rukn al-madi*) an act that forms *jarimah*, which belongs to that category of violation of the act or abandonment that has been obliged.
- c. Moral element (*al-rukn al abadi*) object that is punished, or can be said to be the perpetrator of a crime. It can accept the *khitab* or can understand *taklif*, meaning that the perpetrator of the crime is mukallaf so that they are prosecuted for the crimes that have been committed.

The fall of punishment also aims to form a good society with mutual respect and love among fellow members by sticking to the limits or conditions that apply. Perpetrators of sexual violence are categorized as unlawful acts. Sex that is in accordance with Islamic law is sex performed through the marriage path. Such activities are carried out heterosexually and performed by people who are already able (puberty), sex activities are also aimed at reproduction or progeny as a regeneration process.

C. Conclusion

Violence against children is an intentional act that causes destruction or harm to children (both physically and emotionally). Forms of violence against children can be classified into physical violence, psychological violence, sexual violence and social violence. This action is prepared using coercion, threats, bribes, deceptions and/or pressure. Sexual violence tends to have a traumatic impact on both children and adults. Chemical castration sanctions for perpetrators of child sexual abuse are carried out as an effort to restore sexual disorders, so it can be said that this punishment is not as torture against the perpetrator. The chemical castration sanctions in the perspective of Islamic criminal law can be categorized as *ta'zir* punishment which is a punishment that has a minimum and maximum limit determined by the judge. The judge has the right to impose a chemical castration penalty if the accused is proven to have committed an offence that is categorized or determined in the applicable law, since the type of punishment is not yet in the *nash*.

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