

Analysis of Indonesian Human Rights and Islamic Criminal Law on Chemical Castration as An Effort to Tackle Criminal Acts of Sexual Violence Against Children

Ziya'ul Fikri^{1*}, Joko Setiyono²

^{1,2}Universitas Diponegoro Semarang, Indonesia

Email: ziyaulfikri@gmail.com

ABSTRACT

This research is motivated by cases of sexual violence in children have a serious impact on children, both directly and long-term. One form of legal protection for children to overcome sexual violence against children, the Government issued Perppu No. 1 of 2016 which was passed into UU No. 17 of 2016. This study aims to find out how the view of human rights in Indonesia and Islamic criminal law regarding chemical castration as an effort to overcome sexual violence in children. This research uses library research method using descriptive analysis approach. The result of this study is in human rights The implementation of chemical castration is an act of violence and is considered contrary to the 1945 Constitution, namely in Article 28 G paragraph 2 and Article 33 paragraph 1 of UU No. 39 of 1999 concerning Human Rights. Meanwhile, Islamic criminal law basically does not recognize castration. The punishment of chemical castration is ta'zir. This study concludes that from the perpetrator's side, this criminal conviction is clearly not in accordance with human rights. From the side of the child as a victim, of course, this chemical castration crime can be an appropriate crime. In Islamic penal law, chemical castration can be imposed if rape committed by the perpetrator is included in an act close to adultery.

KEYWORDS Castration, Sexual Violence, Human Rights, Islamic Penal Law, Children



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International

INTRODUCTION

The crime of sexual violence, which has not receded due to the development of the era, technological advancement, and the advancement of human mindset, has become one of the most troubling crimes in society. Crimes of sexual violence are one of the forms of criminal offenses in society that are increasingly diverse in terms of motive, nature, form, intensity and mode of operation. As a social reality, the

How to cite: Fikri, Z., & Setiyono, J. (2024). Analysis of Indonesian Human Rights and Islamic Criminal Law on Chemical Castration as An Effort to Tackle Criminal Acts of Sexual Violence Against Children. *Journal Eduvest*. 4 (5): 4079-4090
E-ISSN: 2775-3727
Published by: <https://greenpublisher.id/>

problem of criminality is unavoidable and always exists, causing unrest because criminality is considered a disturbance to the welfare of society and its environment.

Although sexual violence occurs repeatedly and continuously, not many people understand and are sensitive about this issue. Sexual violence is often considered a crime against decency alone. This view is even supported by the state through the contents of the Criminal Code (KUHP). In the Criminal Code, crimes of sexual violence such as rape are considered Crimes Against Decency. This categorization not only reduces the degree of rape committed, but also creates the view that sexual violence is a matter of morality alone.

The term sexual violence is an act that can be categorized as unnatural sexual relations and behavior, causing serious harm and consequences for the victims. Sexual violence has permanent and long-term physical and psychological effects. Unlike other acts of violence, cases of child sexual abuse have a much more serious impact on children, both immediately and in the long term. These cases do not only leave physical injuries. More than that, this anarchistic act will have an adverse effect on the emotional, social and psychological development of victims of violence. (Hasanah & Sopyono, 2018).

Children are entitled to human rights and international freedoms, which are universal rights of every human being. Human rights should not be limited by age. However, children are considered to require additional assistance. Jurisprudence on children's rights has existed since before the existence of human rights supervisory bodies. Children's rights have been proactively promoted by the European Court of Human Rights and the UN Human Rights Committee (Smith et al., 2008).

Human rights can be defined as the basic rights that every human being has. Legal norms aim to protect everyone from political, legal or social violations or betrayals. When it comes to human rights, we inevitably face more fundamental issues. A person has the right to do or have something. One will be protected from people who want to harm them with these rights. In this regard, human rights rest on two main values: human dignity and equality. Therefore, there is no requirement, condition, skill or knowledge needed to have human rights (Nurdin & Athahira, 2022).

Basically, the law has the power to force to prevent and enforce human rights violations. Therefore, human rights law can be defined as a law that contains and regulates the natural and social rights of humans as social beings and creatures of God. In addition, the law has the power to force execution against anyone who violates human rights. (Marzuki & Riyadi, 2008).

One form of legal protection for children to tackle the increase in sexual violence against children, the Government issued Perppu No. 1 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning Child Protection. This Perppu was then passed into Law Number 17 of 2016 concerning the Stipulation of Perppu No. 1 of 2016. The law regulates the aggravation of crimes against perpetrators of sexual violence, especially against children. the Perppu regulates the existence of punishments and actions.

In this paper, the author focuses more on chemical castration for perpetrators of one type of sexual violence, namely rape committed against children. Komnas Perempuan defines rape as an attack directed at the sexual parts and sexuality of a

person by using the sexual organs (penis), vagina, anus, or mouth, or by using other body parts that are not sexual organs or other objects. The attack is committed with violence, with the threat of violence, or with coercion, which causes fear of violence, psychological pressure, abuse of power, or taking advantage of an unpleasant situation. (Apriyansa, 2019).

The imposition of punishment on people deemed guilty has always been considered contrary to human rights. The purpose of imposing punishment can be based on the past actions of the convicted person or for the benefit of the future. In the first case, the purpose of imposing punishment is to retaliate for the past actions of the convicted person, while in the second case, the purpose of imposing punishment is to improve the behavior of the convicted person in the future. The purpose of punishment, which is also known as the existence of relative theory or goal theory, is to prevent crime. (Soesilo, 2021).

Meanwhile, Islamic criminal law basically does not recognize castration punishment for perpetrators of sexual violence, especially rape. Rape in Islamic criminal law is included in the category of zina. The perpetrators of adultery crimes receive various types of punishment based on the fulfillment of the elements of adultery. Only after it is proven in accordance with the specified elements, sanctions can be imposed. An adulterer can only be sentenced to ta'zir punishment if they do not fulfill the elements and other requirements. The forms of punishment associated with adultery are as follows: 1. For unmarried free adulterers (ghairu muhshan), flogging one hundred times; 2. Whipping fifty times for people who commit adultery with slaves; 3. Married adulterers are subject to stoning to death. (Fitriyani et al., 2021).

Jarimah ta'zir itself consists of two categories: first, jarimah ta'zir that offends the rights of Allah, and second, jarimah ta'zir that offends the rights of others or individuals. Jarimah ta'zir can be divided into three based on its nature: first, jarimah ta'zir for committing an evil act, second, jarimah ta'zir for committing an act that endangers public interests, and third, jarimah ta'zir for violating the law. In addition, jarimah ta'zir can be divided into three types based on the legal basis for its determination. The first is jarimah ta'zir which comes from jarimah hudud or qishas which does not meet the requirements or has a shubhat. The second is a jarimah ta'zir whose type is mentioned in the shara' nash, but the punishment has not been determined. The third is a jarimah ta'zir which neither the type nor the punishment has been determined by shara'. (Syarbaini, 2019).

Islamic criminal law is educationally intended to teach people to obey or comply with all applicable rules. The Shari'a that has been given by Allah is adjusted to the ability of humans to understand and learn the rules as mentioned above, in a series of a set of rules that apply to all actions that are permissible or not permissible, halal or haram, are highly regulated by Islamic law, especially for rape or sexual crimes. (Abduh, 2014). How does Human Rights (HAM) in Indonesia view castration as a countermeasure against criminal acts of sexual violence against children? And how is chemical castration punishment when viewed from Islamic criminal law?

RESEARCH METHOD

Analysis of Indonesian Human Rights and Islamic Criminal Law on Chemical Castration as An Effort to Tackle Criminal Acts of Sexual Violence Against Children

This research uses library research method by collecting and analyzing written works related to chemical castration, human rights, and Islamic criminal law. In addition, this research uses a descriptive analysis approach by describing chemical castration in terms of human rights in Indonesia and Islamic criminal law and then studying it repeatedly until the author finds a definite conclusion.

RESULT AND DISCUSSION

Descriptive Test

This test is a statistical method used to analyze and describe data in detail.

Table 1. Descriptive Test

Gender	
Female	221
Male	179
Demographics	
North Jakarta	23
East Jakarta	25
West Jakarta	25
South Jakarta	27

From a human rights perspective in Indonesia, chemical castration is a threat to the rights of individuals and their bodily integrity. If the perpetrator is found guilty of child sexual abuse, their consent is unclear. They may consent under duress or not understand the consequences of the treatment. The offender's rights as a human being are also violated by castration in this situation. As such, there is very little likelihood that the treatment of a particular individual will have any impact on what is a huge prevalence of sexual assault cases.

In fact, the issue of human rights revolves around the relationship between the individual and society. The state guarantees that every child has the right to survival, growth, and development as well as protection from discrimination and violence. There are many cases of sexual violence against minors today. Therefore, the government issued a law that is expected to have a deterrent effect on people who commit violations. The government issued Perppu No. 1 Year 2016, which is the second amendment to Law No. 23 Year 2002 on child protection. This Perppu aggravates the punishment for perpetrators of sexual crimes allowing them to be punished with chemical castration. The article explicitly states that offenders will be punished. It is as if human rights have been violated by the application of chemical castration.

From a health perspective, the implementation of castration laws has significant negative consequences. According to National Geographic Indonesia, "Anti-androgen hormones are anti-male hormones." Dr. Wimpie stated that the administration of anti-androgen drugs will have no impact on a man and will not make them feminized. However, chemical castration results in premature aging of the body. It is known that liquid anti-androgens reduce bone density, which increases the risk of bone loss or osteoporosis. Anti-androgens also reduce muscle

mass, which increases the chances of the body accumulating fat, which in turn increases the risk of heart and vascular disease. Torture is the term used for a chemical castration process that can paralyze organs.

Based on the explanation, it shows that chemical castration punishment has a bad impact. The implementation of chemical castration punishment is an act of violence and is considered contrary to the 1945 Constitution of the Republic of Indonesia, namely Article 28 G paragraph 2 which reads "*everyone has the right to be free from torture that degrades human dignity and has the right to obtain political asylum from other countries*". As well as Article 33 paragraph 1 of Law No. 39 of 1999 concerning Human Rights which states "*everyone has the right to be free from torture, punishment, or cruel, inhuman, degrading treatment and human dignity*".

Everyone has the right to freedom from inhumane and degrading punishment. One of the consequences of chemical castration is torture and retaliation against the perpetrator. According to Article 4 of Law No. 39/1999 on Human Rights, torture is any intentional act that causes severe pain or suffering, both physically and mentally.

The views of Komnas HAM regarding the application of castration punishment for perpetrators of sexual violence are:

1. Perhaps considered a cruel and inhumane punishment, the imposition of castration is not in accordance with the constitution and Indonesia's commitment in the field of human rights. The provision of Article 28G paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "*every person has the right to be free from torture and degrading treatment*".
2. The use of castration (either chemical or medical surgery) as an additional punishment can also be considered a violation of rights, including the right to consent to medical treatment and the right to protection of one's physical and mental integrity.
3. Doctors, legal experts, and criminologists say that the causes of sexual violence are not just physical; they are also psychological and social. In this case, recovery efforts through medical, psychological, and social rehabilitation, guided by human rights, should be provided in addition to punishment in accordance with current laws.
4. Perppu that regulates castration punishment must be reconsidered and not issued. Komnas HAM is of the opinion that the handling of sexual crimes against children that also involve women requires comprehensive and consistent action, which focuses not only on punishment but also rehabilitation and preventive measures, such as building a social protection system for children, including child- and women-friendly communities and information disclosure about the perpetrators. In addition, better education and understanding of reproductive health is also needed. (INDONESIA, 2021).

There are several suggested strategies to tackle child sexual abuse in Indonesia, namely:

1. Design dissemination and implementation of evidence-based policies and regulations, including action plans that focus on violence against children strategies;
2. Invest in a comprehensive parenting program, including skills modules that help parents and caregivers build safe environments and relationships to nurture their children.
3. Improve services provided to victims, especially in the area of health, and provide regular teaching to sensitive child victims and referrals to relevant workers such as nurses, social workers, midwives, and even police officers;
4. Support feminist movements and collective initiatives focused on gender equality and the empowerment of women and girls;
5. To change attitudes and behaviors to accept or justify the existence of criminal acts of sexual violence against women and children, the government and civil society must work together. (Eddyono et al., 2016).

With so much child sexual abuse, additional lessons on sex are needed in schools that serve to teach children about sex and understand that sexuality is very relevant. They should also understand the use, meaning and how to protect their vital organs. This kind of thing will help them and protect them from sexual offenses. Since the victims are citizens, educational institutions, especially schools, should not view these sex crime cases as a disgrace. The education office and related ministries must seriously handle this case. (Anggara et al., 2020) .

Because basically a perpetrator of child sexual abuse also has the right to know clearly about the chemical castration sanctions imposed on him, the rules must be clear about how chemical castration is applied. It is possible to influence an offender to be able to help eliminate thoughts about sexual desire by using psychological science. In this case, the government should also promote child protection so that they do not become victims of sexual abuse. (Kartika et al., 2020).

It is clear that Law No. 17/2016 has carefully weighed the pros and cons of chemical castration, which violates human rights and medical considerations. The consent of perpetrators of sexual violence to chemical castration also needs to be explained. The perpetrator must be accurately and thoroughly informed about the consequences of chemical castration so that he or she can give free and informed consent to influence his or her release from imprisonment. Of particular importance is the significant cost of providing the drugs for chemical castration, as well as a thorough medical examination before and after the chemical castration procedure.

Chemical castration must be carried out responsibly and in accordance with medical ethical standards. If we expect that perpetrators of sexual crimes will respect and value others, then we must also carry out chemical castration in a way that respects human dignity and worth. coordination between ministries responsible for law, social affairs, and health to oversee court decisions on the use of chemical castration to achieve the objectives of punishment, namely preventing sexual violence crimes from recurring and deterring perpetrators.

Meanwhile, Islamic criminal law basically does not recognize castration punishment for perpetrators of sexual violence, especially rape. Rape in Islamic criminal law can be said to be the same as zina, even if it fulfills its elements. Zina is included in the category of *jarimah hudud*, which means that this criminal offense

can only be sentenced to *had punishment*. The *had* punishment itself is a punishment that has been determined by Allah and cannot be contested if the criminal case has entered the court. (Muhammad, 2020). The perpetrator of adultery is subject to 100 lashes. This is written in the Qur'an Surah An-Nur Verse 24. In addition, the perpetrator of adultery can also be subject to stoning to death for those who are married. So that the imposition of castration punishment for perpetrators of rape who fulfill the elements of adultery is very unlikely to be done.

Castration punishment can be imposed for *jarimah ta'zir* category, which is a criminal offense whose punishment is determined by the judge or ruler of an area because the punishment is not regulated in the Qur'an and Sahih Hadiths. One of the reasons an act can be categorized as *jarimah ta'zir* is because the act does not fulfill the elements of *jarimah qishas-diyat* and *jarimah hudud*. Castration punishment can be imposed to the perpetrator of rape if the elements of adultery are not fulfilled.

One of the elements of zina is sexual intercourse in which the male genital organ (*zakar*) enters the female genital organ (*farji*) in the same way as an eyepatch. The eye goes into the eye-patch. The head of the male penis (*hashaphah*) must enter the *vagina*. In addition, zina is considered if there is a barrier between the *penis* and the *pharynx* as long as the barrier does not hinder the feeling and pleasure of intercourse, and intercourse that does not occur on its own. In addition, the element of adultery is that it is done with pleasure. Thus, a person who is forced to have sexual intercourse or a victim of rape cannot be said to be the perpetrator of adultery. Therefore, people who are victims of rape cannot be sentenced to any punishment including 100 lashes or stoning to death. (Rokhmadi, 2015).

Since one of the purposes of imposing punishment is to prevent or overcome the occurrence of criminal acts, the level of punishment must be sufficient to achieve this goal, and must not be less or more than the necessary limit. Thus, there is the principle of justice in imposing punishment. In addition to deterrence and fear, Islamic Shari'ah also takes into account the interests of the perpetrator. The main objective is even to teach the offender a lesson and do him good. Thus, humans abstain from *jarimah* not because they are afraid of punishment, but because they know and hate *jarimah* and abstain from their environment to gain God's *pleasure*. (Wahyuni, 2016).

Therefore, castration punishment, especially those using chemicals, is a *ta'zir punishment* that can only be imposed if the perpetrator commits rape by means other than inserting the male genitals (*zakar*) into the female genitals (*farji*) such as inserting the male genitals (*zakar*) into the butt hole (*anal sex*), inserting the male genitals into the mouth (*oral sex*), and so forth. However, because *ta'zir* is a punishment that is imposed based on the provisions of the judge or ruler, the punishment can use other punishments such as imprisonment, flogging, or stoning if possible.

CONCLUSION

The research findings indicate that the attitudes of healthcare practitioners, the role of teamwork, and the physical environment have a positive and significant impact on patient safety culture in Jakarta hospitals. Hospitals need to enhance

teamwork among healthcare professionals, ensuring that each individual in the team collaborates effectively to improve service quality and patient safety. Improving the physical environment conditions in hospitals is necessary, including factors such as cleanliness, security, and the availability of adequate resources to support patient safety practices.

Finally, increasing awareness and commitment of healthcare professionals to patient safety is crucial, through training, education, and enhancing understanding of the importance of patient safety practices in every aspect of healthcare service. For further research, several suggestions can be considered: 1. Case Studies in More Hospitals Future researchers can conduct multi-hospital studies to obtain a broader and more representative overview of patient safety culture in hospitals in Jakarta. 2. Influence of Additional Factors Subsequent researchers can expand the scope of the study by considering additional factors that may influence patient safety culture, such as organizational policies, incident reporting systems, and patient safety training.

REFERENCES

- Abduh, R. (2014). Tindak Pidana Perkosaan (Studi Komparatif Antara Hukum Pidana Dan Hukum Islam). *Wahana Inovasi*, 3(1).
- Anggara, R. G. A., Sianturi, K., Florency, D. W., & Michael, T. (2020). Pentingnya Pendidikan Bagi Anak Korban Pemerkosaan. *EGALITA*, 15(1).
- Apriyansa, D. (2019). Penegakan Hukum Terhadap Tindak Pidana Pemerkosaan Terhadap Anak Dibawah Umur Dan Sanksi Yang Diterapkan. *Jurnal Panorama Hukum*, 4(2), 135–145.
- Eddyono, S. W., Sofian, A., Akbari, A. R., Kamilah, A. G., Rentjoko, A., & Cipta, L. H. (2016). Menguji euforia kebiri: Catatan kritis atas rencana kebijakan Kebiri (chemical castration) bagi pelaku kejahatan seksual anak di Indonesia. *Jakarta: Institute for Criminal Justice Reform (ECPAT) Indonesia*.
- Fitriyani, A., Romli, S. A., & Antoni, A. (2021). Tinjauan Hukum Pidana Islam Terhadap Putusan Hakim Dalam Tindak Pidana Penyuapan Yang Dilakukan Oleh Badan Hukum (Studi Putusan Nomor 26/Pid. Sus-Tpk/2019/Pn Plg). *Ta'zir: Jurnal Hukum Pidana*, 5(2), 131–146.
- Hasanah, N. H., & Soponyono, E. (2018). Kebijakan Hukum Pidana Sanksi Kebiri Kimia dalam Perspektif HAM dan Hukum Pidana Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7(3), 305–317.
- INDONESIA, R. (2021). *Keterangan Pers Pandangan Komnas HAM Mengenai Hukuman Kebiri Bagi Pelaku Kejahatan Seksual*.
- Kartika, A. P., Farid, M. L. R., & Putri, I. R. N. (2020). Reformulasi Eksekusi Kebiri Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter Dan Perlindungan Hukum Bagi Pelaku Pedophilia. *Jurnal Hukum Ius Quia Iustum*, 27(2), 345–366.
- Marzuki, S., & Riyadi, E. (2008). *Hukum Hak Asasi Manusia*. Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia.
- Muhammad, N. (2020). *Pengantar dan Asas-Asas Hukum Pidana Islam*. Yayasan PENA.

- Nurdin, N., & Athahira, A. U. (2022). Hak Asasi Manusia Gender dan Demokrasi (Sebuah Tinjauan Teoritis Dan Praktis). *Jatinangor: Sketsa Media*.
- Rokhmadi, M. A. (2015). Hukum Pidana Islam. *Semarang: CV. Karya Abadi Jaya*.
- Smith, R. K., Asplund, K. D., & Marzuki, S. (2008). *Hukum hak asasi manusia. Pusat Studi Hak Asasi Manusia, Universitas Islam Indonesia (PUSHAM UII)*. Yogyakarta.
- Soesilo, G. B. (2021). Telaah Kritis Kebiri Kimia sebagai Pidana Tambahan Bagi Pelaku Pedofilia. *Amnesti Jurnal Hukum*, 3(1), 15–24.
- Syarbaini, A. (2019). Teori ta'zir dalam hukum pidana islam. *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan*, 2(2).
- Wahyuni, F. (2016). Sanksi Pidana Pemerkosaan Terhadap Anak Menurut Hukum Pidana Positif dan Hukum Pidana Islam. *Jurnal Media Hukum*, 23(1).