

Chemical Castration Sanctions Against Pedophiles Based on *Mashlahah* Perspective

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Abstract: This study discusses the chemical castration sanctions against pedophiles. The main problem in this study is how are the sanctions for chemical castration in Law No. 17 of 2016 concern Child Protection? and what are the sanctions for chemical castration against pedophiles in Law No. 17 of 2016 concerning Child Protection based on *Mashlahah* perspective? The methodology used was field research, using qualitative methods with a juridical and normative approach. Then, the data collection methods were analysis, interviews with the ulama (Indonesian Ulema Council) of South Sulawesi Province, and documentation. The data processing and analysis techniques had several stages: data reduction, data presentation, data editing, data analysis, and conclusion. The results showed that: 1) Chemical castration sanctions in Law No. 17 of 2016 concerning Child Protection is a sanction in the form of injecting a chemical substance that aims to suppress sexual desires towards perpetrators of sexual crimes against children (pedophiles). The chemical castration sanction in the Law is an additional criminal sanction that is imposed at most two years after the perpetrator has served the main sentence in the form of imprisonment; 2) Chemical castration sanctions in Law No. 17 of 2016 concerning Child Protection are categorized as *mashlahah mulghah* by the ulama, it refers to rejected *mashlahah* because there is an argument for the prohibition of castration in the hadith and *ijma'* of the ulama.

Keywords: Chemical Castration; Pedophile; Mashlahah

INTRODUCTION

Children are a trust from Allah the Almighty who should be looked after and given

their rights by the recommended in Islam.¹ Children are the responsibility and gift of the Almighty God, which we must always look after because within them are self-worth, dignity, and rights as human beings which must be upheld as undivided human beings. Islam views children as a precious gift and has a sacred status. This expensive gift is a trust that parents must guard and protect because children are assets of parents and the nation. Islam gives great attention to the protection of children, including physical, psychological, intellectual, moral, economic and others.²

Every child was born with the right to receive care and nurturing from their parents to lead them towards maturity. A child's soul formation is greatly influenced by how the child is cared for and nurtured since birth. Children's growth and development require solemn attention, especially during the toddler years. Children are the seeds, potential, and young generation who can continue the ideals of the nation and state in the future.

In article 2, paragraph 4 of Law Number 4 of 1979 concerning Child Welfare, it is stated that "children have the right to protection against the environment which can harm them or hinder their normal growth and development".³ Therefore, the state has provided a legal umbrella to guarantee that a child's life, namely Law Number 23 of 2002 concerning Child Protection which aims to protect children from criminals.

The implementation of Law Number 23 of 2002 was ineffective because sexual crimes against children were increasing, and there was still an overlap between sectoral laws and regulations related to the definition of children. After approximately twelve years, Law Number 23 of 2002 concerning Child Protection was then changed to Law Number 35 of 2014 concerning Child Protection, which emphasizes the need for increased criminal sanctions and fines for perpetrators of crimes against children, especially for perpetrators of sexual crimes. It aims to provide a deterrent effect and encourage concrete steps to restore children's physical, psychological, and social health. Law Number 35 of 2014, which became effective on October 18th, 2014, also changed the "legal paradigm", including giving responsibilities and obligations to the state, government, regional government, community, family, and parents or guardians regarding child protection.

However, in the current reality, even though the child protection law has changed, cases of crimes against children keep increasing, especially crimes and sexual violence against children. The peak occurred in 2016 when there was a sexual crime against a thirteen years old junior high school student by eight boys in Surabaya; in the same year, there was sexual violence against Yuyun, a junior high

¹<https://www.merdeka.com/jatim/hadist-kewajiban-orangtua-terhadap-anak-dalam-islam-berikut-selengkapnya-klm.html> Accessed on June 9th 2022.

²Muhammad Zaki, *Perlindungan Anak Perspektif Hukum Islam*, Asas (6), No. (2). 2014: 1

³Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare.

school student in Padang Ulak Tanding Village, Rejang Lobong District, Bengkulu Province, who was raped by fourteen young men on her way home from school.⁴ Yuyun's case grabbed the attention of the general public, then another new case emerged in Kediri Regency, East Java Province; there were 17 out of 58 minors who had been identified as rape victims.⁵

The rapid flow of globalization and the negative impact of developments in the fields of information and communication technology raise the new phenomena of crime and sexual violence against children.⁶ Sexual violence against children is a serious crime that is increasing from time to time and significantly threatens and endangers children's lives, damages personal lives and children's growth and development, and disrupts their comfort, peace, security and public order.

Child Sexual Abuse against children, which is often called pedophilia, is an act of sexual crime committed by adults against minors.⁷ Pedophilia is a crime where the perpetrator attempts an approach slowly, such as giving gifts, both to the child and to the child's parents. The pedophiles carry out his usual actions continuously when the opportunity arises.

There are many cases of sexual crimes against children (pedophiles); the government of the Republic of Indonesia has declared that Indonesia is in a sexual crimes emergency and officially stipulated and promulgate government regulations for the replacement of the Republic of Indonesia Law of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection (or better known in the mass media as the castration regulation), which was later ratified into law No. 17 of 2016 concerning Child Protection.⁸

According to the perspective of Indonesian criminal law, the stipulation of chemical castration sanctions aims to protect the benefit of Indonesian society from pedophiles, provide a deterrent effect, and as a form of legal responsibility for the perpetrators.

However, in its application, the legal sanction of chemical castration in Law No. 17 of 2016 continues to be controverted because there has been no significant reduction in the number of cases of sexual crimes against children since its enactment. Based on data from the Ministry of Women's Empowerment and Child Protection, the number of child victims of sexual violence from 2019 to 2021 has increased.⁹ In 2019, the number of child victims of sexual violence reached 6,454,

⁴Andika Wijaya, *Darurat Kejahatan Seksual* (Ed. 1: Jakarta: Sinar Grafika Offset, 2016), p. 3.

⁵Andika Wijaya, *Darurat Kejahatan Seksual* (Ed. 1: Jakarta: Sinar Grafika Offset, 2016) p. 4.

⁶Laskar Iqra, *Perpu Kebiri* (Ed. 1: Jakarta: CV. Bagiz Grafika, 2016) p. 7.

⁷Siska Iis Sulistiani, *Kejahatan dan Penyimpangan Seksual* (Ed. 1: Bandung: Nuansa Aulia, 2016), p. 76.

⁸Andika Wijaya, *Darurat Kejahatan Seksual* (Ed. 1: Jakarta: Sinar Grafika Offset, 2016) p. v.

⁹<https://nasional.kompas.com/read/2022/03/04/17062911/kemenpppa-797-anak-jadi-korban-kekerasan-seksual-sepanjang-januari-2022?page=all>. Accessed on June 9th 2022.

then increased to 6,980 in 2020. Furthermore, from 2020 to 2021, there was an increase of 25.07 percent to 8,730 cases.

There are many cases of sexual crimes against children amidst the implementation of chemical castration sanctions in Law No. 17 of 2016, which is expected to suppress and prevent cases of sexual crimes against children, evokes a question "Whether chemical castration sanctions which aim to provide a deterrent effect and maintain benefits in people's lives can be adequately implemented or not?".

In Islamic law, *mashlahah* or benefit is the goal of legal enactment. Imam as-Syatibi, in his famous book *al-muaffaqat fi ushul al-syariah* emphatically states that the purpose of Allah in establishing His laws is to embody the benefit of human life, both in the world and hereafter.¹⁰

The ulama defines *mashlahah* as good by common sense because it brings goodness and prevents evil or damage to humans, aligning with *syara's* objectives in establishing laws. The presence of legal sanctions of chemical castration against pedophiles in human life is attractive to study, especially from a *mashlahah* perspective.

THEORETICAL REVIEW

An Overview of Chemical Castration

Castration (*al-ikhsa'*) is the cutting of two testicles, which can be coupled with the cutting of the penis.¹¹ So castration can be only cutting the testicles, and this is the basic meaning of castration. Castration aims to eliminate sexual desire and can also result in infertility.

The practice and application of castration methods are divided into two types, namely physical castration and chemical castration.¹² Chemical castration does not amputate the testes but rather inserts chemicals in the form of antiandrogen through injections into someone's body to weaken the testosterone hormone. In simply, chemicals that are inserted into the body will reduce or even eliminate the ability of erection, libido, or sexual desire.¹³

Moreover, the punishment of chemical castration in the form of antiandrogen injections has a negative impact; it is accelerating the aging of the body. Antiandrogen fluid injected into the body reduces the mass density of bones so that bone is easily porous and increases the risk of fractures. This drug reduces

¹⁰Ghofar Shidiq, *Teori Maqashid al-Syariah Dalam Hukum Islam*, (Jurnal Sultan Agung, XLIV, No. 118, 2009): p. 121.

¹¹Muhammad Rawas Qal'aji, *"Mu'jam Lughah Al-Fuqaha"*, (Beirut, Lebanon: Daru al-nafais, 2006), p. 150

¹²Tim Diskusi Dosen Fakultas Syariah UIN Raden Intan Lampung, *"Hukum Kebiri Dalam Kajian Fiqih Modern Interdisipliner,"* (Ed. 1; Surabaya: CV Gemilang, 2018), p.137

¹³Tim Diskusi Dosen Fakultas Syariah UIN Raden Intan Lampung, *"Hukum Kebiri Dalam Kajian Fiqih Modern Interdisipliner,"* (Ed. 1; Surabaya: CV Gemilang, 2018), p.137

muscle mass and increases fat, raising heart and blood vessel risk. If the injection of antiandrogen is stopped, a person's sexual urge and erection will reemerge. Thus, chemical castration is not permanent but temporary.¹⁴

Islamic Sharia does not recognize castration punishment for sexual perpetrators of children; it is based on the hadith of the Prophet Muhammad that explains the execution of the castration of his companions during the time of the Prophet Muhammad:

عَنْ قَيْسٍ، قَالَ: سَمِعْتُ عَبْدَ اللَّهِ، يَقُولُ: "كُنَّا نَعْرُزُ مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، لَيْسَ لَنَا نِسَاءٌ، فَقُلْنَا: أَلَا نَسْتَخْصِي؟ فَهَانَا عَنْ ذَلِكَ، ثُمَّ رَحَّصَ لَنَا أَنْ نَنْكِحَ الْمَرْأَةَ بِالثَّوْبِ إِلَى أَجَلٍ" (رواه مسلم)

Meaning:

"Qais heard Abdullah say, "We used to fight with the Prophet Sallallaahu 'alaihi wasallam, but we did not bring our wives, then we said: O Messenger of Allah, were we not castrated? However, the Prophet Muhammad forbade that; then he relieved us to marry a woman by giving her a dowry in clothes." (Hadith of Muslim).¹⁵

The details of the punishment for pedophiles are: first, if the pedophiles commit adultery, then they get punishment for adulterers (*Had Az-Zina*), they get stoned if married (*Muhsan*) or whipped a hundred times if they have not married (*Ghairu Muhsan*). Second, if the pedophiles are *liwath* (homosexual), then the punishment is the death penalty. Third, if the pedophiles commit sexual harassment that is not considered adultery or homosexuality, the punishment will be *takzir*.¹⁶

An Overview of Pedophilia

Sexual crimes are crimes that violate immorality. According to R. Soesilo, immorality is behavior that is by customs.¹⁷ The definition of immorality is inconsistent because customs are always influenced by time, place, and society

Van Bemmelen formulated that crime is an immoral act that is detrimental and causes much unease in a particular society, so society has the right to denounce it and express its rejection of that behavior through condolences. Meanwhile, according to B. Simandjuntak, crime is an anti-social act that is detrimental and

¹⁴Tim Diskusi Dosen Fakultas Syariah UIN Raden Intan Lampung, "Hukum Kebiri Dalam Kajian Fiqih Modern Interdisipliner," (Cet. 1; Surabaya: CV Gemilang, 2018), p.137

¹⁵Imam Muslim, *Shahih Muslim*: No. 1404, Bab Nikah Mut'ah, (Beirut, Darl Al-Fikr, tt), p. 193

¹⁶Tim Diskusi Dosen Fakultas Syariah UIN Raden Intan Lampung, "Hukum Kebiri Dalam Kajian Fiqih Modern Interdisipliner," (Cet. 1; Surabaya: CV Gemilang, 2018), p.71

¹⁷Madnur, Sanksi Kebiri di Indonesia Dalam Perspektif Hukum Islam dan Perlindungan Anak, Tesis (Jakarta, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2019), p. 33

inappropriate, which cannot be tolerated and can cause problems in society.¹⁸

Pedophilia is a sexual disorder in the paraphilia category. The term paraphilia was first mentioned by a psychotherapist named Wilhelm Stekel in his book entitled *sexual aberration* in 1925. Paraphilia refers to a group of disorders that involve sexual attraction to unusual objects or unusual sexual activity.¹⁹ Paraphilia is a sexual feeling or behavior that may involve a sexual partner without consent or that involves suffering or torment by one or both partners.²⁰

An Overview of *Mashlahah*

Imam Malik viewed that "*mashlahah* is every benefit that is not based on a specific *nash* that shows whether the benefit is *mu'tabar* (approved) or not."²¹

Ramadhan Al-Buthi explained that "*al-mashlahah* is something beneficial and intended by the wisest *syari'*, for the good of His servants, which is in the form of maintaining their religion, soul, mind, offspring, and property in a precise order."²²

Ushul fiqh scholars agree that *maslahah mu'tabarah* is an evidence in determining Islamic law. Benefits like this are included in the *Qiyas* method. They also agreed that *mashlahah al-mulghah* cannot be used as evidence in determining Islamic law. It is in line with *mashlahah al-gharibah*, because it cannot be found in *syara'* practice.²³

RESEARCH METHODOLOGY

This study was field research. It provided an overview and explained the relationships between all the data obtained so that the truth can be obtained by understanding the phenomena or symptoms of the object to be studied.²⁴

The research location of this study was the Indonesian Ulema Council (MUI) of South Sulawesi Province to see the views and answers of the ulama regarding the chemical castration sanctions that have been regulated in Law No. 17 of 2016 concerning the protection of children against pedophiles from a *mashlahah* perspective.

¹⁸Siska lis Sulistiani, *Kejahatan dan Penyimpangan Seksual*, (Ed:1, Bandung; nuansa aulia, 2016), p.

¹⁹Siska lis Sulistiani, *Kejahatan dan Penyimpangan Seksual*, (Ed:1, Bandung; nuansa aulia, 2016), p. 76

²⁰Siska lis Sulistiani, *Kejahatan dan Penyimpangan Seksual*, (Ed:1, Bandung; nuansa aulia, 2016), p. 76

²¹Fariqam Musa, *Ushul Fiqh Imam Malik*, (Saudi: Dar al-Tadmuriyyah), p.409.

²²Sa'id Ramadhan al-Buthi, *Dhawabit al-Maslahah fi al-Syariah al-Islamiyah*, (Beirut: Mu'assasah Al-Risalah, 1992), p. 27

²³Nasroen Haroen, *Ushul Fiqh*, (Jakarta: Logogs Wacana Ilmu, 1997), p. 120

²⁴Sugiyono, *Metode Penelitian Pendidikan penedkatan Kualitatif, Kuantitatif, dan R&D*, (Ed. XI Bandung: Alfabeta, 2010) p..31

The approach used in this study was: (1) A normative theological approach (*Syar'i*); an approach that is based on Islamic law originating from the Al-Qur'an, Hadith, rules of *fiqh*, and the opinions of the ulama in understanding and analyzing problems in implementing chemical castration sanctions. (2) The Juridical-Normative Approach is an approach that is based on the primary legal materials by examining theories, concepts, legal principles, and statutory regulations related to this study. This study referred to Law Number 17 of 2016 concerning Child Protection.

DISCUSSION

Chemical Castration Sanctions Against Pedophiles based on the Legal Perspective

Children, as the nation's next generation, have an essential role in national development and are obliged to get protection from the state following the provisions of the 1945 Constitution of the Republic of Indonesia, which states that children have the right to protection from violence.²⁵ The rapid flow of globalization and the negative impact of developments in the field of information and communication technology rise a new phenomenon of sexual violence against children. Sexual violence against children is a serious crime that is increasing from time to time and significantly threatens and endangers children's lives, and also disturbing the comfort, peace, security, and order in society.

The constitution of the Republic of Indonesia of 1945 states that the State guarantees children's rights to survive, growth, and development, and protection from violence and discrimination.²⁶ Along with the rapid flow of globalization and the negative impact of the development of information and communication technology, violence against children, especially those related to sexual violence rise precipitously.

The government of the Republic of Indonesia declared that Indonesia was in a sexual crimes emergency on May, 25th 2016.²⁷ The Government of the Republic of Indonesia officially stipulates and promulgates government regulations in place of Law of the Republic of Indonesia No. 1 of 2016 which was later legalized into Law No. 17 of 2016 concerning Child Protection as the second amendment to Law No. 23 of 2002 concerning Child Protection

Chemical castration sanctions contained in Law No. 17 of 2016 on the Human Rights Commission (*Komnas HAM*) is aimed at perpetrators of sexual crimes against children (pedophiles).²⁸ The government created this sanction to provide a

²⁵Perpu No.1 tahun 2016 tentang perubahan kedua UU No 23 tahun 2002 tentang perlindungan anak (Ed. 1; Jakarta: bagis grafika, 2016), p. 7

²⁶The Constitution of the Republic of Indonesia of 1945.

²⁷Andika Wijaya, *Darurat Kejahatan Seksual*, (Ed. 1; Jakarta: Sinar Grafika, 2016), p. v

²⁸Madnur, *Sanksi Kebiri di Indonesia Dalam Perspektif Hukum Islam dan Perlindungan Anak*, Thesis (Jakarta, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2019), p. 95

deterrent effect against perpetrators of sexual crimes against children to reduce the high number cases of sexual crimes against children.

The chemical castration sanction on perpetrators of sexual crimes against children was formulated in 2015 by the Minister of Social Affairs, Khofifah Indar Parawansa; she argued that many countries had implemented this punishment as a way to control the libido of perpetrators of sexual violence against children, this proposal was then acclaimed by Minister of Law and Human Rights, Yasonna Laoly. So, in 2016, the President ratified a Government Regulation in place of Law as an amendment to Law No. 23 of 2002 concerning Child Protection, which was later enacted into Law No. 17 of 2016 and four years later, President Joko Widodo signed Government Regulation No. 70 of 2020 as a guideline for implementing chemical castration sanctions.

The presence of additional criminal sanctions, namely chemical castration in Law No. 17 of 2016 concerning child protection, does not immediately receive support and approval from various parties; sanctions in the form of chemical castration have various pros and cons. Among those who support the implementation of chemical castration sanctions in Law No. 17 of 2016, submitted by Sujatmiko as Deputy for the Coordination of Women and Children's Protection at the Coordinating Ministry for Human Development and Culture (*Kemenko PMK*), it was said that the application of harsher sentences for perpetrators of sexual crimes is a warning to Indonesian society. This warning has two crucial things after its implementation. First, the chemical castration sanction aims to provide a deterrent effect for the perpetrator. Second, remind the public not to mess around with sexual crimes because it has become an exceptional crime.²⁹

Chemical Castration Sanctions Against the Pedophiles in the Mashlahah Overview

The government's chemical castration sanctions are not only expected to prevent and suppress the cases of sexual crimes against children, but the government also expects that the chemical castration sanctions in the form of injecting anti-androgen substances against perpetrators of sexual crimes against children as regulated in Law No. 17 of 2016 concerning Child Protection can have a deterrent effect and create benefits.

In Islamic law, *mashlahah* is a concept used as the primary consideration in resolving Islamic legal problems because the principle contained in *mashlahah* is the maintenance of the objective purposes of the law, such as the care of the soul, mind, religion, lineage, and property. Imam As-Syatibi, in his book, *Al-Muwaffaqat Fii Ushul Al-Syariah*, also stated that the purpose of Allah the Almighty in establishing His laws is to embody the benefit of human life, both in the world and hereafter.

²⁹Andika Wijaya, *Darurat Kejahatan Seksual*, (Ed. 1; Jakarta: Sinar Grafika, 2016), p. 172

According to the *fatwa* commission secretary of the Indonesian Ulema Council (MUI) of South Sulawesi, Dr. Syamsul Bahri, Lc., chemical castration sanctions are not in line with and are contrary to Islamic law. He explained that there are already arguments in the form of hadith and *ijma* that regulate the prohibition of castration. Besides, he continued that scholars who want to carry out *ijtihad* in determining Islamic law must refer to the existing laws. Rape cases can be taken from the original law, namely adultery or homosexuality. If pedophilia is included in the category of adultery, then the punishment given is to be whipped 100 times or *rajam* (killed). If the perpetrator is classified as homosexual, then the punishment is put to death. If pedophilia is limited to sexual harassment, then those who do not commit adultery or homosexuality will be punished with *takzir* (additional punishment).

However, based on *mashlahah* perspective from the *mashlahah* category by the ulama, the sanction of chemical castration regulated in Law No. 17 of 2016 concerning Child Protection is *mashlahah al-mulghah*, it is defined as the *mashlahah* that is good in reason (capable of bringing goodness and preventing damage) but rejected by *syara* (Islamic legal provisions)

The secretary of the *fatwa* commission of the Indonesian Ulema Council, South Sulawesi, namely Dr. Syamsul Bahri, in a direct interview, stated that "chemical castration sanctions in the *mashlahah* concept fall into the category of *mashlahah al-mulghah*, or *mashlahah* which contains texts in the form of hadith and *ijma* ulama which show rejection toward the sanctions in the form of castration.

Apart from that, Dr. Syamsul Bahri also mentioned the consensus agreement of the ulama regarding the rejection of castration; Ibn Hajar Al-Asqailani, in his book *Fathul Baari* stated that the prohibition of disallowance without differences of opinion among the ulama is the castration in humans.³⁰ Regarding *mashlahah mulghah*, *ushul fiqh* scholars agree that *mashlahah mulghah* cannot be used as evidence in determining Islamic law, because the Shari'a has stated it to prohibit it.³¹

Suppose the hadith about prohibiting the sanction of castration in the Prophet's hadith is hooked to the chemical castration sanction regulated in the law. In that case, there is a difference in the context of the two. The prohibition of castration in the hadith is a direct request from a friend of Prophet Muhammad to be castrated for fear of adultery sin, which could happen because the friends did not bring their wives for a long time. Castration in the law is a form of punishment for perpetrators of sexual crimes against children. Therefore, if we look further into the differences in context, the sanctions of chemical castration from the government may be the *ijtihad* of the government or state leaders in providing punishment for pedophiles, considering that the Qur'an does not regulate in detail the punishment for perpetrators of crimes or rape by an adult against a child or

³⁰Ibnu Hajar Al-Asqailani, *Fath Al-Bari*, Fii Syarh Shahih bukhari, h. 27

³¹Nasroen Haroen, *Ushul Fiqih*, Logogs Wacana Ilmu; Jakarta, 1997), h. 120

pedophilia. Thus, the chemical castration sanction can also be categorized as *mashlahah mursalah*.

From this hadith, questions also arise regarding the permission to carry out castration, considering that the friends of the Prophet Muhammad who asked to be castrated in the hadith narrated by Imam Muslim already had wives. It is still questionable what the status of banning castration is; is it still prohibited for friends who do not have a wife? So from this question, the second hadith narrated by Imam Bukhari regarding the prophet's prohibition on *tabattul* (living celibate) can be used as a reference. In this hadith, the Prophet forbade Usman bin Maszh'un to perform *tabattul* because, according to the companions in this hadith, if the Prophet permitted Uthman bin Mazh'un to carry out *tabattul* then the other companions would also carry it out even though they had to get castration. In the book *Subulus Salam* by Ash Shan'ani, *tabattul* is reluctant to get married because of the decision to worship Allah only.

Interviewed separately, Dr. Yusri Arsyad, a member of the *fatwa* commission of the Indonesian Ulema Council (MUI) South Sulawesi, also explained that the chemical castration sanction in Law No. 17 of 2016 is *mashlahah al-mulghah*. However, in the results of the interviews, the two ulama from the Indonesian Ulema Council of South Sulawesi had different views regarding the legal basis for determining sanctions for chemical castration in the form of *mashlahah al-mulghah*. Dr. Yusri Arsyad contends that it is not appropriate to make the Prophet's hadith regarding the prohibition of castration the basis or argument for categorizing chemical castration sanctions in Law No. 17 of 2016 to be *mashlahah al-mulghah*. According to him, the prohibition on carrying out chemical castration in the hadith of the Prophet Muhammad was a direct request by the companions to apply chemical castration in order to avoid lust. In contrast, castration in Law No. 17 of 2016 is in the form of punishment for perpetrators of sexual crimes, which may take the form of *ijtihad* in implementing the law on problems or criminal cases that do not have detailed punishment arguments.

According to Dr. Yusri Arsyad, the verse is *Qath'i al-dalalah wa qath'i as-subut*, meaning that if the law is evident in the Qur'an and hadith, then there are no *ijtihad* and *takzir*. Allah the Almighty has stipulated that the sanction for the perpetrator of adultery is caning for the perpetrator of *ghairu muhsan* (unmarried perpetrator) or *rajam* for the perpetrator *muhsan* (married perpetrator) in the Qur'an. He further explained the law of justice for rapists, all the laws from Allah the Almighty are *adlun kulluha* (everything is fair), *hikmatun kulluha* (everything contains *himah*), *maslahatun kulluha* (everything is *maslahat*), and *rahmatun kulluha* (everything is grace)

However, if seen in the context of Indonesia or a country that does not practice Islamic law or if pedophilia cases cannot get *qiyas* like the law of adultery, then the sanction of chemical castration can be categorized as a *takzir* punishment (additional punishment) which is the authority of the judge or ruler to find appropriate laws. It is not clearly regulated in the arguments of the Qur'an or Sunnah. The chemical castration sanction regulated in law is also the government's

ijtihad in finding punishments that are not regulated in detail in the Qur'an. Moreover, sexual crimes against children or pedophilia are new cases in which the punishments are not explained in detail in the Qur'an or hadith. He made an analogy of the approval of chemical castration sanctions as the government's *ijtihad* in determining the law for new cases, such as the prison sentence imposed on thieves in Indonesian law, which can also be approved even though the punishment for perpetrators of theft is cutting off their hands based on the Qur'an.

Nevertheless, look at the consequences of chemical castration sanctions, which only have a temporary effect on the perpetrator who has ruined the child's growth and development in terms of *mashlahah*. The benefits of chemical castration sanctions can only create an illusion. Chemical castration is regulated in law No. 17 of 2016 concerning child protection, which is illusive or temporary and is not commensurate with the harm. The chemical castration sanction seems light, not serious, and just a trial with no deterrent effect for the perpetrator. It is in line with many cases of theft and other crimes that perpetrators and former convicts repeatedly commit. Therefore, it does not provide a deterrent effect but is only temporary. The pedophiles may re-commit their crimes after going through prison and chemical castration, which only has a temporary effect. It is known that pedophiles are perpetrators who have abnormal sexual disorders. It will continue to concern society and is contrary to the definition or concept of *mashlahah*, which is taking advantage and avoiding *mudharat* (harm).

The Effectiveness of Chemical Castration Sanctions against Pedophiles in Indonesia

In 2016, the government ratified PERPPU (Government Regulation in place of Law) into Law No. 17 of 2016 concerning Child Protection as an amendment to Law No. 23 of 2002. The government undertook this after there were many cases of sexual crimes against children in the same year.

However, in reality, the sanctions for chemical castration regulated by law have caused polemics in society, starting from the rejection from the Ministry of Law and Human Rights, the rejection from the IDI (Indonesian Doctors Association), which argues that doctors are prohibited from using their knowledge for things which is contrary to humanity, and also the rejection from several Islamic community organizations who consider chemical castration sanctions to be contrary to Islamic law.

Based on the interview, the Indonesian Ulema Council of South Sulawesi categorizes the sanctions for chemical castration in Law No. 17 of 2016 concerning Child Protection as *mashlahah mulghah*. It is the *mashlahah* that contains arguments for its prohibition. Apart from that, the secretary of the *fatwa* commission of the Indonesian Ulema Council of South Sulawesi Province defines that the sanction of chemical castration against pedophiles is *mashlahah* whose level of *mafsadah* is greater than the level of benefits.

Moreover, the benefits of embodying *mashlahah* regarding chemical castration sanctions against pedophiles are minimal, considering that the deterrent effect of

chemical castration sanctions is infinitesimal. It is based on interviews with a doctor about the side effects and possible deterrent effects that arise from chemical castration sanctions, Dr. Rusmin Syukur Sp. An. considers the sanction of chemical castration is too light compared to the harm of the crimes committed by pedophiles. According to Dr. Rusmin Syukur, physical castration is a more suitable choice to give a deterrent effect for the perpetrator, considering that the effect will be permanent for the perpetrator. Another opinion regarding the lack of a deterrent effect from chemical castration sanctions is the fact from a study conducted by Andy Labanta Roh Manik on sexual crime cases that occurred at Yogyakarta Regional Police from 2015 to 2017. It was found that there was no change regarding the number of sexual crimes that occurred in the particular region of Yogyakarta before and after the passing of law No. 17 of 2016 concerning Child Protection as the second amendment to Law No. 23 of 2002

From 2015 until mid-May 2016, cases of sexual crimes against children occurred eight times. It occurred on May 25th, 2016, after the chemical castration sanctioned in Law No. 17 of 2016 was authorized; it was confirmed that cases of sexual crimes against children had occurred seven times and even the last time occurred on April 25th, 2017, when Andy Labanta carried out and obtained research data.. His study shows that the chemical castration sanctions that apply in the law are not effective in preventing sexual crimes against children. According to Andi Labanta Roh Manik, this data shows that perpetrators of sexual crimes against children are not afraid of the threat of existing sanctions.

Another reason that strengthens the chemical castration sanctions will not be effective in suppressing cases of sexual crimes against children and creating benefits is that in Law No. 17 of 2016 concerning child protection, the sanction of castration is only an additional punishment, not the primary crime. It clarifies that the sanction of chemical castration will not provide adequate and burdensome punishments so that pedophiles will not hesitate to commit crimes.

According to the Indonesian Ulema Council of South Sulawesi, the solution to embody the benefits concerning the perpetrators of sexual crimes against children is not only to provide physical punishment but a better and more appropriate way for pedophilia, which is a disease or sexual disorder, so that, providing education in terms of deviant understanding and behavior. This opinion results from a police investigation related to the study conducted by Andy Labanta Roh Manik. From the results of interviews with the police, represented by the Head of the Women and Children Services Unit of Yogyakarta, he said that the increase in sexual crimes in Indonesia, especially in the particular region of Yogyakarta, was not due to ineffective laws, but because lack of socialization to the community and lack of role of the community itself in preventing sexual crimes. He asserted that sexual crimes occur due to the decline in religious values in society, especially the perpetrators, so that they are not afraid of sin and think that sexual crimes against children are normal things.

Therefore, viewing the application of chemical castration sanctions regulated in Law No. 17 of 2016 concerning Child Protection from a *mashlahah* perspective,

chemical castration sanctions are not appropriate. The chemical castration sanctions will only burden the state, the involvement of many parties such as coordination of prosecutors and several medical experts and related ministries, the costs of operating chemical castration are expensive, the involvement of relevant ministries regarding supervision of chemical castration convicts, plus research data and the Ministry of Women's Empowerment and Protection show that there are still many of pedophilia cases even though chemical castration sanctions have been implemented since seven years ago that remains concern in society.

Furthermore, the reason that chemical castration is not an appropriate sanction to embody *mashlahah* is that the perpetrator of sexual crimes against children or pedophilia is a disease or sexual disorder that requires unique or different treatment that differs from normal humans. The problem lies in the orientation or improper mindset of pedophiles; pedophiles may carry out their actions again even though they have been chemically castrated because their tendency to approach minors will not vanish.

The government should review and discern this. The sanctions of life imprisonment and the death penalty regulated in Law No. 17 of 2016 are sufficient as an alternative punishment for perpetrators of sexual crimes against children or pedophiles; these sanctions will undoubtedly be a consideration for pedophiles to carry out their crimes. Apart from that, these sanctions will also be commensurate with the consequences of the pedophiles' crime, which can harm the mentality, future, and life of a child. Punishment in the form of life imprisonment is appropriate for perpetrators of sexual crimes against children or pedophilia to realize benefits, where they are limited movement and avoid the harm from pedophiles that threaten the lives and future of children as the next generation of the nation in the future.

CONCLUSION AND IMPLICATION

Conclusion

Castration sanctions that are regulated in Law No. 17 of 2016 concerning Child Protection is a medical action in the form of injecting chemicals into perpetrators of sexual crimes against children or pedophiles, which causes more than one victim, results in serious injuries, mental disorders, infectious diseases, disruption or loss of the function of reproductive organs, and causes the victim to die. Chemical castration sanctions in Law No. 17 of 2016 concerning Child Protection from a *mashlahah* perspective is categorized by the ulama (Indonesian Ulema Council) of South Sulawesi as *mashlahah mulghah*; the *mashlahah* which is rejected by *syara'* because postulates indicating its prohibition. However, there is a difference in context between the hadith prohibiting castration and the chemical castration sanction in the law, which can categorize the chemical castration sanction as *mashlahah murlahah*. This opinion is based on the hadith of the Prophet regarding the prohibition of castration during the time of the Companions of Prophet Muhammad and the existence of *ijma* (agreement) of previous scholars regarding the prohibition of castration. Apart from that, if we look at the

effectiveness of chemical castration sanctions, it can be defined as *mashlahah*, with more significant harm than benefits.

Implication

The chemical castration sanctions regulated by law are considered too light for pedophiles who destroy the lives and future of precious children, so the perpetrators do not hesitate to commit or even repeat their crimes. Sanctions in the form of the death penalty or life imprisonment can be the right choice in cases of pedophilia. Life imprisonment is appropriate for pedophiles to limit the movement of perpetrators who have mental problems and improper thought patterns. Besides, the death penalty can be a punishment and lesson for other people not to dare commit sexual crimes against children or pedophilia, which is troubling society to this day.

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