

**A CRITICAL REVIEW OF PERATURAN PEMERINTAH REPUBLIK
INDONESIA NOMOR 70 TAHUN 2020 CONCERNING THE
IMPLEMENTATION OF CASTRATION FOR SEXUAL CRIMES: IN THE
PERSPECTIVES OF MAQASHID SHARIA**

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ABSTRACT

This research was conducted to analyze the implementation of the law of castration from the perspective of Maqashid Syariah. In Indonesia today there are many criminal acts of rape against women and children. As an alternative punishment with castration as formulated in Law Number 70 of 2020. The method used is normative juridical research, namely research to find legal doctrines or principles, ijma' (opinions of scholars), therefore in this study the author tries to understand the conversation about sexual deviation, especially those that discuss the application of castration sanctions against sex offenders. This research is a juridical normative research which is viewed from the perspective of Maqashid Shari'ah. In Islamic law, punishment for perpetrators of sexual crimes is given in the form of stoning and whipping. Castration punishment is not in accordance with Maqashid Shari'ah because it can damage human beings which is contrary to the hifdzun of the nafs. First, Islamic sharia has strictly prohibited castration on humans, without any difference of opinion (khilafiyah) among the fuqaha. Second, in terms of the castration method used is the injection method. Third, that which is injected is the hormone estrogen, the law is also haram, because it causes the castrated male to have physical characteristics like women. Based on the 3 reasons, it is unlawful to impose castration on perpetrators of sexual crimes.

Keywords: Castration, Islamic Law, Maqashid Sharia



INTRODUCTION

In Indonesia today there are many criminal acts of rape against women and children followed by violence, torture and even murder of the victims. Therefore, it is necessary to establish a legal formulation that can prevent it and one alternative is castration. In the Indonesian context, this castration sentence has been regulated in Peraturan Pemerintah Republik Indonesia Nomor 70 tahun 2020 concerning Procedures for Implementing Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against the Child.¹

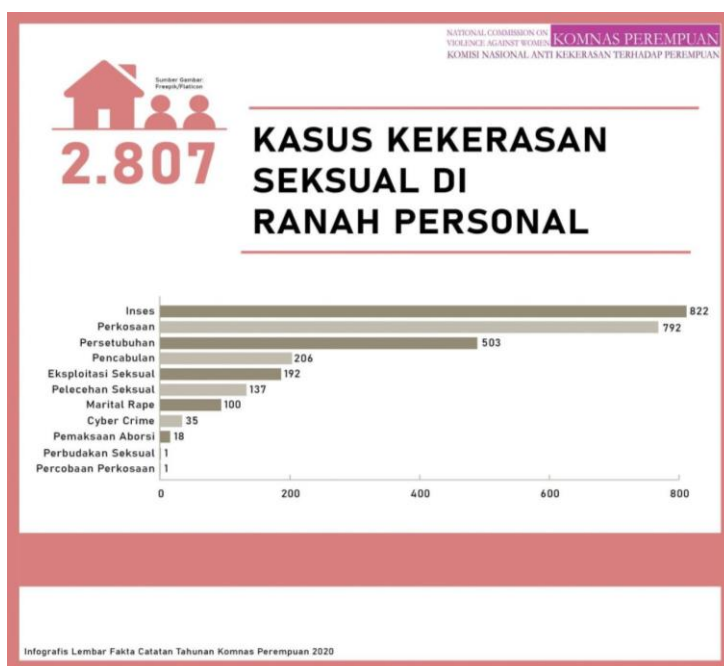
The analysis of study of Islamic law, castration is a matter of *ijtihad*. Even though it is not contained in the Qur'an and the Prophet's Hadith, castration can be accepted in Islamic law as a form of empirical *ijtihad* in an effort to prevent the high levels of violent and rampant sexual violence and crime in recent times. Castration punishment has indeed become a tradition that is widely applied by several Western countries by utilizing advances in science and technology. As an open system, dialectical and fighting for human values, Islamic law can accommodate external traditions such as castration. This is a form of *ta'zir* criminal punishment or additional severe punishment so that castration does not need to be contrary to Islamic law and can still be applied in Indonesia.

Annual Records (CATAHU) of the National Commission on Violence Against Women (Komnas Perempuan) records cases of violence against women received by various institutions communities and government institutions spread across almost all provinces in Indonesia, as well as direct complaints received by Komnas Perempuan through the Referral Complaints Unit (UPR) or through the official Komnas Perempuan email, within the past year.

¹ Peraturan Pemerintah Republik Indonesia Nomor 70 tahun 2020, "Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, Dan Pengumuman Identitas Pelaku Kekerasan Seksual Terhadap Anak," 2020.



Based on the data collected from the service agency or data collection form for Komnas Perempuan as much as Of the 8,234 cases, the most prominent type of violence against women was in the private sphere or private sector, namely domestic violence and personal relations, as many as 79% (6,480 cases). One of them is violence against wife (KTI) ranks first in 3,221 cases (49%), followed by violence in dating 1,309 cases (20%) took second place. The third position is violence against girls as much as 954 cases (14%), the rest were violence by ex-husbands, ex-girlfriends, and violence against workers household. Violence in the private sphere experienced the same pattern as in previous years.²



General Description: Number Of Women Violences Of Violence In 2020 In Know 2021.

² Komnas Perempuan, *Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Siber, Perkawinan Anak, Dan Keterbatasan Penanganan Di Tengah Covid-19, Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2020, Catatan Tahunan Tentang Kekerasan Seksual Terhadap Perempuan*, vol. 1, 2021, <https://komnasperempuan.go.id/uploadedFiles/1466.1614933645.pdf>.

CATAHU 2021 describes the diverse spectrum of violence against women that occurred throughout in 2020 and there are the highest cases in a new pattern that is quite extreme, including, increasing 3 times the number of marriage dispensations (child marriages) that are not affected by the pandemic situation, namely from 23,126 cases in 2019, an increase of 64,211 cases in 2020. Likewise the number of cases Cyber gender-based violence (online/online space) or abbreviated as KBGS which is reported directly to Komnas Perempuan, from 241 cases in 2019 rose to 940 cases in 2020. According to the Service Institute report, in 2019 there were 126 cases, in 2020 it rose to 510 case. The increasing number of cases of gender-based violence in the online space (KBGO) should be serious attention of all parties.³

Another note based on the innovation of adding questionnaire questions, cases in the personal realm and communities related to violence against women, there is still a lot to be done through non-legal channels, including by legal assistance service institutions. Second, in terms of the system referrals applied by Komnas Perempuan, the most requests from victims are the importance of assistance legal, psychological assistance, medical and safe houses. Third, the lowest resources in service institutions are psychologists, and female medical and police personnel. These three are very important for the process of handling victims, which are found to be very lacking in number. Meanwhile, in terms of facilities, at least is a special examination room and safe house. Both are desperately needed victims in need privacy and self-rescue in the process of handling victims.

Based on the data that has been described, sexual crime is a neverending problem in Indonesia. It is the responsibility of the government to find solutions so that perpetrators of sexual crimes are deterrent so that the number of sexual crimes can decrease every year. The government has not been able to address the issue of sexual harassment, and the law that has been enacted in response to this, Perppu (Law number 1 of 2016) regarding amendments to law number

³ Komnas Perempuan, "Info Grafis Catahu 2020.Pdf," 2020, 6.



23 of 2002 on child protection, is still controversial and has not been accepted by the public.

Forensic psychologist Reza Indragiri Amriel said chemical castration would not stop criminals. According to him, there is a wrong assumption behind the plan. Sexual desire is not only due to hormonal factors, but also imagination. Predators who have paralyzed people can use coitus resistance and encourage others to spread it.⁴

The advantages and disadvantages of this castration punishment caused the government to be slow in making decisions. Until now, it seems that the government has not made significant efforts to deal with sexual violence, because the government has not closed the door to triggers for violence, namely pornography, alcohol, and drugs. Although it seemed slow, in Peraturan Pemerintah Republik Indonesia Nomor 01 tahun 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection.⁵

This law also regulates the castration penalty for perpetrators of child sex crimes. Supervision sanctions in the form of castration and installation of chemicals. Electronic detection devices so that the movement of the perpetrator can be detected after leaving prison. Responding to the implementation of the law, the question arises how to enforce the castration punishment in terms of Maqashid Syari'ah? Can it be a solution to bring benefits and solve the problem of sex crimes in Indonesia?

METHODS

The method used is normative juridical research, namely research to find legal doctrines or principles, *ijma'* (opinions of scholars), therefore in this study the author tries to understand the

⁴ Nur Hafizal Hasanah and Eko Soponyono, "Kebijakan Hukum Pidana Sanksi Kebiri Kimia Dalam Perspektif HAM Dan Hukum Pidana Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 3 (2018): 305, <https://doi.org/10.24843/jmhu.2018.v07.i03.p03>.

⁵ Hanafi Arief, "Rekonstruksi Hukum Tentang Hukuman Kebiri Bagi Pelaku Tindak Pidana Pelecehan Seksual," *Journal of Chemical Information and Modeling* 53, no. 9 (2019): 1689–99.



conversation about sexual deviation, especially those that discuss the application of castration sanctions against sex offenders. Normative juridical research is a research conducted with literature studies aimed at obtaining accurate/actual data and information obtained directly from reference data whose credibility is not in doubt. In this study, researchers conducted research to obtain some data regarding castration sanctions as an alternative punishment for perpetrators of sexual crimes.

In the context of developing the research process, the object of the research relates to problems in the field of criminal law regarding castration sanctions, especially regarding chemical castration penalties against pedophile perpetrators from the perspective of *Maqashid Syariah*. The specification of this research is included in the analytical descriptive form, which clearly explains the applicable laws and regulations relating to legal theory and the implementation of positive law regarding these problems.

The primary data is the source used comes from literature books related to the title theme raised by the author, namely books and journals related to sexual crimes and castration. Obtained based on the Criminal Code, the 1945 Constitution, Law no. 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.⁶

RESULTS AND DISCUSSION

Definition of Castration in Peraturan Pemerintah Republik Indonesia Nomor 70 tahun 2020

Castration (*al ikhsha`*, *Kebiri*) means cutting in half dzakar fruit (*al khushyatain*, *testis*), which can be accompanied by cutting the *dzakar*. So castration can be just cutting the testicles, and this is the basic understanding of castration. But sometimes castration is in the

⁶ DPR RI, "UNDANG - UNDANG REPUBLIK INDONESIA NOMOR 30 TAHUN 1999," 1999.

form of cutting the testicles and penis at a time. Castration aims to eliminate lust and at the same time make it sterile.⁷

There are basically two kinds of castration methods, namely physical method and hormonal method (injection). Physical method (Perppu) Number 1 of 2016 concerning the second amendment to the Law 90 done by cutting the organ that produces testosterone, namely the testes. After the testicles are cut and removed through surgery, the rest is tied off and then sutured. With cutting the testicles means that testosterone has been removed as a sex drive hormone. As a result, men will lose sex drive and at the same time become infertile permanent.

As for the hormonal castration method, it is not done by cutting the testicles or penis, but by injection (injection) hormones to the castrated person. There are two injection methods. First, a drug that suppresses hormone production is injected testosterone. The injection is done repeatedly so that the hormone testosterone seems to be missing. Second, injected hormones estrogen to the castrated person, so that he has the characteristics physical like woman. Hormone testosterone will decrease and sexual arousal will also come decrease. When injecting the hormone testosterone this is stopped, the state of the castrated person will recover as before.⁸

In practice, the punishment for castration is in the form of chemical injections and will be given after the perpetrator undergoes principal punishment. It will react after a minimum of two times given the injection, this punishment will be accompanied by rehabilitation, let alone the perpetrator who have done it many times, excess hormones testosterone. Castration punishment is not cutting but weakened his libido, he told the meeting. Then, the detection device will be installed

⁷ Nuzul Qur'aini Mardiya, "Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual Implementation of Chemical Castration," *Jurnal Konstitusi* 14, no. 1 (2017): 18.

⁸ Ninla Elmawati Falabiba et al., "HUKUMAN KEBIRI TERHADAP KEJAHATAN SEKSUAL ANAK," *Paper Knowledge . Toward a Media History of Documents* 5, no. 2 (2014): 40–51.



after the perpetrator exits jail. However, the form of tools and technology will still be studied further.

The following is a method of castration that applies to perpetrators of child sex crimes that are designed:

- a) The punishment for castration is in the form of chemical injections and will be given after serving the principal sentence. When the perpetrator received a basic sentence of 15 years in prison, then the additional punishment in the form of chemical castration and the installation of a new detection tool is carried out after that.
- b) Chemical injection of the perpetrator will react after at least two injections.
- c) Castration punishment is not cutting but weakening libido.
- d) Perpetrators will be given rehabilitation.
- e) After the perpetrator gets out of prison, he will installed a detection device, in order to detect movement next perpetrator.
- f) The identity of the perpetrator will be published so that this predator receive punishment from society.
- g) All the punishments don't apply if it's a sexual crime is done by children.⁹

Critical Review Of Castrated In The Maqashid Sharia

Maqashid Syariah in terms of the objectives of the *Shari'ah* Islam is contained in every rule. Imam Asy Syathibi reveal about shari'ah and its function for man. Al-Syatibi does not define *Maqashid Syariah* as *mashlahah* or goodness and the welfare of mankind is good in this world and in the hereafter. Therefore Ash-Syatibi put the position of benefit as 'illat law or reason' Islamic law, in contrast to *ushul fiqh* experts others, An-Nabhani, for example, he is careful stressed over and over again, that the benefit that is not 'illat or motive (*al-ba'its*) the

⁹ Talita and Hatarto Pakpahan, "Pengaturan Hukuman Kebiri Kimia Dan Pemasangan Alat Pendeteksi Elektronik Dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Journal, Bhirawa Law Costanza*, 2, no. 1 (2021).



determination of the *Shari'ah*, but wisdom, results (*natijah*), goals (*ghayah*), or consequences (*'aqibah*) from the application of the *Shari'ah*.¹⁰

Maqashid Shari'ah is a concept to know the wisdom (values and goals of *syara'* that explicitly and implicitly in the Qur'an and Hadith) which Allah the Exalted has set for humans as for the purpose the end of the law is one, namely *mashlahah* or goodness and well-being of mankind both in the world (with *Mu'amalah*) and in the hereafter (with *'aqidah* and Worship). While the way to achieve the benefit is human must meet the needs of *Dharuriat* (Primary), and perfecting needs *Hajiyat* (secondary), and *Tahsiniat* or *kamaliat* (tertiary).¹¹

In general, the purpose of Islamic law in establishing laws the law is for the benefit of all humans, good benefit in this world and benefit in the hereafter. This matter based on the Word of Allah ta'ala: QS. Al-Anbiya: 107

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

107. *And We have not sent you, [O Muhammad], except as a mercy to the worlds.*

In other words, the purpose of Islamic law is benefit human life, both spiritual and physical, individual and social. The benefit is not only for the life of this world but also for eternal life in the hereafter. Abu Ishaq al-Shatibi formulated five objectives of Islamic law, namely:

- a) *Hifdz Ad-Din* (Maintaining Religion).
- b) *Hifdz An-Nafs* (Nurturing the Soul).
- c) *Hifdz Al'Aql* (Maintaining Intellect).
- d) *Hifdz An-Nasb* (Maintaining Descendants).

¹⁰ S Ilyas, "Sanksi Kebiri Dalam Perspektif Hukum Islam Dan Hukum Pidana Indonesia," *Qiyas: Jurnal Hukum Islam Dan Peradilan*, 2018, 53–62, <https://journal.iainbengkulu.ac.id/index.php/QIYAS/article/view/964>.

¹¹ Zul Anwar Ajim Harahap, "PEMBARUAN, EKSISTENSI MAQASHID AL-SYARI'AH DALAM INDONESIA, HUKUM PIDANA DI," *Istinbath Jurnal of Islamic Law/Jurnal Hukum Islam* Vol. 16, N, no. 66 (2017): 1–26.



e) *Hifdz Al-Maal* (Maintaining Wealth).¹²

When viewed from the makers of Islamic law, the purpose of law Islam is to maintain the necessities of human life which are primary, secondary, and tertiary, deep Islamic law literature is each referred to by the term *daruriyyat*, *hajjiyat* and *tahsiniyyat*.

Primary needs are the main needs that must be protected and maintained as well as possible by Islamic law so that the benefit of human life is truly realized. Need secondary is the need that is needed to achieve primary life, such as independence, equality, and so on, which is to support the existence of needs primary. Tertiary needs are the needs of human life other than the primary and secondary ones that need to be held and maintained for the good of human life in society, such as clothing, food, housing and others.

With regard to the law of castration, of course, to give punishment for sex offenders. However, in giving punishment for a case, refer to the provisions of the text of the Qur'an as well as Hadith. So far the law of castration is not known in jinayah literature, because punishment for perpetrators of sexual crimes (*zina*) has been ordained by Allah in the Qur'an. There are two model of punishment for adulterers:

1) Adulterer *al-Muhshan*

Adulterers who were once married (*al-Muhshan*) were sentenced to stoning (thrown with stones) to death. This punishment is based on Al-Qur'an, *hadith mutawatir* and consensus of the Muslims. Which explains the punishment of stoning in the Qur'an. The punishment of stoning is specifically reserved for adulterers *al-muhshân* (who is legally married) because he has married and knows how to keep his honor from the genitals forbidden and he does not need the forbidden genitals. Also he himself can protect himself from threat of adultery. Thus, the excuse (reason) according to the *shari'ah* is refuted from all sides. People who have get perfect pleasure (then

¹² Ahmad Habib and Al Fikry, "Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Dalam Perspektif Hukum Islam," *JHLG Vol.2 No.2 Hukum Islam Februari 2021* 2, no. 2 (2021): 88–108.



still do) criminal) then his crime (*jinayah*) is more heinous, so that he deserves additional torment.¹³

2) Adulterers Who Are *Not Al-Muhshan*

Perpetrators of adultery who do not meet the criteria of *al muhshan*, so the punishment is whipped as much a hundred times. This is the agreement of the scholars based on the word Allah Subhanahu wa Ta'ala:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

2. The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment. [An-Nûr/24:2]

Al-Wazîr rahimahullah stated "The scholars are in agreement" that couples who are not yet *al-muhshan* and independent (not slaves), if they commit adultery, both of them are lashed (flogging), a hundred times each. The death penalty (by stoning) was lightened for them becomes a caning punishment because there is an excuse (*syar'i* reason) so the blood is still preserved. They were deterred by hurt all over his body with lashes.¹⁴

3) The specifics of the punishment of adulterers

Allah gives three characteristics specifically for the punishment of adultery:

- a. Strict punishment, namely stoning for *al-muhshan* and that is the most grievous death penalty and the pain is all over the

¹³ A H MH and R Syamsuddin, "Pandangan Hukum Islam Terhadap Sanksi Hukum Kebiri Dalam UU No. 17 Tahun 2016 Tentang Perlindungan Anak," ... *Ilmiah Mahasiswa Hukum Keluarga Islam*, no. 17 (2020): 445–58, <http://103.55.216.56/index.php/qadauna/article/view/14867>.

¹⁴ Ilyas, "Sanksi Kebiri Dalam Perspektif Hukum Islam Dan Hukum Pidana Indonesia."

body. Also lashes for who have not *al-muhshan* is a torment to the whole body plus the seclusion that is mental torment.

- b. Humans are forbidden to feel unbearable and sorry for adulterer.
- c. Allah ordered the execution of this punishment in the presence of group of believers. This is for the benefit of punishment and is more of a deterrent as well as a lesson for others.¹⁵

Stoning for *Muhshan* perpetrators, and caning plus exile for one year for who are not *Muhshan*, it's quite heavy. It's done by people who commit adultery who in fact like each other. Especially if carried out with violence even to death, the punishment should be even more severe smell only castrated by chemical injection. Therefore, that's the castration law that has been given an order against the perpetrator sexual crimes against children are not in line with *maqashid shari'ah*.¹⁶

Imposing the punishment of castration for perpetrators of sexual crimes is unlawful, based on 3 (three) reasons as follows;

First, Islamic sharia has strictly prohibited castration on humans, without any difference of opinion (*khilafiyah*) among the fuqaha. In the hadith the statement is quoted the evidence for the prohibition of castration on humans which clearly shows the prohibition of the Prophet Muhammad against castration. From Sa'ad bin Abi Waqqash RA, he said:

رَدَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى عَثْمَانَ بْنِ مَطْعُونٍ التَّبْتَلِ، وَلَوْ أُذِنَ لَهُ
لَاخْتَصَيْنَا.

¹⁵ Lukman Arake, "Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Perspektif Fiqh Siyasah," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 5, no. 1 (2020): 16–41, <https://doi.org/10.35673/ajmpi.v5i1.676>.

¹⁶ Ahmad Jamaludin and Sayid Mohammad Rifqi Noval, "Pemidanaan Kebiri Terhadap Pelaku Kejahatan Seksual Kepada Anak Perspektif Hak Asasi Manusia Dan Hukum Islam," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 14, no. 2 (2021): 191–208, <https://doi.org/10.15575/adliya.v14i2.10135>.



"The Messenger of God, may God's prayers and peace be upon him, responded to Othman bin Maz'oon with castrated, and if he had given him permission, we would have been singled out."¹⁷

Explanation of the hadith, Islamic law took into account the needs of the human soul in a manner consistent with the demand for the Hereafter without prejudice or excess.

In this hadith, it is reported by Saad bin Abi Waqqas, may God be pleased with him: that the Prophet, may God's prayers and peace be upon him, did not give permission for Uthman bin Mazoon to celibate. What is meant by castrated is the cessation of marriage and the seclusion of women, and what follows from refuge to worship. Because abandoning the sanctuary of life and abstaining from worship is due to extremism in religion and reprehensible monasticism.

And Saad, may God be pleased with him, mentions that if the Prophet, may God's prayers and peace be upon him, had given permission to Ibn Maz'un, may God be pleased with him, to give up marriage, "we would have been singled out." And castration: the two are separated. Saad, may God be pleased with him, said: "We were singled out." With the will of exaggeration, i.e.: we have gone into extreme castrated until the matter leads us to exclusion, and it did not mean exclusivity in reality. Because it is forbidden, and it was said: Rather, it is as it appears, and that was before the prohibition of singling out.

Thus giving punishment for a crime must consider between *maqashid shari'ah* and textual arguments. It means an existing crime the punishment in the text of course must be applied in accordance with the provisions of the text. The law of castration is not found in the texts because castration for humans is prohibited in Islam. From this information it is clear that castration is prohibited for human. There are some people who think that prohibited if it is done by an individual but

¹⁷ Sahih Al-Bukhari, "Castration," n.d., <https://dorar.net/article/1433>.



if it is done determined by the authorities in this case the government as punishment for a crime, castration is permissible.¹⁸

Then the case means that adultery which is prohibited by the text of course becomes lawful when it is legalized by the authorities (government). This is opinions that reflect inconsistency in religion, so that instead of upholding the religion of Islam, but instead destroying religion itself, because it is as if a decree God can be changed through government decrees.

Give severe punishments for perpetrators of sexual crimes especially for children, it is included in the needs that urge (*daruriyat*) to remember the sexual crimes against children lately are getting rampant so it's worrying parents for the safety of their children. Castration punishment as additional punishment after serving the sentence the tree feels still too light and therefore won't provide a significant deterrent effect for perpetrators of sexual crimes.

Moreover, the implementation of the castration punishment using chemical injections and will be given after perpetrators serve the principal sentence. It will react after minimum of two injections, this punishment will be accompanied by rehabilitation especially the perpetrators who have done it many times, the advantages testosterone hormone.¹⁹

In addition, to being given rehabilitation for those who have received a castration punishment, a detection device will also be installed to find out the behavior of the perpetrator. The government is not serious about punishing the perpetrators sexual crimes against the child. Imagine up to hundreds of thousands of perpetrators of sexual crimes that's how much medicine to buy, how much officers who should be paid, how much money should be spent to buy the detection tool, how much surveillance officers who must be paid by the state. If it's like

¹⁸ Harahap, "PEMBARUAN, EKSISTENSI MAQÀSHID AL-SYARÌ'AH DALAM INDONESIA, HUKUM PIDANA DI."

¹⁹ Wahyudi, "Kebiri Kimiawi Dalam Perspektif Hukum Islam," *Istinbath : Jurnal Hukum* 16, no. 2 (2019): 235–47, <https://doi.org/https://doi.org/10.32332/istinbath.v16i2.1551>.



this the way doesn't seem to be giving punishment but impressed make observations, trial and error, not serious, or half heart. Costs a lot out the results are not significant to prevent sexual crimes.

Islamic sharia has set punishments for perpetrators of sexual crimes according to the details of the facts of their actions, so it is not permissible (haram) to carry out types of punishment outside the provisions of Islamic Sharia. The evidence for the prohibition of implementing non-sharia laws is the word of Allah SWT:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ
وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلًّا مُبِينًا

36. *It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair. And whoever disobeys Allah and His Messenger has certainly strayed into clear error. (Surat al-Ahzab [33]: 36).*

The verse clearly prohibits Muslims from making new provisions if there are certain legal provisions of Islamic Sharia. Therefore, it is unlawful to apply the law of castration to perpetrators of sexual crimes, because Islamic Sharia has stipulated details of certain punishments for perpetrators of sexual crimes.

The details of punishment for perpetrators of sexual crimes are as follows;

- a) The perpetrator of the sexual crime is committing adultery, the punishment is punishment for adulterers (had az-zina), namely stoning if you are married (married) or lashed a hundred times if not muhsan;
- b) The pedophile does liwath (homosexual), then the punishment is the death penalty, nothing else;
- c) Sexual harassment (at taharusy al jinsi) which does not result in adultery or homosexuality, the punishment is ta'zir.²⁰

²⁰ Wisnu Febrian, "PENERAPAN HUKUMAN KEBIRI PERSPEKTIF HUKUM ISLAM DAN HAM," *Repository.Uinjkt.Ac.Id*, n.d., https://repository.uinjkt.ac.id/dspace/handle/123456789/55936%0Ahttps://repository.uinjkt.ac.id/dspace/bitstream/123456789/55936/1/WISNU_FEBRIAN_-_FSH.pdf.



It is true, the punishment for perpetrators of sexual crimes who only commit sexual harassment (*at taharusy al jinsi*), is a *ta'zir* punishment, which can be determined by the judge himself (qadhi). For example, being lashed 5 times, imprisoned for 4 years, etc. The question is, can the judge make castration a punishment for *ta'zir*? The answer is no (haram). Because even though the *ta'zir* punishment can be chosen by the type and level by the judge, it is required that the *ta'zir* punishment has been ratified and is not prohibited by sharia texts, both the Qur'an and Sunnah. If it is prohibited by the *nash sharia*, it is forbidden to be carried out. For example, the punishment of burning with fire. This is unlawful, because there is a valid hadith that forbids it (Bukhari). So likewise, imposing *ta'zir* in the form of castration is haram, because there are valid hadiths that prohibit castration.

Second, in terms of the castration method used is the injection method. Third, that which is injected is the hormone estrogen, the law is also haram from the other side, because it causes the castrated male to have physical characteristics like women.

Thus, the method of castration by injection of the hormone estrogen into male perpetrators of sexual crimes is unlawful, because it becomes an intermediary (*wasilah*) for the male to resemble the opposite sex (female). Based on the 3 (three) reasons above, it is unlawful to impose castration on perpetrators of sexual crimes.

CONCLUSION

The law of castration is not in accordance with Islamic law, and its application is a major sin, because the legal provisions for adulterers have been set by Allah in the Qur'an. Something that there is already a text *qoth'iy* does not exist other options besides run it. The law of castration does not touch the purpose of Maqashid Shari'ah, especially in terms of the benefit of the public, because the law given is only felt by the person concerned and not visible to others so that others cannot know whether the person concerned has carried out castration law or not. Especially by way of drug injection certain only valid for a limited period of time (not permanent) it is even possible to recover by injection of another drug. By adding a detection tool for those who have been sentenced castration law will actually add to the difficulties for



government because it will be monitored at any time, this is of course increase state expenditures that should not be necessary occur.

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