

Disparity in Chemical Castal Verdicts for Perpetrators of Child Sexual Violence: An Analysis of Jurisprudence and Jinayah Fiqh

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Abstract

This study aims to analyze the factors that cause the disparity in chemical castration criminal verdicts against perpetrators of sexual violence against children in Indonesia and examine these verdicts from the perspective of fiqh jinayah. This research is motivated by the difference in the application of additional penalties in the form of chemical castration in cases that have similar characteristics, thus raising questions about legal certainty and the effectiveness of child protection. The research uses normative legal research methods with a qualitative approach through a legislative approach, a case approach, and a fiqh jinayah approach. The main data source comes from the Mojokerto District Court Decision Number 69/Pid.Sus/2019/PN.Mjk, Surabaya District Court Decision Number 2627/Pid.Sus/2019/PN. Sby, Tuban District Court Decision Number 157/Pid.Sus/2020/PN.Tbn, and Tanjungkarang High Court Decision Number 42/PID/2021/PT. TJK which is analyzed together with laws and regulations and scientific literature. The results of the study showed that the disparity in verdicts was influenced by differences in the construction of the indictment, the judge's interpretation of the provisions of the chemical castration crime, the orientation of the purpose of the penalty, and the absence of sentencing guidelines that regulate the parameters of the application of the additional penalty. From the perspective of jiyah jurisprudence, the crime of chemical castration is a form of ta'zīr that is oriented towards the benefit and protection of offspring (hifz al-nasl), as long as its application meets the principles of justice and proportionality. This study emphasizes the importance of preparing penal guidelines to realize consistency of verdicts, legal certainty, and child protection.

INTRODUCTION

The protection of children is one of the fundamental principles in the national legal system as well as Islamic law. Children are seen as the next generation of the nation who have the right to live, grow and develop optimally, and be free from all forms of violence and discrimination.¹ The Indonesian Constitution through Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that every child has the right to survival, growth and development, and to be protected from violence and discrimination. This commitment was then strengthened through Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which provides legal protection guarantees against various forms of violence, including sexual violence. From a criminal law perspective, the protection of children is part of the state's responsibility to ensure the fulfillment of basic rights of citizens while maintaining social order through effective law enforcement mechanisms.²

Although the regulatory framework has undergone significant developments, the practice of sexual violence against children still shows alarming numbers. Based on data from the Indonesian Child Protection Commission (KPAI), cases of sexual violence against children fluctuate every year with an increasing trend, even during the COVID-19 pandemic the number of complaints showed a significant increase.³ This condition indicates that the threat to child safety is not only influenced by weak social supervision, but also influenced by the suboptimal effectiveness of the legal system in providing protection to victims and preventing the recurrence of criminal acts. This phenomenon makes sexual violence against children no longer seen as an *ordinary crime*, but as a crime that has a multidimensional impact on the physical, psychological, social, and future conditions of the victim.⁴ Therefore, the state is required to present legal policies that are able to provide more comprehensive protection for children as a vulnerable group.

In response to the increase in sexual crimes against children, the Indonesian government carried out criminal law policy reforms through the issuance of Government Regulation in Lieu of Law Number 1 of 2016 which was later stipulated as Law Number

¹ Sujasmin Sujasmin, 'The Application of Chemical Castration Sanctions for Perpetrators of Child Sexual Violence in a Human Rights Perspective', *Journal of USM LAW REVIEW* 8, no. 1 (2025): 544-458, <https://doi.org/10.26623/julr.v8i1.11774>.

² Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (2014), <https://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014>.

³ Indonesian Child Protection Commission, *KPAI Performance Report 2020* (Jakarta: Indonesian Child Protection Commission, 2021), <https://www.kpai.go.id/publikasi/siaran-pers-laporan-kinerja-tahun-2020-komisi-perlindungan-anak-indonesia-perlindungan-anak-di-era-pandemi-covid-19>.

⁴ Eneng Nita Juwita, 'Legal Protection for Victims of Sexual Violence Against Children and Women', *JOECY (Journal of Innovative and Creativity)* 6, no. 1 (2026).

17 of 2016. The regulation introduces additional penalties in the form of chemical castration against perpetrators of sexual violence against children.⁵ The presence of chemical castration is a form of criminal law reform that aims to strengthen the *deterrence effect*, prevent recidivism, and provide more optimal protection for children as victims. From the perspective of criminal policy, the provision of additional penalties is a penal instrument that is expected to strengthen the function of legal protection while increasing public trust in the criminal justice system. However, since the enactment of this provision, the implementation of the chemical castration crime has raised various academic and practical debates.⁶ Some people view chemical castration as a necessary policy to deal with the high level of sexual violence against children, while others argue that it raises ethical issues, human rights, and conformity with the principles of Islamic law. The debate does not only occur at a conceptual level, but is also reflected in judicial practice. Some courts impose additional penalties in the form of chemical castration on perpetrators of sexual violence against children, while in other cases with relatively similar characteristics, judges do not impose the penalty or even overturn the verdict at the appeal level. These differences show that the implementation of the chemical castration criminal provisions does not have a uniform application pattern, thus giving rise to the phenomenon of disparity in verdicts in the criminal justicemenvironment.

Criminal disparity is an important issue in criminal law because it is closely related to the principles of legal certainty, justice, and consistency in the application of the law. On the one hand, the independence of judges is a fundamental principle in the judicial system so that judges have the freedom to assess the facts of the trial and make decisions based on their beliefs. But on the other hand, this freedom must remain within the corridor of legal certainty so that the verdicts handed down on cases that have similar characteristics do not cause too striking differences. In the context of chemical castration crimes, the disparity in verdicts shows that there are variations in the judge's consideration in interpreting the elements of the criminal act, assessing the seriousness of the perpetrator's mistake, and determining the purpose of the punishment to be achieved. This condition is an important issue to study because it has implications for the effectiveness of child protection as well as the development of criminal law policies in Indonesia.

⁵ Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law (2016), <https://peraturan.bpk.go.id/Details/37575/uu-no17-tahun-2016>.

⁶ Dina Silvia Puteri et al., 'Chemical Castration From Criminal Law and Human Rights', *Cepalo* 4, no. 1 (2020): 67–80, <https://doi.org/10.25041/cepalo.v4no1.1910>.

METHODS

This study uses normative legal research with a qualitative approach. Normative legal research was chosen because the focus of the study is directed at the analysis of legal norms, *judge-made laws*, and Islamic law principles related to the application of additional penalties in the form of chemical castration against perpetrators of sexual violence against children.⁷ In normative legal research, law is understood as a set of norms contained in laws and regulations, court decisions, and legal doctrines that develop in judicial practice. This approach allows researchers to identify the basis of judges' considerations in making decisions, as well as evaluate the consistency of the application of the law to cases that have similar characteristics. Research methods are an important part of scientific articles because they explain the way that researchers use to answer problem formulations in a systematic and accountable manner.⁸

The research approach used consists of three approaches. First, the statute *approach*, which is to examine various regulations that regulate child protection and criminalization of perpetrators of sexual violence, especially Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016, Law Number 35 of 2014 concerning Child Protection, the Criminal Code (KUHP), and other provisions related to additional crimes in the form of chemical castration. This approach is used to understand the normative foundation on which judges are based in making decisions.⁹

Second, the *case approach*, which is a comprehensive review of court decisions related to the criminal application of chemical castration against perpetrators of sexual violence against children. The analysis is focused on legal considerations (*ratio decidendi*), judges' arguments, and factors that cause criminal disparities. The main objects of the research include the Mojokerto District Court Decision Number 69/Pid.Sus/2019/PN.Mjk, the Surabaya District Court Decision Number 2627/Pid.Sus/2019/PN. Sby, Tuban District Court Decision Number 157/Pid.Sus/2020/PN.Tbn, and Tanjungkarang High Court Decision Number 42/PID/2021/PT. TJK. The four decisions were chosen because they represent a variety of the application of chemical castration crimes, namely decisions that impose castration penalties, decisions that do not impose castration penalties, and decisions that cancel castration crimes at the appeal level. The selection of the case allows for a comparative analysis of the judge's consideration pattern in cases that have relatively similar criminal characteristics.

⁷ Muri Yusuf, *Quantitative, Qualitative & Joint Research Methods* (Jakarta: Prenada Media, 2016).

⁸ Efendi Jonaedi and PriIbrahim Johnny, *Legal Research Methods: Normative and Empirical* (South Jakarta: Prenada Media, 2018).

⁹ Mahmud Marzuki, *Legal Research: Revised Edition* (Jakarta: Prenada Media, 2017).

Third, the jiyah fiqh approach, which is used to assess the suitability of judges' considerations with the principles of Islamic criminal law. The analysis is carried out through the concept of *maqāṣid al-syarī'ah*, especially the protection of offspring (*ḥifẓ al-nasl*), the concept of *maṣlaḥah*, and the purpose of punishment in Islamic law. This approach is not intended to replace Indonesia's positive law, but rather as an analytical perspective in evaluating whether the verdict has reflected the values of justice, utility, and protection of victims as the main goal of sharia.

The source of research data consists of primary legal materials and secondary legal materials. Primary legal materials include laws and regulations related to child protection and chemical castration crimes, as well as court decisions that are the object of research. Meanwhile, secondary legal materials are obtained from criminal law books, jurisprudence, *maqāṣid al-sharī'ah*, scientific journal articles, theses, dissertations, and other scientific publications relevant to the theme of criminal disparity and child protection. The use of these various sources aims to strengthen normative analysis while providing a theoretical basis for the arguments built in the research.

Data collection is carried out through *library research* by inventorying, classifying, and reviewing all relevant legal documents. Each court decision is systematically analyzed to identify the legal facts, judges' considerations, normative bases used, and the orientation of the punishment reflected in the decision. Furthermore, the data was compared between verdicts to find patterns of disparity in the application of chemical castration crimes.

Data analysis is carried out qualitative-descriptive through three stages, namely data reduction, data presentation, and conclusion drawn. In the first stage, all legal data are selected based on their relevance to the focus of the research. The second stage is carried out by compiling a comparison of judges' considerations on each decision so that similarities and differences can be identified. The last stage is carried out through legal interpretation by linking the empirical findings of court decisions with the theory of criminal disparity, the principles of national criminal law, and the concept of *maqāṣid al-syarī'ah* in jiyah fiqh. With this approach, this study is expected to be able to explain the factors causing the disparity in chemical castration decisions as well as provide a normative evaluation of the consistency of the application of the law in cases of sexual violence against children.

RESULTS AND DISCUSSION

1. Disparity in Judges' Considerations in Imposing Chemical Crates

The application of additional penalties in the form of chemical castration in cases of sexual violence against children is one of the important developments in Indonesian criminal law after the enactment of Law Number 17 of 2016. The presence of these sanctions is the state's response to the increasing number of sexual violence against children which is seen as *an extraordinary crime*, so it requires a stricter penal policy compared to criminal acts in general. However, the implementation of these norms in judicial practice shows that there are significant differences between one decision and another. This difference can be seen from the existence of judges who impose additional penalties in the form of chemical castration, while other judges choose not to apply it or even cancel the crime at a higher judicial level.¹⁰ This phenomenon shows that the existence of legal norms does not automatically result in uniformity in the application of the law, but is greatly influenced by the way judges understand the facts of the trial, interpret the provisions of the law, and determine the purpose of punishment that is considered most appropriate.

In the Indonesian legal system, the independence of judges is a fundamental principle guaranteed by Law Number 48 of 2009 concerning Judicial Power. This freedom provides space for judges to assess evidence, construct legal facts, and make decisions based on their beliefs. However, such freedom does not mean that judges can ignore the principles of legal certainty and consistency in the application of the law.¹¹ Therefore, when a verdict on a case that has relatively similar characteristics results in a significantly different type of crime, this condition gives rise to a phenomenon known as *sentencing disparity*. From the perspective of criminal law, disparity is not always seen as a form of error, but can be an indicator of the absence of uniform penal parameters so as to open up space for different interpretations among judges.

The object of this research consists of four court decisions that represent variations in the criminal application of chemical castration, namely the Mojokerto District Court Decision Number 69/Pid.Sus/2019/PN.Mjk, the Surabaya District Court Decision Number 2627/Pid.Sus/2019/PN. Sby, Tuban District Court Decision Number 157/Pid.Sus/2020/PN.Tbn, and Tanjungkarang High Court Decision Number

¹⁰ Yaris Adhial Fajrin and Ach Faisol Triwijaya, 'Reconstruction of Castration Sanction Formulation in The Perspective of Indonesian Criminal Law Renewal', *Jurnal Dinamika Hukum* 19, no. 2 (2019): 389, <https://doi.org/10.20884/1.jdh.2019.19.2.2469>.

¹¹ Adi Kusyandi and Saefullah Yamin, 'The Disparity of Quality Criminal Judges' Decisions Reflecting a Sense of Justice in the Indonesian Legal System', *Yustitia* 9, no. 1 (2023): 122–32, <https://doi.org/10.31943/yustitia.v9i1.173>.

42/PID/2021/PT. TJK. The four decisions were chosen because they showed three different forms of implementation, namely the application of chemical castration, rejection of chemical castration crimes, and cancellation of chemical castration at the appeal level. Thus, the four rulings provide a comprehensive picture of how judges use their discretionary authority in applying additional criminal provisions that are relatively new in the Indonesian legal system.

Analysis of the Mojokerto District Court Decision shows that the judge made the severity of the consequences caused by the defendant's actions the main basis for imposing an additional penalty in the form of chemical castration. These considerations are not only based on the fulfillment of the elements of criminal acts as regulated in the Child Protection Law, but also consider the number of victims, the intensity of sexual violence, and the psychological and physical impact experienced by the victim. In this decision, the judge views that imprisonment alone is not enough to realize the purpose of the crime, so an additional penalty is needed that is able to provide a deterrent effect to the perpetrator while preventing the recurrence of the crime. In other words, the orientation of the punishment in the decision focuses more on repressive and preventive functions.

The considerations used by the judge show that the chemical castration crime is positioned as an instrument of protection for the public interest, especially the protection of children as a vulnerable group. From the perspective of the theory of the purpose of punishment, this approach is in line with *relative theory* which views crime as a means to prevent the occurrence of crimes in the future through the effects of general *prevention* and special prevention). However, when compared to other decisions that are the object of research, it can be seen that not all judges have the same criminal orientation.¹² This difference in orientation then becomes one of the factors that give rise to disparities in the implementation of chemical castration crimes.

When the four verdicts are comprehensively compared, it can be seen that the disparity in punishment lies not only in the existence or absence of additional crimes in the form of chemical castration, but also in the pattern of legal arguments used by judges in building their considerations. Mojokerto District Court Decision Number 69/Pid.Sus/2019/PN.Mjk and Surabaya District Court Decision Number 2627/Pid.Sus/2019/PN. Sby both imposed additional penalties in the form of chemical

¹² Mompang L. Panggabean, 'Tracing The Criminal Policy on Castration and Community Response', *Juristicia Jurnal Hukum* 10, no. 2 (2021): 196, <https://doi.org/10.20961/yustisia.v10i2.51730>.

castration. However, the basis of consideration used is not entirely identical.¹³ In the Mojokerto District Court Decision, the judge emphasized the severity of the consequences caused to the victim, the number of victims more than one, and the high potential for the perpetrator to repeat his actions. Meanwhile, the Surabaya District Court Decision focuses more on the level of guilt of the defendant, the intensity of the sexual violence committed repeatedly, and the long-term psychological impact experienced by the victim. Thus, although both rulings impose chemical castration, the orientation of their legal arguments shows a different emphasis in interpreting the purpose of the penalty.

In contrast to the two rulings, the Tuban District Court Decision Number 157/Pid.Sus/2020/PN.Tbn did not impose an additional penalty in the form of chemical castration even though the defendant was proven to have committed a crime of sexual violence against a child. In its deliberations, the panel of judges argued that the punishment must still be based on the proportionality between the level of the perpetrator's guilt, the evidence revealed at the trial, and the legal provisions that were explicitly proven during the evidentiary process. The judge considered that the prison sentence and the fine were sufficient to achieve the purpose of the crime so that the addition of the chemical castration crime was seen as not having a strong enough urgency in the case. This consideration shows that judges prioritize the principles of proportionality and prudence in applying the type of crime that has serious consequences for the biological condition and rights of the convict.

A more interesting phenomenon can be seen in the Tanjungkarang High Court Decision Number 42/PID/2021/PT. TJK. At the appeal level, the panel of judges corrected the previous decision by canceling an additional penalty in the form of chemical castration. The legal considerations in the appeal decision do not solely focus on the seriousness of the defendant's actions, but on the suitability of the application of additional penalties with the legal facts proven at trial and the meticulousness in applying the provisions of laws and regulations. Thus, this decision shows the function of the appellate court as a mechanism to supervise the consistency of the application of the law.¹⁴ The correction shows that the criminal application of chemical castration is not

¹³ Gita Cristin Debora Sihotang et al., 'Imposing Criminal Punishment for Chemical Castal Against Child Predators in Decision No.69/Pid.Sus/2019/PN.Mjk', *Locus Journal of Academic Literature Review*, 2022, 170–80, <https://doi.org/10.56128/ljoalr.v1i3.65>.

¹⁴ Nur Hafizal Hasanah and Eko Soponyono, 'Criminal Law Policy of Chemical Castal Sanctions in the Perspective of Human Rights and Indonesian Criminal Law', *Udayana Master Law Journal* 7, no. 3 (2018): 305–17.

seen as an automatic consequence of every crime of sexual violence against children, but must meet the juridical parameters that can be held accountable.

These differences in considerations show that the disparity in punishment cannot be understood only as a result of differences in the facts of the case. In several aspects, the characteristics of the criminal acts examined have similarities, especially related to child victims and the forms of sexual violence committed. However, judges produce different verdicts because they use *a different* legal reasoning¹⁵ framework. Some judges view chemical castration as an instrument of community protection that must be applied to reduce the risk of recidivism, while other judges place the crime as an additional form of punishment whose application must be strictly limited to remain in line with the principles of legality, proportionality, and legal certainty. This variation in legal reasoning is ultimately one of the main causes of the disparity in decisions.¹⁶

These findings reinforce the view that the independence of judges is an essential principle in the justice system, but at the same time can result in variations in verdicts if adequate *sentencing guidelines are not available*. In various modern legal systems, sentencing guidelines are drafted to reduce the disparity in verdicts without eliminating the independence of judges. Indonesia has not yet had guidelines that specifically regulate the parameters for the application of additional penalties in the form of chemical castration. As a result, the judge's discretion is so wide that considerations regarding the purpose of the crime, the level of the perpetrator's error, the protection of victims, and the potential for repetition of criminal acts are more determined by the beliefs of each panel of judges. This condition explains why cases that have relatively similar characteristics can produce different decisions.

From the perspective of jurisprudence, the four rulings also show that the law does not work mechanically through the application of written norms alone. The judge's decision is the result of an interaction between the provisions of laws and regulations, the facts of the trial, the arguments of the parties, and the judge's assessment of the value of justice to be realized. Therefore, the disparity found in this study does not solely show the inconsistency of the application of the law, but also reflects the lack of established jurisprudence patterns regarding the criminal application of chemical castration in Indonesia. This condition has important implications for legal certainty because the

¹⁵ Nurul Fatwa Ali, Sunariyo Sunariyo, and Muhammad Nurcholis Alhadi, 'Disparity in Judges' Decisions in Cases of Sexual Violence by Child Perpetrators', *Legal Standing : Journal of Legal Science* 9, no. 4 (2025): 852-861, <https://doi.org/10.24269/lj.v9i4.11418>.

¹⁶ Ayu Pratiwi, Nasrullah Arsyad, and Tri Abriana Ma'ruf, 'Chemical Castal Legal Sanction Policy for Perpetrators of Sexual Violence from a Human Rights Perspective', *LEGAL DIALOGICA* 1, no. 1 (2025): 1-20, <https://jurnal.fh.umi.ac.id/index.php/legal/article/view/1439>.

public has not yet obtained a clear picture of the parameters used by judges in imposing the additional penalty. To clarify these differences, here is a brief comparison of the four decisions analyzed.

Verdict	Amar Verdict	Dominant Considerations	Criminal Orientation
PN Mojokerto No. 69/Pid.Sus/2019/PN.Mjk	Dropping chemical castration	Many victims, heavy impact, prevention of recidivism	Preventive–Retributive
PN Surabaya No. 2627/Pid.Sus/2019/PN.Sby	Dropping chemical castration	The intensity of the crime and the suffering of the victims	Retributive
PN Tuban No. 157/Pid.Sus/2020/PN.Tbn	Does not drop chemical castration	The principle of proportionality and sufficiency of the principal criminal	Proportional
PT Tanjungkarang No. 42/PID/2021/PT.TJK	Cancel chemical castration	Correction of the application of law and juridical prudence	Corrective

The table shows that disparity is not only related to the final outcome of the verdict, but also to the criminal paradigm used by judges. Thus, the analysis of disparities is not enough to be carried out through the reading of the verdict, but must be directed to the construction of the legal arguments that underlie each verdict. This approach provides an understanding that the dynamics of the implementation of chemical castration in Indonesia are still at the stage of forming jurisprudence so that they are greatly influenced by the interpretation of each judge on the purpose of criminalization and child protection.

2. Factors Causing Disparity in Chemical Castal Verdicts for Perpetrators of Child Sexual Violence

Disparity in punishment is a consequence that cannot be completely avoided in a criminal justice system that gives room for independence to judges. However, disparities do not always reflect injustice, but can indicate differences in assessment of legal facts, the construction of evidence, and the purpose of the crime to be achieved.¹⁷ In the context of the application of additional penalties in the form of chemical castration, disparity is

¹⁷ Saffana Ayu Azzahra, 'The Influence of Human Rights, namely the Right to Have Children and Family with Chemical Castal Punishment for Perpetrators of Sexual Violence', *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 4 (2026): 348–58, <https://doi.org/10.65310/b706ck88>.

an important issue because it concerns the application of a type of crime that is still relatively new in the Indonesian legal system. The results of the analysis of the four court decisions show that the difference in the verdicts is not only influenced by the characteristics of the case, but also influenced by the way the judge understands legal norms, assesses evidence, and interprets the purpose of the sentence. Thus, the disparity that occurs is the result of the interaction between normative aspects, juridical aspects, and philosophical aspects in the decision-making process.¹⁸

The first factor that causes disparity is the difference in the construction of the indictment and the prosecution's demands. In the Indonesian criminal justice system, the judge's room for movement is basically limited by an indictment prepared by the public prosecutor. The indictment serves as the basis for examining the case as well as determining the scope of evidence during the trial.¹⁹ Therefore, the quality of the indictment has a significant influence on the judge's consideration in making a verdict. This study found that in cases that ended in chemical castration crimes, the public prosecutor expressly built arguments regarding the severity of the consequences experienced by the victims, the high level of defendants' guilt, and the urgency of applying additional penalties as a form of protection for the community. On the other hand, in cases that do not impose the crime of chemical castration, the argument is not developed optimally so that the judge focuses more on proving the elements of the main crime than considering additional crimes. These findings suggest that disparities are not only influenced by judges, but also by the quality of legal constructions built from the prosecution stage.

The second factor is the difference in the judge's interpretation of the elements of the crime and the level of the perpetrator's error. Although Law Number 17 of 2016 has provided a legal basis regarding additional crimes in the form of chemical castration, the regulation does not regulate in detail the parameters when the crime must be imposed and when it can be set aside. As a result, judges have a wide enough discretion in assessing whether a case is eligible for the additional penalty. In the Mojokerto District Court Decision, for example, the judge considered that the number of victims and the

¹⁸ Siti Nuralifa Asnur Massumange, Mulyati Pawennei, and Tri Abriana Ma'ruf, 'Analysis of the Imposition of Chemical Castal Sanctions on Perpetrators of Child Sexual Violence', *LEGAL DIALOGICA* 1, no. 2 (2026), <http://103.133.36.88/index.php/legal/article/view/2305>.

¹⁹ Benny Leonard Saragih, Ediwarman Ediwarman, and Muaz Zul, 'Disparity in Prosecution in Criminal Cases of Persecution in the Criminal System in Indonesia', *ARBITRATOR: Scientific Journal of Master of Law* 1, no. 1 (2019): 55–67, <https://doi.org/10.31289/arbitrator.v1i1.107>.

impact caused were sufficient reasons to implement chemical castration.²⁰ On the contrary, in the Tuban District Court Decision, the judge considered that the prison sentence had sufficiently met the purpose of the crime so that no additional penalty was needed. These differences in interpretation show that the legal norms regarding chemical castration still provide a wide scope for interpretation, resulting in variations in decisions.

The third factor is related to the difference in the orientation of the purpose of the penalty. In criminal law theory, several penal orientations are known, including absolute theory (retributive), relative theory (preventive), and combined theory. Judges who impose chemical castration crimes tend to use a preventive orientation by placing the criminal case as an instrument to prevent the recurrence of criminal acts and protect the community from the threat of recidivism. On the other hand, judges who do not impose the crime of chemical castration emphasize the principle of proportionality and balance between the interests of the victim, the rights of the defendant, and the purpose of the sentence.²¹ This difference in orientation has direct implications for the type of crime imposed. In other words, disparities are not solely caused by differences in the facts of the case, but are also influenced by the criminal paradigm embraced by each judge.

The fourth factor is the lack of sentencing guidelines regarding the application of chemical castration. In various countries, sentencing guidelines are drafted to reduce the disparity in sentences and improve the consistency of law enforcement. Indonesia has not yet had guidelines that specifically regulate the parameters for the application of additional penalties in the form of chemical castration. As a result, each judge has the discretion to determine whether the crime is appropriate to apply based on his beliefs and assessment of the facts of the trial. This condition increases the likelihood of disparities, especially in cases that have similar characteristics. From the perspective of legal certainty, the absence of these guidelines can cause uncertainty for the public and law enforcement officials regarding the standards for the criminal application of chemical castration.

In addition to the normative aspect, disparities are also influenced by the individual characteristics of judges. The literature on *judicial behavior* explains that judges' decisions are not only influenced by legal norms, but also by professional experience, academic background, values adhered to, and the way judges understand the purpose of the law.

²⁰ Agung Dwi Laksana, *Chemical Castal and Perpetrator of Sexual Violence by Pedophiles - Jejak Pustaka* (Jambi: Jejak Pustaka, 2023).

²¹ Suarni Suarni et al., *Reference Book of Criminal Law: A Comprehensive Theory* (Jambi: PT. Sonpedia Publishing Indonesia, 2024).

Although all judges are bound by the same laws and regulations, the legal *reasoning* process can produce different conclusions. In this study, it can be seen that some judges emphasize victim protection as a top priority, while other judges are more careful in applying additional penalties that have consequences for the biological rights of convicts. This variation in perspective is a consequence of the independence of judicial power, but at the same time it is one of the causes of the emergence of disparities in decisions.

From the results of the analysis, it can be understood that the disparity in chemical castration decisions is not caused by a single factor. Disparity is the result of the interaction between the construction of the public prosecutor's indictment, the judge's interpretation of legal norms, the orientation of the purpose of the crime, the absence of criminal guidelines, and the individual characteristics of judges in interpreting justice. Therefore, efforts to reduce disparities are not enough to be carried out through changes in laws and regulations alone, but also require the preparation of more comprehensive sentencing guidelines, improving the quality of prosecution, and strengthening the Supreme Court's jurisprudence as a reference for judges in applying additional penalties in the form of chemical castration. Thus, the consistency of the application of the law can be improved without reducing the independence of judges as one of the fundamental principles of the state of law.

3. Analysis of Jinayah Fiqh on the Disparity in Chemical Castration Verdicts

The application of chemical castration against perpetrators of sexual violence against children not only raises debates in a positive legal perspective, but also gives rise to a fairly broad discourse in the study of fiqh jinayah. This is because Islamic criminal law does not recognize castration as a form of *hudūd*, *qisās*, or *kaffārah* which is explicitly stipulated in the Qur'an and Sunnah. Therefore, the analysis of chemical castration is more appropriate to be placed within the scope of *ta'zīr*, which is a type of crime whose form and level are left to *ulil amri* or the government to realize the benefits of society. In this framework, the legality of a sanction is not only measured by the existence or absence of *nash* that regulates it, but also by the extent to which it is able to realize the goals of the sharia (*maqāṣid al-syarī'ah*) and prevent damage (*mafsadah*).²²

In jurisprudence, the main purpose of punishment is not to retribute alone, but to maintain the five main purposes of sharia (*al-kulliyāt al-khams*), namely the protection of religion (*ḥifẓ al-dīn*), the soul (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), offspring (*ḥifẓ al-nasl*), and Treasure (*ḥifẓ al-māl*). Among the five objectives, cases of sexual violence against children

²² Andrai Setiyadi Reine Rofiana Ferry Fathurokhman, Dan, 'The Criminal Application of Chemical Castal for Perpetrators of Sexual Violence Against Children in Review from Criminal Theory', *LEGALITY* 8, no. 2 (December 2023): 57, <https://doi.org/10.31293/lg.v8i2.7460>.

have the closest relationship with the protection of offspring (*hifz al-nasl*).²³ Protection of posterity is not only interpreted as maintaining the sustainability of the nasab, but also includes the protection of honor, dignity, physical health, psychological health, and the future of children as the next generation of the people. Thus, any legal policy that is able to prevent the occurrence of sexual violence against children is basically in line with the goals of sharia as long as it does not conflict with the principles of justice and humanity.

The results of the analysis of the four decisions that were the object of the research showed that the entire panel of judges had the same orientation, namely providing protection for children as victims of criminal acts. However, the way to achieve this goal varies. The decision of the Mojokerto District Court and the Surabaya District Court views that additional punishment in the form of chemical castration is a necessary instrument to prevent the repetition of criminal acts and provide a deterrent effect to the perpetrator. On the other hand, the Tuban District Court Decision and the Tanjungkarang High Court Decision argue that the goal of child protection can still be achieved through principal crimes without having to impose additional penalties in the form of chemical castration. These differences show that all judges actually have the same interest orientation, but differ in determining the legal instrument that is considered the most effective to realize these benefits.

From the perspective of *jiyah* jurisprudence, the difference can be understood through the concept of *maṣlaḥah mursalah*, which is a benefit that is not explicitly regulated in the *nash*, but whose existence is necessary to meet the needs of society and does not contradict the principles of sharia. Imam al-Ghazali explained that a policy can be categorized as *maṣlaḥah* if it is able to maintain the main objectives of the sharia and provide real benefits to the community.²⁴ Based on this concept, chemical castration can be understood as a legal policy born from the needs of the modern state in dealing with the increasing acts of sexual violence against children. Thus, the criminal legitimacy of chemical castration does not solely depend on the existence of the *nash* that regulates it, but also on its ability to realize the protection of the community, especially children as a vulnerable group.

Nevertheless, *the concept of maṣlaḥah* in Islamic law also requires that any policy must meet the principles of proportionality (*tanāsub*), justice (*al-'adl*), and not cause greater

²³ Nurhayati Nurhayati et al., 'Human Trafficking in The Perspective of Maqashid Al-Sharia', *Jurnal Ilmiah Islam Futura* 22, no. 2 (2022): 150, <https://doi.org/10.22373/jiif.v22i2.12304>.

²⁴ M. Zaki, 'The Standard Formulation of Maslahah in Islamic Law (Study of al-Ghazali's Thought in the Book of Al-Mustasfa)', *Al-Risalah: Forum for Legal and Social Studies* 13, no. 01 (2018): 27–46, <https://doi.org/10.30631/al-risalah.v13i01.419>.

harm (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*). Therefore, the application of chemical castration cannot be carried out automatically against all perpetrators of sexual violence against children. Judges must still consider the level of wrongdoing, the impact on the victim, the possibility of recidivism, and the effectiveness of the crime in achieving the goal of community protection. This perspective is in line with the Tuban District Court Decision and the Tanjungkarang High Court Decision which places chemical castration as an exceptional crime, not as a mandatory criminal in every case.²⁵

From the point of view of *ta'zīr* theory, the state has the authority to establish a form of crime that is not explicitly recognized in the *nash* as long as it aims to maintain public order and the benefit of the community.²⁶ The majority of scholars are of the opinion that the scope of *ta'zīr* is dynamic because it is adjusted to the development of the times and the needs of society. Therefore, the crime of chemical castration can be positioned as a form of *modern ta'zīr* developed by the state through a mechanism of legislation. However, this authority is not absolute. The state is still limited by the principles of justice, respect for human dignity, and the prohibition of imposing arbitrary crimes. Thus, the criminal application of chemical castration requires clear standards so as not to contradict the basic principles of Islamic law.

Based on this analysis, this study argues that the disparity in chemical castration decisions does not show a contradiction between positive law and *jinayah fiqh*, but rather reflects differences in determining the form of benefits to be realized through judges' decisions. The judge who sentenced the chemical castration crime views that the benefits are more effectively achieved through strengthening the deterrent effect and preventing recidivism. On the other hand, the judge who did not impose the penalty was of the opinion that the benefits could still be realized through the principal penalty as long as they were able to provide protection to the victim and the community. Thus, the meeting point of all these rulings is actually on the same goal, which is to maintain *ḥifẓ al-nasl* as one of the main goals of the *Shari'a*.

This finding is also the main contribution of the research. In contrast to previous research that tends to debate whether or not it is permissible to commit chemical castration according to Islamic law, this study shows that the more fundamental problem does not lie in the legality of chemical castration, but in the parameters of benefit used by

²⁵ Sahnaz Kartika and Faisar Ananda, 'Sentencing of Chemical Castal on Pedophilia Offenders in the Perspective of Maqashid Sharia Ash-Syathibi', *Yurisprudential: Journal of Economic Law* 8, no. 1 (2022): 88–104, <https://doi.org/10.24952/yurisprudential.v8i1.5743>.

²⁶ Vichi Novalia et al., 'Ta'zir in Islamic Crime: Non-Material Aspects', *Terang: Journal of Social, Political and Legal Sciences Studies* 1, no. 2 (2024): 225–34, <https://doi.org/10.62383/terang.v1i2.222>.

judges in applying the crime. Therefore, strengthening the penal guidelines based on the principles of child protection, proportionality, and *maqāṣid al-syarī'ah* is an urgent need so that the application of chemical castration crimes has a more consistent, fair, and in accordance with the objectives of national law and Islamic law.

4. Implications of Chemical Castal Decision Disparity on Legal Certainty and Child Protection

The disparity in verdicts in the application of additional penalties in the form of chemical castration not only reflects differences in legal interpretations among judges, but also has far-reaching implications for the criminal justice system, legal certainty, and the effectiveness of child protection in Indonesia. In the state of law, one of the main functions of the judiciary is to ensure that the law is applied consistently to cases that have comparable characteristics. This consistency is an important prerequisite for the realization of legal *certainty* and public trust in the judiciary. When cases that have relatively similar characteristics result in significantly different decisions, the public can view that law enforcement is highly dependent on the subjectivity of judges.²⁷ This condition has the potential to reduce the legitimacy of court decisions and reduce public trust in the criminal justice system. Therefore, criminal disparities must be understood as an institutional issue that requires serious attention, not simply a consequence of the independence of judges.

From the perspective of legal certainty, the results of the study show that the difference in the application of chemical castration is influenced by the absence of clear normative parameters regarding the terms and conditions of the application of the additional penalty. Law Number 17 of 2016 does provide a legal basis for judges to impose the crime of chemical castration, but it has not regulated in detail indicators that can be used as guidelines in determining when the crime is feasible. As a result, each judge uses different *legal reasoning* in interpreting these provisions. Some judges place chemical castration as an instrument of community protection that needs to be applied to perpetrators with a high level of danger, while other judges view that the crime can only be imposed if there is a truly extraordinary reason. These differences in interpretation show that the main problem does not lie in the existence of legal norms, but in the absence of uniform standards of interpretation in judicial practice.

The next implication is related to the effectiveness of child protection as the main goal of establishing a chemical castration criminal policy. From the perspective of *criminal*

²⁷ Ahmad Jamaludin Et Al., 'Sanctions for Chemical Castration Action in Indonesia', *Russian Law Journal* 11, no. 5s (2023), <https://doi.org/10.52783/rlj.v11i5s.890>.

policy, the punishment of perpetrators of sexual violence is not only aimed at punishing the perpetrators, but also provides a sense of security to the community and prevents the recurrence of criminal acts. However, if the application of additional penalties is carried out inconsistently, the effectiveness of the preventive function becomes questionable. Perpetrators of criminal acts who commit acts with similar characteristics can receive different types of crimes, so that the purpose of creating *a deterrence effect* is less than optimal. At the same time, victims and society may view that the legal protection provided by the state depends on who the judge examines the case, not on the uniformity of the application of the law.

On the other hand, this study shows that disparity in verdicts is not always meaningful as a form of injustice. In the modern judicial system, the independence of judges is a fundamental principle that must be maintained so that every case is decided based on the facts of the trial and the judge's beliefs. Therefore, differences in decisions can still be justified as long as they are based on rational, transparent, and accountable legal arguments. Problems arise when these differences are not supported by clear parameters so that they give the impression of inconsistency in the application of the law. Thus, the main challenge for the judicial system is not to eliminate all forms of disparity, but to ensure that every difference in verdicts has an objective basis of argument and can be tested academically and juridically.

In the perspective of *jiyah fiqh*, these implications are also closely related to the achievement of the goals of sharia (*maqāṣid al-syarī'ah*). As explained in the previous subchapter, the protection of children is part of the purpose of safeguarding offspring (*ḥifẓ al-nasl*). Therefore, any judge's decision should not only consider the certainty of formal law, but also consider the extent to which it is able to provide effective protection for victims and the community. Disparities that do not have a strong basis for argument have the potential to reduce the achievement of benefits because they create uncertainty regarding the standard of legal protection provided by the state to children as a vulnerable group.²⁸ On the other hand, if the disparity is based on a proportionate analysis of the facts of the case and the purpose of the crime, then the difference in verdict can still be seen as part of the dynamics of legal *ijtihad* that remain in the corridor of justice.

Based on the findings of the research, one of the strategic steps that needs to be taken is the preparation of sentencing guidelines regarding the application of additional

²⁸ Syafiq Aljani Siagian Syafiq and Imam Yazid, 'Analysis of Islamic Criminal Law on Continued Criminal Acts by Children', *KRTHA BHAYANGKARA* 19, no. 2 (2025): 393–408, <https://doi.org/10.31599/krtha.v19i2.4286>.

penalties in the form of chemical castration. The guidelines are not intended to limit the independence of judges, but rather provide more objective parameters in assessing the level of wrongdoing, the level of harm caused, the possibility of recidivism, the impact on the victim, and the conditions that must be met before a chemical castration crime is imposed. The experience of various countries shows that sentencing guidelines are able to reduce disparity in verdicts while increasing the transparency of the decision-making process. In the Indonesian context, the preparation of these guidelines can be carried out by the Supreme Court through the strengthening of jurisprudence or the issuance of guidelines for judges in examining cases of sexual violence against children.

In addition to the preparation of criminal guidelines, improving the quality of coordination between investigators, public prosecutors, and judges is also an important factor in creating consistency in the application of the law. This study shows that the quality of the indictment and the public prosecutor's demands affect the judge's consideration space in imposing additional crimes. Therefore, strengthening the capacity of law enforcement officials in understanding the purpose of the formation of Law Number 17 of 2016 is an important part of efforts to strengthen child protection. In addition, the development of education and training on child protection, victimology, and *maqāṣid al-syarī'ah* for law enforcement officials can also be a strategy to strengthen the quality of legal reasoning in cases of sexual violence against children.

Thus, this study emphasizes that the disparity in chemical castration decisions is not just a problem of differences in verdicts, but a matter of consistency in the penal system in realizing legal goals. This disparity shows that the reform of the criminal law through the introduction of chemical castration crimes has not been fully followed by the establishment of clear implementation parameters. As a result, the judge's discretion is very wide, resulting in variations in decisions in cases that have relatively similar characteristics. Therefore, the establishment of criminal guidelines, strengthening jurisprudence, and integrating the principles of child protection and *maqāṣid al-syarī'ah* in judicial practice are strategic steps to increase legal certainty, justice, and usefulness in the implementation of chemical castration crimes in Indonesia.

CONCLUSION

This study shows that the disparity in chemical castration verdicts against perpetrators of sexual violence against children in Indonesia is a consequence of differences in juridical considerations, criminal orientation, and judges' interpretation of the provisions of Law Number 17 of 2016. Analysis of the decisions of the Mojokerto District Court, Surabaya District Court, Tuban District Court, and Tanjungkarang High

Court shows that the application of additional penalties in the form of chemical castration does not have a uniform pattern. Some judges view chemical castration as a necessary instrument to provide a deterrent effect and prevent the repetition of criminal acts, while others argue that the principal crime is sufficient to achieve the purpose of punishment without imposing additional penalties. The findings indicate that the disparity is not solely caused by differences in legal facts, but also influenced by the construction of the public prosecutor's indictment, the quality of evidence, the criminal paradigm adopted by the judge, and the absence of sentencing guidelines that specifically regulate the parameters of the application of chemical castration crimes.

From the perspective of *jiyah* jurisprudence, this study concludes that the crime of chemical castration can be placed as a form of *ta'zīr*, which is a type of crime whose determination is the authority of the state to realize the benefits of the community. Using the *maqāṣid al-syarī'ah* approach, especially the principle of *ḥifẓ al-nasl* (protection of offspring), this study shows that the main purpose of the implementation of chemical castration is not retaliation against the perpetrators, but the protection of children as a vulnerable group and the prevention of the recurrence of sexual violence. However, the application of the criminal law must still pay attention to the principles of justice, proportionality, and benefit so as not to conflict with the basic values of Islamic law and the principle of the rule of law.

The main contribution of this research lies in the analysis that connects the study of jurisprudence with the perspective of jurisprudence in explaining the causes of the disparity in chemical castration decisions. In contrast to previous research which generally only discussed the legality or conformity of chemical castration with Islamic law, this study shows that the fundamental problem lies in the lack of penal standards that are able to bridge legal certainty, child protection, and benefit goals. Therefore, this study recommends the preparation of *sentencing guidelines* regarding the application of additional penalties in the form of chemical castration, strengthening the jurisprudence function of the Supreme Court as a reference for judges, and integrating the values of *maqāṣid al-syarī'ah* in the formation of national criminal law policies. This step is expected to reduce disparity in verdicts, increase legal certainty, and strengthen protection for children as victims of sexual violence in Indonesia.

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