

IMPLEMENTATION OF THE CRIMINAL FLASH IN NANGGROE ACEH DARUSSALAM PROVINCE TO THE CRIME OF ZINA AS A PROPOSED TO RENEWAL THE CRIMINAL LAW

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Abstract: *Zina is an act of sexual intercourse between a woman and a man, it is known that either the woman or the man or both are bound by marriage. The regulation regarding the crime of adultery is regulated in Article 284 of the Criminal Code, as it is known that the regulation is no longer effective. For example, adultery is currently not only committed by someone who is married, in fact many commit adultery from a woman and a man who are known to have not been married, while Article 284 of the Criminal Code does not regulate this. It is necessary to carry out a criminal law reform against Article 284 of the Criminal Code by looking at the rules of Islamic criminal law which first regulates this crime of adultery, both those who are married and those who are not married. In Islamic criminal law, the sanctions for the crime of adultery are regulated by the implementation of caning and accompanied by exile for one year.*

Key Words: *Caning, Adultery, Criminal Law Reform.*

1. INTRODUCTION:

In general, the purpose of punishment is to provide a deterrent effect for the perpetrator and a lesson for others not to do the same thing. Because the caning law itself aims to educate the negative stimuli that the perpetrator gets through the embarrassing effect that is instilled in the convict not the hurting effect on the whip, so that the perpetrator continues to remember the punishment for the act and will not repeat it again. The caning sentence imposed on *qanun* does not apply to all *qanun*, caning is only imposed on *qanun* who are Muslim. As for non-Muslims, the form of punishment will be adjusted to what is applied in the national criminal law, unless the non-Muslim is willing and asks to be punished with the caning (subject to the sanctions of Islamic law).

2. THEORITICAL FRAMEWORK:

- Criminal Theories Sentencing theory is a theory that analyzes: [1]
- Theories related to Islamic Law The *Receptio in complex* states that for a Muslim, Islamic law is fully applicable because he has embraced Islam even though in practice there are deviations.
- Theories related to Criminal Law Reform Criminal law reform is an attempt to review and reform (reorient and reform) Indonesian criminal law so that it is in accordance with general socio-political, socio-philosophical, and cultural values of Indonesian society.[2]

3. LITERATURE REVIEW:

According to Satochid Kartanegara,[3]that the punishment (criminal) is torture or suffering, which by the criminal law law is given to a person who violates a norm determined by the criminal law law, and that torture or suffering by a judge's decision is imposed on the person who is blamed.

Ibn Rushd defines zina as any intercourse that occurs not because of a legal marriage, not because of *doubt* (vague / pseudo) and not because of the ownership of slaves.[4]

Caning is often referred to as *uqubat* (sanction) which is the difference between Islamic criminal law and national criminal law.

4. METHOD:

The method used in this study is a normative juridical approach, namely an approach that uses a *positivist legislative conception*, which views law as identical with written norms made and promulgated by authorized institutions or officials.[5]

5. DISCUSSION:

Caning is a form of proposed new criminal sanctions in the criminal law system in Indonesia, in the western criminal system as referred to in Article 10 of the Criminal Code (KUHP) never recognizes the type of caning / whipping, so it becomes a very serious matter. unique to study.

Discussions about the application of Islamic law in Aceh Province are not new. There has been a lot of research and analysis related to this. From several existing research results, no authors have found caning for the crime of adultery as a criminal law reform and also considering that the State of Indonesia is indeed not an Islamic State, but the population in Indonesia is predominantly Muslim, because it is necessary to apply Islamic criminal law against whipping. as a national law reform.

6. ANALYSIS:

A. Application of Caning against the Crime of Adultery in the Province of Nanggroe Aceh Darussalam

Caning is a type of torture that is carried out on the body of the perpetrator by hitting the perpetrator's body using a tool called a whip made of twisted rope derived from plant fibers or leather such as rattan and tied to a curved stalk as a place for the executioner to hold the whip long. around 0.75 – 1 meter. The implementation of caning is the authority and responsibility of the Prosecutor. The whipping itself is carried out immediately, after the judge's decision has a permanent law that is guided by the provisions stipulated in the *qanun*. The application of the punishment of caning for the first time in the Province of Nanggroe Aceh Darussalam was carried out at the Great Mosque of Bireun on Friday, June 24, 2005, this is the starting point for the application of punishments or other types of crimes based on Islamic Shari'a. In the middle of the month of 2021, there has been a caning punishment in Aceh. The application of caning in Aceh in the crime of adultery is proven in the decision number 5/JN/2021/MS-Sab.

B. The Criminal Effort of Caning as a Reform of Indonesian Criminal Law:

Efforts to reform the criminal law in the formation of the National Criminal Code Bill are the basic needs of the community in order to create fair law enforcement. Law enforcement is closely related to criminal law policy (*penal policy*) as a criminal politics carried out by the government together with law enforcement officers in order to realize justice. Rational efforts or real actions in the form of criminal law policies in law enforcement that cover the scope of policies in the field of material criminal law, formal criminal law, and criminal implementation. The application of caning can be applied as a criminal law reform, there must be reasons underlying the criminal law reform, namely political, sociological and practical reasons.

7. CONCLUSION :

From the discussion as explained earlier, several conclusions can be drawn, including:

- The application of caning in Indonesia is found in the Province of Nanggroe Aceh Darussalam, which was first applied on June 24, 2005 at the Great Mosque of Bireun.
- Efforts made to apply caning to the crime of adultery as a criminal law reform in Indonesia must be based on 3 reasons in criminal law reform, namely; political reasons, sociological reasons and practical reasons.

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