

# Clothing During Whipping Executed in Accordance with Syariah Perspectives

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## Abstract

The punishment of whipping for Syariah offenders is generally stated in Syariah legislation includes those related to clothing worn by Syariah offenders while serving a whipping sentence. However, the type of clothing is not clearly stated used. This article will examine the related clothing worn by Syariah offenders' men and women while undergoing whipping under the Syariah Criminal Law. The type of clothing used is different from the clothing that is practiced under Malaysian law. Methodology used in this study is qualitative with data obtained through content analysis from the texts of the Qur'an, al-Hadith, books and articles, journals and relevant laws. Then it is analyzed by descriptive method. Outcome the study of this article is to identify the types of clothing worn by male offenders and women during whipping were carried out in addition to distinguishing between clothes male and female offenders. In addition, the authors suggest creating a specific guideline regarding ethics and types of dress for male and female offenders who underwent flogging to be more systematic and uniform.

**Keywords:** Clothing, Whipping, Executed, Syariah Perspectives.

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## Introduction

The whipping in the Syariah Court is intended to evoke remorse offender and not to hurt. Under Islamic law, offenders are caned at the back of the body using a small cane and the offender should also be complete dress and cover the genitals (Hussin 2019). If seen, the provisions contained in the existing law do not specifically mention the type of clothing used by both male and female offenders while serving whipping.

## Whipping in Malaysia

In a legal perspective, whipping is a form of punishment allowed in Islamic law and it is stated in the Quran and Sunnah for certain offenses such as adultery, accusing adultery and even drinking alcohol. Whipping can also be imposed on offenders of takzir offenses. The clothing to be worn by the offender while undergoing whipping is not prescribed in any case provisions of civil or syaria law. In this country, we can see inside execution of whipping in Malaysia,

offenders will only wear a loincloth exposed the buttocks area and besides that the offender does not wear other clothing (Embong 2006). However, according to section 92 (e) of the Children Act 2001 states that children those subject to whipping must wear clothing. However, it is not clearly detailed the type of clothing used.

## **Clothing During Whipping is Executed in Accordance with Syariah Perspectives**

This is in contrast to Hukum Syarak which has prescribed the way of dressing when undergoing whipping, Syariah Law in Malaysia also prescribes conditions clothing similar to what has been prescribed by Hukum Syarak i.e. with wearing clothes as well as not exposing the genitals of the offender or in other words clothing shall cover the aurat as prescribed in Islamic Law. But, the clothes worn should not be too thick and not too thin. Besides that is, the clothing does not cause the lashes to be obstructed the offender. This is to ensure that the sentence travels run smoothly and can bring about repentance and awareness to the offender until there is a fear of repeating the mistake. Mazhab Maliki thought male offenders shall be whipped in a state of not wearing clothing unless only the aurat is covered while the female offender is covered in the aurat perfect. Mazhab Syafie is based on the implementation of stoning male offenders are not implanted half -body because the male body is not aurat and vice versa applies to female offenders (Ahmad Khairudin 2014).

Pursuant to section 125 (3) (h) of the Syariah Criminal Procedure Act (Territories Federal) 1997 (Act 560), stated that the offender was sentenced to whipping shall wear clothes in accordance with Hukum Syarak. We can understand that offenders of Shariah must wear clothes that cover the aurat when going to undergo whipping punishment based on what is stipulated in Islamic Law.

### **Male Offenders**

For male offenders, there are two scholarly views on this matter. First opinion states that male offenders are only allowed to wear covering clothing his aurat only. This means they are whipped in a state of not wearing a shirt. This is the opinion of the Hanafi scholars for the offense of adultery and drinking alcohol and Maliki for all hudud offenses. The reason given is that by whipping the offender without a shirt, it will get more pain which in turn gave more lessons to him in order do not repeat the mistakes made. Furthermore, basically a whip should be about the body of the offender directly.

The second opinion is that male offenders should cover their aurat and are also allowed to wear a shirt when whipping is carried out. This is the opinion of the scholars of Shafi'I and Hanbali. This opinion is based on what Ibn Mas'ud said: "No. allowed in this ummah to bind (al-rabt) lying on the ground (al-madd) and undress (al-tajrid) Among the arguments of reason that is put forward is Allah SWT ordered that offender be whipped, instead of having their clothes undressed. In addition, thin clothing does not prevent the effects of the whipping from reaching the offender's body. Having examined the two opinions above, it can be concluded that the second opinion is stronger. This is because there is no clear proposition that suggests

male offenders should unbuttoned his shirt when the whipping was carried out. Plus, it makes no difference keep the garment thin by opening it in terms of the effect of the lashes. So, it is politer to allow offenders to wear them (Md. Hashim 2000).

## Female Offenders

Female offenders should wear thin clothing that can cover their genitals, even advised by the scholars' Shafi'i and Hanbali that their clothes be tied so that not stuck and exposing the genitals.

## Condition of Clothing During Whipping

According to the method of whipping according to Islam, offenders who undergo whipping punishment shall wearing clothing that coincides with Hukum Syarak (Ismail. S 2006). As with the implementation stoning, offenders are allowed to wear clothing but not thick clothing. This view is further strengthened by the words of Ibn Mas'ud which means: "Among the Muslims there is no act that lays the offender, took off his clothes, tied his neck and shackled his neck" (Al-Baihaqi 1994 : 546, Al-Hathaimi 1992 : 6/385)

Ibn Mas'ud's view was accepted by the companions. Apart from the reasons given by Islamic jurists is that thin clothing does not prevent pain (Abdul Ghani 1998). Islamic law has set the limits of aurat to its people. Even in what circumstances, Muslims should keep their aurat from being exposed. The same goes inside execution of punishment especially whipping, clothing that covers the genitals strongly needed his care. While serving the sentence, the clothes worn should not be too thin nor too thick so as not to feel the lashes imposed. As for ordinary clothes, it does not need to be removed as much as possible exposing the genitals of the offender. This is in contrast to offenders who undergo whipping at Malaysia where the offenders are in a state of undress, and they will undergo whipping in prison in a state where his genitals are exposed, they are not dressed properly i.e. without wearing clothes as well as clothes that is supposed.

Meanwhile, their backs should be exposed as whipping members and in this situation, the offenders only wear exposed pants behind it (Embong 2006).

## Whipping in Aceh

The flogging carried out in Aceh evoked remorse and fear against offenders and society. This is because, whipping is done in the open and in in front of the crowd. Clause 22 (1) of Law No. 14, the offender will be punished with 'uqubat tazir in the form of whipping a maximum of Nine times and a minimum of three times and/or a fine maximum Rp 10 million and minimum Rp 2.5 million. Clause 28 outlines the procedure execution of whipping i.e. male offenders are whipped in a standing position untied and wearing a thin shirt, while the female offender was whipped in a sitting position with the cover closed fabric at the top (Hamid, Syed Nong Mohamad, & Mohd Jamil, 2015).

According to Governor's Regulation No. 10 of 2005 paragraph (9) explains that male offenders whipped in a standing position without a prop, without being tied up and wearing a

thin shirt which covers the genitals. While for female offenders were whipped in a sitting position and covered with a cloth over his thighs (Ritonga 2013).

## Analysis of Whipping Cases in Malaysia

### Case in Terengganu

This case is a syariah criminal case related to the *musahaqah* offense below section 30 of the Syariah Criminal Offenses (Takzir) (Terengganu) Enactment 2001 read together with section 59 (1) of the same enactment. In this case, OKT who were women aged 32 and 24 respectively were charged under section 59 (1) which is read in conjunction with section 30 of the Syariah Criminal Offenses Enactment takzir (Terengganu) 2001. Both OKTs were arrested for trying to have sex in a tinted car and parked suspiciously Both OKTs have pleaded guilty, and the Court has sentenced a guilty verdict on both offender with a fine of RM3,300.00 and whipping as many as 6 lashes. The execution of whipping was done in private in the Council 2 Kuala Terengganu Syariah High Court which was attended by 100 people from representatives of the media, non -governmental organizations (NGOs) and representatives of law associations without any permission is given to bring cameras and cell phones. OKT imposes baju kurung and white hood provided by the Terengganu Syariah High Court and then OKT was instructed to sit on the chair provided and tuck the lid to shoulder level (Mohammad Al Bakri 2018).

### Case of Abdul Kahar bin Ahmad Against Selangor State Syarie Chief Prosecutor [2016] 4 Shlr

This case is a syariah criminal case. The accused has been charged with five offenses relating to false doctrine, false allegations, insulting or causing authority Islam and opinions contrary to the fatwa. The accused has been convicted guilty by the Syariah High court and sentenced and appealed the accused at The Syariah Court of Appeal was dismissed. For false doctrinal offenses under section 7 (1) of the Syariah Crimes Enactment (Selangor), the accused was sentenced to imprisonment for three years and six lashes.

If observed through the case decided in Terengganu, the couple who were whipped were dressed in full baju kurung and all -white hood. Since both offenders are women, then both sentenced to whipping in a state of dress that covered the aurat. This coincides with what has been prescribed in Hukum Syarak and stated in the provisions of Shariah law namely in Section 125 subsection 3 (h) which states that the offender must wear clothing in accordance with Islamic Law when underwent whipping. However, if seen in Aceh, based on the Governor's Regulation No. 10 of 2005 paragraph (9) clarifies that male offenders are whipped in the circumstances standing without a support, without being tied and wearing a thin shirt that covered the aurat while the female offender was whipped in a sitting position and covered with a cloth over her thighs (Hamid N. , Syed Nong Mohamad, Lily Suryati, & Pauzai, 2015). There is little difference between the clothing worn by male offenders and women while serving whipping in Malaysia and Aceh but still emphasizing the aspect of the care of the offender's genitals.

## Suggestion

Although the procedure for the execution of whipping has been set out in the legislation Islam however there are still many more things that need to be refined and given observation by government including whipping tools, clothing worn by offenders, timing of whipping and others. The authors suggest a powerful body such as the Department of Justice Syariah Malaysia establishes a specific directive or guideline related to ethics application for both male and female sharia offenders serving sentences whipping. With these guidelines, it can help facilitate the task of legal practitioners in making referrals and carrying out whipping sentences with more uniform and orderly.

## Conclusion

Clothing is one of the aspects that need to be considered before a sentence whipping is carried out. In the execution of whipping, the aurat must be taken care of either for male or female offenders. Offenders shall serve punishment by wearing clothes that cover the aurat as prescribed. This is purposeful so that the aurat remains awake even in various circumstances and situations. The 'Ulama agreed that offenders were not allowed to wear thick wear that could obstruct from the arrival of the effect (pain) of whipping (Md. Hashim 2000). This contrasts with civil offenders who will instructed to undress and were only allowed to wear loincloths to protect genitals (Ismail. S. Z. 2004). Therefore, this study suggests that a specific guideline can be established in achieving the goal of the implementation of whipping that is to give teaching and repentance to the offender rather than merely inflicting injury and harm to whipped offenders. Execution of whipping is affordable prevent wickedness and should be done wisely.

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