



## **Litigation and Penology of Pedophilia in the Perspective of Indonesian Conventional and Islamic Laws**

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**Abstract:** *The high number of pedophilic incidences in Indonesia is partly due to the lack of community's social control and the weak supervision of the litigation and penological processes. Considering the impact of pedophilia to victims including long-term trauma, injury, and socio-moral damage that tends to be acute and dangerous, intensive monitoring of both litigation and penological processes must be carried out on a massive scale to ensure and maximize the sustainable protection for children which guarantees and protects their rights so they can live, grow, develop, and participate optimally appropriate to human dignity and integrity as well as get protection from any form of violence and discrimination act. This empirical-normative-juridical qualitative study uses emic and etic approaches; the data analysis refers to the explication technique developed by Von Eckartsberg, Wertz, and Schweitzer, starting with data interpretation and continuing with the integration of interview results and normative-juridical analysis. The results of the study show that the litigation and penology of pedophilia are in line with the Indonesian conventional law and in accordance with the objectives of Islamic law (maqasid shari'ah) eventhough at its penological aspect it is not pretty optimal yet.*

**Keywords:** *Litigation, Pedophilia, Penology, Indonesian Conventional Law, Islamic Law.*

## A. Introduction

The increasing scale and complexity of the problems faced by children<sup>1</sup> are marked by the increasing number of children who experience mistreatment in the forms of exploitation,<sup>2</sup> burdening and stereotypes,<sup>3</sup> stigma,<sup>4</sup> violence,<sup>5</sup> victimization, trafficking,<sup>6</sup> neglect, exile, abortion, and even murder. Anwar mentions the high incidence of pedophilic cases in Indonesia due to the weak community's penological process.<sup>7</sup> Meanwhile, in general, most cases of pedophilia occur because of psychological problems and lack of social control.<sup>8</sup>

Pedophilia is indeed an *extra ordinary* crime considering that the victims are powerless children and the impact can result in long-term

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<sup>1</sup> Kevin L. Nunes and Chantal A. Hermann, "Special Issue of Sexual Abuse: A Journal of Research and Treatment-Connecting Theory With Research: Testing Hypotheses About the Causes of Sexual Offending," *Sexual Abuse* 28, no. 1 (February 1, 2016): 73-74; See also Dahyul Daipon, "Kekerasan Seksual Pada Anak di Indonesia (Tipologi, Respon Pemerintah Dan Hukum Islam)," *Al Hurriyah : Jurnal Hukum Islam*, no. 2 (December 13, 2016): 195-214, <https://doi.org/10.30983/alhurriyah.v1i2.489>.

<sup>2</sup> Craig Bennell *et al.*, "Sexual Offenses Against Children as the Abusive Exploitation of Conventional Adult-Child Relationships," *Journal of Social and Personal Relationships* 18, no. 2 (April 1, 2001): 155-171; See also Mutia Yirdam R and Den Yealta, "Peran Ecpat (End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes) Dalam Menangani Kasus Prostitusi Anak Di Meksiko Tahun 2005-2015," *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Sosial Dan Ilmu Politik* 4, no. 2 (November 7, 2017): 1-15.

<sup>3</sup> Iffatin Nur, "The Redefinition of Child of Adultery," *International Journal of Science and Research (IJSR)* 4, no. 3 (2015): 2186-2192, <https://www.ijsr.net/>.

<sup>4</sup> Sara Jahnke, Kathleen Philipp, and Juergen Hoyer, "Stigmatizing Attitudes Towards People With Pedophilia and Their Malleability Among Psychotherapists in Training," *Child Abuse & Neglect* 40 (February 1, 2015): 93-102, <https://doi.org/10.1016/j.chiabu.2014.07.008>.

<sup>5</sup> Wiwid Noor Rakhmad, "Kekerasan Terhadap Anak dalam Konstruksi Koran Tempo," *Jurnal Ilmu Sosial* 15, no. 1 (June 1, 2016): 35-52, <https://doi.org/10.14710/jis.15.1.2016.35-52>.

<sup>6</sup> Syaifullah Yophi Ardianto, "Perlindungan Hukum Terhadap Anak sebagai Korban dari Tindak Pidana Perdagangan Orang di Kota Pekanbaru," *Jurnal Ilmu Hukum* 4, no. 1 (March 8, 2013): 1-31, <https://doi.org/10.30652/jih.v3i1.1041>; See also Salundik, "Penegakan Hukum Terhadap Tindak Pidana Pelaku Pedofilia," *Jurnal Ilmu Hukum Tambun Bungai* 1, no. 1 (March 1, 2016): 2, <https://journal.stihtb.ac.id/index.php/jihtb/article/view/47>.

<sup>7</sup> S.D. Anwar, *Pentingnya Membangun Komitmen Bersama untuk Mencegah Maraknya Kekerasan Seksual dan Pornografi* (Jakarta: Dirjen Informasi dan Komunikasi Publik -Kemenkominfo, 2014).

<sup>8</sup> Ermania Widjajanti and Rusmilawati Windari, "Pedophilia as a Form of Sexual Deviance From a Social Bond Theoretical Perspective," *IJUM Law Journal* 29, no. (S1) (May 12, 2021): 177-194, [https://doi.org/10.31436/iiumlj.v29i\(S1\).641](https://doi.org/10.31436/iiumlj.v29i(S1).641).

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trauma. The trauma affects the victims psychologically and brings physical and social-moral damages that will eventually harm them in their future. The psychological trauma is dominantly greater than the physical injury. Other than eliminating self-confidence to victims, it can also degrade their feelings. Such children will lose dysfunction in their sexual activity, undergo the rise of phobia and have the feeling of being isolated and tainted due to what the offenders had done to them. To girl victims, a delay in menstruation will also occur due to long-term stress they experience.<sup>9</sup>

Pedophilic crime can not be neglected; it has become both national and international issue.<sup>10</sup> Even, more than two decades ago, pedophilia had been a major crime in the United States. In 1996 alone, there were approximately 234,000 offenders convicted of rape or sexual assault under the jurisdiction of correctional agencies, according to the Bureau of Justice Statistics.<sup>11</sup> Last year, an independent commission of investigation in France revealed that 216,000 children were victims of pedophilic sexual abuse in the French Catholic Church. They became victims in 1950-2020. A report by AP News, Wednesday (6/10/2021), said that 80 percent of victims were boys, although overall 75 percent of victims of sexual harassment in France were girls. In reports related to sexual violence happened in French churches, the perpetrators were clergies. The number reached 2,900-3,200. That figure is about 2.7 percent of the total 115,000 clergies recorded during the period the harassment occurred. Since the number of perpetrators is less than the number of victims, this means that one perpetrator targeted a large number of

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<sup>9</sup> Susan E. Cutler and Susan Nolen-Hoeksema, "Accounting for Sex Differences in Depression Through Female Victimization: Childhood Sexual Abuse," *Sex Roles* 24, no. 7 (April 1, 1991): 425-438, <https://doi.org/10.1007/BF00289332>; See also G.C. Davison, J.M. Neale, and D. Hindman, *Abnormal Psychology*, 8th Ed. (New York: John Wiley, 2004); See also Iffatin Nur *et.al.*, "Building Pedophilia-Free Zones Based on Juridical and Educative Islamic Law's Perspectives," *The Social Sciences* 15, no. 7 (2020): 273-282, <https://doi.org/10.36478/sscience.2020.273.282>.

<sup>10</sup> Nur *et.al.*, "Building Pedophilia-Free Zones Based on Juridical and Educative Islamic Law's Perspectives", 277.

<sup>11</sup> Dennis J. Stevens, "Pedophiles: A Case Study," *Journal of Police and Criminal Psychology* 17, no. 1 (March 1, 2002): 36, <https://doi.org/10.1007/BF02802860>.

child victims. The investigation noted the number of perpetrators may have been higher.<sup>12</sup>

The number of cases and victims tends to increase over years. As reported by the Indonesian Ministry of Women Empowerment and Child Protection, in 2019, a total of 11,057 cases were recorded with 12,285 victims. Then, in 2020 the total number of cases was 11,278 with 12,425 children victims. In the first semester of 2021, there were 7,089 cases with 7,784 children victims of violence. That number is an increase of around 39 percent from the figure for the same period the previous year, which was 4,615 children.<sup>13</sup> The cases of sexual violence such as rape and sexual abuse of children dominated during the Covid-19 corona virus pandemic. Based on data from the Indonesian Commission for Child Protection (Komisi Perlindungan Anak Indonesia or KPAI), in 2020, there were 419 cases of children in conflict with the law for being victims of sexual violence.<sup>14</sup> Just for an example, in November 2021 the Resort Police Office of Batang, Central Java, revealed allegations of sexual deviation cases committed by FWR (33) to 30 under-aged children (i.e. a pedophilia crime) and charged him suspect.<sup>15</sup>

The more worrying fact is the occurrence of several cases of pedophilia within some Islamic boarding schools. Most people were made angry considering the fact that the perpetrators of sexual harassment against the young student victims were their own teachers and clerics. Just to mention but few, the recent cases include: 1) a cleric, initial FZ, at the ‘Lembah Arafah’ Islamic Boarding School of Lumajang, East Java, was suspected of molesting 3 female students, 2) eleven under-aged female students became victims of sexual abuse and rape by 3 teachers and 1 senior at the Ridayul Jannah Islamic Boarding School of Depok, West Java, 3) in Subang, West Java, an

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<sup>12</sup> Tommy Kurnia, “Pedofilia di Gereja Prancis: 216 Ribu Anak Jadi Korban”, *liputan6.com*, October 6, 2021.

<sup>13</sup> R. Handayani, *et.al.*, “Anak Korban Kekerasan”, *republika.id*, September 9, 2021.

<sup>14</sup> Dwi Hadya Jayani, “Kasus Kekerasan Seksual Terhadap Anak Mendominasi Saat Pandemi Covid-19”, *katadata.co.id*, May 27, 2021.

<sup>15</sup> Editorial Team, “Bejat, Tersangka Pedofilia di Batang Mengaku Cabuli Lebih dari 30 Anak”, *liputan6.com*, November 11, 2021.

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Islamic boarding school leader, initial DAN (45), raped his 15-year-old female student for a year and had committed his lewd acts ten times from December 2020 to December 2021, 4) an administrator and owner of the Madani Boarding School of Bandung, West Java, initial HW (37), raped dozens of his female students, 5) a son of a well-known cleric in Jombang, East Java, initial MSAT (42), was charged a suspect in the case of molestation and rape of female students at the Majma'al Bahrain Siddiqiyah Islamic Boarding School,<sup>16</sup> and 6) in September 2021, a teacher at one of the Islamic boarding schools in Ogan Ilir, South Sumatra, was suspected of having committed a criminal act of sexual abuse against 12 of his under-aged students.<sup>17</sup>

Public attention and awareness must now begin to focus on monitoring the litigation and penological processes of pedophilia, as the most tragic crime that has befallen the future children of the Indonesian nation, both pure pedophilia and pedophilia that end in sadistic murders involving mutilation to victims' bodies. Intensive supervision of the litigation and penological processes of pedophilia as an *extra ordinary* crime aims to ensure and maximize sustainable child protection.<sup>18</sup> This must be done considering the impact of pedophilia which results in long-term trauma, physical and psychological injuries, and socio-moral damages that tends to be acute and dangerous to victim children.<sup>19</sup>

Regarding pedophilia in Indonesia, some previous research had been conducted. In early 2016, Reha studied about the criminal law policy in dealing with pedophilic crimes. He found that the government must pass applicable policies and there must be a law

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<sup>16</sup> Jayani, "Kasus Kekerasan Seksual Terhadap Anak Mendominasi Saat Pandemi Covid-19".

<sup>17</sup> Editorial Team, "Kasus Pedofilia, Guru Pesantren Cabuli 12 Murid Ditangkap," *cnnindonesia.com*, September 15, 2021.

<sup>18</sup> Laurensius Arliman S., "Reformasi Penegakan Hukum Kekerasan Seksual Terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan," *Kanun Jurnal Ilmu Hukum* 19, no. 2 (August 27, 2017): 305–326; D.R. Hutagalung, *et.al.*, "Juridical Study of Castration Shot on Pedophilia Offender Based on the Purpose of Criminalization," *Bengkoelen Justice* 7, no. 2 (2017); Desy Maryani, "Politik Hukum Perlindungan Anak Di Indonesia," *Jurnal Hukum Sehasen* 1, no. 2 (December 21, 2017): 1-19.

<sup>19</sup> Nur *et.al.*, "Building Pedophilia-Free Zones Based on Juridical and Educative Islamic Law's Perspectives", 277.

reform to tackle such crime. The offenders must be sentenced using article 82 of the Act No. 2 of 2002 with a minimum of 3 years and a maximum of 15 years imprisonment depending on the weight of the crime they committed.<sup>20</sup> Meanwhile, in her paper, Nurjanah states that, essentially, child protection is all efforts carried out to create conditions so that every child can enjoy their rights and carry out obligations for their development and growth, physically, mentally and socially. Child protection is embodiment of justice in a society; so, it is necessary to support children in various areas of state's and society's life.<sup>21</sup> Therefore, legal certainty needs to be sought for the sake of continuing child protection activities and prevent abuses that lead to undesired negative consequences in the implementation of child protection,<sup>22</sup> including from becoming victims of pedophilic crimes.

In 2018, Saputra and Soponyono studied the criminology on pedophilia prevention in Indonesia. They found that to overcome the crime, it is necessary to carry out pre-emptive, preventive, repressive, and rehabilitative methods. They also noted that the attention of Indonesian government to child protection was increasing evidenced by the issuance of the Government Regulation in lieu of the Act No. 1 of 2016 which was later legislated through the enactment of the Act No. 17 of 2016.<sup>23</sup> Then, a research by Sungkono in 2020 shows that the protection of children against pedophilia is regulated in the Act No. 35 of 2014 which includes threats of fines and imprisonment and even castration to offenders. The crime of pedophilia in Islamic criminal law is categorized in *jarimah ta'zir* (a crime in which its sanction is not mentioned by religious texts), therefore, its sanction is handed over to the authorities (*ūlil amr*). The heaviest punishment is stoning. The contents of the Indonesian positive criminal law

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<sup>20</sup> Febby Rahmad Reha, Emilda Firdaus, and Erdiansyah, "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Pedofilia," *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum* 3, no. 1 (2016): 1-15.

<sup>21</sup> Siti Nurjanah, "Keberpihakan Hukum Islam Terhadap Perlindungan Anak," *Al-Adalah* 14, no. 2 (2017): 391-432, <https://doi.org/10.24042/adalah.v14i2.2905>.

<sup>22</sup> Nurjanah, 397.

<sup>23</sup> Tri Akhmad Aji Saputra and Eko Soponyono, "Criminology Study on Pedophilia Prevention in Inonesia," *Jurnal Hukum Novelty* 9, no. 2 (August 31, 2018): 117-127, <https://doi.org/10.26555/novelty.v9i2.a11387>.

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legislation in general are in line with Islamic criminal law (*jināyah*) if understood contextually.<sup>24</sup>

Differing from those previous studies, this paper tries to observe the litigation and penology of pedophilia specially to focus on whether their processes so far have been in accordance with the various regulations of both Indonesian conventional and Islamic laws. This study is a *field research* with a qualitative approach, employing empirical-judicial and normative-judicial approaches. The data collection in this study used *emic* and *etic* approaches: the *emic* approach was aimed at revealing research data from the perspective and subjective experience of the research subject, while the *etic* approach was used as data triangulation, as well as to reveal complementary data that did not appear in the interview. The data collection method in this study used *in-depth focused interview* with officers of some cities' Office of Protection for Women and Children in Kediri, Nganjuk, and Malang and with some judges who handled pedophilic cases on district courts of those cities. The analysis refers to the technique of explication developed by Von Eckartsberg, Wertz, and Schweitzer, which begins with data interpretation and continues with the integration of the results of the interview.

### **B. Literature Review**

Litigation refers to the process of resolving disputes by filing or answering a complaint through the public court system.<sup>25</sup> Litigation is the process of taking a dispute to a court of law. If parties in dispute cannot agree between themselves about the fair and proper outcome of a dispute, they will present their respective cases to a court for its judgment. It is a broad term that describes a long and sometimes complex process.<sup>26</sup> To make it clearer, litigation which means "dispute" (*litigatio* in Latin), is a law concept used to describe the

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<sup>24</sup> Bagas Adhi Sungkono, "Tindak Pidana Pedofilia dalam Perspektif Hukum Pidana Islam dan Hukum Pidana Positif", *UG Thesis*, (Magelang, Universitas Muhammadiyah, 2020), <http://eprintslib.ummgl.ac.id/2534/>.

<sup>25</sup> "Litigation," LII / Legal Information Institute, accessed December 27, 2022, [law.cornell.edu](http://www.law.cornell.edu).

<sup>26</sup> Burlingtons, "What Is Litigation?," Burlingtons Legal, August 11, 2020, [burlingtonslegal.com](http://www.burlingtonslegal.com).

process of enforcing or defending an entity's legal rights. It is a contested action usually made in front of a judge between two opposing sides.<sup>27</sup>

In science, 'penology' is the field of study that focuses on the principles and methods related to the punishment of crimes. The meaning of penology is derived from the Latin word "poena", which means penalty. The penology definition may include various aspects of punishment, such as the study of prisons. In a broader use, penology may focus on prison management or prison administration, as well as how crimes are defined and punished.<sup>28</sup> So, in this paper, penology is meant by the latter explanation which is about how a crime, in this case pedophilia, is defined and punished.

According to Britannica, 'penology', also called penal science', is the division of criminology that concerns itself with the philosophy and practice of society in its efforts to repress criminal activities.<sup>29</sup> As the term signifies (from Latin *poena*, "pain," or "suffering"), penology has stood in the past and, for the most part, still stands for the policy of inflicting punishment on the offender as a consequence of his/her wrongdoing; but it may reasonably be extended to cover other policies, not punitive in character, such as probation, medical treatment, and education, aimed at the cure or rehabilitation of the offender; and this is, in fact, the accepted present sense of the term.

The term 'pedophilia' was popularized by Wilhelm Stekel, a psychotherapist, on 1925.<sup>30</sup> Pedophilia is defined as unusual sexual behavior involving inhumane sexual partners, without permission, accompanied by coercion and torture.<sup>31</sup> Textually, this term has not

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<sup>27</sup> Paulette Keheley, "What Is Litigation? - Legal Definitions Explained," May 25, 2020, *digitalwarroom.com*.

<sup>28</sup> Laura Langford, "The Concept of Penology," *study.com*, April 21, 2022, *study.com*.

<sup>29</sup> The Editors of Encyclopaedia Britannica, "Penology," *britannica.com*, April 1, 2016, *britannica.com*.

<sup>30</sup> Wilhelm Stekel, *Sexual Aberrations: The Phenomena of Fetishism in Relation to Sex, Disorders of the Instincts and Emotions the Parapathic Disorders*, trans. S. Parker (Whitefish-MT: Kessinger Publishing, 2004); American Psychiatric Association (APA), *Diagnostic and Statistical Manual of Mental Disorders* (Virginia: American Psychiatric Publishing, 2013).

<sup>31</sup> Ann M. Kring and Sheri L. Johnson, *Abnormal Psychology: The Science and Treatment of Psychological Disorders*, 15th edition (Hoboken: Wiley, 2021).



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been found in the literature of Indonesian conventional and Islamic laws but that does not mean that this crime against humanity can be separated from the bondage of the laws.<sup>32</sup> A legal analogy process applies both in conventional law<sup>33</sup> as well as Islamic law.<sup>34</sup>

The term “pedophilia” is derived from Greek. It consists of two syllables: *pedo* which means child and *philos* which is interpreted as strong desire or a sense of love. Terminologically, pedophilia is defined as the condition of being sexually interested in children or sexual activity with children.<sup>35</sup> The Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV) and its text revision (DSM-IV-TR) define pedophilia as “*recurrent, intense sexually arousing fantasies, sexual urges or behaviors involving activity with a prepubescent child or children, generally 13 years or younger*”.<sup>36</sup> People suffering pedophilia have sexual deviations because they choose under-aged children as their sexual desires. Pedophiliacs cannot satisfy their passions with adults of the same age or older so that they choose children to satisfy their lust and their actions are often repeated.<sup>37</sup> Pedophiliacs use their manipulative skills to victimize children, tending to use children’s natural curiosity about sexuality to exploit them.<sup>38</sup>

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<sup>32</sup> Vicky Khoila Winarto, Erdianto Effendi, and Erdiansyah, “Kebijakan Kriminalisasi Terhadap Pelaku Tindak Pidana Pedofilia Menurut Hukum Pidana Indonesia,” *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum* 3, no. 2 (October 4, 2017): 1-15.

<sup>33</sup> W. Walayuliansari and R. Achmad, “Penegakan Hukum Pidana Terhadap Tindak Pidana Pedofilia,” *Legalitas: Jurnal Hukum* 1, no. 2 (May 9, 2017): 115-160, <https://doi.org/10.33087/legalitas.v1i2.65>; See also Suparman Marzuki, *et.al.*, *Pelecehan Seksual: Pergumulan Antara Tradisi, Hukum Dan Kekuasaan* (Yogyakarta: UII Press, 1995).

<sup>34</sup> Iffatin Nur, “Islamic Law on Gender Based Sexual Violence,” *AHKAM: Jurnal Ilmu Syariah* 13, no. 1 (February 1, 2013): 57-64, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/951>.

<sup>35</sup> C. McIntosh, *Cambridge Advanced Learner’s Dictionary*, 5th edition (Cambridge: Cambridge University Press, 2013).

<sup>36</sup> Lisa J. Cohen and Igor Galynker, “Psychopathology and Personality Traits of Pedophiles: Issues for Diagnosis and Treatment,” *Psychiatric Times* 26, no. 6 (June 1, 2009): 42-47; See also Nur *et.al.*, “Building Pedophilia-Free Zones Based on Juridical and Educative Islamic Law’s Perspectives,” 275.

<sup>37</sup> Junita B. Mokale, “Pedofilia Sebagai Salah Satu Bentuk Kejahatan Kekerasan Seksual Terhadap Anak,” *Lex Crimen* 2, no. 5 (November 12, 2013): 98-107, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/3122>.

<sup>38</sup> Stevens, “Pedophiles”, 36.

Pedophilia is categorized as a crime if fulfilling some significant characteristics. In one of his articles, O' Grady presented three extreme characteristics of a pedophilia as follows: 1) pedophilia is said to be *obsessive* in which most deviant actions undertaken by a perpetrator control almost overall aspects of his/her life from his/her job, reading materials, hobbies, clothes, even his/her house's design and furniture, 2) pedophilia is said to be *predatoric*, it means that a perpetrator will spend all capabilities and efforts to be able to hunt down his/her desired targeted victim(s), and 3) pedophilias tend to keep documentation of targeted victims very neatly in the form of videos, photos, and other matters related to them.<sup>39</sup>

In Indonesia, the enactment of the act No. 23 of 2002 concerning Child Protection<sup>40</sup> and its amendments<sup>41</sup> may be considered as one more appropriate step for reforming the regulations in Indonesia, especially those regarding child protection, in efforts to ensure the fulfillment of children's rights so that they can grow and develop optimally in accordance with the human dignity and receive protection from any form of violent and discriminatory act.

In the Islamic teachings, the discussion of crimes and their treatment, both repressive and preventive, is described in *fiqh jināyah* (Islamic criminal law) which is often times assessed as 'cruel'. For example, the punishment in the forms of cutting hands, binding, and stoning. However, an in-depth discussion of Islamic criminal law will provide evidence of the wrong impression about it. This is because not all criminal acts in Islam are threatened with "*hudūd*" (punishment that has been determined by Islamic legal texts) or '*ta'zir*' (punishment given by an Islamic judge based on his/her wise opinion in the absence of legal texts) or "*qisās*" (an equal punishment

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<sup>39</sup> Ron O'Grady, "Eradicating Pedophilia: Toward the Humanization of Society," *Journal of International Affairs* 55, no. 1 (2001): 123-140, <https://www.jstor.org/stable/24357674>.

<sup>40</sup> Government of Indonesia (GoI), "*Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak*," <https://peraturan.bpk.go.id>, October 22, 2002.

<sup>41</sup> Read further: Government of Indonesia (GoI), "*Undang-Undang No. 35 Tahun 2014*", <https://peraturan.bpk.go.id>, October 17, 2014; Government of Indonesia (GoI), "*Peraturan Pemerintah Pengganti Undang-Undang (PERPU) No. 1 Tahun 2016*," <https://peraturan.bpk.go.id>, May 25, 2016; and Government of Indonesia (GoI), "*Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2016*", <https://peraturan.bpk.go.id>, November 9, 2016.

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given to the perpetrator similar to the injury suffered by the victim), but there are also crimes which are threatened with *diyāt* (appropriate fine). *Diyāt* may be carried out when the victim's family has forgiven the offender (s) such as the case of unintentional murder.<sup>42</sup> Moreover, those punishments which might be regarded as 'cruel' are imposed only to offenders who had had been evidenced to conduct severe crimes which inflicted others. In this regard, Islam upholds justice for all by threatening offenders with sanctions so as to deter them from conducting crimes so much so that social order can be preserved.

### **C. Litigation and Penology of Pedophilia in Indonesian Conventional Law**

In Indonesia, the litigation process of pedophilia goes through at least several stages: the investigation, examination, and trial stages. The *first stage* is the investigation; at this stage the police and non-governmental organizations pick up the child victim for the sake of the investigation. Then, at the *second stage*, the examination, the child victim is carried out at the Women and Children Protection Unit of a city or regencial police office. The investigation is carried out by female police officers. This is so done in a hope that female police officers will have more empathy, sympathy, and better understanding towards the suffering experienced by child victims, especially in criminal acts of decency such as pedophilia. It is expected that child victims can freely and openly provide information regarding sexual harassment they underwent without any shame or fear.

At the investigation stage, the child victim is accompanied by his/her parents to maximize the protection for the child up to every stage of the judicial process. Assistance is also intended to ensure the fulfillment of children's rights as stipulated in article 23 paragraph 2 of the Indonesian Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.<sup>43</sup> The need of parental assistance for children in the investigation process aims to foster a sense of security

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<sup>42</sup> Ririn Isna Magfiroh and Ashif Az Zafi, "Eksistensi Fiqih dalam Penerapan Hukum Zina di Indonesia," *Diktum: Jurnal Syariah Dan Hukum* 18, no. 1 (July 21, 2020): 102-117, <https://doi.org/10.35905/diktum.v18i1.1314>.

<sup>43</sup> Government of Indonesia (GoI), "*Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*", <https://peraturan.bpk.go.id>, July 30, 2012.

and protection for them considering that parents are the main protectors for them. The need of assistance from the Indonesian Commission for the Protection of Women and Children (KPAI) for child victims of pedophilia is intended to have them free from having the feelings of being afraid, stressed, and depressed at every stage of the litigation process, especially at the investigation stage. Assistance is also carried out by non-governmental organizations as a form of community's participation, role, and supervision in children protection.

At the *trial* stage, the witness children are not sworn in, the child victims can be witnesses at the trial according to the provisions of Article 12 of the United Nations (UN) Convention on the Rights of the Child<sup>44</sup> which has been ratified by Indonesia through the Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.<sup>45</sup> Suffering experienced by the victim children serves as the basis for the judge's consideration before passing a verdict; the aggravating matter in so doing is that *"the defendant's actions can damage mentality and cause a long-term trauma that affect the growth and development of children in the future"*.

As mentioned by Nur *et.al.*, the normative references to prohibit pedophilia are contained in the Indonesian Penal Code (KUHP), the Indonesian Law of Crime Procedure Code (KUHAP), the Indonesian Act No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, the Indonesian Act No. 39 of 1999 on Human Rights, the Indonesian Act No. 23 of 2002 on the Protection of Children, the Indonesian Act No. 23 of 2004 on the Elimination of Domestic Violence, the Indonesian Act No. 13 of 2006 on the Protection of Witness and Victim, the Indonesian Act No. 35 of 2014 which is the first amendment of the Indonesian Act No. 23 of 2002, and the Government Regulation in lieu of the Act (PERPPU) No. 1 of 2016 which is the second

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<sup>44</sup> United Nations (UN), "UN General Assembly Resolution 44/25 on the Convention on the Rights of the Child," *un.org*, November 20, 1989.

<sup>45</sup> Government of Indonesia (GoI), "*Keputusan Presiden (KEPPRES) No. 36 Tahun 1990 Tentang Pengesahan Convention on the Rights of the Child (Konvensi Tentang Hak-Hak Anak)*", <https://peraturan.bpk.go.id>, August 25, 1990.

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amendment to the Indonesian Act No. 23 of 2002 and was later on legalized by the enactment of the Indonesian Act No. 17 of 2016 on the Government Stipulation of PERPPU No. 1 of 2016 into Act. The dictum revised mainly in articles 81 and 82 with the weighting down and additional penalties for perpetrators of sexual violence crimes against children: imprisonment of up to 20 years, life imprisonment, capital punishment, publication of the perpetrator's identity, installation of electronic detectors, and up to a chemical castration.<sup>46</sup> With these legal references, it is expected that law enforcers can provide the fairest punishment to pedophiliacs.

Criminal sanctions against perpetrators of pedophilia in Indonesian conventional law refer to KUHP and PERPPU No. 1 of 2016 which is the second amendment to the Act No. 23 of 2002 on Child Protection especially articles 285, 287, 289, 290, 292, 293, 294, and 295 as well as article 81 of the Act No. 1 of 2016 *juncto* article 76D of the Act No. 35 of 2014.

In the event that the criminal act as referred to article 76D of the Act No. 35 of 2014 causes more than 1 (one) person to die, results in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, for life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.<sup>47</sup> In addition to being subject to the punishment as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator. Against the perpetrator as referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and installation of electronic detection devices. The action as referred to in paragraph (7) shall be decided together with the principal punishment by specifying the period of execution of the action. Additional penalties and excluded actions for child perpetrators.<sup>48</sup>

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<sup>46</sup> Nur *et.al.*, "Building Pedophilia-Free Zones Based on Juridical and Educative Islamic Law's Perspectives," 277-278.

<sup>47</sup> Government of Indonesia (GoI), "*Undang-Undang No. 35 Tahun 2014*".

<sup>48</sup> Government of Indonesia (GoI), "*Undang-Undang No. 1 Tahun 2016*".

In Indonesia, the regulation of castration punishment is in accordance with PERPPU No. 1 of 2016. Castration is a surgical procedure and/or usage of chemicals that aims to eliminate testicular function in males or ovarian function in females. Castration can be performed on either animals or humans. There are two kinds of castration applied in various countries, namely physical castration and chemical castration. Physical castration is carried out by amputating the testicles of the perpetrators of pedophilias so that the perpetrators lack the hormone testosterone which affects their sex drive.

Chemical castration is not only introduced in Indonesia. In Europe, castration has been carried out since the beginning of the 20th century to punish sex offenders as a form of treatment. Back in 1929, Denmark was a pioneer country for the implementation of castration for perpetrators of sex crimes. Then, it was followed by the States of Germany (1933), Norway (1934), Finland (1935), Estonia (1937), Iceland (1938), Latvia (1938), and Sweden (1944) which enacted similar regulations. The theory that underlies the implementation of such castration is eradicating sexual urges which is believed to be the dominant etiologic factor within the offenders' sexual behavior.<sup>49</sup>

It was introduced in the United States, for example, even some years back before Indonesia. Since 1996, in effort to address the increasing concerns regarding sex offender recidivism, nine states in the United States have passed legislation authorizing the use of either physical or chemical castration.<sup>50</sup> Chemical castration, unlike physical castration, is not performed by amputating the testicles. It is done by inserting anti-androgen chemicals, either through pills or injections into a person's body with the aim of weakening the testosterone hormone. In simple terms, chemicals that are put into the body will reduce or even eliminate the ability to erect, libido or sexual desire. Chemical castration punishment is in the form of anti-

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<sup>49</sup> Linda E. Weinberger et al., "The Impact of Surgical Castration on Sexual Recidivism Risk Among Sexually Violent Predatory Offenders," *The Journal of the American Academy of Psychiatry and the Law* 33, no. 1 (2005): 18.

<sup>50</sup> Charles L. Scott and Trent Holmberg, "Castration of Sex Offenders: Prisoners' Rights Versus Public Safety," *Journal of the American Academy of Psychiatry and the Law* 31, no. 4 (2003): 502.

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androgen injections. If it is stopped, a person's sexual drive and erectile function will appear again. In Indonesia, the first example of castration verdict was given to MA, a pedophilia offender in Mojokerto, who raped 9 under-aged girls in 2019. He was also sentenced to 12 years in prison and a fine of 100 million rupiahs or a subsidiary to 6 months in prison.<sup>51</sup>

The PERPPU, which later was legislated through the Act No. 17 of 2016, serves as the legal basis for castrating pedophiles perpetrators. As stated in article 81 paragraph (7) of PERPPU, there are provisions for pedophilia perpetrators who can be subject to chemical castration which include two types as contained in article 81 paragraph (4) and (5): 1) perpetrators who have been sentenced for the same crime (residivist) and 2) perpetrators may be sentenced to death, life imprisonment or imprisonment for a minimum of 10 years and a maximum of 20 years, as stated in Article 81 paragraph (5) of PERPPU because of these conditions: the victim is more than 1 (one) person, resulting in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies (Suryani and Mulyati, 2012). The article 81 paragraph (4) of PERPPU states: *"In addition to the perpetrators as referred to in paragraph (3), the addition of 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted of committing a crime as referred to in article 76D"*.

The Indonesian Constitution of 1945 as the highest legal norm in Indonesia has outlined in article 28B paragraph 2 that *"every child has the right to survive, grow and develop and has the right to receive protection from violence and discrimination"*.<sup>52</sup> With the inclusion of children's rights in the body of the Constitution, it can be understood that the position and protection of their rights are important matters that must be further elaborated and conducted in daily reality. Even, in the Act No. 39 of 1999, 15 articles, -from

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<sup>51</sup> Imanuel Nicolas Manafe, "Baru Pertama Kalinya di Mojokerto, Hakim Vonis Pemerksosa 9 Anak dengan Hukuman Kebiri Kimia," *Tribunnews.com*, August 26, 2019.

<sup>52</sup> Government of Indonesia (GoI), *"Undang-Undang Dasar 1945"*, with its 1<sup>st</sup> amendment (19 October 1999), 2<sup>nd</sup> amendment (18 August 2000), 3<sup>rd</sup> amendment (19 November 2001), and 4<sup>th</sup> amendment (10 August 2002), <https://peraturan.bpk.go.id>, August 10, 2002.

articles 52 to 66-, were formulated specifically to regulate children's rights. This is because the legislators realize that children are group of humans who are very vulnerable to experience violations against their rights.<sup>53</sup>

The litigation process of pedophilic cases in Indonesia, from the processes of investigation, examination and up to trial, has complied with the code of ethics and conventional laws and teachings of Islamic law. Maximization of punishment is intended to provide a deterrent effect for offenders so as not to repeat the same crime. This is in line with the purpose of punishment in the perspective of conventional law and Islamic law in order to provide a deterrent effect and foster and recover pedophilia perpetrators. The weighting of sanctions is also a warning to the public not to commit these crimes. However, the application of sanctions to new types of punishment in Indonesia is the last alternative (*ultimum remedium*) for pedophilia offenders. This is relevant because of the high incidence and sadicity of pedophilia in the last twenty years. Meanwhile, the execution of castration convicts is carried out by the Indonesian National Police employing their medical officers.

As mentioned in a paper by Nur *et.al.*, relating to deterrent effect for pedophilia offenders, each region studied had been dealing with pedophilic cases very well. Recent penalties for the offenders were found to be more than five years or seven years whereas, before the Act No. 17 of 2016 enforced, the punishment for them ranged from five to seven years imprisonment. Since, its enforcement, the punishment has become increasingly severe. This enforcement is a form of the Indonesian government's seriousness in prosecuting such offenders. Previously, the penalty is a maximum of seven years; the new rule applies a sentence of more than seven years. In these three said cities, criminals of pedophilia or obscenity had been sentenced more than 10 years. This was due to a juridical consideration that, apart from the large number of children becoming victims, the crimes had left physical and psychological damages to the victims.<sup>54</sup>

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<sup>53</sup> Nur *et.al.*, "Building Pedophilia-Free Zones Based on Juridical and Educative Islamic Law's Perspectives", 278.

<sup>54</sup> Nur *et.al.*, 278.



#### **D. Litigation and Penology of Pedophilia in Islamic Law**

In the literature of Islamic law, litigation and sanctions for pedophilia offenders refer to, among others, the Holy Qur'an Surah (QS) al-Nisa': 65, QS. al-Ma'idah: 49, and QS. Sad: 26 and some hadiths of the Prophet narrated by those whose credibility and validity are not in doubt.<sup>55</sup> In all these verses, Allah commands muslims to uphold justice as taught by Him through His revelation and not to follow one's lust when doing so.

Pedophilia itself is a form of adultery. Regarding its punishment, there are some hadith from the Prophet (pbuh), including: 1) from Zaid bin Khalid al-Juhani, he said, "*I heard the Prophet (peace be upon him, pbuh) ordered that unmarried adulterers be lashed a hundred times and exiled for a year*",<sup>56</sup> and 2) in another hadith, from 'Ubadah ibn al-Shamit, he said that the Prophet (pbuh) said: "*Take it from me, take it from me! Allah has made for them a way out. (If adulterers are) a man with a woman then the punishment is to be lashed a hundred times and to be exiled for a year. (In case of adultery involving) two married people, then the punishment is to be lashed a hundred times and stoned*".<sup>57</sup>

Pedophilia can be classified into two categories namely being attracted to girls and attracted to boys (i.e. practising (*liwat*) or anal sex) with the following sanctions introduced.<sup>58</sup> For perpetrators of heterosexuality involving adultery, the *mazhab* (schools of thought) of Maliki, Hanafi, Hanbali, Shafi'i, Zaidiyah, Shi'a and Zahiri agree

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<sup>55</sup> A.Y. Ali, *The Meaning of the Holy Quran* (Beltsville-MD: Amana Publication, 2008), 204-205.

<sup>56</sup> Muhammad al-Bukhari, *Sahih Al-Bukhari*, vol. XII/156 (Riyadh, KSA: Bait al-Afkar al-Dauliyah, 1998), hadith no. 6831.

<sup>57</sup> Imam Muslim, *Sahih Muslim*, Vol. III/1316 (Riyadh, KSA: Maktabatur Rusyd, 2001), hadith no. 1690.

<sup>58</sup> Abdul Qadir Audah, *Tasyri' al-Jina'i al-Islami* (Beirut: Muassasah al-Risalah, 1992); See also Nur, "Islamic Law on Gender Based Sexual Violence"; See also Safinah, "Sanksi Hukum Terhadap Perbuatan Liwath dengan Anak di Bawah Umur (Studi Perbandingan Undang-Undang No. 35 Tahun 2014 Tentang Perlindungan Anak dan Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat)," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 1, no. 2 (November 1, 2016): 127-140, <https://doi.org/10.22373/petita.v1i2.88>; See also H.A. Qotadah, *et.al.*, "Problems With the Implementation of Qanun Aceh Number 6 of 2014 Concerning Jinayat Law," *Analisis: Jurnal Studi Keislaman* 22, no. 1 (June 30, 2022): 111-132, <https://doi.org/10.24042/ajsk.v22i1.6556>.

unanimously that they are subject to sanction of committing *zina* (adultery). If the conduct is limited to sexual harassment, there is a debate: according to Maliki and Shafi'i schools, they are sentenced through a *ta'zir*, while the Hanafi, Hambali, Zaidiyah, Shia and Zahiri schools agree with the imposition of committing adultery. For homosexual acts, the Shafi'i school prefers *rajam* (stoning) while the Hanafites opt imposing *ta'zir* to the perpetrators.<sup>59</sup>

Meanwhile, punishments for pedophiliacs can refer to the classical *fiqh* (Islamic jurisprudence) literature of the Shafi'i school, including the books *Asna al-Mathalib fi Syarh Raudl al-Thalib*,<sup>60</sup> *Nihayah al-Muhtaj ila Syarh al-Minhaj*,<sup>61</sup> *Tuhfah al-Muhtaj fi Syarh al-Minhaj*,<sup>62</sup> *Hasyiyah ash-Syarwani as mentioned in Tuhfah al-Muhtaj fi Syarh al-Minhaj*, *Fathu al-Wahhab bi Syarh Manhaj al-Thulab*,<sup>63</sup> *al-Mausu'ah al-Fiqhiyah al-Kuwaitiyah*,<sup>64</sup> and *Tafsir al-Qurthubi*.<sup>65</sup> These literature explain that *kasru al-shahwah* (destroying one's lust), the act of "turning off the libido" temporarily by using *kafur* (camphor, a crystalline ketone obtained from *cinnamomum camphora*) is legally permissible<sup>66</sup> for men who are not financially ready to get married but have a strong desire to have sexual intercourse. Borrowing *qiyas jali* (major analogy method) of the Shafi'i *mazhab*, the castration against pedophilia perpetrators is certainly permissible because the legal *illat* (effective cause) is much stronger and has a high preference value.

In the literature of *fiqh* of Shafi'i *mazhab*, people who already have the financial ability to get married (*mu'nah*) and already have a

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<sup>59</sup> Audah, *Tasyri' al-Jina'i al-Islami*.

<sup>60</sup> Zainuddin al-Anshari, *Asna Al-Mathalib Fi Sharh Raudlah al-Thalib* (Cairo: Dar al-Kitab al-Islami, tt.).

<sup>61</sup> Syamsuddin al-Ramli, *Nihayah Al-Muhtaj Ila Syarh al-Minhaj* (Beirut: Dar al-Fikr, 1984).

<sup>62</sup> Ibn Hajar al-Haitami, *Tuhfah Al-Muhtaj Bi Syarh al-Minhaj* (Cairo: Dar al-Alamiyyah, tt.).

<sup>63</sup> Zainuddin al-Anshari, *Fathu Al-Wahhab Bi Syarh Manhaj al-Thulab* (Beirut: Dar al-Fikr, 1994).

<sup>64</sup> al-Auqaf al-Kuwaitiyah, *Al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah* (Beirut: Dar al-Kitab al-'Ilmiyyah, 2020).

<sup>65</sup> Muhammad al-Qurthubi, *Tafsir Al-Qurthubi: Al-Jami' Li Ahkam al-Qur'an* (Beirut: Dar al-Risalah, 2006).

<sup>66</sup> al-Anshari, *Asna Al-Mathalib Fi Sharh Raudlah al-Thalib*.

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high sexual desire are legally obliged to do so.<sup>67</sup> However, those who have a high sexual desire but incapable financially are ordered to fast or suppress the sexual desire temporarily.<sup>68</sup> The suppression of sexual desire in the past was done by using *kafur*. Nowadays, the contextualization of *kafur* is in the form of chemical castration either using drugs or other means such as injections that can paralyze one's sexual desire. Such suppression is only temporary, not permanent.<sup>69</sup>

Regarding pedophilia with sexual disorders such as *liwat*, both homosexuals and lesbians, a punishment imposed is the death penalty to offenders. Therefore, In Islam, sexual harassment (including pedophilia) is regarded as a great sin because it is categorized as an act of adultery and can harm society both to people who are mature and sane as well as to children who are still weak and fragile. In Islam, every action that can be detrimental to the benefit of community must be subject to proper sanctions. Public interest must be upheld high and prioritized. Nur and Muttaqin emphasized that rejecting *mafsadat* (damages) over attaining *maslahat* (benefits) is in accordance with the principle of Islamic law that says “*dar’u al-mafasid muqaddam ‘ala jalb al-masalih*” (rejecting harms takes precedence over attaining benefits).<sup>70</sup> In this context, protecting the larger part of community, especially children, from becoming victims of pedophilia is prioritized than letting the perpetrators of pedophilia live with their wellbeing.

It must be realized that pedophilia offenders have the potency to transmit dangerous disease and destroy future generations; therefore,

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<sup>67</sup> Alfinna Ikke Nur Azizah, “Pengadaan Walimatul ’Ursy di Masa Pandemi dalam Perspektif Hukum Islam dan Hukum Negara,” *Maqashid: Jurnal Hukum Islam* 3, no. 2 (November 17, 2020): 52-65, <https://doi.org/10.35897/maqashid.v3i2.430>.

<sup>68</sup> Nur Hidayah, “Implementasi Ayat 32 Dan 33 Surat An-Nur Tentang Penyegeeraan dan Penundaan Pernikahan,” *Isti’dal: Jurnal Studi Hukum Islam* 7, no. 1 (2020): 34-52, <https://doi.org/10.34001/istidal.v7i1.2149>.

<sup>69</sup> See more in Sahnaz Kartika and Faisar Ananda, “Penjatuhan Hukuman Kebiri Kimia Pada Pelaku Kejahatan Pedofilia Dalam Perspektif Maqashid Syari’ah Asy-Syathibi,” *Yurisprudencia: Jurnal Hukum Ekonomi* 8, no. 1 (July 12, 2022): 88-104, <https://doi.org/10.24952/yurisprudencia.v8i1.5743>.

<sup>70</sup> Iffatin Nur and Muhammad Ngizzul Muttaqin, “Reformulating The Concept of Maslahah: From A Textual Confinement Towards A Logic Determination,” *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (June 2, 2020): 73-91, <https://doi.org/10.21154/justicia.v17i1.1807>.

they deserve proper punishment for the crime they do. In the perspective of Islamic law, through the preventive method of *usul fiqh* (fundamentals of Islamic jurisprudence) which is *sadd al-zari'ah* (closing the opportunity of wrongdoings), the heavy punishment for pedophilic offenders is meant to protect children as the nation's future generation and give deterrent effect to offenders in effort to preserve the larger community from the impacts of this particular crime. The weighting of castration sanctions and the death penalty for perpetrators with more than three victims introduced by the Indonesian government which is intended to save the future of children and as an effort to minimize the number of victims is in line with the objectives of Islamic law (*maqasid shari'ah*) which are to preserve the seven fundamental elements: *hifz al-din*, *hifz al-nafs*, *hifz al-'aql*, *hifz al-nasl*, *hifz al-mal*, *hifz al-'ird* and *hifz al-bi'ah* (protection and preservation of religion, soul, intellect, lineage, property, dignity, and environment respectively), which are commonly known as *kulliyat sab'ah*.<sup>71</sup>

All the founders of *mazhab* state that adultery, whether homosexual or others, is unlawful. According to Maliki, Shafi'i, and Hambali, the perpetrator of *liwat* (i.e. homosexual) must be subject to *hadd* (crime punishment) in the form of stoning regardless the perpetrator be a man, a woman, a widower or a widow. Meanwhile, according to Imam Hanafi, if the offender does it repeatedly then he/she must be castrated or killed. Offenders of *liwat* or homosexuals are included in the category of actions that are contrary to religious and moral norms, and deviate from the existence of humanity and nature.

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<sup>71</sup> For more explanation about *maqssid shari'ah*, read further: Jasser Auda, *Maqashid Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT., 2008); Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqasid Al-Shari'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020): 331-360, <https://doi.org/10.15408/ajis.v20i2.18333>.

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### **E. Conclusion**

Litigation and penology of pedophilia in Indonesia are intended to protect children in general from the harmful impacts of the crime in the form of psychological, physical, and social-moral damages, to save the larger society from the offenders' wrongdoings, and to give deterrent effect to the offenders so not to repeat what they did. The litigation process and the punishment imposed to offenders are in accordance with several dictums of both Indonesian conventional legislations and Islamic law, although the application of punishment has not been maximized optimally yet. In the perspective of *maqasid shari'ah*, the litigation and penology of pedophilia in Indonesia, which include some regulations involving threats of fines and imprisonment and even castration to offenders, is very much appropriate with the objectives of Islamic law, especially to preserve one's religion, soul, intellect, lineage, honor, and environment.

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