
Accepted: Oktober 2022	Revised: Oktober 2022	Published: Oktober 2022
---	--	--

Analysis of Islamic Law And The Book of Criminal Law In Collection of Criminal Actions

Samuji, Rusmiyah

Universitas Sunan Giri Surabaya

e-mail: sam.hafizah@gmail.com, rusmiyah@gmail.com

Abstract

In social life, the rules of society are generally governed by a law or regulation that guides action and behavior which is embodied in orders and prohibitions. However, it seems that orders and prohibitions alone are not enough to leave bad deeds, therefore it is necessary to have norms such as religious norms, moral norms, politeness norms, and legal norms. There are four combined theories of committing a crime according to the Criminal Code, namely: first, Stelsel Absorption, Second, Sharpened Stelsel Absorption, Third, Stelsel Cumulation, and fourth Stelsel Cumulation. Whereas Islamic law views that the combination of punishments arises as a result of a combination of committing several criminal acts where one of these actions has not yet received a final decision. Islam recognizes the existence of combined theories of committing criminal acts but these theories are not used absolutely and are limited by the theories of at-tadaahul (inclusion) and al-Jabbu (absorption). Based on the two theories above, in its implementation it is inseparable from the three combined forms of committing a crime, including: a combination of several fingers where all the punishments are pure Allah's rights, a combination of several fingers where in the punishment there are God's rights and adami's or slave's rights, and a combination of several jarimah where the punishment is a pure adami right. Meanwhile regarding the Criminal Code's view of the joint problem of committing a crime, that the provisions regarding this matter have been regulated in articles 63 to 75 of the Criminal Code. In these articles, it has been explained how the system of punishment for someone who has committed a combined crime has been committed.

Keywords: *Islamic Law; Criminal Code; Criminal Acts*

Introduction

Every individual cannot live in complete isolation forever. Humans need each other to survive and live as humans. The nature of this interdependence produces certain forms of cooperation that are steady and produce certain forms of society. Humans are social creatures, that's almost beyond doubt. The existence of humans as social beings, each individual has interests that are manifested in the form of cooperation and even vice versa can lead to contradictions.

The order of society is generally governed by a law or regulation which guides action and behavior which is embodied in orders and prohibitions. However, it seems that orders and prohibitions alone are not enough to stop bad deeds, therefore it is necessary to have norms such as religious norms, moral norms, politeness norms, and also legal norms.

The existence of norms that regulate and limit the freedom of individual behavior and action in society is a manifestation of community protection for its citizens in social life together. These norms or rules are then known as law, which is a set of provisions, both written and unwritten, that govern community order so that anyone who violates these rules will be subject to punishment according to existing provisions.

As it is known that evil in this world exists along with human development, the will to do evil is inherent in human life. On the one hand, humans want to live in a peaceful, orderly and just manner, meaning that they are not disturbed by things that contain elements of evil. Efforts to minimize crime rates continue to be carried out, both preventive and repressive in nature, for example by issuing regulations and laws. While that is repressive, namely the existence of punishments against parties who have committed crimes or violations.

There is a penalty that is threatened to a creator so that many people do not do something *jarimah*, because a mere prohibition or order will not be enough. Although the punishment itself is not a good, even a destruction for the maker himself. But such punishments are necessary, because they can bring real benefits to society.¹ When there is someone who does evil then he is punished, then this is a lesson for others not to commit crimes.

Besides that, a punishment that is threatened against an offender, in Islam is intended so that someone does not violate the *finger*, the sanction itself is essentially

¹ A. Hanafi, *Principles of Islamic Criminal Law* (Jakarta: Crescent Star, 1967), p. 3.

not so that the perpetrator of the finger can suffer because of retaliation, but is preventive in nature towards the act of finger and teaching and education.²

At present the basis for imposing punishment is a sense of justice and protecting the community. The sense of justice requires that a punishment must be in accordance with the magnitude of the maker's mistake. In the Criminal Code, the severity of the punishment that must be imposed for perpetrators of criminal acts such as theft, murder, rape, and others has its own provisions. However, the severity of the sentence has not been fully implemented by the judges. This relates to the existence of maximum and minimum punishment limits in the Criminal Code. Most judges sentence sentences taken in between these two limits, and rarely do judges hand down the maximum sentence except in exceptional cases.

Even in practice a judge or public prosecutor in making demands is considered too light, especially against the perpetrators of criminal acts that disturb the community. In this case, without reducing the freedom of the judge in imposing a sentence commensurate with the crime or criminal act committed by the defendant, either the public prosecutor or the judge, it is hoped that he will demand and impose an appropriate sentence, so that it has an impact, besides having the aspirations and justice of the community, it is also a deterrent for members of the public. who have the potential to become perpetrators of crimes (general deterrent effect).³

In human life, sometimes we often find someone doing a finger act, not only purely of one type, sometimes there is an intention to do one type of finger, but what happens is that they actually do several fingers. For example, one night A, who doesn't have a license, says he can drive a car, runs his vehicle in the city at a speed of more than 40 km/hour without installing lights. In this case A has committed a violation of 1) driving a vehicle without having a license, 2) exceeding the allowed car speed limit in the city, and 3) not installing lights at night. From this case the question arises how the punishment should be meted out? Will A be given three sentences at the same time (for committing three violations) or will he be given only one sentence but the heaviest one?⁴

From this example it can be seen that there has been a combination of committing criminal acts, where one person has committed several criminal acts. The

² Abdul Al-Qadir Audah, *Al Tasyri' al-Jinaiy al-Islamy*, Volume I, (Cairo: Dār al Urubah, 1963) p. 442.

³ Djoko Prakoso, *Splitsing of Criminal Cases (Splitsing)* (Yogyakarta: Liberty, 1988), p. 49.

⁴ E. Utrecht, *Hukum Pidana II* (Surabaya: Pustaka Tinta Mas, 1994) hlm. 137.

combination of committing criminal acts in positive law is often termed cumulative or concursus offenses which are regulated in chapter VI book 1 of the Criminal Code articles 63-71.

The existence of this combination of criminal events, gave rise to a combination of punishments. So the combination of punishments exists because there is a combination of committing criminal acts where each has not received a final decision. In the systematics of the Criminal Code, the regulations regarding the concomitant criminal acts are provisions regarding the size in determining a sentence (straftoemeting) which has a tendency towards aggravating crimes.⁵

As explained in article 63 paragraph (1) of the Criminal Code, namely:

"If an act is included in more than one criminal provision, then only one of these provisions is used, if the punishment is different, then the provision with the heaviest principal sentence is used." From this article, a person who commits two or several criminal acts at the same time can be said to have committed a combined criminal event as referred to in the article above.⁶

Meanwhile, in Islamic law, the combination of committing this crime is a matter of debate among scholars, as it is known that in Islamic Shari'a there are various and varied criminal matters, so it can be said that for one particular type of crime there is a separate law, such as stealing. with the punishment of cutting off hands, murder with qishos, adultery with stoning and others. However, it is necessary to review that not all criminal events have provisions in the texts of the Qur'an and the Sunnah of the Prophet. So in this case the judges are given the authority to give punishment for criminal acts committed concurrently or simultaneously.

As a result of the existence of different types of punishment, it causes people to feel that there is no need to think about how to apply punishment, if a person simultaneously commits more than one type of criminal activity because he does not face any difficulties. In Islamic law, it is exemplified by cases of theft followed by rape and murder. In this case, will he be sentenced to three punishments at once, namely the punishment of cutting off his hands, stoning and then the punishment of qishos, or will he only undergo one of the heaviest punishments, namely the

⁵ Aruan Sakidjo dan Bambang Pornomo, *Hukum Pidana Dasar Aturan Umum, Hukum Pidana Kodifikasi* (Jakarta: Ghalia Indonesia, 1990), hlm. 169.

⁶ R. Soesilo, *Criminal Code and Comments Completely Article by Article* (Bogor: Polikeia, 1981), p. 68.

punishment of qishos. Scholars also differ on how to give punishment for this combination of acts.

How Islam views this problem is certainly different from the view of the Criminal Code in resolving this combination of actions, where this is closely related to the problem of imposing a sentence which will later be imposed. The existence of differences between Islamic law and the Criminal Code in resolving this problem makes the basis for the authors to conduct further research, namely by comparing the two so that there appear to be aspects of similarities and differences between the two.

Method

The writing of this research is based on the following methods: This type of research is based on literary or library research, namely by exploring various sources of literature that are related to the existing problems, namely a combination of committing criminal acts in terms of the Criminal Code and Islamic law. The type of research in this thesis is analytic descriptive in nature, namely describing the combination of committing a crime in the Criminal Code and Islamic law, which is then analyzed from each of these laws. While the research approach is that the author uses a normative juridical approach, namely an approach by looking at existing legal provisions with the intention of providing an assessment of the combination of committing a crime in the view of the Criminal Code and Islamic law.

The data collection was carried out by library research, namely by obtaining primary and secondary data. Primary data include Abdul Qadir Audah with his book at-Tasyri' al-Jinaiy al-Islamy, Muhammad Abu Zahrah with his book al-'Uqubat: al-jarimah wa al-uqubah fi al-Fiqh al-Islami, then from the perspective of positive law namely the Criminal Code (KUHP). While secondary data includes books, magazines, research results that contain information relevant to this discussion.

Discussion

Joint Committed Criminal Acts According to Islamic Law

Basically in Islamic law it is known that every crime or finger has its own legal provisions. The diversity of types of punishment contained in Islamic law often creates problems when someone commits multiple finger or multiple finger. Which punishment will be meted out? Is it one type of punishment or is it all punishments?

The combination of committing a crime in Islamic law does not actually have a special term. However, in this sense, there are two things that need to be

considered, namely the definition of a combined offense and a series of violations, both of which are like two sides of a coin, meaning that there is a combined offense due to a series of violations.

In Islamic law, this combination of punishments is known as ta'adudul 'uqubat (multiple punishments) and al-ijtimaul 'uqubah (collecting several punishments). Abdul Qadir Audah in al-Tasyri' al-Jinai al-Islami, says:

تتعدد العقوبات كلما تعددت الجرائم. وتعدد الجرائم كلما ارتكب شخص جرائم متعددة قبل الحكم عليه نها نيا في واحدة منها.⁷

From the above understanding, it can be seen that joint fingering occurs when a person performs several jarimah before the final sentence is determined for each finger. This is when the first crime has not received sanctions or punishment as a result of the final decision given to the perpetrator of the crime, then he commits the second, third and so on violations. So when the perpetrator is caught he is exposed to the charges according to what he has violated with each sanction that is threatened for the crime he has committed.

Departing from this understanding, it can be seen the difference between the combination of doing jarimah and the repetition of doing jarimah. In a combination of committing a crime, in this case it is a combination of punishments, the perpetrator of the crime commits several fingers where the decision for each finger has not yet been determined, whereas in repeating fingers it occurs when the perpetrator commits a second finger and so on after being sentenced for the first finger. In this matter of repeating the finger, the jurists agree to punish the perpetrator of the crime, according to the penalty. Because according to them, repetition of the finger by someone after he has received the final verdict, actually it can show the stubborn nature of the perpetrator of the finger and the ineffectiveness of the first sentence. Therefore, it is only natural that there is a tendency to increase the punishment for repeating the finger.⁸

Joint Forms of Committing Criminal Acts

As it is known that the combination of committing a crime causes the emergence of a combination of punishments. The emergence of theories in combined punishment is inseparable from various forms of combination. Ibnu Qudamah in his

⁷ Abd. Al-Qadir al-Audah, al-Tasyri' al-Jinai al-Islami, Volume I (Beirut: Muassasah al Risalah, 1987), p. 744.

⁸ A. Hanafi, Principles of Islamic Criminal Law, Cet. 1st (Jakarta: Crescent Star, 1967), p. 247.

book al-Mughni said that if the collected jarimah, hudud jarimah where the punishments are different, then it will not be separated from the three categories below, the three categories are: First: A combination of several jarimah where all the punishments are purely the right of Allah. Second: A combination of several jarimah where in the punishment there is the right of Allah and at the same time the right of the servant or the right of Adami. Third : Combination of several jarimah where the punishment is purely Adami's right.⁹

The three categories above are also explained by Wahbah al Zuhaili in his book al Fiqh al-Islam wa adilaatuhu. First, the situation where there is a combination of several fingers where all the punishments are purely the right of Allah. In this state, several jarimah are accumulated in which there are pure rights of Allah or a combination of punishments for violating the rights of pure Allah. There are three forms of this combination, namely:

a. A combination of several fingers that carry the death penalty

Syafi'i said that someone who commits a combination of several crimes, whether in which there is a death penalty or not, then all the punishments that are threatened must be carried out. Meanwhile, some jurists are of the opinion that other than the death penalty, it means group and only the death penalty is carried out. This opinion is according to Ibn Mas'ud, Atha', as-Sya'bi, an Nakhaiy, al-Auza'iy, Hammad, Malik and Abu Hanifah.¹⁰

The Hambaliyah, Hanafiyah and Malikiyah groups say that the punishments are mutually exclusive (at Tadāhul), that is, one sentence is mutually exclusive so that the perpetrator is subject to only one punishment, namely the death penalty as the heaviest punishment. This opinion is also supported by Ibrahim al-Nakha'i that punishment is fulfilled by carrying out the death penalty, because there is a collection of pure God's rights and the purpose of the punishment itself is to warn. With the imposition of the death penalty, the need for the warning was deemed sufficient.¹¹

Meanwhile, Ibn Qudamah followed the opinion of Ibn Mas'ud who said:

⁹ Abi Muhammad Abdullah bin Ahmad bin Muh. Ibn Qudamah, *Al Mughni* (Riyad: Maktabah al Riyadi al Haditsah, t.t.), hlm. 298-299.

¹⁰ Muh. Abu Zahrah, *al_uqubah: al Jarimah wa al Uqubah fi al Fiqh al Islam* (Beirut: Dar al Fikr, t.t.), p. 298.

¹¹ Wahbah al Zuhaili, *al Fiqh ...*, p. 169.

إذا اجتمع حدان أحدهما القتل أحط القتل بذلك¹²

In fact, each sentence is intended to teach (educate) a lesson and prevent further fingernails from occurring, so that if there are several finger-mortgage crimes and there is a death penalty in them, then there is no need for punishment other than the death penalty to be carried out.

In this matter, Syafi'i's opinion is considered quite heavy in determining the punishment for the violation of several fingers. Syafi'i does not admit the existence of the theory of mutual entry that if there is a combination of several fingers whose punishments are different then the punishments must be carried out one by one and these punishments cannot enter between some of the others.

b. A combination of several fingers that do not carry the death penalty

Such as the gathering of jarimah zina ghairu mukhson, theft, drinking khamr repeatedly and each has not received a final decision. In this matter there are two opinions: first, that all punishments must be carried out. The reason is that because of the combination of doing the jarimah it is different and there is more than one. The number of (more than one) causes makes punishments unable to enter into each other or be combined because the reasons are also different. Scholars agree to impose all punishments, as long as they do not enter each other.

However, scholars differ on which punishment should be carried out first. Syafi'iyah and Hanabilah carry out the lightest punishments first, such as had drinking khamr, had adultery, cutting off hands for finger theft. The punishment of cutting off the finger of theft can be intertwined with the punishment of cutting off the hand of the finger of hirabah with confiscation of property.

While Malikiyah is of the opinion that the punishment of cutting must take precedence over the punishment of tying. Hanafiyah left the election to determine which sentence would be meted out to the government first. If the government wants the adultery punishment to take precedence, the adultery penalty will be carried out, or it wants the hand cutting punishment to take precedence and so on.

¹² Abi Muh. Abdullah bin Ahmad bin Muh. Ibn Qudamah, *al Mughni ...*, hlm. 299.

Joint Committing Criminal Acts (Concursus) According to the Criminal Code Definition and Legal Basis

In order to provide a clearer picture of the definition of a combination of committing a crime, it is necessary to know what the opinions of legal scholars are in providing a definition regarding the combination of committing this crime. The combination of committing a crime is often termed *concursum* or *samenloop*¹³ which means committing a crime committed by one person simultaneously.¹⁴

In the Criminal Code, the combination of committing a crime is often termed *Samenloop van Strafbare Feiten*, namely one person who commits several criminal acts, meanwhile *Mas'ad Ma'shum* provides a combined definition of committing this crime with several actions committed by a person.¹⁵

Mr. On the other hand, he prefers to use the term "correctly crushed offense" because in the *concursum* it appears that several precisely crushed offenses were caused by the actions of the maker.

From the above understanding, there are three things that need to be considered, namely regarding the combined meaning of committing the crime itself and regarding inclusion and also regarding repeated criminal acts.

In the delict of inclusion (*delneming*) several people are involved in one punishable act, whereas in a combination of several acts or *concursum* there are several punishable acts committed by one person, as in *recidive*. However, in *recidivism*, several criminal acts that have been committed are interspersed with a court decision that has permanent force, so that the convict is declared to have committed the crime again.

Meanwhile, in the combination of committing criminal acts, the perpetrator has successively committed several criminal acts without giving the court the opportunity to try and sentence one of these acts.¹⁶

The combination of committing a crime is also often equated with committing a crime together, namely someone who commits an act that violates

¹³ Nur'ainy. AM., *Hukum Pidana* (Yogyakarta: Fakultas Syari'ah IAIN Sunan Kalijaga, 2003), hlm. 85.

¹⁴ Aruan Sakidjo dan Bambang Poernomo, *Hukum Pidana Dasar Aturan Umum Hukum Pidana Kodifikasi* (Jakarta: Ghalia Indonesia, 1990), hlm. 169.

¹⁵ Mas'ad Ma'shum, *Hukum Pidana I* (Yogyakarta: Fakultas Syari'ah IAIN Sunan Kalijaga, 1989), hlm. 122.

¹⁶ Moch. Anwar, *Beberapa Ketentuan Umum dalam Buku Pertama KUHP* (Bandung: Alumni, 1986), hlm. 84.

several legal provisions or commits several criminal acts, each of which is an independent act that will be tried all at once, where one of the actions has not yet received a decision. permanent.¹⁷

The combination of committing a crime (*concursum*) is regulated in the Criminal Code from articles 63 to 71 book I Chapter VI. From these articles, it can later remove the impression that has existed in society that someone who commits a combination of several criminal acts, he will get a punishment that multiplies according to the actions he has committed.

Joint Forms of Committing Criminal Acts

Combined punishment occurs when there is a combination of committing a crime. The combination of committing a crime only exists when someone commits several fingers before there is a final legal ruling on one or more of these actions. According to legal science, in positive law there are three combined forms of committing a crime, namely:

- a. A combination of one deed / idealistic *concursum* / Eendaadse Samenloop
- b. Continuing Actions / Voorgezette Handeling
- c. A combination of several actions / *concursum* realists / Meerdaadse Samenloop

The explanation of the three forms of combined criminal acts is as follows: Combination of one act or idealistic *concursum* or eendaadse samenloop. That is a combination of an act when a person commits an act and by committing that act he commits a violation of several criminal regulations.¹⁸

This idealistic *concursum* is regulated in article 63 paragraph (1) of the Criminal Code, namely:

“If an act is included in more than one criminal provision, then only one of those provisions is used; if the punishment is different, then what is used is the provision with the heaviest principal punishment.

The combination of one action (*concursum idealis*) according to Article 63 is to commit an act which includes several criminal provisions which cannot be separated from one without eliminating the other (*conditio sine quanon*).¹⁹

The main issue in this idealistic *concursum* is regarding the meaning of an act (*feit*). The question whether an action can be said to be a combination of actions

¹⁷ Aruan Sakidjo dan Bambang Poernomo, *Hukum ...*, hlm. 169-170.

¹⁸ Moch. Anwar, *Beberapa ...*, hlm. 84.

¹⁹ R. Soesilo, *KUHP...*, hlm. 68.

together, is difficult to answer. Science and experience are always looking for limits that can be used for everything, even though from several judges' decisions it can be seen that there are some indications, decisions are still more or less based on casuistic considerations. In its development, the notion of *feit* varies. The old opinion says that what is meant by *feit* is material action.²⁰

Jonkers argues as quoted by E. Utrecht in his book *Criminal Law* that defines an act as an act that can be punished if an act that can be punished cannot be included in several punishment regulations, because every act that can be punished already has its own legal regulations. This means that the act has a material meaning meaning that a criminal act should have actually occurred. Meanwhile, classical authors such as Van Hamel, Simons and Zevenbergen interpret *feit* as a physical act (*Lichamelijke Handeling*). Vos also makes a clear formulation of *feit* as a physical act, namely a material action or physical action, which is an act that is seen apart from the consequences determined by that act, apart from subjective elements (mistakes) and apart from all other elements. accompanying.

For example, someone who rides a motorbike at night and is also drunk, with a vehicle without lights and without a license. In this case, if it is applied in the sense of one material act, then the case is only one act or one body movement or mere physical action, so that this case is also a combination of one act as stated in *Arrest Hoge Road* dated 26 May 1930. However, this case this cannot give legal satisfaction because basically criminal law does not question body movements. Departing from this case, on 15 February 1932 the *Hoge Road* changed its stance which was contrary to the *Hoge Road* on 26 May 1930. According to the *Hoge Road* 15 February 1932 in the above case the person committed two kinds of violations which each stand alone and different properties.²¹

The two actions cannot be considered to result in a combination of one action with the following considerations:

1. Whereas the characteristics of the first action must be sought in the situation where a person is, while the second is in the state of his motorized vehicle. That the two actions must be viewed from the point of view of criminal law, regardless of one another.

²⁰ Lamintang dan Djisman Samosir, *Hukum Pidana Indonesia* (Bandung: Sinar Baru, 1979), hlm. 47.

²¹ E. Utrecht, *Hukum Pidana II* (Surabaya: Pustaka Tinta Mas, 1994), hlm. 140.

2. That the togetherness of events is not something that actually has to arise, since the first action did not give rise to the second, then the first action cannot be considered as being in a state where the other actions were.²²

Comparative Analysis Between Islamic Law and the Criminal Code

Both the Islamic Shari'ah and the Criminal Code both acknowledge the existence of the combined theory of committing this crime. Even so, there are differences as well as similarities between the two.

The similarity is that both of them use a limited multiple theory. In this double theory, every finger action will be punished according to the existing provisions. However, the punishment is still limited, namely not exceeding a third of the various types of punishment that should be imposed. The reasons used from the two laws are also the same, namely when there is a combination of committing a crime, it will result in the emergence of a combination of punishments. In such conditions there were various kinds of punishments, so that there were too many sentences. If the punishment is in the form of a prison sentence, the length of the imprisonment can also be life imprisonment if it is not limited. This is what is not desired in the two laws.

The basic premise of the two laws is that there is an element of forgiveness. Both of them see the perpetrator of the crime in an obstructed position when carrying out the second finger, because he has not received punishment for the first finger.

Both are also of the opinion that a combination of punishments without any restrictions will lead to results that are rejected by reason and Islamic thought.²³

The other similarity is that both admit the existence of the theory of absorption (absorption or al jabbu). Even though in Islamic law there is one school of thought who does not accept this theory. Imam Malik, Abu Hanifah and Imam Ahmad agreed that the death penalty, which is the most severe punishment, absorbs all types of punishment. While Imam Syafi'i is of the

²² Moch. Anwar, *Beberapa ...*, hlm. 90-91.

²³ Abd. Al-Qadir al- Audah, *al-Tasyri' al-Jinai al-Islami*, Jilid: I (Beirut: Muassasah al Risalah, 1987), hlm. 751.

opinion that each finger of punishment cannot be combined with one another, but must be imposed one by one.²⁴

In the Criminal Code this absorption theory is regulated in article 63 which determines the heaviest punishment for several different sentences. Even though there are some similarities between Islamic law and the Criminal Code, it does not mean that there are no differences between the two. The use of multiple theories that are not absolute in Islamic law is a triggering factor for the difference between the two.

These differences appear in the following matters:

1. The use of the multiple theory is limited in Islamic law which is not used absolutely, but applies it when there is one finger that is carried out repeatedly and also on different fingers, but the punishment has the same goal. The reason is that each finger has its own punishment. If someone does repeated fingering before getting the punishment for the first or earlier finger, then logically he is prevented from receiving the second punishment because he has not been punished for the first finger. In this case, it means that there is no theory of multiple punishments. If the finger is different, then the failure to impose one of the punishments from the finger that has been committed cannot be a barrier for the second finger to get a penalty as well.

The application of the second punishment is expected to prevent the perpetrators of crimes from committing similar crimes, because basically each sentence has a specific purpose and purpose.

In the Criminal Code, this law abolishes the punishment for other fingers so that there is a tendency that if someone commits a finger that carries a heavy penalty, it is very likely that he will do another finger that is lighter.

2. The theory of mutual entry used in Islamic law is much broader in scope than the Criminal Code. Because the law does not recognize *al-tadaahul* except in one case, namely when the perpetrator commits several crimes to achieve one goal provided that these fingers have an inseparable connection between one another.

In this case, between Islamic law and the Criminal Code have differences in terms of foundation. The Criminal Code makes the basis for

²⁴ Ahmad Djazuli, *Fiqh Jinayah (Efforts to Overcome Crime in Islam)* (Jakarta: PT. Raja Grafindo Persada, 1997), p. 30.

entering into each other (al-tadaahul) if the perpetrator commits several fingers with one goal where the fingers are interrelated so that it is impossible to separate them. Whereas syara' law makes the theoretical basis of entering into each other if the finger punishments are carried out for one purpose. From this it can be seen that the KUHP theory of mutual entry is subject to the goals desired by the legislator.²⁵

3. In the Criminal Code, imprisonment is a basic punishment with maximum and minimum limits. In this case it means that the punishment is limited by time. Meanwhile in Islamic law the basic punishments are "cutting" and "lashing", where these punishments are limited by the morals or character of the finger's behavior.
4. Even though the Criminal Code and Islamic Law both recognize the theory of absorption of punishment (al jabbu) as explained earlier, there are differences between the two.

In Islamic law, this absorption theory only uses combined punishments where there is only a murder penalty. Meanwhile, in the Criminal Code, this theory of absorption is used when there is a combination of punishments with the heaviest penalties, so it is hoped that this theory limits freedom in sentencing so that it is carried out according to its degree.

As explained, Islamic law does not make imprisonment a basic punishment which is limited by time as is the case in the Criminal Code. However, Islamic law stipulates prison sentences without any time limits that are absolutely used, such as stealing by cutting off hands, adultery by being whipped, and so on. The purpose of Islamic law in applying this absorption theory is to improve the character of the perpetrators of jarimah and also so that the person who performs the jarimah repents so that he does not repeat the jarimah again. There is no time limit in giving punishment, so the perpetrators of crimes get out of prison perfectly, namely by repenting and improving morals, not because of the length of time in prison.²⁶

From the similarities and differences between Islamic law and the Criminal Code in looking at the joint problem of committing the crime, the author concludes that between the Criminal Code and Islamic law which is

²⁵ Abd. Al-Qadir al- Audah, *al-Tasyri'* ..., hlm. 753.

²⁶ Ibid., hlm. 754.

better used as a guide in giving punishment to perpetrators of joint crimes are the theories contained in Islamic law.

With the existence of these theories, there is a possibility that Islamic law can include and provide thought contributions to the Criminal Code in dealing with the combined problem of committing this crime.

Conclusion

From the results of the research that the authors put forward, the authors can draw several conclusions, namely:

1. There are two theories which are combined theories of committing criminal acts according to Islamic law, namely: first, the theory of mutual entry or *al tadaahul*, that is, if there are several combinations of fingers, then some of these fingers enter each other, some enter into others, so that for all *jarimah* only given one punishment. Second, the theory of absorption or *al jabbu*, which is sufficient for the implementation of a sentence whose implementation hinders the implementation of other punishments.

Meanwhile, according to the Criminal Code, there are four combined theories of committing a crime, namely: first, *Stelsel Absorption*, namely for a combination of single criminal acts and continuing actions (articles 63 and 64 of the Criminal Code). Second, *Stelsel Absorption* which is sharpened, namely for a combination of multiple criminal acts where the main punishment is the same (article 65 of the Criminal Code). Third, *Cumulation Stelsel*, which is a combination of multiple criminal acts against violations with violations and crimes with violations (article 70 of the Criminal Code). And fourth, the amended *Stelsel Cumulation*, namely for a combination of multiple criminal acts where the principal punishments are not the same (article 66 of the Criminal Code).

2. Islamic law views that the combination of punishments arises as a result of a combination of committing several criminal acts where one of these actions has not yet received a final decision. Islam recognizes that there are combined theories of committing a crime but these theories are not used absolutely and are limited by the theories of *al tadaahul* (inclusion) and *al Jabbu* (absorption).

The implementation of these two theories is inseparable from the three combined forms of committing a crime, including: a combination of

several fingers in which all punishments are pure Allah's rights, a combination of several fingers in which the punishment includes the rights of Allah and the rights of adami or servant, and a combination of several jarimah where the punishment is a pure adami right.

Meanwhile regarding the Criminal Code's view of the joint problem of committing a crime, that the provisions regarding this matter have been regulated in articles 63 to 75 of the Criminal Code. In these articles, it has been explained how the system of punishment for someone who has committed a combined crime has been committed.

References

- A. Hanafi, *Principles of Islamic Criminal Law*, Jakarta: Crescent Star, 1967.
- Audah, Abdul Al-Qadir. *Al Tasyri' al-Jinaiy al-Islamy*, Volume I, Cairo: Dār al Urubah, 1963.
- Ahmad Djazuli, *Fiqh Jinayah (Efforts to Overcome Crime in Islam)*, Jakarta: PT. Raja Grafindo Persada, 1997.
- Aruan Sakidjo dan Bambang Pornomo, *Hukum Pidana Dasar Aturan Umum, Hukum Pidana Kodifikasi* Jakarta: Ghalia Indonesia, 1990.
- Abū Abdillah Muhammad bin Ismail al Bukhāri, *Sahih al Bukhāri*, Volume IV Beirut: Dar al Fikr, t.t.
- Abdullah, Abi Muhammad bin Ahmad bin Muh. Ibn Qudamah, *Al Mughni* Riyad: Maktabah al Riyadi al Haditsah, t.t.
- Abd. Al-Qadir al-Audah, *al-Tasyri' al-Jinai al-Islami*, Volume I Beirut: Muassasah al Risalah, 1987.
- A. Hanafi, *Principles of Islamic Criminal Law*, Cet. 1st Jakarta: Crescent Star, 1967.
- Djoko Prakoso, *Splitsing of Criminal Cases (Splitsing)* Yogyakarta: Liberty, 1988.
- E. Utrecht, *Hukum Pidana II* (Surabaya: Pustaka Tinta Mas, 1994.
- Lamintang dan Djisman Samosir, *Hukum Pidana Indonesia*, Bandung: Sinar Baru, 1979.
- Muh. Abu Zahrah, *al-uqubah: al Jarimah wa al Uqubah fi al Fiqh al Islam*, Beirut: Dar al Fikr, t.t.
- Nur'ainy. AM., *Hukum Pidana* (Yogyakarta: Fakultas Syari'ah IAIN Sunan Kalijaga, 2003.

Mas'ad Ma'shum, *Hukum Pidana I*, Yogyakarta: Fakultas Analysis of Islamic Law And The Book of Criminal Law In Collection of Criminal Actions Syari'ah IAIN Sunan Kalijaga, 1989.

Moch. Anwar, *Beberapa Ketentuan Umum dalam Buku Pertama KUHP*, Bandung: Alumni, 1986.

R. Soesilo, *Criminal Code and Comments Completely Article by Article Bogor: Polikeia*, 1981.

Copyright © 2022 **Journal El-Faqih**: Vol.8, No. 2, Oktober 2022, e-ISSN: 2503-314X ;
p-ISSN: 2443-3950

Copyright rests with the authors

Copyright of Journal El-Faqih is the property of Journal El-Faqih and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.

<https://ejournal.iaifa.ac.id/index.php/faqih>