



Combined Criminal Acts in Islamic Criminal Law

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Abstract

Combined criminal acts in Islamic law, several criminal acts can be committed simultaneously. This study aims to analyze the punishment system for perpetrators who commit more than one crime, both according to Islamic law and the Criminal Code. In Islamic law there are theories of al-tadakhul (mutual entry) and al-jabbu (absorption), while the Criminal Code regulates combined criminal acts through several theories such as the Absorption System and Cumulation System. This study also aims to describe how the criminal punishment system for a double crime is carried out both according to Islamic law and the Criminal Code, and to provide a deeper explanation of the theory of combined criminal acts in Islamic law and the Criminal Code. Combined criminal acts are also one of the phenomena in criminal law that involve more than one criminal act committed by a perpetrator. In the perspective of Islamic criminal law, combined criminal acts in Islamic criminal law and how the application of punishment is in accordance with sharia principles. Through a normative approach by examining primary sources such as the Qur'an, hadith, and works of classical scholars, this study is that criminal law in Islam has a unique mechanism in responding to a combination of criminal acts, including by considering the type of violation, the purpose of preventing crime, and justice for victims. The results of the study indicate that Islamic law prioritizes restorative justice and prevention as the main basis for sentencing for criminal acts, by considering the objectives of sharia. This study has implications for a deeper understanding of the flexibility and relevance of Islamic criminal law in handling complex cases in the contemporary era.

I. INTRODUCTION

Islam pays great attention to providing protection for the rights of every Muslim concerning life, property and honor, both concerning the rights of Allah SWT, and human rights will have legal consequences for the perpetrators. Contemporary scholars use the term Fiqh jinayah as one of the fields of fiqh science that discusses the issue of criminal acts and their laws.(Siregar et al., 2024).

Fiqh jinayah consists of two words, namely fiqh and jinayah. The meaning of fiqh in terms of language comes from two words, namely faqiha, yafqahu, fiqhan, which means to understand or comprehend. While the meaning of fiqh in terms of terminology, fiqh is the science of practical sharia laws taken from detailed evidence. By analyzing the definition of fiqh above, it can be concluded that fiqh is the science of practical sharia laws and is the result of a mujtahid's

analysis of detailed evidence, both in the Qur'an and the hadith.(Sari, 2023).

Crime or criminal offenses can certainly occur at any time. The perpetrators commit crimes with different motives, with different crimes, even the status of the perpetrators is also different. This criminal offense may be committed by an individual or in a group, either for one type of crime at one time or several criminal crimes at the same time. Several crimes committed at the same time are called combined criminal acts, or some also give the term concurrent criminal acts.

Definition according to legal experts, namely a criminal act from a term known in Dutch law. "starfbaar feit". A criminal act is also referred to as a crime, an act that can be punished, or a criminal event as a whole is an act that violates or is contrary to the law carried out by a responsible person.(Amalia et al., 2025). The combination of criminal acts or in Dutch criminal terms called

samenlop or concursus in Latin, is a combination of two or more criminal acts for which one or several people are responsible in the context of participation, and from the series of criminal acts committed, none have been tried. (Africa, 2017).

In Islamic criminal law, this combination of criminal acts is called ta'addud al-jara'im. This combination or concurrency consists of two types, namely the complementary theory called tadakhul and the absorption theory or called al-jabb. The al-tadakhul theory requires that a person who commits several criminal acts can be sentenced to only one type of punishment because it is considered that one type of punishment is able to complement each other. However, if the punishment given is for different interests and purposes, for example in cases of adultery, theft, or murder, the punishment given varies according to the form and type of crime committed. (Muhammad Maulana, Edi Yuhermansyah, 2022).

The purpose of the al-jabb theory is to require someone who commits two or more crimes to be sentenced to only one crime because it is considered that the punishment imposed absorbs the other punishments. (Maulana et al., 2022). In sentencing a perpetrator who commits more than two crimes, it is sufficient to punish him with only one punishment, as long as the punishment is able to absorb the type of punishment from other crimes. This type of punishment is none other than the death penalty because the death penalty absorbs all types of punishments that exist for all existing crimes. In practice, the combination of crimes that are relatively common in society is the crime of murder and then stealing the victim's property as in decision Number 39/Pid.B/2019/PN.Tdn. in this literature the defendant has been charged by the public prosecutor with a combination charge, namely the first primary violation of Article 340 of the Criminal Code, subsidiary Article 338 of the Criminal Code. Second, it violates Article 363 paragraph (1) point 3 of the Criminal Code.

Based on this judge's decision, it tends to be unable to prove that the defendant really planned to commit the crime of premeditated murder as stipulated in Article 30 of the Criminal Code. This is supported by the prosecutor's demands for ordinary murder cases using the provisions of Article 338 as a subsidiary demand. The use of Article 338 of the Criminal Code by the public prosecutor appears to be a way to warn that if the defendant is not proven to have violated Article 340, then the alternative is Article 338. In the

same circumstances, the judge in his considerations also tends to be unable to prove that the defendant really violated the provisions of Article 340 of the Criminal Code.

II. RESEARCH METHODS

This research method for criminal acts in Islamic criminal law generally uses a normative and comparative approach. (Jonaedi Efendi et al., 2018). This research often involves literature review to analyze legal norms and classification of criminal acts, such as adultery and terrorism, from the perspective of positive and Islamic law. This approach includes descriptive-analytical analysis to understand the applicable sanctions and legal considerations, data collected from literature, books, and relevant legal documents to support the analysis.

III. RESULTS AND DISCUSSION

A. Concept of Islamic Criminal Law

Islam pays great attention to providing protection for the rights of every Muslim regarding life, property and honor, both regarding the rights of Allah SWT and human rights which will have legal impacts on the perpetrators. Contemporary scholars use the term Jinayah Fiqh as a field of fiqh science that discusses the issue of criminal acts and their laws. (Sari, 2023).

Jinayah fiqh consists of two words, namely fiqh and jinayah. The linguistic meaning of fiqh comes from the pronunciation faqiha, yafqahu, fiqhan, which means to understand, or understand. Meanwhile, the definition of fiqh in terms of terms, fiqh is the science of practical sharak laws taken from detailed postulates. By analyzing the definition of fiqh above, it can be concluded that fiqh is the science of practical sharia laws and is the result of a mujtahid's analysis of detailed propositions, both contained in the Qur'an and hadith. (Sari, 2023).

The definition of the term jarimah or jinayah put forward by scholars is: (Ali, 2007)

All prohibitions are haram because they are prohibited by Allah and are threatened with the laws of both had and takzir, the meaning of al-mahdhurat is either carrying out prohibited actions or abandoning ordered actions..

The word jarimah means bad, ugly, or sinful deeds. The word jarimah is identical to the meaning referred to in positive law as a criminal act or violation. Jarimah has the same meaning as the term jinayah, both in terms of language and in terms of terms. In terms of language, jarimah is a derived word (masdar) with the origin of the

word jarama which means to do wrong, so jarimah means wrongdoing. The meaning of jarimah as stated by Imam Al-Mawardi is: (Ali, 2007)

Jarimah are actions that are prohibited by sharak which are threatened by Allah with the punishment of had or takzir.

According to Makhrus Munajat, jinayah is an act that is prohibited by sharak because it can cause danger to religion, life, property, lineage and reason. (Munajat, 2011). Some jurists use the word jinayah for actions related to the soul or body parts, such as killing, maiming, aborting a pregnancy and so on. Thus, the term fiqh jinayah is the same as criminal law.

From the definition above, the concept of jinayah itself is related to the issue of prohibition because every action is prohibited by sharak. From this definition, it can be understood that punishment is one of the actions given as a consideration for actions that violate the provisions of sharak, with the aim of maintaining order and the interests of society, as well as protecting the interests of each individual.

B. Combined Criminal Acts

A combination of acts occurs if the perpetrator commits more than one crime and there is no judge's decision between the crimes. If there is a judge's decision between the crimes, then it does not constitute recidivism. (Africa, 2017).

This combination of crimes can take various forms. However, it can be simply described as follows: (Africa, 2017)

1. With one physical act, a person fulfills several criminal acts. For example, a person rapes a woman in a park that is visible to the public. Here the perpetrator has fulfilled the crime of rape (Article 285 of the Criminal Code) and the crime of damaging public morality (Article 281 of the Criminal Code), this is called *concursum idealis*. According to Article 63 (1) of the Criminal Code, if an act is included in more than one criminal rule, then only one of those rules is imposed, if different, then the rule with the most severe principal punishment is used. So now there is absorption of the heavier punishment absorbing the lighter punishment.
2. A person commits several acts, each of which is a crime. The crimes can be of the same type or different, called *concursum realis*, regarding the punishment regulated in articles 65, 66 and 70 of the Criminal Code. Article 65 of the Criminal Code

stipulates that if there is a combination of crimes whose main threat is the same, then only one punishment is imposed but the maximum punishment is increased by 1/3 (absolute sharpened).

Article 66 of the Criminal Code stipulates that in the case of a combination of crimes that do not carry the same type of punishment, then each punishment will be imposed, but the total may not exceed the highest punishment plus 1/3 (limited cumulative).

Article 70 (10) of the Criminal Code stipulates that if there is a combination (*concursum realis*) as referred to in Articles 65 and 66 of the Criminal Code between violations and crimes, or violations, then each violation shall be punished without reduction, but the total substitute imprisonment sentence may not exceed 1 year and 4 months and the total substitute imprisonment sentence may not exceed 8 months, Article 70 paragraph (2) of the Criminal Code (pure accumulation).

3. Continuing acts. Article 64 of the Criminal Code stipulates that if several acts, although each is a crime or violation, are related in such a way that they must be viewed as a continuing act, then only one legal stream is used, if the legal rules are different, then the most severe one will be used. Thus there is pure absorption (not accumulation and not sharpened). In the explanatory memorandum of the Criminal Code or MvT (*memorie van toelichting*) the criteria for acts that are viewed as continuing acts must meet the following requirements:

- a. There must be one decision of the will, events must arise from the same decision of the will.
- b. Each action must be of the same type.
- c. The time between these actions is not too long.

It is important to understand that the term combined criminal acts is different from repeat criminal acts (*recidive*). The first refers to a person committing several criminal acts where each has not received a court verdict. The second occurs when a person commits a criminal act after he has received a judge's verdict for another criminal act. (Africa, 2017).

According to Islamic criminal law, the theory of multiple punishments is well known among the *fuqaha*, but this theory is limited by two other theories, namely the theory of mutual entry (*tadakhul*) and the theory of absorption or *al-jabbu*. (JOINTMENT & QODRIYAH, nd).

- 1) Complementarity theory

According to this theory, when a combination of actions occurs, the punishments complement each other, so that therefore all the actions are given one punishment, as if he had committed one action.(Nasution, 2014). This theory is based on two considerations:

- a) Basically, a punishment is imposed with the intention of providing a lesson (ta'dib) and prevention for others (zajru), and both of these goals can be achieved with one punishment as long as it brings sufficient results.
- b) Even though the acts committed are multiple and of different kinds (for example, someone eats carrion, pork, blood), the punishments can complement each other and one punishment is sufficient to protect the same interests or to achieve the same goal (for example, protecting human and public health).

C. Absorption theory (Al-jabbu)

The definition of absorption is imposing a punishment where other punishments cannot be imposed. The punishment in this case is the death penalty, where its implementation automatically absorbs other punishments.(Abdillah, 2015). Among the fuqaha there is no agreement on the application of this theory, Imam Malik, Abu Hanifah and Ahmad hold this theory, while Imam Safi'i does not, those who hold this theory also have different opinions about the extent to which the area of application is. According to Imam Malik, if the had punishment is combined with the death penalty because of God, for example the crime of apostasy or because of qisas, then the had punishment cannot be carried out first before the death penalty(Iqbal, 2019).

If there are two hudud crimes, for example stealing and adultery for those who are married, only the death penalty is carried out. However, if the hudud punishment is combined with human rights, where those must be carried out first, where one of them is threatened with the death penalty, then the human rights must be carried out first, and the rights (punishments due to) God are absorbed by the death penalty. For Abu Hanifah, basically there is a combination of human rights and God's rights, so the first one is prioritized. If after the implementation of the first punishment, the second punishment cannot be carried out, then the punishment is automatically canceled. Meanwhile, for Imam Syafi'i there is no absorption theory, all punishments must be imposed as long as they do not complement each other (cumulative). The method is to prioritize the

punishment due to human rights (other than the death penalty), then the punishment due to God's rights (other than the death penalty) and then the death penalty(Abdillah, 2015).

As for recidivists or repeating criminal acts, actually the fuqaha have also recognized repeating criminal acts, but they do not make certain conditions either in terms of time interval or the type of criminal act committed. Details regarding repeating criminal acts can be regulated by the state authorities.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

A combination of criminal acts occurs if a person fulfills several criminal acts and among the criminal acts there is no judge. This can be described as follows, namely raping a woman in a park that is visible to the public, a person fulfills several acts, each of which is a criminal act, continuous acts, namely each of which is a crime or violation, namely not continuous must meet the requirements.

The theory of Islamic criminal acts is different from criminal offenses (recidive). The first refers to someone committing several criminal acts where each has not yet been found out of court. Second, it occurs when someone commits a crime after he gets a judge's decision on another crime. The theory of complementarity and absorption or al-jabbu is limited by the theory of mutual entry (tadakhul) and the theory of absorption or al-jabbu. The theory of complementarity and sufficient one punishment can complement each other and sufficient one punishment to protect long-standing interests.

B. Suggestion

In an effort to understand and implement the concept of combined criminal acts in Islamic law and positive law, a more in-depth study is needed regarding the differences between combined criminal acts and recidivists. Harmonization of these two concepts can help the justice system in determining fairer and more proportional punishments for perpetrators of crimes. In addition, the theory of absorption (al-jabbu) and the theory of complementarity must be applied by considering the principles of justice and protection of the interests of victims. Therefore, an update is needed in criminal law regulations so that they can accommodate the principles of Islamic law in judicial practices in Indonesia.

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