



Combined Criminal Acts in the Perspective of Islamic Law and the Criminal Code

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Article History Received : 2025-08-7 Revised: 2025-08-22 Published: 2025-09-30 Keywords: <i>Islamic Law; Combined Crimes; Criminal Code</i>	Committing a Crime in the Perspective of the Criminal Code and Islamic Law aims to describe how the criminal punishment system works according to Islamic law and the Criminal Code, as well as to provide a more in-depth explanation of the combined theory of committing a crime in Islamic law and the Criminal Code. This research is a library research, which is descriptive analytical in nature. Meanwhile, in analyzing the collected data, the author uses a comparative method, namely analyzing data by comparing two different laws, namely the Criminal Code and Islamic law regarding combined punishments to find similarities and differences between the two. After the discussion, it can be concluded that: 1) there are two theories that are combined theories of committing a crime according to Islamic law, namely: first, the theory of mutual entry or al tadaahul, namely if there are several combined crimes, then several of these crimes enter into each other, second, the sharpened Absorption System, namely for combined multiple crimes where the main penalty is the same (Article 65 of the Criminal Code). Third, Cumulation System, which is a combination of multiple criminal acts against violations with violations and crimes (Article 70 of the Criminal Code), and the softened Cumulation System, which is for a combination of multiple criminal acts where the main penalty threat is not the same (Article 66 of the Criminal Code). 2) Islamic law views that the combined punishment arises as a result of the combination of committing several criminal acts where one of the acts has not yet received a final decision.

I. INTRODUCTION

No individual can live in complete isolation forever. Humans need each other to survive and thrive as human beings. This interdependence produces certain forms of cooperation that are stable and result in specific forms of society. Humans are social creatures, that is almost undeniable. Because of their existence as social beings, each individual has interests that manifest themselves in the form of cooperation, and conversely, can give rise to conflicts.(Mustamin and Si 2016).

Social order is generally regulated by laws or regulations which serve as guidelines for actions and behavior which are manifested in commands and prohibitions.(Draftsman 2021)However, it seems that commands and prohibitions alone are not enough to abandon bad deeds, therefore, norms such as religious norms, moral norms,

norms of politeness, and also legal norms are needed.

As is known, crime in this world exists alongside human development, and the desire to do evil is inherent in human life. On the one hand, humans desire to live in peace, tranquility, order, and justice, meaning they are free from disturbances that contain elements of evil.(Suaidi 2024). Efforts to minimize the crime rate are continuously being made, both preventive and repressive. The preventive ones are for example by issuing regulations and laws. While the repressive ones are the punishments for those who have committed crimes or violations.(MUHAMMAD TOMI 2018).

There must be a punishment designed for a perpetrator to prevent others from committing a crime, even though a mere prohibition or command is not enough. Although punishment

itself is not good, and may even be detrimental to the perpetrator, such punishment is necessary because it can bring real benefits to society. When someone commits a crime and is punished, this serves as a lesson for others to refrain from committing crimes.(Dostoevsky 2001).

Meanwhile, in Islamic law, the combination of these criminal acts has become a matter of debate among scholars, as it is known that in Islamic Sharia there are various and different criminal matters, so it can be said that for a certain type of crime there is a separate law, such as theft with the punishment of amputation of the hand, murder with qishos, adultery with stoning and others. However, it is necessary to review again that not all criminal incidents have provisions in the text of the Qur'an or the Sunnah of the Prophet. Therefore, in this case, the judges are given the authority to impose punishments for criminal acts committed together or simultaneously.(Excerpt 2017).

The difference in punishments makes it unnecessary to consider how to apply punishment if someone commits more than one crime simultaneously, as it doesn't pose any difficulties. In Islamic law, the case of theft followed by rape and murder is exemplified. In this case, will the individual be subject to three punishments: amputation, stoning, and then qisas (retribution), or will they only undergo one of the harshest punishments, qisas (retribution). Scholars also differ on how to impose punishment for this combination of crimes.

Islam's perspective on this issue is certainly different from the Criminal Code's perspective on resolving this combination of acts, which is closely related to the issue of the punishment that will eventually be imposed. The differences between Islamic law and the Criminal Code in resolving this issue provide the basis for further research, namely by comparing the two to reveal their similarities and differences.

II. RESEARCH METHODS

This research uses a normative-comparative juridical approach because the focus of the study is to examine the comparison between Islamic law and the Criminal Code (KUHP) in imposing

penalties for combined crimes. The normative juridical approach was chosen to analyze the legal provisions written in the Qur'an, Hadith, the opinions of scholars, and national laws and regulations. The comparative nature is used to identify similarities and differences in the principles, types, and application of criminal sanctions in the two legal systems.(Suyanto 2023).

The research data is entirely derived from secondary data through library research, including literature on Islamic jurisprudence (fiqh jinayah), tafsir books, hadith, the views of Islamic scholars, regulations in the Criminal Code (KUHP), and previous research. The analysis was conducted qualitatively by interpreting primary, secondary, and tertiary legal materials, then presenting them descriptively and analytically to produce conclusions that illustrate the intersections and differences in the concepts of punishment between Islamic law and the Criminal Code regarding combined criminal acts.

III. RESULTS AND DISCUSSION

A combination of criminal acts or *samenloop van strafbare feiten* (concursum) is an important concept in criminal law which highlights the situation when one person commits two or more criminal acts, each of which fulfills the elements of a crime, but has never been tried.(Akune, Wantu, and Zulfikar Sarson 2023)This concept emphasizes that the perpetrator has violated several legal provisions simultaneously, either through a single act that has multiple impacts or a series of acts that stand alone but are interrelated. From the perspective of the principle of legality (*nullum crimen sine lege*), every act must be assessed based on the provisions in force at the time the act was committed, so that the combination of criminal acts tests the extent to which the formulation of laws is able to provide legal certainty without ignoring the principle of justice.(Africa 2017).

In the Indonesian Criminal Code, the provisions on combined criminal acts are contained in Articles 63 to 71. These provisions emphasize that punishment is not solely based on the number of crimes committed, but also on the nature, relationship, and impact of those acts.

Three main forms of combined criminal acts are recognized, namely *concursum idealis* (*eendaadse samenloop*), *voorgezette handeling* (continuing action), and *concursum realis* (*meerdadse samenloop*), provides a different basis for analysis. Idealist *concursum* describes a single act that violates several legal provisions simultaneously, for example when a single act gives rise to several criminal consequences regulated by different articles. *Voorgezette handeling* emphasizes a series of actions that are a continuation of the same intention, while *concursum realis* highlights the perpetrator who carries out several different actions, each of which fulfills the elements of a crime and can be tried simultaneously (Akune et al. 2023).

This discussion becomes even more complex when linked to theories of punishment. Absolute or retributive theories, which emphasize appropriate retribution for crimes, can encourage judges to impose maximum sentences in cases of combined crimes to provide a deterrent effect. In contrast, relative theories, which are oriented towards prevention and resocialization, prioritize proportionality, so that even if the perpetrator commits multiple crimes, the punishment imposed still takes into account the goals of rehabilitating the perpetrator and protecting society. The tension between these two theories is reflected in the various punishment systems discussed by experts such as Mas'ad Ma'shun, who mentions several models of sanction application: the absorption system (*absorptie stelsel*), enhanced absorption system, pure cumulation system (*het vol cumulatie stelsel*), and limited cumulative system (*het gematigde cumulatie stelsel*). The choice of this system determines whether the judge will choose only the most severe punishment, combine all the punishments, or apply a combination of both. (Akune et al. 2023).

From the perspective of criminal law principles, the application of the principle *lex specialis derogat legi generali* and *lex posterior derogat legi priori* also plays an important role. If an act violates two articles with the character *lex specialis*, then the special article overrides the general article. Likewise, if there is a difference

between the old and new provisions, the principle *lex favor reo* demanding that the judge apply provisions that are more favorable to the defendant. This strengthens the principle *geen straf zonder schuld* (no punishment without fault) which is the spirit of criminal responsibility, while ensuring substantive justice (Moeljatno 1983).

Comparison with Islamic law shows a common ground in the principle of justice. In Islamic jurisprudence, the combination of criminal acts is known as *ta'addud al-jara'im*, which is a situation where one perpetrator commits several crimes before being sentenced. (Siagian and Tanjung 2024) Scholars differ on how to impose punishment: some adhere to the principle of the dominance of the most severe punishment, which absorbs other punishments, while others allow cumulative punishment as long as it does not cause injustice. This is in line with the *maqasid al-shariah*, which emphasizes the benefit and prevention of harm (*dar' al-mafasid*). Abdul Qadir Audah, for example, emphasized that punishment must balance justice for the victim, the perpetrator, and society. (Rajafi 2010).

A comparative approach between the Criminal Code and Islamic law shows that both place the principle of proportionality as the basis for sentencing. In the Criminal Code, judges are given the opportunity to consider the background, intent, and impact of an act when imposing sanctions. In Islamic law, the principle of substantive justice requires that punishment be moderate, even if the perpetrator commits multiple crimes. Thus, the regulation of combined criminal offenses not only reflects legal certainty but also serves as a crucial arena for the realization of corrective, preventive, and educative justice.

Through this study, it is clear that the combination of criminal acts does not merely involve the addition of violations, but also touches on the philosophical and theoretical aspects of criminal law, from the principle of legality to the theory of punishment, all of which aim to maintain a balance between legal certainty, utility, and justice.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

A combined crime is a situation where someone commits several crimes simultaneously, thus requiring precise measures to determine the severity of the sanctions based on the criminal system. In Islamic law, two main theories are recognized: al-tadakhul (mutual penetration), which views several crimes as sufficient punishment because they absorb each other, and al-jabbu (absorption), which only enforces punishments whose implementation prevents other punishments. Its application depends on the type of crime, whether it falls under the rights of God alone, a combination of the rights of God and human rights, or purely human rights. Meanwhile, the Criminal Code regulates combined crimes in Articles 63–75, which define the mechanism for imposing punishments for perpetrators who commit several crimes before a court decision is issued.

B. Suggestion

There is a need for harmonization of understanding between positive law and Islamic law, as well as updating of sentencing guidelines so that judges have a clear basis for applying sanctions proportionally, fairly, and in line with the principle of legal benefit.

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