



Imposition of Criminal Sanctions on Suspects Who Commit Criminal Acts in Detention Centers (Review of Criminal Law and Islamic Criminal Law)

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Abstract - This study discusses the sanctions given to a person who commits more than one criminal act at different times before the judge's decision (during the detention period). This study aims to find out the regulation of criminal merger in positive criminal law, to find out the merger of crimes in decision number 2739/Pid.B/2020/PN Lbp and in the verdict number 2360/Pid.B/2021/PN Lbp and know the incorporation of crime in Islamic criminal law. This type of research is normative juridical, with a comparative approach method. The data source uses secondary data in the form of books. Data collection through journals and other legal sources. The data analysis technique used is descriptive-qualitative analysis. Crime is increasing, and this study shows that a person who is still in the legal process can still commit a criminal act, in this case it is called a combination of criminal acts. Based on the results of research and discussion, it is known that criminal mergers are divided into three types, namely: *Concursus Idealis*, *Vorgezette Handeling*, dan *Concursus Realis*. The penal system in the Criminal Code is divided into three, namely absorbs, accumulation, weighted absorbs and limited accumulation. In Islamic criminal law, merger is known as *ta'addudul uqbad* (Multiple punishments) dan *al-ijtimaul 'uqubah* (The accumulation of several punishments). Getting to know three theories, namely the theory of Mutual Penetration/Entry (*At-Tadkhul*), Absorption Theory (*al Jabbu*), and mixed theory.

Keywords: Incorporation, Criminal Law, and Islamic Law

I. INTRODUCTION

A suspect was detained for a theft case and while in the detention process or legal process being undertaken, the suspect again committed the crime of demolishing other detainees which resulted in his death. In the case that occurred, the suspect was sentenced by the judge to a different verdict in accordance with the criminal act he committed. Chronology of theft cases with verdict numbers 2739/Pid.B/2020/PN Lbp. The incident began on Saturday, September 5, 2020 at 03.00 WIB when the first defendant Dayan Hutabalian alias Dayan together with the second defendant Martin Sintong Adinegoro Sibarani and Agus Presri Situmorang alias Agus crossed the road on the road of hamlet VII, Pagar Jati Village, Kec. Lubuk Pakam Regency. Deli Serdang is precisely at the warehouse of the 3 Kg LPG gas base by driving a motorized rickshaw owned by Agus Presri Situmorang. When they passed the 3 Kg LPG gas base, there was no one to guard them, they immediately prying the warehouse cendela using a screwdriver. In this theft case, the judge sentenced him to 2 (two) years (Putsan Nomor 2739/Pid.B/2020/PN Lbp, 2020).

The chronology of the demolition case on Sunday, December 20, 2020 at around 17.00 WIB, a Lubuk Pakam Police prisoner died as a result of the demolition carried out by other prisoners. Located at the Lubuk Pakam Police Detention House on Jalan Tanjung Garbus I, Lubuk Pakam, Deli Serdang Regency or at least in another place that is still included in the

jurisdiction of the Lubuk Pakam District Court. Starting on Saturday, December 19, 2020 at around 13.00 WIB, there was a commotion that occurred between the victim of Typhoon Pramana and other prisoners in the Lubuk Pakam Police detention cell. The incident began with a dispute between the victim of Typhoon Pramana and the first defendant, Dayan Hutabalian and Witness Martin Sintong Adi Negoro Siberani (Separate Case File). Then the sixth defendant, Agus Presli Situmorang and the victim who was in the hallway of the detention cell, then the sixth defendant, Agus Presli Situmorang, pulled the victim's shoulders using both hands and brought the victim closer to the first defendant, Dayan Hutabalian, who was in the detention cell number 2. Then then the first defendant, Dayan Hutabalian, grabbed the victim's hair from inside cell number 2 so that the victim's position was crouched and lowered in front of cell number 2, then the other prisoners and witness Rehan Stevan Sarumaha together committed violence against the victim which resulted in the loss of a person's life (deceased) as explained in Decision Number 2360/Pid.B/2021/PN Lbp (Putsan Nomor 2739/Pid.B/2020/PN Lbp, 2020). In the decision of the demolition, the judge sentenced him to 9 (nine) years in prison.

In article 1 21 KUHP explained "Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with its determination, in the case and in the manner regulated in this law". In the legal process, a perpetrator who is still in the investigation stage (police) is called a suspect, if it has been handed over by the investigator (police) to the prosecutor's office, it is called a defendant. If a person who is in the legal process and has not been sentenced or sentenced by a judge but he commits a criminal act again in custody, it is called "Joint" (Semenloop Or Concursum) which is regulated in KUHP. In positive law (semenloop ataupun concursus) has been set in KUHP on CHAPTER VI, Article 63 to Article 71. In these articles, in general, it is stipulated that 3 (three) concurrent/combined criminal acts, namely the combination of one criminal act (andadse semenloop = idealistic concursus) are regulated in the article 63 KUHP, Continuing deeds (Voortgezette Hendeling) Article 64 KUHP, a combination of several acts (Concursum Realis) Article 65-Article 71 KUHP (Ketut Rai Setiabudh, Gde Swardhana, 2016).

In Islamic Criminal Law, the combination of criminal acts is called the word Ta`addudul `uqbad (Multiple Punishments) dan al-ijtimaul `uqubah (the accumulation of several punishments). Combined or ta`adudul `uqubat (in Islamic criminal law) consists of two types, namely the theory of complementarity called tadakhul and the theory of absorption called al-jabb. Theory al-tadakhul It is desirable 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 is given for different interests and purposes, for example in the case of adultery, theft, or murder, the punishment given varies according to the form and type of crime committed. While the theory al-jabb Wants a person, who commits two or more criminal acts to be sentenced to only one type of punishment because it is considered that the punishment imposed absorbs other types of punishment. In sentencing perpetrators who commit more than two crimes, it is enough to be punished with only one punishment, as long as the punishment is able to absorb the type of punishment from other criminal acts (Muhammad Maulana, Edi Yuhermansyah, 2022).

In the knife of legal analysis, whether the above case can be resolved with a combined article (semenloop) Or there are other regulations that regulate the merger of criminal sanctions and how the lens of Islamic law in the application of the merger article So that from the explanation of the case described above, the author is interested in researching the imposition of criminal sanctions on suspects who commit crimes in detention centers. (Review of Criminal Law and Positive Criminal Law). Research problem is How to Regulate Criminal Merger in Positive Criminal Law ? How to Combine Criminal Sentences in Decision No. 2739/Pid.B/2020/PN Lbp And in the decision number 2360/Pid.B/2021/PN Lbp? How to Incorporate Crimes in Islamic Criminal Law?. Referring to the formulation of the previous problem, the purpose of this research is to next: To find out the arrangement of criminal merger in positive criminal law, to find out the consolidation of crimes in the verdict Nomor 2739/Pid.B/2020/PN Lbp and in the decision number 2360/Pid.B/2021/PN Lbp? To find out the incorporation of crime in Islamic criminal law.

II. METHOD

This type of research was carried out with a normative juridical study. The approach method in this study is a comparative approach (comparative approach). This approach is carried out by comparing the legal system in detail about the criminal acts committed by a person who is still in the legal process and has not been decided by the court or a combination of criminal acts (*securus/concurcus*) regulated in the KUHP, and based on the view of Islamic Law. The source of data in this study is to use secondary data in the form of books, books, and previous research according to needs as a source of information (Muhaimin, 2020). Data collection through journals and other legal sources. The data analysis technique used in this study is descriptive-qualitative analysis. This analysis is carried out by researchers to find and reveal the meaning and relationship between the data and the problem theory being studied.

III. RESULT AND DISCUSSION

3.1 Arrangement of Criminal Merger in Positive Criminal Law

Concurrent or Combined Criminal Acts (*semenloop atau concursus*) is the occurrence of two or more criminal acts by one person where the first criminal act with the next criminal act has not been sentenced or a court decision. Concurrent criminal acts or *concurcus* are problems related to the giving or application in criminal law. Concurrent criminal acts are regulated in KUHP Bab VI in the article 63-71. The reading of the articles that regulate the legal basis for the combined criminal act is as follows (Afrikal, 2017):

a. Article 63 KUHP about *Concurcus Idealis*

- (1) If an act is included in more than one criminal rule, then only one of those provisions is applied, if the criminal is different, imposed which contains the most serious main threat.
- (2) If an act is included in a general criminal rule, it is also regulated in a special criminal rule, then only that special criminal provision is used.

It can be seen that paragraph 2 explains, if there is an act that can be punished according to a special criminal provision in addition to a general penalty, then that special criminal provision is used. This is in accordance with the old slogan that reads *lex specialis derogat lex generalis*.

In the article 63 KUHP (*concurcus idealis*), the penal system used is the Absorption system, which is only subject to the heaviest principal penalty.

b. Article 64 KUHP about *Vorgezette Handeling*

- (1) If there is a relationship between several acts, even though each of them has been a crime or a violation, so that it must be seen as one consecutive act, then only one criminal provision is used, which is the provision with the heaviest basic penalty.
- (2) Likewise, only one criminal provision is carried out, if a person is blamed for counterfeiting or damaging money and using objects, against which the act of counterfeiting or damaging the money is committed.
- (3) However, if the crime described in articles 364, 373, 379 and article 407 paragraph 1 is committed consecutively, and the amount of loss to the person because the act is more than Rp. 25, - then the criminal provisions of articles 362, 372, 378, or 406 shall be applied.

Article 64 is the legal basis for continuous acts, namely between one act and another. Criminal acts that are categorized as continuous criminal acts such as petty theft (article 364), light embezzlement (article 373), ordinary embezzlement (article 372) then some minor fraud (article 379), ordinary fraud (article 378), destruction of goods (article 407 paragraph 1) and also destruction of ordinary goods (article 406).

In the article 64 KUHP (*Vorgezette Handeling*) The penal system used is the Absorption system, which is only subject to the heaviest principal penalty.

c. Article 65 KUHP about *Concursus Realis*

- (1) In the concomitant of several acts that must be seen as stand-alone acts so that they are several crimes, which are threatened with the same basic crime, then only one crime is imposed.
- (2) Maximum the penalty imposed is the maximum amount of the penalty threatened against the act, but must not be more than the maximum maximum of the heaviest penalty plus one-third of it.

In article 65 is a combined form of several crimes (*concurus realist*). If there is a person who commits several crimes, only one punishment will be imposed if the punishment threatened is a type of punishment which must not exceed the maximum for the most serious crime plus one-third. Article 65 discusses a combination of crimes with similar punishments.

In the article 65 KUHP (*concurus realis*) This penal system used is the Absorption system in sharpening, that is, if you are threatened with a similar principal crime, you will only be subject to one penalty with the provision that the maximum amount of the penalty must not be more than the heaviest maximum amount plus a third.

d. Article 66 KUHP

- (1) In the concomitant of several acts that must be regarded as stand-alone acts so that they are several crimes, which are threatened with a different type of principal crime, then a criminal sentence shall be imposed for each crime, but the amount shall not exceed the maximum of the heaviest penalty plus one-third.
- (2) In the penalty of fine is calculated according to the maximum length of the substitute imprisonment specified for the act.

Article 66 is the legal basis for the combination of several acts (*concurus realis*) in that the punishment threatened for the crimes is not the same. Therefore, the punishment imposed is not only one but each act is subject to punishment, but the sum of all must not be more than the heaviest punishment plus one-third of the fine penalty is taken into account the lesser punishment of the substitute.

In the article 66 KUHP (*concurus realis*) The penal system used is limited cumulative, if threatened with a principal crime that is not the same, then each principal penalty will be imposed with the provision that the amount must not exceed the amount of the heaviest principal crime plus one-third.

e. Article 67 KUHP

"If a person is sentenced to death or life imprisonment, in addition to that, no other punishment may be imposed except for the revocation of certain rights, and the announcement of the judge's decision."

Article 67 explains that imprisonment and fines cannot be imposed side by side with the death penalty or life imprisonment imposed.

f. Article 68 KUHP

- (1) Based on the matters in Articles 65 and 66, concerning additional crimes, apply the following provisions of the rules:
 - a. The same crimes of revocation of rights are made into one, the duration of which is at least two years, and the maximum of five years exceeds the principal penalty of only the penalty of fine, then the duration of the revocation of rights is at least two years and a maximum of five years.
 - b. Different crimes of deprivation of rights are imposed individually without being reduced.
 - c. The crime of confiscating certain items, as well as the penalty of substitute confinement because the items are not handed over, dropped individually without being reduced.
- (2) The amount of substitute imprisonment shall not exceed eight months. The above article talks about if a judge will impose an additional penalty in the form of revocation of certain rights of the same type. The length of revocation must be equal to the length

of the prison sentence or imprisonment sentence, plus at least two years and a maximum of five years. If the punishment is not of the same type, the revocation of the right is imposed on each crime charged, without reduction. Similarly, if an additional penalty is imposed in the form of confiscation of certain items from the substitute confinement sentence is not handed over, then each sentence must be imposed without reduction, while other substitute sentences must not exceed eight months.

g. Article 69 KUHP

- (1) The comparison of the severity of the principal crimes that are not the same is determined according to the order in article 10.
- (2) If the judge chooses between several principal crimes, so in comparison only the heaviest sentence is used.
- (3) The comparison of the severity of the same principal crime is determined according to the maximum of each.
- (4) The ratio of the length of the principal crimes of the same type is determined according to the maximum of each.

As it is known that punishment consists of two types, namely the main punishment and the additional punishment whose provisions are contained in article 10, if there are two different punishments, it is expected that the heaviest punishment will be chosen, the comparison of the length of the punishment that is not the same is determined by the maximum.

h. Article 70 KUHP

- (1) If there is a concomitance as intended in articles 65 and 66 between an offense and a crime, or an offense with a violation, then a criminal penalty is imposed for each offense and a separate penalty without deduction.
- (2) For violations, the amount of imprisonment and substitute imprisonment must not exceed one year and four months. Meanwhile, the maximum number of substitute confinement sentences is eight months.

Article 70 contains about the concomitance of crime with an offense or an offense with a violation. So, in this case, each crime must be sentenced separately as well as the violation must be punished individually. If there is a sentence of imprisonment, this is not more than one year and four months, while if it is a sentence of imprisonment in lieu of a fine, it must not exceed eight months.

In the article 70 KUHP, the penal system used is Cumulative, all crimes that are threatened with a maximum of 1 year and 4 months.

i. Article 70 bis KUHP

"When applying articles 65, 66 and 70, the crimes based on articles 302, paragraphs (1), 352, 364, 373, 379, and 482 are considered violations, but if they are sentenced to imprisonment for these crimes, the maximum amount is eight months."

In order to implement the regulations in articles 65, 66, and 70, minor crimes must be sentenced individually, with the provision that if sentenced to imprisonment, it must not exceed eight months.

In article 70 of the bus KUHP, the penal system used is Cumulative, with a maximum prison sentence of 8 months.

j. Article 71 KUHP

- (1) If a person has been sentenced and then found guilty again for committing a crime or offense before the criminal verdict was issued, then the previous sentence shall also be counted in the penalty to be imposed by using the rules in this chapter regarding the cases to be tried at the same time.

Acts committed in the form of a combination cannot always be tried at the same time. From the above articles, it can be known how the punishment system for the perpetrators of joint crimes is given.

In the article 71 KUHP This penal system used is added in accordance with the sentence imposed, also known as cumulative stesel.

The types or forms of combining criminal acts are regulated in KUHP Chapter VI in articles 63-71, but in the formulation of the article and the chapter KUHP does not provide a definition of concurrent criminal acts (*semenloop/concursus*). However, from the formulation of the articles, the understanding and provision of criminal penalties for *concursus* can be obtained as follows:

a. *Concursus idealis*

The definition of *idealistic concursus* is an act that falls into many (more than one) criminal code (Floren Alesandro Keintjem, Rodrigo F. Elias, 2021). The system of sentencing in *idealistic concursus* is Absorbsi, which is only subject to the heaviest principal penalty, Example: If rape occurs on a public street, the perpetrator can be threatened with a prison sentence of 12 years according to article 285, and a prison sentence of 2 years and 8 months according to article 281. With the asorbsi system, the penalty is article 285, which is 12 years. However, when there is a difference in the type of principal crime, the heaviest type of principal crime according to the article is taken 10 KUHP.

Furthermore, in article 63 paragraph (2) there is an adagium (Lex specialis derogate legi generali) or a rule of law that specifically eliminates UU general. So, when there is a difference between the general and the special rules then the special ones are taken.

Idealistic concursus is an act that falls into more than one criminal code. It is also referred to as a combination in the form of one act (eendaadsche samenloop), which is an act that includes more than one article of criminal law provisions. The penalty system used in the idealistic concursus is the absorption system, which is only subject to the heaviest principal penalty.

b. *Concursus Voortgezette Hendeling*

The definition of continuous concursus is an act that is carried out repeatedly or gradually where the act is related and seen in one action. In MvT (Memorie van Toelichting), the criterion "the acts are related in such a way that they must be seen as one continuous act", namely: There must be a decision of the will, each act must be of the same kind, the grace period between the acts is not too long, the time limit characteristic in the continuous concursus is limited to the judge's decision (in kracht).

The system of sentencing for continued acts uses the absorbs system, which is only subject to the heaviest threats. And if it is different, then the heaviest basic criminal provisions are imposed. Continuous actions occur when a person commits several acts (crimes or offenses), and those acts are related in such a way that they must be regarded as one continuous act (Emi Rosna Wati Dan Abdul Fattah, 2020).

c. *Concursus realis*

The realist concursus is that a person performs several actions, and each action stands alone. As a criminal act (it does not need to be of the same kind and does not need to be related).

In the system of sentencing realists there are several types, namely as follows:

1. Absorbsi sharpened, that is, if threatened with a similar principal crime, only one penalty is imposed with the provision that the maximum amount of the crime must not be more than the heaviest maximum amount plus one-third (Laurensius Androine Lengu Labamaking, Made Sugi Hartono, 2023).
2. Cumulative is softened, namely, if threatened with a principal crime that is not the same, each principal crime will be imposed with the provision that the amount must not exceed the amount of the heaviest principal crime plus one-third.

Concursus realist or the combination of several actions (*meerdaadsche samenloop*) occurs when a person commits several acts, and each act stands alone as a criminal act (Prisilia Anggraini Evelyn Terisno, 2019). The provisions for criminal punishment in *the realist Concursus* are as follows:

- a. If it is a crime that is threatened with a similar principal crime, only one penalty is imposed with the provision that the maximum amount of the crime must not exceed the heaviest maximum plus one-third. This system is called a sharpened absorption system (Fahrurrozi, 2018). For example, A commits three crimes that are each threatened with imprisonment of 4 years, 5 years, and 9 years, then the applicable sentence is 9 years + $(1/3 \times 9)$ years = 12 years in prison. If A commits two crimes that are threatened with imprisonment of 1 year and 9 years, then 1 year + 9 years = 10 years in prison applies. Not subject to 9 years + $(1/3 \times 9)$ years, as 12 years exceeds the maximum amount of a 10-year penalty.
- b. If it is a crime that is threatened with a different type of principal crime, then all types of criminal threats for each crime are imposed, but the amount must not exceed the maximum of the heaviest crime plus one-third. This system is called a softened accumulation system. Suppose A commits two crimes each of which is threatened with 9 months of imprisonment and 2 years in prison. Then the maximum penalty is 2 years + $(1/3 \times 2 \text{ years})$ = 2 years and 8 months. Because all types of crimes must be imposed, the judge, for example, decided 2 years in prison and 8 months of confinement.
- c. If the realist concursus is in the form of a violation, then it uses a cumulative system, which is the sum of all the crimes threatened. However, the number of all crimes is limited to a maximum of 1 year and 4 months of imprisonment.
- d. If the realist concursus is in the form of minor crimes, namely Article 302 (1) (misdemeanor of animals), 352 (misdemeanor), 364 (misdemeanor), 373 (misdemeanor), 379 (misdemeanor), and 482 (misdemeanor), then the accumulation system with a maximum restriction of 8 months imprisonment shall apply.
- e. For realist concursus, both crimes and offenses, which are tried at different times, Article 71 applies: "If a person, after being convicted, is later found guilty again, for committing a crime or other offense before the criminal verdict is issued, then the crime that was formerly taken into account in the sentence to be imposed by applying the rules of this chapter regarding cases to be tried at the same time." Suppose A on January 1 commits the crime of theft (Article 362, 5 years imprisonment), on January 5 commits ordinary persecution (Article 351, imprisonment 2 years and 8 months), on January 10 commits theft (Article 480, 4 years imprisonment), and on January 20 commits fraud (Article 378, 4 years imprisonment), then the maximum penalty that can be imposed on A is 5 years + $(1/3 \times 5 \text{ years})$ = 6 years and 8 months. If the judge sentences A to 6 years in prison for the four crimes, then if it turns out that A on January 14 committed embezzlement (Article 372, 4 years imprisonment), then this second verdict for embezzlement can only be sentenced to imprisonment for 6 years and 8 months (simultaneous verdict) at most minus 6 years (verdict I), namely 8 months in prison (Joko Sriwidodo, 2019).

In the imposition of a criminal sentence in the merger, there are four stesels, which are as follows:

a. Stesel Absorpsi (*Absorptie Stesel*)

Absorption comes from the Dutch word *Absorpbere*. The term absorpbere is a filling that is often used in chemistry which means to suck or swallow or inhale. In order not to confuse the meaning, the term 'absorptie stesel' is then translated into Indonesian with the term 'absorption stesel'. If a person commits several acts that are several offenses, each of which is threatened with a different type of crime, then according to this system only one crime is imposed, namely the heaviest penalty even though the person carries out several crimes (Dony Tarmizi, 2022). Example: 'A does three types of delicacies. For offense 1, he was sentenced to 1 year in prison, for offense II, he was sentenced to 2 years, and for offense III, he was sentenced to 3 years in prison. The heaviest crime is as if swallowing or sucking/absorbing a light crime.

b. Stesel Accumulation (*Cumulatie Stesel*)

Cumulatie means the amount. So the accumulation of stesel means adding up all the crimes imposed.' *Cumulatie stesel*' translates in Indonesian to 'Stesel Cumulsi'. If a person

commits an act that is several offenses that are threatened with a separate crime, then according to this system, every crime that is threatened against each offense committed by that person is all imposed. Example: "As in the example above, for A who commits three types of offenses that are each threatened with their own crimes, then according to this statistic, the three crimes that are threatened with each offense are all sentenced, namely 6 years (1 year plus 2 years plus 3 years).

c. *Stelsel Absorpsi Diperberat (Verschepthe Absorptie Stelsel)*

Verschepthe Absorptie Stelsel henceforth translated as 'Weighted Absorption Telsesl'. If a person commits several acts that are several types of offenses, each of which is threatened with a criminal offense sendiri-sendiri, According to Stelsel, in essence, only 1 pidana was imposed, which is the heaviest crime. However, it is aggravated by increasing one-third. Example: The penalty imposed on A in the example above, according to the aggravated absorption stelsel is 3 years plus 1 year ($1/3 \times 3$ years) to 4 years (Rosida, 2019).

d. *Limited Accumulation Stelsel (Gematigde Cumulatie Stelsel)*

Gematigde Cumulatie Stelsel it is further translated as 'Stelsesl Limited Accumulation'. If a person commits several types of acts that cause several types of crimes, each of which is threatened with its own crime, then according to this document, all crimes threatened against each offense are imposed on all, but the amount of the crime must be limited, that is, the amount must not exceed the heaviest crime plus one-third (Vience Ratna Multi Wijaya, 2023). Example: for A in the example above, he should have been sentenced to 6 years (1 year plus 2 years plus 3 years) but the amount of time for all crimes is limited, which must not be more than 4 years (3 years plus $1/3 \times 3$ years).

3.2 Criminal Merger in Decision Number 2739/Pid.B/2020/PN Lbp and in Decision Number 2360/Pid.B/2021/PN Lbp

in the first case, a person is detained for theft and stipulated article 363 Paragraph (2) KUHP. In the court decision Nomor 2739/Pid.B/2020/PN Lbp the judge sentenced him to 2 (two) years in prison.

Then, while carrying out the legal process in the case of theft, someone commits another criminal act in the detention cell, namely the case of demolition which is charged in article 170 paragraph (2) 3 KUHP. In this case, the judge sentenced 9 (nine) years in prison in the decision of Decision Number 2360/Pid.B/2021/PN Lbp.

From the above case, the type of criminal act that occurred is a stand-alone merger crime (*concursum realis*), and in practice the article used in this merger case is the article 71 KUHP whose penal system is added to each sentence imposed.

Article sounds 71 KUHP "If a person has been sentenced, also blamed for committing a crime or offense committed before he was convicted, then the previous punishment is also calculated using the rules in this chapter, if the cases are tried simultaneously".

But actually, the article 71 KUHP which is used for the penal system in the above case is not ideal because article 71 KUHP explaining that a person is caught committing a crime after being convicted, not before being convicted. So that the article 71 KUHP theoretically not eligible for criminal prosecution in the case that occurred above.

3.3 Criminal Merger in Islamic Criminal Law

The incorporation of criminal acts in Islamic law is known as *ta'addudul uqubad* (multiple punishments) and *al-ijtimaul 'uqubah* (the collection of several punishments). The combination of jarimah occurs when a person performs several jarimah before the final punishment of each jarimah is determined. This is when the first crime has not received sanctions or punishments as a result of the final verdict given to the perpetrator of the crime, then he commits the second, third and so on. When the perpetrator is caught, he is charged according to what he has violated with each sanction that is threatened against the crime he has committed (Zulhija Yanti Nasution, 2014).

A combination of punishments can occur if there is a combination of criminal acts. Meanwhile, a combination of criminal acts can be said to exist when a person commits several types of criminal acts where each has not received a final decision.

The Legal Basis or Joint Regulation of Criminal Acts in Islam is contained in the Qur'an, which is as follows:

QS. Al-An'am: 160 :

مَنْ جَاءَ بِالْحَسَنَةِ فَلَهُ عَشْرُ أَمْثَالِهَا وَمَنْ جَاءَ بِالسَّيِّئَةِ فَلَا يُجْزَى إِلَّا مِثْلَهَا وَهُمْ لَا يُظْلَمُونَ

Barang siapa membawa amal yang baik maka baginya (pahala) sepuluh kali lipat amalnya; dan barangsiapa yang membawa perbuatan yang jahat maka dia tidak diberi pembalasan melainkan seimbang dengan kejahatannya, sedang mereka sedikitpun tidak dianiaya (dirugikan).

QS. Al-Maidah: 45:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا ۖ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ ۚ وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

Dan Kami telah tetapkan terhadap mereka di dalamnya (At Taurat) bahwasanya jiwa (dibalas) dengan jiwa, mata dengan mata, hidung dengan hidung, telinga dengan telinga, gigi dengan gigi, dan luka-luka (pun) ada kisasnya. Barangsiapa yang melepaskan (hak kisas) nya, maka melepaskan hak itu (menjadi) penebus dosa baginya. Barangsiapa tidak memutuskan perkara menurut apa yang diturunkan Allah, maka mereka itu adalah orang-orang yang zalim.

QS. Asy-syura: 40:

وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا ۗ فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ ۗ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ

Dan balasan suatu kejahatan adalah kejahatan yang serupa, maka barang siapa memaafkan dan berbuat baik maka pahalanya atas (tanggungan) Allah. Sesungguhnya Dia tidak menyukai orang-orang yang zalim.

In Islamic law, the merger of criminal acts has three theories, which are as follows:

a. Theory of Mutual Overlap/ Entry (*Nazariyyatut Tadkhul/ at-Tadkhul*)

The complementary theory is that a person who commits a combination of jarimah (criminal acts) will only get one punishment as well as when he commits one jarimah. In this theory, when there is a combination of actions, the punishments of the acts complement each other so that all of these acts are sentenced to one punishment only. This is because the punishment of some of the jarimah enters each other, some enter others, So that only one punishment was imposed. In this case, there is a condition if the punishment is only one, namely the combination of the punishment is carried out on the basis of safeguarding the benefit (Desi Royanti, 2020).

In this complementary theory, it is based on two considerations, namely the following:

1. Although *jarimah* which is done double, but all types are the same. So the perpetrator is only subject to one type of punishment, for example theft that is carried out repeatedly.
2. Although the acts committed multiple are of different types, the punishments can complement each other and only one punishment is imposed because it is to protect the same interests. For example, a person who eats carcasses, blood and pork is enough to be sentenced to one punishment because the punishment is imposed to achieve a goal that protects the interests of a person and also protects the interests of society.

b. Absorption theory (*al Jabbu*)

The absorption theory is that a person who performs a combination of jarimah will be sentenced, where the punishment at the same time aborts other punishments or its implementation will absorb other punishments. In this theory, the punishment is nothing but

the death penalty, because the execution of the punishment itself absorbs the other punishments.

Among the jurists, there is no agreement on the application of the absorption theory. The opinions of scholars in punishing the absorption theory are as follows:

The opinion of the first scholar Imam Malik, that every punishment *hudud* who gather with the death penalty as the right of Allah (such as the crime of apostasy) or with the punishment of qisas as a person's right, the punishment of hudud cannot be carried out because the death penalty has absorbed the punishment *hudud* except for criminal acts *qadzaf*. His sentence has been carried out and then killed.

The opinion of the second scholar Imam Ahmad Bin Hambal, that if two criminal acts are collected *hudud* as Allah's right, there is the death penalty, such as theft and adultery *muhshan*, or drinking and killing when committing robbery (*hirabah*) then only the death penalty is carried out, while the other punishments are dropped. When the punishment *hudud* together with the rights of man (adamy), then the rights of man must be exercised first, while the rights of Allah are absorbed by the death penalty, whether the death penalty is a punishment *hudud* and *qisas*.

The third scholar, Imam Abu Hanifah, said that if there is a combination of human rights and the rights of Allah (the rights of the general public), human rights take precedence because humans need their rights. If this right has been exercised, Allah's right is erased due to an emergency. If Allah's right can still be exercised and Allah's right is more than one, only one right (punishment) is imposed, that is, his right can abort the other right to punishment.

This is in accordance with the words of the Prophet, "*Hindarkanlah hukuman hudud semampu mungkin*"

For example, if someone kills and then commits adultery *gair muhsan*. Then he drank liquor, he was only sentenced to death as a punishment of qisas, while the punishment of adultery and drinking - drink became null and void.

The opinion of the fourth scholar Imam Ash-Shafi'i is that he does not recognize the existence of absorption theory. According to him, all punishments must be imposed as long as they do not complement each other (*tadakhu*). The trick is to prioritize the punishment of human rights that is not the death penalty, then the rights of Allah (the rights of society) which are not the death penalty. For example, if a man gathers several punishments of had, such as the had of zina *ghair muhsan*, the had of *qazaf*, the limit of theft, the limit of murder and the punishment of qisas for killing, the order of punishment is the following sentences: had *qazaf* (eighty dera), then detained (confined) until he recovers and then sentenced to had zina (one hundred dera), then detained again until he recovers and then his hand is cut off again for theft. The last was sentenced to death as a punishment for murder. If the perpetrator dies while serving the previous punishments, the subsequent punishments are abolished.

c. Mixing Theory (*al Mukhtalath*)

This mixing theory is intended to overcome the weaknesses of the previous two methods, namely the *al jabbu* theory (absorption) and the *ad tadaahul* theory (entering each other), namely by combining the two and finding a middle way. In this mixing theory, it is done because it limits the absoluteness of the previous two theories. Combining punishments may be carried out but must not exceed certain limits, aiming to provide a final limit in punishment to prevent excessive punishment (Marliana Sari, 2017).

In the case that occurred, the theory used in imposing punishment was the absorption theory. But in the theory of absorption, scholars have different opinions about the imposition of punishment. There are some scholars who say that the punishment is only subject to the death penalty if there is a death penalty in the act. But there are also some scholars who are of the opinion that the punishment must be applied one by one: someone commits *jarimah* theft (punishment of cutting off the hand) then committing murder (punishment of *qisash*), then the application of the punishment is carried out by cutting off the hand first and then carried out *qisash*. Because the criminal acts committed have different punishments, so the punishment cannot be applied to each other.

IV. CONCLUSION

In the case that occurred above, it was a combination of criminal acts (concursum/semelocum). The merger of criminal acts is divided into 3 parts, namely: concursum idealis (combined in one act), voortgezette handeling (perbuatan berlanjut), dan concursum realis (combined in several deeds / stand-alone). In this case, this is included in the type of merger concursum realis (stand-alone deeds). In the imposition of the article of merger applied to the article 71 KUHP. However, in the penal system in the article, there is a void in the rule of law because the article applied is not suitable and is not ideal theoretically in practice. In this case, the application of the penalty is a task in the formulation of laws in the future and must be immediately so that there is no void in the rule of law. So that inappropriate legal rules are enforced.

While in Islamic criminal law, the combination of punishment is called ta'addudul uqbad. There are three theories of merging in Islamic criminal law, namely the Theory of Mutual Penetration / Entering (Nazariyyatut Tadkhul/ at-Tadkhul), Absorption theory (al Jabbu), and mixed theory. The sentencing applies the theory of absorption where the punishment is carried out one by one according to the crime committed.

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