



Review of Islamic Criminal Law and Positive Regarding Combined Criminal Acts (Case Analysis Study of TNI AL Bintara Candidates in Padang)

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Abstract: This study aims to discuss the review of Islamic criminal law and national criminal law related to the combination of criminal acts in the case of prospective TNI AL NCO students in Padang, West Sumatra. This study applies the method of field legal research (legal research). The results of the study reveal that positive law adopts three theories that are combined in the concept of punishment, namely cumulative theory, absorption theory, and mixed theory. The three theories are listed in Articles 60 to 71 of the Criminal Code, regulating the combination of criminal acts of *concursum idealis*, *concursum realis*, and *voortgezette handeling*. The application of the combined theory of punishment in positive law is designed to comply with the principles of justice, benefit, and legal certainty. Conceptually, this idea has fundamental differences with Islamic criminal law. In positive law, various criminal acts carried out by one perpetrator are subject to one type of reward according to the provisions that the criminal acts are carried out in a close time or continuously, so that they are included in ongoing actions. This provision is looser than Islamic law, recognizing the imposition of one punishment for several acts if the acts have the same purpose. If they have different purposes, the perpetrator must be given the appropriate punishment with the type of criminal punishment that has been committed.

Keywords: Combined Criminal Acts, Islamic Criminal Law, Positive Criminal Law

1. Introduction

Crimes or criminal acts can be committed anytime and anywhere with various motives, types of crimes committed, and different backgrounds of the perpetrators. (Umbara & Setiawan, 2022), (Reksoprodjo, Widodo, & Timur, 2018). The crime can be committed individually or in groups, in the form of one type of criminal punishment that occurs at one time or even various criminal acts that occur simultaneously. (Djanggih, Mappaselleng, & Permana, 2022), (Bakri, 2024). Criminal acts carried out at the same time are known as concurrent criminal acts, or can be called a combination of criminal acts. (Suarni, Antoni, Asmarani, Wahyuni, & Amalia, 2024), (Zaidan, 2022).

Murder is one of the crimes that often occurs in society. This case can be triggered by various factors, such as psychological, mental, economic, and social conditions. (Dekawati & Marbun, 2022), (Handoko & Widowaty, 2022). Murder is considered a very despicable act because it can disrupt social and economic stability. This act is prohibited by customary norms, customs, and applicable laws. Therefore, the crime of murder must be eradicated. (Ardiansyah, 2023), (Syifaa, 2024).

The concurrency or combination of criminal acts is known in Dutch as *samenloop* and in Latin *concursum*, is a combination of two or more criminal acts involving one or even various perpetrators including the context of participation. The crime has never been tried in the series of events (Pasaribu, 2019). This concept has been managed by the Criminal Code (KUHP) in CHAPTER VI, Articles 63 to Article 71 (Siregar, 2022), (Langi, 2023).

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The regulation regarding the concursus article aims to reduce the punishment, although its application is not general and depends on the view of a particular concrete event. There are two main reasons behind the decision of the legislators to try various criminal acts simultaneously through one decision. In this way, the punishment is not imposed separately, so that the criminal acts in the concurrence are only partially subject to their respective criminal warnings, namely (Hasibuan, 2018), (Zuhra, 2023). First, from a psychological perspective, serving a single sentence in a long duration is considered heavier than serving two separate sentences with the same total time. Second, from a guilt perspective, subsequent criminal acts are considered lighter than the first criminal act. This consideration is based on the assumption that punishment is a warning from the state against the perpetrator's guilt due to his actions. (Zunaidi, 2022), (Ahmad Fatoni, 2019).

Islamic criminal law has different characteristics from positive criminal law. In Islamic law, the concept of punishment based on criminal acts is rooted in the principle of justice, with categories of sanctions such as hudud, qisas, and diyat. (Hamzani & Aravik, 2022), (Wisudawati, Virhanida, Abd Jalil, Rijalallah, & Najmudin, 2023). Meanwhile, positive criminal law in Indonesia, which is sourced from western law, tends to be more secular and prioritizes written rules in the Criminal Code as the basis for sentencing. This difference becomes interesting when applied in cases of combined criminal acts, where one case can give rise to more than one violation of the law. (Asmadi, 2021).

One example of a combined criminal case that requires further study is a case involving a Casis (Prospective Student) Bintara AL in Padang. In this context, the problem becomes more complex because the case not only involves a civil crime, but also involves a prospective military member who is subject to military law which has its own rules. This case is interesting to study from two other legal perspectives, namely Islamic criminal law and positive criminal law. (Henny Nuraeny, 2022), (Hutagalung, 2022).

This article aims to review in depth the review of Islamic criminal law and national criminal law related to the combined criminal sanctions in the case of prospective TNI AL non-commissioned officer students that occurred in Padang, West Sumatra.

2. Materials and Methods

The research method is qualitative (Hasibuan, et al, 2020) which functions as a detailed observer in a study and uses a field research approach (Sari, 2020) which functions as data collection using books, journals and other trusted articles that are still related to the research, and in this study also uses the Research procedure method involving searching, collecting, processing, and analyzing accurate information using certain methods. This research is included in the category of normative legal studies with analytical descriptive specifications (Sugiyono, 2019). It is called descriptive because the research aims to provide an overview and explain the application and legal implications for combined criminal cases in both legal systems.

3. Results and Discussion

3.1. Case Chronology

Like the case of the premeditated murder of a prospective non-commissioned officer (casis) carried out by a member of the Indonesian Navy, Iwan Sutrisman Telaumbana, a prospective student (casis) of the Indonesian Navy non-commissioned officers, died as a result of murder carried out by a member of the Indonesian Navy named Serda Adan Aryan Marsal. This tragic incident occurred on December 24, 2022, just eight days after the victim began the selection process to become a member of the Indonesian Navy. This incident began when Iwan Sutrisman's family met Serda Adan to ask for help so that their child could become a member of the TNI. The perpetrator then demanded Rp200 million from the victim's family as a registration fee and the second wave of the Indonesian Navy selection process. However, after taking the test, Iwan, who came from Lahusa

Idenatea Village, Idanatea District, South Nias Regency, was declared to have failed. Serda Adan then visited the victim's house and suggested that Iwan try the Indonesian Navy at Lanal II Padang. He claimed to have relatives who worked there and agreed to help Iwan graduate.

After the meeting, Iwan Sutrisman was sent to Padang via Gunungsitoli Port. Since his departure, the victim's family has lost contact with Iwan. However, on December 22, 2022, Sergeant Adan gave his family a photo of Iwan. In the photo, Iwan was seen wearing a complete uniform with his head shaved off. Sergeant Adan also informed that Iwan had passed the TNI selection and was currently studying in Tanjung Uban. After that, Sergeant Adan asked the victim's family for some money. A few months later, he called them back, this time demanding two magpie robins which he said would be given to his uncle who was said to have helped Iwan graduate. To further confirm the victim's family, Sergeant Adan asked them to come to Tanjung Uban to witness Iwan's inauguration and again asked for additional money. Upon arriving in Tanjung Uban, Iwan Sutrisman's family did not find their son. Sergeant Adan admitted that Iwan was carrying out his duties as a Marine. Feeling suspicious of Sergeant Adan's attitude, the victim's family reported the incident to the Commander of the Lahewa AL Post. The results of the investigation revealed that Iwan had been murdered by Serda Adan and his colleague, Alvin, on December 24, 2022 in the Sawahlunto area, West Sumatra. The victim was stabbed in the stomach, then his body was thrown into a ravine in Talawi, Sawahlunto. Further investigation showed that the murder occurred eight days after the victim's departure from Nias to Padang, precisely on December 24, 2022. For his crimes, Serda Adan Aryan Marsal was charged with Articles 378, 338, 339, and 340 of the Criminal Code in conjunction with Article 55 of the Criminal Code, with a warning of the death penalty, life imprisonment, or a maximum sentence of 20 years in prison.

3.2 Legal Review of Combined Criminal Acts

Concurrent or combined criminal acts are specific criminal acts, where several criminal acts that occur are actually carried out by one person (*samenloop van strafbare feiten*). The term *samenloop* or *concursum* is interpreted as a combination or concurrency. Concurrency occurs when one person carries out two or more criminal sentences, the first criminal penalty has not been determined, or there has been no judge's decision separating the first criminal act from the next (Mahsur Ali, 2011).

Concursum holds 3 (three) structures including concurrent regulations (*concursum idealis*), concurrent actions (*concursum realis*) and concurrent continuing actions (*Vorgetzette Handeling*). (Febriana Sulistya Pratiwi., 2022). Therefore, the requirements needed to be achieved in order to state concurrent: (a) There are two or more criminal sanctions that occur. (b) the criminal sanctions are carried out by one or more people (in cases of involvement). (c) The two or more criminal acts have not been processed in court. (d) All of these criminal acts will be tried together

a. Legal Basis for Combined Criminal Acts

Concurrent criminal acts are crimes that violate legal requirements, so that the perpetrator deserves a heavier punishment than the perpetrator who commits one crime. The rules regarding combined criminal acts (*concursum*) are listed in Articles 63 to 71 of the Criminal Code (KUHP), Book I, Chapter VI. The articles are as follows:

a) Idealistic Concursus

Ideal concursus or a combination of one act is stipulated in Article 63 of the Criminal Code, known as a single concurrence. This occurs if an act violates various criminal provisions. In this case, only one provision is imposed (Jamilah, 2014). Article 63 of the Criminal Code states: Paragraph (1): If an activity violates various criminal provisions, only one provision is applied, namely involving the most severe main criminal risk. Paragraph (2): If an act is regulated by general and special criminal provisions, the special rule is prioritized.

b) Front desk trading

Continuing action (continuing act), a combined term for continuing or continued (Zuleha, 2017). Continuing action is a series of actions, each of which is a violation, but is closely related so that it is considered a continuing act (Manullang, 2017): Continuing action is written in Article 64 of the Criminal Code, which reads:

Article (1): If a number of acts, each of which constitutes a crime, are interrelated and are considered to be continuing acts, only one criminal regulation is determined; if they differ, then the one with the heaviest principal penalty is applied.

Article (2): Only one criminal provision is applied if someone is proven to have counterfeited or damaged currency, as well as using the counterfeited or damaged goods.

Article (3): However, if the perpetrator who commits the crime in Articles 364, 373, 379, and 407 paragraph 1 is deemed to have committed the crime continuously and the loss reaches 375 rupiah, the perpetrator will be subject to the criminal provisions in Articles 362, 372, 378, and 406.

c) Realistic Conversation

Concursus realis or a combination of various treatments, known as multiple concurrency that occurs when someone carries out various sanctions that are received separately but simultaneously (Muhammad Fauzan & Badruddin Siagian, 2017). Concursus realis is regulated in Articles 65 to 71 of the Criminal Code. Which reads:

Article 65 Paragraph (1): In conjunction, if various acts are considered as separate crimes which are threatened with the same main sanction, if only one punishment is determined.

Article (2): The highest limit of punishment given is the maximum amount of each punishment, with an additional one third of the most severe punishment. Article 66 Paragraph (1): If various acts are considered separate crimes with different main punishments, the punishment imposed for each crime, but the total may not exceed the most severe punishment plus one third.

Article (2): The fine is estimated based on the maximum limit of the substitute prison sentence for the treatment. Article 67: If a person is sentenced to death or life imprisonment, no additional punishment may be imposed, except for the revocation of special rights and notification of the judge's decision. Article 68 Paragraph (1):

Based on the provisions contained in Articles 65 and 66, the rules regarding additional penalties are regulated in: (a) The penalty of revocation of similar rights is combined, with a minimum duration of two years, a maximum of five years additional to the main penalty. If the main penalty is a fine, therefore the duration of the revocation of rights is a minimum of two years and a maximum of five years; (b) The penalty of revocation of different rights is imposed separately without any reduction. (c) The penalty of confiscation of specific goods, as well as substitute im-

prisonment because the goods are not given, is imposed separately without any reduction.

Article (2): The maximum limit of substitute imprisonment is eight months. Article 69 Paragraph (1): The comparison of the severity of different types of main punishments is determined based on the stages in Article 10 Paragraph (2): if the judge must decide between various main punishments, only the heaviest punishment is used. Paragraph (3): The comparison of the severity of similar main punishments is determined based on the different maximum limits of punishment. Paragraph (4): The comparison of the duration of similar main punishments is determined based on the maximum limits of each punishment.

Article 70 Paragraph (1): If there is a concurrency as referred to in Articles 65 and 66, a concurrency between a violation and a crime, or between a violation and a violation, then each violation is punished separately without any reduction.

Article (2): For violations, the maximum duration of imprisonment and substitute imprisonment is one year and four months, while the substitute imprisonment itself is a maximum of eight months. Article 70 bis stipulates that the application of Articles 65, 66, and 70, crimes regulated in Article 302 paragraph 1, 352, 364, 373, 379, and 482 are considered violations, with the stipulation that if the prison sentence is served, the duration may not exceed eight months.

Article 71: If a person who has been sentenced is proven guilty of another crime or act before the previous criminal verdict, the old sentence will be calculated together with the new sentence according to the provisions regarding cases tried together.

Three types of criminal concurrence, including idealist concursus, realist concursus, and voortgezette handeling. This is related to the execution of various criminal acts, which are then referred to as criminal concurrence. Each type of concursus has different specifications or characteristics in its application, depending on the treatment carried out by the defendant (Kusumaningrum & Slamet, 2015).

3.3 *Concursus Theory of Criminal Acts*

The problem of concurrent criminal acts is related to the imposition of punishment for perpetrators of concurrent crimes. In the Criminal Code, there are 4 concepts used to impose punishment on perpetrators of combined criminal acts (Mas'ad Mas'hum, nd), namely: Ordinary Absorption Theory (Absorptie Stelsel) is a concept that is listed in the article that regulates the combination of external acts (pseudo or concursus idealis), where criminal provisions are applied with the heaviest principal punishment. which reads: (a) If an act can be punished based on several criminal rules, then the rule applied is the heaviest principal punishment. (b) If an act can be punished based on general criminal provisions and special punishments, only the special punishment will be imposed. (c) The Hard Absorption Theory (Versterpte absorptie stelsel) is listed in Article 65 which regulates real acts (concurus realis) with the same main punishment. Only one punishment is imposed, which can be increased by one third of the most severe punishment as a criminal enhancement, which states: (d) if various acts are considered separate crimes with similar main punishments, only one punishment is applied.

The maximum penalty is the maximum amount threatened for each act, but cannot exceed the maximum penalty plus one third.

Reduced multiple theory (gematigde cumulatieve stelsel) The combination of real acts (concurus realis) is threatened with different main penalties, according to Article 66, each act is sentenced individually, but the result must not exceed the heaviest penalty

plus one third. In fact, the theory of hard absorption is regulated in Article 65, if referring to the first concept, in line with the theory in Article 66.

The Ordinary Multiple Theory stipulates that all sentences sentenced do not experience reduction. The combination theory is regulated in Article 67 Paragraph 1, which states: "If there is a combination of violations and crimes, or between violations and other violations, each violation is punished without any reduction." (Abdul Qadir Audah, 2007).

Of the four systems, only three are often used: Absorption, sharpened absorption, and softened cumulation. Pure cumulation is rarely applied because it is contrary to the *samenloop* teaching which benefits the accused. (Ali Chidir, 1985).

The idea of concurrent criminal penalties for murder and fraud in Islamic criminal law and positive law have their own standards. In positive law, Articles 63 to 71 of the Criminal Code are determined. (Dwi Handoko, 2017).

3.4 Review of Islamic Criminal Law Regarding Combined Criminal Acts

The combination of criminal penalties in Islamic law is known as *ta'adudul uqubat* (multiple penalties) and *al-ijtimaul uqubah* (collection of various penalties). This applies when someone commits various crimes, where each crime has its own punishment that has not been decided finally.

A. Hanafi's opinion, someone who commits various kinds of crimes, then each of his actions is still waiting for a separate decision (Ahmad Hanafi, 1976). Abdul Qadir Audah's opinion, a combination of crimes occurs when someone commits various other crimes, each of these actions has not been decided finally by the judge (Abdul Qadir Auroh, 1977).

a. Legal Basis for Combined Criminal Acts According to Islamic Law

The Quran, as the holy book of Muslims, firmly rejects and forbids fraudulent activities. Although the Quran does not explicitly mention the crime of fraud or the punishment for the perpetrators, Islam strictly forbids all activities that take other people's property illegally, or anything that harms other people. Several verses in the Quran that forbid such acts can be found in Surah Al-Baqarah verse 188: Meaning: "And let not some of you consume one another's property wrongfully, nor bring it to the judge, so that you may consume part of other people's property sinfully, while you know." (QS. Al-Baqarah [2]: 188)."

From the above argument, it is concluded that the act of taking property with bad steps is prohibited in Islam and is clearly considered a sin. In Islamic law, the punishment for the crime of fraud is not explained in detail. Therefore, if the punishment is not explained, then the punishment imposed is *ta'zir*. *Ta'zir* is a punishment for violations that are not expressly regulated by *hadd* law, so that its determination is imposed on human or community *ijtihad* through the welfare of the community, taking into account conditions, place, and time. The term *ta'zir* is used because this punishment aims to prevent the convict from committing a crime again or, in other words, to deter the perpetrator. (Yafie, Alie, 2003).

In the Criminal Code, premeditated murder can be punished with life imprisonment, death penalty, or a maximum sentence of twenty years. Meanwhile, in Islamic criminal law, the perpetrator of the crime can be sentenced to *qisas* or *diyat*. The basis for determining the *qisas* punishment as a threat to the perpetrator of premeditated murder is the

principle of justice in Islam which regulates that retribution is commensurate with the act committed, namely giving the same punishment to the perpetrator of murder according to the provisions of Islamic law. The verses of the Qur'an related to the crime of concursus are:

A. Qs. Al-Maidah (5): 33

And I will grant you peace The Lord of the Worlds O Allah, the Most Gracious Yarabin Allah is the Most Gracious And He is the Most Gracious And He is the Most Gracious FYI O Lord, the Most Merciful Farah Anya Yakutia O Allah Yaseen O Allah The Most High O Allah, the Most Gracious And He is the Most Gracious My name is Ya Allah O Allah Yavina My name is Allah is the Most Gracious Allah is the Most Gracious Allah is the Most Gracious Yasser FYI Allah is the Most Gracious And He is the Most Gracious FYI And the Most Gracious O Allah O Lord, Meaning: Verily the recompense of those who wage war against Allah and His Messenger and cause corruption on earth is that they be killed, crucified, or their hands and feet be cut off in return, or they be expelled from their homes. This is a humiliation for them in this world, and in the Hereafter they will receive a severe punishment,

B. Qs Al-An'am (6): 160:

My name is Jah And He is the Most Merciful Allah is the Most Gracious The Lord O Allah, the Most Gracious ^{وَمَنْ} Jah And the Most Gracious Falala Yajay O Allah Allah is the Most Gracious And He is the Most Gracious Allah And He is the Most Merciful

Meaning: Whoever brings a good deed, he will get a reward ten times more than his deed; and whoever brings an evil deed, he will only be recompensed according to his evil deeds, and they will not be wronged in the slightest.

C. Qs Asy-Asyur: (42): 40:

And the Lord is with you The Most High The Most High Allah is the Most Gracious FAMILY O Allah And He is the Most Gracious Farah O Allah Allah is the Most Gracious O Allah, Allah Yahab O Allah, the Most Gracious Meaning: And the reward for an evil is evil in proportion, but whoever forgives and does good, then Allah will give him his reward. Indeed, He does not like unjust people.

b. Forms of Combined Criminal Acts

This section discusses the combined theory in Islamic criminal law, which arises due to the fact that an offender can commit more than one crime. This raises the question of whether the offender is only given one punishment or several punishments. The fuqaha (Islamic jurists) were able to study this issue and establish two combined theories of punishment, namely the complementary theory (tadakhkhul) and the absorption theory (al-jabb).

The theory of complementarity (tadakhkhul) states that different punishments can be applied simultaneously, mutually reinforcing each other. Meanwhile, the theory of absorption (al-jabb) proposes that a lighter punishment can be subject to a heavier sanction, so that only the heavier punishment is imposed.

a) Complementarity Theory (al-Tadakhul)

The theory of complementarity in jinayat jurisprudence is called at-tadakhul. The Prophet, in terms of language, "tadakhul" means to enter or enter and complete. This opinion, when a combination of treatments occurs, the punishments imposed will strengthen each other. This means that each punishment for different acts will be applied simultaneously, with the aim of creating balance and justice in sentencing, so that only one punishment is applied for all these acts. Santoso, quoted by Mardani, stated that the theory of complementarity (at-tadakhul) is based on two main considerations (Dr. Mardani, 2019): (a) Sanctions are imposed to provide education (ta'dib) and prevention (zairu), both of these goals can be achieved with one punishment if it is effective. (b) Although different treatments (such as pork, eating carrion, or blood) can be punished, punishments can support each other and one punishment is sufficient to secure the same needs (such as public health). (c) The two reviews above relate to the purpose of punishment. In Islamic law, the purpose of punishment is divided into two, namely general and specific goals. The main purpose of punishment is as a means of social control (a tool of social control). Achmad Ali briefly expressed the law as a means of social regulation (Achmad Ali, 2017). In the Islamic perspective, punishment aims to bring benefits (mashlahah). Mashlahah in Islamic terminology means benefit or avoiding damage (Mufid, 2018). There are also those who interpret it as goodness or profit (Abdul Manan, 2017). The general meaning of *maṣlaḥah* is to avoid harm and gain benefits (Al-Qaradhawi, 2019).

The theory of complementarity states that in a combination of acts, only one punishment is imposed (Audah, 2007). 116 The theory of complementarity (at-tadakhul) is implemented if the combination of treatments has a criminal that unites each other, so that one punishment is enough as if the perpetrator had only committed one act. criminal.

b) Absorption Theory (Al Jabb)

Absorption in Islamic law means that it is enough to impose one punishment, so that other punishments do not have to be imposed. In this context, the death penalty can absorb other punishments automatically (H. Ahmad Wardi Muslich, 2004).

Among the jurists, no agreement has been reached regarding the implementation of the absorption theory. Imam Malik, Abu Hanifah, and Ahmad support it, unlike Imam Syafi'i, those who support this theory have other views regarding the limits of its application.

Imam Malik's opinion is that if the had punishment is combined with the death penalty, such as the death penalty for apostasy or qishash, then the had penalty is abolished by the death penalty, with the exception of the punishment for slander which must be carried out by being whipped 80 times before the death penalty is carried out.

Imam Ahmad's opinion is that if two cases of hudūd occur, for example stealing and committing adultery for a muhsan, or drinking alcohol and committing hirābah by killing, only the death penalty is stipulated, while other penalties are dismissed. If the hudūd crime meets the rights of adami, where one of them is sentenced to death, the rights of adami must be fulfilled first, while the rights of God are abolished by the death

penalty. For example, if someone cuts off another person's finger, slanders, steals, commits adultery, and kills, then the punishment imposed is qishâsh (cutting off a finger), the had punishment (eighty volumes) for slander, and the death penalty, while the other punishments are death (Ahmad Hanafi, 1976)."

According to Imam Abu Hanifah, if there is a combination of human rights and God's rights, then human rights must be prioritized because they usually get their rights immediately. After human rights are implemented, God's rights will be automatically eliminated. If God's rights can still be implemented and there is more than one, only one punishment is determined, namely the one that can cancel the other punishments. This is in line with the words of the Prophet Muhammad SAW:

It has been told to us by Abdurrahman ibn al-Aswad Abu Amr al-Bashri who said that Muhammad ibn Rabi'ah conveyed it from Yazid ibn Ziyad ad-Dimasyqi, who heard it from Az-Zuhri, who narrated it from 'Urwah, which was then passed on from Aisyah. He said: Rasulullah SAW said, "Avoid hadd punishment from the Muslims as much as you can. If there is a way out, then let it go. Because indeed, it is better for an imam to be wrong in forgiving than to be wrong in imposing punishment." (HR Imam Tirmizi) (Abdul Qodir Irfan, 2005).

Imam Syafi'i's opinion, the theory of absorption (al-jabb) does not exist, and all punishments must be imposed as long as they do not contradict each other (at-tadakhul). Punishment for human rights that are not the death penalty is prioritized, followed by punishment for God's rights that are not the death penalty, then the death penalty is imposed. For example, if someone commits adultery, slander, stealing, and disturbing the peace by killing, the order of punishments imposed is: punished with 80 lashes for slander, then punished with 100 lashes for adultery, and after that sentenced to death.

If the perpetrator dies while serving the sentence, then the next sentence will be canceled. Imam Syafi'i put the death penalty last because it did not apply the absorption theory (al-jabb).

For example, a perpetrator who is sentenced to 40 years in prison for slander, adultery, and having his hand cut off for theft, if he dies before the death penalty is carried out, then the death penalty will not be applied.

Some Shafi'iyah scholars seem to apply the absorption theory but in fact they use the theory of mutual support. They assume that if someone commits theft and then threatens security by committing murder, then the death penalty is imposed, not cutting off the hand, because both acts are similar and have the same purpose. In this case, disturbing security is considered a major theft, while ordinary theft is called minor theft.

c) Mixed Theory (al-Mukhtalath)

The theory of mixture aims to address the shortcomings of the theories of absorption (al-jabbu) and mutual entry (at-tadakhul) by combining the two and finding a middle solution. Islamic law does not apply both theories as a whole.

In this mixed theory, the action taken is to fortify the absolute nature of the two existing concepts (Hafidz, 2020). Combining punishments is allowed, but there must be limits to avoid giving too severe a punishment. Both of these theories are recognized by

Islamic law, but there is a difference of opinion among scholars regarding the method of application and the logic of determining punishment for perpetrators of criminal punishment.

In Islamic criminal law, the combined violation of the murder sanction and fraud on the aggravating factor is applied with the al-jabb theory, where the death penalty can infiltrate other punishments. Premeditated murder is subject to qishash sanctions, while fraud is subject to ta'zir punishment which varies according to court policy. The combination of criminal acts is included in the al-jabb theory because this theory is related to the method of calculating the penalty for perpetrators who commit several crimes at once.

Therefore, the perpetrators of premeditated murder and fraud with the elements of both crimes fulfilled, will be sentenced to death. This is because the punishment for fraud is absorbed by the punishment for premeditated murder.

3.2 Implementation of Sanctions for TNI Members Who Commit the Crime of Murder

Based on Sanctions is a response to legal deviations regulated by Law, which can be in the form of Criminal or Action. Military criminal sanctions are sanctions given to TNI members who commit criminal acts that are not justified by military criminal law. Military criminal sanctions function to manage community life and enforce social order.

Military criminal sanctions can be the main punishment, such as imprisonment, imprisonment, death penalty, closure sentence, and fines. This principal punishment is the most severe punishment and is a special principal punishment in the criminal system in Indonesia (Carolina, 2017). In imposing legal sanctions, there are differences between the Criminal Code and the Criminal Code.

Especially the inconvenience of the basic sentence or the absence of additional discipline. For this situation, additional discipline cannot be imposed without the main discipline in accordance with the Criminal Code. In a monumental sentence, the judge has the position to consider an option. However, this must also be in accordance with the interests seen from a military criminal perspective. Sudarto emphasized that the judge determines the extent of the criminal sanctions to be imposed, then it is up to the correctional institution to implement it (Syaiful Bahkri, 2017). The process of giving criminal sanctions to TNI members who commit murder crimes involves several stages that must be passed. The following are rStages of the process of imposing criminal sanctions for TNI members who commit murder: Military Court: Murder crimes committed by TNI members will be tried in a military court. The sanctions given can be the death penalty, imprisonment, fines, or other penalties in accordance with the provisions of military criminal law. High court: In some cases, murder crimes committed by TNI members can be brought to the high court for retrial. The process of imposing criminal penalties on TNI members involved in murder requires precision and accuracy in every stage, as well as understanding the applicable military criminal law regulations.

Considering the discussion and description above, the author concludes that: the type of responsibility imposed on military individuals who commit the crime of murdering ordinary people is detention and dismissal from military service. The prison sen-

tence imposed is heavier than the punishment for non-military perpetrators, because the thinking used by the judge is that the military, which is given special authority to protect civilians, is abusing its noble duty by carrying out murder. This action is considered a factor that aggravates the punishment.

4. Conclusions

This study examines the Review of Islamic Criminal Law and Positive on Combined Crimes. The theory of combined criminal acts based on the Criminal Code consists of four types, first, Absorption System, the law of which is contained in Articles 63 and 64. Second, Absolute Principle (absortie), the law of which is Article 65. Third, Cumulative System, with the law of Article 70 of the Criminal Code. Fourth, Softened Cumulative, the law of which is Article 66 of the Criminal Code. Concurrent offenses or combined acts are special criminal treatments, where various criminal acts that occur are actually carried out by one person (samenloop van strafbare feiten). Concursus has three types, including: concurrence of regulations (concurus idealis), concurrence of acts (concurus realis), and concurrence of continuing acts (Vorgetzette Handeling).

In Islamic law, there are two theories of combining criminal acts: first, the theory of mutual entry (al-tadakhul), in which various crimes cover each other, only one punishment is imposed; second, the theory of absorption (al-jabb), which considers the punishment of one crime to be sufficient to replace the implementation of the other punishment.

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