

COMPARATIVE STUDY ON CRIMINAL PENALTIES ACCORDING TO THE PERSPECTIVE OF ISLAMIC CRIMINAL LAW AND THE INDONESIAN CRIMINAL LAW CODE

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ABSTRACT

The issue of punishment in Islam is by raising one type of punishment that is often not brought to the surface, namely the fine (diyat) as an alternative type of punishment. Sentencing also costs a lot of money, for example in the costs of court proceedings, imprisonment, parole, consultation centers that must be attended, and collection of fines. The method used in this research is a normative juridical comparison between Islamic Law and the Criminal Code (KUHP). The research specification used is descriptive analysis. The data collected and processed to support this research used library research which was processed qualitatively. All of our data is separated by data that is relevant or irrelevant to this research. The results of the research and data analysis in this study state that: first, in Islamic Criminal Law there is no such thing as a complaint offense, all jarimahs, be it hudud, qishos, diyat, and takzir, are all ordinary offenses. Adultery in Islamic law is not a complaint offense, whereas in the Criminal Code Article 284 the crime of adultery is a complaint offense, and is included in the category of absolute complaint offense. Second, in proving adultery in Islamic criminal law, it is proven by four things: testimony, confession, qarinah (indication), and li'an. However, this is not the case with the Criminal Code, because the criminal act of adultery is included in the category of an absolute complaint offense, there must be a complaint beforehand so that the offense can be processed.

Keywords: comparative, criminal, Islam and law.

ABSTRAK

Meneliti tentang persoalan hukum pidana dalam Islam adalah dengan mengangkat salah satu jenis permasalahan hukum yang seringkali tidak diangkat ke permukaan, yaitu denda (diyat) sebagai alternatif jenis hukuman. Penjatuhan hukuman juga membutuhkan biaya yang tidak sedikit, misalnya untuk biaya persidangan, pemenjaraan, pembebasan bersyarat, pusat konsultasi yang harus dihadiri, dan pemungutan denda. Metode yang kami gunakan dalam penelitian ini adalah yuridis normatif perbandingan antara Hukum Islam dan Kitab Undang-Undang Hukum Pidana (KUHP). Spesifikasi penelitian yang digunakan adalah analisis deskriptif. Data yang dikumpulkan dan diolah untuk mendukung penelitian ini menggunakan penelitian kepustakaan yang diolah secara kualitatif. Semua data kami pisahkan dengan data yang relevan atau tidak relevan dengan penelitian ini. Hasil penelitian dan analisis data dalam penelitian ini menyatakan bahwa: pertama, dalam Hukum Pidana Islam tidak ada yang namanya delik aduan, semua jarimah baik itu hudud, qishos, diyat, dan takzir, semua merupakan delik biasa. Zina dalam hukum Islam bukan merupakan delik aduan, sedangkan dalam KUHP Pasal 284 tindak pidana zina merupakan delik aduan, dan termasuk dalam kategori delik aduan absolut. Kedua, pembuktian zina dalam hokum pidana dibuktrikan dengan empat hal, diantaranya: Kesaksian, Pengakuan, Qarinah (indikasi), dan Li'an. Namun tidak demikian halnya dengan KUHP, karena tindak pidana zina termasuk dalam kategori delik aduan mutlak, harus ada pengaduan terlebih dahulu agar delik tersebut dapat diproses.

Kata kunci: komparatif, pidana, Islam, dan hukum

A. INTRODUCTION

Indonesian criminal law is an original product of the Dutch state which was implemented by the Indonesian people.¹ Discussion of criminal law in Indonesia contains various types of criminal acts. A criminal act is an act which, if violated, will receive clear sanctions in

¹Miftahul Ulum, “Supremasi Sistem Peradilan Pidana Anak di Indonesia“, Al-Jinayah Jurnal Hukum Pidana Islam, Vol. 5 Nomor 1 Juli 2019), 238.

accordance with the Criminal Code (KUHP). Of the types of criminal acts in the Criminal Code, there are types of crimes that can only be prosecuted if there is a complaint from the aggrieved party. This is regulated in chapter VII of the Criminal Code regarding filing and withdrawing complaints in terms of crimes that are only prosecuted for complaints.²

One of the complaint offenses is the crime of adultery. It is an absolute complaint offense, meaning that it cannot be prosecuted if there is no complaint from the husband and wife who are harmed (who are humiliated). As long as the case has not been examined before the court, the complaint can always be withdrawn. The criterion for the adultery offense will continue to be a problem whether it is a complaint offense or an ordinary offense.³

Criminal law is a legal regulation regarding criminal matters. This definition has been clarified by Mustafa Abdullah and Ruben Ahmad who said that substantive/material criminal law is the law regarding offenses that are punishable by criminal law. The word criminal law is first of all used to refer to all the provisions that stipulate what conditions are binding on the state, if the state wishes to issue a criminal law, as well as rules that define what kind of punishment can be permitted. Criminal law in this sense is applicable criminal law or positive criminal law which is also often called *jus poenale*.⁴

Islamic law, which until contemporary times still survives as one

²Satjipto Raharjo, *Membedah Hukum Progresif*, (Jakarta: Penerbit Buku Kompas, 2008), 56.

³Miftahul Ulum, "Fikih Organisasi (Reaktualisasi Sejarah Nahdlatul Ulama di Indonesia)", *Al-Insyiroh Jurnal Studi Keislaman*, Vol. 5 Nomor 2 (September 2019), 73.

⁴Teguh Prasetyo, *Kriminalisasi dalam Hukum Pidana*, (Bandung: Nusa Media, 2010), 20.

of the legal systems run by several Muslim countries, also does not escape criticism, because in Islamic law there are several types of punishment which, when measured by a humanism approach, are considered to have lost touch with contemporary modern civilization. Some types of punishment in Islam such as caning, cutting off hands and death by cutting off the head with a sword are considered contrary to human rights which have been ratified in the form of the UDHR (Universal Declaration of Human Rights).

The issue of punishment in Islam is by raising one type of punishment that is often not brought to the surface, namely the fine (diyat) as an alternative type of punishment. Sentencing is not a pleasant thing for someone who is convicted. Sentencing also costs a lot of money, for example in the costs of court proceedings, imprisonment, parole, consultation centers that must be attended, and collection of fines.

According to the utilitarian theory put forward by Bentham, punishment is a crime (mischief) which can only be justified if the crime is able to prevent a greater crime from happening than the punishment for the perpetrators of the crime. Sentencing raises various sentencing objectives that have developed from the past to the present which are more directed towards a more rational direction. Starting from the theory of retaliation which aims to satisfy all parties. This theory of retaliation is primitive but its influence is still felt in modern times, because the primitive element in criminal law is the most difficult to remove.

B. RESEARCH METHODS

To examine and discuss the legal events above, the researchers used a normative research method with a legal approach and a conceptual approach. as well as reviewing and studying various laws and regulations related to the title under study. The sources of legal materials used are primary and secondary sources of law. The method used in analyzing the data in this thesis is deductive, namely the data obtained in general which is then analyzed to conclude specifically, namely related to general descriptions of fines and then conclusions that are specific according to Islamic law.⁵

C. DISCUSSION

1. Diyat's View in Islamic Criminal Law

In Islamic law, someone who has killed, caused injury, or malfunctioned another person's limb either intentionally, unintentionally or semi-intentionally, the appropriate sanction for the perpetrator is the diyat sanction. Diyat itself has the meaning of property that must be paid for because of a crime (murder) which is then given to the victim or his heirs. Diyat according to the term is property given to the victim or his family as compensation for his actions in killing or injuring someone.⁶

Diyat is a substitute punishment for the main punishment, namely qishas. Diyat is an effort to replace the law in which the perpetrator offers to the victim with compensation or a fine, in which

⁵Soerjono Soekamto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986), 12.

⁶Miftahul Ulum, "The Concept of Maslahah By Al-Imam Malik And Al-Imam Al-Tufi (Comparatif Study of Maslahah Al-Imam Malik and Al-Imam Najm al-Din Al-Tufi)", *Veteran Law Review*, Vol. 2, No. 1 (November, 2018), 61.

the fine or compensation is a punishment for the perpetrator, which can be said to be lighter and can even be abolished because of the existence of a fine or compensation. offered by the perpetrator to the victim who agreed to it.⁷

For murderers or destroyers of limbs, diyat or fines are set for the following reasons:

- a. The murderer or destroyer of limbs has been forgiven by the family of the murdered or the family whose limbs have been damaged
- b. The perpetrator of the murder or the destruction of body parts escapes and the payment of the diyat is borne by his family.
- c. In a state of qishas, it is difficult to carry out, if someone injures another person's body and it is difficult to determine the size, both in depth and width of the wound.
- d. The death of the perpetrator of the murder or the destruction of the limbs.

The wisdom of implementing diyat, among others, are as follows:

- a. Diyat (fine) with property is for the benefit of both parties. For the murderers, this diyat makes the perpetrators feel a new safe life and get salvation, repent to the right path because they feel how precious life is. On the other hand, the family of the slain can use the treasure for their survival and lighten the burden of their grief a little.
- b. The perpetrator of the murder is expected to be aware of his

⁷ Abdul Qadir Audah, *Al Tasyri' Al Jinaly Fi Al Islamiy*, (Beirut: Daar al-Kitab, t.th), 7.

negligence and be more careful. In the context of Arab society at that time, the form of fines was in the form of camels or freeing slaves. Then what paid for not only the murder, but also his family.

- c. Diyat is to prevent crime from happening and protect the soul from being harassed.

Protecting one's life, which is protecting one's soul from being killed, includes protecting one's body parts from being injured or damaged. Anyone who kills humans or injures their limbs intentionally must be sentenced to qisas or diyat.⁸

Adultery in the Criminal Code is included in the absolute complaint offense (absolut klacht delict), which can be processed if someone complains about the act. Complaint is the right of the victim to be prosecuted or not prosecuted because it involves the interests of the victim, for this reason in practice complaint offenses are given a period of revocation of cases regulated in Article 75 of the Criminal Code which reads "a person who files a complaint has the right to return within three months after the complaint has been filed."⁹

This is done so that the victim can consider by looking at the impact that will be caused to the victim if the case is continued or not, holding a complaint offense is to protect the aggrieved party and provide an opportunity for interested parties to resolve cases that apply in society.

So complaint offenses can only be prosecuted if there is a

⁸*Ibid.*

⁹Moeljati, *KUHP*, (Jakarta: PT. Bumi Aksara, Cet. 25, 2006), 124,

complaint from the person who was involved in the crime. Prosecution may not be carried out if there is no complaint. A complaint is a notification accompanied by a request by an interested party to an authorized official to take action according to the law on a person who has committed a crime against him (Article 1 point 25 of the Criminal Procedure Code).

Meanwhile, in an Islamic perspective, any action (whatever is done by anyone) that brings mafsadat/madharat and hinders the realization of benefits for human life, is in principle prohibited (immoral). Because such an act is contrary to the core purpose of Islamic law's law. In legal language, the prohibition of a disgraceful act is often known as a crime (delict) or according to Islamic criminal law terminology, it is commonly referred to as a finger. Namely the prohibitions of sharia that are threatened by Allah with had or ta'zir punishments.

Adultery is clearly an act that causes great damage, judging scientifically. Adultery is one of the causes that results in damage and destruction of civilization, transmits very dangerous diseases, encourages continuous singleness and the practice of living together without marriage.¹⁰

The issue of adultery is something that is clear and important to pay attention to, because it always requires understanding as well as meaning that must be based on religious teachings. From a sociological point of view, many people who abort their wombs often do this because the two partners (a man and a woman who

¹⁰Laden Marpaung, *Asas Teori Praktik Hukum Pidana*, (Jakarta: Sinar Grafika, 2005), 11.

commit adultery) are reluctant to take responsibility for it because of disgrace in society. The abandonment of innocent babies, this background can happen because the perpetrators of adultery, both men and women, are not ready for the presence of the baby. This murder often occurs because of the woman's pregnancy, on the other hand the man is not ready to be held accountable for his actions, so the man is dark-eyed and ends the problem he is facing by killing the woman.¹¹

The problems above can be seen how lax the rule of law in Indonesia is regarding adultery cases which seem as if the adultery is not serious to be eradicated. Even though adultery as a social phenomenon is very dangerous. This shows how weak the law in Indonesia is with no significant change in legal rules related to this article on adultery, especially in that adultery is categorized as an absolute complaint offense.

The next thing that is most worrying is that the Indonesian people who have bad attitudes towards adultery will continue to repeat their bad actions, and even those who have never done it will be motivated to try to do it (tempted), because of the enthusiasm in the adultery rules article 284 of the Criminal Code. not in accordance with what is expected by the legal objectives, namely preventive (scare) for the benefit of society in a country.

We can examine adultery from why someone did that, in this case if adultery occurs in a household partner then we can call it an affair. There are so many types and patterns of infidelity, it may be difficult to know for sure what is the reason or cause of infidelity.

¹¹*Ibid.*

However, in order for us to have an idea of causes or reasons or motives, we also need to read references in the literature so that they become knowledge.¹²

2. Fines in the Indonesian Criminal Code

Before studying more deeply about the crime of adultery, it is first necessary to know about the elements of the offense (jarimah) in general. If these elements are present in an act, then it can be classified as a delict (jarimah) with legal consequences in the form of threats of sanctions that have been regulated in syara' law (Islamic law). And before studying the elements of jarimah, first know the meaning of the jarimah itself.

Besides general elements, there are also special elements. For example, in the case of theft, in addition to fulfilling the general elements, special elements must also be met, namely the stolen goods worth a quarter of a dinar and above, carried out secretly and the stolen objects stored in an appropriate place.¹³

According to fiqh scholars, adultery is intercourse between a man and a woman without a valid marriage bond, namely inserting the male genitalia into the female genitalia, at least up to the limit of hasyafah (testinal head).

Sexual intercourse that is forbidden and considered as adultery is intercourse in the vagina, where the penis in the vagina is like a celak stick in a celak bottle or like a bucket in a well. Intercourse is considered adultery, at least with the occurrence of hasyafah (top of

¹²D. Schaffmeister, *Hukum Pidana*, (Bandung: Citra Aditya Bakti, 2007), 87.

¹³Leden Marpaung, *Tindak Pidana Terhadap Nyawa dan Tubuh*, (Jakarta: Sinar Grafika, 2000), 20.

the penis) on the penis, or a type of sexual intercourse if the penis does not have an erection, and according to a strong opinion, the penis does not require an erection.

Adultery according to Islam is intercourse carried out by a couple who is not bound by a valid marriage. The perpetrators of adultery are divided into two, namely adultery muhsan and ghairu muhsan. Muhsan adultery is adultery committed by a person who is mature, intelligent, independent, and has legally mixed with someone of another sex. In other words, muhsan adultery is married adultery. While ghairu muhsan adultery is adultery committed by people who have never entered into a legal marriage.¹⁴

Islamic law prohibits adultery and threatens it with punishment because adultery undermines the social system and threatens safety. Adultery is a violation of the family system, while the family is the basis for the establishment of society. Permitting adultery means permissible abomination, and this can undermine society. Regarding the abomination of adultery, Muhammad Al-Khatib Al-Syarbani said that adultery is the most heinous of the big sins, not one religion justifies it. Meanwhile, the witnesses who were dropped were also very heavy, because they threatened honor and family relations.¹⁵

The danger to religion from adultery is clear enough. Someone who commits adultery, at that time he feels happy and happy. Meanwhile, on the other hand, his actions caused God's anger and curse because He had strictly forbidden them and punished the

¹⁴*Ibid.*

¹⁵Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana*, Bandung: Refika Aditama, 2003), 72.

perpetrators. In addition, the act of adultery also leads to the release of faith from the heart of the perpetrator, so that if he died while committing adultery, he would die without having faith.

The Criminal Code is the main book of criminal law in Indonesia, in the articles that regulate adultery as part of a crime against decency, all of which fall under the category of crime. The crime referred to is contained in five articles, namely: Article 284 (adultery), Article 285 (rape with sexual intercourse), Article 286 (intercourse with a woman who is not his wife who is in a state of unconsciousness), Article 287 (intercourse with a woman who is not yet fifteen years old who is not his wife), Article 288 (having intercourse with a woman who has not yet reached the age of marriage and causes injury or death).

Actions that have the same meaning as adultery, in the Criminal Code are classified as crimes of decency regulated in Articles 284-303 of the Criminal Code. One of these crimes of decency is known as adultery/mukah (overspel) which is regulated in Article 284.

According to Article 284 of the Criminal Code, it is stated that adultery is intercourse committed by a man or woman who is married to a woman or man who is not his wife or husband. And in order to be included in this article, intercourse must be done voluntarily, there can be no coercion from either party.¹⁶

The punishment given to the perpetrators of adultery, in the Criminal Code threatens with a maximum penalty of nine months in

¹⁶*Ibid.*

prison. In the new Criminal Code Bill, it has been stated that the penalty for adultery is five years in prison. And under the penalty of a maximum of two years in prison for perpetrators of cohabiting, namely the act of living in the same house without any marriage ties.¹⁷

Adultery in the Criminal Code stipulates adultery as one of the absolute complaint offenses (*absolutklacht delict*), meaning that even though adultery has occurred, the perpetrator cannot be prosecuted if there is no complaint from the aggrieved husband and wife. Complaints cannot be made by anyone other than the husband or wife of the adulteress.

Complaint delict is a crime that can only be prosecuted if there is a complaint from the aggrieved person. As adhered to by the Criminal Code (KUHP), an absolute complaint offense is an offense which according to its nature under any circumstances can only be prosecuted on the basis of a complaint. The act of complaint here is needed to prosecute the incident so that all those concerned should be prosecuted. Absolute complaint offense is in *splitsbaar* (unsolvable) so that the prosecution does not only apply to the person whose name was mentioned by the complainant, but also to other people who are participants in the crime even though their name is not mentioned in the complaint.¹⁸

Criminal law in Indonesia includes crimes listed in general criminal legislation (book of criminal law laws), as well as special legislation (outside the Criminal Code), such as: Law no. 31 of 1999

¹⁷Aziz Syamsuddin, *Tindak Pidana Khusus*, (Jakarta: Sinar Grafika, 2011), 89.

¹⁸*Ibid.*

concerning the Crime of Corruption, Narcotics Law and others. All implementing regulations are under the control of the State. In this case, the task is to ensure law enforcement in the community, for the sake of achieving public order.

This crime is as regulated in Article 10 of the Criminal Code which consists of the following main crimes:

- a. Death Penalty
- b. Imprisonment
- c. Confinement
- d. Criminal Fines.

The existence of fines is the existence of fines, namely the imposition of fines as an alternative to short-term criminal deprivation of liberty which is the type of principal crime that is rarely imposed by judges, especially in the practice of Indonesian law.

The stipulation of fines in the Criminal Code is a type of criminal sanction that differs in the number of percentages and the threat of the type of crime with the Criminal Code Bill, both penalties that are threatened as an alternative or a single crime. Starting from Article 104 to Article 488 for crimes (Book II) and starting from Article 489 to Article 569 for violations (Book III), the formulation is single imprisonment, imprisonment with an alternative fine, single imprisonment, imprisonment with an alternative fine, and a fine that is threatened singly.¹⁹

The minimum fine is Rp. 0.25 (twenty five cents) x 15. The

¹⁹Hamzah Hasan, *Kejahatan Kesusilaan Perspektif Hukum Pidana Islam*, (Makasar: Alaudin University Press, 2012), 20.

maximum is not determined in general but is determined in the articles of the crime concerned in Books II and III of the Criminal Code. Outside the Criminal Code, it is sometimes specified in 1 or 2 articles of the last part of the legislation, for the norms of criminal acts specified in several articles that preceded it. In the Criminal Code, before the amendment to Article 303, the maximum fine that was threatened was contained in Article 403, namely Rp. 10,000 x 15 = Rp. 150,000, which in fact constitutes a single criminal threat.

In imposing a sentence, the role of the judge is very important. After knowing the purpose of sentencing, the judge must consider the circumstances surrounding the perpetrator of the crime, what and how the influence of the criminal act committed, the effect of the criminal imposed on the criminal in the future, the effect of the crime on the victim and many other circumstances. other matters that need the attention and consideration of the judge in imposing a sentence. These are all sentencing guidelines.

In carrying out the effectiveness of fines, there must be a balance between fines and their substitutes, in the event that the convict cannot pay the fines that have been determined in the current Criminal Code, the replacement is imprisonment.²⁰

With this balance principle, in the context of execution, it will be easier, namely if a fine cannot be executed, then a replacement sentence will be imposed so that the realization will not occur what has been known as "chronic arrears".

In terms of effectiveness, fines are less effective when compared to imprisonment, this is especially so when viewed from

²⁰*Ibid.*

the perspective of deterrence of the convict. This is because the criminal fine can be paid by someone else. Meanwhile, in terms of imprisonment, it is impossible to be represented by another person. In addition, the convict can collect money from anywhere to pay off/pay the fine.²¹

In the end, within the framework of the operationalization of fines, it is necessary to put forward the first, starting from the positive side of fines, it is hoped that it will become the basis for legislative policies to further improve the function of fines as a means of punishment, both in their position as a stand-alone type of sanction and as an alternative type of criminal punishment. short term imprisonment; Second, a deep understanding of the weaknesses/limitations of the effectiveness of fines is expected to be a signal as well as feedback that must be considered in order to get around the operational policy strategy of fines to make it more functional or work more effectively in reality:

3. Differences in Fines in Islamic Criminal Law and the Criminal Code

The formulation of fines in the draft Criminal Code draft which was prepared by the 1992 Criminal Law Bill Team is contained in Book I regarding General Provisions Chapter III Articles 72 and 73.

Elucidation of article 72:

Fines can also be seen as an alternative to the criminal revocation of independence. As a suggestion in criminal politics,

²¹Adam Chazawi, *Tindak Pidana Mengenal Kesopanan*, (Jakarta: PT. Raja Grafindo Persada, 2007), 84.

this punishment is no less effective than the punishment for revocation of independence.²² Based on this idea, basically, as far as possible the fine must be paid by the convict and for that payment a grace period is set. if circumstances permit, the fine paid is taken from the wealth or income of the convict instead. The definition of "if circumstances permit" means that the convict is able, but does not want to pay the fine. If an attempt to replace it is not possible, a substitute imprisonment shall be imposed on him. The provision that the convict pays his fine as much as possible must mean that he is given the opportunity by the judge to pay off his fine.

Explanation of article 73:

Considering that the purpose of punishment is not in the form of retaliation, in imposing a fine, the judge must pay attention to the real ability of the convict.

So the team in drafting the Draft Criminal Code concept is based on 5 (five) weight classes for the level of crime, which are as follows:

- a. Very light
- b. Light
- c. Medium
- d. Weight
- e. Very serious (very heavy).

In Article 351 paragraph (1) of the Criminal Code (KUHP) it reads as follows:

"Massage is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five

²²*Ibid.*

hundred rupiah."

The criminal threat in the form of a fine of Rp. 4500, - contained in Article 351 paragraph (1) of the Criminal Code has been adjusted based on Article 3 of the Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code:

"Each maximum amount of fines threatened in the Criminal Code except for Article 303 paragraph 1 and paragraph 2, 303 bis paragraph 1 and paragraph 2, is multiplied to 1,000 (one thousand) times."

Based on these provisions, the fine as regulated in Article 351 paragraph (1) of the Criminal Code becomes a maximum of Rp. 4,500,000.00 (four million five hundred thousand). *Diyat* is a criminal act whose type is also determined by God, but its implementation is entirely left to humans. So humans have and have alternatives to choose the type of punishment that will be imposed on the perpetrators of the crime.

Diyat deals with mental and physical problems of a person, such as murder and torture. In this case, if a person is killed, the victim's family has the right to choose an alternative punishment, namely retaliating against the perpetrator with a similar punishment (*kisas*) or asking for a fine as remorse from the perpetrator to the victim's family (*diyat*).²³

The payment period for the murder *diyat* starts from the

²³Rahmat Hakim, *Hukum Pidana Islam (Fiqih Jinayah)*, (Bandung: CV. Pustaka Setia, 2000), 36.

moment the victim breathes his last. According to the ashah opinion, the period of paying diyat in addition, such as cutting a hand whose wound has healed, starts from the time the crime was committed, because that is when diyat is required. So the start of the diyat payment depends on the time the crime was committed. Just as the payment of the diyat for murder depends on the time of the loss of the soul because that is when the diyat obligation is imposed.

However, it is not justified to demand a substitute equivalent to the crime committed, except after the wound has healed. If the wound has not healed, for example the wound spreads from one limb to another, for example, such as cutting a finger, then spreads to the palm, then the payment period for the replacement of the finger starts from the moment the finger is cut, and the replacement of the palm from the moment the palm breaks. If some of the heirs of ashabah die in the middle of the year, he is void of obligations that must be fulfilled in that year. In addition, he is not required to pay the diyat from his inheritance because he is helping, like zakat.

D. CONCLUSION

The issue of punishment in Islam is by raising one type of punishment that is often not brought to the surface, namely the fine (diyat) as an alternative type of punishment. Sentencing is not a pleasant thing for someone who is convicted. Sentencing also costs a lot of money, for example in the costs of court proceedings, imprisonment, parole, consultation centers that must be attended, and collection of fines. According to the utilitarian theory put forward by Bentham, punishment is a crime (mischief) which can only be justified

if the crime is able to prevent a greater crime from happening than the punishment for the perpetrators of the crime.

In Islamic Criminal Law, there is no such thing as a complaint offense, all finger hudud, qishos, diyat, and takzir are all ordinary offenses. Adultery in Islamic law is not a complaint offense. - Whereas in the Criminal Code Article 284 the criminal act of adultery is a complaint offense. And it is included in the category of absolute complaint offenses. In the Criminal Code, those who can make complaints are husbands/wives or third parties who are tainted. If there are no complaints and the parties are designated by the Articles of the Criminal Code, then an offense of adultery cannot be processed.

RECOMMENDATION

Adultery is a despicable act. Adultery occurs because of the mistakes of education, association, and the role of the government to determine policies. Therefore, the management of adultery problems involves several elements, namely:

For the community: Family is the first education for the formation of one's character. And character education to create the successor to the nation's moral and ethical nation starts from the family. Therefore the role of 110 parents is very important. Parents should fortify their children with religious, moral, and ethical education.

For the government for sake of creating a good generation of nation continuing the civilization of the Indonesian state which maintains the norms of decency, customs and civilized nations based on the Almighty God. In accordance with the value of Pancasila as the basis of the state. The government and the Parliament should view adultery as a heavy problem

and must be known by strong sanctions and make adultery as a complaint offense. So that it is fitting for the new Dans, the new KUHP Bill will be immediately approved.

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