The relationship of crime to society in the countries of Asia and the Arabs

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Abstract

The study aims at find out and analyze domestic violence, and study it in detail, openly and independently based on the Libyan criminal law in order to review and develop the law. Studi sosial internasional antara. so it will not against Islamic law and.Furthermore, it aims to monitor and determine the jurisprudence aspect and the law by studying the law sanction set by Libyan law maker and compare it with Islamic law. As following the search questions: 1) How are crimes related to families in the perspective of Libyan Penal Code? 2) How can sanctions be compared to these crimes in terms of the opinions of scholars in Libyan Penal Code and Peoples of other States? The researcher employs a descriptive analysis method and collects the data from Libyan law reference textbooks and criminal law encyclopedia. Data related with Islamic law are from several fiqh books. Then the researcher analyzes the data by representing them on each theme and reviewing them from the perspective of Libyan law and four main ulemas. The last steps are compare and draw the conclusion from the study. The result shows that the Libyan law maker is in accordance with Islamic law in making law on domestic violence and its sanction. However, the implementation of the law is sometimes different in some cases due to some reasons such as maintaining human rights, safety and stability. The fact is caused by the lack of development and adjustment of the law. The Libyan family law has no explicit explanation on domestic violence and mediator misuse, and it delegates them to criminal law. However, the explanation will help to strengthen the argument and clarify the family condition in criminal law. It also help judges to determine the condition and law adjustment to a certain crime. In some cases, the suspects are not brought to trial and punished. The criticism of the researcher arises when a theory says that only the Family Law can regulate the relationship arising from the fact that man is male or female, that he is husband or widower or absolute, or that he is full or incomplete, but the researcher sees that this theory is incomplete, where it does not specify rewards and punishments in case of violation of the rule. The researcher asserts that the assumption based on the specific criteria at the time of the crime was taken by the Libyan Criminal Code as evidence. Therefore, theorist’s theory complements the previous theory. Thus, the theory of researchers complement each other with previous theories. And that the crimes and punishments imposed on them are unequal according to Islamic law, and not limited to family law alone.

Keywords: Crime, Society, Domestic violence, Criminal law

INTRODUCTION

Background Search

The crime is one of the social problems that human society has known in all its ages and its different systems and forms. It has been the subject of interest of many thinkers and scientific researchers. Each one tried to express an opinion and provide analysis. It is one of the social facts that have afflicted human societies from the earliest ages. And it has suffered from humanity over time, which is not absolute in the sense that it indicates a fixed action has specific situations, but a relative thing determined by many factors, including time and place and culture, some acts in the past are not considered crimes, but become crimes in modern societies and vice versa 1.

And crime means in the language of the commission of the offense is the sin, and the words of God) and do not dare you Shenn people. Ie, do not hold you, and it is said that he does not earn you, and he will be guilty of any accusation that he has not done. As well as the words of the Almighty) as well as reward criminals 2.

In the terminology of most human sciences, they are close to the same definition, but they are based on one

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1Omar Mohieddin Houry, Crime and its causes against it, a comparative study in Sharia, law and social sciences (Damascus: Dar al-Fikr al-Arabi, 1, 2003).
2Muhammad ibn Abi Bakr bin Abda Lokadir al-Razi, Mukhtar al-Sahah (Cairo: Dar al-Hadith, a new edition, 1424 AH, 2003) Bab al-Jim, 67.
basis, namely, the act of hurting the human being or any physical or moral entity, and thus can be included in all the prohibitions against which the laws of positivism are based (Iryani & Murtiwidayanti, 2017; Wicourts, 2006). Then it is a fact that harms the social entity, its social fabric and its basic interests such as security and stability. Thus, it can be said that it is a small society for the children. It plays an important role in shaping the personality of the individual, guiding his behavior, and defining his future. The person begins his life and spends his childhood, affected by all the events that pass through him. Of the care or neglect, and therefore its impact on the individual reality is not available, and studies have shown that any disorder or disorder that hinders the family from the performance of her mission in the education of children in the most likely leads to future deviation and criminality, where the family has many problems in years Age, these problems may be economic or psychological. The relationship between the couple or one of the children affects the general atmosphere of the family and the relationship between the spouses. If this relationship is solid and balanced, the consensus, satisfaction and cohesion prevail over these problems and crises. However, if the relationship is weak, the strike and the imbalance will put the entire family in the wind. And ravaged by how you like 3.

Research Problem

Most modern theories and studies have proven that any disorder or disorder that hinders the family from performing its mission in the upbringing of children fully will often lead to deviation and criminality in the future. The basis of the research problems is the subject of violating the Libyan Penal Code for contemporary societies such as Indonesia. The Libyan Constitution represented by the green document in Article states that “the Koran is the law of society.” Thus, this provision is clear and unequivocal that all provisions and provisions of Libyan law derive of the Islamic law, but the researcher thinks and believes that some of the provisions of this law, especially the Libyan Penal Code “General Crimes” in Chapter I of Chapter II of the articles on family crimes may be deficient and may be contrary to Indonesian society and this is contrary to Constitutional. Among the problems is also the researcher believes that the provisions of the Libyan Penal Code are all rigid and inflexible, through continuous research and access to the researcher found that this law was issued in 1953 after the independence of the Kingdom of Libya directly, and came rigid rigid and non-flexible crimes related to the families did not occur Any change or change to the present day, and this is consistent with contemporary crimes and penalties for the family, which need to be analyzed to reach the jurisprudential, in accordance with Islamic law. Thus, the weakness of the entity and the severity of the strike and lost its balance may result in multiple crimes, the Islamic Sharia has imposed special penalties, also that most laws have been subjected to penalties, including the Libyan law represented by the Penal Code and the Personal Status Law, as most of their provisions derived from Islamic law under the slogan “The Holy Quran is the law of society” and since the researcher thinks and believes that some of the provisions of this law do not agree with the sharia on the pretext of achieving security and the interests of the people.

Research Questions

1-How are family-related crimes in the perspective of Asian and Arab societies?
2-How can the penalties for such crimes compare between Indonesian and Libyan law?

Research Goals

The objectives of this research are embodied in several principles: Following the changes that took place within the State of Libya, an amendment to the laws and the establishment of new laws, the researcher aspires from this study to be a futuristic study by the Libyan state, and the Asian peoples benefit from them in the treatment and modification of some shortcomings in identifying the crimes directly related to the families and analyzing them in detail and To guarantee the rights of the people and ensure the security and stability of the community and work on its growth and progress, which helps in the formation of a comprehensive view of these crimes in terms of jurisprudence and law, and a statement under the wealth of them. The legislator, when protecting an interest

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3Major Hatem al-Tira, director of public security in the Libyan city of Benghazi, presented the Libyan authorities with comparative statistics for the crime of family abuse for the years 2004 to 2006 AD, where it became clear that these crimes are increasing in Libya and each year in an unnatural manner, which necessitates amending the law and imposing more severe penalties to deter And reduce its spread.
within society, considers the violation of the duty of the individual to be obedient and loyal to the state. Family and other crimes are in violation of the orders and powers of the state, and this is the justification for criminalizing the legislator for this act or abstention.

The Importance of the Subject

That this research is a contribution to the enumeration of the most common types of crimes within families committed by the couple or by children because they are not familiar with the fundamentals of sound education, and to include them in studies, as this research is a contribution to identify the provisions of the Libyan and Indonesian Penal Code in these crimes and then compare them so that The families are fully aware of the crimes that are going on around the entity and its causes and factors and the legal implications resulting from the Sharia and Libyan law.

The practical importance of the subject The researcher hopes to draw the attention of those responsible for judicial bodies, human rights organizations and scientific institutions to provide them with a detailed study of these crimes, analyzing, detailing, developing and dealing with deficiencies and codifying new standards, detailing the law in strict accordance with Islamic law in general.

PREVIOUS STUDIES

The difference in the similarities and differences between this study and the study in which the researcher will examine the fact that this study dealt with the subject in terms of social aspect only, and did not address the researcher in terms of legal aspect, did not mention the penalties that are supposed to be applied in the event of such crimes.

Search Limits

The scope of the study in this research is determined between the Arab and Asian societies in determining the crimes through a comprehensive study of the crimes, sentences and penalties that affect the interest protected by law and society. This is supported by the laws and penalties that you have chosen for this study (Alahoul, Azizan, & Alwi, 2016; Thomas, 2007).

In this book, the Libyan law refers to general crimes in particular, and the Personal Status Law in general. The Libyan Personal Status Law regulates the relations that arise from the fact that a person is male or female, that he is a husband, widowed or divorced, As he is full of eligibility or incomplete for his age or lack of knowledge of the law did not specify those sanctions in the case of if it was violated, where most of the texts are only organizational matters (Ambikai & Ishan, 2016; Thamer, 2015).

As for the Penal Code, which is of particular interest to us in this book, we find that the Libyan legislator in Chapter II, which deals with the crimes committed against families in Chapter I, has listed specific provisions and penalties for those crimes, which are in accordance with Islamic law, The society has its security and stability and works on its growth and progress. It has identified three crimes in general and listed criminal penalties in particular.

The first concerns the crime of failure to perform family duties. The second is a crime related to all those who misuse the means of reform or education illegally. The third is a crime related to the ill-treatment of family members and children, as these crimes, as provided for in the law, are only prosecuted on the basis of the complaint of the injured party. It is strange that the Libyan legislator considered them crimes that rise to criminal offenses and evidence that he listed an independent door in the Libyan Penal Code.

In this regard, the researcher saw that the relationship between these crimes must be examined, analyzed and described in a detailed and explicit legal detail independent, and compared with the Islamic jurisprudence in terms of crimes and penalties (Omar, 2003; Patrick, 2017).
RESEARCH METHODOLOGY

Research Type and Methodology

The methodology followed by the researcher is the descriptive and analytical research methodology that relies on the library. Most of the Libyan literature related to this context has not been created or published in the international information network, so the use of the library is necessary and necessary. And tried to transfer what can be transferred directly from them, and through the use of the library also enables the researcher to obtain books helped him to extract under the wealth of information and others, and where it was necessary to rely on the writing of the first section and the previous studies and the theoretical framework, and can not imagine The person wrote In these two sections and in this form of the enlarged itself and the results of his ideas, but to be a scientist or a scholar or something like that, regardless of any approach applied (United States Agency for International Development, 2007).

A purely desktop approach is the careful and thorough collection of records and documents available in relation to the problem of research and then a comprehensive analysis of their contents in order to deduce from the research problem evidence and evidence proving the answer to the research questions (Essmat, 2008).

This approach approach descriptive approach is intended descriptive is the researcher described the reality of the phenomenon, which wants to study as it is completely, accurate description based on the collected accurate information on the phenomenon, and factors affecting it. It is also known that most laws guaranteeing the rights of people to take appropriate punishment are supposed to define a clear and unequivocal definition of the question of doubt. This is the second legal gap: the Libyan legislator did not separate these duties in the sense of their legal nature, For the judge to be determined by certain criteria relating to the offender’s condition and condition at the time of the offense.

In addition, there are contemporary statistics in Libya, which have prompted the researcher to write on this subject, which recorded the highest percentage of crimes of families in the second largest city after the capital, with increasing rates of complaints and cases referred to the Public Prosecution in this regard, where it turned out that every ten thousand families in the city Benghazi: Nineteen families registered a family crime case in 2006.

It was found that the highest rate of assault recorded against the father of 276 families followed by the mother of 179 families and followed by the brothers among them 111 families, the proportion of 49% for the first 32% for the second 20% for the third.

The researcher believes that contributing to providing the Libyan judicial bodies with an ad hoc study in these crimes makes it easier for judges to reach the meaning of the texts in a quick and detailed manner. The researcher will examine each of the crimes and examine them independently. The researcher to study these texts to stand and see only the books and public documents, but will address the independent publications printed especially in this subject 5.

Where most modern theories and studies have proved that any disorder or disorder that hinders the family from performing its mission in the upbringing of children in the most complete manner will often lead to deviation and criminality in the future.

However, the crimes committed by families under the Libyan Penal Code, which include the failure to perform family duties and the misuse of means of reform, education and ill-treatment of family members, may be deficient in some cases. A sacred entity must be protected criminally, and this law did not expressly explain the things that fall under those crimes concerned, and only the adoption of public standards only, by making the discretionary judge to judge it in what he deems appropriate, although the Islamic system has proved successful experience in the interpretation Provisions 6.

Critic critic criticizes the fact that the penalties for freedom are no longer used by the world in line with modern reality, but if the researcher hopes in Libyan law, he finds that these sanctions are still prevailing in the world, especially in the Libyan, Egyptian, Algerian and other penal laws, This is confirmed by the statistics on the penal status, and because of the negative consequences of these sanctions, which were the accumulation of prisons

5Ahmed Mahmoud Khalil, mediator in the legislation of family courts for Muslims and non-Muslims (Egypt: The Modern University Office, 1, 1429, 2008)
6Libyan Penal Code, General Crimes, Chapter Two Crimes against Families, Chapter I Crimes related to Family Assistance Article 396, Article 397, Article 398
for minors, although the increase in the expenditure of the state negatively affects them, in addition to the futility of reducing the recurrence of the return of crime for short periods of time, What the modern penal policy aims at.

Other thinkers see sanctions as a concept that must be considered in comparative Islamic legal thought, not in contemporary and contemporary ideas, which violate the principle, which is that some of the penalties are the right of God and may not be developed or submitted amendments on the pretext of the development of society, , Sabri Mohammed Khalili, professor of philosophy at the University of Khartoum, where he believes that in the Islamic Criminal Code has been texts on the sanctions and marginal punishment and no one can enter ideas on them, but the penalties of the other Taazir is fine because it did not respond to the Sharia, Decides to judge what he deems fit Asbah in crimes that have no limit, no expiation or punishment, where Islamic jurisprudence has many rules that benefit the right of the state to adopt certain legal rules to become binding for the people.

The judgment of the jurists and the judges is considered to be the beginning of the jurisprudence in the field of punitive sanctions. It is not an end to it. This jurisprudence includes important points to benefit from the contributions of contemporary societies provided they do not conflict with the fundamental rules of Islamic jurisprudence.

Based on this, the researcher believes that Ijtihad in the field of sanctions is absolutely canceled because it is a right to God, although some call for absolute diligence in the field of sanctions. Here is what the scholar Ismat Seif Al-Dawah pointed out in his book on Arabism and Islam. Are based on revenge, but are like all the provisions of Islam, based on the interests of human beings, or the protection of interests as said in the jurisprudence of criminal law, and social enough to maintain the force of binding in the rules of jus cogens and end 7.

DATA ANALYSIS

In the context of contemporary criminal policies, criminal legislation in general does not specify specific penalties for each crime. However, all legislations, in particular the Libyan legislator, leave flexibility between a minimum and a higher limit, in which the judge has broad discretion, And circumstances at the time of the commission of the crime. For example, the Libyan legislator’s decision in the Penal Code in Article 172 Penalties punishes the offender from three to five years’ imprisonment. The law also provides them with two different penalties in the form, such as article 396, Shall be liable to imprisonment for a period not exceeding one year or a fine not exceeding fifty pounds (United Nations Office on Drugs and Crime, n.d.).

This is due to the judgment of the trial judge, who chooses the appropriate punishment in accordance with the circumstances of the offense and the case of the accused in every case brought against him. However, the judge is obliged to state the justification for the punishment referred to in article 28, The judge may not exceed the limits stipulated by the law unless there are reasons for mitigation or tightening. In case of any of these reasons, the judge here shall not exceed what the law allows in this regard (Ahmed, 2008).

This limitation provided for the scope of the judge’s discretion in Article 27, “The judge shall rule the penalty he deems fit within the limits of the law and shall explain the reasons for which he is justified and shall not exceed the limits prescribed by law for each penalty by increasing or diminishing it. Except in cases determined by law” and therefore the criterion for assessing the punishment is the nature and intent of the act, the behavior of the perpetrator at that time and the circumstances of his or her personal, family and social life.

The Supreme Court of Libya also ruled that if the judge had convicted the offender of the minimum penalty applicable, the fact that it was not justified was not contrary to the law and the convicted person could not challenge the judgment against his lack of interest (Abdurrahman, 2011).

Where the rates of evidence gathered for complaints of ill-treatment of family members and their children over time are increasing “by years of schooling”, thus the results were as follows:

The largest percentage of population congestion in the jurisdiction of the police station of Araba followed by the police station, and registered the highest proportion of the crime of ill-treatment of family members in the police stations of Araba followed by the police Albaraka and Benghazi new in 2006.

In every ten thousand families in the city of Benghazi, there are 19 families registered against their members in connection with the crime of ill-treatment of family members during 2006.

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7 Essmat Saif Al-Dawla, Arabism and Islam, Series of National Culture, Part 6 (Damascus: Center for Arab Unity Studies, unpublished) 23
The increasing number of cases referred to the Public Prosecutor’s Office concerning offenses of ill-treatment of family members, misdemeanors and offenses in general over time according to the years of study.

It was found that the highest rate of assault recorded against the father "276" followed by the mother "179" followed by the brothers among them, "111" crime so that the proportion of 49% 32% 20%.

The Results Reached by the Researcher in his Book

Result of the first section

A) The crime of failure to perform family duties, the researcher concluded that this crime falls under the law before reaching the minor to the legal age, and this is contrary to the opinion of the most correct in Islamic jurisprudence, where the crime is achieved before and after the age of puberty, Muhammad the tunnel on his sons in both cases, and not default in their right.

The researcher concludes that this crime is not valid in Libyan law, except after considering the outcome of the act, and restricting it to the complaint of the injured party, and the opinion of the majority of jurists otherwise, to criminalize this act and not to take the complaint of the injured party as a result For this act because the victim is a minor who has not reached the age of majority.

C) The crime of ill-treatment of family members and children. The researcher concluded that this crime is a deliberate crime according to Libyan law, which requires the general criminal intent to provide the flag of science and will. The majority of jurists went on to say that this crime is not a deliberate crime, Libya, where it does not require the achievement of those elements, and does not require the signing of sanctions already premeditated.

D) The crime of disposing of the minor’s property and waste. The researcher concluded that the Libyan law does not allow the guardian or guardian to dispose of the minor’s money, whether it is beneficial or harmful, except with the permission of the court. The most likely opinion of the jurists is that the guardian may act in the minor’s interest in the interest without being censored in beneficial acts. Libyan law is contrary to Islamic law.

E) The crime of not paying alimony or custody after a final judgment. The researcher concluded through the analysis that this crime is a criminal offense that has a description of the crime, in which the defendant can not provide a guarantor for him in paying the maintenance value, nor does he provide a guarantor, contrary to the opinion of the most likely jurists. If the defendant refrained from paying the maintenance after The court orders his imprisonment to be released at any time when he makes a payment or provides a guarantor.

As for the position of the Libyan Personal Status Law, he did not address all these crimes in particular, but rather left them to the Penal Code "General Crimes" in the enactment of special laws for them, except in some matters such as organizing alimony. And to support the judiciary in determining its legal description and adaptation.

Result of Section II

A) The researcher concluded that the penalty for the offense of default in carrying out family duties is not supposed to be taken by the Libyan Penal Code, since it does not rise to felony, where the term of imprisonment is imprisonment, which is not more than one year and not less than twenty four hours or a fine And this is contrary to the opinion of the most likely jurists of Islamic jurisprudence, where this opinion went to the lack of financial penalty “fine” at all, and the view is also likely, that the minimum duration of imprisonment in this crime in one day Only, the most six months.

B) The penalty for the offense of misuse of the means of reform or education. The term of imprisonment in this crime according to the Libyan law is up to eight years, which is contrary to Islamic law, in that it does not rise to criminal offenses. The jurists of Islamic jurisprudence based their opinion on the correct opinion, which takes the punishment of Taizir, which made it a substitute for alternatives to imprisonment in this crime, where if the result of this crime death, the judge here the discretion in determining the maximum and minimum penalty.

The judge concluded that the Libyan Penal Code gave the judge an discretionary power to judge the minimum amount of punishment that he deems appropriate in his opinion when the crime occurred. This opinion was in accordance with the principle or opinion of the most correct jurists of Islamic jurisprudence, This is done by simply waiving by the injured person, and contrary to the opinion of the most likely jurists who is suspended by the
execution of the sentence either by death or madness or pardon or intercession.

CONCLUSION

Theory of Outcome

The researcher criticized the Libyan Penal Code, because it made family crimes criminal offenses in violation of Islamic law in some of its texts, and introduced them under the Criminal Code to protect them criminally. The researcher’s theoretical framework related to the economic situation of the family. The researcher found that it was based on factors based on custom and social tradition. This is what the researcher believes is that these crimes are supposed to fall under the Libyan Personal Status Law. The legislator, when protecting an interest within society, considers the violation of his duty in the Lighter and loyalty to the law of personal status, not the law of criminal offenses and penalties, the crimes of family are considered disobedience of the orders of personal status law, and in this lies the legislator to justify the criminalization of this act or omission that.

The reader’s criticisms of data, evidence and theories have been written about this. If the reader hopes in the book "The Mediator in the Legislation of Family Courts for Muslims and Non-Muslims" by Ahmad Mahmoud Khalil, there is the theory that the Personal Status Law regulates the relationships that arise from the fact that the person is male or Female, widowed or widowed, full-fledged or under-age, or not familiar with the law.

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