Chapter 5
CHAPTER - V

CLOSING

CONCLUSIONS

The analysis of ideas or concepts of punishment in Indonesian criminal law system and Islamic criminal law system done in the preceding chapter led us to the following conclusions.

A. General Conclusions

One of needs of modern state is the presentation of law and order. Fundamental issue therefore is how the law and order in a society is formed and what kind of law is required to achieve the objects of state.

It is an issue of general importance and is relevant for every country and Indonesia is no exception. In Indonesia that still utilizes some colonial product, the issue creates certain problems in the enforcement or application, because the legalized product is not yet suitable for character, spirit and awareness of Indonesia nation.

Generally the concept of national law politic of Indonesia has poured in broad lines of nation directions but as well known that if its formulation is very general, that occasionally create opinion controversy as seen in composing of national legislation plan.

Basically, national law development is an endeavor to build national law order which is directed to fulfil needs of developing society and it
can have a role as director and anticipator of social change for creating ideals of just and prosperous society.

Meanwhile, as it have stated above, some products of colonial law still remain in operation to organize social life and one of them is criminal law system with its penal stelsel.

National law formation that is suitable to demand of development era constitutes basis need of society which is important and urgent. It has also to subserve the demand of the nation identity building and nations existence.

Formation of national law adjusted to needs, character and ideals of nation can play a big role as a tool of social engineering for supporting and pushing development mobility.

The significance of having such national law, is not only related to the character of Indonesia as a constitutional state, but even if caused by the function of law as a social engineering in development process and this added by law role as stimulus and supporter of the other area of development, as well as like a director of social changing process.

By it's role as one of national development component, the law reconstruction has link to each others and also relevant to the economic, social, politic, cultural and security defence etc.

All the terms having connection to development, social order, social engineering, law and justice, etc, must be firmly related to human and a thing which adhere to human matters such as, status matters, human
values, human resources, human rights and the other aspects of human life. To play such a role the, law is strengthened by sanction system. The sanction system which adhere to the law system make the system of law is having authority. It means, the sanction system is very significant. The sanction system or punishment system also deals with many aspect of life pertaining to the humanity matters that occasionally can create controversy, political or social flaming.

Punishment system also is connected to criminal justice system which its function of sentencing and it's implementation. Thus, operationally, criminal law system including it's punishment system has strategic position on criminal justice system. It means, if criminal justice system is not handled seriously, it may not only frustrate the objects of criminal law, but also the criminal justice system itself will become as one of criminogenic factor.

Beside that, punishment matters also relating to criminal law policy as apart of planning and mechanism of crime prevention that is the planning or policy about what sanction can be imposed to offender whether punishment or treatment should be the applicable. Criminal law policy is an thus an integral part of national development policy. When the criminal law policy is not well planned, it could cause of increase in crimes rate. While, criminology as one of the partner of criminal science, aim at discovering the causes of crime and the effective measures to reduces crime is also link to treatment, custody, prevention
and control of crime, criminal policy is implemented through the state agency. The formulation of criminal policy essentially depends on crime causations and there is correlated factor with its implementation which is achieved through that medium. The vital issue in criminology is the problem of causation and how to deal with the treatment of offender (punishment stalsel).

Criminology also includes victimology which is study of the relationship between victim and offender in all its aspects. Victimology in turn is therefore connected with the term of the punishment. Nowadays, the definition about victim has become more wider than before, leading to the expansion of the definition of offender. The offender can define it as the system of authority, corporation, economy, politic, social and cultural perspective.

The development of the criminal sciences. Such as criminology, victimology and penology etc. have been helped to widen the scholar's sights about the significance of punishment with all it's implications.

But, the development of that sciences can not be equalled with the development of crime revolution that happen nowadays, where it become more and more serious.

The condition which was aggravated with the situation where the compentational penal treatment have fallen into disuse and crime remain rose enormously. That situation also can not be helped by economic growth, the developing of science and technology, as happen on the
rise of crime in affluent societies like U.S.A. and the other European society.

Uptill now the theories about penal and criminal law as well as theories of criminology that are built to respond the emerged problems and conditions can not be considered satisfactory. As one of the cause is the activities of scholars roof from one science family in scope of criminology, sociology, penology, victimology etc. have debated punishment from his own knowledge. They are in different observation caused by consideration of multi aspects where it influence each other reciprocally.

The facts as stated above lead to the necessity to reconsider about the present system of punishment.

For Indonesia, it is a matter of reconstruction of national law particularly criminal law and it's penal system. In reconstruction of law the process of formulating involves the choices towards form, values or ideas, essence etc. It concerns to what kind of law is really needed in present time and future. It also pertaining to the issue as to which basic principles should be handed and given priority.

To answer this question, we should reanalyse the existing system of law and compare it to the other system that also exist. For Indonesia, it is clear that the followed system is civil law system which is close and similar to the other western system like common law system. While except in communist society which is leading to ruin. Moreover, the
ideas be values contained in communist system is directly opposite to state fundamental norm of Indonesia.

There remain one system of law that almost have been forgotten and very much misunderstood, that is Islamic law system. By comparing both system (Islamic system and Indonesia system as well as civil system) one can be discover the shortcoming and the weaknessess and determine the superiority of each system for making significant input in process of reconstruction of law.

General discription about Indonesian law involvement in Western system of law started from colonialism of Dutch in Indonesia during three and half centuries where at that time, Indonesia did not yet possess her own codified system of criminal law except customary law that exist in each traditional society which is not atoned to the changing needs of the society. This conditions continued up till now, long after Indonesia independence.

As a foreign system of law that accepted and applied just like that due to severals understandable condition before, therefore the values or the spirit contained behind the idea of that system is not yet difinitely conform with the needs and character of Indonesian Nation.

The use of foreign law or certain substances of foreign law by a country indeed much take place and every where. There is needs any country in the world which possess pure national law system root from it's society development. But the acceptance of foreign law or certain
substance of that, is not rare also create bitter experience, particularly if it done unselectively and uncritically. Beside that reason, politically and socially, as much as proper, an independence country has his own national law that accordance to the need of nation.

While the system of law from the west where the its ideas or concept adopted by Indonesia, obviously contains the philosophy and the characteristic of western society.

The concepts or ideas which is contained this western philosophy also mould the guidance and methods for solving the problems of ethic, moral and social into the system that is called system of law. In other words, if in Indonesia society, emerge the problems of ethic, moral and social, so that, it will be solved by western concept that contained in system of law, of course, it is indeed not approriate, although, it is undeniable that in western concept also found some universal values.

The European system of criminal law is catogorised as man made law that emerges as typical reactions from certain conditions had taken place in that society. Thus that system of criminal law made to anticipate the conditions of 18th centuries where rationalism and secularism and it's implication gave a great influence. Theology become more and more isolated from zone of science. Individualistic anthropocentric view with materials perspective became a new religion where it affect the idea of crime and punishment.
The reliance only on logical power (rationalism) evoke that built theories of criminal law and punishment which are offenly changeable, uncertain and invalid or contain disablement. As a result a world of criminal law science and penology, is in relativism, where it also affect criminology and victimology.

That thing is normal, because logical power is close with subjectiveness relativity and limitedness whether it is caused by influence of social culture, milieu, time, place, emotion or by knowledge limitedness etc. Mean while, Pancasila as way of life and state fundamental norm of Indonesia have not yet involved fully in developing of criminal law and punishment, caused by some reasons among others:

- On defacto and dejure, Indonesia still apply the old penal code from Dutch Legacy, although with some alterations and additions but it is not principally.

- the formulation of Pancasila it's self have not yet clarified comprehensively into certain area of science or knowledge including criminal law and punishment.

- philosophical analysis of criminal law and punishment still done very rarely and if any it was done partially and un intact.

- almost all of prominent expert of criminal law in Indonesia come from milieu of western oriented law institution and keep their attention to occured development of theories in western countries.
Concerning to islamic law or islamic criminal law, it is classified as Divine law where from its basic principles, sources, goal, kinds upto the significance and the relation to the others systems of life are different.

The law constitutes of command and revelation of God via holy Quran book and His messenger. In islam the absolute authority and soverignity is only on God, not on humanbeing like in western concept (man made law) because God is creator of human and all of universe, consequently he know the better and the bad for human more than human it's self. The logical power of man will not able to equal the logical power of God, but it is not meant that God does not appreciate logical power and the role of human. Logical power of human remain necessary and significant for analysing, investigation that concepts or ideas or massage of his words in Qur'an and Hadiths that form of principal on sources of islamic law. This is also caused by much of the explicit statement of Al Quran is general and form of juridical respond towards the products of human culture, while as-sunnah is also linked to certain time and millieu. Beside that, the role of human in islamic law is to seek answer about the various problems that have not yet been touched by both of sources above by way of keeping refer to both sources. Occasioned by that reason, so, the basic fundamental norm and unchangeable, and concept that had been determined in Al-Qur'an and Hadiths is constant, while the law determination as result of human
analysis such as: ulamas, mujtahid, fuqoha (law experts), are relative or changeable to anticipate society change and development of era. Sometime the result of analysis influenced by the experience of their knowledge, millieu and the cultural dynamic of their society.

The developed and determined system of law in islam do not made only for the sake of law itself, but also for the sake of the other aspect of life such as moral life, spiritual life and it is pertaining to others aspects like economic politic, social and cultural etc.

By way of universal character of islamic law (Shariah), it can be said that the Sharia is the core (essence) core of islamic tenets, "whell" of all life. Sharia is system of ethic and value, a pragmatic methodology that developed for solving the problems of the present time and future. All of the character of Sharia's above cover to all system of law such as criminal law, constitutional law, civil law etc.

By that reason, the meaning and understanding of "law" in Islam are far more wide, integral, universe, interlinked and comprehensive than western concept of law.

Without comprehensive and cohesive understanding in hierarchiehal and horizontal relationship, therefore, it will be difficult to understand islamic law with it's holistic character. Likewise, toward understanding of substances of system of law like its punishment system.

Punishment system in islamic law will not comprehend fully and truly only by the way of the system and parameter used by west, but it
should be understood with its holistic character comprehensively and cohesively. But, it do not considered that under the other system of law, some of goal and general principles of islamic criminal law including it's punishment system can not be applied or will not be achieved. But this thing should be cautioned in order that the understanding of islamic criminal law and its penal stelsel is releas from misunderstood and unfair view.

In islam, obligation of punitive action, beside as law obligation, it is also moral obligation aswell as spiritual's, while in secular system, it is only law obligation or at farest it is morals.

Islamic view of punishment essence is that the values that build the pulse of social community, should be defended although by severity punishments if necessary. The goal is nothing else than in order not to happen law avoidance and degradation of respect of moral standards. Beside that, punishment is imposed as process of spiritual purifying of offenders though "submission toward heavy trial. For society itself, it is the purifying of society by conducing true moral and spiritual condition with creating the feeling of real fear toward bad consequences amongst peoples who have intention to commit crime. For the above purposes, islam has its own principle of punishment gradation that is, the higher of violated values, the heavier of its punishment and vice-versa. Modern west view of punishment gradation
is different from Islamic view, especially about ethical crime that more and more do not to be considered to be protected by law.

In Islamic criminal law, the kind and the gradation of punishment, Sharia have been given guidance to determine it. The guidance contains the parameter of maximum and minimum where the society may perform their ethic and law activity.

Punishment formulation found in Al-Qur'an, basically it is not the classification of law formulation, but it is a guidance, a reference or direction. This matters is understood oftenly, e.g. hudood and qisas which is considered as absolute punishment, where it may not be reduced and also may not be added.

Actually, hudood, qisas are the limitation of maximum and minimum of human attitude, where the acts that can be threatened by hudood is all of un Islamic categorized acts, while Qisas diyat is limitation determined by Sharia about how far the compensation may be claimed, when founds the facts, where the human have tendency to claim compensation. Thus, the tenet of one soul for one soul in murder, one eye for one eye in wound etc., is signal a maximum compensation that can be claimed.

Beside that, there is the more important Sharia norm, it is forgiving and loving which always showed as example by Prophet Muhammad that as long as his life, he always love and forgive the other or his enemies. Thus, qisas and hodood are not retribution.
At the glance, punishment in Islam seems cruel and severe. This thing caused by the facts that actually, human being according to Al-Qur'an is The Creature who have the highest level of dignity and given superiority of logic and intelect. Essentially, human being according to his natural character is spiritual being that given duty as vice of God on the earth with orient to Al-Qur'an and Al-hadist as a mercy from God. Caused by that the crime that determine in Hudood is considered as fundamental violations of human status.

The absolute application of all tenets or principles of islamic punishments should be fulfilled the whole of needed condition or requirement by Al-Qur'an, which is only valid in special form of society, that is islamic society, because the concept of criminal law in Islam is a comprehensive philosophy and code of life that if it want to be implemented or translated into action. It should accordance to certain condition as logical requirement of a law and regulation.

The term of islamic society is indeed, different with the western society. In this matter, islamic society is a society whether in theory or practice positively based on shari'a and consists of individuals that do the struggle morally and have spiritual orientation, and subsequently constitutes of society which have aim to create justice, moral, law, economy, politic continuously that have function positively and purposed as well devoted for eliminating motivations as will to commit crime where it's farest purpose is always spiritual.
But, above of all as have been stated before, that it is not means that some of the purpose and certain general principles of Islamic punishment system can not be implemented or achieved on the other society.

Beside the principles that it is as if unchangeable, there is flexibility principle of Islamic criminal law that found in ta'zeer where it is opened to debate, and it can be developed and formed in accordance with the need of society and era through a number of other sources of Islamic law beside Al-Qur'an and hadist such as; ijma, qiyas,, ijtihad istihsan etc. that form of methodology for adapting the change of era.

The adaptation of punishment concept to certain crime due to change of society, intended, so that from the concepts that found in ijma, ijtihad, qiyas, istislah etc. can be functioned with new understanding in accordance with the needs of time. This is related to the important of the change and as well as the continuity in Islamic law.

But, it should be noted that the change of concept of Islamic law must be separated with the change of religious practices that must not be allowed at all in shari'a. Meanwhile the change of custom, manner, tradition of society due to the influences of development factor of economic, science and technology are acceptable by shari'a in certain matters as long as it is good despite it will influence shari'a law where the relatively good thing become the bad and vise versa, the shari'a should be able to adapt himself by arrange this change.
The matter above can guide to the understanding of shari'a (including its punishment concept) that adaptable to development of era when the violation about new problem happen.

Aboved, it have been said that islamic system of punishment is apart of integral system of shari'a, interconnected and integral in hierarchical and horizontal relation with the others. This thing cause that the islamic system of punishment as one aspect of islamic law can not be force toward a society by sacrifice the principles of basis ethic which is intended by sharia. It means the nowadays society can not be forced to accept shari'a suddenly, only on short time with the non-islamic condition.

This may accord to the way that have done by Prophet Muhammad (P.B.U.H.) and also parallel to the method of revolution of Qur'anic Verses pertaining to this matters.

The changes that have done by Al-Qur'an is slowly. This thing seen e.g. in prohibiting of alcohol through three phases where, he (Al-Qur'an) give the opportunity to believe for utilizing of much time in order to adapt with the coming change, beside that, it give probability to society for accepting and understand about the emphasizing and priority of the shari'a truth, it is also parallel to the main object of shari'a that is to give priority to benefit and interest of society.

The concept of punishment that source from Al-Qur'an and hadist as well as other supporter sources like ijma, qiyas, ijtihad, istihsan etc.
constitute of uncountable mercy where human kind can utilize it as
guidance, to analyse, observe the truth and also to study it's
compatibility with change of era. With the analysis based on this
guidance, so, the human endeavours in finding the truth become not
useless.
Upto this time, it have been happened too much failure of human
endeavour when they build the theories for searching the truth.
While, the happened failure in implementation of principles or system
of islamc law (criminal law) is by among other reasons those are the
partially implementation of sharia, misunderstood in comprehend of
shari'a, the deviation in implementing of shari'ah.
Generally, islamc concept of criminal law and punishment is anti
thesis toward western concept.
Finally, dispite shari'ah implementation generally or the
implementation islamc system of punishment in special require islamc
conditions around all society system, but it is not meant that the general
principles and ideas of values of this system can not be able to be
applied in non-islamic society, even for Indonesia itself.

B. Special Conclusion

In this part, it will be concluded the different of both system
(Indonesia and islam) part by part - so taking western concept in this
part by the same reason also can not be avoided.
Sources of law regulation

The sources of Indonesia criminal law that root from European law, generally was excavated from western philosophy added by influences of thinkers at that time. In other words the sources emerge from the result of human thinking only (man made sources) for comparing it to islamic criminal law sources.

The sources of law from that human thinking can take form whether as original (pure) inspiration with out influences that caused by events occured in society or that result of thinking emerge as a response to events occured in society. The both of sources of law rely on logical power at all, influenced by rationalism which was spreading at that time. The ideas concepts, tenets or schools from the result of thinking are personally and collectively give effection to formation of sources of law or law and regulation itself, while as, the results which is produced from rely on logical power in rationalism are limited and occasionally very subjective caused by many reasons such as, environment or milliew, emotion, limitedness of knowledge, social dynamic of society and many other influence where personally due to the differences caused by nationality, religion, position, race etc.

Unlike sources of western law, islamic law sources beside differ, but also more complete. It has main sources from Qur'an and hadits and subsidiary sources as supporter like, ijma, qiyas, ijtihad, istihsan etc.
This primary sources especially Al-Qur'an with authentic evidence is God revelation. He is a multi-dimensional thinker, creator of human and universe where the capability of reach of its power and thinking can not be equalized to the human's. God and his words beside as sources of knowledge, it also source of law as logical consequences as creator of human and universe (no one an do this), and caused by that, He (God) is the omniscient about human and what is the best for human.

After Al-Qur'an as primary source of law, there is Al-hadists as second source that found in all of words and attitude of prophet Muhammad (Choosen man) that have conotation with law. The Hadists that can be made as legal cause (ratio legis) have been passed the strict selection and validi test method. This hadist took place during the prophethood years (23 years), it indicate that the hadists do not take place simultaneously similar with Al-Qur'an for responding the events at that time.

At-subsidiary sources, the determination about who entitled to make law is very strict. They should have certain qualification because in this sources the quality of man is very important. The law made by this sources should always be guided by Al-Qur'an and hadists. The variety, completeness, requirement and qualification, selection needed by such sources of law make this sources more comprehensive than western sources of law or it's kind. As a results, in both sources found the values or principles whether fundamental or not fundamental
as well, changeable or unchangeable, absolute or relative, as well
universal or local as well. In facts all of system of law need this absolute
and relative values or principles.
The absolute basic or principle is needed for certainty and stability,
while the other (relative) is needed for flexibility and adaptability and
dynamism.
The absolutely principles or values is the indication of absolute truth,
and the true essence, that by that cause it is unchange and can not be
change, used as guidance for the sameness of perception, step or action
and goals or ideals, that can conduce stability and certainty. While the
relative values or principle indicate that basically, society and human
are dynamic. The relative from subsidiary sources values is changeable
in order that development do not lead to destruction, chaos, so, the
relative principles or values should be combined and always refer to
absolute principles.
From the both kinds of sources (primary and subsidiary sources) it is
seen the true hierarchy (not quasi) either from the side of authority,
ability or sovereignty. This hierarchy whether in theory or in practical
must be used in true meaning. It means, that the decisions produced
from the lower source, its validity or legality and it's existence will not
be approved without refer to primary source.
In other words, the primary source must be made as legal cause (Ratio
legis) exactly when the subsidiary sources used as methods to make a
law decision.
In western system and it's kind, this hierarchy is indeed exist, but the standards and requirement of the hierarchy are not quite clear and exact like in islamic system. And in reality, in forming of law regulation, the obligation for using and refering to the higher source is not really exist and rarely happen, in other words, practically, the must for using and refering the higher (primary) source is quasi and hazy. This is the stigma which is found in western system (man made source). As a result, law products that come out from this system of law source, the position is not really proportional hierarchical.

At the glance, application of this sources of law in both systems, indeed seems similar, but the difference is obvious, especially it is seen on the absoluteness usage of Al-Qur'an and hadist as legal cause for all methods.

In western system, this absoluteness is not exist, the ratio legis (legal cause) of a law regulation is moral concept that generally followed. As a consequence, the products that emerge from the source that consider even as the first source (the higher's), it's hierarchical position is uncertain.

With the condition like above, it cause, the ideas or concepts that produced by this system of source are very relatively, inconstant and become very easy to be changed according to the wish of the maer and or the user.
**Kinds of Punishments**

In Islamic criminal law, its punishment system is completed by specific methods either from its kinds or the standards. Talking about the variety of punishment will not be aparted from the other aspects of punishment. To know, what are kinds of this punishments and how the standard is, the answer found in the source and its system.

Like stated above, the source can be divided into two kinds. There are the subsidiary source (ijtihad, qiyas, ijma, istihsan, istislah etc.). From the both source it is found the fixed punishment which is constant unchange, exact and the penal punishment (ta'zeer) which is relative changeable.

The fixed punishment like qisas, diyat, hudood where it's kinds and standard had been determined and contains punishment for crimes toward the important and essential aspects of life. The ideas or concepts found in qisas, diyat, hudood that desicioned by Al-Qur'an and hadist are unchangeable, absolute and constant. This is intended in order that human can not be changed or use it recklessly due to subjective consideration. In other words, although the era and the society change but this absolute idea is not change in order that society always be in stability and containty, so that there are found the presence of the sameness of perception, step or action, and ideals or goal for the sake of the behalf of the whole society. Thus the fixed punishment
(hudood) qisas (equal punishment), diyat (compensation) constitutes of human attitude guidance that have function to save and guard the continuity of human life. In this matter, it should be cautioned is that the absolute, unchangeable thing in punishment system of hudood, Qisos and Diyat are not exist in kinds of punishment itself, but exist in the idea behind the parameter or standard about maximum and minimum sanction that might be imposed or can be claimed, and the kinds of crime that involved in these punishment.

In other words, the absolute values or ideas in hudood, qisas and diyat punishments are present in the parameter of maximum and minimum sanction that might be imposed to offender and how much the compensation can be claimed and in variety of crime found in hudood, qisas and diyat punishment.

The reason is, if the kinds of punishment found in qisas diyat and hudood are not saved by threat of maximum sanction found in hudood, qisas and diyat punishment, therefore the continuity of the most important and essential aspect of human life will be disturbed and damage.

The next reason is the kinds of crime, in hudood and qisas punishment will persist to be considered as crime since the past time till the present time and future because it have been determined by God, the omnicient, who create human and know what is the best for him more than human itself, so, human have no authority to change this decision.
The other reason, as stated above, if it noted, indeed the kinds of crime in hudood, qisas and diyat punishment are the kinds of crime that firmly related to continuity and the necessity concerning to the essential aspects of human life.

The excellent idea about the absoluteness values with its implication in islamic concept of punishment, is not found in western concept and it's kind, even in punishment conception of Indonesia criminal law system as a follower of western system.

There is no absolute values in western concept of punishment, although universal values is admitted, but it is also temporarily, cause of their idea or concept of crime and punishment are very relative and inconsistent or uncertainty. They can change the kind of crime or punishment whenever they wish if it is considered not in accordance with their idea or view. And all of concepts or idea come from human thinking. There is no absolute guidance in western concept. All concepts on ideas have the same chance to became the guidance as long as if it is considered more argumentative than the other.

As a result, because the most important values that build the pulse of society life do not defended as it should be, without award, the degradation of respect of values standard and human dignity is happened slowly but certainly. This thing may not be occured in islamic view because it is deemed will lead to moral defect and bring to the destruction. Caused by that islam (God) determine qisos and hudood as
a normative standard of Muslim conduct that should be enforced in order that destruction will not happen.

The straightness and the absoluteness of qisos, diyat and hudood character is not means that Islam do not admit the dynamic character of human or society and development of society, but what is not wished by Islam is the wild dynamic and change without reins and guidance. Islamic acknowledgement of dynamic character of human and society approved by determination of ta'zeer punishment (penal punishment) beside qisos, diyat and hudood. Ta'zeer give the dynamic and flexibility character to punishment system of Islam.

Ta'zeer punishment is not complementary punishment, it is in equal position with Qisas, diyat and hudood punishment. Determination about kinds of punishment nowadays, there are found the tendency to reevaluate the old punishment that root in former tradition societies for seeking alternative of problem solving in punishment matters.

This tendency seen in trend to add kinds of punishment in its stelsel which is known as alternative sanction. This have been done by many western countries in last several decades.

This trend also followed by Indonesia with its plan or concept of new penal code.

Amongs of this alternative sanctions where its kinds of punishment have been introduced and applied by islamic society or country based on islamic criminal law long long time ago in the time of prophet
Muhammad and the four caliphs. Beside more varied, Islamic punishment system is capable to reach more far the moral and ethic violation that out of reach by western system. Punishment for moral and ethic violation that considered as not important to handle seriously by western system, become significant in Islam. It have function for educating, directing and guarding society from moral ruin with its all implications.

The combination and balance of the absoluteness, unchangeable principles and the flexibility, relativity principles in Islamic punishment conception will conduce harmonious equilibrium in stability, certainty but dynamic.

The sophisticated methods like this have not possessed by western system and its kind.

The punishment, the gradation etc, including the determination of kind of crime become in authority of man fully, but it always refer to Al-Qur'an and hadits. There many methods can be used to make the law and regulation in this kind of ta'zeer such as, ijma, qiyas, ijtihad, istihsan, mursalih almursalalah etc which was inovated by prior learned scholars as response to the events that have occured or might be occur due to change of society.

By the methods of ijma, qiyas, istihsan, etc. this kind of ta'zeer punishment is open to be developed and formed appropriate to the need.
Caused by that, the elements found in ta'zeer is relative and changeable.

If it compared to the other stelsel, it will find that the kinds of punishment in islamic system more varictive like wise if it compared to the Indonesia punishment stelsel.

This variation cover all of kind of punishment in other stelsel added by its own kinds that not available in other stelsel.

Kinds of punishment in islam oftenly considered as irrelevant, inconventional or out of date beside the other labels that given to islamic system of punishment for instance; barbaric, cruel, unhuman and soon. But, infact, punishment stelsel that considered more human, modern, sophisticated and used to solve the society's problems, gives unsatisfactory results.

**Basic Principle of Punishment**

To know what kind of basic principle found behind the idea of a punishment system is by observing the develop tenets or school at that time and utilized as base of punishment formulation. Indonesia that use the penal code from Dutch legacy is indeed; influenced by the tenets or school that develop at the time when that penal code in European countries was composed.

Upto nowadays, this situation where Indonesia always orient to the tenets or schools of thinking that develop in western countries is still
continue, it is also seen in forming of concept or plan of new penal code.

In other words, the theories or ideas of punishment which is applied in Indonesia all this time came from foreign element, beside affected by westernization and effects of colonialism history, and developed by the influence of thinking of most of Indonesian law expert who come from law educational institution which is west oriented.

As result, although unsatisfactory and failure happened on application of western concept or theories of punishment, but they persisted to orient toward the west in searching new theories or concept for solving the actual problem of law and society, while the ideas or concepts that emanete from or have sense of islam considered as out of date marginal concept dispite 85% of Indonesia people convert islam. This matters added with situation where Indonesian islamic law experts do not or have not yet made comprehensive concept about criminal law and punishment in accordance with the need of society and it is ready to be colided with the other concepts.

Actually, there are some efforts of Indonesia law experts to find Pencasila concept of punishment but this efforts have not yet sufficient, and the analysis is not comprehensive.

Generally, western theories or concept influenced by the idea behind rationalism, humanism with individualistic antrophocentrism approach. Even though, there are some western philosopher who base their theory
from theological approach but it is still partially or uncomprehensively, because indeed the philosophers or scholars did not specialize themself to study religion concept comprehensively, evenless islamic conception.

Due to the theories or concept root from spirit of rationalism and humanism with its all implication, where one of its characteristic are; rely on human logical power and deny the existence of God or religion and his tenets, cause by that, the standard that they made by them self is uncertain and relative, and as a logical consequences the truth of the theories or concept are also relative. This situation is not a startle thing because as many tenet or theory as made so, as many standards as also used. Subsequently, because each of all of ideas or theories state that their own theory is the most correct, such condition will lead to science relativism. In criminal law area this influence of relativism seen in their idea about crime and punishment and reformation of both, especially on personal crime and ethical crime. Punishment ideas root from rationalism and humanism with individualistic perspective tend to give priority to individual interest. Punishment for personal crime and ethical crime tend to reduce even up to eliminated, eg. legalization on homosexual and others moral or ethical crimes. Rationalism where it also create secularism beside humanism tend to refuse severity punishment.
Relativism in criminal law field and its punishment stelsel conduce the feeling of uncertainty and insecure in society. As result it will lead to unstabil situation.

In Islam, it have availabled foundation and guidance that should be used in building the idea or concept of punishment stelsel.

The foundation and guidance found in Al-Qur'an and Al-hadists and added by that contained in subsidiary sources of punishment regulation. Due to the must of using the foundation and guidance that available in Al-Qur'an and Hadists and soon in law formating so it will avoid from the sidedness of fallaciousness. The sidedness creates imbalance that cause any side ignored. Islamic conception of punishment balance out and harmonize all of sides and interest, it is found because islamic system do not contain the separateness like it be in secular system. In other words, the necessity of criminal law and punishment is also the need of moral, spiritual and other aspects. The purpose of punishment beside aimed for guarding human and social interest, it also for safeting moral and spiritual interest. Beside that, specially, the idea or concept of islamic punishment also give attention to the interest of offender, victim and his family as well.

In oriented western system, the tenets, schools or theories of criminal law and punishment is almost always partial or take sides to one or two interest only. This thing can be traced from theories or schools of punishment that emerge and develop after such longtime start from
absolute or retributive theories, as the most classical theory up to the most modern or contemporary like defence society theory.

In Islam, attention to all needed sides and interest seen in its varieties of punishment and the exist of determined punishment where its involved crimes (qisas) is constant, unchangeable and the undetermined punishment and its involved crimes (ta'zeer) which is relative, flexible and changeable. It also involve the goal of punishment and the sources of punishment regulation where all of this aspects are integrated and interlinked, it is called integralistic monotheism doctrine. Kinds of punishment is Islam where it devided into two kinds that are determined punishment (hudood, Qisas and diyat) and undetermined punishment (ta'zeer) with its justification strengthened by integralistic monotheisms doctrine that means if punishment in law system may not be separated with other system of life such as, social moral, ethic, religion or faith system.

The idea of punishment in Islam also supported by the hereafter doctrine that found in Tawheed doctrine (the unity of God doctrine). Based on this doctrine (Tawheed and the hereafter doctrine) that contain acknowledgement of the authority and sovereignty of God about all and man is his vicegerence to implement his command and also should account for all of his acts before God.

Thus, it hope, there is no deviation of law enforcement and using the power.
This doctrine does not just conduce feeling of fear in authority circles, but in people circle too.

In integratistic monotheism doctrine, amongst concept of God, human and universe are not separated. It also means, there is no separation concept of systems of life such as, system of moral, law and punishment, religion, ethic and also the others system like politic, economy, cultural etc. Thus, the integration or the unseparation of system of moral, law and punishment and faith (religion) will create balance and harmony, likewise with the aimed interests such as the interest of individual, society, moral, religion even universe. As a rational consequences of this doctrine it will creates balance, proportional, harmony and fair. In that integrity and in the relatedness found a guidance and values that have "certainty" characteristic as paradoxical of unclear, uncertain thing, where its certainty guidance and values are very necessary for human and its society for maintaining, organizing his life as well as for achieving his purpose of life.

Actually this integralistic doctrine also followed by pancasila, but the created concept only limited on general guidance for society life, it have not, yet touched social science field including law or criminal law science.

**The Goal of the Punishment**

A large part of the prior conclusion is also constitute apart of the
below conclusion, due to the interrelatedness with the goal of punishment.

In Islam, the goal of punishment comprises many aspects of life and give pay attention to interests of many sides. Generally, the purpose of imposing punishment in Islam are:

1. As a lesson for offender and the other. Lesson for offender can be in the form of many kinds of punishment found in qisas, diyat, hudood and Ta'zeer.

2. As a protection for individual as well as society, faith (religion), moral or ethic law and

- environment
- stability as need of every society.
- certainty where also as need of every society.

The purpose above should be balance by giving attention to all side and interest, such as; offender, victim and his family, society and milliew (environment), moral, ethic and religion.

The heterogenous of interest and of objects of punishment above can not be provided by one theory or concept that take side and give attention to one or two object or interest only, like be in wesern theory or concept.

Generally, there are some interests that attract western philosopher attention, where one or two kinds of interest become as a basis of their theory about the goal of punishment. The interests are; the interest of
offender, society and law, so, shape of the protection of this interest is visible at absolute or retributive theory, reformatory theory and combination of both theory and at developing of the three theories. Absolute theory or retributive theory with its stressing on act of offender with considered equal punishment and relative theory that still emphasis to offender but not only stressed on act and what kind of equal punishment will be imposed, but also emphasized to how to rehabilitate criminal, while combination theory constitutes unification of both aim in that theories. The expansion of that three theories or even other theories still remain revolve on two kinds of necessity those are the necessity of offender and society and or the necessity of law. Indonesia where its penal code come from western concept and even most of its law experts are produced from western oriented law educational institution, indeed, cannot be spared from aboved condition. And tendention persisted to turn and follow the developing western theories visible in discussions, seminars, symposiums reach to preparation and process of formating the concept or plan of new penal code. It is also visible in reformation about implementation of penal and punishment like reformation of imprisonment which is till now still create some problems. Actually, there are some efforts for making concepts that excavated from Pancasila's norms, but as oftenly stated that the excluded concepts still half done, partial in general matters of social life and as an effect,
they remain orient to the west. Nowadays theories about goal of punishment that develop in western countries which is actually as evolution of prior theories, is moving its direction to the defence society or protection of society where it is not be in contradiction with Pancasila's norm, which emphasize to interest of society more than interest of individual or group.

Change of orientation of punishment theories in western countries is a result of unsatisfactory toward the result of prior theories and it is added by condition where the development of crime revolution become more apprehensive.

Shift to islamic concept of punishment purpose that have existed since seventh centuries where it have combined all of the emerge western theories with its goal that intend to be achieved and its interest that intend to be guarded, moreover it can be said that islamic concept of punishment purpose more perfect than the aboved theories because the guarded interests and the aimed goals more wide, more have variation and more basics.

The only thing that can not be denied is that the developing of concepts and guidance that have availabled in Al Qur'an, Al-hadists and others sources is not done any more by present law experts in shape of language or terms of nowadays in accordance with the development of science and technology, although, infact, the developing of concept or guidance in Al-Qur'an and hadist have been done by islamic philosopher and law experts at that time, several hundreds of years ago.
Upto now, the wide range and universality of concept and the highly develop method they had made beyond the time and place constitute of remarkable thing. The masterpieces of prior islamic thinkers remain sink below the surface and did not reanalysed and developed (due to some causes such as; the happened islamic law obstinacy, influence of science and technology development in western countries and orientalistic efforts etc.)

In western countries itself, massive development which is reached by science and technology run parallel with the emerge problems. The new methods, theories or concepts, that intended to anticipate the problems also face many new challanges and difficulties. As long as the method or theory or concept that made are persisted to stand on rationalism that rely on human logical power and deny God's guidance and remained letting secularism, positivism, humanism dominate the thinking of the present scholars, certainty the made concept, or theories will not be sufficient, what being needed is a comprehensive and cohesive method or concept with holistic approach which is operated consistently.

*The relationship between punishment conception with law and moral*

Relation between law, moral and punishment conception is obvious because what is behind the ideas or concept of punishment is what is contained in ideas of law and moral.
Law and punishment can not be fleed from moral, however a little moral concept that intend to be participated in process of formating law and punishment stelsel might be, because behind the process of law and punishment formulating there are certain ideals to be achieved. The problem is whether moral is as central theme in the process of law and punishment formulating, and what kind of moral concept will be choose.

In practical, moral also is supporter of law enforcement. It is, for instance, seen in some acts that can be catogorised as bad miss from law punishment formulation whether it is caused difficult to formulate and difficult to be proved or caused of forgotten and neglected.

In concept of law came from western system, moral is not a central theme and also not a tool of social evolution. Even if moral is considered as a significant thing in process of society social revolution or in process of formating idea or theory, therefore the used kind of moral or standard of moral which rooted from humanism that close to rationalism, secularism and positivism.

This model of moral is persisted to deny the existence of God guidance found in its religion tenets. In other words this kind of moral is formed and rooted from relying on human logical power. The ideas from this concept is very close with limitedness whether by its ability or capacity or by scope, time and space, it is also close with dichotomy between world and hereafter, man and God, man and universe, profanity affairs
and religions affairs etc., like wise between moral religion, law and the
other system of life.
Occasionally this kind of moral is easy to be influenced by certain
sentiments due to the difference of religion, race, nationality, tribe,
position etc. As a result the ideas from this concept of moral, although
it contain universal values but, always prepare much space that can give
some chances to the sidedness, domination and inconsistency.
In punishment matters, its influence seen in their ideas about crime and
penal that more sides with personal interest and ignore moral and
ethical interest. Caused by that, punishment for crime of private
conduct, moral and ethic is very loose and even considered as it is not
crime. They also refuse severity punishment although it is for serious
crimes. The other implications of this concept of moral is its lack of
ability to create the feeling of the real fear, whether in people cirlces or
in leaders circles or and intelectual that mirror in obedience to
implement law in control or not.
In Islamic concept, system of moral as form of unseparatable part of
the unity system of life including law and its punishment system. Moral
and ethic is identical with sha'ria (Islamic law) itself. The unity and
interrelationship between law, moral and religion in islamic tenets
cause islam has his special own concept of moral.
Moral constitutes of important theme in every study and analysis, so
moral is the activating, developing and reforming power.
This moral force come from doctrine of tawheed, risalah and doctrine of chaliphate combined with the doctrine of the hereafter. Doctrine of tawheed make every step and action of Muslim life have the sameness in motive and purpose definitely, not presumably or still in searching that occasionally create confusion and hopeless.

Doctrine of law need free man from worship toward amongst man, means or goods or position that oftenly cause injustice, oppression, arbitrariness and the other forms of abuse the power. Moral that come from this doctrine of tawheed contain principle of equality without discrimination of race, position, group etc and it also contain principle of authority restriction power because the only absolute authority is God.

The obedience and awareness that produced by this doctrine more effective and forceful than the obediences and awareness that emerge from fear to face against state and its instruments. This doctrine also make human struggle for achieving a moral ideals become firm, consistence and strong.

Islamic system also based on the principles found in Risala (prophethood) of Muhammad that have proved this moral force for reform and developed Arab society

In risalas found some models for how to realize that concept of moral in social life.
While, islamic moral principle found in doctrine of chaliphate sign the significance of role of every human to enforce law and truth by his title that is as a envoy of God on earth. This principle teach the higher of human position from the other creatures, but he is not a center of all, human is not a center of all of activity and purpose of life, he also has limitedness.

In other words, the centre of all step and activity of human life is in frame to implement the goal that determined by God, pertaining to human relation to others, to universe and to his god. Thus, the center or focus of all human activity is not in will (intention) of human itself which is oftenly cause egoism, greed, arbitrariness etc.

By the aboved principles, islamic moral teach equality, love and mercy and liability toward each other. By the three principles (doctrines) above, the reference of islamic moral values is clearly and definitely until it do not give space to relativism uncertainty and doubt.

Islamic morality does not only reach the relationship between human with the other but also human with himself, with his God and with nature.

The interest which want to be achieved by islamic moral in realization of law does not to be confined to interest of individual only or merely social, but the balance of both interest as well religious interest or moral itself as anticipation to the occurrence or probability occurrence of
disequilibrium of interest between individual and society, between religion, moral and law.

From such principle, it appeared that carrying out the law and its punishment stelsel is not merely law obligation but also the obligation of moral as well as spiritual, where its realization is not only the responsibility of the ruler or leader but also individual and society. Participation of individual and society in frame of moral understanding like this will create social control, ethic moral strength which very much helpful for implementation of law and its punishment stelsel justly, and consitently. All of that, is what called as doctrine of socio religious moral in islam.

The interc connected of man, God and universe in concept of moral law and religion (faith) are also visible from the nature phenomenon as the giver of meaning on facts with its all of eternal and certain laws and principles but developable and dynamic which constitutes of a unity organic system as reflection of the existence of God, where it is sign or indicate that not only nature and its system need definite law and principles, while human and his society also need that unchangeable and definite principles but developable and dynamic for maintaining and organizing their life and society.

These law and principles can be derived through the guidance of God in His law that found in Al-Qur'an and Al-hadists. This is the doctrine of integralistic monotheism in islam.
The relationship of punishment conception with the idea of human right.

The human right issue will remain interesting and relevant in all the time as long as the realization of true concept of human right does not implemented as it should be.

De jure acknowledgement on human right in Indonesia have been inserted in preamble and articles of 1945 constitution and some legislation.

The formal regulation about human right can not be separated from Pancasila as way of life and state fundamental norm where its position is legally fervent. In the 1945 constitution also contain the meaning of that Indonesia is a constitutional state, where it indicate that human right, the state, the law and the Pancasila is an unseparatable thing. By that reason, the starting point and the aim of organisation of constituunional state and order is respecting towards human dignity (human right) based on Pancasila. Respecting and protecting on human right based on Pancasila in law implementation can be interpreted passively but, as well as actively.

Pasively it comprises the efforts to prevent arbitrary act in law implementation and in active meaning, it comprises the effort to create human social condition and motivate human to manifest himself as full as possible.
The formulation of Pancasila and 1945 constitution that contain the basic values of human rights is also not contradict with United Nation Universal Declaration of Human Rights. Human right according to Pancasila is the balance of the rights the individual by the rights of community balanced by the obligation equally to respect of the rights of others balanced by the rights of the society and the rights of the nation. The concept of human right which is found in Pancasila and 1945 constitution is universal and ideal.

But, there are matters which rather contradict with Pancasila's formal tenets pertaining to basic right of human above. This matter is the fact that the foreign law system such as criminal aw and its punishment stelsel still in operation in Indonesia beside the reality where, from the implementation of human right itself, generally still still accured many deviations and abuse.

The other thingis that the values and principles of Pancasila and the concept of human right itself have not yet clarified and concepted comprehensively and it also have not yet involved fully and reached to certain field of social sciences including criminal law with its punishment stelsel. In other words that the concept and formulation of Pancasila with its human right concept has general character which contain general direction of behavior.

Beside that it is a fact about the influences of western cultural and values which spread to all over the world and Indonesia with out
exception, cause the Pancasila's value with its human right concept collide with the values that came from the west where it indeed is different.

The influence of values and western culture is difficult to be avoided due to the advance of science and technology with its prevailing system (global system). As a result, the west is considered and became reference, where the values order is involved too.

Actually, the western human right concept is universal in character but in certain thing contain weakness and flawed.

Generally, the western concept of human right give much more emphasis on individual right than collective right and more accentuate to political right than on economic right where it is far more important than the other because it is the form of basic need of human life. This right (economic right) became the most important right for some third world state in Asia and Africa nowadays. Although, internationally the struggle to enforce human being have been done since Declaration of human right proclaimed, but the accentuation and emphasizing to individual rights then collective rights, political and civil rights then economics and social rights as a legacy of renaissance age history, have caused imbalances.

Among the imbalances are the granting to the accumulation of authority and wealth on a special minority while on the other side the nothingness of wealth and authority is endured by the majority.
Emphasizing on above right also evokes that the responsibility of minority group to participate in improving the fate of other group can be avoided.

The western concept of human right life above moulded by the ideas of moral and values that found behind forming of that concept of human right that influenced by bias of western philosophy which rooted from rationalism, secularism and humanism.

In western moral concept, there is dichotomy between the system of moral itself with the other system of life including system of law with its punishment system, this is cause the enforcement of moral obligation does not involve the other obligation such as law obligation, spiritual obligation etc.

In western concept, basic right is not parallel with basic obligation reciprocally.

In islam the concept of moral is firmly related with concept of law and religion or faith, cause by that every actions that endanger and cause neglected of others people is considered as immoral and opposite with islamic teaching.

Human right in islam should base on general principles of sharia that is spread out the benevolence and prevent the evilness.

By base on principles of tawheed, risala of Muhammad and vice gerency, make islamic concept of human right far more comprehensive, universal and complementary than western concepts.
With tawheed doctrine, it means that only God is a creator, sustainer and master of this world and universe, that means the souvereignty of this world is belonged to only Him. There are none of individual, family, social class or human race where could make them more superior above God. In tawheed doctrine contains the restriction of authority or power and souvereignty as the first effort of human right protection from tyranny and arbitrariness.

All of activities of whether individual, groups, society or state must orient and obey to the Shariah law as a highest law of muslim community as a reflection of God souvereignity.

This principle also teach that every acts performed in this world however small it is, will be asked for responsibility by God with merit and sanction.

The concept of God souvereignity in tawheed doctrine pass over the geographical boundaries which cause that the obligation for prohibiting violating acts to human right should be done no matter it happen.

The moral where it made as abasic of obedience and feeling of responsibility for enforcing of this human right came from the belief of God souvereignty in this tawheed doctrine will create the consitence and objective attitudde and contineously without fear to everything except God which distinguish it with the temporer and inconsistence attitude in western concept as that be in example of double standard done by united state.
The second basic principle of human right according to Islam is risala (the prophethood of Muhammad) which has function as medium when the law of God sent down.

In risalah, can be found the compass or guidance to determine the standard of ideal ethical attitude as implementation of respect to human right through example and good model that has been done by Prophet. Risalah where in its contents found the basic source of Islamic constitution about rights and obligation of human whether he or she as individual, a member of society or as a leader or ruler, bind all of Muslim and his community.

The guidance or direction in the risalah combined with the teaching of Al-Qur'an constitutes of universal and comprehensive concept of human right where it, indeed have ever been approved by history in the age of prophet struggle and and the four caliphs.

Above all, risalah provides clear guidance where it is intended in order that man does not search by themself without guidance. The concept which considered as ideal as response to the reliance of human logical power where occasionally is limited, subjective and wild.

The third principle of human right doctrine in Islam is vicegerency or representation of man.

This doctrine teachs that the place and position of human being is as a vicegerent of God on earth. By that reason, every his step or act in various aspect is determine by the parameters that found in Al-Qur'an and Al-hadith.
The existence of man in islam is accounted by the quality of his relation whether it with himself, fellow mankind, with nature or with his God as regulated by Al-Qur'an, hadist or Shari'a. In the basic right of human found basic obligation, both can not be separated. Between the basic right and the basic obligation, there are the reciprocal and paradoxial relationship.

The rights of individual will be got from realisation of obligation of individual and collectives. Carrying out the basic obligation means respreting on the basic right of others.

The three principle above also as a basic of determination and implementation of law including criminal law and its punishment stelsel. By this reason, there is no dichotomy and contradiction between concept of human right and concept of punishment in islam, like wise with the relation of human right with the system of moral and religion (faith), even the relation between them are complementary and reciprocally.

Theocentrical of islamic view about the human right is in accordance with the concept of punishment where if it is comprehended superficially will be seen as cruel or barbaric and disrespret to human right.

Basic principles that contained in three doctrine above are eternal and unchangeable as response to conditions in ever age although, the chances for development dynamically still remain with always refer to Al-Qur'an and Al-hadist.
SUGGESTIONS

This is to be needed the conceptual revolution. Some efforts and endeavors should be done to introduce and popularize islamic law teachings generally and islamic criminal law and its punishment system specifically in comprehensively and correctly in order that the biased opinion, misunderstanding and misinterpretation of it do not emerge frequently, even less in circle of academic society and subsequently put it proportionally.

For such purposes;

1. it can be started from more comprehensive teaching of on going subjets of islamic law and or criminal law at faculties of law particularly that take shelter under islamic private university and other educational institutions in Indonesia in special and in other place generally.

In particular, for islamic educational institutions besides the more comprehensive teaching of islamic law generally and islamic criminal law specifically, the addition of compulsory subjects about other systems of law besides national law such as western or secular law accompanying with the developing positive sciences.

It is intended in order that students of every islamic educational institution have adequate comprehension about the existing systems of law and subsequently they can able to make comparison about such system.
This matters also should be to get notice from law science consortium of Indonesia

2. On behalf of another institutions that having an interest with the study and establishment of national law they should be desirable to disclose and give more opportunities toward research and comprehensive study of Islamic law matters in order to that system or at least the general principles or values of Islamic law might be able to give contributions and go along in colouring the establishment of national law, or it might be able in giving alternative solving of social ethical or law problem on nowadays Indonesian society;

3. To Islamic law experts and jurists who are also hoped to always improve and broaden their perception or concept with the developing positive science and technology all together with the western or secular law system with the results that the analysis, study and manuscript, article, book reference about Islamic law become more actual, realistic, comprehensive, cohesive and moreover having contact with the actual problems of nowadays society.

Monodisciplined approach which has extremely sectoral and biased character is desirable that to be avoided.

4. It is also required special groups to study and analyze intensively by using interdisciplined approach and subsequently develop the existing principles and tenets of Islamic law with its
criminal law system in macro and micro perspective where the results can be spread to academic society or to the public. Such groups can be formed in any universities or institution or it can also in form of independence groups where it's members consist of the experts of multidicipline of social science beside islamic law jurists or expert. The results of their study or researches can be recommended to government also.

5. discussion forums about analysis of actual problem of law accompanying with islamic method of problem solving is also recommended where the results at least might be affected the participants perception and motivate them to be involved with that issue.
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62. Ibid, p. 177.

63. B. Arief Sidharta, opcit, p. 6.

64. Ibid, p. 6.


68. See, Chandra Muzaffar, opcit, p. 40-41.

69. Ibid, p. 61,62.
70. Extrinsical religious attitude consider religion as a thing to be utilized, not for life itself. Religion is use for supporting the other motives such as: needs toward status, secure's feeling and self esteem. One who has religion in this way, implements outer form of religion such as fasting, prayer, pilgrimage, but not in its inside or inner, while having religion in intrinsical way, it is considered to support mental health and place of society, in this way, religion is considered as comprehensive commitment and driving integration motive which regulate all aspects of one's life. Religion is accepted as unifying factor, (see, Jalaluddin Rahmat (1995), p. 25-26.

71. Soeryono Soekanto, opcit, p. 12,13.


73. A large part of society understand Islam only from ritual aspects (ritual demension) while the other dimensions of Islamic tenet such as social, intellectual and ideological dimension of islam are less attention, even it is not understood at all. This fact aggravated by the influence of foreign culture and added by the efforts that have done by orientalists. (Compared it with Amien Rais, "Islam in Indonesia, Srigunting, Jakarta, 1996).

74. Sulaiman Mubarak, opcit, p. 6-7.
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