

The Meaning Of Resorative Justice In The Concepts Of Sulh, Afw, Diyat, And Social Reintegration In Islamic Criminal Law

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Info Articles	Abstract
Article History Received : 2021-07-03 Revised: 2021-07-11 Published: 2021-07-30	This study aims to explore and analyze the meaning of restorative justice within the framework of Islamic criminal law through the concepts of sulh, afw, diyat, and social reintegration. The research method used is library research with a normative-descriptive approach that examines secondary data in the form of legal and sharia literature. The results show that Islamic criminal law has fundamental similarities with the principles of modern restorative justice, where case resolution does not only focus on punishment (retributive), but rather prioritizes restoring relationships between the perpetrator, victim, and society. The concepts of sulh (peace) and afw (forgiveness) provide space for reconciliation, while diyat (compensation) functions as an instrument for restoring the victim's material rights. Through the islah mechanism, Islamic law encourages social reintegration that allows perpetrators to improve themselves and maintain social harmony. This harmonization between positive law in Indonesia and the values of Islamic criminal law has the potential to become a new paradigm in a more humane and just criminal justice system.
Keywords: <i>Restorative Justice, Islamic Criminal Law, Sulh, Afw, Diyat, Islah.</i>	

I. INTRODUCTION

Islam is a religion that carries the concept of rahmatan lil 'alamin, namely being a blessing for the entire universe. The main goal is to create happiness in human life, both in this world and in the afterlife, by taking everything that is beneficial and keeping away the things that are detrimental. In a legal context, this principle is interpreted as an effort to guarantee the benefit of human life in a comprehensive manner, covering physical, spiritual, individual and social life aspects.

In resolving criminal cases, Islamic law focuses not only on punishment but also on the principles of justice and humanity. The use of the principle of legality is crucial to avoid errors in the sentencing process and to dispel the misconception that Islamic law is rigid or cruel. Instead, the general rules of Islamic criminal law reflect philosophical values that highly respect human dignity and due process.

One of the unique features of Islamic criminal law is seen in serious cases like murder, where there is room for forgiveness. The perpetrator is not immediately punished if the victim's heirs forgive or if a peace agreement is reached through

a mediation process called al-Islah. This demonstrates that the ultimate goal of Islamic law is not simply revenge, but rather the restoration of social relations and the opportunity for the perpetrator to improve.

The spirit of dispute resolution in Islamic law strongly correlates with the concept of Restorative Justice, now popular among modern legal experts. Both Islamic law and Restorative Justice believe that criminal cases need not always end in prison, but can be resolved through just and peaceful means for the common good.

II. RESEARCH METHODS

In compiling this journal research, it was compiled using a library research method which was carried out by reviewing various secondary data sources in the form of books, journals, and other legal writings related to the research topic. A normative method which is descriptive analysis is also used. The approaches used are the legislative approach, the conceptual approach and the legal principles approach. which examines and explains the problem of the Application of the Concept of Restorative Justice in the concepts of

sulh, afw, diyat, and social reintegration in Islamic Criminal Law.

III. DISCUSSION

A. Understanding Restorative Justice

In general, the definition of restorative justice is the restructuring of the criminal justice system to be fairer, both for the perpetrator, the victim, and the community. Meanwhile, in the positive law applicable in Indonesia, the definition of restorative justice can also be seen in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Article 1 paragraph 6 of the law states that: "Restorative justice is the resolution of criminal cases by involving the perpetrator, the victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution with an emphasis on restoration to the original state, and not revenge."

Restorative Justice is an approach to justice that focuses on the needs of victims and perpetrators of crimes, and also involves community participation, and not solely on fulfilling legal provisions or solely imposing punishment. In this case, victims are also involved in the process of resolving criminal problems, while perpetrators are also encouraged to take responsibility for their actions, namely by correcting the mistakes they have made by apologizing, returning stolen money, or by performing community service. The restorative justice approach focuses on the needs of both victims and perpetrators. In addition, the restorative justice approach helps perpetrators of crimes to avoid further crimes in the future. It is based on a theory of justice that considers crimes and violations, in principle, as violations against individuals or society, rather than against the state. The concept of restorative justice is essentially simple. The measure of justice is no longer based on the victim's retribution to the perpetrator (whether physical, psychological, or punitive), but rather the painful act is healed by providing support to the victim and requiring the perpetrator to take responsibility, with the help of family and community when necessary.

The main problem in implementing or applying the restorative justice approach or concept is because the mechanism offered by the restorative justice approach or concept prioritizes the concept of peace, the concept of "mediation" and the concept of reconciliation where the perpetrator, victim, law enforcement officers and the wider community participate directly to take part in resolving criminal cases. So in this case, it is certainly inversely proportional or contradictory to the traditional criminal justice system which is rigid and overly formalistic which prioritizes legal certainty over justice in society (Zulva, Eva Achjani, 2010).

The implementation of restorative justice is not simply undertaken without prior consideration. This consideration is crucial, as there must be a strong rationale for considering the possibility of implementing a restorative justice approach in resolving criminal cases. The following are some of the rationales for implementing a restorative justice approach in resolving criminal cases.

B. Islamic Law Perspective on Restorative Justice

Restorative justice, in the context of Islamic law, can be understood as an approach to resolving conflict or crime through restoring relationships between perpetrators, victims, and the community, with the goal of restoring violated rights and maintaining social harmony. The Islamic perspective on restorative justice is rooted in long-established fundamental principles of Islamic law, including the concepts of sulh (peace), afw (forgiveness), diyat (compensation), and social reintegration.

1. The Concept of Sulh (Peace) in Islamic Law

In Islamic teachings, peaceful resolution of disputes and crimes has a very important position. The principle of sulh, which means settlement or peace between parties in conflict, is a method that is highly recommended in Islam (az-Zuhaili, Wahbah, 1985). This concept is

reflected in several verses of the Koran, including QS. Al-Hujurat verse 9.

This verse emphasizes the importance of peace in Islamic society. Although the context of this verse focuses on conflict between individuals or groups, the principle of sulh can be applied to criminal cases, particularly those involving victims and perpetrators. In this case, sulh prioritizes conflict resolution without resorting to formal punishment that imprisons the perpetrator, but rather through mediation between the two parties to reach a mutually beneficial agreement. In practice, sulh can take the form of an apology, compensation, or other forms of compensation.

2. Afw(Forgiveness) and Restorative Justice

Islam also highly values the concept of afw (pardon or forgiveness), which is a form of conflict resolution that aligns with the principles of restorative justice. In many cases, Islam allows victims to forgive their perpetrators, which often has a positive impact on social reconciliation. This concept of afw is crucial in the context of Islamic criminal law, as it gives victims the option of not pursuing formal legal proceedings, in the hope of achieving social reconciliation. This concept is reflected in several verses of the Quran, including Surah Ash-Shura, verse 40.

This verse demonstrates that forgiveness in Islam is not only encouraged but also considered better and more rewarding. From a restorative justice perspective, forgiveness is a crucial instrument that not only resolves criminal cases but also restores social relationships damaged by criminal acts.

3. The Principle of Diyat (Compensation) in Settling Criminal Cases

One form of restorative justice also recognized in Islamic law is diyat, which is the payment of compensation or restitution to victims as a form of settlement for crimes that have occurred (Taufiq, Mohammad;, 2007). This diyat concept applies in certain cases, especially in crimes

involving physical harm, such as murder or assault. According to Islamic law, victims or their families have the right to choose between retaliatory punishment (qishas) or receiving compensation (diyat).

In cases of murder, if the victim's family chooses to forgive the perpetrator or accept compensation (diyat), the perpetrator is not subject to the death penalty or imprisonment, but is required to pay a sum of money as compensation for the victim's loss. This aligns with the principle of restorative justice, which emphasizes reparation for the victim's losses and restoring social relationships rather than simply punishing the perpetrator.

In cases of qisas-diyat, Islamic law provides more flexible space for negotiation between the victim or their family and the accused. In this case, there is the concept of diyat (ransom or financial compensation) that allows the victim or their family to forgive the perpetrator by accepting certain compensation. (Zahrah, Muhammad Abu;, 1987) In Islamic law, there is a way for the victim's family to choose between qisas or diyat. This choice indicates a space for reconciliation and restoration of social relations between the victim and the perpetrator, which is in line with the principles of restorative justice.

4. Restorative Justice in the Context of Islah

The word islah comes from the root word shalaha, which means to repair, reconcile, or uphold good. In a social context, islah refers to efforts to repair damaged relationships between individuals and communities. This concept is active and progressive, namely restoring a damaged situation to a better and more just state. (Auda, Jasse;, 2008)

The Qur'an elevates islah as a primary principle in maintaining social harmony. The essential basis for the concept of islah is QS. An-Nisa: 114, QS. Al-Baqarah: 220, and QS. Al-A'raf: 56. The Qur'an emphasizes the importance of islah as part of the prophetic mission, namely to

bring peace, justice, and comprehensive social improvement. (Shihab, M. Quraish;, 2002)

In fiqh literature, scholars recognize *islah* as a form of conflict resolution based on the principles of mutual consent (*tarādī*) and benefit. Therefore, *islah* becomes one of the main instruments in restoring relationships that have been disrupted due to violations of the law or social conflict. (al-Zuhayli, Wahbah;, 1985)

In the context of Islamic customary law in Indonesia, particularly in Muslim societies steeped in family traditions, the concept of *islah* (reconciliation) plays a crucial role in resolving legal and social issues. *Islah* focuses on resolving issues that arise between the parties involved with the aim of establishing peace and avoiding escalation of conflict (Abidin, Zainal;, 2012). In many cases, this *islah* is conducted through meetings between the families of the perpetrator and the victim, under the guidance of religious or community leaders, to find a mutually acceptable solution.

This reconciliation approach not only addresses legal aspects but also takes into account social and moral aspects. This is highly relevant to the concept of restorative justice, which aims to restore relationships damaged by criminal acts and maintain social harmony within society. The principle of reconciliation has long been a practice of conflict resolution in Muslim communities, even before the development of the modern concept of restorative justice.

C. Harmonization and Convergence of Restorative Justice as a New Paradigm of Punishment in Islamic Law

Indonesia has a great opportunity to integrate restorative justice into its criminal justice system by aligning positive law, customary values, and Islamic law through four main points:

1. **Criminal Mediation (Sulh):** Developing case resolution outside formal channels through mediation, especially for minor crimes, which is in line with the concept of peace in Islam.

2. **Forgiveness (Afw):** Providing space for victims to forgive perpetrators and receive compensation, which aims to encourage reconciliation and social recovery.

3. **Compensation Mechanism (Diyat):** Integrating a compensation system (material payment) for cases of physical or material loss as an alternative to harsh punishment, so that perpetrators can atone for their mistakes without damaging their future.

4. **Community-Based Resolution (Islah):** Utilizing customary values, deliberation, and the role of community/religious leaders to achieve an inclusive consensus to maintain social peace.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

This study concludes that the concept of Restorative Justice has strong philosophical and practical roots in Islamic criminal law, aiming to restore social welfare and harmony. Through the mechanism of *Sulh* (peace), Islamic law offers a solution through mediation that benefits all parties without having to rely on formal punishment. This is reinforced by the concept of *Afw* (forgiveness), which gives the victim the authority to grant forgiveness for the sake of genuine reconciliation. Furthermore, the instrument of *Diyat* (compensation) presents a fair material solution to restore the victim's rights while providing the perpetrator with the opportunity to take responsibility without losing their future. Comprehensively, the process of *Islah* (reparation) is the estuary of all these concepts, where the involvement of family, community leaders, and religious values serves as a bridge for effective social reintegration. Thus, the harmonization of Indonesian positive law with Islamic legal principles can become a new, more humane paradigm in the criminal justice system in the future.

B. Suggestion

As a development step, it is hoped that legal practitioners and policymakers in Indonesia will begin to integrate the values of Sulh, Afw, and Diyat more formally into national criminal law regulations, not only limited to the juvenile criminal justice system but also in certain general criminal cases that have a high chance of reconciliation. In addition, more extensive socialization and education are needed for the community and law enforcement officials regarding the importance of the role of religious and traditional leaders in the Islah process, so that out-of-court settlements can be accepted as legitimate and binding justice. Further research is expected to examine in more depth the standardization of Diyat values in the modern economic context so that its implementation continues to fulfill a sense of justice for all levels of society.

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