

Conference Paper

The Concept of Restorative Justice in Islamic Criminal Law: Alternative Dispute Settlement Based on Justice

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ORCIDSyariful Alam: <https://orcid.org/0000-0003-2053-2373>**Abstract.**

This study discusses the concept of restorative justice in Islamic criminal law as an alternative to restorative justice-based dispute resolution. This study is to analyze the concept of restorative justice in the context of Islamic criminal law and identify its potential use as a more just and recovery-oriented dispute resolution method. This research method is a literature study by collecting and analyzing primary and secondary sources related to the concept of restorative justice in Islamic criminal law. This study used a descriptive-analytical approach to understand the essence and principles of restorative justice and how it can be applied in the context of Islamic criminal law. The results of the study show that the concept of restorative justice in Islamic criminal law emphasizes recovery, reconciliation, and reintegration of offenders into society. This approach pays special attention to the needs of victims, encourages their active participation in the dispute resolution process, and involves the community as a key stakeholder. This study also identifies the potential for using the concept of restorative justice in Islamic criminal law as an alternative to resolving disputes. A restorative approach allows the parties involved to reach mutually satisfactory agreements, restore damaged relationships, and reduce the risk of repeat offenses. In conclusion, the concept of restorative justice in Islamic criminal law can be an alternative that has the potential to improve justice in dispute resolution.

Keywords: restorative justice, Islamic criminal law, justice, disputes

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Published 5 January 2024Publishing services provided by
Knowledge E

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Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

1. INTRODUCTION

In the Islamic criminal law system, there is a concept that emerges as an alternative dispute resolution based on the principles of restorative justice, namely the concept of restorative justice. Restorative justice offers a different approach to dealing with lawlessness, with a focus on restoring broken relationships and reconciliation between perpetrators, victims and society.

Islamic criminal law[1] has the main objective of realizing justice and maintaining social order. However, in practice, the criminal justice system is often focused on punishing perpetrators without giving adequate attention to victims and the safety of society as

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a whole. This often results in punishment patterns that only deepen the separation between the offender and society, without providing opportunities for social recovery and reintegration.

In this context, the concept of Restorative Justice exists as an alternative that offers a more humane approach to dealing with criminal acts. This concept proposes a new understanding of crime as a violation of the relationship between the perpetrator, the victim, and society.[2] Restorative Justice encourages dialogue, active participation, and shared responsibility between all parties involved in resolving disputes and recovering losses that have arisen.

This study explores the concept of Restorative Justice in the context of Islamic criminal law. The purpose of this study is to analyze the concept of Restorative Justice as an alternative to dispute resolution in Islamic criminal law, as well as to identify challenges and opportunities for implementing this concept in the existing legal system.

In addition, this research will also explore the principles of Restorative Justice in Islamic criminal law. These principles include first, recovery, and reconciliation. Restorative Justice emphasizes the importance of restoring damaged relationships between perpetrators, victims, and society. This approach aims to overcome the victim's trauma, help the perpetrator acknowledge the negative impact of his actions, and promote reconciliation between all parties involved.

Active participation is a key element in Restorative Justice. All parties involved, including perpetrators, victims, and the community, are expected to be actively involved in the dispute resolution process. In the context of Islamic criminal law, this active participation can include mediation processes, open dialogue, and recovery of losses through compensation.[3]

Furthermore, this research will also identify challenges that may arise in the implementation of the concept of Restorative Justice in Islamic criminal law. Some of these challenges include an actor-centered approach, difficulties in integrating the concept of Restorative Justice into the existing legal system, as well as resistance to change from various parties involved in the justice system.

However, this research will also highlight the opportunities that can be found in the implementation of the concept of Restorative Justice in Islamic criminal law. This approach can provide space for a paradigm shift in dispute handling, produce justice that is more comprehensive, and strengthen social bonds in Muslim societies.

As such, this research has important relevance in supporting the development of a more inclusive, just, and sustainable Islamic criminal law system, in line with human

values and Islamic principles that promote restoration, reconciliation, and restorative justice.[4]

In addition, this research also has several benefits that can be expected. *First*, by exploring the concept of Restorative Justice in the context of Islamic criminal law, this research can provide a deeper understanding of the principles of restorative justice contained in Islamic teachings. This can assist in developing a legal approach that is more in line with Islamic values in resolving disputes and restoring damages.

Second, this research can provide a different perspective on crime and law enforcement in the Islamic context. Restorative Justice places a focus on recovery and reconciliation, which can provide a more humane and integrated alternative in dealing with violations of the law.[5] By applying this concept, the Islamic criminal law system can become more inclusive, pay attention to the interests of victims, and provide opportunities for perpetrators to improve themselves and contribute positively to society.

Third, this research can provide guidance and recommendations for legal practitioners, policymakers, and judicial institutions in introducing and implementing the principles of Restorative Justice in the Islamic criminal law system.[6] In the implementation process, challenges and obstacles that may arise can be identified and strategies for solving them can be formulated.

Thus, research on the concept of Restorative Justice in Islamic criminal law is expected to provide an important contribution in developing a legal approach that is more inclusive, just, and based on Islamic values, as well as promoting recovery and reconciliation in resolving disputes.

2. METHODOLOGY

The research methodology involves analyzing literature and documentation related to Restorative Justice in the context of Islamic criminal law. We will collect data from primary and secondary sources which include verses from the Qur'an, hadith, and relevant works of scholars, as well as empirical studies and academic literature that examines the use of the concept of Restorative Justice in Islamic criminal law practices.

3. RESULTS AND DISCUSSIONS

Islamic law is not just how to carry out the law for those who violate it, but more than that it demands piety for everyone to do good while building awareness to be fair to anyone. Islamic law is "a system that prioritizes adherence to *Nash* (religion) and the

plenary principles of justice, including justice for perpetrators of criminal acts, justice for victims of criminal acts, and justice for society and the State”.[7]

The implementation of Islamic law is flexible, as it primarily seeks to punish individuals once guilt is established. However, its application is closely tied to the concept of “*maslahah*,” which refers to actions that bring about positive outcomes and benefits for humanity in accordance with the principles of Shari’a. This approach aims to ensure happiness and prosperity in both the present life and the afterlife.

One of the advantages in situations involving intentional killings and persecution is the possibility of reconciliation between the involved parties through peaceful means. This approach is in line with Islamic teachings, emphasizing the unity of people and the promotion of peace. Reconciliation between the perpetrator and the heirs of the victim in a murder case, or between the perpetrator and the victim (or their guardian) in a persecution case, serves as the initial step in avoiding the application of *qishâsh* (retaliation). In this process, the victim’s heirs, the victim, or their guardians are not compelled to make the forgiveness process difficult, and the perpetrator must genuinely express remorse and apologize for their actions. Moreover, it is essential that any agreed-upon compensation is executed in a fair and honorable manner.

In relation to current conditions, forgiveness and the existence of a *diyyat* are none other than a form of implementing restorative justice. “The concept of restorative justice was initiated by perpetrators and victims to resolve problems peacefully by prioritizing the principles of deliberation and consensus”,[8] for the common interests of perpetrators and victims. “This restorative justice approach provides full involvement for victims in resolving their cases.”[9] Through peace and implementation of the *diyyat*, victims or their heirs are sufficiently respected, and their rights are restored and humanized again as if no victim had occurred so that unity and human relations remain intact.

“The other side of the protection of victims’ rights is in terms of punishment for the perpetrators of murder if proven, the death penalty (*qisas*), or *diyyat* if pardoned. This is none other than to protect the interests of the victim, where one of his family has been killed, who may be someone who has an important position in his family.”[10]

Examining the provisions of Islamic law concerning murder and persecution cases, it becomes evident that well before the concept of restorative justice gained prominence in contemporary times, Islamic law had already established and practiced it. This illustrates that Islamic law is a comprehensive and exemplary legal system, aiming to safeguard the rights of victims. The principles rooted in Islamic teachings, including those related to restorative justice, have been documented in various languages. It is

essential to note that Islamic law had a well-developed criminal justice system (shariah) long before Western legal influences emerged, which prioritized the interests and well-being of crime victims.[11]

In Islamic law, restorative justice is manifested through the option of substituting *qisas*, the principle of retributive justice, with *diyat*, a form of compensation, in cases of intentional killings and abuse. This flexibility demonstrates the progressive and constructive nature of Islamic law, as it aims to foster positive relationships between victims and perpetrators. It serves as a tangible expression of Islam's profound regard for human rights. Moreover, this practice highlights that the resolution of criminal cases does not necessarily have to rely solely on the judicial system. Instead, it offers an alternative avenue for resolving conflicts and promoting reconciliation in a manner that prioritizes the well-being of all parties involved.

The implementation of restorative justice in Islamic law goes beyond addressing earthly matters; it also encompasses considerations for the afterlife, providing inherent benefits within the framework of Islamic principles. This aspect sets apart the concept of restorative justice in Islamic law from restorative justice in other legal systems, as it takes into account both the temporal and spiritual dimensions.

The presence of discussions regarding the forgiveness of perpetrators by the victim's heirs, the victim, or their guardian in intentional killings or persecution cases, as well as the possibility of substituting *qisas* with *diyat*, demonstrates that Islamic law had established early guidelines for punishment. These guidelines not only serve as a robust reference for judges but also resonate with the public. They are deeply rooted in the protection of victims, emphasizing a balanced and just approach to sentencing..

In Islamic criminal law, it is explained that certain criminal threats can be replaced when obtaining forgiveness from the victim or the family of the victim of a crime. Related to that, Islam has 3 (three) levels of punishment, namely first, equality punishment, second, pardon, and, third, *diyat*. [12] This shows that Islam recognizes two paradigms in case settlement, namely litigation and non-litigation paradigms. The litigation paradigm is a fundamental view and belief that the only proper institution to settle cases is through the courts. In contrast, the non-litigation paradigm departs from the basic assumption that the settlement of cases is not always through law and courts. Methods outside the court are part of a model that is not abandoned and have proven to be effective in resolving cases without leaving injuries and ongoing grudges. This last method is now called the restorative justice approach.

Settlement of cases through non-litigation channels can be carried out on the basis of the initiative of each party in the case, it can also involve a third party (*hakam*).

The hakam functions as a mediator (peacemaker) of two or more parties in a dispute. The position of the judge is equivalent to that of a mediator or arbitrator. The method of settlement in a good way is a tradition that has long been rooted in Arab society even before Islam was present. After Islam was present, this doctrine was strengthened again with suggestions to always create peace and harmony in society. The doctrine developed by Islam in settling cases is a peaceful settlement and deliberation among the litigants without having to go through a legal process before the court. It is the position of the doctrine of pardon in Islamic law that is now recognized as an alternative form of settlement of cases by achieving the most ideal goal of punishment. Through the institution of forgiveness, the settlement of cases can produce balanced justice between the perpetrator, the victim, and society. It is this ideal of punishment that is to be achieved in a restorative justice approach.

In practice, Islamic criminal law does not only advocate reconciliation in civil cases but also in criminal cases. The implementation of restorative justice can be seen in the implementation of *qisas* and *diyat*.

A novel element evident in the application of *qisas* is that the right to pursue *qisas* punishment remains with the victim's family. Legal scholars view the act of killing as a civil wrong, akin to a civil case.[5] The resolution of this matter is contingent upon the mutual agreement between the two parties involved, namely the perpetrator and the victim's family. Nonetheless, the final authority to determine the *qisas* punishment rests with the judge.

Within the context of contemporary legal systems, murder is classified as a public issue due to its potential threat to the safety and security of society at large. Consequently, the responsibility to address this matter falls under the jurisdiction of the government. Victims possess the right to report the crime and initiate legal proceedings against the perpetrators, but the ultimate authority to handle the case and decide on the punishment lies with the state, represented by its legal institutions.

Islamic criminal law does acknowledge the government's role in the execution of *qisas* punishment, but its involvement is confined to overseeing the proper implementation of the punishment in accordance with the prescribed regulations. Although the right to seek *qisas* lies with the victim's family, they cannot independently carry it out without the involvement of the government, as delegated by the judge or *qadli* (Islamic judge).[6] The government's presence ensures that the process adheres to established procedures and is carried out in a just manner.

Qisas demanded by the victim's family can only be carried out after a judge's decision. *qisas* law enforcement does not forget the procedures or procedures for determining

the law. The implementation of *qisas* punishment must begin with proof with a number of certain conditions. The judge in determining the sentence must pay attention to four things, namely the existence of a confession, a strong indication or *qarinah*, the presence of witnesses, or by oath or *qasamah*.^[2] The confession in question is the confession of the perpetrator of the crime, while the *qarinah* is a strong clue or evidence that leads to the occurrence of a crime. The number of witnesses in a murder case must be two men who are just and reasonable. The oath or *qasamah* provisions apply in cases of murder where the killer is unknown. The oath was taken by the people who were housed at the murder scene. The aim was to demonstrate that the community was not involved in the killings that had taken place.

The evidentiary requirements as referred to in these provisions are alternative and not complementary. This means that all the conditions are not required to exist, but if one of them is proven then *qisas* punishment can be imposed.

Thus the demands of the victim's family cannot be carried out directly but through the process of proving it first. In addition, this *qisas* sentence can fall if the perpetrator dies, is forgiven by the victim's family, or reconciliation occurs between the perpetrator and the victim's family.^[6] For the perpetrators of intentional killings forgiven by the victim's family, they are not free from punishment, but the jurists provide a substitute punishment by paying expiation and being subject to the *ta'zir kafarat* punishment for intentional killing is freeing slaves or fasting for two consecutive months.^[3] In addition, the perpetrators must also be bound one hundred times and imprisoned for a year.

The establishment of procedural procedures in the enforcement of the *qisas* law above indicates that there is modernization in the Islamic legal system. Ulama implements the *qisas* rules contained in the Qur'an at the practical level to provide guidance for *qadhi* in carrying out their duties. Although fiqh is the product of individual thought, its formulation forms the basis for the implementation of Islamic teachings by society and the state. The transformation of the values of modernity has made Islamic law a legal system that is applicable and not obsolete with the times.

According to Hanafi, the purpose of imposing punishment (*'uqubah*) in Islamic law is divided into two, namely prevention (*arraddu wa az-zajru/deterrene*) and education or teaching (*al-islah wa al-tahzib/reformatif-rehabilitatin*).^[13] In exploring the existence of *qisas* punishment, it is necessary to study the philosophical basis of its determination. Without knowing the philosophical basis of its stipulation, it will result in misunderstanding in viewing the substance of the law which results in inaccuracies in applying it.

Qisas punishment is often perceived as the law of the jungle, uncivilized, because it puts forward physical imposition. Such an opinion is misleading because it sees *qisas* only as a symbolic side. The basis for determining *qisas* law has actually been made explicit in the Qur'an sura al-Baqarah: 179, which reads:

“And in that narration, there is (guaranteed continuity) of life for you, O people of understanding, so that you may be pious.”

The verse emphasizes that the purpose of implementing *qisas* is to maintain human survival. Textually, there is a paradox between the symbol of *qisas* punishment and its basic purpose.

Based on this verse, the philosophical basis for implementing *qisas* is not retributive or has the nuances of retaliation for the crimes that have been committed. The application of *qisas* punishment does not aim to avenge the murders that have been committed by the perpetrators. Consequently, not everyone who kills must be punished, because this has violated its basic purpose. This is what drives why every murder case that is reported to the Prophet Muhammad is not immediately subject to *qisas* punishment, but the first thing the Prophet Muhammad advises is to order the victim's guardian to forgive him.[14]

The underlying philosophy behind the implementation of *qisas*, as mentioned earlier, is oriented towards reformation, seeking to improve the behavior of both criminals and society as a whole. *Qisas* serves as the ultimate punishment, reserved as a last resort for perpetrators. The reformatory nature of *qisas* is also evident through the principle of deterrence, which aims to dissuade individuals from committing further acts of murder and discouraging similar actions. This preventive approach aims to safeguard the community's well-being, ensuring that they are not entangled in a cycle of revenge, as was common during the period of ignorance.

Based on the aforementioned explanation, the philosophy of assigning punishment to those guilty of murder in Islam aligns with the principle of restorative justice. This principle grants significant participation to various parties in the resolution of crimes. These parties include the perpetrators, the victims and their families, the community, and the state represented by law enforcement authorities. In this context, the state does not wield absolute control over the resolution of criminal acts. Instead, it functions as a mediator to facilitate an agreement reached collectively by the involved parties. Restorative justice in Islam emphasizes collaboration and inclusivity to achieve a fair and balanced resolution for all stakeholders.[15]

The concept of restorative justice in Islamic criminal law is evident in the way punishment is determined for murder cases, as seen in the *qisas* system. For the crime

of murder, the punishment options include *qisas* (death penalty), *diyat* (monetary compensation), or pardon from the victim's family. These three punishments are presented as alternatives, not cumulative, which means that once one sentence is chosen, the others cannot be added. Of particular interest is the third option, where the victim's family has the power to grant forgiveness, exemplifying the emphasis on reconciliation and restoration of relationships in Islamic law.[4]

4. CONCLUSION

The restorative justice present in Islamic criminal law is evident in the application of penalties for *jarimah qisas* (crimes with the right to retaliation) and *diyat* (compensation). The act of granting forgiveness by the victim or their family can annul the *qisas* punishment. Moreover, the concept of *diyat* ensures that victims or their families receive direct compensation for the repercussions of the crime they have endured. These measures aim to promote reconciliation and restore balance between the parties involved in the criminal act. The peace process carried out in resolving cases has provided a fair portion by bringing together the interests of perpetrators, victims, and the community. It is the position of the doctrine of forgiveness in Islamic law that is now being recognized as an alternative form of settlement of cases by achieving the most ideal punishment objective. Through an institution of forgiveness, the settlement of cases can produce balanced justice between the perpetrator, the victim, and society. The ideals of punishment are to be achieved in a restorative justice approach.

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