

Restorative Justice in Islamic Law: Solutions to Improve Social Justice Towards a Golden Indonesia 2045

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Abstract

Restorative Justice present as legal reform in Indonesia. Discourse Restorative justice as a legal practice, it is seen as a concept that is more just, has legal certainty, is beneficial and is based on human rights. However, in its application it still experiences many argumentative obstacles so that its use and concept are not yet mature. To this day there is no standard version regarding the concept of restorative justice itself. If examined more deeply, this concept is more similar to the idea of al-'Adalah al-Islahiyah which has existed since the Qur'an was revealed. The type of research used is library research (library research) by using a normative juridical approach regarding regulations and instruments in implementing the concept restorative justice in Indonesia, case study (case approach) related to effectiveness restorative justice in improving justice as well as comparative studies related to the concept a quo based on the view of Islamic law. The data used comes from literature and studies of related verses and hadiths as well as related laws and other regulations of restorative justice. The results of this analysis show that the concept of restorative justice In Islamic law is known asal-adalah al-islahiyah and char. This concept as a whole prioritizes the resolution of matters by emphasizing on reconciliation, forgiveness, restoration and improving the relationship as it is now. This concept is considered more relevant and guarantees rights and justice for the parties so it is considered necessary to be integrated in the system of restorative justice in Indonesia in an effort to realize a golden Indonesia 2045. The implication of this article is that there are standard rules regarding the mechanism for implementing restorative justice in Indonesia by presenting special institutions to accommodate the implementation of restorative justice.

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INTRODUCTION

The Quran as a holy book that came down gradually does not only contain concepts of Diniyah only but also contains concepts of the world socially needed by society (Khaeroni, 2017; Widiarti & Fahmi, 2023). The conceptual contents contained in the Quran must be studied until they are embodied in the form of

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values and laws to be implemented into norms and rules of social life (Sugiarto, 2014). The legal discourse currently being widely discussed is the practice of restorative justice as a novelty in positive legal practice in Indonesia. This reform departs from a legal dialectical process regarding the effectiveness of court sentences in minimizing criminal acts and providing justice for victims and perpetrators. So it appears restorative justice as an alternative for resolving cases outside of court based on an agreement between the victim and the perpetrator (Ernis, 2017; Arief & Ambarsari, 2018; Sarbini & Ma'arij, 2020; Maulana & Agusta, 2021). Discourse Restorative Justice This is increasingly strengthening as a legal alternative because it is considered a solution in improving social order towards a Golden Indonesia 2045. One of the important points in achieving the ideals of 100 years of Indonesian independence is the transformation and creation of national legal supremacy that is just, legal certainty, beneficial and based on human rights.

Practicing Restorative justice as a new idea still experiences many argumentative obstacles so that the concept is not yet mature. However, if we examine it more deeply, this concept is more like an ideal-*'Adalah al-Islahiyah* (afwan) which has existed since the Quran was revealed. *Draftal-Adalah al-Islahiyah* when compared with practice restorative justice, modern have many similarities. Meanwhile, there is no explanation regarding the content of the Quran regarding standard concepts of restorative justice. Starting from the difficulty, the writer tried to analyze and conduct research on the content of the Quran that contains concepts of restorative justice. This is a form of solution contribution from the Quran towards legal certainty that is more just in welcoming Indonesia 2045.

METHODS

The type of research used is library research by using a normative juridical approach regarding regulations and instruments in implementing the concept restorative justice in Indonesia, case study (case approach) related to effectiveness restorative justice in improving justice as well as comparative studies related to the concept a quo based on Islamic legal views (Azhar, 2019; Fad, 2019; Akmal, 2021; Hamdi & Ikhwan, 2021). The data used comes from literature and studies of related verses and hadiths as well as related laws and other regulations of restorative justice.

RESULT AND DISCUSSION

Draft Restorative justice In Islamic law it is known *asal-adalah al-islahiyah* and charm. This concept as a whole prioritizes the resolution of matters by emphasizing on reconciliation, forgiveness, restoration and improving the relationship as it is now. This concept is considered more relevant and guarantees rights and justice for the parties so it is considered necessary to be integrated in the system of restorative justice in Indonesia in an effort to realize a golden Indonesia 2045. The implication of this article is that there are standard rules regarding the mechanism for implementing restorative justice in Indonesia by presenting special institutions to accommodate the implementation of restorative justice.

Implementation Problems Restorative Justice in Indonesia

Draft Restorative justice basically it is a concept of resolving cases by prioritizing a recovery and peace approach (Maulana & Agusta, 2021; Syahputra, 2021; Elmayanti, 2022; Sahputra, 2022). In contrast to the relative concept which places more emphasis on retaliation, the concept of restorative justice focuses more on providing protection for victims and perpetrators for their rights (Arafat, 2017).

If we examine the paradigm further historically restorative justice has been implemented among the community in the form of customary law as in the *Simbur Cahaya* and *Kuntara Radjaniti* books which apply in Lampung, it is stated that the mechanism for resolving cases can be carried out through mediation, which involves

individuals, families, the environment and traditional heads (Abidin, 1983).

Apart from that, sociologically, in some areas the values are still practiced restorative justice. The Kuntara Munawar Book from Bali is still a reference (Mulyana, 1979). Then, the Book of Qonun Mangkuto Alam from Aceh, which is still being revived and used as positive law in the Aceh region, can also be seen in the attitude of the community which still maintains deliberative institutions as a means of resolving problems that occur in community groups. This shows, implementation restorative justice The Indonesian criminal system has a fairly strong sociological basis.

Meanwhile, from a philosophical perspective, the values contained in restorative justice includes restoration, giving forgiveness to the perpetrator and improving the relationship between the perpetrator and the victim so that there is no more revenge in the future, in line with what Hazarib stated that legal cases are resolved with the aim of maintaining peace. Referring to the description above philosophically of implementing restorative justice. The criminal system already exists in accordance with the values that live and develop in society inherited from the ancestors of the Indonesian people.

Regardless of the superiority of the concept mechanism of restorative justice it still has obstacles in its implementation. One of the challenges of restorative justice is that perpetrators who do not admit it and are not known will be difficult to implement because this concept requires full awareness, responsibility and participation from the perpetrators and law enforcers (Widayati, 2013; Arafat, 2017). Basically, the case examination system recognizes two principles, namely principles I'm worried about which views the perpetrator or defendant as the object of examination and principles accusatory which has the principle that the perpetrator and victim are the subjects of case investigation. If we look at the substance of the current Criminal Procedure Code, it can be seen that the court process has shifted from inquisitorial going to accusatory. The presence of the accusatory principle gives a little picture of enthusiasm restorative justice is starting to be implemented substantially.

However, if reviewed formally, implementation restorative justice This is not yet fully regulated in legislation. Explanation regarding definition restorative justice contained in Article 1 paragraph 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Besides that, restorative justice also explained in Article 1 paragraph 3 of State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Article 1 paragraph 1 of Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

This shows that the criminal law system in Indonesia is ready to apply the concept of restorative justice. Based on data from the Supreme Court decision directory, 764 cases have been decided based on restorative justice since 2020-2023. This data is quite significant, showing that restorative justice has been widely implemented in Indonesia.

However, it cannot be denied that the application of the concept of restorative justice also raises pros and cons both in society and among law enforcers themselves (Rahaditya et al., 2023; Syahrudin et al., 2024). One of the cases that was considered a failure in implementing restorative justice was the case of abuse of students in Pidie district which continued with the case being transferred to the prosecutor's office after the perpetrator was deemed to have failed and could not find common ground in fulfilling the victim's request for recovery funds (Gassing & Amin, 2011). Based on this case it can be concluded that the method of restorative justice that is applied does not provide justice in the behavior of charging the requested recovery costs.

Draft Restorative Justice in the View of Islamic Law

The Quran as a universal book of law requires a process of study and tadabbur which contains these laws; some can be directly understood easily (muhkamat) and some of them can only be understood by certain groups (mutasyabihat). This means that the Quran has a mature concept but requires further deepening (Sahroni & Asror, 2023).

One of the experiences intended is to find out the purpose of enacting the law itself or what is also known as maqasid al-shari'ah. Prof. Dr. Ahmad al-Raisuni defines it as maqasid al-shari'ahas the goals that want to be realized from all the laws set in Islam that have implications for the realization of the welfare of the people. This is in line with the opinion of imam al-Qurthubi who states that the laws brought by the Prophets of God mean and aim to create worldly and ukhrawi benefits. These benefits need to be studied in depth in order to be able to find certainty from the application of the law itself.

Quran and hadith as sources of Islamic law have provided an overview of the concept of restorative justice through a conceptual approach-is al-ishlahiyahand conceptcharm. Despite the term restorative justice not used directly, its principles such as forgiveness, reconciliation, and the opportunity for repair, are strongly supported by verses from the Quran. Further interpretation and understanding can be found in the hadith and works of Islamic scholars which explain the application of these concepts in the context of Islamic law and justice, including:

Draft al-islah

In the Islamic context, the concept of peace is known asal-ishdatewhich means repairing, reconciling and eliminating disputes and trying to bring about peace (Awaludin, 2021). Islam places great emphasis on resolving problems outside the court process and can also be found in various concepts in the Quran, such as the concept of islah (peace), as expressed in QS. Al-Hujurat/49:9

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتَ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا ۗ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: "and if there are two groups of those who believe are at war, you should make peace between them! But if one violates the agreement against the other, let the one who violates the agreement fight until it recedes to God's command. If he has receded, make peace between the two according to justice, and act justly; Indeed, Allah loves those who act justly" (QS. Al-Hujurat: 9).

This verse explains the importance of peace and resolving conflicts between humans. This verse teaches that if there is a dispute between two groups, the mediator should work to reconcile them. However, if one of the groups is still in rebellion, firm action is permitted to restore order. This verse underlines the importance of upholding justice and peace in society. Ibn Kathir said:

أَيُّ: اِعْدِلُوا بَيْنَهُمْ فِيمَا كَانَ أَصَابَ بَعْضُهُمْ لِبَعْضٍ، بِالْقِسْطِ، وَهُوَ الْعَدْلُ

Meaning: "Do justice between them in what happens to some of them to others, with fairness and wisdom, that is justice."

Draft al-adl

Draft Restorative Justice can be linked to the principles of justice (Al-'Adl) (Arsyad et al., 2023). The Quran and hadith teach the importance of improving relationships in a fair way and giving everyone their due rights. Therefore, in handling crimes, Islam encourages peace, forgiveness and restoration as the priority steps, as long as these actions continue to maintain the principles of justice and the rights of both the perpetrator and the victim. Draftal-Adl this is found in QS. An-Nahl verse 126:

وَأِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ وَلَئِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِلصَّالِحِينَ

Meaning: "and if you retaliate, then retaliate with a retribution equal to the punishment inflicted on you. But if you are patient, indeed, that is better for those who are patient" (QS. An-Nahl: 126).

This verse provides direction regarding a restorative approach in dealing with crime. The purpose of retaliation in this verse is to give the perpetrator the opportunity to correct mistakes without reducing his rights as a human being. In concept Restorative Justice, this verse teaches the importance of giving criminals opportunities to repent and improve their behavior. If the perpetrator regrets his actions and is willing to change himself, then forgiveness and this opportunity can bring healing and reconciliation in the relationship.

Draft Affun

Draft al-islah is often considered to have similarities with charm, some scholars even equate the two. However, although there are similarities in the spirit of peace and forgiveness, they are different both in terms of definition and concept. Affun refers to forgiveness, which is the act of letting go or not taking into account one's mistakes or transgressions. This involves granting forgiveness and releasing the person from punishment or consequences for their actions. Difference between al-islah and charm. There are only differences in concept, whereas in application or practice there may be similarities in explanation. Mentioned in Quran surah Fushilat verse 34.

وَلَا تَسْتَوِ الْأَحْسَنُ وَلَا السَّيِّئَةُ ادْفَعْ بِالَّتِي هِيَ أَحْسَنُ فَإِذَا الَّذِي بَيْنَكَ وَبَيْنَهُ عَدَاوَةٌ كَأَنَّهُ وَلِيٌّ حَمِيمٌ

Meaning: "and good and evil are not the same. Reject (that evil) in a better way, then suddenly the person with whom there is enmity between you and Him seems to have become a very loyal friend" (QS. Fussilat:34).

This verse teaches the importance of responding to evil with kindness and patience. As Muslims, we are advised to respond better to bad actions, promote peace, and avoid conflict as much as possible. In situations of conflict or hostility, tact and patience in dealing with others are highly valued in Islam. Mentioned in the book Tafsir Ath-Thabari:

عن عليّ، عن ابن عباس، قوله: ﴿ادْفَعْ بِالَّتِي هِيَ أَحْسَنُ﴾ قال: أمر الله المؤمنين بالصبر عند الغضب، والحلم والعفو عند الإساءة، فإذا فعلوا ذلك عصمهم الله من الشيطان، وخضع لهم عدوهم، كأنه وليّ حميم

Meaning: "Ali bin Abi Talib, the grandson of the Prophet SAW, who narrated the message of Ibn Abbas regarding the verse of the Quran, Surah Fushilat (41:34), (reject evil in a better way). Ibn Abbas explained that God commanded believers to be patient when angry, to be patient, and to forgive when insulted. If they do, Allah will protect them from Satan and their enemies will humble themselves in front of them, like a very faithful friend" (At-Thobari, 2001).

From the description above it can be concluded that the concept of restorative justice Islamic law guarantees equal justice and is more relevant for updating the concept of restorative justice in Indonesia today.

Mechanism Restorative Justice in Islamic Law to Improve Social Justice in Indonesia

Legal developments in Indonesia are currently increasing in line with the complexity of problems and awareness of legal needs by society itself. Moreover, currently Indonesia is in a period of renewal in various aspects of state life to prepare for a golden Indonesia 2045, which is an idea to welcome 100 years of Indonesia's independence. One of the visions that will be realized in the a quo idea is

strengthening national resilience and governance through one of the indicators, namely strengthening the national legal system and anti-corruption.

Restorative justice as a form of legal development, it has now been implemented in Indonesian criminal law. However, there are no standard rules regarding implementation of restorative justice. This makes it still a challenge for justice enforcers to apply this concept in the case resolution process. Therefore, there is a need for special regulations in legislation that discuss procedures for restorative justice. This is in line with progressive legal theory according to Prof. Satjipto Raharjo said that if there are legal problems, then it is the law that needs to be corrected, not humans who are forced into the legal scheme (Raharjo, 2006).

Additionally, concept restorative justice in Indonesia still needs to be reviewed. The existence of this concept needs to be accompanied by guarantees from all parties so that they have more integrity, professionalism and balance in the eyes of the law as per the principles of equality before the law. This is very relevant if viewed from the aspect of Islamic law which emphasizes peace, forgiveness and restoration of relations between the two parties involved in a lawsuit, all of which have been integrated in the concept of *al-adalah al-islamiyah* and *charm*.

Even though they come from different legal systems, a common thread can be drawn from the mechanism of restorative justice Islamic law is very appropriate to be applied in the criminal law system in Indonesia to realize social justice as a form of benefit for society. If the textual application of Islamic law is a necessity in the Indonesian criminal system, then its application can be carried out substantially and contextually.

Apart from emphasizing the awareness and moral integrity of the parties in resolving cases. The implementation of restorative justice also requires a systematic and comprehensive mechanism to ensure justice and equality of the parties. In the author's opinion, the presence of a special institution as a mediator is the right thing to accommodate the litigants in achieving consensus and peace. However, to guarantee consensus if it still has legal force, the court, in this case the judge, is still required to give a decision based on the consensus that has been reached through this mechanism. Thus, based on Republic of Indonesia Prosecutor's Regulation number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the case handling process will be more relevant by considering the principles of justice, public interest, proportionality, the nature of *ultimum remedium* punishment as well as the principles of speed, simplicity and low costs.

CONCLUSION

After reviewing the concept of restorative justice in Islamic law, it can be concluded that the concept of resolving cases using restorative justice in Indonesia has been applied to several criminal cases. However, the obstacle is that there are no standard rules regarding the implementation mechanism, so it is deemed necessary to update them with more relevant and comprehensive rules. Islamic law also recognizes the concept of restorative justice through the approach to the concepts of *al-ilah al-islamiyah* and *afwun*, namely emphasizing justice, peace and forgiveness; a new idea in Islamic law which has a different approach to the concept of *qishash diyat* in terms of giving punishment so that there is a comparison between the two so that relevance is found for restorative values in criminal law in Indonesia to achieve the goal of social justice as a form of benefit for the people.

Legal reform by integrating the concept of restorative justice in Islamic law with the concept of restorative justice in the Indonesian criminal law system. This update was carried out as an effort to realize the vision of a golden Indonesia 2045, namely strengthening national resilience and governance through strengthening the national legal system and anti-corruption.

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