

The Concept of Restorative Justice in Criminal Law from the Perspective of Islamic Criminal Law

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Abstract. The presence of supporting helpful equity is a response to the retributive worldview of criminal guideline which actually has a direction towards reprisal, and the neoclassical speculation which lies in equivalent treatment of criminal regulation disciplines. The next important considerations when using restorative justice, which is useful for resolving criminal issues, include paying attention to the elements of justice, humanity, peace, or peace be upon both parties, which states that perpetrators cannot be punished and neither the victim nor the perpetrator agrees to make peace. The legality principle and the restoration justice approach are influenced by a relationship. First, the legality and justice for recovery instruments serve to uphold the law. Second, both the supportive rebuilding approach and the lawfulness standard are instruments that are supposed to give a feeling of equity to all individuals. Thirdly, the restorative justice approach and the legality principle will work well together in the process of law enforcement.

Keywords: Restorative Justice, Criminal Law, Islamic Criminal Law

1 Introduction

In contemporary society, regulations are an essential means to govern and discipline the populace. The presence of law is crucial for maintaining order, and it reflects the principle that Indonesia is a nation founded on the rule of law (*rechtsstaat*), not merely on authority (*machtsstaat*).^[1] This signifies that Indonesia has a plethora of rules and laws in place to safeguard the interests of the community.

There exists a reciprocal relationship between society and law, commonly known by the Latin phrase "*ubi societas ibi ius*," meaning "where there is society, there is law." Hence, the two are inseparable.^[2] However, the development of the legal system in Indonesia has not progressed as anticipated. When law enforcers and scholars adopt a positivistic perspective, where legal certainty or legal sources are sought first when confronting a problem, it can lead to various repercussions. When a public incident is viewed as a wrongful act, it influences how individuals act within the community and their perception of the prevailing regulations. Criminal law regulations in Indonesia are based on Dutch laws that are still upheld by Indonesian society. Various types of crimes are discussed in Indonesian criminal law discussions, with criminal acts considered offenses under the Criminal Code (Kitab Undang-Undang Hukum Pidana or

KUHP).[3]

One noticeable reaction to the peculiarity of legal usage is the emphasis on the formality of criminal regulations, which is generally repressive and receives limited appreciation. This situation leads to the perception that criminal regulations are enforced mainly as a simple method for retribution. Regardless of humanistic, philosophical, or other elements, contemporary law enforcement relies primarily on the law itself. The disorientation in law enforcement arises from a lack of understanding of the philosophy underlying the purpose of law creation. The criminal justice system is capable of incarcerating individuals but lacks the ability to restore harmony and balance within a society that has been affected by crimes. This presents an optimal opportunity to achieve the objectives of law enforcement. A direction that prioritizes the alignment between benefits, legitimate guarantees, and equality. The implementation of restorative justice or its guiding principles can serve as a foundation for the reorientation of law enforcement in Indonesia.

As a tool for social control, the formation of laws employs various sanctions as enforcement mechanisms to ensure that rules are consistently adhered to. This is because the state can only exist if the law is consistently applied. Apart from encompassing compliance with positive law, the consistent application of the law should extend to all aspects of societal norms and customs. A crucial discourse that needs to be pursued is the standardization of law enforcement across all aspects of life, including norms and customs. This is due to the current state of the nation facing challenges in the political, monetary, and social realms, and maintaining legitimate control is

The introduction of restorative justice serves as a response or reaction to retributive theories in criminal law, which are still punitive in nature, and neoclassical theories, which share the same orientation toward both criminal and non-criminal treatment. Criminal sanctioning in this context predominantly emphasizes retribution, which is essentially a reaction to an act. Sanctions are generally perceived as intentional forms of suffering inflicted on wrongdoers. On the other hand, justice should also be an activity that provides both a sense of security to victims and the community. In light of skepticism towards retributive speculations, criminal endorsement is focused on an individual's actions through the imposition of penalties (to make the individual aware or deter them).[4] Consequently, the focus of punitive actions is aimed at rehabilitation. Sanctions are also expected to provide guidance and prioritize public safety.

According to Makhrus Munajat, the majority of existing literature studies concur that the purpose of Islamic criminal law is to prevent actions that could harm individuals and society, whether involving life, property, or honor, and to achieve justice and peace for all. This objective aligns with Islamic law's provisions, which are consistent with the concept of regulation's broad benefits, especially in understanding individual interests and upholding justice. It is possible to conclude from the preceding discussion that punishment serves a preventive function. Punishment also aims to safeguard the community, maintain order and security, and provide legal certainty to uphold justice, in addition to its preventive aspect.[5] Islamic criminal law (fiqh jinayah) can be employed as an examination of the degree and capability of a clear and valid correlation, which can then be referred to authorized specialists for examination or application in specific circumstances. In the pursuit of a more advanced Indonesia, comprehensive legal thinking should not solely focus on retribution but also on consensus, without undermining the norms embedded in Pancasila and the balance of societal relations.[6]

2 Method

This text employs a normative legal research methodology, also known as a juridical-normative approach.[7] This method is used to provide legal answers to legal vacuums, ambiguities, impediments, and regulatory conflicts.[8] The primary legal materials for this research are all types of legislation that pertain to the main actors in criminal acts. Meanwhile, secondary legal materials provide an understanding of the primary materials and encompass all books and scholarly articles that discuss the main actors in a criminal act, as well as draft legislation. To compile and formulate the legal materials, a literature review is conducted through a statutory approach.

3 Result and Discussion

3.1 The Significance of Restorative Justice Concept

As a general rule, beneficial justice entails rebuilding a more agreeable disciplinary framework for offenders, victims, and society. Conversely, the concept of restorative justice is present in Indonesia's positive law, specifically in Law Number 11 of 2012 concerning the juvenile justice system.[9] In Article 1, paragraph 6 of this law, it is defined as follows: restorative justice is the most common way to resolve criminal cases by involving the offender, victim, groups of offenders or victims, and other relevant parties with the ultimate goal of achieving a fair outcome that emphasizes restoration rather than retribution.

While strictly adhering to legal requirements and imposing punishment, the restorative justice approach focuses on the needs of the victim, offender, and the community. In this scenario, both the victim and the offender are urged to take ownership of their actions by offering apologies, returning stolen property, or engaging in activities such as community service to address the harm done. Victim-offender dialogue is a common method for addressing criminal issues.[10] The needs of both the offender and the victim are the primary focus of restorative justice. Similarly, an equity-based approach aids in preventing future wrongdoings by those who commit them. This is contingent upon the hypothesis that revealing the harm done to individuals or the community, rather than the state, constitutes an offense. Restorative justice is essentially a simple idea.[11] Appropriate retribution in the form of physical, psychological, or legal punishment from the offender to the victim no longer determines the degree of justice; instead, harmful acts are repaired by offering assistance to the involved party, with the offender being reliant on family and the local community if necessary.

Meanwhile, society is protected from criminal acts, and the offenders are sanctioned and rehabilitated in accordance with the wrongdoing.[12] Essentially, this is a concept within the framework of punishment itself. In this scenario, wrongdoing is essentially a way to achieve a deviance from the balance of the two main objectives: societal security and the replacement of events or individual offender assurance. The rationale behind this is a mono-dualistic reasoning between the interests of society and personal interestst.[13]

It is clear from the preceding discussion that retributive retribution is not the sole objective of

punishment; it must also be capable of safeguarding society and instilling a sense of justice. Essentially, criminal law should take into account philosophical, sociological, and criminological factors. Therefore, to achieve a sense of justice that can be felt by all parties involved in criminal dispute resolution, various aspects must be considered.

Larry argues that the restorative justice approach has been developed as an alternative to criminal punishment to achieve effective penal objectives. Restorative Justice is an effort to restore the interests of crime victims and their families with the goal of healing their suffering.[14] The primary aim of restorative justice is to achieve a just and equitable outcome, particularly for all parties involved, rather than prioritizing punishment.

In contrast, restorative justice is quite different from retributive justice, also known as contemporary justice.[15] Retributive justice characterizes wrongdoing as an act of harming others. Furthermore, restorative justice views the offender's responsibility as a result of understanding the act and assisting in determining what is best, whereas retributive justice views the offender's responsibility in the context of punishment. Furthermore, justice standards become the primary focus when a beneficial justice approach is used. Wrongdoing is seen as both a legal violation and a social ailment that must be addressed.

One model of out-of-court or extrajudicial dispute resolution is the restorative justice approach, which is one of the options for resolving criminal issues. Although there is extensive investigation into regulatory structures, there are also ways of resolving criminal cases outside the law enforcement system.[16]

The important ideal of regulation is justice.[17] Therefore, it is expected that the fundamental objective of restorative justice is nothing but ensuring a sense of fairness. In other words, the purpose of the law is to realize justice. The use of justice standards then becomes the benchmark for public assessment of the judge's judgment in selecting legitimate cases. Regarding justice and the law, there is a saying that the ideal of the law is substantive justice concerning the development of the 21st century. The current nationalism emphasizes continuous thinking, making the human spirit unsatisfied with the importance of endless substantive justice as long as the development of a harmonious society progresses.[18]

It is clear that regulations or guidelines must be fair, especially in their implementation, but in reality, there is a sense of shame. Even though justice by law enforcement officials does not fully address this.[19]

2.1 Criminal Law in the Perspective of Islamic Criminal Law

Understanding Fiqh and Sharia The term "Fiqh" comes from the Arabic language and means "knowledge," "understanding," or "comprehension," or conversely, "knowing something and understanding it well." The significance of this term has been elaborated, among others, by contemporary Islamic scholars: Fryze proposed a definition of Fiqh as the knowledge of the rights and commitments of an individual originating from the Quran or the Sunnah or as established by scholars or both.[20]

Furthermore, Ash-shidieqy provides an understanding of Fiqh as the science that derives its rules from the details to explain the laws of the Sharia.

Budiman defines Fiqh as "the legal science that only encompasses the field of practice" and states that Ijtihad is the source of all legal knowledge. In Islamic regulations, the expression "justice" comes from the Arabic word "al-'adl," which means "center," and can be found numerous times, 28 times to be precise, in the Quran.[21]

The Arabic word "Jinayah" means "the name of someone's wrongdoing and what they strive for." This is the etymological meaning of the term "Fiqh Jinayah." The term, which means "someone has done wrong to another person," is used as a noun because it is an infinitive and originates from an idiom. This is a common use of the term "crime," which in legal terms means something contrary to the law. Furthermore, it has been terminologically defined by several authors of Islamic criminal law, among others.[5]

According to Abdul Al-Selan Qadir Awdah, the definition of a "jarimah" or sin is an action prohibited by Sharia, whether it involves a person's life, property, or something else. Because it has the potential to harm life, property, offspring, and intellect, Sharia prohibits criminal acts. In addition, Imam Mawardi provides the definition of a "jarimah" or shamelessness as an exception to Sharia that Allah has disregarded with the discipline of "hadd" or "ta'zir."

According to Topo Santoso, a legal prohibition imposed by God is understood to have a punishment for its violation. Doing or not doing something that is commanded is considered a legal prohibition. Also, wicked behavior is a performance that is strongly prohibited by the Sharia. In other words, doing or not doing something threatened by Sharia punishment constitutes a crime.[22]

Based on the Quran, As-Sunnah, and Ijmak, Asadullah Faruq characterizes "jarimah" as prohibited and blameworthy conduct.[23] here are three types of sanctions based on belief in the Islamic worldview: regular discipline, such as admonitions and warnings, discipline that has an experimental and natural connection to sins, consequences of activities on this planet, and discipline as an indication (tajassum) of sins that cannot be identified (unprecedented retribution).[5]

As recently expressed, the supportive justice approach is a methodology that places greater emphasis on circumstances that are essential to achieving balance and justice for both criminals and victims. In the context of Islamic criminal law, the term "supportive justice" can be equated with the phrase "al-Isti'adah." [24]

In the Islamic criminal regulation, the concept of "Islah" can be used as an elective solution to criminal problems. Al-Islah, or reconciliation, has the power to annul the punishment for those who commit crimes such as murder and assault.[25]

Restorative justice is a reasoning concept that responds to the reform of the legal enforcement framework by emphasizing the need to incorporate religious justice in each religion, which is normatively recognized by the state. This is to align with the divine directives in decisions that must prioritize the concept of divinity.[26] The judicial process is expected to restore the damage suffered by the victim to the pre-crime state in order to achieve justice, which is not

merely the imposition of criminal sanctions on the perpetrator as retribution for the harm done. This is what the global community desires today, as it is dissatisfied with the current criminal justice system for not allowing victims to be directly involved in case resolution.

The Indonesian criminal justice system can actually implement restorative justice practices. This is further supported by the National Criminal Code (KUHP), as stated in Article 54(1), which is full of provisions that inspire various spiritual values related to the concept of restorative justice.

Alternative dispute resolution methods outside the courtroom, such as mediation, arbitration, and others, can advance the concept of a peace model.[27] This example can be fully adapted and provides the ability to adapt for meetings and outsiders to plan case resolution options. "Islah" is a way to bring peace to the world and benefit all of humanity. According to the principles of the restorative justice approach, the resolution of criminal cases should take into account various factors, especially the will and interests of the perpetrators, which are manifested in the form of peace, as evidenced by the explanation of the concept of this peace.

Looking at this scenario, it is very likely that addressing criminal issues in Indonesia can be done through various approaches. The conventional approach that has been taken is based on the principle of legality. Using the beneficial justice approach is another option that can be employed in resolving criminal issues. Between the principles of legality and the restorative justice approach, there is a mutual influence. First, legality and supportive justice are instruments for law enforcement. Second, both the restorative justice approach and the principle of legality are tools aimed at providing a sense of justice to everyone, especially those involved with the law. Third, the restorative justice approach and the principle of legality will synergize well in the law enforcement process. This is because they each have their strengths and weaknesses.

4 Conclusion

Several conclusions can be drawn from the preceding discussion. The following are fundamental factors that need to be considered when employing a restorative justice approach to address criminal issues, such as the consideration of justice, humanitarian aspects, and peacebuilding aspect. The concept of restorative justice can also be observed in various cases, where offenders may be exempted from punishment through the forgiveness of the victim or their guardian. If both parties, the offender and the victim, agree to reconcile, the offender may not face criminal sanctions. There is a relationship between the principle of legality and the restorative justice approach that mutually influences each other. First, legality and supportive restorative justice are instruments for law enforcement. Second, both the restorative justice approach and the principle of legality are tools aimed at providing a sense of justice to everyone, especially those who have legal issues. Third, the restorative justice approach and the principle of legality can synergize effectively in the law enforcement process, as they each have their own limitations.

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