

RESTORATIVE JUSTICE IN THE CRIMINAL JUSTICE SYSTEM, A NORMATIVE ANALYSIS FROM THE PERSPECTIVE OF ISLAMIC LAW

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Abstract

Keywords :

*Restorative Justice,
Islamic Criminal Law,
Criminal Justice System,
Normative Analysis.*

This study aims to analyze the concept of restorative justice in the criminal justice system and examine its normative relevance from an Islamic legal perspective. The main focus of the study is directed at identifying the intersection and conceptual boundaries between the restorative approach in modern law and the principles of Islamic criminal law. The method used is normative juridical research with a conceptual and comparative approach, through a review of primary and secondary legal materials, including legislation, academic literature, and sources of Islamic law such as the Qur'an and hadith. The analysis was conducted qualitatively using deductive-inductive reasoning as well as systematic and teleological interpretation. The results of the study indicate that restorative justice has partial compatibility with Islamic criminal law, especially in the realm of qisas-diyat and ta'zir which open up space for forgiveness and consensus-based resolution. However, in the category of hudud, the restorative approach faces relatively clear normative boundaries. These findings emphasize that the integration of restorative justice into an Islamic legal perspective cannot be done comprehensively, but rather selectively by considering the normative framework of each system. The impact of this research lies in its contribution to enriching the discourse on criminal law, particularly in formulating a more contextual approach to justice, as well as providing a conceptual basis for the development of legal policies that are responsive to the needs of society without ignoring prevailing normative values.

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INTRODUCTION

The development of the criminal justice system in recent decades has demonstrated conceptual unease with the dominance of the retributive approach that has long been mainstream. A system that emphasizes punishing perpetrators is often considered to fail to deliver substantive justice, especially for victims who tend to be marginalized in the judicial process. Criticism of this approach is not only normative but also supported by empirical realities, such as high recidivism rates and the limited deterrent effect of punishment. In this context, restorative justice has emerged as an alternative, offering a different approach, namely viewing crime as a breakdown in social relations that requires restoration, rather than simply a violation of state legal norms.

Restorative justice essentially shifts the orientation of the justice system from a state-centric approach to a more participatory one. Perpetrators, victims, and the community are positioned as subjects actively involved in resolving cases through dialogue and mutual agreement (DR Dahlan Sinaga, SH, 2016). This approach provides space for victims to voice their losses, while simultaneously opening up opportunities for perpetrators to take direct responsibility. In practice, this model has been adopted in various forms, such as penal mediation and family conferences. Some countries have even begun integrating this approach into their formal legal systems as part of criminal justice reform efforts (Lesmana, 2020). However, the success of its implementation remains questionable, particularly regarding the limits of its application and potential conflicts with more traditional criminal law principles.

Amidst these developments, the need has emerged to re-examine the concept of restorative justice within the framework of other legal systems with different normative bases, including Islamic law. Islamic criminal law not only functions as an instrument of social regulation but also has a theological dimension that distinguishes it from modern secular legal systems. Within the structure of Islamic criminal law, there are classifications of crimes such as hudud, qisas-diyat, and ta'zir, each of which has its own normative basis and unique legal implications (Assaidi, 2025). This complexity demands careful analysis, as each category cannot be simplified into a single approach.

Interestingly, within the qisas-diyat category, there is a mechanism that allows the victim or their family to determine how the case will be resolved, including through forgiveness. This practice is conceptually closely aligned with the principles of restorative justice, which emphasize restoration and reconciliation. Furthermore, concepts such as *ṣulh* (peace) and *al-'afw* (forgiveness) demonstrate that Islamic law is not solely oriented toward retribution but also considers the social dimension (Asyuari, 2025). At this point, there appears to be a potential conceptual dialogue between restorative justice and Islamic criminal law, even though both arise from different epistemological bases.

However, not all aspects of Islamic criminal law allow for a restorative approach. In the hudud category, for example, the provisions of sanctions are often understood as God's right, which is fixed and non-negotiable. This is where a normative tension arises between the flexibility offered by restorative justice and the rigidity inherent in some norms of Islamic law. This tension cannot be resolved simplistically but requires a deeper reading of the purpose of the law itself. From the perspective of *maqāṣid al-sharī'ah*, law is intended not only to enforce rules but also to safeguard human well-being. This approach opens up space for a more contextual interpretation of the application of law (Trisnia & Rahayu, 2025).

Furthermore, the discourse on integrating restorative justice into religiously based

legal systems is inextricably linked to evolving social and political dynamics. In countries with Muslim majorities, criminal law reform efforts often confront demands to maintain fundamental normative values (Nasoha, 2025). In this context, restorative justice can be viewed as both an opportunity and a challenge. On the one hand, it offers a more humane and responsive approach to victims' needs. On the other hand, its implementation must be aligned with the prevailing normative framework to avoid legal dissonance.

Conceptually, studies on restorative justice from an Islamic legal perspective have developed in recent years, although they are still dominated by descriptive-comparative approaches. Some studies attempt to demonstrate the alignment of restorative principles with concepts in Islamic law, particularly in the context of qisas-diyat and ta'zir. However, many also highlight the existence of normative boundaries that cannot be exceeded, particularly in the area of hudud (Hasanah et al., 2025). Thus, the state of the art in this study indicates that the relationship between restorative justice and Islamic criminal law is partial and contextual, neither completely harmonious nor completely contradictory. This is where research remains open, particularly to examine more deeply how such integration can be formulated conceptually and normatively.

Given these conditions, the significance of this research lies in its attempt to provide a more systematic reading of the possibility of integrating restorative justice within the framework of Islamic criminal law. This research aims not only to find common ground but also to identify normative boundaries that need to be considered in the integration process. Thus, this study is expected to contribute not only to the development of legal theory but also to the practice of reforming the criminal justice system to be more responsive to societal needs.

Ultimately, the primary motivation of this research is to address the need for a justice model that not only guarantees legal certainty but also delivers substantive justice as perceived by the parties. In an increasingly complex societal context, rigid and formalistic approaches are often inadequate to resolve relational legal issues. Therefore, exploring restorative justice from an Islamic legal perspective is relevant, not as an attempt to replace the existing system, but as part of a broader process of normative reflection in search of a more humane and contextual form of justice.

RESEARCH METHODS

This research uses a normative juridical approach that focuses on the analysis of legal norms governing restorative justice in the criminal justice system and their relevance from an Islamic legal perspective (Hakim, 2024). This approach was chosen because the object of study does not lie in empirical behavior, but rather in the construction of legal norms, principles, and principles that develop in two different systems. In the tradition of legal research, the normative approach positions law as an autonomous system, which can be analyzed through tracing legislation, legal doctrine, and relevant decisions. Therefore, this research utilizes primary legal materials in the form of legislation related to restorative justice in the criminal justice system, as well as sources of Islamic law such as the Qur'an, hadith, and classical and contemporary works of fiqh. In addition, secondary legal materials derived from academic literature are used to enrich the analysis, particularly those related to the theory of justice, the concept of restorative law, and maqāṣid al- shari'ah. The conceptual approach is also used to understand more deeply the key concepts that form the basis of the analysis, so that the research does not stop at describing norms, but is able to analyze the structure of thought that underlies them.

The analytical technique used in this study is qualitative, with deductive-inductive reasoning that moves dialectically. Initially, the researcher identified the concept of restorative justice in the modern legal system as a general premise, then examined the principles of Islamic criminal law as a normative framework with its own characteristics (Sudrajat et al., 2025) . Next, the two frameworks were analyzed comparatively to find common ground, differences, and non-negotiable normative boundaries. The analysis was conducted through legal interpretation methods, both grammatical, systematic, and teleological, to understand the meaning of norms in a broader context. In the context of Islamic law, the approach used is not only textual but also contextual, considering the objectives of law (maqāsid al- shari'ah) as the basis for assessing the relevance of a concept. Through this analytical procedure, this study seeks to produce arguments that are not only logically coherent but also have a strong normative foundation, thereby contributing to the development of legal discourse, particularly in efforts to formulate a justice approach that is more responsive to societal dynamics.

RESULTS AND DISCUSSION

The Concept of Restorative Justice in the Criminal Justice System

Restorative justice initially developed as a critical response to the dominance of the retributive paradigm in the modern criminal justice system. The retributive approach, which positions punishment as a form of retribution for violations of state law, is deemed to have failed to address the need for more substantive justice, particularly for victims. Within a restorative framework, crime is no longer understood solely as a violation of legal norms, but rather as a breakdown in social relations involving the perpetrator, victim, and community. This shift in perspective has fundamental implications for the purpose of punishment, which is no longer oriented solely toward punishment but rather toward restoring conditions disrupted by criminal events. Thus, restorative justice introduces a new dimension to criminal law, namely the relational dimension, which previously received little attention in conventional systems.

The development of this concept is inextricably linked to empirical realities that demonstrate the limitations of the criminal justice system in achieving the goals of justice. Various studies show that recidivism rates in many countries remain relatively high, indicating that criminal punishment is not always effective in preventing recurrence of crimes. Furthermore, victims' positions in the judicial process are often reduced to mere witnesses, without adequate space to convey the harm they have experienced. In the context of developing countries, this situation is even more complex. In South Africa, for example, a restorative approach has begun to be adopted as part of post-conflict reconciliation efforts, emphasizing dialogue and admission of guilt as a means of social recovery (Yunus, 2021) . Meanwhile, in Indonesia, the practice of diversion within the juvenile justice system demonstrates the application of restorative principles aimed at protecting children from the negative impacts of the formal justice system.

However, restorative justice is not without its critics. One of the main criticisms relates to the potential disregard for the public interest, particularly in cases with broad impacts on society. In some situations, resolving cases through dialogue mechanisms is considered to risk weakening the preventive function of criminal law. Furthermore, there are concerns that a restorative approach can create a power imbalance between perpetrators and victims, especially if the process is carried out without adequate

oversight. Therefore, restorative justice needs to be positioned proportionally as part of the criminal justice system, not as a complete replacement, but as an alternative approach that can be used in certain circumstances while still considering the principles of justice and the public interest.

Structure and Principles of Islamic Criminal Law

Islamic criminal law has a different normative structure from modern legal systems, both in terms of its legal sources and its intended objectives. The classification of crimes into hudud, qisas-diyat, and ta'zir categories demonstrates a differentiation in approaches to criminal acts. Each category has distinct characteristics, both in terms of the type of violation, the form of sanctions, and the available scope for interpretation (Sondakh, 2025). In this context, Islamic criminal law cannot be understood as a uniform system, but rather as a complex and layered normative construct. The theological dimension inherent in Islamic law also provides its own unique color, where law is understood not only as a social rule but also as a manifestation of divine will.

In the qisas-diyat category, there is considerable room for the victim or their family to determine the form of settlement. The forgiveness mechanism recognized in this system demonstrates that Islamic law is not entirely oriented towards revenge. The concepts of *ṣulḥ* (peace) and *al-'afw* (forgiveness) provide an opportunity for a resolution more oriented towards restoring social relations (Fahri, 2022). Such practices can be found in several countries with Islamic legal systems, such as Pakistan, where certain murder cases can be resolved through the payment of diyat based on an agreement between the perpetrator and the victim's family. This phenomenon demonstrates that Islamic criminal law has a certain flexibility that allows for a restorative approach within certain limits.

However, this flexibility does not apply universally. In the hudud category, the scope for interpretation is much more limited because it relates to provisions considered to be God's right. Sanctions in this category are generally fixed and cannot be changed through mutual agreement. This creates quite clear normative boundaries for the possibility of implementing restorative justice. Therefore, analysis of Islamic criminal law must be conducted with attention to the differences in characteristics between crime categories to avoid generalizations that could potentially oversimplify the complexity of the legal system.

Analysis of Restorative Justice from an Islamic Law Perspective

An analysis of restorative justice from an Islamic legal perspective requires an approach that is not only comparative but also interpretive. The basic principles of restorative justice, such as restoration, participation, and responsibility, can be found in several concepts within Islamic law, particularly within the framework of *maqāṣid al-sharī'ah*, which places benefit as the primary objective of law (Masruroh, 2026). From this perspective, law functions not merely as an instrument for enforcing rules but also as a means to maintain social balance and protect human interests. Therefore, there is room to interpret restorative justice as an approach that is relevant to the fundamental values of Islamic law.

However, integrating these concepts cannot be done directly without considering the underlying epistemological differences. Restorative justice in modern law stems from a secular paradigm that places humans at the center of legal considerations, while Islamic law is derived from revelation, which has a different normative authority. This difference poses a significant limitation in efforts to fully adopt the restorative concept. Therefore,

a more appropriate approach is to integrate selectively, considering the appropriateness of the principles and the context in which they are applied.

The study's findings indicate that restorative justice has common ground with Islamic law, particularly in the areas of qisas-diyat and ta'zir, where there is room for forgiveness and consensus-based resolution. In practice, several countries, such as Indonesia, have developed approaches that combine restorative principles with local and religious values, for example, in resolving cases through community-based mediation. However, in the area of hudud, restorative approaches tend to be limited due to the existence of fixed normative provisions. These findings indicate that the relationship between restorative justice and Islamic law is partial, requiring caution in formulating its conceptual integration.

Normative Implications for the Criminal Justice System

The normative implications of this study suggest that restorative justice could be a relevant approach in efforts to reform the criminal justice system, particularly in countries with complex social contexts. This approach offers a more humane alternative in resolving criminal cases by providing greater opportunity for victims to participate in the judicial process. Furthermore, restorative justice has the potential to reduce the burden on the formal justice system, which often faces limited resources. In the context of developing countries, this approach could be a pragmatic solution to improve access to justice, particularly in areas with limited legal infrastructure.

However, the application of restorative justice cannot be carried out uniformly without considering the surrounding social and normative context. In countries with a strong religious foundation, the integration of restorative concepts needs to be aligned with applicable legal principles. In this regard, Islamic law can make an important contribution through concepts such as forgiveness and reconciliation, long recognized in the Islamic legal tradition. Experience in several countries shows that community-based approaches that accommodate local values are often more effective in creating solutions that are acceptable to the community.

Ultimately, reforming the criminal justice system cannot rely solely on the adoption of new concepts without in-depth normative reflection. Restorative justice offers a promising approach, but its success depends heavily on how it is integrated into the existing legal system. Therefore, a more comprehensive study is needed to ensure that the implementation of restorative justice is not only practically effective but also aligned with the legal values entrenched in society. In this context, a normative analysis of restorative justice from an Islamic legal perspective is crucial as a basis for formulating more contextual and sustainable legal policies.

CONCLUSION

The conclusion of this study shows that restorative justice emerged as a critical response to the limitations of the retributive approach in the criminal justice system, which has tended to emphasize punishment of the perpetrator and neglect the rehabilitation of the victim. The restorative approach offers a paradigm shift by positioning crime as a damaged social relationship that needs to be restored through the active involvement of the perpetrator, victim, and community. In practice, this approach has proven to have the potential to deliver more substantive justice, particularly in the context of developing countries facing limited resources and high social complexity.

From an Islamic criminal law perspective, the normative structure of hudud,

qisas-diyat, and ta'zir demonstrates that this system is not a single entity, but rather encompasses a spectrum of approaches in responding to criminal acts. In certain areas, particularly qisas-diyat and ta'zir, there is scope for the application of restorative principles, such as forgiveness, reconciliation, and consensus-based resolution. This demonstrates that Islamic law is not entirely oriented toward retribution but also contains a restorative dimension relevant to the concept of restorative justice. However, within the hudud category, the restorative approach faces relatively clear normative boundaries, so not all restorative principles can be directly integrated into the Islamic legal framework.

Furthermore, the analysis confirms that the relationship between restorative justice and Islamic criminal law is partial and contextual. Integration of the two concepts is only possible in certain areas where the principles align, while in other areas irreducible differences remain. Therefore, the required approach is not generalization, but rather selectivity in adopting restorative principles while still adhering to the normative framework of Islamic law.

Ultimately, the implications of this study emphasize the importance of a reflective and contextual approach in efforts to reform the criminal justice system. Restorative justice can be a relevant alternative to increase the effectiveness of law enforcement and deliver more humane justice, but its implementation must be aligned with the legal values entrenched in society. Therefore, the future development of the criminal justice system requires not only conceptual innovation but also normative sensitivity to ensure that any changes remain legitimate and acceptable within the broader social context.

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