

The Role of Restorative Justice in Juvenile Criminal Law Islamic Law Analysis

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Abstract. *The Restorative Justice (RJ) approach in juvenile criminal law is a paradigm that is oriented towards the restoration, reconciliation, and rehabilitation of children in conflict with the law. Unlike the retributive justice system which emphasizes punishment, RJ aims to restore social balance through deliberation between the perpetrator, victim, and community. In Indonesia, the RJ principle has been accommodated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) which prioritizes diversion as a mechanism for resolving juvenile cases outside the courts. In addition, the Indonesian Attorney General's Regulation Number 15 of 2020 also regulates the termination of prosecution based on restorative justice. From an Islamic legal perspective, the RJ approach is in line with the principle of Maqashid Syari'ah, which aims to protect the soul (hifz al-nafs) and maintain social harmony. The concepts of qisas, diyat, sulh, and afw in Islam provide space for a more just conflict resolution, emphasizing forgiveness and peace as the main solutions in resolving criminal cases, including for children. The implementation of RJ in the Indonesian legal system faces several challenges, such as the lack of understanding of law enforcement officers, the limitations of more comprehensive regulations, and the minimal involvement of the community in the reconciliation process. Therefore, this study recommends strengthening regulations by enacting a special law on RJ, increasing training for law enforcement officers, and public education so that the community's understanding of restorative justice increases. With these steps, RJ can be an effective solution in a more just juvenile criminal law system, in accordance with Islamic legal values.*

Keywords: *Diversion; Justice; Juvenile; Maqashid; Restorative.*

1. Introduction

In the criminal law system, children as perpetrators of criminal acts have a unique and different position compared to adults. Children who are in conflict with the law require special treatment that takes into account their psychological, social, and moral conditions. (Perdana et al., 2018) In Indonesia, the juvenile criminal justice system has

undergone various reforms, especially with the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law marks a paradigm shift from a retributive approach that emphasizes punishment to a restorative justice approach that is oriented towards recovery.

The restorative justice approach in juvenile criminal law aims to prioritize the restoration of social relations, rehabilitation of perpetrators, and the best interests of the child.(Wijaya & Ruslie, 2024)This is a response to the weaknesses of the conventional criminal justice system which prioritizes punishment over rehabilitative efforts. This approach is also in line with the principles of Islamic law which emphasize the balance between justice, compassion, and peaceful resolution. In Islam, the concept of justice does not only refer to punishment, but also includes aspects of social recovery and reconciliation, as reflected in the concepts of qisas, diyat, and afw (forgiveness).(SIMAMORA, 2021)

However, in practice, the implementation of restorative justice in the juvenile criminal justice system still faces various challenges. Some of the main obstacles include:

1. The lack of understanding among law enforcement officers and the public about the restorative justice approach means that many still believe that justice can only be upheld through severe punishment.
2. Limited regulation and legal harmonization, where even though the principle of restorative justice has been adopted in several regulations, there is still inconsistency in its application.
3. Lack of infrastructure and resources, including limited penal mediation facilitators, rehabilitation services for children, and lack of social system support for children's reintegration into society.

In addition, from an Islamic legal perspective, the restorative justice approach also has a strong basis. Islam has long accommodated the concept of peaceful restoration and dispute resolution. In several categories of criminal acts in Islam (jinayah), there are settlement mechanisms that emphasize aspects of forgiveness, peace, and compensation. In certain cases, Islam prioritizes a settlement that not only provides justice for the victim, but also opens up opportunities for the perpetrator to be responsible and improve themselves.

Islamic history records several real-life examples of restorative justice. One famous case is the decision of Caliph Umar bin Khattab in dealing with theft due to famine.(Manurung, 2017)Instead of applying the amputation penalty as stipulated in qisas, Umar acquitted the accused because he understood that the act was more influenced by socio-economic factors. This decision shows that Islamic law has flexibility in applying sanctions by considering substantive justice.(Flora, 2018)

From the perspective of positive law and Islamic law, restorative justice not only provides an alternative solution in resolving juvenile criminal cases, but also reflects the principles of humanity and legal balance. By considering this approach, the juvenile criminal law

system in Indonesia can be more oriented towards recovery, rehabilitation, and prevention of future crimes.

Based on this background, this study will examine the role of restorative justice in juvenile criminal law with an Islamic legal analysis approach. This study is important to provide policy recommendations based on *Maqashid* sharia, in order to increase the effectiveness of national criminal law in handling juvenile criminal cases with a fairer and more humane approach.

2. Research Methods

This research uses a normative legal approach,(Indra Utama Tanjung 2024)which examines the principle of restorative justice in juvenile criminal law through an analysis of legislation, Islamic legal doctrine, and relevant legal theories. This method aims to understand how restorative justice is implemented in the SPPA Law and its compliance with Islamic legal principles, such as *Maqashid* sharia and the concept of qisas-diyat.(Herman et al., n.d.)Data collection techniques were carried out through literature studies of primary legal materials, such as the Qur'an, Hadith, and related regulations, as well as secondary legal materials, such as law journals and academic literature.

The approach used is descriptive-analytical, with deductive analysis to understand the concept of restorative justice in Islamic law and its application in national law. In addition, a comparative method is used to assess the extent to which the principle of restorative justice in Islamic law can be adopted in the juvenile criminal justice system in Indonesia. With this approach, this study is expected to provide more systematic recommendations for the development of juvenile criminal law policies that are oriented towards recovery, rehabilitation, and balance between the interests of victims, perpetrators, and society.

3. Results and Discussion

3.1. Legal Policy in Developing the Concept of Restorative Justice in Indonesian and Islamic Juvenile Criminal Law

Restorative justice has become an important paradigm in the modern criminal justice system, including in juvenile criminal law in Indonesia. This approach emphasizes victim recovery, perpetrator accountability, and reconciliation with the community. Unlike the retributive model that emphasizes punishment for the perpetrator, restorative justice prioritizes conflict resolution through mediation and deliberation between the parties involved.(Rado & Badillah, 2019)

In juvenile criminal law, this approach is increasingly gaining ground, in line with the principles of child protection in various national and international legal instruments.(Rado & Badilla, n.d.)Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) explicitly regulates the concept of diversion and restorative justice as the main approach in handling cases of children in conflict with the law. Article 5 of the SPPA Law states that the juvenile criminal justice system must prioritize the best interests of the child and avoid the negative effects of criminalization. Therefore, the restorative justice approach is used in the investigation, prosecution, and trial processes, where children

can be given the opportunity to correct their mistakes without having to go through punishment that has a negative impact on their future.(Devi, 2014)

From an Islamic perspective, restorative justice is in line with Islamic legal values that emphasize justice, compassion, and reconciliation. Islam teaches that the purpose of law is to maintain maqashid sharia (the goals of sharia), including the protection of life, property, mind, descendants, and religion. The Qur'an and Hadith provide many guidelines for conflict resolution that prioritize peace over revenge. One verse that reflects the principles of restorative justice is:

And the reward for a crime is an appropriate crime. But whoever forgives and does good, his reward will be (borne by) Allah. Indeed, He does not like unjust people."(QS. Asy-Shura: 40)

This verse emphasizes that although punishment can be imposed, forgiving and seeking a peaceful solution is preferred. The Hadith of Rasulullah SAW also shows how restorative justice is applied in everyday life. In a history, the Prophet said:

No one forgives another person's injustice towards him unless Allah will increase his glory."(HR. Muslim)

In juvenile criminal cases, the application of restorative justice is in accordance with the concept of ta'zir in Islamic law.(Sartika et al., nd)Ta'zir is a punishment that is not specified in the Qur'an and Hadith, but is left to the discretion of the judge or ruler based on the principle of maslahat. In this context, the punishment of children can be replaced with punishment that is educational and aims for self-improvement, not merely punishment.

In Indonesia, the application of restorative justice in juvenile criminal law has developed through several legal policies and legislation.(Rusmini, 2021)Article 7 paragraph (1) of the SPPA Law states that at the level of investigation, prosecution, and examination of child cases in court, diversion must be attempted. Diversion is the transfer of the settlement of child cases from the formal justice system to non-litigation channels, which aims to achieve more humane justice. Some forms of restorative justice implementation in Indonesia include:

1. Victim-Offender Mediation (VOM)

- Involving victims and perpetrators in discussions moderated by a neutral party (mediator).
- The main goal is the recovery of the victim and the responsibility of the perpetrator for his/her mistakes.

2. Family Group Conferencing (FGC)

- This model places the family as the main party in resolving child cases.

- Children who commit crimes are accompanied by their families and the community to reach a fair agreement.

3. Restorative Board / Youth Panel

- Involving community groups as councils that facilitate the resolution of cases of children in conflict with the law.

This policy aims to prevent children from having bad experiences in the criminal justice system that can cause trauma or even worsen their behavior. Although restorative justice has many benefits, its implementation in Indonesia still faces several obstacles:

1. Lack of Public Understanding and Awareness

- Many people still believe that justice can only be upheld through severe criminal penalties.
- Solution: Public education and outreach regarding the benefits of the restorative justice approach.

2. Lack of Facilities and Competent Human Resources

- Not all law enforcement officers have the skills to carry out mediation and restorative approaches.
- Solution: Training for investigators, prosecutors, judges, and social workers involved in juvenile criminal justice.

3. Lack of Active Role of Victims and Society

- The success of restorative justice depends on the involvement of victims, perpetrators, and the community.
- Solution: Encourage communities and social institutions to be more active in resolving child cases using restorative methods.

4. Legal Aspects That Still Need to be Strengthened

- Although the SPPA Law has accommodated restorative justice, its implementation still varies in various regions.
- Solution: Strengthening national regulations and policies so that the implementation of restorative justice is more systematic and uniform.

Restorative justice in juvenile criminal law in Indonesia and Islam is a more humane and just approach compared to the retributive criminal justice system. Islam itself has taught the importance of justice that does not only punish, but also provides an opportunity for perpetrators to improve themselves and contribute positively to society.

In the Indonesian legal system, restorative justice has been accommodated in the SPPA Law and several other policies. However, there are still challenges in its implementation that require synergy between law enforcement officers, the community, and social institutions. (Rahmat et al., 2021) Therefore, strengthening legal policies and public education is an important step to ensure the success of the implementation of restorative justice in the juvenile criminal justice system.

3.2. Policy and Implementation of Restorative Justice in Criminal Law for Children in Indonesia from the perspective of Islamic Law

Restorative justice in juvenile criminal law in Indonesia is a legal approach that is increasingly receiving attention in the modern criminal justice system. This system aims to shift the resolution of criminal cases from a retributive model—which emphasizes revenge—to a model that is more oriented towards recovery. (Devi, 2014) This concept allows for dialogue between the perpetrator, victim, and community to achieve a more just resolution, with an emphasis on restoring social relations and rehabilitating the perpetrator. In the context of juvenile criminal law, this approach is very relevant because it adapts to the psychological and social development needs of children, who in many cases commit crimes due to environmental factors and a lack of understanding of legal consequences.

In Islamic law, restorative justice is not a new concept, but has been applied since the time of the Prophet Muhammad and the caliphs after him. Islam places the principles of forgiveness (*al-ʿafw*), reconciliation (*ishlah*), and compensation (*diyāt*) as part of resolving legal disputes. The Word of Allah in Surah Al-Hujurat verse 10 states that, "Indeed, believers are brothers, therefore make peace between your two brothers and fear Allah so that you may receive mercy." This verse emphasizes the importance of peace in resolving conflicts, including in criminal cases involving children as perpetrators. This concept is in line with the principles of Islamic law which emphasize the protection of the soul (*hifz al-nafs*), reason (*hifz al-aql*), and descendants (*hifz al-nasl*), as outlined in the *Maqashid* sharia.

In the Indonesian legal system, the implementation of restorative justice has been accommodated in various regulations. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) adopts this concept through a diversion mechanism. (Fitriani, 2012) Article 6 of the SPPA Law states that diversion aims to avoid the negative impacts of the formal justice system on children, including imprisonment which can have long-term effects on their social lives. Diversion is the main approach in resolving cases of children in conflict with the law, emphasizing non-litigation resolution through deliberation between the perpetrator, victim, and community. Article 7 of the SPPA Law emphasizes that diversion must be carried out during the investigation, prosecution, and examination stages in court, if the perpetrator is under 18 years old and the threat of punishment is less than seven years.

In its implementation, the Attorney General's Office of the Republic of Indonesia issued Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which allows the prosecutor's office to stop prosecution if there is a peace agreement between the perpetrator and the victim. In addition, Supreme Court Regulation Number 1 of 2024 provides guidelines for judges in implementing a restorative justice approach in child

case decisions. This regulation shows the state's commitment to developing a more humane and recovery-oriented justice system.

From an Islamic legal perspective, this approach is in line with the concept of *qisas* and *diyat* which gives the victim or his family the option to demand an appropriate punishment or receive compensation as a form of restitution. Surah Al-Ma'idah verse 45 states, "And We have ordained for them in the Torah that a soul shall be recompensed for a soul, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and wounds (even) have their recompense. But whoever releases it, it is atonement for him." This verse shows that in Islamic law, justice is not only in the form of retribution, but there is also room for forgiveness and a resolution that is more oriented towards social recovery.(Aulia et al., 2024)

The thoughts of Islamic scholars and legal experts also support the application of restorative justice in juvenile criminal law. Al-Ghazali in *Ihya 'Ulum al-Din* emphasized that the law is not only intended to punish perpetrators of crimes, but also to improve individuals and society. Punishment that does not provide social benefits for perpetrators and society will only increase damage, not solve the problem. Ibn Ashur in *Maqashid asy-Syari'ah* also emphasized that the main objective of Islamic law is to maintain social balance and prevent damage (*mafsadah*) (Marsaid, 2020). The punishment applied must consider its impact on the wider community, including in the case of child criminalization.

Legal theories that support the implementation of restorative justice have also been widely developed by modern legal experts. John Braithwaite developed the theory of reintegrative shaming, which states that perpetrators of criminal acts, including children, must be given the opportunity to improve themselves and be accepted back into society after completing their responsibilities to the victim. Howard Zehr, who is considered the father of modern restorative justice, emphasized that the criminal law system should focus more on the restoration of victims and the moral accountability of perpetrators rather than simply imposing retributive punishment (Braithwaite, 2002).

Although this concept has been implemented in regulations in Indonesia and has a strong basis in Islamic law, its implementation still faces various challenges. One of them is the lack of understanding of law enforcement officers about the restorative justice mechanism, which causes many cases of children to still be processed formally without any diversion efforts.(Isnawan, 2024)In addition, in some cases, victims or their families reject peaceful settlements because they consider heavier sentences to be fairer. Another factor that is an obstacle is the lack of supporting facilities such as mediation and counseling centers for children in conflict with the law.

From the perspective of Islamic legal philosophy,(Yudhanegara et al., 2024)The application of restorative justice in juvenile criminal law can be linked to the principle of *maslahat* (benefit) which is the basis for determining Islamic law (Ali, 2023). Al-Syatibi in *Al-Muwafaqat* emphasized that Islamic law must be oriented towards human protection and welfare. Therefore, punishment of children must consider aspects of rehabilitation and recovery so that they can return to being productive members of society.

In Islamic history, Caliph Umar bin Khattab once gave a concrete example in the application of the principle of restorative justice. When there was a large-scale theft due

to famine that hit the community, Umar decided not to apply the law of cutting off the hands of the thieves, because he realized that the crime occurred due to difficult social conditions. This decision reflects the flexibility of Islamic law in adapting to social needs and shows that justice must consider the conditions of individuals and society as a whole.

In the context of juvenile criminal law in Indonesia, the implementation of restorative justice must continue to be strengthened with various strategic steps. One of them is increasing the capacity of law enforcement officers to better understand and optimally implement this concept. In addition, there needs to be socialization to the community regarding the importance of peaceful resolution in juvenile cases in order to reduce the negative stigma against children in conflict with the law. The government also needs to expand the scope of cases that can be resolved through the restorative justice mechanism, including in more complex cases, while still considering the principle of justice for victims (Irawan et al., 2022).

Thus, the legal policy in developing the concept of restorative justice in juvenile criminal law in Indonesia already has a strong foundation, both in positive law and in the perspective of Islamic law. However, its implementation still requires strengthening in various aspects, including more comprehensive regulations, increasing the understanding of law enforcement officers, and active involvement of the community in resolving juvenile criminal cases. If implemented optimally, this approach can be a more equitable solution in dealing with children in conflict with the law, and in line with the principle of welfare in Islam.

4. Conclusion

Restorative justice in Indonesian juvenile criminal law is strongly based on Islamic principles that emphasize justice, forgiveness, and reconciliation. This system aims to provide an opportunity for juvenile perpetrators of crimes to correct their mistakes through a more humanistic and recovery-oriented approach. In Islamic law, the concepts of *Maqashid Syari'ah*, repentance, *sulh* (reconciliation), and *'afw* (forgiveness) are very relevant to the implementation of restorative justice, which allows for the resolution of cases through deliberation and mediation. Although regulations such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and the Indonesian Attorney General's Regulation Number 15 of 2020 have accommodated this approach, its implementation still faces various challenges, including a lack of understanding among law enforcement officers, limited resources, and a lack of public awareness of the benefits of restorative justice. To strengthen the implementation of restorative justice in juvenile criminal cases, several strategic steps are needed. First, the establishment of a special law that explicitly regulates the restorative justice mechanism to provide legal certainty in its implementation. Second, the integration of the RJ principle in the Bill relating to criminalization, so that this approach is not only limited to children but can also be applied in certain cases involving adults. Third, training and education for law enforcement officers regarding the philosophy and application of RJ, including its Islamic aspects, so that the application is more effective and does not merely become a legal formality. Finally, a public awareness campaign is needed to build a better understanding of the benefits of RJ in creating more substantial justice. With more comprehensive policies and public support, restorative justice can become an integral part of the juvenile criminal law system in Indonesia that is more just and in accordance with Islamic legal values.

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