

## Restorative Justice in the Perspective of Islamic Law and Judicial Principles

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**Abstract.** Restorative justice is the resolution of criminal cases by emphasizing direct participation from the perpetrator of the crime, the victim and the community. The aim of restorative justice is to obtain clarity from an incident that occurred by encouraging the perpetrator, restoring the victim's losses, reintegrating the victim into society and providing collective accountability. In the general justice environment there are also guidelines for resolving cases issued by the Director General of Badilum. The aim of this research is to find out the concept of restorative justice in the Decree of the Director General of Badilum and also The analysis is based on Islamic law and judicial principles. The research method used is normative juridical with data sources in the form of legal materials. The results of this research include: that the concept of restorative justice contained in the Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 includes the resolution of criminal cases with classification types, light criminal cases, children's cases, women's cases facing with narcotics law and cases. Then if it is analyzed that the decision aims to provide convenience for justice seekers, so that if it is linked it is in accordance with the rules of fiqhyyah which state that a leader's decisions must be oriented towards benefit. Apart from being in accordance with the concept of mashlahah in Islamic law, the concept of resolving cases using a restorative justice approach is also to uphold the principles of fast, simple and low-cost justice.

**Keywords:** Criminal; Justice; Principles; Restorative.

### 1. Introduction

Resolving conflicts that occur in society can be resolved in two ways, namely the litigation route and the non-litigation route. The litigation route is known as the model for resolving cases through court, while the non-litigation route is a model for resolving cases outside the court. Settlement of cases through litigation, which culminates in a court decision, is sometimes seen as not reflecting a sense of justice, which is one of the objectives of the law. As stated by Gustav Redburh, there are three basic values for the

purpose of law, namely justice, expediency and legal certainty.<sup>1</sup>

The litigation process is also considered to be increasing the number of cases in judicial institutions. For this reason, there needs to be a new breakthrough offered to achieve a sense of justice in deciding cases, namely by implementing the concept of restorative justice which can create a balance between the perpetrator and the victim, besides that the process can be completed quickly thereby saving time, costs and energy. One of these things is resolving criminal cases through a Restorative Justice approach.

Restorative justice can be called a new paradigm enforcement model to respond to dissatisfaction with the workings of the criminal justice system which places more emphasis on the legal process. Legal practices by law enforcers that occur in Indonesia tend to be based on legalism as the main characteristic of legal positivism.<sup>2</sup>

Restorative justice is a way of resolving conflicts or cases that focuses more on resolving problems by involving a wider range of parties, for example the involvement of victims and the community.<sup>3</sup>This is certainly different from the case resolution model commonly used in Indonesia. However, there are already several regulations governing the resolution of cases using a restorative justice approach, such as at the Directorate General of the General Judicial Body of the Supreme Court of the Republic of Indonesia.

This research aims to determine the concept or description of the application of restorative justice in criminal trials according to the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice and its analysis according to Islamic law and also the principles of justice.

## 2. Research Methods

A research method is a way or path to fulfill and study and examine a problem carefully and diligently in order to achieve a goal, answer existing problems. In this journal research, the method used is a normative research method, where the research uses legal material sources in the form of statutory regulations, court decisions/decisions, legal theory, or legal doctrine.<sup>4</sup>This research method is often known as library research. Then the researcher uses a normative juridical approach, because the aim of this approach is to explain and explain a product of positive law or Islamic law. The data sources used are secondary data in the form of legal materials, whether primary, secondary or tertiary. Meanwhile, the data collection method that the author used in this research was document study or literature study of the legal materials.

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<sup>1</sup>Muhammad Erwin, 2012, *Legal Philosophy*, Raja Grafindo, Jakarta, p.123

<sup>2</sup>Renita Dharma Pratiwi, et al, *Obstacles in Implementing Restorative Justice Principles in Child Crime Cases*, *Lex Suprema Journal*, Vol. 1 No. II (2019), p. 3

<sup>3</sup>Agni wisnu Brata et al, *Application of Restorative Justice in Handling Conflict in Society*, *Khaira Ummah Law Journal*, Vol. 15 No 1 (2020), p. 3

<sup>4</sup>Muhaimin, 2022, *Legal Research Methods*, Mataram University Press, Mataram, p. 45

### 3. Results and Discussion

#### 3.1. Restorative Justice in the Decree of the Director General of the General Justice Agency

Satjipto Raharjo revealed that resolving cases through the judicial system which results in a court verdict is a process of slow-track law enforcement. This will lead to a verdict which is usually in the form of punishment. Punishment is the ultimum remedium, which means it is a last resort when there are no other efforts to resolve the case outside of litigation. Therefore, other methods are needed to resolve conflicts or problems that exist in society. One method that is considered quite good is the restorative justice approach.

*Restorative justice* is a concept that is experiencing rapid development and plays an important role in legal reform in various countries. Restorative justice was introduced in the writings of Albert Eglash in the 1950s and was only introduced in 1977 to classify the criminal justice system into three groups, namely retributive justice, distributive justice and restorative justice.<sup>5</sup>Retributive justice aims to punish the perpetrator, distributive justice aims to rehabilitate, and restorative justice aims to restore conditions to the situation before the crime was committed. However, long before Albert Eglash put forward his ideas, the civilizations and traditions of Ancient Arabia, Greece, Ancient Rome and Hindustan actually recognized special restorative justice in crimes of loss of life. Even though at that time the term restorative justice was not used, at least there was a restorative approach.<sup>6</sup>

In North America, Australia and parts of Europe, restorative justice has been applied at all stages of the conventional criminal justice process, namely at the investigation and prosecution stages, the adjudication stage and the prison execution stage.<sup>7</sup>Later in its development, the spread of restorative justice received support from the United Nations (UN), which then in Geneva in 1975, the UN began to pay attention to compensation for crime victims, as an alternative to retributive criminal justice.

The original concept of restorative justice practices comes from peacekeeping practices used by the Maori tribe (indigenous tribal people in New Zealand). If conflict occurs, restorative practices will deal with the perpetrators, victims and stakeholders.<sup>8</sup>This concept prioritizes meetings between interested parties in crime. Basically, the concept of restorative justice actually has similarities with the concept of penal mediation which has been carried out at various practical levels.

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<sup>5</sup>Muhammad Fatahillah Akbar, Restorative Justice Reform in the Indonesian Criminal Justice System, *Journal of Legal Issues*, Vol. 51, no. 2, April 2022, p. 201

<sup>6</sup>Hariman Satria, Restorative Justice: A New Paradigm for Criminal Justice, *Legal Media Journal*, Vol. 25 No. June 1, 2018, p. 117

<sup>7</sup>Sapta Candra, Restorative Justice: A Review of Criminal Law Reform in Indonesia, *National Law Development Media Rechvinding Journal*, Vol. 2 No. 2, August 2013, p. 269

<sup>8</sup>Juhari, Restorative justice in criminal law reform in Indonesia, *Legal Spectrum Journal*, Vol. 14, no. 1(2017), p. 101

Dignan stated that restorative justice is a new framework for responding to wrongdoing and conflict that is rapidly gaining acceptance and support by education, law, social workers, counseling professionals and community groups. Restorative justice is based on a values approach as a response to violations and conflicts whose focus is on crime victims, crime perpetrators and the communities affected by the crime.<sup>9</sup> Meanwhile, Muladi defines restorative justice as an approach to justice that is based on the basic philosophy of the values of responsibility, openness, trust, hope, healing and inclusiveness which have an impact on policy decision making in the criminal justice system.

In Indonesian criminal law, restorative justice is still not very familiar, however, the concept of restorative justice has actually been practiced for a long time by Indonesian indigenous communities, such as in Papua, Bali, Toraja, Minangkabau, as well as other traditional communities that still hold strong culture.<sup>10</sup> If a criminal act occurs by someone, the resolution route is through internal customary settlement with peace. And this has been proven successful in maintaining harmony in society.

Bagir Manan stated that law enforcement in Indonesia had failed to achieve the goals outlined in the "communist opinion doctrum" law. In this case, a breakthrough is needed in law enforcement, namely restorative justice, where the approach uses a socio-cultural approach and not a normative approach. This is an anticlimax to the destruction of the existing criminal system in Indonesia. The punishment system in the form of imprisonment is considered to be no longer effective, this can be proven by the increase in crime rates in Indonesia.<sup>11</sup>

According to Van Nes, as quoted by Mudzakir, restorative justice is characterized by several prepositions, namely:<sup>12</sup>

- Crime is a conflict between individuals that results in losses to the victim, society and the perpetrator himself
- The goal that must be achieved in the criminal justice process is to carry out reconciliation between the parties while mutually repairing the losses caused
- The criminal justice process must facilitate the active participation of victims, offenders and the community, criminal justice should not be dominated by the state to the exclusion of others.

*Restorative justice* as an alternative resolution of criminal cases which, in the criminal justice procedure mechanism, focuses on punishment which is transformed into a

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<sup>9</sup>Ahmad Syahril Yunus and Irsyad Dahri, 2021, Restorative Justice in Indonesia, Guepedia, p. 8

<sup>10</sup>Henny Saida Flora, Rhetorative Justice as an Alternative in Resolving Crimes and Its Influence in the Criminal Justice System, UBELAJ Journal, Vol. 3, no. 2, October 2018, p. 145

<sup>11</sup>Sodik Muslih et al, Implementation of Restorative justice in the Settlement of Defamation Cases in the ITE Law, Widya Pranata Hukum Journal, Vol. 3, no. 2 September 2021, p. 102

<sup>12</sup>Juhari, Restorative justice in criminal law reform in Indonesia, Legal Spectrum Journal, Vol. 14, no. 1(2017), p 102

dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties.<sup>13</sup>Each party upholds common interests, not personal interests. Deliberative settlement or mediation is more effective in achieving a sense of justice compared to state mechanisms.<sup>14</sup>

Restorative justice has the aim of empowering victims, perpetrators, as well as families and communities to correct an act against the law by using awareness and conviction as a basis for improving social life, explaining that the concept of restorative justice is basically simple.<sup>15</sup>In this simple concept, the measure of justice is no longer based on retaliation in kind from the victim to the perpetrator, either physically or by punishment, but rather that painful acts are healed by providing support to the victim and the perpetrator's community to take responsibility, with the help of the family and community if necessary.

The application of restorative justice upholds the involvement of all parties in handling criminal cases. Meanwhile, the concept of restorative justice emphasizes the values of peace, balance, tranquility, harmony, harmonization, equality, kinship and brotherhood in society rather than punishment or imprisonment. Apart from punishment having an impact on prisoners and their families, the current system has not responded to the interests of victims. Moreover, the legal process takes quite a long time.

In general, the principles of restorative justice are:<sup>16</sup>

- a. Makes violators responsible for repairing losses caused by their actions
- b. Providing opportunities for offenders to prove their capacity and quality as well as dealing with their feelings of guilt constructively
- c. Involving victims, parents, family, society, or other parties
- d. Create a forum to collaborate in solving problems

Restorative justice programs are thus designed to bring together perpetrators, victims, their respective families, friends and community representatives, and seek to involve them in the process of reconciliation and reparation.<sup>17</sup>The aim is to enable perpetrators and victims to meet in a face-to-face context to voice their experiences and understandings to reach a mutually agreeable resolution. Restorative justice basically

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<sup>13</sup> <https://www.Hukumonline.com/berita/a/mengenal-restorative-justice-62b063989c193/> accessed in September 2023

<sup>14</sup>Justisi Devli Wagiu and Pascal Wilmar Yehexkiel Toloh, Restorative Justice in Resolving Banking Crimes for State-Owned Enterprises, Klaten, PT. Nas Media Indonesia, 2018, p. 39

<sup>15</sup>Hanafi Arief, Application of Restorative Justice Principles in the Criminal Justice System in Indonesia, Al-adl Journal, Vol. X, No. 2, July 2018, p. 178

<sup>16</sup>Yahya Sultoni, Development of the Principles of Restorative Justice towards Children in the Realm of Criminal Law, Maksigama Journal: Volume 14 Number 2 Period November 2020, p. 124

<sup>17</sup>Hasbi Hasan, Application of Restorative Justice in the Juvenile Criminal Justice System in Indonesia, Journal of Law and Justice, Vol. 2, no. 2 (2013), p. 255

complements and does not replace the existing criminal justice system. Therefore, restorative justice can be used at every stage of the criminal justice process. Restorative justice is the answer to the problem of the criminal justice system which is deemed unable to accommodate the aspirations of the parties involved in the case.<sup>18</sup> The application of restorative justice can provide several benefits, including that restorative justice focuses on justice for crime victims in accordance with personal desires and interests, not the state's decisions. Providing recovery offers for all parties involved, and can make the perpetrator responsible for the crimes he has committed.<sup>19</sup>

Restorative justice also opens up greater access to justice for the poor, because in fact, in fact, access to legal aid is still difficult to achieve. The benefits of restorative justice are also to reduce the quantity of people in litigation, especially to reduce the capacity of correctional institutions, this is attempted to increase public participation and reduce the burden on the justice system.

Within the framework of restorative justice, apart from punishment, judges can also carry out sentences:<sup>20</sup> Reparation (compensation), fines, community service (social work), Periodic Detention, and Community Program (special program).

In the development of Indonesian law today, various law enforcement products have given birth to the concept of restorative justice, both for the Police, the Prosecutor's Office and the Directorate of the General Judicial Body of the Supreme Court of the Republic of Indonesia as stated in the Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/ 2020 concerning Guidelines for implementing Restorative justice. In the letter, it is explained that restorative justice is an alternative resolution of criminal cases using a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly create an agreement on the resolution of criminal cases that is fair and balanced for the victims and perpetrators by prioritizing restoration to their original condition, and restoring patterns of good relations in society.

The Supreme Court determined that several criminal acts in court hearings can apply the principles of restorative justice, namely in cases of minor criminal acts, namely cases with criminal threats as intended in articles 364, article 373, article 379, article 384, article 407, and article 482 of the Book. Criminal Law (KUHP) with a loss value of no more than Rp. 2,500,000 (two million five hundred thousand rupiah).

The trial process for minor criminal offenses is carried out by a single judge appointed by the Chairman of the District Court to examine, try and decide the case in a speedy manner. In making this determination, the head of the court takes into account the value of the goods or money that is the object of the case as stated in the provisions

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<sup>18</sup>Ribut Hari Wibowo, Restorative Justice Approach in Terminating Prosecution Based on Restorative Justice, *Progressive Law Journal*, Vol. 9, no. 2, October 2021, p. 148

<sup>19</sup>Josefin Mareta, Implementation of Restorative Justice Through Fulfilling Restitution for Child Crime Victims, *Legal and Human Rights Research and Development Agency*, p. 313

<sup>20</sup>Justisi Devli Wagiu and Pascal Wilmar Yehexkiel Toloh, Restorative Justice in Resolving Banking Crimes for State-Owned Enterprises, Klaten, PT. Nas Media Indonesia, 2018, p 52-54

mentioned. Settlement of minor criminal cases through restorative justice can be carried out provided that peace has been implemented between the perpetrator, victim, family of the perpetrator/victim, and related community figures with or without compensation.

After the trial opened, the judge read the indictment notes and asked the opinions of the defendant and victim, and then peace efforts were made. If the parties can reach peace, a peace agreement is made which is signed by the Defendant, the victim and related parties, and then the peace agreement is included in the consideration of the decision. If a peace agreement cannot be reached, the examination process will continue. Restorative justice does not apply to repeat criminals.

Then the second is the application of restorative justice in juvenile criminal cases. This is not something strange, because it is included in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In the Juvenile Criminal Justice System, it is known as Diversion, which is a form of restorative justice. If diversion is unsuccessful or does not meet the diversion requirements, the judge seeks a decision using a restorative justice approach. Judges must always be proactive in encouraging children/parents/legal advisors and victims as well as related parties to seek peace.

Third is restorative justice in cases of women in conflict with the law. When examining these cases, judges must always consider gender equality and non-discrimination. During the course of the trial, the judge must prevent and/or reprimand the parties, legal advisors, public prosecutors and/or attorneys who behave or make statements that demean, blame, intimidate or use the experience or sexual background of women in conflict with the law.

The fourth is restorative justice in narcotics cases. This approach can only be applied to addicts, abusers, victims of abuse, drug dependence and one-day use of narcotics. The judge can order the defendant to present his family and related parties to hear their statements as mitigating witnesses in the context of a restorative justice approach.

*Restorative justice* requires efforts from the community and government so that perpetrators and victims can make peace. Restorative justice restores conflict to victims, perpetrators and the interests of their communities and provides justice for them.

### **3.2. Restorative Justice in Islamic Law Perspective and Judicial Principles**

There are two ways in the case resolution process, namely litigation and non-litigation. Settlement of cases through non-litigation channels can be carried out based on the initiative of each party involved in the case and can also involve third parties (*Hakam*). *Hakam* as a mediator (reconciler) between two or more parties in a lawsuit. The method of resolving things amicably is a tradition that has long been rooted in Arab society even before the arrival of Islam. After Islam arrived, this doctrine was strengthened again with recommendations to always create peace and harmony in society<sup>21</sup>

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<sup>21</sup>Syaibatul Hamdi, et al, Islamic Law Review of the Implementation of Restorative Justice in the

In Islamic criminal law, the term *restorative justice* can be equated with the term "*al-Isti'adah*", which means restoration.<sup>22</sup> Restorative justice is defined as a method for responding to criminal acts by involving conflicting parties in order to repair the damage caused by the criminal act. This is done through dialogue and negotiation between both parties.

*Restorative justice* places a higher value on the involvement of the parties. This concept also actively involves victims and victims' families in resolving criminal cases as well as solutions to try to restore the original situation. In the context of Islamic criminal law, the involvement of victims of criminal acts (recognition of victims' rights) is firmly accommodated in *diyath*.

*So whoever receives forgiveness from his brother, let (the one who forgives) follow it in a good way, and let (the one who is forgiven) pay (diat) to the one who forgives in a good way (too). This is a relief from your Lord and a mercy. Whoever transgresses the limit after that, he will have a very painful punishment." (QS Al-Baqarah: 178)*

In Islam, it is explained that certain criminal threats can be replaced when the perpetrator of the crime receives forgiveness from the victim or family of the victim of the crime. The Indonesian criminal system, which originates from the Criminal Code and Criminal Procedure Code, is still identical to the retributive punishment paradigm which still focuses on taking action against criminals by providing appropriate retribution for the crimes that have been committed. In Islamic criminal law, this type of punishment system is in accordance with one of the objectives in the theory of punishment, namely retribution (*al-jaza*).<sup>23</sup>

*"And the recompense for an evil is a similar evil, so whoever forgives and does good, his reward will be (borne by) Allah. Indeed, He does not like unjust people. (QS Ash-Shura: 40)*

If you understand the verse above, it can be understood that Islam offers two options in solving problems, namely giving reply or giving forgiveness. Both are permissible options, but forgiving and not imposing sanctions on perpetrators of criminal acts based on the perpetrator's willingness, occupies high dignity in the sight of Allah SWT.<sup>24</sup>

Settlement of cases by forgiving is then known as *ishlah* or peace, because the parties involved in the crime case sit together to find solutions and solutions to resolve the case.

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Juvenile Criminal Justice System in Indonesia, *Maqashidi Journal of Sharia and Law*, Vol. 1, No. 1 (2021), p. 80

<sup>22</sup> <http://rozikin-konsultan.blogspot.com/p/Hukum-pidana-islam.html> accessed in August 2023

<sup>23</sup> Oktoberriansyah, The Purpose of Punishment in Islam, *In Right: Journal of Religion and Human Rights*, Vol.1, No.1, November 2011, p. 23-32

<sup>24</sup> Waluyadi, *Ishlah according to Islamic Law's Relevance to Criminal Law Enforcement at the Investigation Level*, *Yutisia Journal* Vol. 3 No. 2 (May-August 2014), p. 36



In criminal law it also became known as *Restorative Justice*, the concept is the same as the implementation *ishlah*.

If we observe, actually *Restorative justice* as stated in the Decree of the Director General of the General Justice Agency, based on aspects *maslahah*. Because this aims to create benefits for the community, especially victims, perpetrators, families of victims/perpetrator as well as communities affected by the commission of crimes. This is as stated by Ibnu Ashur that *maslahah* is a characteristic of actions that can bring goodness, benefits forever for the majority and individuals.

*"A leader's policy towards his people must be oriented towards the benefit"*

*Fiqh* rules above provides a solid basis for use *maslahah* to provide happiness for humanity. This is related to the Decree of the Director General of the relevant General Justice Agency *restorative justice*, this is the policy of leaders in general justice institutions to provide guidance for lower ranks in law enforcement, as well as to encourage increased implementation of restorative justice as regulated by the Supreme Court in the resulting decisions.

Then, in the trial process of criminal cases, the principles of justice must be created, such as: the principle of presumption of innocence, the principle of obtaining legal assistance, the principle of equal application before the law, the principle of opportunity, the principle of simple, fast and low-cost justice, as well as the principle of Compensation and rehabilitation obligations (*Compensation and Rehabilitation*).

The principle of presumption of innocence or (*presumption of innocence*) is the principle which assumes that a person who is suspected, arrested, detained, prosecuted, and also brought before a trial is deemed innocent until there is a court decision which legally and convincingly states that he or she has committed a criminal act. This principle is enshrined in the Judicial Power law. Meanwhile, in the Criminal Procedure Code (KUHAP) article 8.

The principle of obtaining legal assistance, where a person has the right to obtain legal assistance at every stage of the examination process, both at the investigation, prosecution and judicial levels. As for someone who is suspected of committing a crime which is punishable by the death penalty or a penalty of 15 (fifteen) years in prison or more or for an incapacitated defendant who is threatened with a sentence of 5 (five) years or more who does not have his own legal advisor, the official who examines are required to appoint legal advisors for them.

Then there is the principle of equal application before the law or often also known as *equality before the law*. This principle explains that all citizens are equal in law and government and are obliged to uphold these laws without exception. This principle firmly emphasizes that every citizen has the same position before the law with no

exceptions.<sup>25</sup>This means that all citizens have the same position in terms of law enforcement. There is no such thing as impunity or selective logging in its enforcement. All Indonesian citizens who violate the law will be treated fairly according to the criminal offense they have committed.

The next is the principle of opportunity, namely the principle that gives the public prosecutor the authority not to prosecute a person or corporation that has committed a criminal act if the public prosecutor considers that the prosecution will bring harm to the general public.<sup>26</sup>The principle of opportunity in prosecution, means that even though there is sufficient evidence to charge someone with violating a criminal law regulation, the Public Prosecutor has the power to set aside cases where the evidence is clear for the purpose of being in the State or public interest (*deponer*).<sup>27</sup>

Then in criminal justice there is also the principle of fast, simple and low-cost justice. This principle is regulated by Article 2 paragraph (4) and Article 4 paragraph (2) of Law no. 48 of 2009 which states that: "Justice is carried out simply, quickly and at low cost." In the explanation, what is meant by "simple" is that the examination and resolution of cases is carried out in an efficient and effective manner. What is meant by "low costs" are case costs that can be afforded by the public. In the Big Indonesian Dictionary, fast can be interpreted as taking a short time. However, even so, examinations in court must not exclude thoroughness and thoroughness in seeking truth and justice.

This principle requires that the implementation of law enforcement in Indonesia be guided by the principles: fast, precise, simple and low cost (cheap). Moreover, if the delay in resolving a criminal case is intentional, it is certainly a violation of the law and human dignity.<sup>28</sup>

*Restorative justice* which was initiated by the Directorate of General Courts is also closely related to the principles of fast, simple and low-cost justice. If we observe, the process of resolving a criminal case will generally take a lot of time until it finally results in a court decision. The first process begins at the investigator level. After that, the case files and suspects are handed over to the public prosecutor to prepare the indictment, for the trial process at the District Court and then the stages of implementing the court decision or execution. If we relate it to Islamic law, then the principle of presumption of innocence is in line with the rules of *ushul fiqh*, namely *al-ashl bara'ah al-dzimmah*

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<sup>25</sup>Nadya Thmariska, et al., Application of the Principle of Equality Before the Law (Equality Before The Law) Against Perpetrators of General Crimes from the Inner Tribe (SAD) in the Legal Area of the Sarolangun Police, *Legality: Legal Journal*, Vol. 15, no. 1 (2023), p. 111

<sup>26</sup>Alfitra, 2018, Abolition of the Right to Sue for Criminal Justice, *Achieve Hope of Success*, Jakarta, p. 89

<sup>27</sup>Salinah, Application of the Principle of Opportunity in Criminal Law in Indonesia Viewed from Islamic Law, *Legalite Journal of Islamic Legislation and Criminal Law*, Vol. 1, no. 01, (2016), p. 64-65

<sup>28</sup>Winli A. Wangol, Principles of Simple, Fast Justice and Low Costs in Resolving Criminal Cases According to the Criminal Procedure Code, *Lex Privatum Journal*, Vol. IV, No. 7 (2016), p. 43

(basically everyone is free from various legal demands).<sup>29</sup>

With the existence of guidelines for resolving criminal cases using models *restorative justice* for certain cases, it is hoped that the completion time will be reduced, because the parties related to the case will be involved in the resolution process. The judge will act as a mediator to create an agreement between the parties, which will then be stated by the judge in the court decision.

So, with the Decree of the Director General of the General Justice Agency, case resolution can be carried out effectively and efficiently, the process is not convoluted, not complicated, straightforward, easy to understand, concrete, both from the perspective of justice seekers and law enforcers and others. Then the judge can immediately make a decision after an agreement is reached.

In essence, the principle of fast, simple and low-cost justice is aimed at ensuring that the rights of suspects or defendants in relation to various actions such as investigations, prosecutions and also examinations at trial receive guarantees regarding time by the relevant law enforcement officials. In this way, victims of criminal acts also immediately receive legal certainty regarding the actions that befell them, whose interests are taken into consideration in a just decision.

#### 4. Conclusion

The current development of criminal law shows a tendency to shift the concept of justice and the criminal paradigm to the concept of restorative justice. One of these things is marked by the existence of a set of rules governing the resolution of criminal cases using restorative justice, such as the Decree of the Director General of Badilum. The decision letter explains several criminal cases that can be resolved by prioritizing restorative justice and its guidelines. These cases include: minor criminal cases, children's cases, women's cases in conflict with the law and narcotics cases. However, if analyzed further, the concept of restorative justice is in line with the concept of *mashlahah* in Islamic law. Because one of the purposes of issuing this decision letter is to bring benefits, especially for victims of criminal acts. Apart from that, resolving cases using a restorative justice approach can also support the creation of simple, fast and low-cost justice principles, because the process is relatively shorter.

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<sup>29</sup>M. Nurul Irfan, 2016, *Islamic Criminal Law*, Amzah, Jakarta, p. 18

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