



Restorative Justice Based On An Islamic Legal Perspective In Cases Of Children As Criminal Offenders

Anwar Mayer Siregar

Department of Law, Faculty of Law, Universitas Lampung

Email: mayeranwar79@gmail.com

Abstract - Most criminal cases in Indonesia adhered to the revenge theory, this has an impact on overloaded prisons and detention centers. Islamic law, one of Indonesia's oldest laws after law customs, apparently has also regulated restorative justice. Principle restorative justice in law Islam uses draft qisas and diyat payment. This study examines the regulation and implementation of restorative justice in Islamic law, with a focus on protecting the rights of child offenders. This research uses a normative research method using a conceptual approach, namely an approach that analyzes the resolution of a problem. The results obtained from this research conclude that there is also a concept of restorative justice in Islamic law, which differentiates between the two only in terms. In Islamic law, restorative justice is often called forgiveness and *diyat*. Both are dispute resolution methods through non-litigation and require a third party as a mediator. Resolving children's problems using the concept of restorative justice is very appropriate if implemented in cases of children who commit criminal acts.

Keywords: Restorative Justice, Islamic Law, Children

I. INTRODUCTION

Restorative justice does not adhere to the theory of revenge or retributive in law criminal. Justice Restorative has been arranged in Regulation Attorney Republic of Indonesia No.15 of 2020, Article 1, paragraph 1 explains restorative justice is a solution case that follows criminals with involved perpetrators, victims, family perpetrators /victims, and other related parties. Together, look for a fair solution that emphasizes recovery back to the situation and not retaliation (Kementerian Hukum dan Hak Asasi Manusia RI, 2020). Previously, in implementation, most criminal cases in Indonesia adhered to the revenge theory, so that matters. This has an impact on overloaded prisons and detention centers (Sanusi, 2016). We Look at data on Public SDP where the total as of September 9, 2022, reached 22,311 prisoners, not yet including prisoners (Direktorat Jenderal Pemasyarakatan, 2022).

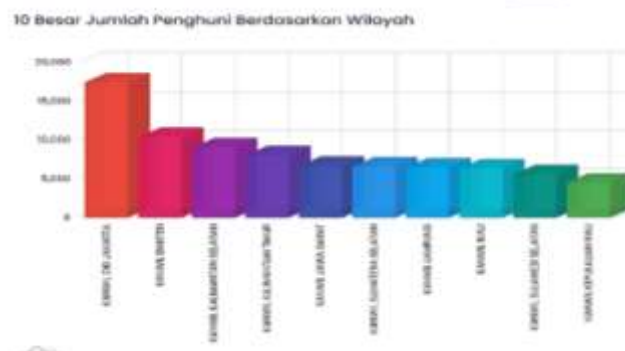


Figure 1. Top 10 Numbers Prison Inmates Based on Region (Direktorat Jenderal Pemasyarakatan, 2022)

Based on the chart, we can see that DKI Jakarta has 15,000 residents in prison the most, which is more than 15,000. Suppose system punishment in Indonesia is not fixed and continuously uses system punishment with principal revenge. In that case, it will impact overload capacity prison. This will also impact the effectiveness of objective institution correctional Alone. The impact of the overloaded prison capacity is difficulties for the residents built correctional for rest and activities, disturbed rights inhabitant construction, lack of adequate sanitation, emergence causing conflict fights, and not enough maximum supervision by officers (Qodar et al., 2022).

Restorative justice has different goals from understanding punishment in general, where punishment means intentional suffering, while restorative justice has the equivalent of the word repair, which means canceling action damage (Gade, 2021). Islamic law, one of Indonesia's oldest laws after law customs (Hamsah, 2022), apparently has also regulated restorative justice. Principle restorative justice in law Islam uses draft qisas and diyat payment (Ramadhanti et al., 2022). Qisas is a term in meaningful Islamic law retribution (giving appropriate punishment) is similar to the proverb "debt a life paid life." In the case of murder, the law qisas gives the right to the victim's family to request punishment for the death of the killer, but if the victim's family forgives the perpetrator, the punishment qisas No can be implemented (Ramadhanti et al., 2022). Meanwhile, diyat money is changing money loss awarded to the victim's family (Maulidar, 2021).

Many are children who become residents and are a picture of the future nation. Children are a generation's successor nation and are already appropriately educated and nurtured with good. Although the Development Institute Especially for their Children (LPKA) gets education and development (Ministry of Law and Human Rights of the Republic of Indonesia), it matters the difference in education and coaching that can be done, they feel, is outside the LKPA. There is an impact on psychology and society that the child will feel if they live in LPKA. This study examines the regulation and implementation of restorative justice in Islamic law, with a focus on protecting the rights of child offenders.

II. METHOD

In research, we will review restorative justice in perspective law Islam on the matter of a child as a perpetrator following a criminal. Draft restorative justice in perspective law Islam is more efficient when applied to this case than draft punishment that has been done in general. Currently, the number of children in prison inmates is 805 (Direktorat Jenderal Pemasyarakatan, 2022).

Draft restorative justice in perspective. Law Islam has already appropriately made guidelines for enforcement solutions outside of court (Hamdi et al., 2021). So what? Law Islam arranges restorative justice and how the rights of children can be protected from its implementation. Restorative justice is a problem that will be discussed in the research. This study uses a method study with a conceptual approach and an analytical approach to solving a problem (Loker et al., 2022).

III. RESULTS AND DISCUSSION

The number of cases child who become perpetrators following crimes in Indonesia is high. Based on the data obtained, at least 805 children became prison inmates, with details distribution as follows (Direktorat Jenderal Pemasyarakatan, 2022) :

Table 1. Total Children's Prison Inmates 2022

No	Regional Office	Total	No	Regional Office	Total
1	Aceh Regional Office	29	21	West Nusa Tenggara Regional Office	0
2	Bali Regional Office	43	22	East Nusa Tenggara Regional Office	33
3	Bangka Belitung Regional Office	25	23	Papua Regional Office	0
4	Banten Regional Office	6	24	West Papua Regional Office	1
5	Bengkulu Regional Office	0	25	Riau Regional Office	4

6	DI Yogyakarta Regional Office	28	26	West Sulawesi Regional Office	0
7	Regional Office DKI Jakarta	82	27	South Sulawesi Regional Office	71
8	Gorontalo Regional Office	0	28	Central Sulawesi Regional Office	4
9	Jambi Regional Office	0	29	Southeast Sulawesi Regional Office	58
10	West Java Regional Office	18	30	North Sulawesi Regional Office	67
11	Central Java Regional Office	65	31	West Sumatra Regional Office	54
12	East Java Regional Office	0	32	South Sumatra Regional Office	10
13	West Kalimantan Regional Office	33	33	North Sumatra Regional Office	9
14	South Kalimantan Regional Office	44		Amount	805
15	Central Kalimantan Regional Office	29			
16	East Kalimantan Regional Office	24			
17	Regional Office Riau islands	58			
18	Lampung Regional Office	12			
19	Maluku Regional Office	0			
20	North Maluku Regional Office	7			

Low or unreported numbers of juvenile offenders in certain areas likely reflect a combination of the success of prevention measures, alternative justice practices, and potential inconsistent reporting. Act crimes committed by children This also hurts society, and children perpetrators follow criminals. Frequent crimes are committed by children, among them theft, violence, deeds, immorality, abuse of drugs, and even murder (Prasetyo, 2020). The action is often different from actions performed by adults; however , the difference lies in their motives to follow criminals. Often, the underlying motive behind the child following criminal No is evil, so the experts often mention the deed with the term “child delinquent” or “*juvenile delinquency*” (Fitrah et al., 2021).

Researcher assumptions, implementing restorative justice programs presents a number of challenges and barriers, including cultural and institutional resistance, community and victim participation, lack of public awareness and understanding, and inconsistent legal and policy challenges in its implementation. While there are significant challenges to implementing restorative justice, these challenges can be overcome through a combination of education, training, resources, legal reform, and community engagement. Restorative justice has the potential to transform the way communities deal with crime by focusing on healing, accountability, and community reintegration, but it requires systemic commitment to be truly effective.

The child who became the perpetrator followed the criminal and did not fully bear the error. Parental, environmental, and community factors are involved in influencing children to follow criminals. A child still needs to get guidance and direction from parents in doing something. Society and parents do not quite have enough answers to supervise children so that they are spared from following criminals. No-care environment surroundings, parents, and society are one of the encouraging factors for children to do mischief and often develop into deed follow criminals.

Islam has arranged due rights accepted by every child. Rights the among them are (Riyanto, 2021):

- a. Right to maintain his honor (*hifdzul ird*);
- b. Right to maintain his religion (*hifdzul din*);
- c. Right to maintain his soul (*hifdzul nafs*);
- d. Right to maintained reason (*hifdzul aql*);
- e. Right to maintain his wealth (*hifdzul mal*).

So if a child commits a crime or something follows a criminal, then it can confirmed that there are rights that children have that do not fulfill. An example of neglectful parents' right To look after a child (*handful aql*) will impact on action negative behavior by children . One of the forms of giving the right *hifdzul aql* is giving good knowledge, teaching good behavior as

well as teaching something good and bad things, so if right This missed such a child the No Can differentiate something good and bad things and will impact on an action those who can be distorted and can have fatal consequences impact on children it and also society around. So what? If children have already become perpetrators, do they follow criminals? Islamic law also has arranged it. In the law of Islam, A term is mentioned with *qisas*. In fiqh jinayah, murder categorized as in law *qisas*.

In the book of fiqh, law *qisas* applied to case murder (*qatl/murder*) and injury (*jarh/injuries*), so *qisas* shared in two types, namely related to life (*nafs*) and not life (*dunan nafs*). Related *Qisas* with life shared Again into two, viz murder humans and murder to the fetus (in content). The jurists, especially circles Jumhur, divide murder into three levels based on the intention and form of his actions. The third level is murder intentionally (*qatl al-' amd*), semi-intentional murder (*syibh al-' amd*), and murder No intentionally (*qatl al- khata '*). Difference level This results in different punishments imposed. *Qisas* law only charges to action murder with on purpose. Semi-intentional and unintentional murder on purpose given penalty pay *diyat* and run kafarah or worn *ta'zir* (Amdani, 2016).

Researcher assumptions, islamic and secular restorative justice practices share an emphasis on reconciliation, accountability, and community engagement. Both prioritize healing over punishment, with the goal of restoring social harmony. However, a key difference lies in the theological basis of Islamic restorative justice, which incorporates spiritual and divine elements into its process. In contrast, secular restorative justice focuses on human-centered ethics and community well-being without involving religious or spiritual considerations. Despite these differences, both systems share a vision of justice that goes beyond retribution, aiming for repair, reconciliation, and positive transformation for the perpetrator, the victim, and the community. In Islamic criminal law, Abu Rohmad (2012) explains that a threat criminal particular can be replaceable when the victim or the victim's family criminal gets forgiveness.

Related to That, Islam has 3 (three) levels of punishment that is First, criminal equality; second, forgiveness; and third, *diyat*. This shows that Islam recognizes two paradigms in solution matters: paradigm litigation and non-litigation. Paradigm litigation is confident and fundamental, and the only appropriate institution for finishing a case is through court. On the other hand, the non-litigation paradigm leaves the assumption base that solution cases are not always handled through law and courts. Outside ways , the court is part of models that don't abandon and proven effective finish cases without leaving ongoing hurt and resentment. Last way, this is what is now called short restorative justice (Soleh, 2015). Based on the level of punishment in law, Islam included in restorative justice is forgiveness and *diyat*.

Completion of cases through non-legalization can be done on the basis of the initiative of each party to the lawsuit, which can also involve a third party (*hakam*). *Hakam* works as a mediator (peacemaker) of two or more moderate party litigants. The position of the rights is equal to that of a mediator or arbitrator. How to solve with method fine is a long-rooted tradition in Arab society, even before Islam came. After Islam came, the doctrine was strengthened again with the recommendation for always creating peace and harmony in society (Soleh, 2015). According to the law, in finishing a problem, Islam is recommended for prioritized discussion.

Based on the explanation above , one draft about restorative justice makes a difference between them, only found in using the term just in law Islam. In the law, Islamic restorative justice is often called with term forgiveness and also *diyat*. Both are solutions to disputes through the litigation route and require a third party as a mediator in the process. Completion problem child with draft restorative justice is very appropriate If implemented in cases where the child did follow criminal. This matter is caused by a psychological child who can disturbed if He lives in LKPA. Besides that, the impact will also arise when a child goes out from LKPA and is face-to-face with the public.

Children will feel *insecure* with the environment and tend to be left behind. They will, too, be left behind by the developments of the times that are developing in society because they do not know the developments in society. Although they learn and earn an education at LKPA. If a child commits a criminal act, it should be the responsibility of the parents, the environment, and the public.

Children cannot yet distinguish between good and bad, so they need guidance and supervision from parents and society around them. If the child did it, the criminal, moreover, formerly must attempt a solution with draft restorative justice. If the second split parties, both victims and perpetrators can make peace, and the victim, along with the victim's family, forgives the perpetrator, so more applied. That matter was done because the child followed criminal law. Experts mention deed they as deed child naughty, because reasonable for a child do delinquency at the age they. If restorative justice is implemented well, it can save generations of nations; however, every child who becomes a perpetrator must get attention and supervision, especially from parents and society. So that child the No will repeat the deed knowing that his actions give rise to an impact on himself, his family, the victim, and society around.

IV. CONCLUSION

Islam's law there is also one draft about restorative justice, and a difference between both of them is only found in the use of the term just. In the law, Islamic restorative justice is often called with term forgiveness and also *diyat*. Both are solutions to disputes through the litigation route and require a third party as a mediator in the process. Completion problem child with draft restorative justice is very appropriate If implemented in cases where the child did follow criminal. This matter is caused by a psychological child who can disturbed if He lives in LKPA. If restorative justice is implemented well, it can save generations of nations; however, every child who becomes a perpetrator must get attention and supervision, especially from parents and society. So that child the no will repeat the deed knowing that his actions give rise to an impact on himself, his family, the victim, and society around.

REFERENCES

- Amdani, Y. (2017). Konsep Restorative Justice dalam penyelesaian perkara tindak pidana pencurian oleh anak berbasis hukum islam dan adat Aceh. *Al-Adalah*, 13(1), 81-76. <https://ejournal.radenintan.ac.id/index.php/adalah/article/view/1130>
- Direktorat Jenderal Pemasyarakatan. (2022). *Sistem Database Pemasyarakatan (SDP) Publik, Analisis Harian*. <http://sdppublik.ditjenpas.go.id>
- Fitrah, Faldi Rahmat, dan Nandang Sambas. (2021). Analisis Yuridis Penjatuan Pidana Terhadap Anak Yang Melakukan Tindak Pidana Pembunuhan Berdasarkan Penerapan Asas Lex Specialis Derogat Legi Generali Ditinjau Dari Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Prosiding Ilmu Hukum* 7, no. 1, 355–59.
- Gade, C. B. (2021). Is restorative justice punishment?. *Conflict Resolution Quarterly*, 38(3), 127-155. <https://doi.org/10.1002/crq.21293>
- Hamdi, S., & Ikhwan, M. (2021). Tinjauan Hukum Islam Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia. *MAQASIDI: Jurnal Syariah dan Hukum*, 74-85. <https://doi.org/10.47498/maqasidi.v1i1.603>
- Hamsah, Y. (2022). Eksistensi hukum islam dalam konstitusi-konstitusi Indonesia. *Jurnal Paris Langkis*, 2(2), 51-61. <https://doi.org/10.37304/paris.v2i2.4149>
- Kementerian Hukum dan Hak Asasi Manusia RI. (2022). *Kisah di Balik Lapas Anak (3) Meski di Lapas, Tahanan Tetap Dapat Pendidikan*. Direktorat Jenderal Pemasyarakatan. <http://www.ditjenpas.go.id/kisah-di-balik-lapas-anak-3-meski-di-lapas-tahanan-tetap-dapat-pendidikan>.
- Kementerian Hukum dan Hak Asasi Manusia RI. (2020). *Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restorative*. Jakarta.
- Loker, Eric S, dan Bruce V Hofkin. (2022). *Parasitology: a conceptual approach*. CRC Press.
- Maulidar, M. (2021). Korelasi Filosofis Antara Restorative Justice dan Diyat dalam Sistem Hukum Pidana Islam. *At-Tasyri': Jurnal Ilmiah Prodi Muamalah*, 13(2), 143-155. <https://doi.org/10.47498/tasyri.v13i2.856>
- Prasetyo, A. (2020). Perlindungan hukum bagi anak pelaku tindak pidana. *Mizan: Jurnal Ilmu Hukum*, 9(1), 51-60.
- Qodar, I. A., Supianto, S., & Wahyuningtyas, Y. W. (2022). Dampak Kelebihan Kapasitas terhadap Pemenuhan Hak-Hak Warga Binaan di Lembaga Pemasyarakatan Kelas IIA Jember. *WELFARE STATE Jurnal Hukum*, 1(1), 81-106. <https://doi.org/10.56013/welfarestate.v1i1.1550>

- Ramadhanti, S. N., Nurensa, A., & Rianto, S. A. (2022). Konsep Restorative Justice Dalam Perbandingan Hukum Pidana Di Indonesia Dengan Hukum Islam. *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora*, 1(4), 417-423.
- Riyanto, Ahmad. (2021). Tanggung Jawab Orang Tua Pada Anak Era Digitalisasi Dalam Perspektif Hukum Keluarga Islam (Studi Kasus Desa Jebung Kidul Kecamatan Tlogosari Kabupaten Bondowoso). *[Skripsi]. Jember: INSTITUT AGAMA ISLAM NEGERI JEMBER*.
- Sanusi, A. (2016). Aspek Layanan Kesehatan Bagi Warga Binaan Pemasyarakatan dan Tahanan di Lembaga Pemasyarakatan dan Rumah Tahanan Negara (Aspects Of Health Cares Towards Convicts And Inmates). *Jurnal Ilmiah Kebijakan Hukum*, 10(1), 37-56.
- Soleh, N. (2015). Restorative Justice Dalam hukum pidana islam dan kontribusinya bagi pembaharuan hukum pidana materiil di Indonesia. *Istidal: Jurnal Studi Hukum Islam*, 2(2), 123-135. <https://ejournal.unisnu.ac.id/JSHI/article/view/640>