



# The implementation of restorative justice concept in the criminal justice system based on Maqashid Syariah

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## ABSTRACT

The dominant conventional approach in the criminal justice system often focuses on punishment and the separation of offenders from society without considering the restorative aspects that involve the restoration of relationships between offenders, victims, and the community. The application of Restorative Justice in the criminal justice system based on Maqashid Shariah provides a better solution for achieving holistic justice and restoring social harmony. The purpose of this study is to analyze the implementation of Restorative Justice in the criminal justice system with reference to the principles of Maqashid Shariah. The method used in this study is normative legal research or library legal research. This method does not involve collecting primary data through field research but instead focuses on the analysis and interpretation of existing legal documents. The results revealed that Restorative Justice based on Maqashid Syariah can be used to restore the harm caused by criminal actions through reconciliation, restitution, rehabilitation, and reintegration efforts. The results of this research can serve as a guide for policymakers, legal practitioners, and other relevant parties in improving the criminal justice system to align with the principles of Islamic justice and provide better solutions for the community.

**Keywords:** Restorative justice; criminal justice system; Maqashid Syariah

## 1. INTRODUCTION

The criminal justice system is a process aimed at enforcing criminal law. According to Sugiarto (2012:4), the criminal justice system has unique characteristics that differentiate it from other social systems. However, the dominant conventional approach in the criminal justice system often focuses on punishment and the separation of

offenders from society without considering the restorative aspects that involve the restoration of relationships between offenders, victims, and the community. This creates a gap between the justice desired by the community and the practices carried out by the criminal justice system. In the context of Maqashid Shariah, which is a broad concept encompassing the main objectives of Islamic law in maintaining the well-being and justice of society, the application of the concept of Restorative Justice offers a more holistic approach that aligns with Islamic principles. Harwanto (2021:4) explains that Restorative Justice is a concept that responds to the development of the criminal justice system by emphasizing the importance of involving the community and the often-overlooked victims in the mechanisms operating in the current criminal justice system while prioritizing efforts for the recovery, reconciliation, and social reintegration of offenders. Thus, it can support the realization of Maqashid Shariah in the criminal justice system.

Meanwhile, according to George (2022:1), Restorative Justice aims to empower victims, offenders, families, and communities to repair unlawful acts using awareness and remorse as a foundation for improving communal life. Al-Zuhaili (1986:1017) defines Maqashid Shariah as the objectives, aims, or ultimate outcomes that involve genuine goodness achieved by establishing laws for humans. One of the main principles of Maqashid Shariah is to preserve and restore social harmony among members of society. Therefore, it is important to uphold the values of Restorative Justice in the criminal justice system.

The application of the concept of Restorative Justice in the criminal justice system based on Maqashid Shariah has several significant benefits. Firstly, this approach allows offenders to take personal responsibility for their actions and rectify their mistakes. This aligns with the principles of repentance and self-improvement in Islam. Furthermore, involving victims and the community in the restorative process allows them to express the impact they have experienced and obtain restorative justice under Islamic principles. Moreover, the application of Restorative Justice in the criminal justice system based on Maqashid Shariah can help reduce the cycle of retaliation and revenge that often occurs in conventional justice systems. This approach encourages reconciliation between offenders, victims, and the community, as well as the restoration of damaged relationships resulting from the criminal act. In this context, fostering good relationships among community members is an important goal for achieving social well-being. Furthermore, the application of Restorative Justice in the criminal justice system based on Maqashid Shariah can also help build a fair and proportionate legal system. This approach considers mitigating factors and rehabilitation of offenders, by taking into account their needs and assisting them in avoiding future criminal behavior. This aligns with the principles of recovery and development in Islam.

Therefore, the application of the concept of Restorative Justice in the criminal justice system based on Maqashid Shariah can provide a better solution for achieving holistic justice and restoring social harmony. By involving offenders, victims, and the community in the restorative process, the criminal justice system can promote personal accountability, reconciliation, and relationship restoration. This will help build a fair legal system that aligns with the principles of Maqashid Shariah and meets the needs of society.

Despite the great potential of restorative justice in the context of Maqashid Shariah, the research specifically analyzing the application of this concept in the criminal justice system based on Maqashid Shariah is still limited. Therefore, this research aims to fill this knowledge gap by analyzing the application of Restorative Justice in the criminal justice system, referring to the principles of Maqashid Shariah. Consequently, this research is expected to provide a better understanding of how Restorative Justice can be integrated into the criminal justice system based on Maqashid Shariah. The results of this research can serve as a guide for policymakers, legal practitioners, and other relevant parties in improving the criminal justice system to align with the principles of Islamic justice and provide better solutions for the community

## **2. METHODS**

The research method used in this study to address the issue is normative legal research or library legal research. This refers to research that describes, explains, and analyzes the implementation of restorative justice in the future criminal justice system. According to Soekanto & Mamudji (2001:13), normative legal research is conducted by studying library materials or secondary data as the basic sources that will be examined through the exploration of regulations and literature related to the issue being studied. Normative legal research aims to understand and analyze the law based on existing regulations and relevant literature. This method does not involve collecting primary data through field research but instead focuses on the analysis and interpretation of existing legal documents. In normative legal research, the researcher gathers various library materials such as laws, government regulations, court decisions, and other relevant scholarly literature related to the issue being studied. These materials are then analyzed, compared, and evaluated to understand the legal substance related to the issue. Through normative legal research, the researcher can identify applicable legal provisions, analyze the content and interpretation of those provisions, and understand the legal implications related to the issue under the study.

## **3. RESULTS AND DISCUSSION**

### **The concept of Restorative Justice in the Criminal Justice System**

Restorative Justice empowers victims, offenders, families, and communities to repair the harm caused by criminal acts, relying on awareness and remorse as the foundation for restoring lives within society. This explains that the concept of Restorative Justice is essentially simple. According to Nikmah (2014:103), Restorative Justice is a theory of justice that emphasizes the importance of restoring the harm caused by criminal actions.

Progressive law is based on the principle that the law is for the benefit of humans, not vice versa. Law is not an absolute and final institution but a moral and conscious institution, determined by its ability to serve humans. The law aims to create a just, prosperous, and happy life for humans. Humanity and justice are the main goals of our legal system. Therefore, the phrase "law for humans" also means "law for justice." This indicates that humanity and justice have a higher position than the law itself. The main point is the emphasis on fair law enforcement, which produces societal well-being, often referred to as "a just and prosperous society" in Indonesia.

Since the establishment of Indonesia, the founding fathers of Indonesia have established that Indonesia is a country based on the rule of law. This can be seen in the General Explanation of the 1945 Constitution, which states that the Indonesian State is a state based on the rule of law (*rechtsstaat*) and not based on power (*machtsstaat*). The concept of *rechtsstaat* in the General Explanation of the 1945 Constitution is not the concept of *rechtsstaat* applied in the civil law legal system but merely a term used to describe the concept of a rule of law state in general. After undergoing amendments, this affirmation is also included in Article 1 Paragraph 3 of the 1945 Constitution. This affirmation clarifies that the notion of the rule of law in Indonesia is neither the concept of a *rechtsstaat* or the rule of law, but rather a combination of both, namely a rule of law state with Indonesian characteristics based on the Pancasila ideology, known as the Pancasila Rule of Law State.

Moreover, Putra (2017:3) suggests that the main characteristic of the Pancasila Rule of Law State is the existence of a rule of law based on the principles of kinship, consensus, and the protection of human rights. In addition, there is a balance between rights and obligations, as well as the function of the law in providing protection and care for the community.

Within the framework of the Pancasila Rule of Law State concept, the new approach of Restorative Justice is indirectly recognized in the constitution and partially regulated in several criminal law regulations. For example, the Alternative Criminal Justice System Act (SPPA) and the Special Autonomy Act for Papua Province recognize the "consensus" approach in criminal law enforcement. Tambir (2019:565) explains that institutions such as the Police, the Public Prosecutor's Office, and the Supreme Court have also issued

guidelines or regulations regarding the implementation of Restorative Justice in criminal case resolution.

In the context of criminal law in Indonesia, the Criminal Code (KUHP) as substantive law and the Criminal Procedure Code (KUHP) as formal law have not specifically regulated the "consensus" approach, which is the core value of the Restorative Justice concept, for resolving criminal cases. Therefore, from the perspective of *ius constituendum*, legal policies are needed to regulate the application of the Restorative Justice concept in criminal law enforcement at the stages of investigation, prosecution, and adjudication. The legal policy is an effort to realize regulations that align with the conditions and situations at a particular time, and it is the state's policy through authorized bodies to establish desired regulations. Its aim is to reflect the values existing in society. Legal policy aims to develop regulations suitable for the current conditions and situations, and to reflect society's values regarding criminal law enforcement and the concept of Restorative Justice. By developing appropriate legal policies, it is hoped that criminal law enforcement can achieve fairer outcomes and bring benefits to all parties involved, including offenders, victims, and the general public.

In regulating the implementation of the Restorative Justice concept, legal policy can encompass guidelines, procedures, and mechanisms that facilitate the implementation of the reconciliation process between offenders, victims, and relevant parties. This policy can also define the roles and responsibilities of law enforcement agencies, the role of the community, as well as efforts for the rehabilitation and social reintegration of offenders. With adequate legal policies in place, it is expected that criminal law enforcement can accommodate the values of Restorative Justice and provide better alternatives in resolving criminal cases. This can contribute to the creation of a more inclusive, responsive, and just legal system for all parties involved in the process of criminal law enforcement.

### **Restorative Justice Based on Maqashid Syariah**

Restorative Justice based on Maqashid Syariah is a legal approach to restoring the harm caused by criminal actions through reconciliation, restitution, rehabilitation, and reintegration efforts. Reconciliation efforts in Restorative Justice based on Maqashid Syariah involve several steps and principles to restore broken relationships caused by criminal actions. Some aspects that need to be considered in these reconciliation efforts are as follows:

#### 1) Acknowledgment and Acceptance

Perpetrators of crimes need to acknowledge their actions and take responsibility for the harm caused. This includes admitting their mistakes, showing genuine remorse, and committing to change. Recognition and acceptance are key steps in the reconciliation

process. When a perpetrator of a crime can acknowledge their actions and genuinely feel remorseful, it indicates that they accept responsibility for their deeds. Honest and sincere recognition is crucial in paving the way toward healing, both for the perpetrator themselves and for the victims and society.

Recognition involves acknowledging the wrongdoing committed by the perpetrator. It entails an awareness of the negative impact of their actions and an acknowledgment that those actions were incorrect. This recognition can take place through personal acknowledgment to the victims, in mediation processes, or through appropriate legal proceedings. In addition to recognition, acceptance is also an important stage in the reconciliation process. Acceptance involves the willingness of the perpetrator to accept the consequences of their actions and face the repercussions. This includes being willing to face the justice system, accept appropriate punishment, and make amends for the damages caused.

Recognition and acceptance are also closely tied to the willingness of the perpetrator to change. By acknowledging their mistakes and accepting the consequences, perpetrators can initiate a process of positive self-transformation. This may involve participation in rehabilitation programs, education, or psychological support to address the underlying factors that led to the crime and prevent similar occurrences in the future. Furthermore, recognition and acceptance play a crucial role in the reconciliation process with the victims and the broader community. By acknowledging their actions, perpetrators show respect to the victims and the community that has been negatively affected. This allows the victims and the community to see genuine change and the perpetrator's willingness to rectify their mistakes. Theoretically, recognition and acceptance serve as important foundations in the reconciliation process. By acknowledging mistakes, showing genuine remorse, and committing to change, perpetrators offer hope for healing and improvement. However, the implementation and effectiveness of these steps can vary depending on the context and individual factors involved in the specific crime situation.

## 2) Mediation

Mediation is a process that can be used to facilitate dialogue between the perpetrator, victim, and relevant parties. The goal of mediation is to create a space for them to share their experiences, emotions, and hopes. In mediation, the perpetrator can directly apologize to the victim and discuss ways to repair the harm that has occurred. The objective is to reach an adequate solution and build a better relationship between the perpetrator, victim, and the community.

During mediation, a neutral third-party, known as a mediator, facilitates the communication and negotiation process. The mediator ensures that all parties have an

opportunity to express their perspectives and concerns in a safe and respectful environment. They assist in identifying common ground, exploring underlying issues, and promoting understanding between the parties involved.

Mediation provides a structured framework for the perpetrator and victim to engage in a constructive dialogue. It allows them to share their feelings, needs, and expectations, which can lead to a deeper understanding of the impact of the crime and foster empathy between the parties. Through this process, the perpetrator can take responsibility for their actions and express genuine remorse to the victim.

In addition to apology and remorse, mediation focuses on finding practical solutions to address the harm caused. The parties can discuss restitution options, such as financial compensation, community service, or other forms of making amends. The goal is to reach an agreement that is acceptable to all parties involved, ensuring a sense of justice, closure, and the potential for healing and reconciliation.

Moreover, mediation aims to rebuild relationships and promote a sense of community harmony. By engaging in open dialogue and finding common ground, mediation can foster better understanding, empathy, and trust between the perpetrator, victim, and the broader community. It allows all parties to move forward with a shared commitment to prevent future conflicts and promote positive change.

It is important to note that the effectiveness of mediation can depend on various factors, such as the willingness of the parties to participate, the presence of a skilled mediator, and the suitability of the mediation process for the specific circumstances of the crime. Professional mediators adhere to ethical guidelines and principles of neutrality, confidentiality, and impartiality to ensure a fair and balanced mediation experience.

### 3) Compensation

Offenders are expected to compensate the victims for the harm caused, whether in the form of money, goods, or services. Restitution aims to restore the conditions prior to the occurrence of the criminal act. Restitution is a crucial aspect of the reconciliation process. Perpetrators are expected to compensate for the losses they have caused to the victim. Restitution can take the form of monetary payment, returning of stolen or damaged property, or providing services that are appropriate to the harm suffered by the victim. The principle behind restitution is to restore the victim to the position they were in before the criminal act occurred.

Restitution serves multiple purposes. Firstly, it aims to address the material impact of the crime on the victim. By providing financial or tangible compensation, the perpetrator acknowledges their responsibility and takes steps to rectify the harm caused.

This can help the victim recover some of their losses and alleviate the burdens resulting from the crime. Additionally, restitution serves as a tangible symbol of accountability and remorse from the perpetrator. By fulfilling their obligation to compensate the victim, the perpetrator acknowledges the consequences of their actions and demonstrates a willingness to make amends. Restitution can contribute to the healing process for both the victim and the perpetrator by providing a sense of justice and closure. The specific amount or form of restitution is typically determined through a legal process or negotiated agreement, taking into account the extent of the harm suffered by the victim and the ability of the perpetrator to provide compensation. It is important for the restitution to be fair and reasonable, considering the financial resources of the perpetrator and the impact on their ability to reintegrate into society. Restitution is not only beneficial for the individual victim, but it also has broader societal implications. It reinforces the notion that individuals are accountable for their actions and encourages a sense of responsibility within the community. By emphasizing restitution, the reconciliation process seeks to promote a culture of restitution and restore a sense of justice within society. It is worth noting that restitution alone may not fully address the emotional or psychological impact of the crime on the victim. Therefore, other forms of support, such as counseling or therapy, may be necessary to facilitate the victim's healing process.

#### 4) Peace Building and Recovery

This entails providing psychological support, guidance, and social rehabilitation to offenders, enabling them to reintegrate as positive contributors to society. Peace-building efforts within the reconciliation process recognize that conflicts and crimes can have long-lasting effects on individuals and communities. Therefore, it is essential to address the underlying factors that may have contributed to the offender's involvement in the crime. This may involve providing access to counseling, therapy, or other forms of psychological support to help offenders address and overcome the root causes of their behavior.

Guidance and mentorship play a vital role in the recovery process for offenders. By providing guidance, they can receive support in making positive changes in their lives and developing new skills or perspectives. This may include mentoring programs, vocational training, educational opportunities, or assistance in finding employment. By empowering offenders with the necessary tools and support, reconciliation aims to reduce the likelihood of reoffending and promote their successful reintegration into society.

Social rehabilitation is another crucial aspect of the peace-building and recovery process. Offenders may face challenges rebuilding their lives and relationships after engaging in criminal activities. Reconciliation efforts can include community-based programs that provide offenders with opportunities to make amends, participate in restorative justice initiatives, and contribute positively to their communities. By actively



involving offenders in the process of rebuilding and repairing the harm caused, reconciliation seeks to foster a sense of belonging, responsibility, and accountability.

Peace and recovery efforts within the reconciliation process are not limited to offenders alone. They also extend to victims and affected communities. Providing support services, such as trauma counseling, financial assistance, and community development initiatives, can help victims heal and rebuild their lives. By addressing the broader impacts of crime, reconciliation aims to restore harmony and well-being within the community as a whole.

Ultimately, the goal of peace and recovery in the reconciliation process is to create an environment where all parties can move forward and rebuild their lives. By providing psychological support, guidance, and social rehabilitation to offenders, reconciliation seeks to promote positive change, reduce recidivism, and contribute to a more peaceful and inclusive society.

#### 5) Monitoring and Follow-up

After the reconciliation process, it is important to maintain the recovery and prevent the recurrence of criminal actions. Regular monitoring and follow-up are necessary to ensure the commitment of offenders to change their behavior and adhere to the agreements reached. Monitoring and follow-up involve careful monitoring of offenders after the reconciliation process is completed. This aims to ensure that they stay on the right track in their behavior change. In this regard, the institution or parties involved in the reconciliation process can conduct regular or scheduled visits to monitor the progress of the offenders and provide necessary support.

In addition to monitoring, follow-up also involves addressing consequences in case of violations of the agreements or if the offenders become involved in criminal behavior again. This may include sanctions or consequences appropriate to the severity of the violations. These actions aim to emphasize the importance of complying with the agreements reached and prevent the recurrence of criminal actions. Monitoring and follow-up can also involve providing ongoing support to the offenders to ensure they remain on a positive path of recovery. This may include continued rehabilitation programs, counseling, or guidance to help them face challenges and develop strategies to avoid relapses in criminal behavior.

In some cases, collaboration with law enforcement agencies may also be necessary for the monitoring and follow-up process. Through cooperation between the reconciliation institution and law enforcement agencies, more comprehensive information and monitoring can be conducted to ensure compliance and prevent new criminal incidents. Overall, regular monitoring and follow-up after the reconciliation process are

important to maintain recovery and prevent the recurrence of criminal actions. With careful monitoring and appropriate follow-up actions, offenders can continue to develop positive behavior and contribute constructively to society.

In Restorative Justice based on Maqashid Syariah, restitution plays a crucial role in the process of recovering the losses caused by criminal actions. Restitution, in this context, refers to the reimbursement or compensation provided by the offender to the victim or affected party as a form of responsibility for the incurred harm. Restitution efforts in Restorative Justice based on Maqashid Syariah can involve several aspects:

- 1) **Material Loss Compensation** Restitution in this form aims to restore the material value that has been lost or damaged due to criminal actions. For example, the offender can be required to replace the stolen money or compensate for the damaged property.
- 2) **Restitution based on Islamic Principles of Justice** Restitution within the context of Maqashid Shariah should also reflect the principles of Islamic justice. In this regard, the determined amount and type of restitution should consider fairness for all parties involved, including the offender, the victim, and the society.
- 3) **Restitution as a Form of Forgiveness and Relationship Restoration** In Restorative Justice based on Maqashid Shariah, restitution serves not only as the restoration of material losses but also as an effort to rebuild damaged relationships. By providing compensation to the victim, the offender can demonstrate their responsibility, and the victim can witness the efforts of recovery and forgive the offender.
- 4) **Reconciliation and Mutual Agreement** The process of restitution in Restorative Justice based on Maqashid Shariah should involve active participation and mutual agreement among the offender, the victim, and relevant parties. In this process, the agreed-upon restitution should be reasonable and acceptable to all parties involved.

This approach is based on the principles of Islam, which emphasize the importance of preserving religion, life, intellect, lineage, and property. By incorporating the concept of restitution based on the principles of Islamic justice, Restorative Justice Based on Maqashid Sharia makes restitution one of the important efforts in restoring the damages caused by criminal actions. Through fair and dignified restitution, this approach aims to build sustainability, reconciliation, and recovery for all parties involved.

In the context of Restorative Justice grounded in Maqashid Sharia, rehabilitation becomes a highly emphasized aspect. The primary focus of rehabilitation is to assist offenders in making changes in their behavior and reintegrating them as productive members of society.

- 1) Moral Development Restorative Justice based on Maqashid Syariah prioritizes the cultivation of moral values as part of the rehabilitation of offenders. This includes teaching religious values, ethics, morality, and Islamic principles to help offenders understand their mistakes, express remorse for their actions, and strive to improve themselves.
- 2) Education Rehabilitation efforts in Restorative Justice based on Maqashid Syariah also involve education. Offenders are given the opportunity to acquire formal or non-formal education that can enhance their knowledge, skills, and understanding of positive values in Islam. Through education, it is hoped that offenders can have the chance to start their lives anew in a better way.
- 3) Social Support Restorative Justice also encompasses social support as part of the rehabilitation process. This can involve social assistance, counseling, and guidance aimed at helping offenders overcome problems and challenges they may face after going through the legal process. Through social support, it is expected that offenders can receive the necessary assistance to change their behavior and reintegrate into society.
- 4) Reintegration Opportunities Restorative Justice based on Maqashid Syariah provides opportunities for offenders to reintegrate themselves into society. This includes support and guidance in seeking employment, building positive relationships with family and the community, as well as participating in social activities that can strengthen their reintegration process.

In Restorative Justice based on Maqashid Shariah, reintegration efforts are considered as one of the crucial aspects in restoring the harm caused by criminal actions. Reintegration aims to reintegrate the offenders back into society by facilitating behavioral change, eliminating stigmatization, and supporting the process of social reintegration. In the context of Maqashid Shariah, the reintegration efforts in Restorative Justice have several relevant aspects:

- 1) Religion Preservation Restorative Justice aims to restore justice and balance within society, aligning with the goal of preserving religion. Through the process of reconciliation, restitution, and rehabilitation, Restorative Justice helps offenders understand the consequences of their actions and repair relationships with victims and the community.
- 2) Mental Preservation Restorative Justice promotes the recovery of the offender's mental well-being through rehabilitation and social reintegration. By considering the interests and welfare of the offender, this approach provides an opportunity for them to change their behavior and become productive members of society again.

- 3) Reason Preservation Restorative Justice focuses on a fair and rational approach. Throughout the process, this approach encourages dialogue and active participation from all parties involved, including victims, offenders, and the community. Through discussion and mutual understanding, the decisions made are more likely to result in sustainable justice and respect for human dignity.
- 4) Heritage Preservation Restorative Justice emphasizes the importance of restoration and reconciliation in the context of social and familial relationships. In cases where criminal actions involve family members or interconnected members of the community, Restorative Justice can help repair relationships and restore broken bonds.
- 5) Property Preservation Restorative Justice encourages restitution or compensation for the damages caused by criminal acts. Throughout the process, this approach considers aspects of justice and economic recovery for the victims. The restitution provided by the offender helps to restore the incurred losses and recover the financial stability of the victim.

## **CONCLUSION**

Based on the results, Restorative Justice Based on Maqashid Syariah is a legal approach aimed at restoring the harm caused by criminal actions through reconciliation, restitution, rehabilitation, and reintegration efforts. Some aspects to consider in these reconciliation efforts include acknowledgment and acceptance, mediation, restitution, peace and recovery, and monitoring and follow-up. Reintegration aims to reintegrate offenders into society by facilitating behavioral change, eliminating stigmatization, and facilitating the process of social reintegration. This involves efforts to change the mindset, attitudes, and actions underlying criminal behavior. Moreover, the process involving a rehabilitative approach provides the necessary training, education, skills, and psychological support to help offenders address the underlying issues of their criminal behavior. In this context, rehabilitation aims to help offenders become more responsible and productive individuals in society. In the context of Maqashid Syariah, the reintegration efforts in Restorative Justice have several relevant aspects, including the preservation of religion, the preservation of the soul, the preservation of intellect, the preservation of lineage, and the preservation of property.

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