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AN ISLAMIC CRIMINAL LAW REVIEW OF THE APPLICATION OF RESTORATIVE JUSTICE IN CASES OF MINOR ASSAULT

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ABSTRACT

Restorative justice has emerged as an alternative approach to handling minor assault cases in Indonesia, particularly within police and prosecutor institutions. Empirical studies indicate that this mechanism typically involves mediation among the perpetrator, victim, and community figures via platforms such as Restorative Justice Houses, offering a more humane form of justice compared to formal litigation. From the perspective of Islamic criminal law, this approach aligns with the principles of al-'afwu (forgiveness), al-islah (reconciliation), and diyat (compensation) as core elements of restorative justice since the early era of Sharia. However, practical implementation faces obstacles such as unclear compensation standards and limited mediation duration. This study aims to analyze the compatibility of restorative justice in minor assault cases with Islamic criminal law, identify challenges, and formulate normative recommendations to ensure a more equitable, consistent practice within the framework of Sharia. Through a combined normative legal and case-based methodology, the findings indicate that modern restorative justice is grounded in Islamic theological principles and presents a promising avenue for harmonious integration within the national legal system.

Keywords: Restorative justice; Islamic criminal law; minor assault; al-'afwu; diyat.

1. INTRODUCTION

The reform of the criminal justice system in Indonesia has encouraged the application of restorative justice in minor cases, such as assault without serious injury. This approach focuses on restoring relationships between perpetrators, victims, and the community, avoiding prison sentences that could potentially lead to over-criminalisation and burden correctional institutions (Priskila Ginting et al., 2024). Restorative justice is considered more humane and in line with the collective legal culture in Indonesia (Mahmud et al., 2023).

Minor assault offences are often considered less serious violations in the criminal justice system. However, even though the losses incurred are not as great as those caused by serious crimes, the social and psychological impacts remain significant for victims and the community. In this context, the restorative justice approach has emerged as an alternative to resolving cases that emphasises restoring relationships between perpetrators, victims, and the community, rather than merely imposing punishment. This approach aims to achieve a more humane and effective substantive justice.

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Islamic criminal law, as a legal system applied in several regions, has principles that are in line with the concept of restorative justice. The principle of islah (reconciliation) in Islamic criminal law allows for the settlement of cases through mediation between the perpetrator and the victim, with the aim of reaching a fair agreement for both parties. This is in line with the essence of restorative justice, which emphasises dialogue and reconciliation.

In police and prosecution institutions, the application of restorative justice has been operationalised through restorative houses and mediation between parties. At the Buleleng Police Station, for example, the handling of ordinary assaults has been integrated into the procedures for handling minor cases based on Perkapolri No. 8/2021 (Nyoman et al., 2022). Meanwhile, at the District Attorney's Office, minor assault cases are resolved through a pre-prosecution stage involving mediation and termination of legal proceedings if reconciliation is achieved (Pade et al., 2024).

The legal basis for restorative justice in Indonesia includes National Police Regulation No. 8/2021 and Attorney General's Regulation No. 15/2020, which authorise the termination of prosecution if minor cases are resolved amicably (Fikarudin & Ermania Widjajanti, 2025). However, weaknesses in the regulations, such as norms that do not compel law enforcement officials and uncertainty regarding practical mechanisms, have led to criticism of its implementation (Nyoman et al., 2022).

In Islamic criminal law, the concept of restorative justice can be linked to the principles of al-'afwu (forgiveness), diyat (compensation), and ishlāḥ (social restoration) which are rooted in maqāṣid syarī'ah. This approach reflects the harmony between justice, forgiveness, and sustainable restoration in Islamic society

However, despite the existence of a legal basis, the application of restorative justice in practice still faces various challenges. Some of the obstacles encountered include a lack of understanding among law enforcement officials and the community about the concept and procedures of restorative justice, as well as structural and cultural barriers that affect the effectiveness of its implementation. Although there has been empirical research on the implementation of restorative justice in cases of minor abuse, there has been almost no comprehensive analysis from the perspective of Islamic criminal law. By combining a legal-normative and maqāṣid review, this study aims to bridge the gap between national legal practice and sharia principles, which has the potential to strengthen the legitimacy of restorative justice in an Islamic context.

This article aims to examine the extent to which the practice of restorative justice in minor abuse cases is in accordance with the principles of Islamic criminal law, as well as to offer normative recommendations so that its application is more fair, consistent, and within the corridor of Sharia. The method used is a combination of juridical-normative analysis and case studies in several police stations and prosecutor's offices with the support of literature from fiqh and maqāṣid books.

2. METHODS

The research method used is normative juridical, namely analysis of written legal materials, such as laws, National Police Regulation No. 8/2021, Attorney General's Regulation No. 15/2020, as well as Islamic criminal law doctrine and literature (fiqh). The approaches used include: (a) Statute Approach, which is a review of formal regulations on restorative justice; and (b)

Conceptual Approach, which is an in-depth study of basic concepts such as ishlâḥ, al-'afwu, diyat, and

maqāṣid syarī'ah that are relevant to restorative justice. The analysis is qualitative and descriptive-analytical, aiming to reveal the compatibility between the practice of restorative justice in positive law and classical Islamic legal principles and maqāṣid values.

Secondary data was collected through library research on primary materials (legislation, legal institution decisions), secondary materials (relevant journals and theses), and tertiary materials in the form of Islamic doctrine and fiqh. This technique is similar to the research conducted by Helmi Arisandi (UIN Jakarta) and Ahmad Rope'i (UIN Bandung), who both combined normative juridical methods and content analysis to examine restorative justice within the framework of Islamic criminal law and positive law. The analysis was then carried out systematically: developing a conceptual framework, examining the suitability of norms, and evaluating the gap between existing theory and practice. The results were normative recommendations to synchronise the implementation of restorative justice in line with the principles of Sharia and national legal certainty.

3. RESULTS AND DISCUSSIONS

The Compatibility of the Concept of Restorative Justice with the Principles of Islamic Criminal Law

A. The Concept of Restorative Justice

Restorative justice is an approach that aims to restore the status quo by bringing together the parties involved in a crime, namely the victim, the perpetrator, and the community. This process prioritises dialogue and mutual agreement to repair the damage caused by the crime. Conceptually, restorative justice views crime not merely as a violation of state law, but as a violation of social relationships that causes harm to individuals and communities. Howard Zehr, one of the pioneers of restorative justice, argues that the essence of this approach is restoration rather than retribution. The main objective is to repair the impact of crime on victims, restore disrupted social relationships, and ensure that perpetrators take moral and social responsibility for their actions (Zehr & Gohar, 2002). Thus, justice is measured not by the severity of punishment, but by the extent to which harm is acknowledged and repaired.

Restorative justice is an alternative approach to criminal case resolution that emphasises the restoration of relationships between victims, perpetrators, and the community. Unlike conventional criminal justice systems that place the state as the central party, restorative justice positions victims as key stakeholders whose voices and needs must be addressed. This concept seeks to find fair solutions for all parties through participatory mechanisms, with the aim of repairing the negative social, psychological, and material impacts of criminal acts. In Indonesia, the application of restorative justice has begun to gain attention, especially in the context of Islamic criminal law, which is fundamentally oriented toward justice, peace (silm), balance, and reconciliation (islah). This convergence shows that restorative justice is not conceptually foreign to Islamic legal thought.

In Indonesia, this concept has begun to be applied in several minor criminal cases, such as petty theft, domestic violence, and fights between residents. The use of restorative justice in such cases reflects the principle of proportionality, where legal responses are adjusted to the level of harm caused. However, in a broader context, restorative justice can also be applied in more serious cases if it involves the informed and voluntary agreement of all parties concerned, does not violate

public order, and ensures adequate protection for victims. This conditional application parallels Islamic criminal law, which allows flexibility based on circumstances, intent, and social impact.

B. The Islamic Criminal Law Perspective on the Application of Restorative Justice

As Islamic thought developed, the times changed, especially after the passing of the Prophet Muhammad (peace be upon him). This historical transition required Muslims to develop secondary sources of law, such as *fiqh*, *ijma'*, and *qiyas*, to address new legal problems that were not explicitly regulated in the Qur'an and Hadith. This intellectual development demonstrates that Islamic law is not static but dynamic and responsive to social change. Consequently, differences emerged between groups that prioritised textual interpretation and those that emphasised rational reasoning (*ra'y*) (Fadliyanto Koem et al., 2018). This dynamic character allows Islamic criminal law to integrate restorative justice principles as part of its interpretative evolution.

Islamic criminal law (jinayah) contains several concepts that are substantively aligned with restorative justice, particularly in criminal resolution models that prioritise peace, victim involvement, and social harmony. These concepts show that punishment in Islamic law is not solely retributive but also restorative and preventive in nature. There are three main concepts in Islamic criminal law that are closely related to restorative justice (Rahman, 1992):

a. Qisas

The principle of proportional retribution. In cases of murder or abuse, the victim's family has the right to demand qisas (proportional retribution) or to forgive the perpetrator on condition of diyat (blood money) or without compensation (Sunarto, 2020). Normatively, qisas represents a balance between justice and mercy, as it gives victims control over the outcome of the case. Etymologically, the word qisas comes from the root word qassa, meaning "to follow in the footsteps." In legal terms, it signifies treating the perpetrator in a manner proportionate to the harm inflicted, especially in cases of murder or severe bodily injury.

This concept is based on the principle of retributive justice, which ensures proportional accountability. However, Islamic law does not absolutise retribution. The Qur'an explicitly provides space for forgiveness and reconciliation, transforming qisas into a flexible mechanism that accommodates restorative justice values. As stated in Surah Al-Baqarah verse 178, qisas is prescribed to ensure justice, yet forgiveness is presented as a morally superior alternative.

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b. Diyat

Financial compensation given to victims or their families in cases of murder or physical injury. If the victim's family decides not to pursue qisas, diyat serves as an alternative form of accountability (Sunarto, 2020). Diyat is not merely a monetary sanction but a restorative mechanism aimed at repairing material loss and acknowledging moral responsibility. It represents the recognition that harm caused by crime extends beyond physical injury to social and economic disruption.

Classical fiqh literature details the amount and categories of diyat, which vary according to the nature of the crime and the level of intent. This differentiation reflects the Islamic legal principle of proportionality and fairness. In contemporary contexts, such as in Saudi Arabia and

Pakistan, state involvement in regulating diyat ensures legal certainty while preserving its restorative function.

The primary purpose of diyat is not punishment, but social healing and reconciliation. By compensating victims directly, diyat restores dignity and reduces the potential for prolonged hostility. This objective closely aligns with restorative justice principles, which emphasise repair, accountability, and the restoration of social balance.

c. Sulh

The process of mediation or reconciliation between perpetrators and victims facilitated by a third party. Sulh emphasises dialogue, consensus, and peaceful agreement. In many cases, sulh produces more socially sustainable outcomes than formal criminal punishment (Rahman, 1992). Linguistically, sulh derives from ṣulḥ, meaning peace or reconciliation, reflecting its normative orientation toward harmony.

In Islamic criminal law, sulh serves as a non-litigious mechanism that allows disputes to be resolved through deliberation rather than coercion. The Qur'anic injunction in Surah Al-Hujurat verse 10 reinforces the obligation to reconcile disputes among believers, demonstrating that peace is a legal and moral priority in Islam. Through sulh, justice becomes substantive rather than merely procedural.

Thus, sulh strongly corresponds to restorative justice, as both aim to restore relationships, prevent future conflict, and strengthen community cohesion. These three concepts demonstrate the intrinsic relationship between restorative justice principles and Islamic criminal law, as both emphasise restoration, participation, and peace over punitive rigidity. The hadith of the Prophet Muhammad SAW also underscores the importance of forgiveness and reconciliation in dispute resolution. The hadith stating, "Whoever forgives and makes peace, then the reward is the responsibility of Allah" (Al-Bukhari and Muslim), highlights forgiveness as a spiritually rewarded act that supports restorative outcomes.

Another hadith, "No servant forgives another except that Allah increases his honour" (Muslim), further strengthens the moral foundation of restorative justice by linking forgiveness with personal and social dignity. Similarly, the hadith narrated by Aisha (RA), "Verily, Allah loves peaceful resolutions among people" (Abu Dawud), affirms that peaceful conflict resolution is a divinely endorsed principle, reinforcing restorative justice as compatible with Islamic norms.

The implementation of restorative justice principles in Islamic criminal law is evident in cases where victims' families opt for forgiveness or compensation rather than retaliation. This approach prioritises restoration over punishment and contrasts with purely retributive models that focus solely on penal sanctions. In addition, sulh remains widely practiced in Muslim communities to resolve both civil and criminal disputes without formal court proceedings (Rahman, 1992). This practice demonstrates the enduring relevance of restorative justice values within Islamic legal culture.

The concept of restorative justice is therefore consistent with Islamic criminal law, particularly in the resolution of minor offences. Integrating these approaches offers a humane, participatory, and socially sustainable model of justice.

Evaluation of the Application of Restorative Justice in Cases of Minor Assault

Minor assault constitutes an act of physical violence committed by one individual against another that results in bodily pain or injury without reaching the threshold of serious harm, life-threatening conditions, or permanent impairment of bodily functions. Within criminal law

doctrine, minor assault is distinguished from aggravated forms of violence based on the degree of injury, the extent of harm suffered, and the absence of lasting medical consequences. Injuries such as bruises, abrasions, swelling, or temporary pain that do not require intensive or prolonged medical treatment are categorised as minor because they do not substantially compromise the victim's physical integrity or long-term well-being. This categorisation reflects the principle of proportionality, which requires that legal responses correspond to the severity and social impact of the offence.

In the Indonesian legal system, minor assault is regulated under Article 351 paragraph (1) of the Criminal Code (KUHP), which provides that deliberate acts of violence causing minor injury are punishable by relatively mild sanctions, including fines or short-term imprisonment. The normative construction of this provision indicates legislative recognition that not all acts of violence warrant severe penal intervention. As a result, minor assault occupies a legal space that permits flexibility in enforcement and resolution. This flexibility creates normative justification for the application of restorative justice mechanisms, particularly where the harm caused is limited, the social relationship between the parties remains reparable, and public order is not jeopardised.

The application of restorative justice (RJ) in cases of minor assault has increasingly been acknowledged as an effective alternative within contemporary criminal justice systems. Its relevance is particularly evident in addressing systemic challenges such as judicial congestion, procedural inefficiency, and the over-criminalisation of low-level offences. Restorative justice reorients the justice process from an offender–state framework toward a victim–offender–community model, emphasising harm repair rather than punishment. Through facilitated dialogue and mediation, victims are afforded an active role in articulating their experiences, needs, and expectations, while perpetrators are encouraged to acknowledge wrongdoing and assume responsibility. This approach contrasts sharply with conventional retributive justice models, which prioritise penal sanctions and often marginalise victims' substantive interests (Braithwaite, 2002).

In Indonesia, the issuance of National Police Chief Regulation No. 8 of 2021 provides a formal institutional basis for the application of restorative justice in minor criminal cases, including minor assault. This regulation authorises law enforcement officials to resolve cases through amicable settlement, subject to conditions such as voluntary consent of the parties, proportionality, and the absence of broader public harm. Normatively, this regulation represents a shift toward discretionary, problem-solving policing. However, its practical implementation continues to face significant challenges, including uneven interpretation among law enforcement officers, insufficient technical training, and persistent social stigma attached to both victims and perpetrators. These factors often hinder the effective operationalisation of restorative justice principles.

From the perspective of Islamic criminal law, restorative justice principles intersect substantively with the concepts of sulh (peaceful reconciliation) and diyat (compensation), which emphasise social harmony, moral accountability, and the restoration of equilibrium following wrongdoing. In Islamic jurisprudence, minor assault is generally categorised under taʿzīr, a class of offences for which sanctions are not fixed by textual sources and are left to judicial discretion. This discretionary authority enables judges to consider contextual factors, public interest (maṣlaḥah), and the potential for reconciliation when determining appropriate legal responses. Consequently, restorative justice aligns closely with the taʿzīr framework, reinforcing the view that it represents a contextual adaptation of established Islamic legal values rather than a foreign or incompatible concept.

Despite its normative appeal, restorative justice has been subject to critical evaluation, particularly with respect to the protection of victims' rights. Empirical research indicates that restorative processes may place undue pressure on victims to reconcile, especially in contexts characterised by social hierarchy, power imbalances, or cultural expectations of harmony. In such circumstances, restorative justice risks functioning as a mechanism of informal coercion rather than empowerment. Accordingly, the availability of psychological counselling, legal representation, and procedural safeguards is essential to ensure that restorative outcomes genuinely reflect voluntary consent and do not undermine victims' autonomy or dignity.

Furthermore, the effectiveness of restorative justice is closely contingent upon the competence and orientation of law enforcement officials and mediators. Field studies reveal that a significant number of practitioners continue to employ formalistic and punitive approaches in handling assault cases, often due to institutional inertia and limited exposure to restorative methodologies. This tendency constrains the transformative potential of restorative justice. Enhancing institutional capacity through systematic training, standardised guidelines, and evaluative oversight is therefore a critical prerequisite for meaningful and consistent implementation.

From a broader socio-legal perspective, restorative justice offers the potential to facilitate psychological recovery for victims while simultaneously reducing prolonged antagonism between offenders and victims. By prioritising dialogue, acknowledgment, and reparation, restorative processes contribute to social reintegration rather than stigmatisation. Additionally, community involvement in restorative mechanisms reinforces collective responsibility for maintaining social harmony. Nevertheless, the success of restorative justice remains highly dependent on the willingness, preparedness, and good faith of all parties involved in engaging with the reconciliation process (Sherman & Strang, 2007).

Overall, the application of restorative justice in cases of minor assault is doctrinally consistent with both Islamic criminal law and contemporary principles of humanistic justice. While restorative justice offers a more responsive and socially grounded alternative to punitive models, its effectiveness is contingent upon robust victim protection, institutional capacity, and public legal awareness. With strengthened regulatory frameworks, professional training, and community education, restorative justice holds significant potential as a sustainable and contextually appropriate mechanism within Indonesia's minor criminal justice system.

Challenges & Opportunities for Integrating Restorative Justice into the National Legal System

Humanity and justice constitute the fundamental objectives of all legal systems. Accordingly, the notion of "law for humans" may be understood as "law for justice," emphasising that legal norms must ultimately serve human dignity and fairness rather than function as ends in themselves. In this sense, humanity and justice occupy a normative position above positive law, guiding its interpretation and application. The essence of law lies in establishing equitable rules that regulate social relations and protect rights. Nevertheless, justice is inherently relative in social life, as what is perceived as fair by one party may be experienced as unjust by another. Absolute justice belongs solely to God, while human legal systems strive to approximate justice through proportional and reasonable responses. At a minimum, perpetrators who violate the rights of others must be subjected to appropriate sanctions, not only as a form of accountability but also as a preventive measure intended to discourage repetition of criminal behaviour (Rifky Adji Sukmana et al., 2022).

Within Islamic criminal law, however, the resolution of criminal cases—particularly minor offences—prioritises al-Islah (reconciliation) as a foundational principle. Rather than focusing exclusively on punishment, al-Islah seeks to restore disrupted relationships between the perpetrator, the victim, and the broader community by balancing moral-spiritual values with legal considerations (Ariyani et al., 2023). This orientation reflects the Islamic legal understanding that justice is not merely retributive but also restorative and social in nature. Such an approach closely corresponds with modern restorative justice models, which emphasise inclusive participation, dialogue, and shared responsibility, and which reject the idea of the state as the sole and dominant arbiter of justice.

The implementation of al-Islah in Islamic law is primarily carried out through mediation (islah), rather than through formal and adversarial litigation. In this process, judges, law enforcement officials, or respected community leaders act as facilitators who bring together victims and perpetrators to seek a mutually acceptable resolution. The mediation process typically involves open dialogue, acknowledgment of wrongdoing, material compensation such as diyāt, and the possibility of forgiveness (al-'afw). By avoiding lengthy and rigid court procedures, this model prioritises substantive justice over procedural formalism. Empirical evidence from the city of Parepare demonstrates the practical effectiveness of this approach: cases of minor assault were resolved peacefully, victims' material and moral rights were addressed, and perpetrators were released from formal penal sanctions without undermining social order.

From a social perspective, al-'Afw (forgiveness) plays a crucial role in breaking cycles of retaliation and hostility that often accompany criminal conflicts. In Islamic legal practice—particularly in minor or ta'zīr cases—victim forgiveness can effectively terminate formal legal proceedings, even where compensation (diyāt) has been provided. Forgiveness thus functions not as a denial of justice, but as a higher moral resolution that prioritises reconciliation and long-term social harmony. In practice, reconciliation agreements incorporating elements of forgiveness in minor assault cases have enabled disputes to be resolved without formal hearings, fostering a more humane and sustainable form of peace between the parties.

The combined application of al-Islah and al-'Afw offers substantial advantages in resolving minor criminal cases because these principles are inherently restorative, participatory, and humane. Al-Islah encourages open and structured mediation between perpetrators and victims—facilitated by legal or community authorities—leading to peaceful agreements that avoid partiality, restore social harmony, and prevent the escalation of conflict. At the same time, al-'Afw serves as a spiritual and moral foundation that allows victims to relinquish retribution through sincere forgiveness, thereby enabling the waiver of formal punishment while still permitting compensation (diyāt) as a form of material responsibility. This integrated approach ensures the realisation of justice in a comprehensive sense: it satisfies the victim's material and moral interests, supports the social rehabilitation of the perpetrator, and preserves community peace. Consequently, the al-Islah and al-'Afw framework offers a model of justice that is more effective, efficient, and contextually appropriate, aligning both with Sharia values and local socio-cultural needs within the national legal system.

4. CONCLUSION

This study finds that restorative justice is normatively and conceptually compatible with Islamic criminal law. Both frameworks share a common commitment to restoring harm, prioritising victim participation, encouraging offender accountability, and maintaining social harmony. Islamic criminal law, through the principles of qisas, diyāt, and sulh, demonstrates that

justice is not confined to retribution but includes reconciliation, forgiveness, and moral responsibility. The discretionary nature of taʿzīr further confirms that restorative justice represents a contextual continuation of Islamic legal values rather than an external or incompatible concept.

In the context of minor assault, restorative justice is both doctrinally appropriate and practically relevant within Indonesia's legal system. Minor assault, due to its limited harm and reparable social impact, is particularly suitable for restorative resolution. Existing regulations, especially National Police Chief Regulation No. 8 of 2021, provide an adequate legal basis for its application. However, the effectiveness of restorative justice remains constrained by uneven implementation, limited institutional capacity, and insufficient safeguards for victims, particularly in situations involving power imbalances or social pressure.

At the systemic level, integrating restorative justice into the national legal framework presents significant opportunities to reduce court congestion, prevent recidivism, and promote socially sustainable justice. Islamic principles of al-Islah and al-'Afw offer strong normative support for this integration. Nevertheless, successful implementation requires a shift in legal culture from punitive formalism toward relational and problem-solving justice.

Accordingly, this study recommends: (1) strengthening procedural safeguards to ensure voluntary consent and victim protection; (2) mandatory restorative justice training for law enforcement and mediators; (3) formal integration of community-based mediation under state supervision; and (4) systematic monitoring and evaluation of restorative outcomes. With these measures, restorative justice can function as a humane, effective, and culturally legitimate mechanism within Indonesia's criminal justice system.

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