

**COMPARATIVE STUDY OF RESTORATIVE JUSTICE WITH THE CONCEPT OF
AL-'AFWU IN CRIMINAL OFFENSES****Rini Eka Agustina**

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Mj122@ums.ac.id**ABSTRAK**

Tujuan dari penelitian ini adalah untuk mengetahui perbedaan konsep restorative justice dengan al-'afwu dalam tindak pidana. Jenis penelitian yang digunakan adalah penelitian kualitatif deskriptif dengan pendekatan studi pustaka (library research). Analisis data menggunakan model Miles dan Huberman yang mengemukakan bahwa analisis data antara lain yaitu reduksi data, penyajian data dan menarik kesimpulan. Sumber data primer diambil dari KUHP dan sumber data sekunder dari buku, jurnal, dan referensi lain yang relevan. Dari analisis data yang ada, didapatkan hasil penelitian sebagai berikut: (1) jenis perilaku tindak pidana dalam restorative justice tergolong pada tingkat kejahatan yang lebih ringan, sedangkan al-'afwu tergolong tingkat kejahatan kategori berat, seperti pembunuhan dan penganiayaan. (2) pengganti kerugiannya, restorative justice menerima ganti kerugian berupa materi atau uang. sedangkan al-'afwu pengganti kerugiannya dengan diyat yang ganti kerugiannya berupa harta kepada korban sebagai pengganti kerugian. (3) tujuan penjatuhan pidana, restorative justice tidak hanya berfokus pada pelaku saja, tetapi juga melihat pemulihan korban, pelaku kejahatan, dan melibatkan peran serta masyarakat. memperhatikan proses penyembuhan, rekonsiliasi, dan reintegrasi. sedangkan al-'afwu mengedepankan pencegahan kerusakan/ kemalangan di dalam kehidupan manusia, dan balas dendam sebagai ganjaran atas perbuatan pelaku dengan bertujuan mencegah kejahatan.

Kata kunci: *al-'afwu, restorative justice, tindak pidana*

ABSTRACT

The aim of this research is to determine the difference between the concept of restorative justice and al-'afwu in criminal acts. The type of research used is descriptive qualitative research with a library research approach. Data analysis uses the Miles and Huberman model which states that data analysis includes data reduction, data presentation and drawing conclusions. Primary data sources are taken from the Criminal Code and secondary data

sources from books, journals and other relevant references. From the analysis of existing data, the following research results were obtained: (1) the type of criminal behavior in restorative justice is classified as a lighter crime level, while *al-afwu* is classified as a serious crime level, such as murder and assault. (2) compensation for losses, restorative justice receives compensation in the form of material or money. while *al-afwu* compensates for the loss with *diyat* which compensates the loss in the form of property to the victim as compensation for the loss. (3) the aim of criminal punishment, restorative justice does not only focus on the perpetrator, but also looks at the recovery of the victim, the perpetrator of the crime, and involves community participation. pays attention to the process of healing, reconciliation and reintegration, while *al-afwu* prioritizes preventing damage/misfortune in human life, and revenge as a reward for the perpetrator's actions with the aim of preventing crime.

Key words: *al-afwu*, restorative justice, criminal acts

INTRODUCTION

In Indonesia, legal reform must always be based on developments from time to time because if life on earth still exists, then this law will still exist. Law is a guide that regulates human lifestyle in its role to achieve the goal of peaceful living of the people(1). One of the legal reforms that must be carried out is in the context of criminal law, because current criminal law does not only require the provision of criminal sanctions such as imprisonment, confinement, fines, etc., even the death penalty is considered sufficient (2). Currently, criminal law reform must be carried out using a concept or policy approach that focuses on negotiation and peace to achieve true justice. Legal reform, especially in Indonesia, must always be linked to morality, culture and religion, in addition to the legal values inherent in it. This policy approach can be done through mediation or called restorative justice.

Restorative justice can generally be understood as a values-based approach to responding to wrongdoing and conflict, giving equal attention to victims, perpetrators, and affected communities (3). In accordance with Article 1, Paragraph 1 of the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020, restorative justice can be defined as a criminal case settlement process that involves the direct participation of perpetrators, victims, families of perpetrators/victims, and other relevant parties, with the aim of collectively seeking a fair resolution. A fair solution is sought through the restoration of the original state, eschewing any form of retaliation. This approach is utilized as a means of fostering peace, with the objective of transforming the imposed punishment into a mediation process that engages both parties in order to arrive at a just and equitable resolution of

criminal cases. This is achieved by restoring harmonious relations within society and reinstating the original state (4).

The concept of restorative justice in Islamic law, which has existed since its inception, emphasizes restoration and reconciliation rather than punishment (5). This approach supports the reform of criminal law in Indonesia by prioritizing comprehensive justice. So, in summary, the concept of restorative justice is worth considering to provide reform to material law in Indonesia. However, for those who are not familiar with the concept of restorative justice in Islamic law, they argue that the concept of restorative justice is a current issue that needs to be researched. Indeed, the concept of restorative justice represents a relatively novel phenomenon within the realms of both positive and criminal law in Indonesia. This comparative discussion of the concept of restorative justice in Indonesian criminal law and Islamic law aims to demonstrate the differences between the two concepts and to evaluate which concept is more applicable, given that the application of the concept of restorative justice in Islamic law has a long history, whereas the concept of restorative justice in Indonesian criminal law is relatively new.

Al-'afwu can be understood as granting forgiveness to the wrongdoer and waiving sanctions due to forgiveness. In this concept, the person who apologizes to another person must feel sorry for what he did in the past and be determined not to repeat the act. According to (Nasikhah, 2020.) the concept of *al-'afwu*, apologizing to someone does not require the other person to apologize first, but we don't have to wait for the other person to apologize to us before we can forgive. Therefore *al-'afwu* can be said to be a kindness because it is done in a way that is equally sincere.

Based on the background above, the formulation of the problem is designed what are the differences between the concept of restorative justice with *al-'afwu* in criminal law in Indonesia. Therefore the purpose of this study is to determine the differences in the concept of restorative justice with *al-'afwu* in criminal law in Indonesia.

METHOD

The method used in this research is descriptive qualitative research with a library research approach. In this method, data is collected by understanding and studying theories from various literatures such as books, journals and other references relevant to the research

being conducted (7). The data sources used are primary and secondary data sources. Data analysis used the Miles and Huberman model in (Sugiyono, 2010) which suggests that data analysis includes data reduction, data presentation and drawing conclusions. In this research, the literature study approach is used to compare the concept of restorative justice in Indonesian criminal law and *al-'afwu* in Islamic law.

RESULTS AND DISCUSSION

Restorative justice is an approach that focuses on creating justice and balance for the perpetrators of criminal acts and victims (8). In the criminal justice system, restorative justice changes the mechanism of punishment into a process of dialogue and mediation to reach a settlement agreement that is fairer and more balanced for both parties. The grouping of types of criminal offenses that can choose the way to resolve cases using restorative justice include:

1. Misdemeanour punishable by imprisonment of up to three months and a fine of IDR 2,500,000.
2. Children and women who are in conflict with the law. The approach applied in cases of children and women focuses on recovery and reconciliation.
3. Drug cases can be resolved through restorative justice including drug addiction or abuse.
4. The environment, whose resolution takes into account the impact and restores the damaged environment.
5. Electronic information and transactions.
6. Traffic violations.

Restorative justice means “justice that restores.” In conventional criminal justice, we recognize the concept of restitution or compensation to victims (9) . Victims can present their losses, and perpetrators are given the opportunity to make up for them through compensation, peace, community service, or other agreements.

The implementation of the restorative justice approach has precipitated a notable transformation within the criminal justice system. This approach places an emphasis on the recovery and reconciliation of perpetrators, victims, and the community, rather than solely on the imposition of criminal sanctions (10). This approach changes the formality of punishment that focuses on imposing sanctions and giving pain to the perpetrator.

Restorative justice has not yet thoroughly dominated the entire series of criminal settlements in Indonesia. In fact, most people still rely on state law and existing legal procedures (11). Moreover, those responsible for formulating policy continue to repose a considerable degree of trust and reliance in the existing criminal justice system. In this context, the criminal justice system serves as the foundation for the enforcement of the law and the imposition of penalties for violations thereof. Nevertheless, it is important to acknowledge that the legal landscape is in a state of flux, presenting evolving challenges and changes. In order to ensure the continued fairness and effectiveness of the justice system, it is essential that policymakers adopt a dynamic approach to adaptation and renewal.

In principle, all acts of destruction against other people or creatures are prohibited by religion. Such actions are referred to as crimes or *jinayah*, because they are contrary to the prohibitions of Allah. All forms of actions that are prohibited by Allah and the perpetrators are threatened with certain punishments are specifically referred to as *jinayah* or *jarimah* (12). In the context of Islamic criminal law (*jinayah*), the protection of victims has a more specific focus.

In Islam, the basics and orientation of the concept of reconciliation can actually be found in one of the teachings known as “*al-‘afwu ‘anil ‘uquubah*” (forgiveness of a punishment). The concept of *Al-‘afwu* is mainly applied in cases of murder and persecution (13). Persecution killing in this Concept emphasizes truth-telling, confession, and forgiveness as part of the reconciliation process (14).

One of the relevant principles is the concept of *diyat*. *Diyat* is the payment of a fine that must be submitted by the perpetrator of murder to the victim's family as a sign of forgiveness for his actions. For example, the Qur’anic verse that determines the *Al-‘afwu* system of forgiving immoral acts is mentioned in the Qur’an Surah Al-Hajj (22) verse 60, which reads:

غَفُورٌ لَّعَفْوُ اللَّهِ إِنَّ اللَّهَ لَيَنْصُرُنَّهُ عَلَيْهِ بُعِيَ ثُمَّ بِعِ عَوْقِبَ مَا بِمِثْلِ عَاقِبِ وَمَنْ ذَلِكَ

Meaning: *So it is, and whoever avenges in proportion to the persecution he has suffered then he is persecuted (again), surely Allah will help him. Verily, Allah is indeed Forgiving, Forgiving.*

The forgiveness in the meaning of Qs. Al-Hajj (60) concludes that the believer may fight or defend himself in the event of an unjust act that happens to him. And if a person avenges an act that occurred in the past, then a person gets injustice again because of defending rights,

surely Allah will provide help and protection both in this world and in the hereafter. In the context of Islamic law, the concept of *al-‘afwu* (forgiveness) is relevant in life. Allah has a broad forgiving nature, and does not hasten punishment to those who sin. Therefore, for those who repay evil with equal evil, Allah will help them.

With the results of the discussion above, we can analyze the comparison of restorative justice with *Al-‘afwu* presented in the table as follows:

Comparison Table of Restorative Justice with *Al-‘Afwu*

Comparison Type	Restorative Justice	<i>Al-‘Afwu</i>
Criminal behavior	punishment is lenient	Punishment is severe
Indemnity	stolen materials, apologize, and perform community service.	Payment of a fine in the form of <i>diyat</i> , which compensates the victim with property as compensation.
Sentencing	focuses on the needs of victims, offenders, and involves community participation. pays attention to healing, reconciliation, and reintegration processes. proactive solutions and measures are taken to address the impact of crime and ensure safety and accountability.	Prioritizing the prevention of damage / misfortune, with the existence of rewards as a form of crime prevention.

The difference between the two concepts of restorative justice and *al-‘afwu* can be seen in the following aspects:

First, the type of criminal behavior committed by the offender. It is clear that crimes that can be resolved through alternative justice, such as restorative justice in the Indonesian Criminal Code, or better known as positive law in Indonesian criminal law are crimes that fall into the lighter category, such as theft and other crimes committed. The criminal behavior of *al-‘afwu* is of a serious nature that is punished in the form of *qisas* such as murder and assault. The concept of *al-‘afwu* itself assists the mitigation of punishment with *diyat* in the crime of murder which aims to achieve justice and pay attention to the interests of the rights of victims and perpetrators who suffer losses from the Act.

The conduct of the crime of *al-‘afwu* involves the concept of restorative justice and has a relationship with *diyat* in the crime of murder. Shariah law’s focus on the offender’s process

of self-improvement stems in part from their self-awareness. This is why Islamic penal provisions are not governed by using an “intermediary mode” or a restrictive time mode like criminal law. This is because Islam states that a criminal must be prevented from committing an evil act, not because he fears punishment, but because he himself realizes (in reflection) that evil must be hated and shunned. Because crime keeps a person away from achieving the blessings of Allah SWT as the ultimate goal of life. This realization is what scholars of positive law actually dream of.

Secondly, the differences we see between these two concepts of restorative justice can be seen as a system of compensation. Indonesian criminal law stipulates that the offender can only compensate the stolen material, apologize, and perform community service. In contrast to other forms of compensation, *al-‘afwu*, or forgiveness, is typically carried out through the system of *diyat*, which involves the perpetrator and his family offering assets to the victim’s family in exchange for forgiveness. This system often involves the perpetrator and his family collecting assets to purchase one or more camels as compensation for the victim’s losses. In Islamic law, criminal offenses are not only concerned with the victim but also have direct implications for Allah.

Third, in Islamic law, the purpose of imposing punishment (criminal) on offenders is based on at least two main directions. First, the general direction, namely preventing damage / misfortune in human life and creating benefits in human life. This is the essence of *al-maqaashidu at-tasyri’iyyah* (the main purpose of Islamic law), namely “*dar’ul mafaasidi wa Jalbul mashaalih*”. Then the direction of the second special purpose of punishment is revenge, as well as preventing crime (*al-jazaa’u warraddu*) and cooperating for the sake of teaching / education and good life (*at -ta’dieb/at’tahdzieb wal. islah*) (15).

Restorative justice’s sentencing goals focus on the needs of victims, offenders, and community involvement. It is concerned with healing, reconciliation, and reintegration. Proactive solutions and measures are taken to address the impact of crime and ensure safety and accountability. Restorative justice emphasizes several key principles, namely:

Restoring relationships: Reaching an agreement to resolve a criminal case that is fair and balanced for victims and perpetrators to restore good social relations. **Understanding and Responsibility:** The offender realizes the consequences of his/her actions on the victim and society and participates in the process of restoring the situation. **Justice for all parties:** The purpose of punishment is not just to punish someone, but to provide justice to victims,

perpetrators and society, with the hope of creating the same conditions as before the crime was committed. (16).

As such, restorative justice aims to address the consequences of crime by including all affected parties in the process of resolving and restoring the situation. This approach is more comprehensive as it involves the active participation of all those affected, in contrast to the conventional criminal justice system which generally only focuses on punishment.

CONCLUSION

Restorative justice is an approach to justice that emphasizes restoring conflict and balance in society. In this model, offenders are isolated and punished, but also given the opportunity to interact, make amends, and reintegrate into society. The concept of *al- 'afwu* is the concept of forgiveness and forgiveness that can be applied in restorative justice by involving *diyāt*. The concept of Restorative justice and the concept of *al- 'afwu* in criminal offenses have various differences, namely: (1) the type of criminal behavior, in the difference between restorative justice and *al- 'afwu* there are differences regarding the type of punishment, restorative justice classifies objects based on a lighter level of crime compared to *al- 'afwu*. In *al- 'afwu* the level of serious category crimes, such as murder and persecution. (2) compensation, restorative justice that has been regulated in Indonesian criminal law compensation in the form of stolen material, apologizing, and doing community service, while *Al- 'afwu* compensation in the form of payment of fines with *diyāt* compensation with the victim's property that resembles replacement. (3) Restorative justice focuses not only on the needs of victims, offenders, and community involvement, but also on the process of healing, reconciliation, and reintegration. Proactive solutions and measures are taken to address the impact of crime and ensure safety and accountability. *Al- 'afwu* emphasizes the prevention of harm in human life, and revenge as a reward for the offender's actions with the aim of preventing crime.

REFERENCES

1. Alin F. Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia. JCH (Jurnal Cendekia Hukum). 2017;3(1):14.
2. Pradityo R. Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat

- (Towards Criminal Law Reform of Indonesia: an Overview. *Legis Indones* [Internet]. 2017;14(02):133–44. Available from: <https://ejournal.peraturan.go.id/index.php/jli/article/view/92/pdf>
3. Wulandari C. Dinamika Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *J Jurisprud*. 2021;10(2):233–49.
 4. Indonesia jaksa agung republik. PERATURAN KEJAKSAAN REPUBLIK INDONESIA NOMOR 15 TAHUN 2020 TENTANG PENGHENTIAN PENUNTUTAN BERDASARKAN KEADILAN RESTORATIF. 2020;6(2):190–206.
 5. Soleh N. restorative justice dalam hukum pidana islam dan kontribusinya bagi pembaharuan hukum pidana materil di indonesia. *J Stud Huk Islam*. 2015;
 6. Nasikhah farah afifatun. RESTORATIVE JUSTICE DAN KONSEP AI-AFWU SERTA HUBUNGANNYA DENGAN DIYAT DALAM TINDAK PIDANA PEMBUNUHAN BERDASARKAN SUDUT PANDANG HUKUM PIDANA ISLAM DAN HUKUM PIDANA INDONESIA. 20AD;
 7. Surahman E, Satrio A, Sofyan H. Kajian Teori Dalam Penelitian. *JKTP J Kaji Teknol Pendidik*. 2020;3(1):49–58.
 8. Azwad Rachmat H. Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana. *Kalabbirang Law J*. 2020;2(1):69–76.
 9. Bimantara I, Sumadi IPS. Konsep Restitusi Terhadap Perlindungan Korban Tindak Pidana di Indonesia. *Kertha Wicara J Ilmu Huk* [Internet]. 2018;1–5. Available from: <https://ocs.unud.ac.id/index.php/kerthawicara/article/view/38323>
 10. Caesari D. Penerapan Restorative Justice Dalam Penyelesaian. 2022;11(3):312–20.
 11. Arief H, Ambarsari N. Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *Al-Adl J Huk*. 2018;10(2):173.
 12. Ichwanto AM. Tindak Pidana Penganiayaan dalam Hukum Pidana Islam. *Al-Qanun J Pemikir dan Pembaharuan Huk Islam*. 2018;20(1):181–206.
 13. Maulidar M. Korelasi Filosofis Antara Restorative Justice Dan Diyat Dalam Sistem Hukum Pidana Islam. *At-Tasyri' J Ilm Prodi Muamalah*. 2022;13:143–55.
 14. Kholiq MA. Perspektif Hukum Pidana Islam tentang Penyelesaian Masalah Kejahatan secara Rekonsiliatif. *J Huk IUS QUIA IUSTUM*. 2003;10(24):25–35.
 15. Ocktoherrinsyah O. Tujuan Pemidanaan dalam Islam. *RIGHT J Agama dan Hak Azazi Mns*. 2017;1(1):21–38.
 16. Mubarak N. Tujuan Pemidanaan dalam Hukum Pidana Nasional dan Fiqh Jinayah. *Al-Qanun J Pemikir dan Pembaharuan Huk Islam* [Internet]. 2015;18(2):296–323. Available from: <http://jurnalfsh.uinsby.ac.id/index.php/qanun/article/view/233>