ISNU Nine-Star Multidisciplinary Journal (INS9MJ)
(eISSN: 3063-8984)
Volume 3, Number 1, Mei 2026 (103-112)

Reorientation of Criminal Sanctions in the New Criminal Code: Harmonization of the Doctrine of Qishash Fiqh Jinayah with the Paradigm of Restorative Justice

[1]Muhammad Rafli Pratomo, [2]Azzriel Al Bari Daulay, [3]Dian Prildani Pasaribu, [4]Trio Pranata Ginting
[1,2,3,4]Universitas Islam Negeri Sumatera Utara
E-mail: [1]muhammadraflipratomo@gmail.com, [2]albaridaulayazzriel@gmail.com,
[3]dianprildanipasaribu04@gmail.com, [4]triopranataginting@gmail.com

Info Articles
Article History
Received: 2026-04-07
Revised: 2026-04-19
Published: 2026-05-14

Keywords:
Criminal; Scarlet Witch; restorative justice; Harmonization

Abstract
The enactment of Law Number 1 of 2023 on the Criminal Code marks a paradigm shift in Indonesian criminal law from a colonial retributive model toward corrective and restorative justice. This study examines the relevance of the doctrine of Qishash within Fiqh Jinayah as a philosophical and practical foundation for the implementation of restorative justice in Indonesia. Using a normative-juridical method with conceptual and comparative approaches, the study analyzes the mechanisms of al-'afw (forgiveness) and diyat (compensation) in homicide cases, which position victims as the primary rights-holders in dispute resolution. The findings indicate that the regulation of conditional capital punishment under Article 100 of Law No. 1 of 2023 substantially aligns with the Islamic principle of suspending execution to allow islah (reconciliation). Furthermore, classical juristic debates on the imposition of ta'zir after forgiveness provide a theoretical basis for maintaining public order. The study concludes that Qishash represents a comprehensive system for the protection of life and, if integrated prudently, can strengthen the development of a just and humane national criminal law system.

I. INTRODUCTION

The modern criminal justice system in various jurisdictions, including Indonesia, is facing a crisis of legitimacy that is structural and conceptual in nature. This crisis does not solely stem from the weakness of law enforcement officials, but is rooted in a criminal paradigm that was designed from the beginning with a retributive and state-centric orientation. The legacy of 19th-century Western criminal law thought, which in Indonesia was institutionalized through the Wetboek van Strafrecht (WvS) or the old Criminal Code, places crime as a violation of state order *(Public Wrong)*, not as a social conflict that damages human relations. The consequences of this paradigm can be seen in the dominance of the logic of punishment that focuses on the suffering of the perpetrator through imprisonment, while the interests of the victim and social recovery tend to be marginalized (Moeliono, 2003).

The practice of retribution-based criminalization shows various empirical failures. Prisons, which are the main instruments of punishment, often do not function as a means of moral or social rehabilitation. The high rate of recidivism, the overcapacity of correctional institutions, and the reproduction of structural violence in the correctional system confirm the limitations of the deterrence approach. The victim of crime, in this system, is reduced to an object of proof, not a subject of justice. Court decisions imposing prison sentences are often perceived as a victory for the state, even though they do not touch the psychological, material, and moral needs of the victims. The perpetrator, after serving his sentence, returned to society without an adequate reconciliation process, so that the potential for latent conflict was preserved (Calvin & Azizah, 2024).

This condition encourages the development of theoretical and pragmatic criticism of the conventional criminal justice system, while opening up space for a more humanist alternative paradigm. Restorative justice emerges as an approach that challenges retributive logic by shifting the focus from retribution to restoration.

Crime is understood as an act that hurts individuals and communities, not simply a violation of state norms. This approach places the victim, the perpetrator, and the community as the main actors in the case settlement process. The purpose of punishment is no longer limited to punishment, but rather includes the recovery of losses, confession of guilt, responsibility of the perpetrator, and the reconstruction of damaged social harmony (Lisma, 2021).

This paradigm transformation has gained important momentum in the renewal of the national criminal law through Law Number 1 of 2023 concerning the Criminal Code. The new Criminal Code normatively shifts the orientation of punishment from a punitive model to a more integrative and humanistic approach. The purpose of punishment is formulated not only to uphold legal norms, but also to resolve conflicts, restore balance, and relieve the perpetrators of guilt. This formulation marks a significant philosophical change, while at the same time demanding a consistent value foundation and operational framework so that it does not stop at the symbolic level (Rado & Badillah, 2019).

The search for a philosophical foundation is crucial in the context of a pluralistic Indonesian society that has strong religious and cultural roots. In this landscape, Islamic Criminal Law or Jinayah Fiqh offers a rich, albeit often simplistic, perspective. Popular discourse often presents Fiqh Jinayah as a legal system that is synonymous with physical violence and extreme punishment. Such representations ignore the deeper normative and ethical dimensions, especially the conflict resolution and restoration mechanisms that are at the heart of Islamic criminal teachings (Sodiqin, 2015).

The doctrine of qishash is the most obvious example of such misunderstanding. Linguistically, qishash means equality or just retribution. However, normatively, qishash is not designed as the ultimate goal of punishment. Islamic shari'a places qishash as the initial framework that opens up space for more moral settlement options, namely al-'afw (forgiveness) and diyat (compensation). The right to determine the fate of the perpetrator of the murder is given to the victim's family, not monopolized by the state. This construction has strong restorative implications, as it forces dialogue, confession of wrongdoing, concrete responsibility, and opportunities for just reconciliation (Darussamin, 2014).

This approach shows a fundamental difference from the modern criminal system that tends to alienate victims from the justice process. In the Fiqh of Jinayah, the victim and his family are placed as the main sovereign subjects of their suffering. Forgiveness is not understood as a weakness, but rather as a moral action with high value and a social dimension. Diyat functions as an instrument of material recovery as well as a symbol of the perpetrator's responsibility. This mechanism shows that Islamic criminal law is not simply oriented towards retribution, but rather on the restoration of social relations and the prevention of sustainable conflicts.

The relevance of this doctrine is even stronger when it is associated with progressive provisions in the new Criminal Code, especially the regulation of the death penalty with a probationary period as stipulated in Article 100 of Law 1/2023. This arrangement marks a radical change in Indonesia's criminal law politics, by introducing the concept of delaying execution and evaluating the behavior of convicts within a certain period of time. This concept reflects the state's recognition of the value of human life and the possibility of moral change of the perpetrator. This spirit has a strong wedge with the principle of postponing the implementation of qishash in Islam, which provides space for islah, forgiveness, and peaceful settlement.

The absence of a study that systematically links the doctrine of qishash in Fiqh Jinayah and the paradigm of restorative justice in the new Criminal Code has the potential to create a philosophical vacuum in the implementation of the law. The harmonization of the two paradigms is important so that the reform of the national criminal law is not separated from the values of substantive justice that live in society. This study seeks to place Fiqh Jinayah not as a legal system that is antagonistic to national law, but as a source of ethics and conceptual inspiration in building a

more humane, just, and contextual penal system (Dermawan & Harisudin, 2020).

The reorientation of criminal sanctions through the harmonization of the doctrine of qishash with the paradigm of restorative justice is expected to be able to enrich the discourse of Indonesian criminal law reform. This approach is not only normatively relevant, but also strategic in bridging positive legal values with the social morality and spirituality of Indonesian society. Such integration has the potential to create a criminal justice system that not only punishes, but also heals, restorates, and reconstructs a just and dignified social order.

II. RESEARCH METHODS

This research uses a qualitative method with the character of normative legal research (doctrinal legal research) which focuses on the study of legal norms, principles, and doctrinal construction. The object of study is directed at the doctrine of Fiqh Jinayah and national criminal law norms, especially the criminal regulation in Law Number 1 of 2023 concerning the Criminal Code. The analysis focused on systematic consistency, normative synchronization, as well as historical and philosophical developments in the regulation of criminal sanctions (Suyanto, 2023).

The approaches used include a legislative approach to examine the substance and direction of criminal policies in the new Criminal Code and related regulations, a conceptual approach to examine key concepts in Jinayah Fiqh such as jarimah, uqubah, qishash, diyat, sulh, and ta'zir based on authoritative fiqh literature across sects, and a comparative approach to map the shift in the model of solving murder between the old Criminal Code. The new national criminal code, and Islamic criminal law.

The types of data used are all in the form of secondary data consisting of primary legal materials in the form of the Qur'an, Hadith, and laws and regulations, secondary legal materials in the form of fiqh books, contemporary criminal law books, and articles in reputable scientific journals published in the 2020–2025 period, and tertiary legal materials in the form of dictionaries and legal encyclopedias. Data were collected through literature studies and analyzed qualitatively using grammatical, systematic, and teleological interpretation methods, accompanied by deductive reasoning to draw conclusions from universal normative principles into the context of national criminal law reform.

III. RESULTS AND DISCUSSION

A. The Anatomy of Jarimah Qishash: Between Levy and Life Preservation

In the construction of Fiqh Jinayah, criminal acts that attack the integrity of the human body and life, especially murder (jarimah al-qatl) and severe persecution (jarimah al-jarh), are placed under the regime of Qishash-Diyat. This classification has a character that is fundamentally different from hudud and ta'zir. Hudud is understood as an absolute right of Allah that aims to maintain the moral order of the public and is therefore non-negotiable or forgivable by humans. Ta'zir is in the discretionary space of the ruler as a representation of the state's interests in maintaining public order. Qishash occupies a position between the two, with a hybrid character that combines the dimensions of Allah's rights and human rights, but with the dominance of haq adami as a form of respect for the dignity of the victim and his family (Calvin & Azizah, 2024).

This unique position shows that Islamic criminal law does not view murder solely as an offense against divine authority or an abstract social order, but rather as a concrete wound suffered by another human being. The protection of life is understood as part of maqashid al-shari'ah, but the realization of justice is significantly left to the most affected subjects. This approach reflects a vision of criminal law that is personal, relational, and restorative-oriented, long before the concept of restorative justice was developed in modern legal theory (Wagiu et al., 2022).

The ontological and teleological foundation of Qishash is explicitly formulated in Surah Al-Baqarah verse 179 which affirms that in Qishash there is a guarantee of life for rational humans. This normative statement is often misunderstood if it is read textually and regardless of its philosophical context. The phrase "fi al-qishashi

hayaatun" contains a normative paradox that is deliberately built by the sharia, because life is actually protected through the threat of a commensurate death. This paradox is not intended to legitimize state violence, but rather to affirm the absolute value of human life through mechanisms of prevention and social stabilization (Burlian, 2022).

In the preventive dimension, Qishash serves as a powerful psychological barrier instrument. The knowledge that the act of murder will lead to equal consequences creates a rational fear that prevents individuals from committing aggression on the lives of others. This prevention not only protects actual victims, but also safeguards the potential lives of the wider community. This logic shows that Qishash is not directed at the perpetrator alone, but at the collective interest in maintaining the sanctity of life. Protection of life is not interpreted individualistically, but as a broader social interest (Ramdlany & Musadad, 2022).

In the curative dimension, Qishash acts as a healing mechanism for social wounds left by evil. Loss of life due to murder not only creates personal suffering, but also has the potential to give birth to sustained collective resentment. In both pre-modern and communal societies, the absence of recognized channels of justice can trigger wild revenge, inter-family conflicts, and spirals of unbridled violence. Qishash is present as a legal and moral channel to channel the victim's family's sense of justice, so that the potential for an escalation of violence can be reduced. In this way, Qishash actually serves to break the chain of death and create long-term social stability (Rajafi, 2010).

The tension between Qishash and modern human rights discourse, especially the right to life as non-derogable rights, is often the main point of criticism. The secular human rights perspective views the deprivation of life by the state as an absolute violation of human dignity, regardless of the context and deeds. Islamic criminal law departs from a different paradigm, namely the theocentric human rights paradigm. In this framework, the right to life is understood as a divine mandate inherent in human beings, but it is not absolute without consequences. Violations of the lives of others are seen as a serious form of aggression against God's own will, so that the perpetrator loses his moral claim to full protection of his right to life (Kusuma & Diani, 2022).

Modern criticism of the death penalty is often rooted in concerns about miscarriages of justice and abuse of state power. This concern is actually seriously anticipated in the Qishash system through a very strict and almost extreme standard of proof. The existence of fair witnesses, the consistency of evidence, the absence of elements of syubhat, and layered procedural prudence make Qishash's verdict very difficult to be handed down. The principle of "rejecting hudud and qishash because of doubt" shows the orientation of Islamic criminal law that prefers to acquit the guilty rather than wrongly imposing irreversible sentences (Insani et al., 2023).

The most fundamental uniqueness of Qishash lies in the recognition of the sovereignty of the victim. The right to continue or cancel the execution is not in the hands of the state, but is entirely with the victim's family until the last second before execution. The options of forgiveness and diyat are not marginal exceptions, but rather an integral part of the normative design of Qishash itself. This mechanism makes Qishash not just a retributive instrument, but an open structure that leads to reconciliation, recovery, and moral transformation of the perpetrator (Mutawali, 2020).

Thus, Qishash cannot be reduced to a primitive law of revenge. Qishash is a justice system that combines the firmness of norms with moral flexibility, integrates the protection of life with recognition of the suffering of the victim, and opens up space for dignified forgiveness. This framework shows that Islamic criminal law has long developed a paradigm of justice that does not stop at punishment, but is oriented towards the preservation of life, social stability, and the restoration of human relations.

B. The Mechanism of Restorative Justice in Islam: From Al-'Afw to Diyat

The fundamental difference between the modern criminal law system based on the old Criminal Code and Jinayah Fiqh lies in the way

each system interprets criminal conflicts and determines the main subject of justice. The old Criminal Code, rooted in the tradition of continental criminal law, placed crime as an offense against the state, so that criminal conflicts were taken over entirely by public authorities. The state is present as the sole owner of the legitimacy of the sentence, while the victim loses his central position and is reduced to a means of proof in the judicial process. Criminalization that leads to the imprisonment of the perpetrator is perceived as a success of the system, even though it does not touch the concrete suffering of the victims in the form of economic loss, psychological trauma, and social disintegration left by the crime (Zulfahmi, 2020).

Fiqh Jinayah develops a radically different paradigm by placing the victim or the victim's heirs as sahibul haq, namely the owner of the legitimate right to the criminal act he experienced. The recognition of this position is not merely symbolic, but has real juridical implications. In murder cases, the judge does not have absolute authority to impose the qishash sentence without first obtaining the attitude and will of the victim's family. State authority in this context is facilitative and normative, not coercive. The state ensures that the procedure is fair, the evidence is met, and the victim's choice is respected within the corridor of sharia law (Sari, 2022).

The recognition of the victim as the main subject of justice opens up space for three paths of settlement that are normatively recognized in Fiqh Jinayah. The prosecution of qishash represents the victim's retributive right to demand equality of punishment as a form of restoration of a sense of basic justice. Forgiveness accompanied by diyat reflects a moral compromise between the demands of justice and the need for material restoration. Absolute forgiveness or al-'afw majjanan represents the pinnacle of Islamic criminal law ethics, when justice is surpassed by the value of compassion and transcendental expectation of divine reward. These three options suggest that the Islamic penal system is not locked into a single form of sanction, but rather provides a spectrum of responses that are adaptive to the psychological, social, and economic conditions of the victim (Calvin & Azizah, 2024).

The structure of choice inherently forces an existential encounter between the perpetrator and the victim. The perpetrator cannot hide behind state abstractions or rigid formal procedures. The opportunity to obtain forgiveness requires an admission of guilt, a sincere expression of remorse, and a readiness to take responsibility for the consequences of one's actions. These dynamics are in line with the core elements of modern restorative justice that emphasize dialogue, recognition, and active participation of the parties. The difference lies in normative legitimacy, as such mechanisms have been explicitly institutionalized in Islamic legal doctrine long before they were formulated in contemporary theory.

The concept of diyat plays a central role in the restorative dimension of Jinyayah Fiqh, although it is often misunderstood as a form of commercialization of human life. This narrow interpretation ignores the social and economic function of diyat as an instrument of concrete recovery for the victim's family. Loss of life due to murder is almost always followed by economic shocks, especially when the victim plays the role of the main breadwinner. Prison sentences against perpetrators do not provide a solution to the economic vulnerability experienced by the victim's family. Diyat is designed to close the gap through high-value compensation that realistically guarantees the survival of the family left behind (Aksamawanti, 2016).

The high amount of diyat is not intended as a price of life, but as a preventive and reparative social protection mechanism. These values create a significant moral and material burden for the perpetrator, thus encouraging real, not just symbolic, accountability. The burden of diyat in the case of accidental murder is even expanded through the mechanism of aqilah, in which the perpetrator's extended family is collectively responsible. This arrangement creates a strong social control network, as each individual understands that his or her actions have consequences that go beyond his or her own and impact his or her community (Nur, 2021).

Collective responsibility in the diyat mechanism shows that Islamic criminal law is not only oriented towards the individual, but also on strengthening social cohesion. Families and communities have strong incentives to prevent the deviant behavior of their members through supervision, moral education, and social interventions. This approach is in contrast to modern criminal law which tends to emphasize the individualization of accountability, often by ignoring the social dimension of crime. In this context, Fiqh Jinayah offers a model of restorative justice that not only recovers the victim and demands responsibility for the perpetrator, but also reconstructs the social order collectively (Nur, 2021).

The whole mechanism of al-'afw and diyat shows that justice in Islam is not understood as the result of punishment alone, but as a process of transformation of relationships. Justice is not measured by the severity of the perpetrator's suffering, but by the extent to which social wounds can be healed, victims restored, and perpetrators directed toward meaningful repentance. This framework shows that Fiqh Jinayah contains a mature, contextual, and relevant restorative justice architecture to be used as a reference in the reform of national criminal law that is oriented towards humanity and social sustainability (Kusuma & Diani, 2022).

C. The Dynamics of Fiqh of the Four Sects: The Rights of the State (Ta'zir) Post-Forgiveness in the Framework of Restorative Justice

One of the most serious criticisms of the application of justice Qishash-based restorative is the concern of structural injustice, especially the potential for abuse of forgiveness and diyat mechanisms by perpetrators with economic power. This concern is often formulated in normative questions: whether a wealthy person can kill, then "buy" his freedom through the payment of compensation to the victim's family. This kind of criticism shows that restorative justice, when not balanced with mechanisms to protect the public interest, has the potential to reduce the value of human life to mere objects of private transactions. Fiqh Jinayah does not ignore this problem, but responds to it through the doctrine of ta'zir as a space for state intervention to maintain public order and prevent the banality of crimes against life (Thohari, 2018).

The views of the four schools of fiqh show a rich spectrum of thought regarding the relationship between the rights of the victim, the rights of the perpetrator, and the rights of the community after the occurrence of forgiveness. This difference shows that Islamic criminal law is not monolithic, but adaptive and open to various configurations of justice according to its social context (Khasan, 2017).

The Hanafi school places the rights of the victim as the most dominant element in the case of intentional murder. In this view, qishash is understood primarily as a manifestation of haq adami. When the victim's guardian gives forgiveness, either by accepting diyat or for free, then the demand for qishash is completely eliminated. Normatively, there is no sharia obligation to impose additional corporal punishment on the perpetrator. The state still has room to impose ta'zir, but it is facultative and depends on the need to maintain public security. This conception shows a very high level of respect for the autonomy of the victim, while also reflecting the most private and reconciliation-based model of restorative justice. The risk of this approach lies in the possibility of weakening the general message of prevention if ta'zir is not applied proportionately (Kusuma & Diani, 2022).

The Maliki school offers a more assertive approach and is relevant to the character of the modern state. Imam Malik views murder not only as an offense against individuals, but also as a threat to the peace of society as a whole. In this framework, the forgiveness of victims does not remove the dimension of the crime as a nuisance to the public interest. The acceptance of diyat by the victim's family is not enough to restore the collective sense of security that has been disturbed. Therefore, the Maliki school requires the imposition of ta'zir in the form of corporal punishment and imprisonment, even though the qishash has been lost due to forgiveness (Kusuma & Diani, 2022).

Malikiyah's argument rests on the principle of sadd al-dzari'ah, which is to close the path to greater evil. Without strict public sanctions, the fear of normalization of killings by perpetrators who have financial ability becomes very rational. The punishment of ta'zir in this view serves as a symbolic and practical message that human life cannot be fully negotiated in private space. The state exists as a guardian of collective values, not to negate the forgiveness of the victim, but to ensure that forgiveness does not undermine the foundations of social order. This approach reflects a hybrid model that brings together private restorative justice with public justice in a balanced manner.

The Shafi'i and Hanbali schools take a more flexible position by making a clear distinction between the loss of qishash and the sustainability of state authority. The victim's forgiveness automatically aborts the qishash and turns the legal relationship into a civil obligation in the form of diyat. Regarding the need for additional punishment, these two sects leave it entirely to the ijtihad of the judge as a representation of ulil amri. The judge is given the authority to assess the character of the perpetrator, the motive of the crime, the social impact, and the possibility of recidivism before imposing ta'zir or exempting him from physical sanctions.

This flexibility indicates a high level of criminal individualization, in line with modern penal principles that reject the one size fits all approach. Perpetrators who are known to behave well and commit crimes due to negligence can be released after forgiveness, while perpetrators who have a criminal record or endanger society can be subject to imprisonment or other ta'zir sanctions. This model places judges as moral and social actors, not just implementers of formal norms (Alfitra, 2015).

The dynamics of the differences between these schools shows that Fiqh Jinayah has long anticipated the tension between private justice and the public interest. The existence of ta'zir serves as a corrective against the possible distortion of restorative justice, without negating the central role of the victim. This framework has a strong resonance with the development of Indonesia's national criminal law, especially in Law Number 1 of 2023, which begins to open up space for pardons, criminal commutations, and consideration of perpetrators' behavior without completely relinquishing the state's function as a guardian of public order.

Comparisons with the old Criminal Code show a sharp contrast. In WvS, the victim's forgiveness has no criminal law significance and does not affect the state's obligation to punish. The state monopolizes conflicts and imposes prison sentences in the name of public order. The new Criminal Code moves in a more balanced direction by recognizing the relevance of forgiveness and restitution, although it has not placed the victim as sahibul haq as in Fiqh Jinayah (Sari, 2022).

The dynamics of the four schools of thought on post-forgiveness ta'zir offer a rich conceptual framework for the development of substantive restorative justice. Jinayah Fiqh does not allow justice to fall into the extremes of the privatization of conflicts, nor does it completely surrender to state power. The integration between victims' rights, judges' discretion, and public interest makes Islamic criminal law a mature, adaptive, and relevant normative system to be used as a philosophical reference in the reorientation of criminal sanctions in Indonesia.

D. Critical Analysis of Law Number 1 of 2023: Towards the Integration of Islamic Criminal Law Values

Law Number 1 of 2023 concerning the Criminal Code represents a significant paradigm shift in the politics of Indonesian criminal law. These shifts are not only normative technical, but also touch the deepest philosophical layers regarding the purpose of criminal law and its relationship to substantive justice values. The formulation of penal goals that emphasize the restoration of balance, conflict resolution, and humanity suggests that national criminal law is beginning to move away from a purely retributive paradigm that places the suffering of the perpetrator as the primary goal. In this context, a number of provisions in Law 1/2023 show a conceptual closeness to the principles of Fiqh Jinayah, both consciously through the legislative process, and

indirectly through the influence of living law that lives in Indonesian society (Calvin & Azizah, 2024).

The regulation of the death penalty in Article 100 of Law 1/2023 is the most striking illustration of this shift. The provision on the death penalty with a probation period of ten years contains symbolic and normative meanings that go far beyond mere political compromises between groups for and against the death penalty. The concept of this probationary period philosophically reflects the state's recognition of the possibility of moral change of the perpetrator and the intrinsic value of human life. The death penalty is no longer placed as an immediate and absolute sanction, but as an ultimum remedium whose implementation is postponed in order to provide space for ethical and social evaluation (Calvin & Azizah, 2024).

In the perspective of Fiqh Jinayah, the postponement of the execution of the death penalty has a conceptual compatibility with the practice of suspending the execution of qishash. In Islamic criminal law, the execution of qishash is not carried out automatically after the verdict, but can be postponed in order to wait for the maturity of the victim's heirs, open up a room for diyat negotiations, or provide an opportunity for forgiveness. The logic behind the delay is not doubt about norms, but respect for the value of life and the hope of islah. The provisions of Article 100 of Law 1/2023 which require the defendant's remorse and hope to improve themselves can be read as a modern articulation of the same principle (Calvin & Azizah, 2024).

The phrase "self-improvement" in Article 100 should not be understood narrowly as administrative compliance or good behavior in correctional institutions. Teleological interpretations demand a more substantive meaning, including moral transformation, responsibility for actions, and attempts at reconciliation with the victim or his or her family. The explanation of the article that emphasizes the involvement of the community in assessing the feasibility of criminal change indicates that the state opens up space for social evaluation of the feasibility of pardons. In this framework, the forgiveness of the victim's family during the ten-year probation period has a very strong moral weight and is in line with the doctrine of the fall of qishash due to al-'afw in the Fiqh of Jinayah. The change of the death penalty to a life sentence or imprisonment for a certain period of time can be understood as a moderate form of secularization of the principle (Rajafi, 2010).

The strengthening of the victim's position in Law 1/2023 is increasingly seen in the regulation of Article 54 which contains penal guidelines. The obligation of judges to consider forgiveness from victims and/or their families as mitigating factors marks a radical shift in the construction of national criminal law. Under the old Criminal Code regime, victim forgiveness had no criminal law relevance and was often ignored on the pretext that criminal law was a non-negotiable domain of public interest. Article 54 shifts this assumption by recognizing that justice is not always synonymous with maximum punishment, but can be realized through the recognition of guilt, reconciliation, and restoration of social relations.

Furthermore, the introduction of the concept of judicial pardon in Article 54 paragraph (2) shows the courage of legislators to restore moral discretion to judges. The judge's authority not to impose a crime under certain conditions reflects the understanding that criminal law is not just a coercive instrument, but a means of achieving benefits. This principle has a strong philosophical conformity with the concept of al-'afw in Islam, where forgiveness is seen as a noble value that does not contradict justice, but rather perfects it. Criminal law in this framework is no longer measured by the severity of the perpetrator's suffering, but by the quality of conflict resolution it produces.

Nevertheless, the adoption of restorative values in Law 1/2023 faces serious challenges at the implementation level. The absence of a comprehensive revision of the criminal procedure law creates a procedural gap that has the potential to weaken the effectiveness of substantive norms. The mechanism for payment of restitution, the position of peace in the investigation and prosecution stages, and the juridical implications of victim forgiveness on the continuation of criminal cases have not been clearly and

systematically regulated. Without strict procedural guidance, the restorative value carried out risks being reduced to an additional consideration, not the main instrument for resolving criminal conflicts.

Another obstacle arises from the aspect of the legal culture of law enforcement officials. Recent empirical research shows that retributive orientation still dominates the perspective of prosecutors and other law enforcement officials. The success of law enforcement is often measured by the severity of the charges and the length of the sentences imposed, not by the achievement of peace and social recovery. This condition creates a dissonance between the normative spirit of Law 1/2023 and daily law enforcement practices. In this context, the doctrine of ta'zir as developed by the Maliki School offers an important conceptual bridge. The state continues to carry out the function of protecting the public interest through supervision, minimum criminal penalties, or probationary periods, while opening up space for victim-initiated restorative settlements.

The experience of Aceh Province provides an empirical illustration of the possibility of integrating these values into practice. The application of Qanun Jinayat and the sulh mechanism through the gampong customary court shows that peace-based and compensation-based settlements are able to effectively reduce post-violent social conflicts. The payment of customary fines that function similarly to diyat not only recovers the losses of the victims, but also restores community harmony and prevents further conflicts. This practice shows that the integration of Islamic law, customary law, and national law is not a utopian construction, but rather a normative reality that lives and functions in society (Tarigan, 2017).

An analysis of Law 1/2023 shows that Indonesia's national criminal law is moving towards a more substantive and contextual model of justice. The values that have been considered exclusive to Jinyayah Fiqh, such as forgiveness, restoration, and postponement of execution for the sake of reconciliation, began to find their articulation in positive law. The challenge ahead lies in the institutional courage to refine the procedural framework and change the legal culture of the apparatus, so that the integration of Islamic values in the paradigm of restorative justice does not stop as a normative symbol, but is realized as a living, humane, and dignified practice of justice.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Law Number 1 of 2023 marks a paradigmatic shift in national criminal law from a retributive approach to a more humane, corrective, and restorative model of punishment. The provision of the conditional death penalty in Article 100 shows a philosophical alignment with the concept of qishash which opens up the space for islah, forgiveness, and change of punishment as a manifestation of the purpose of benefit. The juridical recognition of the forgiveness of the victim and his family in Article 54 at the same time strengthens the position of the value of afw as a substantive element in criminal imposition, not just a non-formal moral consideration. The integration of the concept of judicial pardon further emphasizes that criminal law is not solely aimed at punishing, but restoring social relations and substantive justice. However, the effectiveness of the integration of Islamic values is still hampered by the inconsistency of the criminal procedure law and the dominant retaliation-oriented culture of law enforcement officials. Aceh's experience proves that the harmonization of national law, Islamic law, and customary law can be effective if supported by social legitimacy and proper institutional design.

B. Suggestion

A reform of the Criminal Code is needed to accommodate restorative mechanisms, including restitution and peace based on victim forgiveness. Strengthening the understanding of law enforcement officials regarding the philosophy of restorative punishment needs to be carried out systematically. Aceh's experience deserves to be used as a national reference in formulating a model for integrating religious values into modern criminal law.

REFERENCE LISTAN

Aksamawanti, A. (2016). Konsep Diyat dalam Diskursus Fiqh. *Syariati: Jurnal Studi Al-Qur'an Dan Hukum*, *2*(01), 157–172.

Alfitra, A. (2015). Pemiskinan Terhadap Pelaku Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam. *MIQOT: Jurnal Ilmu-Ilmu Keislaman*, *39*(1), 94–109. https://doi.org/10.30821/miqot.v39i1.41

Burlian, P. (2022). *Implementasi Konsep Hukuman Qishas di Indonesia*. Sinar Grafika.

Calvin, C., & Azizah, N. (2024). Tinjauan Hukum Pidana Islam terhadap Parameter Pemidanaan Hukuman Mati dalam KUHP Nasional. *Mutawasith: Jurnal Hukum Islam*, *Vol.7*(No.1), hlm.17-39.

Darussamin, Z. (2014). Qisas dalam Islam dan Relevansinya dengan masa kini. *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, *48*(1).

Dermawan, B., & Harisudin, M. N. (2020). Transformasi pemikiran hukum pidana Islam terhadap hukum pidana nasional (Analisis implementatif jarimah hudûd, qishash dan ta'zir). *Rechtenstudent*, *1*(3), 251–263.

Insani, N., Mutiara, U., & Haritsa, H. (2023). Penerapan Hukuman Mati Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia. *Pagaruyuang Law Journal*, 149–163.

Khasan, M. (2017). Perspektif Islam dan psikologi tentang pemaafan. *Jurnal At-Taqaddum*, *9*(1), 1–26.

Kusuma, M., & Diani, R. (2022). Qishash Diyat Dalam Hukum Pidana Islam Lebih Mencerminkan Keadilan Dari Sisi Korban. *Jurnal Dinamika*, *2*(2), 45–54.

Lisma, L. (2021). Kebijakan Diversi Dalam Penyelesaian Tindak Pidana Pencurian Ringan. In *Al-Adalah: Jurnal Hukum dan Politik Islam* (Vol. 6, Issue 1, pp. 74–87). IAIN BONE. https://doi.org/10.35673/ajmpi.v6i1.1330

Moeliono, J. R. and T. P. (2003). *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Gramedia Pustaka Utama.

Mutawali, M. (2020). Hukuman Mati Bagi Orang yang Murtad dalam Perspektif Hadis. *Ahkam: Jurnal Hukum Islam*, *8*(2), 397–414.

Nur, M. (2021). *Diyat sebagai Sanksi Alternatif dalam Hukum Pidana Islam*.

Rado, R. H., & Badillah, N. (2019). Konsep Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu. *Jurnal Restorative Justice*, *3*(2), 149–163.

Rajafi, A. (2010). QISHASH DAN MAQASHID AL-SYARIAH (Analisis Pemikiran asy-Syathibi dalam Kitab Al-Muwafaqat). *Jurnal Ilmiah Al-Syir'ah*, *8*(2), 459–478. https://doi.org/10.30984/as.v8i2.20

Ramdlany, H. A. A., & Musadad, A. (2022). *KAIDAH HUKUM ISLAM BIDANG PIDANA HUDUD DAN QISHASH*. Scopindo Media Pustaka.

Sari, S. M. (2022). Pengantar Fiqh Jinayah. *Jurnal Penelitian Pendidikan Guru Sekolah Dasar*, *6*(August), 128.

Sodiqin, A. (2015). Restorative Justice dalam Tindak Pidana Pembunuhan: Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam. *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, *49*(1), 63–100.

Suyanto. (2023). *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan*. Unigres Press.

Tarigan, A. A. (2017). Ta'zīr dan Kewenangan Pemerintah dalam Penerapannya. *Ahkam: Jurnal Ilmu Syariah*, *17*(1), 153–170. https://doi.org/10.15408/AJIS.V17I1.6223

Thohari, F. (2018). *Hadis Ahkam: kajian hadis-hadis hukum pidana Islam (hudud, qishash, dan ta'zir)*. Deepublish.

Wagiu, J. D., Maramis, R. A., Anis, F. H., Setlight, M. M. M., & Soeikromo, D. (2022). Penerapan keadilan restoratif (restorative justice) dalam penyelesaian tindak pidana perbankan badan usaha milik negara yang merugikan keuangan negara. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, *9*(10), 4065–4087.

Zulfahmi. (2020). *PERBANDINGAN TINDAK PIDANA PENCURIAN DALAM PERSPEKTIF*. Center for Open Science. https://doi.org/10.31219/osf.io/ehr49