Jurnal Sahabat ISNU-SU (JSISNU)
(eISSN: 3064-0067)
Volume 1, Nomor 2, September 2024 (152-155)

The Concept of Justice and Benefit for Perpetrators and Victims of Crime

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Info Articles

Article History
Received: 2024-09-07
Revised: 2024-09-14
Published: 2024-09-30

Keywords:
Restorative Justice, Victim Recovery, Maslahah

Abstract

Crime is an inevitable social problem because it is related to individual behavior, social structure, economic inequality, and weak control of norms and laws. In the Indonesian positive legal system, particularly the Criminal Procedure Code (KUHAP), the retributive paradigm remains dominant, resulting in relatively marginalized victims and the right to redress not being systematically accommodated. This study examines criminal law enforcement from the perspective of Islamic justice, which places the principles of 'adl (justice) and maslahah (benefit) as the normative foundation. Qualitative research methods were used with a literature study approach and juridical-sociological analysis of laws and regulations, fiqh doctrine, and related literature. The research stages included secondary data collection, comparative analysis between the retributive and restorative paradigms, and synthesis of the concept of maqasid al-shari'ah in the context of victim recovery and perpetrator rehabilitation. The results indicate that the integration of the principles of restorative justice and maqasid can strengthen victim protection, encourage material and immaterial recovery, and provide a restorative orientation to sanctions that support social reintegration. The discussion emphasized the need for reform of judicial policies and practices to accommodate victim recovery mechanisms, officer training, and alternative sentencing policies based on maslahah (beneficial interests) in order to achieve social harmony.

I. INTRODUCTION

Crime is an unavoidable social problem because it is related to the dynamics of human behavior, social structure, economic inequality, and weak control of norms and laws. The impacts of crime include material and immaterial losses for victims and injuries to society's sense of justice. Therefore, the state and the criminal justice system have the primary task of upholding justice, protecting victims' rights, and regulating consequences for perpetrators in a proportionate and humane manner. In the practice of positive criminal law in Indonesia, particularly the Criminal Procedure Code (KUHAP), the retributive paradigm that emphasizes retribution remains dominant, often marginalizing victims and understating reparation mechanisms. This situation raises the need to examine alternative paradigms that prioritize reparation and social harmony as shared goals.

This study places an Islamic perspective, specifically the principles of justice (adl) and benefit (maslahah), within the framework of maqashid al-shari'ah (the principles of Islamic law), as a normative basis for evaluating and recommending more restorative law enforcement practices. In Islam, justice is not merely the distribution of rights, but also the avoidance of injustice against individuals, society, and the relationship with God. The concept of maslahah emphasizes that the goal of legal regulation is to achieve benefits and prevent harm in the dimensions of religion, life, lineage, property, and reason. Therefore, criminal law enforcement must be evaluated not only from the perspective of retribution, but also from its effectiveness in restoring victims, reforming perpetrators, and re-establishing social harmony.

II. RESEARCH METHODS

This research usesThis is a library research with a qualitative approach and normative juridical legal research type. The focus of this research is to analyze norms, theories, principles, and doctrines related to the relationship between law and justice, public welfare, justice for victims and perpetrators, and the concept of restorative justice from secondary sources without collecting empirical data in the field.

III. RESULTS AND DISCUSSION

Discussing law is discussing relationships between people; discussing relationships between people is discussing justice. Therefore, discussing law means discussing justice. Discussing law involves not only discussing the formal form of law but also viewing law as an expression of society's ideals of justice. (Satjipto Rahardjo, 2006)

The concept of justice or fairness has a long history of thought. The theme of justice has been a central theme in law since ancient Greece. The nature of justice from a legal perspective can be seen in two main senses: formal and material. Formal justice requires laws to be universally applicable, while material justice requires that every law conform to the ideals of societal justice. (E. Fernando, 2007)

Aristotle divides justice into two kinds:

a. Distributive justice

Distributive justice, or justitia distributiva, is justice that provides each person with what they deserve based on their merits or distribution according to their respective rights. This justice plays a role in the relationship between society and individuals. Justice here does not mean equality, but rather comparison.

b. Cumulative justice

Cumulative justice, or justitia cummulativa, is justice received by each member regardless of merit. Cumulative justice plays a role in exchange and relationships between individuals. (R. Soeroso, 2007)

John Rawls conceptualized justice as fairness, which contains the principles that free and rational people who wish to develop their interests should have the same position when starting to do so (John Raws, 2006).

The ultimate goal of law is justice. In relation to Islamic law, the justice to be achieved must adhere to the fundamental guidelines of Islam, namely the Qur'an and Hadith. This means that the descent of justice through legal channels must begin from two perspectives and lead to justice from two perspectives. It is said to begin from two perspectives because Islamic guidelines, in the form of the Qur'an and Hadith, must, on the one hand, be able to integrate with the general principles of justice according to humanity, on the other. The initial task then faced is the effort to formulate the Qur'an and Hadith so that they can appear in accordance with the general principles of justice.

And in other terms, there is something called maslahah, which can be understood linguistically as being derived from the word salaha, meaning good, the opposite of bad or corrupt. In Islamic law, maslahah is understood as an effort to maintain the objectives of sharia by seeking benefits and rejecting harm. Al-Ghazali emphasized that the essence of maslahah is to maintain the objectives of sharia, and these objectives encompass these five main elements. (Nasrun Haroen, 1997)

John Rawls described the importance of procedural justice in achieving fair equality of opportunity. Therefore, the basic structure is the primary subject of justice. The basic structure is a system of public rules. What a person does depends on what the public rules say. This basic consideration is to treat the issue of distributive distribution as a matter of pure procedural justice. Furthermore, the United Nations Development Program (UNDP), "Program for Justice: Access for AII," defines access to justice as the ability of people to seek and obtain redress through justice institutions, whether formal or informal, that are in accordance with human rights standards. (John Rawls, 2006)

Victims of criminal acts must be viewed as parties whose status and interests are protected by law in connection with their cases. Therefore, victims also have the right to receive

information regarding the progress of the case, which is a guarantee for the victim, as stipulated in Article 5, letter f, of Law No. 31 of 2014 concerning Witness and Victim Protection.

Even though a prisoner has lost his internal freedom, he still has rights as a citizen and these rights have been guaranteed by the state as stated in the 1945 Constitution of the Republic of Indonesia, Article 28G paragraph (1), which states: "Everyone has the right to protection of himself, his family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right."

Article 10 Paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) states that: “Everyone who is deprived of his liberty shall be treated humanely and with respect for the inherent dignity of the human person.” This provision implies that the loss of liberty is the only suffering imposed on prisoners. Therefore, prisoners must continue to be treated humanely and their dignity as human beings respected. In addition, Article 26 of the ICCPR states that: “All persons are equal before the law and have the right to equal protection of the law without any discrimination.” This provision implies that in fulfilling the rights of prisoners as a consequence of the application of the law, discriminatory treatment is not permitted.

As an alternative that is considered quite comprehensive and effective for handling people in trouble with the law through law enforcement based on the concept of progressive law application, namely the concept of restorative justice. This legal concept aims to empower victims, perpetrators, families and communities in correcting an unlawful act, by using awareness and repentance as a foundation for improving life. On the other hand, restorative justice is implemented through an approach that focuses more on creating justice and balance for perpetrators of criminal acts and for victims. The mechanisms and procedures of criminal justice that initially focused on punishment are transformed into a process of dialogue and mediation to create agreements on the resolution of criminal cases that are fairer and more balanced.

The restorative justice approach is considered a solution for law enforcement efforts that can accommodate the interests of stakeholders, given that conventional justice systems have tended to neglect the interests of victims and the community. Essentially, theories of punishment are a process of action imposed by the judicial institution, and the perpetrator carries it out under duress. Therefore, the element of voluntariness makes restorative justice a distinct system of punishment. (Bambang Waluyo, 2016)

The criminal justice system with a restorative justice approach is a new paradigm in crime prevention that prioritizes peace and benefits for perpetrators, victims, and stakeholders such as the community and government. (Muhammad Rafi Urrutab, 2021)

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Law is closely related to justice: in addition to generally applicable formal rules, law must realize material justice in accordance with the moral ideals of society. Classical and modern thought (e.g., Aristotle, Rawls) have enriched this concept, including distributive division and the principle of fairness in social structures. From an Islamic perspective, justice is rooted in divine decrees in the Qur'an and Hadith; faith precedes understanding, so that the standards of justice are normative and relatively fixed, unlike positive law, which depends on human reasoning and social context. Benefit (maslahah) in ushul fiqh serves as a guideline for achieving the goals of sharia, prioritizing daruri, hajj, and tahsiniyah (community welfare), as well as the public interest over the individual. Justice for victims demands reparation, protection, and access to information throughout the judicial process. Meanwhile, perpetrators of crimes retain human rights and dignity that must be

respected; punishment should not eliminate humane treatment. In response to the limitations of formal approaches and overcrowding in detention, restorative justice has been proposed as an alternative that emphasizes mediation, healing, and community engagement to achieve balanced and reconstructive justice.

B. Suggestion

Integrating the principles of restorative justice and the maqāṣid al-syarī'ah into criminal enforcement policies and practices in Indonesia ensures that victims' rights are fulfilled and perpetrators receive rehabilitation that promotes social reintegration. Practically, reform of the

Criminal Procedure Code (KUHAP) and related regulations is needed to incorporate victim recovery mechanisms, as well as operational guidelines for officials and judges that translate maslahah into concrete actions. Further research, particularly empirical studies and restorative justice pilot projects, is expected to test the effectiveness of this model. Furthermore, the establishment of interdisciplinary forums and the development of policy briefs will accelerate the adoption of culturally sensitive and accountable policies.

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