



LEGAL, MORAL, AND SPIRITUAL DIALECTICS IN THE ISLAMIC RESTORATIVE JUSTICE SYSTEM

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Abstrak: Hukum Islam memiliki karakter khusus yang membedakannya dengan sistem hukum yang lain. Dalam *restorative justice system*, Islam mengintegrasikan aspek legal, moral, dan spiritual dalam penegakkannya. Integrasi ketiga aspek tersebut terlihat dalam filosofi hukum, konstruksi hukum, penetapan tindakan dan sanksi hukum. Artikel ini mengeksplorasi bagaimana integrasi ketiga aspek tersebut membentuk model keadilan restoratif, melalui pengklasifikasian otoritas (*ḥuqūq*) dalam hukum Islam. Dalam penetapan hukum, klasifikasi hak Tuhan, hak manusia, dan campuran antara hak Tuhan dan hak manusia menentukan perbedaan model penegakkan keadilan restoratif. Aturan hukum yang berada dalam otoritas Tuhan (*ḥuqūq Allāh*) menghasilkan model penegakan keadilan restoratif yang berpusat pada pelaku tindak pidana, melalui hukuman yang berupa taubat dan *kaffārāt*. Aturan hukum yang berada dalam otoritas manusia (*ḥuqūq al-'abd*) dan campuran otoritas Tuhan dengan otoritas manusia menghasilkan model keadilan restoratif yang berpusat pada korban, yaitu melalui penerapan hukum kompensasi (*diyāt*) dan pemaafan terhadap pelaku. Kedua model keadilan restoratif ini bertujuan untuk memberikan keseimbangan perlindungan, akses, dan kewajiban dalam penegakan keadilan hukum dan keadilan sosial.

Kata kunci: keadilan restoratif; hak Tuhan; hak manusia; keadilan hukum; keadilan sosial.

Abstract: Islamic law is special and unique since it is from revelation. In restorative justice systems, Islam integrates legal, moral, and spiritual aspects in its enforcement. The integration of these three aspects is clear in the philosophy of law, legal construction, and the determination of legal actions and sanctions. The purpose of this study is to examine the integration of these three aspects in forming a restorative justice model through the classification of authority (*ḥuqūq*) in Islamic law. According to the law, the classification of God and human rights and the mixture of these two determines different models of restorative justice enforcement. In general, the law rules in God's authority (*ḥuqūq Allāh*) and produces the enforcement of offender centered models of restorative justice through repentance (*tawbat*) and redemption (*kaffārāt*). Furthermore, it also rules under human authority (*ḥuqūq al-'abd*) and in a mixture of the two rights, producing a victim-centered model of restorative justice through compensation (*diyab*) and forgiveness. The two restorative justice models balance protection, access, and obligations in the enforcement of legal and social justice.

Keywords: restorative justice; God's rights; human beings' rights; legal justice; social justice.

Introduction

Restorative justice is an effective law enforcement system in resolving legal conflicts (Wilson et al. 2017). The system is based on conflict recovery by bringing together the perpetrators, victims, and the community in law enforcement (Van Ness & Strong, 2015). The meetings between the affected people identify, understands, and rectifies conflicts that cause social damage. Essentially, this model is enforced to reconcile parties outside the court process to achieve social justice (Winslade, 2019). However, the effectiveness of this system depends on the inclusion of restorative justice in the legal education curriculum (Stroup, 2019). Mediation or deliberation is used in the settlement model by bringing together the interests of the parties involved in legal issues.

Restorative justice is used to solve legal issues in Islamic law. Several studies have examined the use of restorative justice as a settlement paradigm in criminal law problems to resolve cases of *qisas* and *diyah* (Qafisheh, 2012; Hascall, 2011; Absar, 2020). Its application has also been examined in various countries, including Malaysia, Palestine, and Indonesia (Wan Muhammad & Abdul Salam, 2018; Fallon, 2020; Maghfirah, et al., 2016). In certain cases, the application of restorative justice requires a model that meets cultural and religious needs, necessitating a just cultural approach in its implementation (Islam, et al., 2018; Dekker & Breakey, 2016). However, the study of restorative justice in Islamic law only looks at legal cases and application models and does not yet explain how restorative justice is constructed in the Islamic law system.

Islamic law differs from international law in both system and size because it originates from God's decree and integrates spiritual and moral aspects in its legal provisions (Powell, 2013; Murnisa, 2015; Kashani, 2017; MA, 2018). This study explains the dialectic of the Islamic law trilogy, including legal, moral, and spiritual, as one unit that characterizes the Islamic restorative justice system. The integration of the three elements is explained in philosophical aspects, legal construction, law enforcement procedures, and types of legal sanctions. Philosophically, Islamic law is divided into two, specifically *ta'abbudi* and *ta'aqquli* (Aziz, 2013). This reflects the mapping of legal, moral, and spiritual elements in legal material. In legal construction, there is a level of orders

and prohibitions (*wājib-nadb*, *ḥarām-makrūh*) and shows the existence of legality and morality in determining legal material (Anwar, 2018). The procedures of Islamic law enforcement mention forgiveness and repentance as reasons for removing punishment, indicating moral and spiritual elements in the system of legal sanctions. The types of legal sanctions in Islamic law also vary and recognize different sanctions, including physical (whipping, stoning, cutting hands, *qisās*), financial (fines), moral (punishment implementation in public), and spiritual sanctions (paying *kaffārāt*) (Dzhansarayeva, et al., 2014). These provisions show that the legal, moral, and spiritual aspects are integrated into the Islamic law system, starting from its principles to material and formal laws. The dialectic of the Islamic law trilogy is vital in formulating the construction of an Islamic law system that meets the legal needs of humans as individuals and social beings.

There is a need for studies on legal, moral, and spiritual integration to explain the relationship between Islamic principles with the dynamism and vitality of Islamic law's (El Fadl, 2017). This can also help explain the implications of integrating the three aspects in realizing the goals of Islamic law, including enforcing legal and social justice (Asyraf, et al., 2012; Siddique, et al. 2019). Islamic law provides legal certainty and embodies social justice, specifically integrating moral and spiritual aspects. Legal and morals integrate the normative domain of a rule, while spiritual influences the reform of criminals and helps restructure the law and legal system (Allan, 2020; Chui, et al. 2013; Domingo, 2019). Furthermore, the concept of restorative justice in Islamic law is also related to the distinction between God's and human rights. Since it comes from religion, Islamic law places God as the source of law (Zuhaylī, 2013). For this reason, the implementation of restorative justice considers God's authority. The rights of the parties in a case, including victims, perpetrators, and the community, are limited by the authority to resolve them by God's right as the Lawmaker. This designates the importance of mapping God's rights and the parties in the implementation of restorative justice.

This article seeks to examine dialectic model of legal, moral, and spiritual in the Islamic restorative justice system. Therefore the main question of this study is how Islamic law place legal, moral, and spiritual in restorative justice system. Where is the position, rights, and authority

of the parties in the implementation of restorative justice when faced with God's rights as a lawmaker. Accordingly, other subsidiary question about how Islamic restorative justice systems reinforce legal justice and the relation of legal justice to realize social justice are raised, which this article is trying to answer in an analytical descriptive method.

Theories of Legal, Moral, and Spiritual Dialectics

Discussions concerning the relationship between legal, moral, and spiritual aspects continue to be a debatable subject between jurists. They differ in positioning law, specifically on whether it has to be related to moral and spiritual matters or be autonomous. The debate map will be described in two parts, including the legal and moral, and the legal and spiritual dialectics.

Legal and Moral Dialectics

The debate about the relationship between legal and moral dialects can be broadly divided into two perspectives. This includes considering a law to be autonomous from morals or viewing law and morals as one unit. There are still more differences in the second perspective, specifically the form or pattern of the legal and moral relationship. There are four theories that explain the relationship between law and morality, namely: legal positivism, interpretative, moral impact, and eliminativist theory.

Legal Positivism Theory was initiated by H.L.A Hart. In his book entitled "The Concept of Law", he states that law is a social construction derived from individual practices and functions as social control. Moral judgments and teleological claims to understand the law are unnecessary (Hart, 1961). However, the existence of substantive moral values shape and limits the law content (Green, 1996). Hart developed a hermeneutic theory of law that emphasizes the need to distinguish the reasons for legal action, either because of fear or the law is used as an excuse to act (Bix, 2018). This formed the basis for Hart to propose a separation between law and morality. The law has to be a reason for action, and compliance with it should not be motivated by moral obligations. Since the law does not always create moral obligations, its normative nature does not need a moral claim. The law needs legal justice and be impartial and understood by all parties (John T Noonan, 1962).

The second theory is the interpretative approach. This approach was introduced by Ronald Dworkin, who stated that law and morals are part of one normative domain, though this opinion is based on one system and interpretative theses (Dworkin, 2011; Bustamante, 2019). Thought about morals, politics, and law is based on a value unity derived from an integrated and mutually supportive normative system (MacInnis, 2020). Law and morals affect one another significantly. However, Dworkin rejects the legal positivism view that law is autonomous from morals. Law is not a special entity because justice, its objective, is rooted in community practice based on mutual agreement. This means legal obligations are also moral obligations arising from cooperation to unite the community to achieve justice (Allan, 2020). Dworkin's thesis has two interpretations, including a constructivist reading by placing it as the basis of epistemology, and a realist reading, specifically the unity of values as a claim about the real nature of independent thinking values (MacInnis, 2020).

Moral impact theory compiled by Greenberg has the same perspective as Dworkin, stating that law and morals are related. However, Greenberg accepted one thesis system by Dworkin and rejected the interpretive one (Bustamante, 2019). Every legal obligation in the same context contains a moral obligation (Greenberg, 2010). According to this theory, the law is the part that morality demands (Greenberg, 2014). Legal institutions (legislatures, courts, administrative institutions) are considered to be the ones that change moral obligations and community expectations. Therefore, the law is a moral consequence of legal institution actions (Greenberg, 2014). In statutory regulations, there are no specific types of moral or legal rights and obligations. Legal standards refer to replacing legal authority with moral rights and legal obligations with moral obligations to be obeyed. The change in moral norms into legal norms is due to the authoritative language spoken by legal institutions (Greenberg, 2010). This produces a difference between morals and legal principles and practices (Allan, 2020).

The last theory in relationship legal and moral is the eliminativist approach. This approach was popularized by Scott Hershovitz, who also agreed with Dworkin and Greenberg's assertion that a legal obligation is a moral obligation. According to Scott, the debate between positivists and anti-positivists about the legal and morals rests on an error. Law

practice produces legal rights and obligations and generates moral rights and obligations (Hershovitz, 2015). However, this standpoint also rejects the separation between legality and morals (Allan, 2020). Liability to the law in a rational manner is also a moral obligation. This is because morality can be identified through a metamorphosis into institutionalized practical reasoning (Thompson, 2019).

Legal and Spiritual Dialectics

The relationship between legal and spiritual dialects can be traced in early legal theory as well as in the concepts of religious law, especially in Hinduism, Judaism, Christianity, and Islam. In this approach, spiritual and legal dialects are closely related to religious teachings as the source of law. However, there are differences in the use of religious teachings as legal rules or a moral basis.

The earliest legal theory in law philosophy is natural law. The basis of this theory is the meeting between humans and the outside world through physical entities and facts, as well as a normative system or the goodness idea (Ben-Menahem & Ben-Menahem, 2020). Natural law theory emphasizes the intrinsic goodness of the natural order (Porter, 2014). In this theory, the law concept is embedded in a metaphysical and theological context. Therefore, various visions of God lead to differences in the meaning of legal idioms in their legal principles and theories. This leads to differences between religious adherents, causing diversity in the content of the legal norm system (Ben-Menahem & Ben-Menahem, 2020). However, this theory is more concerned with absolute values than the theory of human freedom, showing the need to integrate autonomy, personal, and ethical autonomy (Goldstein, 2012). Natural law becomes a measuring tool and a standard for criticizing the existing legal rules. Suppose the rule of positive law is not in line with natural law, it is considered invalid. This is the weakness of natural law theory, specifically seeing the law validity from the source instead of its benefits (Duke, 2016).

In Hinduism, the relationship between legal and spiritual aspects is contained in a religious rule called *Dharmasastra*, which forms the basis for dispute resolution in legal institutions (*vyavahara*). *Dharmasastra* contains various rules, ranging from social practices, rituals, and education to constitutional matters (McClish, 2019). Furthermore, the issue of punishment (*danda*) and penance (*prdyascitta*) is also regulated.

The teaching of dharma is related to law, which is placed as the main component and becomes the conceptual center of Hinduism. In general, the law is an integral and essential part of all *dharmas*. This means legal action is a means of carrying out *dharmas* (Davis, 2007).

In Judaism, the hallmark of Judaism is the close relationship between faith and practical teaching from the Torah. For Jewish believers, the Torah is a revelation that includes moral values and practical law. The law in Judaism has two divisions, including written and oral tradition. In general, oral tradition explains and strengthens written traditions (Torah) to make new rules (Schenker, 2008). The rules in the oral tradition include *Mishnah* (traditional interpretation of the Torah), *Talmud* (interpretation of the *Mishnah*), Post Talmud Codes (containing the rules and customs of the *Halacha Talmud*), and *Responsa* (written answers to legal questions). *Halacha*, sourced from the Talmud, was developed by the Rabbis and used as a guide to solving interpersonal problems (Levinson, 2015).

Christianity does not establish a legal system but instead develops religious and ethical views (Schröter, 2017). The configuration of Christian legal theology is not monolithic (Marshall, 2017). The relationship between law and theology in Christianity is twofold. Christians are bound by an ethos oriented towards God's will but also accept secular rules and authority. This shows that Christians are committed to God's will and accept the positive laws that apply in the community (Schröter, 2017).

Historically, the relationship between law and religion in Christian teaching has been developed, especially after the Papal Revolution (early 18th century) and the Lutheran Reformation (19th century). The Papal Revolution separates spiritual and secular laws. Spiritual law contains ecclesiastical matters, such as sacraments and liturgy, and regulates community affairs, such as marriage, education, crime, and property rights. Secular law has a limited scope and is hierarchically inferior to spiritual law. After the Lutheran reform, the secularization of law occurred with no separation between spiritual and secular law. Spiritual affairs are regulated by secular authorities and their scope only regulates liturgy, marriage, school, moral discipline, and assistance for the poor (Berman, 2000).

In Islam, the law is an inseparable part of Islam, apart from the teachings of faith and morals. Legal, morals, and spirituality are a

mutually dialectic unity in the whole teachings of Islam, which is called Sharia. Islamic law is both God's and human law that comes from revelation (Qur'an and Hadith). From implementation, it is a human (ulama) interpretation of revelation (Ali, 2011). Sharia is understood theologically and interpreted through reasoning to systematize the rule of law (El Fadl, et al., 2019: 15). Islamic law has a broad scope, including laws that regulate human relations with God (worship), and human beings (*mu'āmalah*) (Hallaq, 2009: 28). The difference in the scope of this law is based on sacredness and profanity, legal and spiritual, compartmentalization of legal material, and the interaction from legal action (El Fadl et al., 2019: 87). Worship is a rule related to ritual and prayer, which is sacred and closed to change. This is different from *mu'āmalah* law regulating the relationship between humans, which is specifically profane and open to change and innovation (El Fadl et al., 2019: 26-28).

The existence of human authority (ulama) in legal interpretation produces plural Islamic law. There are two major legal schools in Islamic law, including *Sunnī* and *Shī'ah*. Though the Sunni school is the majority, it is further divided into several sub-schools, such as the *Hanāfi*, *Mālikī*, *Syāfi'i*, and *Hanbālī* (Auda, 2008: 60-75). The diversity of legal schools shows an effort to dialogue between law and legal theory in a social context (Munir, 2017). Furthermore, the unity of legal sources develops into a plurality in its implementation. This is the basic character of Islamic law, which is absolute and relative in terms of source and interpretation, and application. Legal pluralism shows two fundamental characteristics of Islamic law, flexibility, and being dynamic (Hallaq, 2009: 27).

Legal, Moral, and Spiritual Dialectics in Islamic Legal System

The dialectic between legal, moral, and spiritual aspects in the Islamic law system is contained in three domains, including law, legal ranking, and the determination of actions, and a variety of legal sanctions.

Dialectics in the Philosophy of Islamic Law

Philosophically, Islamic law is essentially about human behavior from revelations (Qur'an and Hadith). The aim is to uphold the benefit of humans and the universe. From the epistemological aspect, the

Islamic scholars make law categories based on the reasoning carried out, specifically *ta'abbudī* (unreasoning rules) and *ta'aqqulī* (reasoning rules). *Ta'abbudī* laws do not accept reasoning (*ta'līl*). While *ta'aqqulī* laws have ratio-legis (*'illat*) to benefit humans (Anwar, 2018: 109). This category distinguishes legal provisions that have to be accepted from the one to be interpreted to its enforcement. However, *ta'abbudī* does not have clear reasons and wisdom for establishing the law. The implementation of this type of law is in the form of servitude to God, hence it is permanent and cannot change. In *ta'aqqulī*, the reasons and wisdom for determining the law can be found based on human interpretation. This type of law is dynamic and open to change (Aziz, 2013: 24-46, 61-71).

The Islamic scholars have differences in terms of determining the texts that were *ta'abbudī* and *ta'aqqulī*. According to Wahbah Zuhaylī, there were four schools of thought in this determination, including the *Zahiriyyah* school, which views the nature of Islamic law without legal reasons. This is because the law enactment is determined based on the sound of the text. Second, some scholars show that Islamic law contains legal reasons. Third, the opinion of major scholars (*Syāfi'iyyah* and some *Hanafyyah* scholars) indicate that the basic nature of Islamic law is that it has different characteristics and types of legal reasons. Fourth, some *Hanafyyah* scholars showed that the nature of Islamic law is that it has legal reasons unless there are provisions that prevent it (Zuhaiyly, 2013: 294-295). These differences of opinion show the diversity in determining *ta'abbudī* and *ta'aqqulī*, showing that Islamic law is not only determined from the sound of the text but also the meaning and description that requires reasoning (Zuhaily, 2013: 304).

The distinction between *ta'abbudī* and *ta'aqqulī* affects the separation between legal, moral, and spiritual aspects neglected in the provisions of *ta'aqqulī* law, because of the high rationality dimensions. As a result, laws relating to *mu'āmalah* occur in legal engineering (*hilah*, in plural *hiyāl*), as a hidden way of changing the law from its outward aspect. *Hilah* actions are contrary to the objectives of sharia law, due to the forbidden purposes (Jauzi, n.d.: 101-102). The *ta'abbudī* law also loses its legality aspect, because its implementation depends on the awareness of the individual, hence law enforcement experience difficulties.

Philosophically, there is no Islamic law provision that is pure *ta'abbudī* or *ta'aqqulī*, because they are both dialectics and mutually

integrated. In the *ta'abbudī* law, there are rationality and legality elements, while the *ta'aqqulī* demands servitude (morality and spirituality) in its implementation. The two types of law also contain legal reasons, with differences only in the clarity aspect. The legal reasons in *ta'aqqulī* are clearer in stipulating the law, yet there are commands and prohibitions from God in *ta'abbudī* (Aziz, 2013: 58-59). The categorization of *ta'abbudī* and *ta'aqqulī* should be seen as a division rather than separation. This division shows that the moderating aspects of Islamic law are not all in the form of *ta'abbudī* or *ta'aqqulī*. Suppose all laws are in the form of *ta'abbudī*, the reasoning function in understanding Islamic law will stop. In case all laws are in the form of *ta'aqqulī*, the aspect of submission to Shari will be lost, leading to the loss of the Sharia characteristics as God's law. (Aziz, 2013: 60).

Dialectics in the Classification of Islamic Law

Legal, moral, and spiritual integration in the Islamic legal system is also contained in the law classification and stipulation. Rules in Islamic law are classified into two, accountability rulings (*ḥukm taklifī*) in the form of material law, and declaratory rulings (*ḥukm wad'ī*) as formal law. The *ḥukm taklifī* stipulates the legal status of an act into five levels, mandatory (obligation), *mandūb* (recommended), *mubāḥ* (lawful/ permissible), *makrūh* (detested), and *ḥarām* (prohibited). *Ḥukm wad'ī* describes the requirements for the application of the *ḥukm taklifī*, which includes *sabab* (reason), *shart* (condition), *māni'* (hindrance), *siḥḥah* (correctness), and *bāṭhil* (incorrect) (Auda, 2008: 136-140).

The level of approval in accountability rulings indicates a dialectic between legal, moral, and spiritual aspects. Mandatory orders categorized as *wājib* and prohibitions orders categorized as *ḥarām*, show the strictness of the law from a legal aspect and provide sanctions for violators (Hallaq, 2009: 20). However, this differs from the *mandūb* and *makrūh* categories due to the lack of sanctions for violators. This is because the implementation is based on moral values. Aspects of spirituality are found in the implementation and consequences of actions. Every legal action requires an intention in its implementation and the intention determines the legality of the legal action and a reason to lighten the law (in criminal law). Other aspects of spirituality are in the form of rewards and sins, specifically the consequences of the

law received by the perpetrator. Merits are given to those who carry out orders (both *wājib* and *mandūb*) and leave prohibitions (both *ḥarām* and *makrūh*). Sins are given to violators of legal provisions, either by not carrying out orders or performing prohibited actions (Zuhaylī, 2013: 53-95). Although merits and sins are spiritual, their provisions have a written legal basis, making them an integral part of the Islamic legal system.

The level of approval in accountability rulings has implications for the binding strength of lawsuits. Based on the legality aspect, obligatory and prohibited laws have binding strength as compulsory obedience. This is different from the recommended and detested laws that lack binding power. Legal subjects have the option to perform or leave them without being sanctioned. The binding power of recommended and detested laws is moral and spiritual through recommendations, such as motivation to obey the law (El Fadl et al., 2019: 94). Therefore, the law in Islamic teachings is not only a matter of compulsion to obey (legal aspects). It also involves awareness (moral aspects) and forms the basis for obeying (spiritual aspects). These three aspects are integrated into the Islamic legal system, making it different from positive law, which only emphasizes legality.

Dialectics in the Determination of Legal Actions and Sanctions

Establishing a legal action involves legal, moral, and spiritual aspects, specifically the act, action purpose, and intention. In action with the *ta'abbudī* category, worship should fulfill the requirements and be harmonious. The intention and purpose of worship are included in the pillars of worship that determine its validity.

In legal actions with the *ta'aqqulī*, the existence of these three aspects also determines the category. In *mu'āmalah* law, a transaction is considered flawed suppose it is performed with the intention and purpose, not in line with the contract. In the *qisās* (murder) criminal law, deliberate murder is defined suppose the actions, intentions, and goals are the same and aims to kill another person. However, where the intention or purpose is not to kill, even when using a tool that can kill, the crime category includes semi-intentional and accidental murder (Murnisa, 2015: 11). Likewise, in *hudūd* crimes (mandatory fixed punishments), such as theft, fornication and adultery, defamation,

drinking alcohol, and apostasy, the position of intention and purpose determine the type of criminal activity and the applicable sanctions.

The categorization of legal sanctions also shows the integration of legal, moral, and spiritual aspects. The legal sanctions can be physical (*qisās*, cutting off hands, whipping, stoning), financial (fines/*diyah*), moral (implementation of physical punishment, not being able to be witnesses), and spiritual (paying *kaffārāt*). Physical and financial sanctions reflect compliance with legal aspects. Moral aspects are evident in the implementation of punishment due to criminal offenses, such as in the *qisās*, cutting off hands, whipping, and stoning punishments. The implementation of these corporal punishments needs to be carried out in public. The aim is to provide moral and physical sanctions to make the perpetrators not repeat the criminal acts. In the criminal act of *qadhaf* (defamation), suppose the accusers cannot prove the accusation, they are subject to physical sanctions by being flogged 80 times and moral sanctions, including not receiving their testimony forever (Murnisa, 2015: 11 -25).

The spiritual aspect of determining legal sanctions is a punishment called *kaffārāt*. This is a fine that needs to be paid due to a violation of the law that causes sin. The purpose of *kaffārāt* sanctions is to remove sins for the perpetrators, hence it has a spiritual aspect. Some of the legal actions that have *kaffārāt* sanctions include accidental killing, deliberate sexual intercourse during the day of Ramadan, violating oaths, and killing animals during *ihram* (Zuhaily IV, 1997: 2537). The punishments include freeing a slave (in cases of accidental killing, violating oaths, *ilā'*, and having sex during the day of Ramadan on purpose), fasting (in cases of *zihār*, violating oaths, *ilā'*, having sex during the day of Ramadan on purpose, and killing animals during *ihram*), feeding the poor (in cases of violating oaths, and having sex during the day of Ramadan on purpose), and slaughtering goats (in case of killing animals during *ihram*). Although *kaffārāt* is a spiritual sanction, it has a social aspect, which is freeing slaves and feeding the poor for equality and social justice. Therefore, *kaffārāt* is not only an individual problem whose implementation is based on the awareness of each person. Since it is a means of realizing social justice, it has a social function.

In the Islamic legal system, the integration of legal, moral, and spiritual aspects prevails in determining reasons for waiving punishment,

such as forgiveness and repentance. Forgiveness can be an excuse to free the perpetrator of a murder crime suppose the victim's family chooses to forgive. In comparison, repentance is a form of remorse that can be a reason for waiving punishment, suppose it is performed before the perpetrator is caught. This provision is contained in the law of theft (Qur'an, 5: 38-39), adultery (Qur'an, 24: 2,5), defamation (Qur'an, 24: 4-5), and robbery (Qur'an, 5: 3-4). Therefore, repentance before an arrest may free the perpetrator of a criminal act from punishment related to God's right. Determination of legal sanctions and provisions for forgiveness from the families of the victims as well as remorse from the perpetrators are integral parts of Islamic law, showing the dialectic between legal, moral, and spiritual aspects.

The dialectic between legal, moral, and spiritual in determining legal action and the form of legal sanctions as well as the reasons for waiving them shows the divinity and humanity aspects in Islamic law. From the source, Islamic law is God's law with moral and spiritual aspects. Based on the implementation, Islamic law is the human interpretation result of God's law based on the legal aspects of the Qur'an and hadith. Therefore, its interpretation and stipulation need to be integral by involving the three aspects for the resulting legal stipulation to balance divinity and humanity. The presence of divinity, manifested in moral and spiritual aspects, is an objective reality needed in upholding justice (El Fadl et al., 2019: 2-5).

Rights of God and Human beings in Islamic Restorative Justice System

Legal, moral, and spiritual dialectics influence the distribution of rights in establishing law. The existence of a spiritual aspect in Islamic law indicates the authority to establish and change laws. Based on the boundaries of jurisdiction and the interests of law rule, there are God's rights (*ḥuqūq Allāh*), human rights (*ḥuqūq al-'abd*), and a mixture of the two. The mixture is divided into two, specifically a more dominant right to God and a more dominant right to humans. The basis for differentiating these rights is related to the welfare of society and its moral structure, as well as individual interests in society (El Fadl et al., 2019: 70).

Rights in the establishment of this law need to be defined integrally from a theological, moral, and legal perspective (El Fadl et al., 2019:

68). God's rights regulate the public sphere, such as matters of worship (ritual), criminal law (*ḥudūd*), and redemption for violations (*kaffārāt*). In an implementation, they are not subject to negotiation or concession of any kind. In the context of restorative justice enforcement, legal settlement procedures that are in God's rights cannot be resolved through negotiation or concessions. The rules of *ḥudūd* law, which include the criminal law of theft, adultery, drinking alcoholic drinks, robbery, and religious conversion (apostasy), are included in the scope of God's right. As the lawmaker, God has determined the limits of the enforcement procedure in *ḥudūd* law, hence no room for a settlement beyond what has been determined. However, He established a condition that could be used as an excuse for not applying legal sanctions, which is repentance. Suppose perpetrators of criminal acts of theft, adultery, and robbery repent before being caught, legal sanctions cannot be applied to them (Qur'an, 5: 38-39, 24: 2,5, 24: 4-5, and 5: 3-4). Repentance is proof that the perpetrator has reformed, leading to exclusion from the punishment (Peters, 2005: 27). Repentance serves as a means of negotiation and building concessions in *ḥudūd* law enforcement provided by God. This provision can be considered as a God-based restorative justice enforcement model. In general, God establishes legal sanctions and provides opportunities to avoid or alleviate punishment (Murnisa, 2015: 33).

In legal rules with the scope of human rights (*ḥuqūq al'abd*), enforcement of restorative justice is very open. The rule of law included in human rights is subject to negotiation, concession, and innovation. The procedure for resolving this problem is left entirely to the parties involved, including the victim, the perpetrator, or the community. The law of transactions (*mu'āmalah*) between fellow humans is included in the category of human rights. Humans are given the right to make legal rules and enforcement procedures, provided they do not violate public rights that protect the common interests.

Restorative justice enforcement in law which is a mixture of God and human rights has a different character. God's rights are manifested in the stipulation of legal rules and their enforcement procedures. However, human rights lie in the availability of legal sanctions taken by humans. Several legal sanction options are limited while some are open. Suppose God's rights are more dominant than human rights, then the available

options are limited. In law enforcement *qadhaf* (defamation), there are two legal sanctions, being flogged 80 times and testimony not accepted permanently. Since the victims have the right to forgive the perpetrator, caning cannot be enforced. However, the victim cannot remove the second punishment, specifically the loss of the right to be a witness because it is God's right. This is different from enforcing the law of murder (*qisās*), where human rights are more dominant than God's rights. There are three law enforcement options, in this case, including *qisās*, fines (*diyāh*), and forgiveness. The victim's family has the right to choose one of these legal choices freely. However, they are entitled to choosing only one based on the negotiations with the perpetrator and the community. The enforcement of this law includes a restorative justice model since it aims to resolve conflicts after a crime.

Law enforcement in the Islamic restorative justice system is a means of obedience to God as a lawmaker. Differentiation in the classification of rights in Islamic legal arrangements determines the boundaries of legal protection and support individual and social control in an integral manner (El Fadl et al., 2019: 74). This classification shows a balance between God's authority and the practical needs of humans in their lives. In general, God's authority applies in matters relating to the public interest. Human authority is given extensively in matters relating to private law that applies between them. The types of interactions that result from legal actions determine the differences in their legal, moral, and spiritual dialectics.

Islamic Restorative Justice: Legal Justice as Basic for Social Justice

Justice in the Islamic legal system refers to the fulfillment of legal and social justice. Achieving social justice is an inseparable part of enforcing the rule of law. According to Islam, the law refers to rules in the form of legal language with moral values that need to be obeyed and originates from God's commands. Legal, moral, and spiritual aspects have dialectics in the Islamic legal system to uphold legal and social justice. This shows that justice in Islam refers to theological and sociological aspects (Khan, 2017).

Legal and social justice in the Islamic legal system is reflected in the determination of legal sanctions. For instance, sanctions such as physical (stoning, whipping, *qisās*) and financial (*diyāh*) uphold legal justice. Moral and spiritual sanctions, such as paying *kaffārāt* (freeing slaves,

feeding the poor) aim to create social justice. The implementation of these two sanctions leads to the realization of justice based on obedience to God (Hussain Askari & Mirakhori, 2020). The aim of upholding legal and social justice is to benefit humans through the principles of fairness, awareness, and *ihsān* (goodness) (Ahmad & Hassan, 2000). This shows that two integrated approaches to moral education and punishment (Murnisa, 2015: 7).

In the Islamic restorative justice system, law enforcement and social justice are like two sides of a coin. The principle of restorative justice is to resolve legal problems by enforcing rules while restoring social conditions. Legal legality rules function as social control, while the involvement of victims, perpetrators, and society is social engineering. The perpetrator is obliged to be accountable for legal actions. The victim and the family have the right to demand legal certainty while the community is obliged to be an intermediary for conflict resolution to restore the relationship between them. Since law enforcement is the basis for the achievement of social justice, neglect of legal justice may damage the morality of the society (Asyraf et al., 2012).

The implementation of the Islamic restorative justice system refers to victim-centered and offender-centered (Fallon, 2020). The desire to restore conflict may come from both the victim and the perpetrator. Forgiveness from the victim to the perpetrator and the selection of a fine (*diyāh*) as a legal sanction is a form of conflict recovery. This restorative justice model applies to legal provisions under human authority (*ḥuqūq al-'abd*) and a mixture of human and God's authority (*ḥuqūq Allāh wa ḥuqūq al-'abd*). Repentance and willingness to pay *kaffārāt* (compensation) are forms of conflict recovery from the perpetrators. Legal rules in the authority of God (*ḥuqūq Allāh*) leads to offender-centered-based restorative justice. Therefore, the basis of justice in Islam is freedom of conscience, full equity of humanity, and social solidarity (Kashani, 2018).

Conclusion

Conflict resolution in the Islamic restorative justice system integrates legal, moral, and spiritual aspects. The spiritual aspect forms the foundation for law enforcement that embodies legal compliance and equality. Every human being is equal before God and has the same obligation to obey the rule of law with equal rights in demanding justice. This principle

of equality requires every member of society to uphold moral values from religious teachings and morality due to social agreements. Respect for moral values directly increases public compliance with the rule of law. In case of a violation of the rule of law, the settlement involves upholding moral values based on spiritual . Through this model, the Islamic restorative justice system makes law enforcement the basis for upholding social justice.

The classification of God's rights and human rights in establishing and enforcing legal rules helps maintain a balance of access, obligations, and legal protection between victims and perpetrators of crimes. Victims and perpetrators have the right to demand justice and legal protection from arbitrariness, respectively. God's rights function to provide public protection while human rights function to obtain private protection. The integration of these two types of protection characterizes the Islamic restorative justice system, where the victims, perpetrators, and society obtain the same justice in law and social equality. The classification of God's rights with human rights in establishing and enforcing legal rules helps maintain a balance of access, obligations, and legal protection between victims and perpetrators of crimes. Victims and perpetrators have the right to demand justice and legal protection from arbitrariness, respectively. Furthermore, God's rights provide public protection while human rights focus on privacy protection. The integration of these two types of protection is the characteristic of the Islamic restorative justice system. Through this system, victims, perpetrators, and society receive the same justice in law and social equality.

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