

**REVIEW OF ISLAMIC CRIMINAL LAW ON THE SETTLEMENT OF
MOTORCYCLE EMBEZZLEMENT CASES THROUGH *RESTORATIVE JUSTICE***

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Abstract

The settlement of motorcycle embezzlement cases that occur in the community is usually resolved through litigation, but as the times develop, the case is resolved through *the restorative justice* mechanism. However, not all cases of motorcycle embezzlement can be resolved through *restorative justice mechanisms* and whether there is a deterrent effect on the perpetrator after the case is resolved through *restorative justice*. The formulation of this research problem is: first, how to resolve motorcycle embezzlement cases through *restorative justice*, second, how to resolve motorcycle embezzlement cases through *restorative justice* according to the perspective of Islamic criminal law. The author uses normative legal research with qualitative data types, namely research by examining and describing the sources of data obtained through literature studies, and document studies. The data sources used in this study are *primary, secondary and tertiary legal materials*. The results of the study conclude that the settlement of motorcycle embezzlement cases through *restorative justice* can be carried out through several requirements in existing regulations in the criminal justice subsystem such as in the Police, Prosecutor's Office and the General Justice Environment. In the Police, it is regulated in Police Regulation No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. The Prosecutor's Office is regulated in Prosecutor's Regulation No. 15 of 2020. And finally, the application of motorcycle embezzlement cases can also be resolved through *restorative justice* in the Court environment based on the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. In Islamic criminal law, motorcycle embezzlement cases can be resolved through *restorative justice* if there is forgiveness from the family and also the perpetrator compensates for the losses due to the criminal act he has harmed.

Keywords: *Criminal acts, restorative justice and Islamic criminal law*

INTRODUCTION

Criminal cases arise because there are criminal acts that are processed by law enforcement officials. Criminal cases always arise when there is a criminal process. Criminal acts or crimes are a unit that cannot be separated from human life in the world. All human activities, both social, political, and economic activities, can be the cause of the occurrence of a crime (criminal act). It can be felt that crimes (criminal acts) often occur and are in all walks of life. It is very prevalent in the family, community, government apparatus, groups, nation or state and even international (*transnational crime*). As long as there is still life, it is certain that crimes or criminal acts will arise and for that criminal cases can occur.⁴ The settlement of criminal cases as an integral part of law enforcement in the context of the State of Law, at least refers to the principles and objectives of the law. And still adhere to the philosophy, constitution, juridical wisdom, and moral foundation of the

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⁴ Bambang Waluyo, *Criminal Case Settlement of the Application of Restorative and Transformative Justice* (Jakarta: Sinar Grafika, 2020), 78

nation. Indeed, the rampant criminal acts must be addressed firmly and wisely as well as consistent law enforcement, the community relies on law enforcement, but in fact prevention and eradication or its handling must be simultaneous and comprehensive.

The problem solving methods that can be taken are basically divided into two, namely litigation and non-litigation solutions. In fact, when a problem occurs, especially related to criminal law, the model of solving the problem is always carried out through litigation. In practice, the settlement of cases using the litigation channel does not always go according to what is expected because the settlement of cases using the litigation channel in the current criminal justice system actually raises new problems, for example: the pattern of punishment that is still retaliative, causing the accumulation of cases, not paying attention to the rights of victims, not in accordance with the principles of simple justice; The process is long, complicated and expensive, the settlement is legal and rigid, does not recover the impact of crime, inadequate conditions of correctional institutions, does not reflect justice for the community and so on, even though the law is made in essence to provide justice and benefits for humans.⁵ The essence of justice in the criminal justice system in Indonesia was initially still guided by retributive justice where punishment was intended as a means of retribution for evil acts that had been committed.

The retributive penal system has been criticized by legal experts, who argue that the purpose of punishment is not only to take revenge, but should provide good benefits for the perpetrator and the community. Criminalization based on retributive theory has not been felt fair and even tends not to solve the problem as a whole. This is because crime enforcement is more focused on the perpetrator of crime by imposing the harshest punishment commensurate with his actions, in order to get a deterrent effect.⁶

Criminal law reform in national criminal law in the future will be known as the concept of *restorative justice*, this concept is relatively new in the criminal law enforcement process and also holds the perpetrators accountable. This concept offers a form of settlement of various legal cases that occur outside the criminal justice process that has already been, so that the community does not only depend on existing procedures. But still get justice and problem solving, especially for the victim as the most aggrieved party, but also the perpetrator must be responsible for the actions he committed. One form of solution offered is the settlement process in the context of restorative justice.⁷

Restorative justice does not just implement decisions about who wins and who loses in an *adversarial criminal justice system*, the restorative justice process seeks to facilitate dialogue between all parties affected by crime including victims, perpetrators, supporters, and society as a whole. It involves a process in which all parties at risk in a particular crime jointly seek to collectively resolve how to deal with the aftermath of the crime and its future impacts.⁸

A general term that describes what exactly is meant by the restorative justice approach or concept. Restorative justice was first introduced by Albert Eglash by mentioning the term "*restorative justice*" or which in Indonesian can be interpreted as restorative justice or restorative justice. In his article on *reparation*, Albert Eglash stated that *restorative justice*

⁵ Edi Regrab Herwanto, *Restorative Justice Implementation of Criminal Law Politics with the Value of Pancasila Philosophy*, (Lampung: Laduny, 2021), 1

⁶ Jean Calvijn Simanjuntak, *Restorative Justice: The Metamorphosis of Local Wisdom in Indonesia*, (Depok: Rajawali Pres, 2023), 14

⁷ Taufiq Hidayat, et al. "Solving the Crime of Motorcycle Theft Through a Restorative Justice Approach as a Reform of the Criminal System in Indonesia", in *Iustitia Omnibus Journal*, Vol. 3, No. 2 (July 2022): 16

⁸ Eko Syaputra, "The Application of the Concept of Restorative Justice in the Criminal Justice System in the Future", in *Scientific Journal of Law* Vol. 3, No. 2 (July 2021): 235

is an alternative to the restitutive approach to the retributive justice and rehabilitative justice approaches.⁹ Marian Liebman simply defines *restorative justice* as a legal system that "aims to restore the welfare of victims, perpetrators and communities damaged by crime, and to prevent further violations or criminal acts."¹⁰

The current restorative justice approach or concept has become the dominant model of the criminal justice system in the development of human history and civilization in the world. Settlement of cases with the approach or concept of restorative justice is often carried out by applying reparations by people who commit criminal acts against victims and/or their families and against the community. Recovery carried out by the perpetrator can also be in the form of compensation, social action or carrying out recovery or certain activities in accordance with a joint decision that has been agreed upon by all parties in the meeting held. This is done to avoid the consequences of revenge (*lex talionis* or *an eye for an eye*) or public hatred.¹¹

Currently, rules and policies to apply the concept of restorative justice have been issued by the criminal justice sub-system in Indonesia, both in the police at the investigation stage, the prosecutor's office at the prosecution level and the supreme court at the judicial level in the form of regulations or decisions, but the rules and policies issued by the criminal justice sub-system show differences and inconsistencies in their application.¹² The embezzlement cases that occurred in Indonesia that were resolved through *the restorative justice* mechanism were:

First, the motorcycle embezzlement case that was resolved through *restorative justice* at the Lubuklinggau District Attorney's Office against the perpetrators of motorcycle embezzlement in Lubuklinggau occurred in 2022. A resident of Jalan Manga Besar Rt 03 Kenanga Village, North Lubuklinggau II District, Lubuklinggau City. A man named Sulaiman embezzled his wife's cousin's motorbike. The initial story, Sulaiman came to repair the car where his wife's cousin's parents were, because the car was being repaired, finally Sulaiman borrowed his brother's grand motorbike to go home. However, after a few days the motorbike was borrowed but not returned by the perpetrator and the perpetrator was reported to the Police. The Head of Lubuklinggau, Willy Ade Chaidir accompanied by the Head of Police, Firdaus Affandi and the Public Relations of the Lubuklinggau Police Department, Husni Mubaroq, said that Mr. Sulaiman and the victim still had a family relationship. "At that time, Sulaiman borrowed a motorbike because of his mistake, he finally pawned Rp. 200,000.00 (two hundred thousand rupiah)." Finally, when the file came in, humanitarian considerations and there was peace on the part of the family, Mr. Sulaiman's case was stopped, Sulaiman was released through the *restorative justice program*. "Plus consideration is that the children are also 4 people who are still young, need parents, the first child is 14 years old still in school, and the last one is 2 years old," he said.¹³

Second, the motorcycle embezzlement case that occurred in Banjarbaru on Tuesday, August 9, 2023 involving a perpetrator with the initials EM who embezzled a motorcycle belonging to the victim named Lasri, which initially led to the victim lending a Suzuki Smash brand motorcycle to the EM perpetrator. However, after some time the motorcycle

⁹ Edi Setiadi and Kristian, *Integrated Criminal Justice System and Law Enforcement System in Indonesia*, (Jakarta: Kencana, 2019), 203

¹⁰ Sukardi, *Restorative Justice in Indonesian Criminal Law Enforcement*, (Depok: Rajawali Press, 2020), 39

¹¹ Setiadi and Christianity, *Criminal Justice System*, 226-227

¹² Eko Syaputra, *Application of the Concept of Restorative Justice*, 236

¹³ Eko Hepronis, Restorative Justice at the Lubuklinggau Prosecutor's Office, Perpetrator of Embezzlement of Grateful Prostration Motorcycle, in <https://sumsel.tribunnews.com>. retrieved 14 Nov 2024

was not returned. Finally, Lasri reported to the Banjarbaru Police. Finding the report, the Banjarbaru Police Criminal Investigation Unit conducted an investigation and finally succeeded in arresting the EM perpetrator and his evidence. After being detained for 7 days, the Banjarbaru Police made *Restorative Justice efforts* to provide recovery and reconciliation for both parties. After negotiations, the victim and the perpetrator finally agreed to reconcile and the perpetrator retracted his report and the embezzled motorcycle was returned to the victim. The reason why the Banjarbaru Police Criminal Investigation Unit carried out *restorative justice* efforts was due to consideration and humanity, plus the perpetrator when committing embezzlement was 75 years old and lived alone in South Kalimantan.¹⁴

Third, the motorcycle embezzlement case was resolved through *restorative justice* by the Jembrana District Attorney's Office which was held in the Smart Room for General Crimes (Pidum) of Kejari Jembrana, Wednesday, May 22, 2024. With the name of suspect I Wayan S with the victim named Nova Adi Kusuma, which started with I Wayan S pawning a Honda Genio motorcycle nopol DK 4867 ZG belonging to Nova Adi Kusuma Wibawa without permission and knowledge of the victim. The motorcycle was pawned with a person named Simin (deceased) worth Rp 7,500,000.00 (seven million five hundred rupiah) and resulted in the victim suffering losses of around Rp 20,000,000.00 (twenty million rupiah). The case has ended peacefully after both parties forgave each other through *the restorative justice mechanism*, and the perpetrator compensated the victim for damages of Rp 20,000,000.00 (twenty million rupiah).¹⁵ From the cases that occurred above, why law enforcement officials dismissed the case and whether there was a deterrent effect on the perpetrator and the community on the case considering that not all embezzlement crimes can be resolved through *restorative justice* mechanisms, therefore the researcher is interested in conducting a review of Islamic criminal law on the settlement of motorcycle embezzlement cases through *restorative justice*.

METHOD

This research is normative juridical research or normative legal research, which is a step to find a rule of law, legal principles, and legal doctrines to answer legal issues about the settlement of motorcycle embezzlement cases through restorative justice. Then the researcher examines and describes the source of data obtained through books, journals, seminar proceedings, papers, legal dictionaries, legal encyclopedias, legal literature dictionaries or other legal materials, so as to obtain conclusions that are easy for readers to understand.

RESULT AND DISCUSSION

Settlement of Motorcycle Embezzlement Cases Through Restorative Justice

According to Mardjono Reksodiputro, the criminal justice system is a system that aims to "tackle crime", one of the community's efforts to control the occurrence of crime so that it is within the limits of tolerance that it can accept. The components that work together in this system are the agencies (agencies) that we know by the name: police-prosecutors-courts and correctional facilities.¹⁶ In handling the occurrence of a sub-system crime case in

¹⁴ POLRESBJB, *Humanitarian Considerations Banjarbaru Police Apply Restorative Justice in Motorcycle Embezzlement Case*, In <https://resbanjarbaru.kalsel.polri.go.id>. Accessed 13 Nov 2024

¹⁵ Sadly, the Case of Motorcycle Embezzlement in Jembrana Ended Peacefully Through Rj, in <https://www.nusabali.com>. retrieved 13 Nov 2024

¹⁶ Mardjono Reksodiputro, *Criminal Justice System*, (Depok: Rajawali Press, 2020), 240-241

criminal justice, it is often not to continue a criminal case through litigation, this happens because there is a recovery carried out by the suspect and the victim. In criminal law, *the restorative justice* approach is a model that is often used by law enforcement officials to resolve a case.

According to Eddy O.S Hiariej, the purpose of crime in the contemporary era refers to restorative justice to restore the justice needed by the victims. In the context of restorative justice, it is based on the humane relationship between the victim and the offender and its focus on the impact that crime has on all parties, not only on the victim but also on society and the offender himself.¹⁷ Restorative justice programs are based on the belief that parties to conflicts should be actively involved in resolving and mitigating negative consequences. They are also based, in some cases, on a willingness to return to the decision-making building and local communities. These approaches are also seen as a means of encouraging peaceful expression of conflict, to promote tolerance and inclusivity, to build respect for diversity and to promote responsible practices.

Restorative *justice* is an alternative that resolves the situation so that there is no grudge between the victim and the suspect. Therefore, *restorative justice as an alternative dispute resolution* (ADR) can only be realized in criminal cases where the suspect is definitely known and the victim's family is believed to want to forgive the suspect. Furthermore, the victim or his family must be involved to decide whether the convict can be released. What requirements must the suspect meet to receive an apology from the victim or his family if the victim or his family wants to forgive the suspect. In order for negotiations to begin between the two parties, the suspects and the victims and their families were brought together in a negotiation forum. On the other hand, the suspect must be punished if the victim and his family do not apologize or if the suspect is unable to meet the demands of the victim and his family. In the restorative justice approach, a deliberative forum with a family atmosphere is used to try to bring together the interests of the parties. Without a deliberative forum with a family spirit, it is impossible to reach an agreement. Thus, the *restorative justice approach* is in line with the values of Pancasila, especially the 4th precept.¹⁸

There are at least a few things related to the concept of restorative justice thinking. *First*, when a crime occurs, we are required to prioritize the interests of the victims because they are the ones who are directly affected by the crime. It is even possible that the victim's family, the perpetrator's family, and members of the wider community are also affected. *Second*, the restorative process must maximize the input and participation of the parties concerned in an effort to obtain recovery, restoration, understanding, empathy, accountability, and prevention.¹⁹

Third, if the restorative justice process is owned by the community, then the affected community members must be involved in the restorative justice process and this process must move beyond the individuals involved, and contribute to building and strengthening that community. This restorative process should also not only be limited to meeting the interests of the parties who have suffered losses, but is required to give importance to social conditions, as well as security and peace in their communities. *Fourth*, still related to the community, through this restorative process, the community has the responsibility to support the interests or needs of the victim for information, validation, justification,

¹⁷ Nandang Sambas and Dian Andriasari, *Criminology of Criminal Law Perspectives*, (Jakarta: Sinar Grafika, 2022), 91

¹⁸ Djohan Burhanuddin, et al., "The Implementation of Restorative Justice at the Police, Prosecutor's Office, and General Justice Levels." In *Journal of Legal Reform*, Vol 06, No. 2, (July 2023) 51

¹⁹ Eddy O.S Hiariej, *Principles of Criminal Law: An Amendment Edition of the National Criminal Code*, (Depok: Rajawali Press, 2024), 35

restitution, security, and empowerment, as well as offer the victim the opportunity to meet face-to-face with the person who has harmed him and collaborate in dialogue with him to decide what actions should be taken to meet the needs of the parties.²⁰

Meanwhile, in Article 6 Paragraph 1 letters a and b of Perpol No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Formal requirements include: peace between the two parties, except for drug crimes and fulfillment of the rights of victims and the responsibility of the perpetrator, except for drug crimes. Peace as referred to in paragraph (1) letter a, is evidenced by a peace agreement and signed by the parties. The fulfillment of the victim's rights and the responsibility of the perpetrator is in the form of: (a) returning the goods; (b) indemnify; (c) reimburse costs incurred as a result; and/or (d) compensate for damages caused by criminal acts.²¹

Prosecutor's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice in Article 5 paragraph 1 emphasizes the conditions for criminal cases that can be closed through restorative justice include:

- a. The suspect had committed a criminal act for the first time;
- b. Criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years; and
- c. The criminal act is committed with the value of evidence or the value of the loss incurred as a result of the criminal act of not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

Criminal acts related to property, in the event that there are criteria or circumstances of a caustic nature that according to the consideration of the public prosecutor with the approval of the Head of the District Attorney's Branch or the head of the District Attorney's Office can be stopped, the prosecution based on restorative justice can be carried out while still paying attention to the conditions as referred to in paragraph (1) letter a accompanied by one of the letters b or letter c.

In addition to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the termination of prosecution based on restorative justice is carried out by meeting the following conditions:

- a. There has been a return to the original condition carried out by the suspect by:
 1. Returning goods obtained from criminal acts to the victim;
 2. Indemnify;
 3. Reimburse costs incurred as a result of criminal acts; and/or
 4. Repairing damage caused by the consequences of criminal acts;
- b. There has been a peace agreement between the victim and the suspect; and
- c. The community responded positively.

In the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice. Article 6 paragraph 1 states that the judge applies the guidelines for prosecuting criminal cases based on restorative justice if one of the following criminal acts is fulfilled:

- a. The criminal act committed is a minor criminal act or the victim's loss is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah) or not more than the minimum wage of the local province;
- b. A criminal act is a complaint offense;
- c. Criminal acts with a maximum penalty of 5 (five) years in prison in one of the indictments, including the crime of jinayat according to qanun;

²⁰ Hiariej, *Principles of Law*, 39

²¹ Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice

- d. Criminal acts with child offenders whose diversion is unsuccessful; or
 Traffic crimes in the form of crimes.

Article 6 paragraph (2) states that the judge is not authorized to apply the guidelines for adjudicating criminal cases based on restorative justice in the event that: (a) the victim or defendant refuses to make peace; (b). there is a power relationship; or (c) the defendant repeats a similar crime within a period of 3 (three) years from the time the defendant finishes serving a court decision with permanent legal force.

Table IV: Differences in Conditions and Types of Criminal Acts That Can Be Resolved Through Restorative Justice

Perpol No. 8/2021	Perja No. 15/2020	Perma No. 1/2024.
Non-Recidivist	Non-Recidivist	Not a recidivist for a similar crime within 3 years since the defendant has completed a court decision that Permanent legal force
<ol style="list-style-type: none"> 1. Criminal Acts that do not cause anxiety and/or rejection Society 2. No impact on social conflicts 3. Not potentially divisive 4. No radicalism and separatism 5. ITE crime: spreading illegal content 6. Narcotics Crimes: addicts and abusers who request rehabilitation; Drug use one day 7. Traffic crimes 	<ol style="list-style-type: none"> 1. Criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years; 2. The criminal act is committed with the value of evidence or the value of the loss incurred as a result of the criminal act of not more than Rp.2,500,000.00 (two million five hundred thousand rupiah). 	<ol style="list-style-type: none"> 1. Misdemeanor Crime, where the loss does not reach Rp. 2,500,000.00 (two million five hundred thousand rupiah). Or no more than the local provincial minimum wage. 2. Criminal acts are complaints. 3. Criminal acts with a maximum penalty of 5 years in prison in one of the indictments, including the crime of jinayat according to qanun. 4. Criminal acts with child perpetrators whose diversion is unsuccessful. Traffic crimes in the form of crimes

Source: processed from various sources

Based on the description above, motorcycle embezzlement cases can be resolved through *the Restorative Justice* mechanism in the current criminal justice system in Indonesia based on applicable regulations. As in the Police, the settlement of motorcycle embezzlement cases can be resolved through *Restorative Justice* at the Investigation and Investigation stage on the condition that the perpetrator is committing a criminal act for the first time, a criminal act that does not cause unrest and/or rejection from the community, does not have an impact on social conflicts, does not have the potential to divide the nation and does not have the nature of radicalism and separatism. Then at the Prosecutor's Office at the prosecution stage, the settlement of the crime of motorcycle embezzlement can be resolved through *Restorative Justice* on the condition that the perpetrator is not a recidivist, the criminal act is only threatened with a fine or threatened with imprisonment of not more

than 5 (five) years, the crime is committed with the value of evidence or the value of the loss incurred as a result of the criminal act is not more than Rp.2,500,000, 00. (two million five hundred thousand rupiah). And finally, the settlement of motorcycle embezzlement cases can also be resolved through *restorative justice* in the court environment. Based on Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. provided that the perpetrator is not recidivist against a similar crime within 3 years from the completion of the court decision with permanent legal force, a minor criminal offense whose loss does not reach Rp.2,500,000.00. (two million five hundred thousand rupiah). Or no more than the minimum wage of the local province, a criminal act with a maximum penalty of 5 (years) in prison in one of the indictments.

Resolution of Motorcycle Embezzlement Cases through Restorative Justice in the Perspective of Islamic Criminal Law

Islam is a perfect religion whose teachings cover all aspects of human life, regulating small things to big things. One of the areas that is regulated is the issue of rules or laws, both individually and socially, or rather, Islam regulates social life.²² Islamic criminal law also regulates the mechanism for settling a *case* through the settlement of a case through peace. Islamic Law has 3 (levels) of punishment, namely criminal equality, forgiveness and *diyat*. This shows that Islamic Law recognizes two models of case resolution, namely litigation and non-litigation. Settlement by litigation route requires that the settlement of the case be carried out with the authorities while the non-litigation route is a settlement route in a familial and peaceful way without any grudge. This non-litigation method is close to the *restorative justice system*.²³

The settlement of cases in non-litigation can be done on the initiative of each litigant party, which can also involve a third party (hakam). The hakam is a mediator (conciliator) of two or more parties who are in the case. The way to settle in a good way is a tradition that has long been rooted in Arab society even before the advent of Islam. After Islam came along, the doctrine was further strengthened by the admonition to always create peace and harmony in society.²⁴

In Islam, the terms *shulh* and *al'afwu* are known, where the distinction between *shulh* and *al'afwu* can be said to be only at the level of concept, while in practice, it is very possible that there is a technical similarity in the implementation between *shulh* and *al'afwu*, as a method of solving a *jarimah*. That *shulh* is a general concept of peace for family issues to state political issues and also includes the field of criminal law with an emphasis on the results of mutual agreement. Meanwhile, *al'afwu* is a concept of resolving practical cases in the form of forgiveness by freeing the perpetrator from the demands of punishment with the consequence that the victim has the choice to ask for *diyat* (compensation) or no compensation.²⁵

In addition to the terms *shulh* and *al'afwu* in Islamic criminal law, the process of resolving cases through peace is also known as *Islah*. The concept of forgiveness has been expressed in a hadith of the Prophet PBUH which means: *Narrated to us Adam bin Abi Iyas, narrated to us Ibn Abi Dza'bi, narrated to us Sa'id Al Maqburiy from Abu Hurairah Ra said, the Prophet PBUH said: "Whoever has wronged his brother or anything should ask for his*

²² Marsaid, *Al-Fiqh Al-Jinayah: (Islamic Criminal Law)*, (Palembang: Rafah Press, 2020), 22

²³ Satriadi, "Restorative Justice Approach in Solving the Crime of Petty Theft from an Islamic Law Perspective", in *Journal of Islamic Family Law and Humanity*, Vol 4 No. 1 (June 2022), 26

²⁴ Syaibatul Hamdi, et al, "A Review of Islamic Law on the Implementation of Restorative Justice in the Juvenile Criminal Justice System in Indonesia", in *Journal of Sharia and Law*, Vol 1, No. 4, (June 2021) 80

²⁵ Rizky Al Ikhsan and Dahyul Daipon, "Criminal Settlement of Persecution through a Restorative Justice Approach Reviewed from the Perspective of Islamic Criminal Law", in *Unes Law Review*, Vol 6, No. 4 (June 2024), 9911

*forgiveness on this day (in the world) before the day when it will not be Useful dinar and dirham. If he does, then (later on the Day of Resurrection) if he has righteous deeds, it will be taken from him as much as his righteousness. If he has no more goodness, then the evil of his brother whom he has cursed will be taken and brought upon him."*²⁶

In another hadith: Solomon bin Daud Al Mahri said, he told us Ibn Wahb said, I heard Ibn Juraij narrate from Amru bin Shu'aib from his father from Abdullah bin Amru bin Al Ash that the Messenger of Allah (peace and blessings of Allaah be upon him) said: "You should forgive each other in the matter of the punishment that occurs between you, because if the limit has reached me, then it is obligatory to carry it out".²⁷

Based on the provisions in the Hadith mentioned above, it is understood that a person's sins are not forgiven unless the victim or the aggrieved person forgives. There is indeed a possibility that the person who is a victim of an unjust act will forgive. However, there is also the possibility of not apologizing, by harboring hatred and anger in his heart. Thus, sin remains in the perpetrator.²⁸ The settlement of criminal cases through *Restorative Justice* in Islamic criminal law can be found in cases of murder and persecution where the perpetrator can be punished with *qishash*, but if the victim's family forgives, then the punishment can be *diyat*, which is compensation given by the perpetrator as compensation for the actions he committed against the victim. The application of *restorative justice* can also be applied to the crime of *ta'zir*.

According to the Hanafiyah School, the legal *ta'zir* is obligatory when it comes to the rights of adami. There is no apology from the Judge because the right of the servant cannot be aborted, except by the one who has that right. As for the right of Allah, the decision is up to the Judge, if the Judge thinks that there is good in enforcing it, then he implements the decision. However, if according to the Judge, there is no benefit, then it is permissible to leave it. This means that the perpetrator received a pardon from the Judge. In line with this, Ibn Al-Hamam argued, "what is obligatory for the Imam to carry out the law of *ta'zir* with regard to the rights of Allah is an obligation that belongs to him and he should not abandon it, unless there is no benefit for the wrongdoer."²⁹

According to Imam Al-Ghazali, the meaning of forgiveness is when you have the right to retaliate, then you forfeit that right, and free the person who deserves the reward, from the law of *qishash* or the law of fine. In a *hadith qudsi* Allah Swt. said that: "Prophet Moses asked Allah, O my Lord! Which of your servants is more noble in your sight?" Allah said: "He is the one who, when in power (dominates his enemies) can immediately forgive." Based on this hadith, Allah SWT. explained that noble servants in the sight of Allah are those who have a noble heart, are gentle, have high tolerance and are in harmony with the enemy. He does not act to take revenge or hurt his enemies, even though he has been taken captive, but forgives them for the sake of Allah alone. Such a person who is known to have a heart of gold is praiseworthy. Forgiving the opponent where we are in victory, we are powerful, but cannot act as we please. This is a noble and commendable attribute.³⁰

The crime of embezzlement is a criminal act similar to the crime of theft and the crime of embezzlement is not regulated in the Qur'an. As we know that there are several types of punishments in Islamic criminal law, namely, *hudud*, *qishash-diyat* and *ta'zir*. The punishment of *hudud*, *qishas-diyat* is imposed on a jarimah that has been determined in the Qur'an and Hadith. Meanwhile, the punishment of *ta'zir* is a punishment that is not regulated in the Qur'an

²⁶ Saheeh Al-Bukhari 2269, in the Encyclopedia of Hadith

²⁷ Shaih Abu Daud 3804, in the Encyclopedia of Hadith

²⁸ Sukardi, *Restorative Justice*, 248

²⁹ Irfan and Masyrofah, *Fiqh Jinayah*, 145

³⁰ Sukardi, *Restorative Justice*, 249

and Hadith and the severity of the punishment is left to the ruler. It can be known that the characteristics of jarimah *ta'zir* are (1) the punishment is indefinite and unlimited, meaning that the punishment has not been determined by *the sharia* and there are minimum and maximum limits, (2) the determination of the punishment is the right of the ruler (*ulil amri*/judge).³¹

In the case of embezzlement of motorcycles, law enforcement officials can provide *ta'zir sanctions*, which are in the form of a *restorative justice mechanism* against the perpetrators of criminal acts to the victim with the consent of the parties who are members of the dispute settlement. The sanctions that can be given by the perpetrator to the victim are in the form of compensation or compensation for the motorcycle he embezzled. The *sanction of ta'zir* also includes forgiveness that can be done by the judge if it is beneficial. The purpose of the restorative application is to prevent revenge, forgive the perpetrator for the sin and reconcile the perpetrator with the victim so that the victim can forgive and classify the perpetrator.

In resolving motorcycle embezzlement cases through *the Restorative Justice mechanism*, law enforcement officials should work together to reconcile the perpetrator and the victim with existing efforts or procedures. In the Qur'an there are several postulates that explain the concept of peace in which in this case if there is a dispute or dispute, the two parties to the dispute should forgive each other, this is found in the word of Allah: *Verily the believers are brothers, therefore reconcile your two brothers (who are at war) and trust in Allah so that you may be blessed.* (Al-Hujurat (49): 10). In Surah As-Shura verse 40 Allah Swt. said: *The reward for an evil is a deserved evil. But whoever forgives and does good (to the wrongdoer), then his reward is from Allah. Indeed, He does not like the wrongdoers.*

The settlement of motorcycle embezzlement cases in Islamic law can be resolved through *the Restorative Justice mechanism* if there is an apology from the victim or his family in the form of compensation or *diyat* given by the perpetrator to the victim or if the Judge considers that the case has a benefit or goodness, then the peace process can be carried out. However, if there is no benefit in the dispute resolution process and the victim does not want to forgive the perpetrator, then the settlement of criminal cases through *the mechanism of Restorative Justice* or in Islamic law known as *shulh*, *al'afwu* and *Islah* cannot be implemented.

CONCLUSION

1. The settlement of motorcycle embezzlement cases through *restorative justice* can be carried out through several requirements in existing regulations in the criminal justice subsystem such as in the Police, this is contained in Article 5 of Perpol No. 8 of 2021 concerning Police Regulations on the Handling of Crimes Based on Restorative Justice. Second, in the Prosecutor's Office, this is contained in Article 5 paragraph 1 of Prosecutor's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. And finally, the application of motorcycle embezzlement cases can also be resolved through *restorative justice* in the Court environment based on the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. precisely in Article 6 Paragraph (1) and Paragraph (2).
2. In Islamic Criminal Law, the settlement of motorcycle embezzlement cases can be resolved through *the mechanism of restorative justice* if there is forgiveness and peace made by the victim to the perpetrator and the perpetrator is obliged to compensate for the cost of the losses he incurred from the criminal act. and the judge can also resolve the motorcycle embezzlement case through *restorative justice* if the case according to the judge has a benefit

³¹ Harahap, et al., *Islamic Criminal Law*, 224-225

REFERENCES

- Bambang Waluyo, *Criminal Case Settlement of the Application of Restorative and Transformative Justice* (Jakarta: Sinar Grafika, 2020)
- Edi Grabs Herwanto, *Restorative Justice Implementation of Criminal Law Politics with Pancasila Philosophy*, (Lampung: Laduny, 2021)
- Jean Calvijn Simanjuntak, *Restorative Justice: The Metamorphosis of Local Wisdom in Indonesia*, (Depok: Rajawali Pres, 2023)
- Edi Setiadi and Kristian, *Integrated Criminal Justice System and Law Enforcement System in Indonesia*, (Jakarta: Kencana, 2019)
- Sukardi, *Restorative Justice in Indonesian Criminal Law Enforcement*, (Depok: Rajawali Press, 2020)
- Marsaid, *Al-Fiqh Al-Jinayah: (Islamic Criminal Law)*, (Palembang: Rafah Press, 2020)
- Mardjono Reksodiputro, *Criminal Justice System*, (Depok: Rajawali Press, 2020), 240-241
- Nandang Sambas and Dian Andriasari, *Criminology from a Criminal Law Perspective*, (Jakarta: Sinar Grafika, 2022)
- Eddy O.S Hiariej, *Principles of Criminal Law: An Amendment Edition of the National Criminal Code*, (Depok: Rajawali Press, 2024)
- Taufiq Hidayat, et al. "Solving the Crime of Motorcycle Theft Through a Restorative Justice Approach as a Reform of the Criminal System in Indonesia", in *Iustitia Omnibus Journal*, Vol. 3, No. 2 (July 2022)
- Eko Syaputra, "The Application of the Concept of Restorative Justice in the Criminal Justice System in the Future", in *Scientific Journal of Law* Vol. 3, No. 2 (July 2021)
- Eko Hepronis, Restorative Justice at the Lubuklinggau Prosecutor's Office, Perpetrator of Embezzlement of Grateful Prostration Motorcycle, in <https://sumsel.tribunnews.com>. retrieved 14 Nov 2024
- POLRESBJB, *Humanitarian Considerations Banjarbaru Police Apply Restorative Justice in Motorcycle Embezzlement Cases*, in <https://resbanjarbaru.kalsel.polri.go.id>. Accessed 13 Nov 2024
- Sadly, the Case of Motorcycle Embezzlement in Jembrana Ended Peacefully Through Rj, in <https://www.nusabali.com>. retrieved 13 Nov 2024
- Djohan Burhanuddin, et al., "The Implementation of Restorative Justice at the Police, Prosecutor's Office, and General Justice Levels." In *Journal of Legal Reform*, Vol 06, No. 2, (July 2023)
- Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice
- Satriadi, "Restorative Justice Approach in the Settlement of Petty Theft Crime from an Islamic Law Perspective", in *Journal of Islamic Family Law and Humanity*, Vol 4 No. 1 (June 2022)
- Syaibatul Hamdi, et al., "A Review of Islamic Law on the Implementation of Restorative Justice in the Juvenile Criminal Justice System in Indonesia", in the *Journal of Sharia and Law*, Vol 1, No. 4, (June 2021)
- Rizky Al Ikhsan and Dahyul Daipon, "Criminal Settlement of Persecution through a Restorative Justice Approach Reviewed from the Perspective of Islamic Criminal Law", in *Unes Law Review*, Vol 6, No. 4 (June 2024)