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Differences in Restorative Justice in Indonesia, New Zealand and Saudi Arabia Viewed from Comparative Criminal Law

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ABSTRACT
Resolving criminal cases through the judiciary is considered successful if law enforcers are able to bring the perpetrators to justice and receive punishment. In certain cases, the public hopes that there will be no need for prosecution because the crime committed is not commensurate with the sentence imposed. Provisions about Restorative Justice in Indonesia, the civil law legal system is not yet clearly regulated in the law. New Zealand is a country Common Law who successfully implemented it Restorative Justice at the Correctional Institution. Meanwhile, Saudi Arabia is an Islamic country that most consistently applies Islamic criminal law which has a concept Restorative Justice. The aim of the research is to compare the concept of restorative justice between Indonesia, New Zealand and Saudi Arabia. Through these three different legal systems, which legal system is restorative justice most appropriate to apply? in Indonesia Restorative Justice guided by the internal provisions of the Police, Prosecutor's Office and Courts, which have not yet been stated in New Zealand Law Restorative Justice under the Parole Law of 2002, Saudi Arabia Restorative Justice relies on transcendental rules, namely the Qur'an and Hadits as well as the judge's discretion. The fact that it is applied in different countries is not certain that it will be useful if applied in one's own country or another country. Restorative justice must be in accordance with the social, economic and political conditions of a country.
Keyword: Restorative Justice, Three Different Legal Systems

ABSTRAK
Penyelesaian perkara pidana melalui peradilan dianggap berhasil apabila penegak hukum mampu membawa pelaku ke pengadilan dan mendapatkan hukuman. Terhadap perkara tertentu masyarakat mengharapkan tidak perlu dilakukan penuntutan karena tindak pidana yang dilakukan tidak sebanding dengan hukuman yang dijatuhkan. Ketentuan tentang Restorative Justice di Indonesia dengan sistem hukum Civil Law belum diatur secara tegas dalam Undang-Undang. Selandia Baru merupakan negara Common Law yang sukses menerapkan Restorative Justice pada Lembaga Pemasyarakatan. Sedangkan Arab Saudi merupakan negara islam yang paling konsisten menerapkan hukum pidana islam yang memiliki konsepsi Restorative Justice. Tujuan penelitian untuk melakukan perbandingan Konsep Keadilan Restoratif antara Indonesia, Selandia Baru dan Arab Saudi. Melalui tiga sistem hukum yang berbeda tersebut pada sistem hukum manakah restorative justice paling tepat diterapkan. di Indonesia Keadilan Restoratif berpedoman pada ketentuan internal Kepolisian, Kejaksaan dan Pengadilan, belum dituangkan dalam Undang-Undang, Selandia Baru Restorative Justice berdasarkan Undang-Undang Parole tahun 2002, Arab Saudi Restorative Justice bersandar pada aturan transendental, yaitu Al-Quran dan Hadist serta diskresi hakim. Bahwa fakta yang diterapkan di Negara-Negara secara berbeda belum pasti dengan sendirinya bakal bermanfaat jika diterapkan di negeri sendiri atau negara lain restorative justice harus sesuai dengan kondisi sosial, ekonomi dan politik suatu negara.
Keyword: Restorative Justice, Tiga Sistem Hukum Berbeda

1. Introduction

In Indonesia, the absence of legal rules or provisions that underlie investigations, prosecutions or the formation of court decisions from the perspective of legal positivism is a justification that has no legal basis and therefore cannot be maintained, even though it has a moral basis. As stated by Hart, "Moral judgement cannot be established or defended by rational argument; evidence or proof".

This means the functionalization of the concept restorative justice in criminal justice practice without being supported by positive law, either formal or substantive criminal law (procedural law) is a practice "moral judgement". This can certainly be said to be contrary to the principles or principles of legality which are very influential in criminal law.

Such a legal concept can be said to have a legalistic character, which in turn is very slow to accommodate societal dynamics, such as demands restorative justice. Because in the view of legism or positivism, laws are often considered sacred objects. It is considered a logical system for the application and resolution of all cases because of its rational nature. The theory of rationality of legal systems in the 19th century is indicated by the term "ideenjurisprudenz".(Jonlar Purba, 2017, p. 67-68)

New Zealand is one of the countries that consistently implements it restorative justice in the criminal justice system. One form of restorative justice implemented in the system of coaching prisoners is the state policy of providing punishments that are more community-oriented (community based sentences) rather than imprisonment. Around 26,847 prisoners are serving community-based sentences and only 7,605 prisoners are housed in correctional institutions. (Fitria, 2015, p. 8)

The institution that handles prisoners is called Departement Corrections of New Zealand (New Zealand Correctional Service) led by a Minister. This institution has a vision of ensuring the fulfillment of sentences and reducing the recurrence of criminal acts through credible staff and collaboration with various parties.

For this reason, the priorities carried out by this Department are: (Fitria, 2015, p. 9)

a. The realization of public security (public safety), this is done by ensuring that prisoners complete their sentences properly and ensure the implementation of decisions mandated by the court.
b. Reducing the repetition of criminal acts (reducing re-offending), cutting the rate of crime will automatically reduce victims and significantly improve the welfare of society when prisoners become productive members of society.
c. Create better public value (better public value), challenges to the economy, increasing institutional commitment to fulfilling taxpayers' rights, making the best use of resources and improving services.
d. Leadership (leadership), through the insights it has about inmate behavior, encouraging the implementation of programs that can realize the stated goals and the communities served.

Saudi Arabia was born in 1902 and became the Kingdom of Saudi Arabia since September 22 1933. Based on the Basic Law of Saudi Arabia which was ratified by Royal Decree, the King must comply with sharia (Islamic law), which relies on the Qur'an and Hadits. Saudi Arabia is the Islamic country that is most consistent in implementing Islamic criminal law in its positive law.

Different from the legal system Civil Law and Common Law which is guided solely by the will of the Government, Parliament and the Judiciary, Islamic criminal law relies primarily on transcendental rules, namely the Qur'an and Hadits as well as the judge's discretion. Apart from that, in practice, Islamic criminal law is also guided by the opinions of Islamic schools, especially the four main schools, namely Maliki, Hambali, Syafi'i and Hanafi. (Fitria, 2015, p. 16)

From this background in this research a problem was formulated which was discussed regarding:

1. How is the implementation of restorative justice different in Indonesia, New Zealand and Saudi Arabia?
2. What is the best concept of restorative justice?

2. Research Methods

This research uses normative legal research methods. By using library materials or secondary data. The primary legal materials in this research are laws, books related to Restorative Justice in solving criminal cases and tertiary legal materials in this reseacrh are journals, legal dictionaries, and electronic media. Techniques for collecting data and legal materials using library study techniques (library research).

Differences in the Implementation of Restorative Justice in Indonesia, New Zealand and Saudi Arabia.

A. Indonesia

The Prosecutor's Law which determines the authority of the Prosecutor's Office in the field of law enforcement. Article 30 paragraph (1) of the Prosecutor's Law states that in the criminal field, the Prosecutor's Office has the following duties and authorities:

1) Carrying out prosecution;
2) Carry out judge's determinations and court decisions that have obtained permanent legal force;
3) Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions;
4) Carrying out investigations into certain criminal acts based on the Law;
5) Complete certain case files and for this reason can carry out additional examinations before being handed over to court, the implementation of which is coordinated with investigators.

In the field of prosecution, prosecutors are given the authority to realize the sense of justice in society so that prosecutors are given the authority to control cases (Dominus Litis) which means that the prosecutor is given the authority to determine whether a case can be submitted to court or not, and can set aside the case in the public interest.

Article 139 of the Criminal Procedure Code "After the public prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether or not the case file meets the requirements to be submitted to court. " (Reda Manthovani, et.al., 2019, p. 293)

After the development of a criminal orientation that places victims as an important part of the purpose of punishment. The development of thinking about punishment then moves towards a new orientation where the resolution of criminal cases is something that is beneficial for all parties and becomes the most up-to-date discourse.

Restorative justice is offered as an approach that is considered to meet demands. Returning criminal resolution authority from the judiciary as a representative of the state to the community through a restorative justice approach where victims and the community are components that must exist and determine, so the main question related to this research is whether the restorative justice approach used in resolving criminal cases is included in wrongdoing. a theory of punishment or just a new treasure that enriches existing theories of punishment. From the reality that if the existing forms of classical punishment theory focus on efforts to restore the perpetrator, then restorative has focused its attention on the recovery of the victim. However, what is different is the concept of restitution, reparations and compensation.

Concern for victims iscore values" from restorative justice. Although attention to perpetrators is no less in proportion compared to previous theories. The meaning contained in the concepts of rehabilitation, resocialization, restitution, reparation and compensation seems to be only part of the concept contained in restorative justice.

On the basic characteristics of the criminal philosophy that underlies restorative justice which is different from existing theories. If existing theories see punishment as an action that is forced (mainly by a court institution) and the perpetrator carries it out as a forced action, then the element of voluntarism makes restorative justice a different view of punishment. (Eva Achjani Zulfa, 2011, p. 63-64)

Restorative Justice is a concept of thought that responds to the development of criminal justice by focusing on the need for community involvement and victims who feel marginalized by the mechanisms that work in the

current criminal justice system. Restorative justice is also a new framework of thinking that can be used in responding to criminal acts for law enforcers and workers.
It is not easy to provide a definition for this restorative justice approach, considering the many variations in models and forms that have developed in its application. Therefore, there are many terms used to describe this flow of restorative justice, including "communitarian justice (communitarian justice), positive justice (positive justice), relational justice (relational justice), reparatite justice (reparative justice) and community justice (societal justice) as well communitarian justice". The terminology used to refer to "communitarian justice" comes from communitarian theory that developed in Europe at the moment. The individualistic ideology that has long been associated with the western world is gradually being abandoned in line with the awareness of the role of society in the development of a person's life. These views place restorative justice in a position that promotes deliberative institutions as an effort that can be made to find the best way to solve a problem that arises as a result of the commission of a criminal act.

Resolving criminal cases using a restorative justice approach is basically focused on efforts to transform the mistakes made by the perpetrator with remedial efforts. Included in this effort is improving relations between the parties involved in the incident. This is implemented through actions which are an illustration of changes in the attitudes of the parties in an effort to achieve a common goal, namely improvement. The parties who are often referred to as stake holders here are parties who are directly or indirectly related to the criminal act that occurred. The main stakeholders here are the perpetrator (who caused the criminal act), the victim (as the injured party and the community where the incident occurred. Through joint identification of the problem and looking for the root of the problem, the required need for remedial efforts and obligations As a result, improvement efforts arise. (Fitria, 2015, p. 16)

Based on Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, article 1 paragraph 1 Restorative Justice is the resolution of criminal cases by involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retribution.

Conditions Restorative Justice Article 5 paragraph 1 Criminal cases can be closed by law and the prosecution terminated based on Restorative Justice if the following conditions are met:

a. The suspect has committed a crime for the first time;
b. Criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years; And
c. Criminal acts are committed with the value of evidence or the value of losses incurred as a result of - 6 criminal acts not exceeding Rp. 2,500,000.00-, (two million five hundred thousand rupiah).

Article 5 paragraph 6 Apart from fulfilling the terms and conditions as intended in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

a. There has been a restoration to its original state carried out by the suspect by:
    1) return items obtained from criminal acts to victims;
    2) compensate victims' losses;
    3) reimburse costs incurred as a result of criminal acts; and/or
    4) repair damage resulting from criminal acts;
b. There has been a peace agreement between the Victim and the Suspect; And
c. The community responded positively.(Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020, p. 5)

At the investigative level, it is regulated in the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice, which regulates general provisions, requirements, procedures for resolving minor criminal acts, terminating investigations, investigations and supervision. (Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021)

At the court level it is regulated in the Decree of the Director General of the General Courts regarding implementation guidelines *restorative justice* in the general justice environment, which regulates restorative

justice in minor criminal cases, restorative justice in children's cases, restorative justice in cases of women in conflict with the law and restorative justice in narcotics cases. (Surat Keputusan Direktur Jenderal Badan Peradilan Umum)

B. New Zealand

New Zealand's Department of Corrections primarily handles prisoners sentenced to community-based sentences (community based sentences) rather than imprisonment. Community-based punishment requires adequate support from the community. This type of punishment allows a person to repair the crime they committed while continuing to carry out their normal life and carry out routine work. Prisoners will also be asked to take part in programs that are related to the criminal offenses they have committed, such as violence, alcohol abuse and drug use, as well as driving violations. Community-based punishment aims to provide prisoners with the opportunity to make changes in their lives, to avoid repeating criminal acts so that their lives do not end in prison. (Fitria, 2015, p. 9)

Some forms of community-based punishment (community based sentences):

1) Social work (community work)
   Work for the community or social work is work that is not paid (non-paid). Social work aims to "pay back" to society for criminal acts committed. The philosophy is that it is actually the community that has been harmed by the criminal acts that occurred. Persons sentenced to social work must periodically report the results of their work to Probation Officer on Community Probation Service Center. (Fitria, 2015, p. 10)

   This institution will consider social work sentences based on: the level of the crime, the conditions surrounding the prisoner, as well as the prisoner's needs and skills. Social work can be carried out in group form under supervision Community Probation Service central or it can be individual through placement from a credentialed agency or work in both. Collaboration in implementing social work is carried out with various parties such as house of representatif, government institutions, voluntary organizations, sports associations and other community associations.

   Work carried out under the supervision of an agency will be supervised by one of the officers from that agency who will then coordinate with Probation Officer. Probation officer will ensure that inmates working at the institution fulfill the required working hours and complete their work in accordance with applicable standards. This social work is carried out between 40- 400 hours. The number of hours is determined based on the judge's decision. If you are a prisoner are required to carry out social work for more are required to carry out social work for more than 200 hours, then this must be completed within a period of two years. The obligation to carry out social work under 200 hours must be completed within one year. Prisoners can do community work for up to ten hours per day and a maximum of forty hours per week. While carrying out this task, prisoners can continue to carry out their previous jobs. A person who is punished with social work can also be punished with a Supervision sentence (supervision) simultaneously.

   If the prisoner cannot carry out his obligations because he violates the provisions or is unable to complete his duties, then Probation Officer will return them to court. Usually the court will impose a sentence of up to three months in prison or a fine of 1000 New Zealand dollars. Community Probation Service Center provide information to the judge to help the judge determine the sentence.

2) Supervision
   Supervision or Supervision is a community-based punishment. Supervision sentences are given between six months to two years.

   If a prisoner is convicted of having committed a criminal offense and is awaiting sentence, Probation Officer will assess the needs of the person who committed the offense and what penalties and programs are most appropriate to implement. If a prisoner is sentenced to supervision, Probation Officer provide an assessment including the conditions that must be met to carry out a Supervision sentence. Judges can also impose other conditions to meet an inmate's needs.

   Standard requirements include the inmate's obligation to report to Community Probation Service, restrictions on residence, work arrangements, and restrictions on contact with people. Specific

requirements include the prisoner's participation in therapy, personal development or rehabilitation programs and any other type of program that can reduce the possibility of the crime being committed again.

An inmate sentenced to a Supervision sentence will provide a report to Probation Officer which then explains the terms and conditions The punishment includes how often the person concerned must provide reports to him. Probation Officer will work with the inmate to correct his or her mistakes. If the prisoner is less motivated, Probation Officer will use his skills to increase the motivation of the prisoners he handles. Probation Officer may also work with family, friends, and co-workers of inmates.

In addition to the Supervision sentence, the court may also simultaneously sentence the prisoner to pay a fine, reparation to the victim and perform unpaid work in the form of social work.

As with any type of social work sentence, if a prisoner sentenced to supervision is unable to complete all the sentences given or cannot fulfill the required requirements, Probation Officer will hand the prisoner back to court. The court may impose a maximum prison sentence of three months and a fine of 1000 New Zealand dollars, Probation Officer will provide the judge with the necessary information before the judge imposes the new sentence.

3) House Arrest (Home Detention)
House arrest (home detention) is a sentence that requires the inmate to live in an approved residence at all times under electronic monitoring and close supervision of Probation officer. Placing inmates on house arrest can help inmates maintain relationships with their families, work or actively seek employment and attend exercise or rehabilitation programs. Sentences range from 14 (fourteen) days to 12 (twelve) months.

Only a judge can decide on a house arrest sentence. They must consider the report made before sentencing (a-pre sentence report) and recommendations from Probation officer that has accessed the needs of the guilty person and the sentences and programs that may be most appropriate. Several things are the basis for consideration of the pre-sentence report, such as the prisoner's risk to the public, motivation to change, the risk of repeat criminal acts, and the suitability of the house being proposed as a detention center. Probation officer also examine proposed employment and rehabilitation programs for prisoners and seek approval from people around the residence that the prisoner is concerned with will stay under house arrest.

If the conditions of house arrest cannot be met, the inmate concerned can be fined up to 2000 New Zealand dollars or imprisoned for one year. These inmates previously received formal warnings depending on the level of noncompliance. Other community-based punishments may also be imposed, or probation officer can apply to the court to have house arrest annulled and replaced with prison detention.

4) Release from Prison with Conditions (release from prison on conditions)
The Community Probation service regulate the release of prisoners who have met the requirements. These requirements include employment, preparation for housing, and a rehabilitation program. Release arrangements vary depending on the length and type of prison sentence. There are three types of imprisonment:

   a. Short prison sentence (short prison sentences)
   If a prisoner is sentenced to two years or less in prison, they will automatically be released from prison after serving half of their sentence as stated in their release date. (statutory release date). Meanwhile, prisoners who are sentenced to prison for one year or less can be released on parole as determined by the judge. Prisoners who are sentenced to one to two years in prison must fulfill the conditions for release as regulated by Probation officer.

   b. Certain longer prison terms (longer fixed-term prison sentences)
   Inmates sentenced to more than two years are eligible to be considered for release on Parole after serving the final third of their sentence as specified in their release date. (statutory release date). The conditions for this release are determined by the New Zealand Parole Board. An inmate may also apply to this Board to be placed under house arrest from three months before he or she is eligible for release.

c. Unlimited prison sentences (indefinite prison sentences)
Convicts can be subject to unlimited prison sentences like sentences Lifetime will have a certain period of time not to be released (a specific non-parole period) or after serving ten years in prison, can then be considered for release by Parole Board. Once upon a time it was fulfilled and Parole Board have granted this release, they will be released indefinitely with conditions. When the inmate meets the conditions to be considered for release by Parole Board, for Public Prisons Service will assess the needs of inmates and how those needs have been met in the prison. Prison staff will work with Probation Officer to develop a detailed release plan and how future inmates can organize themselves in society. This information will be provided to Parole Board. Then Parole Board will decide whether the prisoner will indeed be released.

The conditions for exemption are regulated in detail in an exemption license (a release license). This license has two types: first, standard conditions including the obligation to provide periodic reports to Community Probation Service, restrictions on residence, work arrangements and restrictions on contact with people. Meanwhile, special requirements include participating in personal development and rehabilitation programs as well as other forms of activities that can reduce the possibility of similar criminal acts recurring in the future. If it turns out that the prisoner cannot fulfill the conditions for his release, the prisoner will be returned to court. If the court convicts an inmate for failing to meet release conditions, the inmate may be subject to a fine, community-based punishment, or prison time. In cases when the prisoner is released before the Stipulation of the release date or is released from an indeterminate prison sentence, Probation Officer will submit to Parole Board to recall the person to prison.

5) Extended Surveillance (extended supervision)
Extended supervision aims to manage the risks posed by convicted child sex offenders in society. Extended supervision is imposed by the Court, to then allow Department of Correction to monitor convicted child sex offenders for up to ten years after their release. This is done by none other to prevent the recurrence of sexual crimes against children under 16 years of age by collaborating with former convicts.

This extended supervision is aimed at people who have been convicted of sexual crimes and imprisoned for a certain period of time and also people who have been assessed as having a real and ongoing risk of re-committing sexual crimes against children under 16 years, pornography crimes involving children under 16 years, or sexual crimes against children who are retarded. While on supervision, this type of prisoner can be in prison, in the community, or subject to on Word or parole.

Persons subject to Extended Supervision have an obligation to report to Probation Officer periodically, receive treatment and counseling programs, subject to restrictions on where to live and work, as well as restrictions on contact with victims and people under 16 years of age. Restrictions also include places visited and activities carried out. Prisoners who are at very high risk can be monitored up to 24 hours per day during the first year of supervision. If they violate the above conditions, the person subject to extended supervision can be prosecuted before a court and can be imprisoned for up to two years.

6) Conditional Release (Release on Parole)
Not all convicts who apply for release on parole can immediately be released, but this must be decided by Parole Board which carries out a hearing process first with related parties, including prisoners, victims and others Probation Officer. Parole Board consisting of judges and non-judges who have sufficient experience in their fields. There are twenty-one judges, including the chairman Parole Board. Those who are classified as non-judges come from various professions, such as university academics and officials Probation Service, Police Officers who have adequate knowledge in the fields of sociology and criminology, Lawyers, and so on. (Fitria, 2015, p. 16)

Based on the Parole Law of 2002, function Parole Board these include: providing consideration for release (on Word) convict, determine the conditions for the release of the convicted person, review the Board's decision, consider imposing special conditions on the extended supervision order (extended supervision), etc.

Several things to consider Parole Board to grant release (on Word) are the nature and level of seriousness of the crime committed, the environment the convict will enter after leaving prison, and the absence of risks faced by society with his release.

Cases that can be considered by Parole Board are cases where the convict is detained for a term of more than two years or cases where the convict is subject to an extended supervision order (extended supervision).

C. Saudi Arabia

To understand the conception restorative justice in Saudi Arabia, several related aspects are discussed below, namely the purpose of punishment, classification of criminal acts and types of punishment according to Islamic criminal law.

The objectives of punishment in Islamic criminal law are:

2) Prevention and providing a deterrent effect.
   The application of Islamic criminal law is intended to provide a deterrent effect, not only for perpetrators but also for those who intend to do something similar. Severe punishments, such as stoning for perpetrators of adultery and amputation for perpetrators of theft and robbery, make people have to think twice about committing these crimes. Apart from that, the interests and safety of the community are also protected by implementing this punishment. As Muhamad Iqbal Siddiqi argued, "…humiliation for the convict and the lesson for the public is the puprpose of the punishment".

2) Rehabilitate and reform.
   The principle of repentance (repentance) is known in Islam, this is what drives the concept of rehabilitation and reform of prisoners. That no matter how serious a crime is committed, if the perpetrator repents and promises not to repeat it, he will receive forgiveness from God. This conception provides motivation for the perpetrators to be able to return to being good people or even if a severe punishment (such as the death penalty or stoning) is imposed, the person concerned believes that they can be forgiven by God. Regarding ta'zir punishment and hadd punishment, Al Mawardi argues: "ta'zir punishment and hadd punishment are to discipline, correct, rehabilitate, reprimand, prevent and provide a deterrent effect, the forms of which vary according to the form of sin and mistake committed. (Wahbah Az-Zuhaiji, 2011, p. 271)

2) The forms of punishment in Islam are very varied (discussed later), making it possible for various goals to be achieved. The death penalty for perpetrators of intentional murder, for example, can prevent or reduce revenge by relatives, but on the other hand, Prevent, eliminate revenge and reconcile against victims or their relatives. if relatives forgive, then the perpetrator is subject to another form of punishment, namely paying a fine (diyat) as a form of regret and compensation for the victim's relatives.

In Islamic criminal law, in general there are three forms of punishment, namely qishash, hudud, and ta'azir. For more details, they will be discussed briefly one by one:

a. Qishash Punishment
   Qishash in the language means "tatba'al atsar" This definition is used to mean punishment, because the person entitled to qishash follows and traces the traces of the perpetrator's criminal act. Qishash also means "almusalted" namely balance and harmony. From this second meaning, the meaning according to the term is taken, namely "the mujazatuljaani bimitsli fi'lihi" means giving recompense to the perpetrator according to his actions. In line with this, Ibrahim Unais provides a definition, winter is to punish the perpetrator exactly according to what he did.

   The type of criminal offense that is subject to punishment qishhash is intentional killing with a weapon (willful murder with weapon), then the punishment given is also that the perpetrator is punished by being killed (death by retaliation) and intentional physical violence (bodily intentional harm) which is punished with similar retribution.

The qishash punishment is carried out by the heirs, there is no preference between one heir and his heirs, each heir has the same rights, the aim is to cure grief. If the victim does not have heirs or the heirs belong to a different religion, according to the agreement of the ulama, the type of punishment is left to the government (sultan), which will determine the most appropriate punishment, qishash or other punishment such as forgiveness. Regarding the implementation of qishash, there is no agreement among the fuqaha (religious experts) regarding the technique or method of implementation. According to the Hanafi School, qishash is done with a sword, but according to the Malikiyah and Shafi'iyah, the tool used must be the same as the tool used to kill the victim.

Things that invalidate the implementation of qishash are as follows:

1) Disappearance of the qishash object
   The object of qishahs in criminal acts is the soul (the life of the perpetrator), so that if the perpetrator dies then the implementation of qishah is automatically canceled. According to the Hanafi and Hambali Mahzab, the death of the perpetrator does not result in his heirs being obliged to pay diyat (fine). However, the Syafi'i Mahzab has a different opinion, that the family still has an obligation to pay diyat.

2) Forgiveness from Heirs
   Forgiveness of qishahs is allowed according to the consensus of scholars, as found in the provisions of the Quran Surat Al Maidah: 45: "Whoever gives up (the right to qishahs) gives up that right (becomes) an atonement for him..".

However, there are differences among scholars as to whether this forgiveness releases the defendant's obligation to pay diyat. According to Imam Malik and Abu Hanifah, this forgiveness does not automatically result in consequences for the defendant to pay diyat because the payment must go through another mechanism, namely peace. (ishlah). However, Syafi'iyah and Hambali are of the opinion that forgiveness automatically requires the defendant to pay the diyat penalty as a substitute punishment.

Shulh according to the language means Qothulmunaazaah or the one who decides disputes. If it is related to qishash, then the agreement in question is a peace agreement between the heirs/guardians of the victim and the murderer to release the qishash in return. In principle, this peace opens up flexibility for murderers in fulfilling their obligations to pay diyat: the amount (smaller or larger than prescribed), the repayment period, and the payment method.

Diyat according to the language of an amount of property given in compensation for the act of killing or injuring people. As for the things that require the death penalty, among them: when the guardian or heir of the person who was killed forgives the killer from the revenge of the soul, accidental murder, and murder without the element of murder. (M. Abdul Mujieb., et.al, 2011, p. 61)

a) Diyat Punishment
   Diyat is divided into two, namely diiyat light and diyat heavy. Light diyat is for accidental murder, while serious diyat is intentional murder without planning. diyat weight is 100 camels; 40 of them are pregnant. If the injury is minor, it is resolved through a fair decision from the government (just), some say they will be paid the same amount as the doctor's medical fees. However, if an injury is caused.

b) Hudud Punishment
   Hudud (the plural form of had) means to prevent, forbid. According to the term, a rule or decree of Allah that categorizes something as legal or illegal. Hud is a type of punishment that has been determined in the Qur'an for seven types of criminal acts (see table), namely: adultery, theft, insult, apostasy, robbery, using alcohol, and rebellion. The forms of hudud punishment given include stoning (adultery if one or both of them are bound by marriage),

use of alcohol (flogging), and theft (punishment of cutting off one's hand). In practice, the judge does not immediately impose a sentence when the elements of the criminal act are met. If there are extenuating factors, for example, the sentence that should have been imposed can be postponed. This was exemplified during the caliphate of Umar Bin Khatab.

c) Ta'zir Punishment
According to language ta'zir means reject. But according to the term it is prevention and teaching against criminal acts that do not have a limited sentence, qishash/diyat. Ta'zir contains elements of teaching, whether decided by the judge or carried out by the parents towards the child, and so on. In court, the judge has the authority to impose sentences ranging from the lightest to the most severe. The severity corresponds to the defendant's violation/mistake and is educational in nature, in the interests of society.

D. The Best Concept of Retorative Justices

There are opinions that differentiate between Comparative Law with Foreign Law, that is:

1) Comparative Law:
Studying various foreign legal systems with a view to comparing them;

2) Foreign Law:
Studying foreign law with the sole intention of knowing the foreign legal system itself without actually intending to compare it with other legal systems.

Inside Black's Law Dictionary stated that Comparative Jurisprudence is a study of the principles of legal science by comparing various legal systems (the study of principles of legal science by the comparison of various systems of law).

W. EWALD (also Esin Örücü, Critical Comparative Law) suggests that comparative law is essentially a philosophical activity (Comparative law is an essentially philosophical activity). Comparative law is a study or comparative study of intellectual conceptions (intellectual conceptions) which is behind the basic legal institutions/computations of one or several foreign legal systems.

Prof. Jaakko Husa (Elgar Encyclopedia of Comparative Law, 2006). distinguish between: "macro-comparative law" and "micro comparative law" Macro legal comparison, focuses more on big/broad problems or themes, such as systematic problems, classifying and classifying legal systems; while comparative micro law relates to legal rules, cases and institutions of a specific/actual nature. In explaining the comparison of legal systems (legal system), Jaakko Husa stated that "legal system"can be seen in a narrow sense and in a broad sense. In a narrow sense"legal system" is the formal legal system of various countries; while in a broad sense, "legal system" not only includes rules, institutions, jurisprudence and legal doctrines, but also includes various elements of social relations, historical factors, ideology, culture and traditions.

From the various definitions above, it is very clear that comparative law is very important important and necessary in understanding law. R.H.S. Tours ('The Dialectic of General Jurisprudence and Comparative Law', 1977, dalam Esin Örücü, Critical Comparative Law) stated that general legal science (general jurisprudence) and comparative law (comparative law) are two different sides of the same coin (a different sides of the same coin). General legal science (general jurisprudence) without comparison is empty and formal; On the other hand, comparative law without general legal knowledge is blind and cannot differentiate (blind and non-discriminating).

Rudolf D. Schlessinger in his book (Comparative Law,1959) submit among others:

a. Comparative Law is an investigative method with the aim of gaining deeper knowledge about certain legal materials.

b. Comparative Law is not a set of rules and legal principles, not a branch of law (is not a body of rules and principles);
c. Comparative law is a technique or way of working with actual foreign legal elements in a legal problem (is the technique of dealing with actual foreign law elements of a legal problem). (Barda Nawawi, 2019, p. 3-5)

It has been stated in the sentence system chart, that "the objectives and guidelines of punishment are an integral part of the punishment system", in addition to other sub-systems in the form of criminal acts, mistakes (criminal responsibility), and crimes.

E. Conclusion

1. Of the three different legal systems between Indonesia, New Zealand and Saudi Arabia, the resolution of criminal cases using restorative justice is very different. In Indonesia, at each level of the process starting from investigation, prosecution and trial, it is possible for the process to be stopped if it meets the requirements, such as a minor crime, has victims' losses are returned, peace is made and the community responds positively, whereas in New Zealand restorative justice is applied after the case is completed through the trial process, correctional institutions *(New Zealand Department of Corrections)* whose role is to determine whether the prisoner can be sentenced to House Arrest (*Home Detention*), Social work (*community work*), Supervision or Supervision, release from Prison with Conditions (*release from prison on conditions*), Extended Surveillance (*extended supervision*) and Parole (*Release on Parole*) In Saudi Arabia according to Islamic criminal law, in general there are three forms of punishment, namely qishash, hudud and ta'azir, the implementation of restorative justice according to Islamic criminal law is carried out through Diyat Law, Hudud Punishment and Ta'zir Punishment.

2. Whereas the facts are applied differently in different countries, it is not certain that it will be beneficial if applied in one's own country or another country. The resolution of criminal cases through restorative justice must be in accordance with the social, economic and political conditions of a country.

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