

Investigation Islamic Punishments In perspective of Restorative Justice

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Abstract

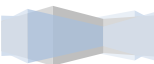
Restorative justice is a way to engage those who have a stake in a particular offense; as far as possible through the collective, to determine due to injuries and losses and liabilities to heal and improve wield right of action. Although the discussion of "restorative justice" in the discussion of new and emerging criminal law is found, but search legal texts with respect to the approach of "criminal justice" Islam is the punishment reflects the history of this kind of justice in Islam. The main objective of this study is to explore and explain the effects of restorative justice in the criminal law is Islam that such as identifying potential targets within the restorative justice in the criminal law of Islam and the introduction of significant effects of restorative justice procedures according to Islamic criminal law also explored and investigated. Islamic criminal law study suggests that Islamic law is intended to punish the crime of, suspended, punished and compensation. Sights and positive and restorative capacities if we want to refer it to the rigor of Islam in politics that proof of principle to insist on ignoring crime and punishment, the passage or non-passage of the ruling powers of the principle of repentance and eventually named. The retribution and forgiveness in a compensatory nature Diego, indicates the reception performance of "restorative justice" in crimes against persons. The victim compensation through the institution of mediation in international law, in essence correct, mediation and intercession as the implementation of "restorative justice" other ways of applying the theory of Islamic criminal law in this research to interpret each of these topics is discussed.

Keywords: restorative justice, criminal law of Islam, retribution, rehabilitation

First Paragraph: Restorative Capacity of Blood Money

Financial compensation literally means that the soul has become. Diego define the "slight right" and "financial return of the victim's life" is the expression of numerous books. However, the legal nature of blood money differences between some of the scholars and jurists, there is some blood money to punish

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and redress others it knows base this argument is that if the compensation blood money we can make it to the compensation the victim is known to have healing approach. But in my opinion with regard to the legality of blood money for the restoration of the doubts us and with regard to May 294 of the Penal Code states: "... the parents of the murdered financial blood money will be given." It seems that the legislature has deemed compensation blood money to look but with the principles contained in the statutes of blood money, blood money restorative tarnish the look. (Haji Deh Abadi, 2007).

An aperture in the restorative sentencing legislation surely there blood money Diego. The ignorance of Islam has a strong emphasis on blood money order and emphasis of Islam, because this was the way it was intended to replace rather than retribution. On the other hand, causing relief blood money to a compensation for the survivors is seen and the discussion turned compromise between offender and victim blood money Retribution is a manifestation of the restorative aspect of blood money and other restorative discussion blood money, crimes against granted by the murder of children by parents, mad murdered by the wise, mature killed by minors, murder and crimes infrared breath of pure and quasi-intentional errors are what is holding them just blood money. Here it is necessary to repair a problem that the lack of blood money them when given or due to the impossibility of retribution, punishment, they turned to blood money, the mention. Some argue that in such cases one cannot speak of restorative justice rounds. Because the traditional criminal justice system imposes penalties on compensation payments, result is reconstructive process of restorative justice to be open to question. However, in contrast, others also believe that any sanction imposed punishment of offenders, regardless of whether jeering damage and losses to the victim, a guarantee of performance and are therefore in the field of restorative justice, restorative placed. (Reshadat & Zaffari,2011). Important and interesting course of study blood money issues in Islamic jurisprudence is seen as worthy of attention, for things that should govern the parties prior to the sentencing task to make peace. Local building is located between the testicles and beaten, so that is not able to control urine or stool, all cases in which the crime, damage to the bone, or partial loss of the intellect, crack head, eliminating the smell of a conduit removing the sense of smell and back again after the payment of blood money, lack of taste the taste of blood money and returns it to some characters and the loss of voice, among such cases.

Second Paragraph: Regenerative Capacity in Retaliation

In Arabic, the word death is the gerund and the Persian language means "to follow the influence of anything" comes and jurists to track the impact of crime and mayhem have expressed. That is a crime that life has dealt him get the same amount of in the context of the current Javahd's owner is quoted: "Here is the meaning of death (Book Al'qesas) track and follow the effects of crime, as retribution for her to do the same criminal act. (Shambiati,2000). What is certain is that if the history of war that arose over the killing of a person to look at it and sequence differences and the many wars arose from the malice of our study. Retaliation followed in Islam valuable step towards creating a system of criminal justice and an end to this conflict without goal. However, if you look in the Quran study Retaliation canonization process, discovered that in addition to the verses that indicate death. Retaliation followed in Islam valuable step towards creating a system of criminal justice and an end to this conflict without goal and very important fact is taken into consideration and that's where all the verses after granting permit retaliation, on principle rather than having to wait for forgiveness and revenge, insisting even when there is no emphasis on the use of retaliation and in another verse Retaliation followed the intentional murder, the victim's heirs the murderer's brother introduced them to forgiveness and reconciliation with his calls.

There are many other verses and sayings of the theme and content are due to forgiveness and



reconciliation. In relation to the second martyr quoted as saying: "In some traditions entered when nations are now in the presence of God, heralded the call, reward those who have to stand before God. After the rebellion of the oppressed in the world who do not go to him (and if possible retaliation) and to be forgiven. "In another narration of Anas bin Malik said, "Never murder case with the Prophet (pbuh) plan, unless it's the door to forgiveness."(Haji Deh Abadi. 2007).

As mentioned in the discussion about the will, as well as the execution of capacity and ancillary issues that do not repair as we know, in most legal systems of the world, death penalty has been abolished and replaced by another punishment and looks at restorative and reconstructive execution due to the removal of barriers to the punishment of criminal policy cycle, and on this basis, anything that causes a lack of execution, can be restorative value; Article 296 of Penal Code, including noted that eliminating the death of one person's mistake is killer and it put an obstacle in the path of execution is undoubtedly value is restored. On the other hand ascendancy of the private aspects of punishment and retaliation claims regarding the right to privacy and the victim's father, who is suffered offense and the possibility of reconciliation with the killer also contains extensive restorative values. So that in death there is a specific feature of restorative ascendancy of the private nature of the crime (murder, including the murder and other crimes against the physical integrity of self infra happens) that the assignment of the right to belong to the victim or heir, justice is fully implemented responsibility for the decision to charge the person or persons that they have found the most serious injuries and by giving the right to charge a performance penalty to the victim or his relatives, the two approaches will face the punishment will be implemented or forgiveness and reconciliation will certainly both values will be restored. Because that the assignment of the right to demand the enforcement of criminal prosecution and victim or his heir, but strongly recommend to forgiveness is possible to forgive the offender is provided and the certainty of punishment enforcement and arbitration was shaken and reach a point of agreement has made it possible to compensate for the loss of mass. (Rezaei, 2001). As you can see in the crimes punishable by death or amnesty, property rights Clamping dominant mass and consequently, the victim has right of criminal passage penalties can be an important role to play in the processing address. The recovery of such a procedure is clear. Also, they can be used in consideration of the provisions of this chance and crimes punishable by death or around it, over the repair. In some cases, the Muslim ruler, but the tail and has authority to pardon or punish the offender, these include cases where the victim or his tail, but do not have access interestingly, in this case the legislator has delegated authority to restore the Islamic ruling. But in that case would be little change or a change from the offender's consent, in order to utilize restorative mechanisms. Islam has always been seen by the elders and leaders, relatives and others (blood owners) invited the victim to have peace and forgiveness and have mediation between the parties now the authorities are trying to create an atmosphere of restorative justice in cases leading to death and resuscitation guidelines.

The head of the judiciary, including the directive on 16 February 2002 addressed to the presidents of provincial Justice. In those states have said: "In cases where death sentences are confirmed we should compromise on the victim's family withdrew from execution for obtaining blood money or free will." (Shambiati,2000).

Third Section: Repair Faults on Retaliation

As noted, the execution is more than a restorative values are nti-restorative and reconstructive is no justification. But conversely, there are other cases that lack of execution is inconsistent with the concept of recovery are operative or non-operative and the time that regardless of whether the judgment in the



application and submit it. Once accepted to be faithful to it, and we can run it in a fair atmosphere. In some cases, faults and flaws that we see the principle set forth and the time that the reasons for the judgment is not enforceable and as long as Muslim, non-Muslim kills or lack of evidence of retaliation for the reason that it takes instances. Or when it is expected that the additional support from people like maniacs and women who are among the most vulnerable and victimization is so talented, and vice versa act. Even execution of these external obstacles that are impossible or has entered into discussions retaliation is partly the fault recovery and it seems that in these cases there is a potential for recovery. With a little reflection, and following the opinion of jurists and theologians of tolerance that has always been the religion of Islam, you can change some of the legal literature, the potential into actual capacities and step forward.

Fourth Section: Hudud and Status of Restorative Justice

What is now the language of jurists and religious books, it is customary in common is that the type and extent of the punishment the judge has given. Such as adultery, drinking alcohol, theft and the like in the books of the word also mean border, end, end, and the end result is. Obtained from the vocabulary of the Qur'an, which means disposal is prohibited. Raghīb says: Hudud is mediator between two things that will prevent mixing of the two "willing to stipulate appellation adultery and drinking alcohol... it is prohibited from committing crime." Imam Sadiq narrated that the Prophet (s) of the Intercession of the ban said that "who is the part of some divine assistance to cancel it, and the annulment of God's work; God will punish him on the Day of Resurrection.". According to another hadith the Prophet Muhammad Osama bin Zaid says: "In part because the ruling is not intercede and intercession.". In this regard, Imam Ali (AS) narrated that the Prophet to intercede and intercession about if the law does not prohibit the relevant people.

What is the content of the Penal Code of 1991, which affected the religious views on it, clamping on the right side of the extent to which they have overcome (such as Hudud) even after its establishment, from the Expanded polystyrene is the forgiveness of venial. If in any way compromise between the parties will be annulled. Therefore, it is not unlikely that some crimes to permit reconciliation and mediation we believe that there is compliance with the license. Clamping essentially cease to be entitled to apply to the crime. But as far as crimes of violence and corruption are on earth would not be possible. Person may act as an enemy of the people who actually put the victim in the crime clamping of the right to be presumed. But because it was molested by the security community about broader and threat to the security and welfare of the public, legislators in Article 192 of the Penal Code stipulates that the violence and corruption on earth to forgive is not to overthrow the rightful owner. Thus, since the orientation of legislator's attention is social expedience. The crime is considered non-forgiveness and reconciliation.

Or there is no doubt that this aspect of the crime Clamping compromise between available space and the mediation. Apart from the crimes discussed, the remaining part mainly crimes against chastity and honor crimes, some are included (such as adultery, sodomy, lesbianism and pimps). Since the explicit rules of the divine right of the crimes they were dominant and also because the essence of the crime victim and the victim is not expected and both sides of the way against crime and criminals are known. On the other hand because of Islamic lawmakers with various tricks to try to ignore the criminal offense of mediation is not appropriate for the crime. Although there is no doubt in obtaining victimization as a result of this provision is guilty of drinking alcohol has also been part of the divine right to rule is to mediate the victim and the absence(Shambiati,2000).

In general it can be said that the policy of separate criminal offense to Islam, the dominance of private integrity or public reputation, significant effects can be applied. Including the right to demand the



punishment of the offender and forgive his former crime victims and the injured, third party mediation in public areas can be overthrown in the divine right of spending too much crime mediation license shall not be deemed absolute and in cases where the offense is somewhat forgivable by Imam. As in cases where the offender admits guilt is proven or offender repents and is forgiven, there is no prohibition. Ruler applies in these cases to mediation and also in cases where the plaintiffs to prevail is not forgivable offense, before it can be made of a mediator. But may be partly due to the mentality exists in society. Behind their Islamic criminal in this area is so harsh, rigid and strict assume that any modifications not tolerate. Unfortunately, beyond the view of the populace and many experts thought the dominant form and public opinion has become almost a different reason. Among the reasons for the degrading nature of the punishments to imagine itself is great intimidation.

But what is most effective on the reasons for the lack of attention and favor, legislators and criminal enforcement policy, the promotion of all aspects of the sanctions set to be made. However, as it was during the discussion of this section, although much of the heavy penalties for certain highly supportive. But first, Islam seeks to eliminate areas of committing such crimes and tries to carnal desires and the environment, to prevent the commission of such crimes. Secondly, if committed, by adopting a setter-oriented approach and an emphasis on offense blind, so the human relationship with God note and any urge to expose the hidden secrets of mankind, and consequently the use of mechanisms, not criminal. Apart from these very strict conditions intended to prove the crime, as it proved to be impossible in some cases. However we look at the positive and restorative capacities to mention. It can be hard to establish the policies and principles of Islam insist on crime. It goes without penalty or being non-passage and the next turn and the Ruler powers of the board that some of them will be mentioned briefly (Rezaei, 2001).

Fifth Section: Restorative capacities of sanctions

Chastising meant to prohibit and prevent the blame also. Jurists to provide different definitions of chastising tried. Chastising the correctional that God has forged it. To the chastising of self and other acts prohibited people. The numeric order in which duty to be entered or the disruption of one of the bad things, and in the description of certain penalties imposed on it is not fixed.

Basically the crimes and punishments handed in all the proceedings, sentencing and execution is the Islamic ruling. Offenses punishable by imprisonment can be imposed for them and not necessarily the whip) consider and in the holy lawgiver like about the death and blood did not consider the specific pattern. Or all of the Islamic ruling is handed over to other penalties to be operational capacities. Muslim ruler can create an atmosphere of recovery in legislation and codification and continuing the process of investigation and enforcement of the legal system and in keeping with the highest values of restorative pioneer fits the requirements of the legal system, creating progressive. What is the Islamic ruling powers are too broad in scope has suspended the right of amnesty from punishment can be sentenced for offenses alleged to requirements on processes and mechanisms, such as commutation of sentence, suspended, probation, etc. That judge's authority is far more open than he has in the other punishments; While suspended from preaching and reprimanded and threatened hierarchy and comply and should any of the above, depending on the degree of crime and other circumstances be considered. So in response to the actions supported by the mandatory penalties, punishments, and during the various stages of criminal cases is not necessary. And mechanisms can be prevented from entering the criminal records of the cycle. Them towards restorative justice programs such as school recommendation methods leads. So suspended are only the provisions of criminal law and criminal provisions in other countries with different schools of Islam that does not matter much. The achievements to-date and the last man on how to deal with

confidential phenomenon can be quickly and without the time and away from any concern about his opposition to the holy lawgiver, applied in such crimes and other important consideration is that, as of sanctions under both the right and God divided clamping and punishment that the right of Allah in repentance lapses by prison sentences, but fell victim to Clamping is subject to adjudication.

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