



Ratio of Justice and Sense of Justice: the Spread Case of HIV/AIDS in Indonesia

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Article	Abstract
<p>Keywords: Ratio of Justice; Sense of Justice; Bioethics; Fairness; Islamic Law.</p> <p>Article History Received: Feb 13, 2024; Reviewed: Feb 15, 2024; Accepted: Mar 18, 2024; Published: Mar 21, 2024;</p>	<p><i>This article discusses the integration between the ratio of justice and a sense of justice in strengthening bioethical values and Islamic law. The ratio of justice is based on applicable legal norms, while the sense of justice is based on human feelings or intuition. Justice, one of the values of bioethics, shows no conflict with the Islamic religion, and it is needed because bioethics emphasizes thinking development to determine the good and bad sides or ethical dimensions of biological aspects, including medical matters related to life. By approaching cases through concrete examples such as the spread of HIV/AIDS, which mainly occurs due to infidelity, positive criminal law and Islamic law have different ratios of justice and sense of justice. Sanctions in Islamic law tend to be more severe, with the application of stoning to perpetrators of adultery. However, the balance between the ratio of justice and the sense of justice here must consider the medical and beneficial impacts on society.</i></p>



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INTRODUCTION

Justice is not a novel term. Every action that demands equal rights in fulfilling the obligation of "justice" is an inseparable matter. Definitively, understanding the meaning of justice is not hard because several simple formulations can answer the meaning of justice. However, understanding the meaning of justice is not as easy as reading texts on the definition of justice provided by experts. When talking about meaning, it has moved to a philosophical level that requires deep reflection on its deepest essence (Amin, 2015).

The long history of philosophy indicates that human behaviour is partly motivated by a sense of justice (Karni & Safra, 2002). In interpreting justice, Plato was strongly influenced by collectivistic ideals, which viewed justice as a harmonious relationship with various social organisms. Every citizen must carry out their duties by position and natural characteristics (Amin, 2015).

Aristotle, however, defined justice as a good act. In other words, justice is the ultimate virtue. "Justice means treating the equal equally and the unequal unequally, in proportion to their inequality." This principle begins with the assumption that equal matters are treated equally and unequal matters are treated unequally and proportionally. The principle of justice does not make equality essential in distributing life's necessities. The desire for equality in the form of treatment must open the eyes to the inequality of reality (Usanti et al., 2023). In Aristotle's view, justice is giving everyone their right (*fiat iustitia bergeat mundus*) (Amin, 2015); justice does not have to be equated with equality, as fairness does not mean everyone is equal (Usanti et al., 2023).

Understanding justice can start from the legal objectives of justice and other legal objectives, namely legal certainty and benefit. Justice is not explicitly written in the text. However, the legislators have seen that making their legislative products is based on justice, which is part of the aim of the law itself. As in ethical theory, the aim of the law is solely to realize justice specified in the classical theory of legal objectives, whereas in the modern priority theory, the standard in modern theory is that the objectives of law include justice, beneficence, and legal certainty (Dwisvimiari, 2011).

Ratio of justice and a sense of justice are part and whole, legal mentality which acts as an attributive property/quality of legal mindset (Gusarova, 2017). The ratio of justice and a sense of justice play a central role in forming a society's moral and legal foundations. As an ethical and legal principle, justice is closely related to the distribution of resources, fair treatment, and human rights. In the medical realm, bioethical principles such as patient autonomy and distributive justice are fundamental in establishing the ratio of justice. However, the ratio of justice does not always reflect the sense of justice felt by society. On the other hand, Islamic Law provides a unique view of justice, with '*adl*' (fairness) and '*mizān*' (balance) as central pillars. In this framework, the ratio of justice in Islamic law provides an ethical and normative view of how to behave and decide in all aspects of life.

On the other hand, human needs will increase and are always everlasting, and discoveries keep emerging in various fields. Not all of these discoveries are considered good, and some have even caused controversy. Therefore, for the common good, bioethics was finally born. Briefly, Francis S. Collins, a geneticist from the United States, stated that bioethics is a science that considers the morality of the application of biotechnology and medical science to humans. Some of the limitations listed in bioethics are also contained in religious regulations, including Islam. The general principles of bioethics consisting of autonomy, justice, beneficence, and doing no harm, had been taught by the Koran long before the emergence of bioethics (Nasihah, 2022).

The ratio of justice and sense of justice have a central role in forming a society's moral and legal foundations. In this context, this article explores the comparison and complex relationship between the ratio of justice and a sense of justice by focusing on the views of two different but interrelated things seen from a medical perspective and Islamic law. The above background has brought further the following problems to investigate: (1) How can the integration of the ratio of justice and a sense of justice strengthen the values of bioethics and Islamic law? and (2) How can a balance between the ratio of justice and a sense of justice be achieved to form a medical and legal system that is holistic, equitable, and in accordance with bioethical values and Islamic law?

METHOD

From a legal research perspective, resolving legal issues through legal research requires a special approach as a basis for formulating precise, rational, and accurate legal arguments (Irwansyah, 2020). This article used normative legal research methods, focusing on conceptual, case, and analytical approaches. The research specifications used are analytical descriptive, namely providing a complete and accurate description of the data related to the object of the problem resulting from literature studies from various references used to research, explore, and study the concept of the ratio of justice and a sense of justice from a medical and Islamic law perspective. Next, the data were checked for validity for further analysis, interpretation, consideration, and conclusion.

RESULTS AND DISCUSSION

Integration between the ratio of justice and a sense of justice in strengthening bioethical values and Islamic law

Justice is one of the most discussed legal objectives throughout legal philosophy. The aim of law is not only justice but also legal certainty and benefit. Ideally, the law should accommodate their activities. The judge's decision, for example, is likely to be the result of the three. Despite this, some still argue that justice is one of the three most important goals, and some even argue that it is the only goal of law (Amin, 2015). Justice consists of thoughts and feelings about what is fair and unfair

and what someone deserves and does (rights and obligations). justice is about a balanced scale. In *Nicomachean Ethics*, Aristotle distinguishes three forms of justice. The first relates to how resources should be distributed (distributive justice)—such as the principle of equality. The second relates to agreements between humans—promises, commitments, and other types of social contracts (commutative justice), while the final form of justice concerns correcting mistakes (corrective justice). It includes ideas like forgiveness and the Rs— revenge, reparation, restitution, and retribution (Krebs, 2008). Humans are more than short-term, calculative, and self-interested creatures; they are ethical-moral beings, naturally capable of subjecting themselves to laws and legal institutions that are just under commutative and distributive justice (Nijman, 2019).

The sense of justice depends on certain social conditions supporting its development (Kuch, 2023). Meanwhile, the ratio is an instrument that directs, guides and controls human activities. Ratio can discover, perpetuate, strengthen and also dismantle injustices that occur in society. Mistakes in developing thinking patterns can result in attitudes, perspectives, and behaviours that are unfair to each other and nature (Suliantoro & Murdiati, 2018). The ratio of justice refers to the logical and principle basis in forming legal norms. For example, the principle "who breaks the rules must be punished" is part of the ratio of justice. The ratio of justice can be found in legal doctrines, laws, and constitutions, which regulate procedures for enforcing laws and providing sanctions. The ratio of justice also includes aspects such as proportionality of punishment, human rights, and protection against discrimination. This concept creates an objective framework for assessing whether an action or policy is in accordance with the principles of justice underlying the legal system. On the other hand, the sense of justice is subjective and closely related to individual perceptions and experiences. It includes how society feels that the law is applied fairly in everyday life. Social, economic, cultural, and historical factors can influence the sense of justice, which plays an important role in shaping society's views on justice.

Although the ratio of justice is designed to create a fair basis in the legal system, its implementation does not always create a sense of justice felt by society. Sometimes, economic differences, social inequality, or unevenness in applying the law can cause public dissatisfaction with the legal system, even though the policy may be formally considered fair. To achieve a legal system that is effective and accepted by society, it is important to find a balance between the ratio of justice and a sense of justice. It can involve changes in legal regulations, increasing access to justice, and strengthening law enforcement institutions to ensure that the principles of ratio of justice reflect the justice felt by society.

Ethics relating to biological issues is known as bioethics. Bioethics or biological ethics is "the critical investigation of the moral dimensions of decision making in health-related contexts and contexts involving the biological sciences." So bioethics

investigates the ethical dimensions of technological, medical, and biological problems related to their application in life. What about the Islamic religion? Are ethics necessary? Ethics and morals are closely related to each other. Ethics and morals are the study of good and bad actions, determined based on the mind and habits of society, while morals are based on revelation. However, ethics and morals still need each other because, in practice, the moral norms in the Koran and Sunnah are still textual ("not ready for use"). The people need reasoning and *ijtihad* to implement the moral provisions contained in the Koran and al-Hadith. For this reason, ethics and morals are necessary to explain and operationalize the moral provisions of the Koran and al-Hadith. Ethics does not represent a homogeneous community because it addresses a general forum that only adheres to reason (Minarno, 2010).

Thus, bioethical values do not conflict with the Islamic religion; they are needed because bioethics emphasizes the development of thinking to determine the good and bad sides or ethical dimensions of modern biology and technology related to life. In comparison, Islam emphasizes the importance of thinking. The need for humans to always use reasoning and thoughts is also stated by Allah SWT in the Koran (Minarno, 2010). If reasons are a tool for thinking and understanding all of God's creation, then a person who does not want to use reasons and due to this becomes not knowledgeable has wasted God's great gift. Therefore, thinking by reasoning is an Islamic obligation that must be carried out by anyone who professes Islam. A person's faith will not even be perfect if it is not accompanied by knowledge in mind and Allah SWT. calls such people '*al an'aam*'—the livestock.

In Islamic teachings, justice is God's decree for the cosmos or universe of His creation. Justice is a principle that constitutes the law of all celebrations. Therefore, breaking justice is breaking the law of the cosmos, and the sin of injustice will destroy the fabric of human society. Therefore, all human actions must fulfil a sense of justice to preserve human life. The relationship between *maslahah* and justice is difficult to understand if it is not connected through the theological aspects that build the Islamic legal paradigm (Amin, 2015).

In Islam, humans are God's creation and caliphs on earth. They are endowed with reason, choice, and responsibility, including care for other creatures, the environment, and their health. Muslims are expected to be moderate and balanced in all matters, including health. Islamic bioethics is closely related to the broad ethical teachings in the Qur'an, the traditions of the Prophet Muhammad, and the interpretation of Islamic law. Bioethical considerations cannot be separated from religion, which emphasizes the continuity between body and mind, material and spiritual nature, and ethics and legal values. The Qur'an and the hadith of the Prophet have established detailed and specific ethical guidelines and legal values regarding various medical issues (Daar & Blackmy, 2001).

Balancing justice ratios and moral intuition for holistic, equitable medical and legal systems in accordance with bioethics and Islamic law

Justice is one of the basic values that Indonesian society upholds. Justice can be interpreted as the balanced and impartial treatment of everyone. Justice can be realized in various aspects of life. Two main aspects of justice involve the ratio of justice and the sense of justice. The ratio of justice and a sense of justice are interrelated and complement each other. The ratio of justice provides the basis and guidance in realizing justice, while the sense of justice provides enthusiasm and motivation in upholding justice.

Justice does not only demand equal treatment that will ultimately produce the same and certain results in the context of positivism, but justice is based more on conformity with portions or what is known as distributive justice, proportional justice, so that in this case the legislators or law enforcers are required to be more responsive by considering the values of a legal incident and looking at the context of the existing facts without overlooking the values that exist, live, and develop in a society so that they can decide on a case not only based on what is written/contained in statutory regulations but also by looking at the background of the facts that occurred using conscience as consideration towards justice. Here, conscience is used as an important factor in considering a decision to reach a decision that has the value of justice so that it can be accepted and implemented by the intended legal subjects to realize the welfare of society through just law enforcement (Harjanti, 2010).

In enforcing the law, three elements must always be taken into account, namely legal certainty (*rechtsicherheit*), beneficence (*zweckmassigkeit*), and justice (*gerechtigkeit*), as taught by Gustav Radbruch in *idee des recht* (Teaching the Ideals of Law). If in legal interactions in society, someone violates legal norms/rules, then this will cause harm to other parties (Hakim, 2017). The judge's decision must consider juridical, philosophical, and sociological aspects to realize justice oriented toward legal, moral, and social values. Legal justice can only be obtained from the law as a consequence of the juridical aspects of the judge's decision. Considering the juridical aspects in the judge's decision is the main aspect, considering that the judge will rely on the applicable law in deciding cases. The philosophical aspect is an aspect that is based on truth and justice, while the sociological aspect considers the cultural values that live in society. Applying philosophical and sociological aspects requires extensive experience, knowledge, and wisdom that can follow neglected societal values. Its implementation is very challenging because it does not follow the principles of legality and is not tied to the system. Including these three elements does nothing but ensure that the decision is considered fair and accepted by the community (Yunanto, 2019).

Furthermore, the aspect of the principle of justice in bioethics is written in QS An-Nisa verse 58: "*Indeed, Allah orders you to convey a message to those who are entitled to receive it, and (orders you) when establishing a law between humans, so that you determine it fairly.*" The

principle of justice or fairness has been enjoined in the paragraph above. Islam commands through the Qur'an to do justice or uphold justice in every decision regarding its people's actions, deeds, and behaviour. The command to do justice does not look at differences in religion, ethnicity, and race. Justice in question includes maintaining individual rights and providing and respecting their rights in a balanced manner (Ali, 2019).

Meanwhile, when examining cases with specific instances, such as the transmission of HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) that is primarily attributed to acts of infidelity, distinct disparities arise between the application of criminal law and Islamic law concerning the proportions of justice and moral integrity. As reported, HIV cases in Indonesia increased in 2023. Spokesperson for the Ministry of Health, Dr. Muhammad Syahril, said that housewives dominated the transmission of cases. Based on data from the Ministry of Health, the number of housewives infected with HIV reaches 35%. This figure is higher than HIV cases in other groups, such as sex workers and MSM (men sex with men) groups. As a result, new HIV cases among housewives increase by 5,100 cases every year (Kemenkes RI, 2023). Housewives can become infected with HIV through various ways of transmission, including blood transfusions, unsafe sexual intercourse, and injecting drug use. The majority of HIV cases target housewives infected by their husbands (in official marriages) (Najmah et al., 2020). The following is an example of a case of a housewife who is at risk of HIV infection.

In 2015, when the author was still studying for the medical profession, The author encountered a unique case experienced by a middle-aged father who had HIV/AIDS at the genital skin clinic and VCT (Voluntary Counselling and Testing) at the Community Health Centre. Acquired Immunodeficiency Syndrome (AIDS) is a collection of symptoms or diseases caused by a decrease in the body's immunity due to infection with the Human Immunodeficiency Virus (HIV), which is a member of the retroviridae family (Setiati et al., 2014). Voluntary Counseling and Testing is a program administered to assist those who will undergo an HIV test. This program is carried out in a clinic specifically providing VCT services. HIV counsellors who have received training are responsible for a VCT clinic. This program is designed to facilitate clients who voluntarily request a test for themselves after receiving sufficient information. Counselling is carried out at least twice, namely before the test (pre-test counselling) and counselling after the test results are obtained (post-test counselling) (Raka Sudewi et al., 2011).

In the case of the middle-aged father, the author found the father crying uncontrollably. Once the father was under control, the author continued to find out why he cried. Instead of coming with his wife and four children, the father was found coming on his own because he did not have the heart to reveal that his wife and children also had the potential to contract HIV from him. Apart from the fact that he

was known by his family and environment as a very good figure and a teacher at one of the largest Islamic boarding schools in East Java, he was infected from his secret sexual relationship with the *kyai* who argued that the *kyai* was holy and had to be followed. He also could not bear it if later, after finding out the results were positive, his family had to take routine medication whose side effects were extremely bad for his physical and psychological conditions. The father was encouraged to invite his family for their good and to slow down the progress of AIDS, which, without treatment, will develop and lead to death.

Another example is the case of infidelity which seems to have become the trend lately. Infidelity-related cases once filled news headlines on printed and electronic media published daily. Infidelity in marriage is destructive and can have negative consequences for both the perpetrator of the affair and the partner of the person committing the affair. Cheating is an act of adultery because the essence is illegal sexual relations between two people of different sexes without marital ties. Therefore, no law tolerates this act and society denounces it, especially since religious norms (Islam) do not condone it (Ardha et al., 2023). Many housewives contract HIV from husbands who might have sexual intercourse with sex workers. This case was revealed by the LEKAS (*Lembaga Kajian Strategis/Strategic Studies Institute*) Foundation, Bogor on the National Family Day dated 29 June and National Children's Day on 23 July 2023 during a media briefing entitled 'Raising awareness, providing accurate information, influencing policy, strengthening partnerships, regarding the role of family and children's rights in preventing HIV/AIDS transmission' (Lestari & AR, 2023).

The Indonesian Criminal Code explains that adultery, as specified under Article 284 of the Criminal Code, is referred to as a criminal offence with a maximum prison sentence of nine months, with the following provisions: a. A married man who commits adultery is aware that Article 27 of the Criminal Code applies to him. b. A married woman commits adultery. According to the provisions of this Article, adultery is sexual intercourse committed by a married man or woman with a woman or man who is not his wife or husband. To be prosecuted under this Article, the sexual intercourse must be consensual. According to the law, it can only be said to be sexual intercourse if the male's genitals enter the female's genital opening in such a way that semen is released. Positive criminal law does not punish people who commit adultery unless there is a complaint from one of the partners who feels polluted by the act. Therefore, if the perpetrator is silent and no one feels polluted or harmed, none is punished. However, Islamic criminal law punishes adultery in any condition and form because adultery is seen as a major sin and is contrary to morals. Damaged morals lead to a damaged society (Ardha et al., 2023).

For those who commit adultery in Islam, of course, there are very strict and harsh consequences because the issue of preserving offspring is one of the five objectives of the Shari'a, which must receive priority, namely preserving religion, soul,

offspring, intellect, and property. In Indonesia, Islamic law can be referred to as a legal system that regulates how humans live and how to live, including how to improve and maintain offspring. To improve and maintain human offspring, marriage law is a law established by Allah SWT. for the benefit of His servants according to their nature in channelling lust in a halal way to create a household atmosphere that is *sakinah, mawaddah wa rahmah*. The punishment of stoning for the perpetrator of adultery can be applied if it is proven by the testimony of four fair witnesses or a confession from the perpetrator. Stoning in Islam must be carefully considered before its implementation because it is related to human life. Therefore, the statements of four witnesses are very difficult to put into reality because witnessing must involve seeing the incidence of adultery with their own eyes. Likewise with confession, if someone admits that he has committed adultery and asks to be stoned, the person concerned is directed to repent and withdraw the confession. However, it does not mean that Islam sees adultery as a mild offence. Considering that adultery is a major sin or serious violation, the sanctions are severe (Ulfiyati & Muniri, 2022).

The two laws above show vivid differences indicating that the sanctions given to adulterers in Islam should be enforced against people who have been proven to have committed adultery, that is, as the act of adultery is a major sin or serious violation, the sanctions imposed to prevent damage and attract benefits are severe. In contrast, the sanctions for adultery perpetrators in positive criminal law, it turns out that not all adulterers can be subject to sanctions, and the sanctions are still relatively light (Ulfiyati & Muniri, 2022). It certainly has a very different ratio of fairness and sense of justice. In the author's opinion, with the enormity of the damage caused, especially from the perspective of medical impacts, Islamic law has a holistic and equitable ratio of fairness and sense of justice.

In Islam, the punishment for adultery for married people is more severe than for those who are unmarried because of the different perspectives related to the two situations. Here are some reasons why penalties for married people tend to be harsher:

1. Violation of Marital Commitment: Married people have committed to be faithful to their partner in a religiously recognized marriage bond. Breaking this fidelity is considered a betrayal of those promises and commitments, which can cause greater damage to marital and family relationships.
2. Greater Social Impact: Adultery committed by married people can have a greater social impact than adultery committed by unmarried people. It is because of the potential to disrupt family stability and cause deeper psychological damage to the partner and children involved.
3. Community Interests and Family Position: In the Islamic view, the family has a very important social position. Adultery committed by married people can threaten the position and stability of the family, so the punishment tends to be more severe to prevent greater damage to the structure of society.

Ultimately, justice refers to the judge's efforts to find the truth and provide law if there is a violation for which there are no formal rules. It is a form of procedural justice. Procedural justice is the external aspect of law where substantive justice is realized. Without procedural justice, substantive justice will be mere theories that do not touch the reality of society. However, apart from justice, legal certainty and beneficence are also important to consider in law enforcement (Amin, 2015).

CONCLUSION

Integrating the justice ratio and sense of justice is crucial in fostering equitable legal systems that uphold bioethical principles and Islamic values. Justice, encompassing distributive, commutative, and corrective forms, is the foundation for legal norms, while the sense of justice reflects societal perceptions of fairness and equality. However, disparities between the ratio of justice and the sense of justice may arise, leading to public dissatisfaction and undermining the legal system's legitimacy. Bioethics, grounded in ethical considerations of medical and biological issues, harmonizes with Islamic teachings, emphasizing the importance of reason, balance, and justice. In addition, Islamic law, inherently promoting justice as a divine decree, provides ethical guidelines and legal values for various medical dilemmas, aligning with bioethical principles. Achieving a balance between the justice ratio and a sense of justice is imperative for holistic, equitable medical and legal systems. Upholding legal certainty, beneficence, and justice while considering philosophical, sociological, and theological aspects ensures fair and accepted legal decisions. Moreover, addressing specific cases, such as HIV transmission and adultery, underscores the need for comprehensive legal frameworks that respect individual rights, uphold family stability, and deter harmful behaviours. In essence, the research underscores the importance of integrating the justice ratio and sense of justice to forge legal systems that comply with bioethical values and Islamic law and reflect societal notions of fairness and equity. Through a nuanced understanding of justice and moral principles, policymakers and legal practitioners can strive towards harmonizing law, ethics, and religious values, ultimately promoting societal well-being and justice for all.

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