

***Diat* and Peace Money in the Crime of Culpable Homicide**

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Abstract

Islamic Law and Indonesian Criminal Law place compensation as an essential part of criminal liability. The fundamental difference is that compensation is primary in Islamic law, while positive law is an alternative. This paper examines and compares the application of the theory of *diat* and compensation in the crime of culpable homicide. The writing is framed with a normative-empirical approach, with data sources from books and court decisions. The results of the study show three things: First, *diat* and peace are different conceptions. *Diat* refers to property given in exchange for a slain soul, while peace is given as a compensation fee and as an effort to forgive. Second, the amount of compensation in the *diat* is regulated in detail with a certain nominal. At the same time, positive law is an agreement considering the perpetrator's ability. Third, compensation in the *diat* is an inspiration for developing legal theories such as restitutive justice, which emphasizes the importance of forgiveness and reconciliation between two parties. Research suggestions so that the *diat* theory can be developed into modern law so that it can be an inspiration for lawmakers so that in its application, the *diat* theory can be a reason for the abolition of crimes, not limited to leniency.

Keywords: *diat*; Islamic law; criminal law; restorative justice



Hukum Islam dan hukum pidana Indonesia menempatkan kompensasi sebagai bagian penting dari pertanggungjawaban pidana. Perbedaan mendasarnya adalah kompensasi menjadi primer dalam hukum Islam, sementara hukum positif sebagai alternatif. Tulisan ini mengkaji dan membandingkan penerapan teori *diat* dan kompensasi dalam tindak pidana pembunuhan tersalah. Tulisan dibingkai dengan pendekatan normatif-empiris, dengan sumber data dari buku dan putusan pengadilan. Hasil penelitian menunjukkan tiga hal: Pertama, *diat* dan perdamaian adalah konsepsi berbeda. *Diat* mengacu pada harta yang diberikan sebagai ganti jiwa yang terbunuh, sementara perdamaian diberikan sebagai biaya santunan serta sebagai upaya pemaafan. Kedua, besaran kompensasi dalam *diat* diatur secara rinci dengan nominal tertentu, sementara dalam hukum positif adalah kesepakatan dengan memperhatikan kesanggupan pelaku. Ketiga, kompensasi dalam *diat* menjadi inspirasi bagi pengembangan teori hukum seperti keadilan restitutif yang menekankan pentingnya pemberian maaf dan rekonsiliasi dua pihak. Saran penelitian agar teori *diat* dapat dikembangkan ke dalam hukum modern sehingga dapat menjadi inspirasi para pembuat hukum sehingga dalam penerapannya teori-teori *diat* dapat menjadi alasan penghapusan pidana, tidak sebatas pada keringanan hukuman.

Kata Kunci: *diat*; hukum Islam; hukum pidana; keadilan restoratif

Introduction

Law and justice are two sides that cannot be separated. The law is like a vehicle assigned to carry the load of justice. The relationship between the two is organic in that the legal organ must be an organ of justice. Thus, the law is justice related to formal procedural conditions and material justice. Law is a set of rules that aim to realize justice and the common good in society. Such is the legal understanding put forward by Thomas Aquinas (1225-1274) which has coloured many legal academic studies in the West until the ideas of positive schools replaced it.¹

The school of legal positivism (*legal positivism*) first emerged in the 19th century, with John Austin (1790-1859) as the main character. Austin defines law as a rule that is not necessarily related to justice. Law is part of social facts that must be defined based on objective facts. Austin said: "*A law is a command which obliges a person or persons... Laws and other commands are said to proceed from superiors and to bind or oblige inferiors.*"²

With this statement, Austin does not care whether a law is fair. For Austin, the law is a coercive commandment, not related to the issue of whether there is justice in it.³ The positivism school is adopted and enforced in modern countries, including Indonesia. Weaknesses One of the positivist schools is that it can open up users of social contract theory to become tyrannical and authoritarian. Why is that? Because the control mechanism for the state to be obligated to do justice in formulating punishment is defeated by the state's right based on a social contract. He became a link between the social contract and the flow of legal positivism with a sense of justice in society.

Concerning criminal law, positivism considers that criminalization and the formulation of punishments for perpetrators of crimes is the state's obligation. Another matter is whether the victim or his family is satisfied with the judge's verdict. It is what makes social contract theory have the potential to become

¹ Peter Adamson, *Philosophy in the Islamic World in Context* (Berlin: De Gruyter, 2019), 114. Hans Kelsen, *Essays in Legal and Moral Philosophy*, ed. Ota Winberger (Boston: D. Reidel Publishing Company, 1973), 113, <http://link.springer.com/10.1007/978-94-010-2653-6>.

² David Lyons, *Ethics and the Rule of Law* (Cambridge: Cambridge University Press, 1993), 8.

³ Muhammad Muslehuddin and Yudian Wahyudi Asmin, *Filsafat Hukum Islam dan Pemikiran Orientalis: Studi Perbandingan Sistem Hukum Islam* (Yogyakarta: Tiara Wacana Yogya, 1991), 14. Mashood A. Baderin, *Islamic Legal Theory* (London and New York: Routledge, 2017), 243, <https://doi.org/10.4324/9781315251721>.

tyrannical and authoritarian when collaborating with the positivism paradigm. The state becomes open to deciding the law even though it may not align with the community's sense of justice. Therefore, an in-depth exploration of the sources of national raw materials is needed to see alternative formulations of just criminal justice. The primary reason Islamic law is studied is its uniqueness in distributing rights. What rights are owned by individuals and what rights are owned by the state have been detailed. Although in many respects, the Islamic legal system has similarities with the theory of social contract justice, Islamic law has normatively provided space for victims and their families to participate in determining a sense of justice in the form of punishment for perpetrators.

For example, suppose a murder crime occurs. In that case, the victim's family is given three options: to forgive the perpetrator without having to pay a fine (*diat*), to forgive the perpetrator but to be accompanied by payment of the *diat*, and to demand equal revenge by the perpetrator.⁴ Meanwhile, the crime of culpable homicide is returned to the perpetrator's intention. Included in this category are traffic accidents that cause the death of another person, categorized as unintentional homicide (*qatl al-khata'*). For guilty murder, Islamic law categorizes sanctions into two things: paying a fine or compensation and the punishment imposed by the judge at the judge's discretion (*ta'zīr*).⁵ If the perpetrator is punished, the *diat* paid is categorized as light *diat* (*diat mukhaffafah*) or the equivalent of 100 camels.

The application of *diat* in the context of the development of Indonesian law is very much needed as an alternative law to imprisonment for murder cases.⁶

⁴ 'Abdul Qādir 'Awdah, *al-Tashrī' al-Jināī al-Islāmī*, vol. 2 (Beirut: Mu'assasah al-Risālah, 1987), 103.

⁵ Paisol Burlian, *Implementasi Konsep Hukuman Qishash di Indonesia* (Jakarta: Sinar Grafika, 2015), 52. Mohd Munzil bin Muhamad et al., "Qarinah: Admissibility of Circumstantial Evidence in Hudud and Qisas Cases," *Mediterranean Journal of Social Sciences* 6, no. 2 (2015): 141, <https://doi.org/10.5901/mjss.2015.v6n2p141>.

⁶ Russell Powell, "Forgiveness in Islamic Ethics and Jurisprudence," *Berkeley J. Middle E. & Islamic L.* 4 (2011): 17, <https://digitalcommons.law.seattleu.edu/faculty/117>; Zainuddin Zainuddin, "Restorative Justice Concept on Jarimah Qishas in Islamic Criminal Law," *Jurnal Dinamika Hukum* 17, no. 3 (2017): 335–41, <https://doi.org/10.20884/1.jdh.2017.17.3.826>. Arzoo Osanloo, "Forgiveness Work," in *Forgiveness Work* (New Jersey: Princeton University Press, 2020), <https://doi.org/https://doi.org/10.1515/9780691201535>.

According to Topo Santoso⁷, the application of *diat* has a solid theoretical basis, juridically, sociologically, and philosophically and even has a strong foundation in the Indonesian constitution. *Diat* is not a guide for judges but a reason not to be sentenced to prison or released from prison. Based on the above background, this paper will examine the implementation of *diat* and peace in wrongful killings, especially murders due to traffic accidents that cause one person to die.

This research is normative-empirical legal research. The research was chosen to see and test whether normative legal provisions work on every societal event. The approach chosen is a judicial case study, namely a legal case study approach that involves court intervention in a legal settlement. This approach will be compared with a comparative law approach to show the differences in legal values. This incident was examined by examining seven (7) court decisions with legal force regarding the implementation of Article 310, Paragraph 4 of the Traffic Law. After the data is collected and an in-depth analysis is conducted, conclusions are drawn according to the research problem.

The Concept of *Diat* and Peace Money

Diat is property given to the victim's family in exchange for the soul that was killed. *Diat* is a payment to the victim or his family as compensation for the violation that has been committed. *Diat* is a fine or payment of compensation to the victim of persecution or murder.⁸ In the study of Islamic criminal law, *diat* is divided into two categories. *First*, *diat* is a substitute punishment for intentional homicide. *Diat* is taken if the victim's family provides forgiveness or forgiveness to the perpetrator. *Second*, *diat* is the primary punishment for murder, such as intentional homicide, guilty murder and torture.⁹ The second *diat* becomes the right of the victim or the victim's family. *Diat* payments are interpreted as compensation or capital for the heirs to continue life. The state

⁷ Hambali Yusuf, Topo Santoso, and Nashriana Nashriana, 'Permaafan dan *Diat* Alternatif Pidana Penjara Pada Tindak Pidana Pembunuhan Biasa (Doodslag)', *Jurnal Hukum Ius Quia Iustum* 28, no. 3 (2021): 481–504.

⁸ Totok Jumantoro and Samsul Munir Amin, *Kamus Ilmu Ushul Fikih* (Jakarta: Amzah, 2005), 57.

⁹ Wael B Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 86. Mohammad Hashim Kamali, "Appellate Review and Judicial Independence in Islamic Law," *Islamic Studies* 29, no. 3 (1990): 215–49. <https://www.jstor.org/stable/20839999>.

(government) may not levy taxes on compensation for peace. In other words, *diat* should not be included in the state treasury as state income.¹⁰

Scholars define *diat* as compensation for the harm suffered by the victim. Because as compensation for losses, the nominal *diat* between one victim's family and another is different. Islamic law provides another alternative if the perpetrator or his family refuses to pay the *diat*. The alternative law is that the perpetrator must receive forgiveness or forgiveness from the victim's family. Thus, the death sentence was replaced by the *ta'zīr* law by the government (judge).

Diat for guilty killing in Islamic criminal law is regulated in QS. al-Nisā' (4): 92, QS. al-Baqarah (2): 178, and several prophetic traditions narrated by al-Bukhārī, Muslim, Ibn Mājah, Abū Dāwud, Aḥmad and others.¹¹ Legal experts agree that *diat* is a human right in the sense of the rights of the victim or his family. The existence of victims' rights in handling crimes is a feature of Islamic criminal law. The victim or heir becomes the party who is given the right to decide whether to give forgiveness or not. If the victim's family is at fault in the murder, the victim's family forgives, and then the law becomes invalid. However, according to Mālik, the perpetrator must be given *ta'zīr*.¹² Meanwhile, if the family does not provide forgiveness, the punishment for guilty killing is normatively paying 100 camels.

Compensation *diat* refers to the literal meaning of QS. 4: 92. The law of *diat* is part of the *jarīmah qiṣāṣ* of intentional murder.¹³ The law stands alone in the crime of guilty murder and torture. In addition to *diat*, according to experts, perpetrators are burdened with paying *kafarāt* to free enslaved people or fasting for two consecutive months. The *diat* of 100 camels is equivalent to 200

¹⁰ Rokhmadi, *Kritik Konstruksi Hukum Pidana Islam*, ed. Nazar Nurdin, 1st ed. (Semarang: eLSA Press, 2019), 182.

¹¹ Muḥammad Ibn Idrīs al-Shāfi'ī, *al-Umm*, ed. Badruzzaman (Jakarta: Pustaka Azzam, 2015), 1–6.

¹² Simon Butt and Tim Lindsey, *Indonesian Law* (London: Oxford University Press, 2018); Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991). Rokhmadi, *Hukum Acara Pidana Islam*, ed. Nazar Nurdin (Semarang: Lawwana, 2021), 5.

¹³ Amir Syarifuddin, *Ushul Fiqh 1*, 5th ed. (Jakarta: Kencana, 2011), 10. Amir Alishahi Tabriz, Hossein Dabbagh, and Harold G Koenig, "Medical Ethics in Qiṣās (Eye-for-an-Eye) Punishment: An Islamic View; an Examination of Acid Throwing," *Journal of Religion and Health* 55, no. 4 (2016): 1426–32, <https://doi.org/10.1007/s10943-015-0120-8>.

cows, 2,000 goats, 1,000 dinars or 12,000 dirhams.¹⁴ If using the 2022 exchange rate, one goat is valued at 3 million rupiahs, the *diat* paid is 2,000, and the *diat* paid is 6 billion rupiahs.

Another opinion says that 100 camels for wrongful killing are 20 camels of different types or a maximum of 100 camels.¹⁵ The *diat* for a wrongful murder is included in the light *diat* category.¹⁶ *Diat* can be replaced by payment of money in the amount determined by the court. The fine for guilty murder in Saudi Arabia is \$6,000¹⁷ or 90 million rupiah.

The payment for a guilty murder can also be charged to his family or the state treasury (government) if the perpetrator is economically incapable. If it is through the state treasury, the payment can be from *zakat*, *infaq*, alms or *waqf* funds. Experts agree that the guilt of murder can be blamed on another person based on the incompetence of the perpetrator. QS. al-Isrā' (17): 36 explicitly states that every human being is held accountable.¹⁸

Diat compensation belongs to the heirs as a provision to continue life. This law aims to create justice and balance a small part of the core teachings of Islamic law. *Diat* is in the muamalah category. This law emphasizes the aspect of forgiveness from the heirs. The punishment for the perpetrator will be by the presence or absence of willingness and forgiveness from the victim's family. Islamic law is very concerned about individual and state rights in criminal law cases. Therefore, in the law above, the judge (government) must consider individual human rights before the state's rights to maintain public order.¹⁹

In this context, the law on guilty killings inspires modern legal schools to believe that the imposition of punishment is not limited to imposing sanctions according to the level of the act. Sanctions in modern law are transformed into various legal variants following the development of more complex human

¹⁴ Rokhmadi, *Hukum Acara Pidana Islam*, 7.

¹⁵ Hazairin, *Tujuh Serangkai Tentang Hukum* (Jakarta: Bina Aksara, 1981), 23.

¹⁶ Burlian, *Implementasi Konsep Hukuman Qishash di Indonesia*, 55.

¹⁷ Jumantoro and Amin, *Kamus Ilmu Ushul Fikih*, 60.

¹⁸ Rokhmadi, *Kritik Konstruksi Hukum Pidana Islam*. 10

¹⁹ Vardit Rispler-Chaim, *Disability in Islamic Law* (Leiden: Springer, 2007), 18. Ahmad bin Muhammad Husni et al., "Relationship of Maqasid al-Shariah with Qisas and Diyah: Analytical View," *The Social Sciences* 7, no. 5 (2012): 725–30, <https://doi.org/10.3923/sscience.2012.725.730>. Rokhmadi, *Hukum Acara Pidana Islam*.

life.²⁰ The concept of forgiveness in Islam, such as restitutive justice theory, emphasizes the need for opportunities for forgiveness²¹ and the possibility of reconciliation between the parties. The victim's family can exercise their right to forgive or not to forgive the perpetrator of the crime (*restorative*).²²

Meanwhile, peace in studying positive law is not the basis for abolishing crime. Peace between perpetrator and victim is possible but only based on leniency. Guilty killings in traffic accidents are legally regulated in Article 229, Paragraphs 1 and 4, Article 230, Article 235, Article 273, Article 310, and Article 311 of Law No. 22 of 2009 concerning Road Traffic and Transportation.

The regulation divides criminal liability between individuals and legal entities (companies). Traffic accidents are divided into three parts: minor, moderate and severe. The mild category appears from damage to vehicles or goods. In contrast, the moderate category can be seen as minor injuries and damage to vehicles or goods. At the same time, the heavy category resulted in the victim's death (Article 229). The three categories of accidents are categorized as legal events.

Because it is a legal event, forgiveness between the victim's family and the perpetrator is not an abolition of the sentence. It is illustrated in Article 235, which states that if the victim dies, the driver, owner or transportation company is obliged to assist the heirs in medical treatment or funeral expenses without aborting the criminal case.

The criminal sanction for a person who is negligent in causing loss of life is punishable by a maximum sentence of 6 years and a fine of 12 million rupiahs (Article 310, Paragraph 4). Meanwhile, a person who intentionally dangerously drives a vehicle to the point of causing loss of life will be punished with a maximum imprisonment of 12 years and a fine of 24 million rupiahs (Article 311, paragraph 5). Meanwhile, if referring to the Criminal Code (KUHP), the guilty murderer is sentenced to a maximum of five years or imprisonment for one year (Article 359).

²⁰ Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016).

²¹ Powell, "Forgiveness in Islamic Ethics and Jurisprudence"; Baderin, *Islamic Legal Theory*, 268. Osanloo, "Forgiveness Work."

²² S. Modongal, "Justice (Adi) through Forgiveness ('afw): Islamic Ethics for Qisās as an Alternative to the Western Conflict Resolution Mechanism", *Islamic Quarterly* 64, no. 2 (2020): 147–58.

Forgiveness in Traffic Accidents

Several traffic accidents that cause loss of human life are still common in various regions in Indonesia. The causes of accidents vary. Based on data from the Central Statistics Agency (BPS) compiled by the Indonesian National Police, accident victims in 2017 reached 104 thousand incidents, 109 thousand (2018) and 116 thousand (2019). Of these incidents, the death toll was 30,694 people (2017), 29,472 people (2018) and 25,671 people (2019). In comparison, the victims of severe injuries and minor injuries were 14,559 and 121,575 people (2017), 13,315 people and 130,571 people (2018), 12,475 people and 137,342 people (2019).²³

An example of an accident incident was experienced by SK (55). One afternoon on August 7 2018, driving a truck on Jalan Urip Sumoharjo Semarang, SK unknowingly hit AS and SN, who was riding a motorcycle at the time, causing both of them to die. SK only realized when the wheel of his truck hit something, then decided to stop. SK saw the motorcycle being driven by the victim, fell and was dragged under the truck. Unfortunately, sparks appeared that burned the motorbike and the truck. In the post-mortem on behalf of the United States, the cause of death was blunt force trauma in the form of abrasions on some bodies and faces, burns all over the body, and broken ribs.

Meanwhile, the cause of SN's death, based on the post-mortem, was blunt force trauma in the form of abrasions in various parts, lacerations and signs of broken bones. On that basis, the state demands that the SK was negligent in driving and caused the victim to die under Article 310 paragraph 4 with a maximum penalty of 6 years and a fine of 12 million rupiahs. SK was also processed by law. During the judicial process, the statements of witnesses, including NN, MR, and SG, have been heard. The panel of judges considers the elements in the article, namely that everyone drives a motorized vehicle and, due to negligence, causes the victim to die. In his consideration, the judge decided to impose a prison sentence on SK of 10 months and a fine of Rp. 1 million. The punishment considers compensation/treasury to the victim's

²³ Badan Pusat Statistik, 'Jumlah Kecelakaan, Korban Mati, Luka Berat, Luka Ringan, dan Kerugian Materi 2017-2019', bps.go.id, 2020, <https://www.bps.go.id/indicator/17/513/1/jumlah-kecelakaan-korban-mati-luka-berat-luka-ringan-dan-kerugian-materi.html>.

family for 27 million rupiahs and evidence of reconciliation between the victim and the defendant.²⁴

The third incident was carried out by TR (41). On February 11 2018, TR driving a truck, had an accident by hitting a motorcycle rider (ANS and YDA) and died. After the incident, TR did not stop the truck and then drove to the industrial area. Residents chased the truck driver until they managed to hand over the driver to law enforcement officers. TR was prosecuted and tried in court. Several witnesses were presented, including DS, TO, MG and JI. After considering witnesses and evidence, the judge decided to sentence TR to one year and four months in prison and a fine of 10 million rupiahs.²⁵ In the decision, the judge considered forgiveness from the heirs and compensation of 20 million rupiahs.

The fourth incident was carried out by PO (39). In 2018, PO driving a four-wheeled vehicle, had an accident involving two pedestrians and died. PO was unaware of the incident because he was sleepy and under the influence of alcohol. The perpetrator's family provided compensation to each victim of 7.5 million rupiahs. The judge, in his decision, agreed to sentence PO to 2 years and three months in prison because he was proven to have violated Article 310, Paragraph 4.

The fifth incident involved LND (23). In 2017, LND driving his private vehicle, had an accident that caused the death of a motorcyclist (AS). In the incident, LND drove his car in the opposite direction on Jalan Sriwijaya. LND is being prosecuted under the threat of Article 310, Paragraph 4. Witnesses have been heard in this case, including ST, SO, SP, MRR, and TT. After considering the witnesses and evidence, the judge agreed to impose a prison sentence of 1 month after considering forgiveness from the family, compensation for recitation fees of 12 million rupiahs, insurance for children's education of 450 million rupiahs in the form of deposits and providing work for the victim's wife at the place of the perpetrator's family with a salary of 2, 2 million rupiahs per month.²⁶

²⁴ Semarang District Court Decision Number 688/Pid.Sus/2018

²⁵ Semarang District Court Decision Number 141/Pid.Sus/2019

²⁶ Semarang District Court Decision Number 324/Pid.Sus/2017

The sixth accident incident involved the AS. In 2021, the AS, who was driving a water truck, could not control the vehicle when it was in a downhill condition and then hit some vehicles, causing four deaths (SA, NH, EPR, AKT) and two people being injured (FS and FF). The court examined several witnesses, including NR, FF, FS, NFM, AI, and expert witness AA. From all the witnesses and evidence, it was concluded that the AS was proven to have violated the provisions of Article 310, Paragraph 4 and was sentenced to 3 years and six months in prison and a fine of 10 million rupiahs.

The accident involved a seventh LS (35). In 2017, LS driving a private vehicle, had an accident by hitting a motorcycle on Jalan S Parman Semarang, causing one person to die and one person to be injured. In this case, testimony from witnesses, including PJ, BS, and PDP, was obtained. After examining the evidence, the judge concluded that LS was guilty of violating Article 310, Paragraph 4 with a prison term of 1 month after the pardon and compensation of 100 million rupiahs.²⁷ The seven traffic incident cases can be described in Table 1.

Table 1
Seven Decisions on Traffic Accident Cases

No	Names of Defendants and Victims	Forgiveness Family	Compensation/ Cost of Peace	Sentence
1	Defendant: SK (55) Victims: AS and SN	<ul style="list-style-type: none"> • Forgive; • Receive compensation; • Written proof of peace. 	Compensation from family and company is 27 million rupiahs.	Ten months, it fined 1 million rupiahs.
2	Defendant: LF (20) Victims: TAW, DP	<ul style="list-style-type: none"> • Forgiving; • Receive compensation. 	The amount of compensation is not mentioned in the decision.	One year, a fine of 1 million rupiahs.
3	Defendant: TR (41) Victims: ANS and YDA	<ul style="list-style-type: none"> • Forgive; • Receive compensation. 	Compensation from the perpetrator's family and the company is 20 million rupiahs.	One year four months, a fine of 10 million rupiahs.

²⁷ Semarang District Court Decision Number 425/Pid.Sus/2017

4	Defendant: PO (39) Victims: 2 people	<ul style="list-style-type: none"> Received compensation. 	Compensation from the families of the perpetrators of each victim is 7.5 million rupiahs.	Two years three months, fined 5 million rupiahs.
5	Defendant: LND (23) Victim: AS	<ul style="list-style-type: none"> Forgives; Receive Compensation; The Peace Agreement is known to the Notary. 	<ul style="list-style-type: none"> Study fee of 2.2 million rupiahs; Children's education Costs 450 million rupiahs; The victim's wife is employed at the minimum wage of 2.2 million rupiahs. 	One month, a fine of 10 million rupiahs.
6	Defendant: AS (51) Victims: SA, NH, EPR, AKT, FF, FS	<ul style="list-style-type: none"> Received compensation from the company. 	<ul style="list-style-type: none"> Victims are given compensation of 5 million rupiahs; Damage to the vehicle will not be reimbursed. 	Three years six months, and a fine of 10 million rupiahs.
7	Defendant: LS (35) Victims: W, PR	<ul style="list-style-type: none"> Forgive; Receive compensation; There is a peace deed. 	<ul style="list-style-type: none"> The perpetrator's family gave compensation of 100 million rupiahs. 	One month 15 days, a fine of 10 million rupiahs.

Source: Semarang District Court Decision

From the cases described above, there is a different treatment from the implementation of article 310, Paragraph 4. The similarity of several cases above is that there is an agreement between the heirs. Peace was followed up with the provision of compensation with different nominal wages. Compensation is given in the form of death costs, medical expenses, costs of religious ceremonies, education costs and job security for the victim's family. Of the seven cases, one narrative was found that the greater the compensation given to the victim's family, the lighter the verdict.

In the author's opinion, several things need to be studied from legal cases, such as table 01—analysis of motor accidents from the perspective of the perpetrators—*first*, the perpetrators who drive private vehicles but are affected by alcohol. Although the LND and PO cases have similarities due to the influence of alcohol, the sentences handed down are different. The difference is that LND assists the heirs more significantly, from the cost of recitation and children's education to job security for the victim's family. Meanwhile, PO provides death compensation for each person of 7.5 million rupiahs. *Second*,

the case of LS, who was sentenced to 1 month and 15 days after the reconciliation deed and the provision of compensation of 100 million rupiahs.

They are seen from the point of view of the general motorized vehicle used. *First*, the perpetrators of driving public transportation owned by the company were experienced by SK and TR. The legal verdicts of the two are different; SK was sentenced to 10 months, while TR was sentenced to 1 year and four months. The difference is the background of the accident. In the decision, SK is responsible after the accident, while TR is not. By Article 231 of the Traffic and Road Transport Law, the driver involved in an accident is obliged to stop the vehicle being driven, provide assistance, report to law enforcement officials and provide information regarding accident incidents. The penalty is different because the SK compensation to the heirs is greater than the TR benefit.

They are judging from the element of peace with the heirs. The case of AS proves that forgiveness and compensation are essential in considering the judge's decision. The absence of forgiveness and compensation to the heirs makes the verdict relatively high. The sentence of 3 years and six months calculates compensation from the company where the perpetrator works.

It is where the urgency of forgiveness from the heirs, as well as the provision of compensation for the victims or victims' families, reimbursement of medical expenses, recitation fees, education of the victim's children, and jobs for the bereaved families, appears. This problem can be solved through kinship between the perpetrator's and victim's families. The phrase 'the greater the compensation given to the heirs, the lighter the judge's decision' is, in the author's opinion, which is quite argumentative. It becomes a problem of justice if the amount of compensation measures the basis for consideration of punishment. Therefore, if you borrow Aristotle's distributive justice, justice for the heirs can be applied to the background of the perpetrator or the perpetrator's family. Follow the flow of the theory. The amount of compensation for perpetrators who are well off must be more significant than the compensation for perpetrators from ordinary families.

Meanwhile, if it refers to the rules of Islamic criminal law, the payment for murder is guilty, and if there is no pardon, a maximum of 100 camels. Another opinion states that Saudi Arabia pays 6,000 dollars or around 90 million rupiahs. The law is invalid if the victim's family forgives. Even though the pardon was granted, the judge still gave *ta'zīr* to the perpetrator as a warning

not to repeat it in the future. In the author's opinion, what has considered in the sentencing is not the amount of compensation but the good intentions to ask for forgiveness or forgiveness.

Victim-Based Justice Analysis and Alternative *Diat*

In Indonesian law, restorative justice is promoted as an alternative criminal settlement. The settlement mechanism focuses on sentencing to dialogue and mediation involving perpetrators, victims, families of perpetrators/victims, and other related parties. Dialogue and mediation aim to create an agreement on a fair settlement of cases for victims and perpetrators by prioritizing the principle of restoration to its original state and restoring good relations in society.²⁸

The basic principle of restorative justice is the restoration of victims who have suffered as a result of crime by providing compensation, peace, perpetrators doing social work or other agreements. In the perspective of restorative justice, the law is seen as impartial, not arbitrary and only sides with the truth according to the prevailing laws and regulations, taking into account the equality of compensation rights and balance in aspects of life.

Therefore, within the restorative justice framework, the perpetrator can be involved in the victim's recovery (restoration). Communities can play a role in preserving peace. Meanwhile, the court plays a role in maintaining public order as part of implementing state power. In other words, restorative justice emphasizes efforts to resolve criminal cases with an emphasis on restoring to their original state, not revenge (retaliation).

Restorative justice can be pursued in the category of minor crimes. It is regulated in 1) Article 205 of the Criminal Procedure Code, 2) Perma 2 of 2012, 3) Memorandum of Understanding with the Chief Justice of the Supreme Court, the Ministry of Law and Human Rights, the Attorney General, and the National Police Chief dated October 17, 2012, and 4) Letter of the Director General of the Judiciary Agency Number 301 of 2015. Cases involving restorative justice are light crimes with a criminal threat of 364, 373, 379, 384, 407, and 482 of the Criminal Code with a loss value of not more than IDR 2.5 million. In the

²⁸ Decree of the Director General of the General Court of Justice of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for Implementing Restorative Justice.

judicial process, the court appoints a single judge (not the panel) by considering the value of the goods/money that is the object of the case. In the minutes of the quick examination, solving the sentence begins with peace (forgiveness) between the perpetrator, the victim, the family of the victim/perpetrator and community leaders related to cases with or compensation. After an agreement is reached, the judge then re-validates it. Then it is used as a consideration for the decision. If there is no peace, proceed with the examination process while still seeking restorative justice in the decision that will be handed down later.

Even though the settlement is through restorative justice, the law must still be fair or just. Injustice means not putting something in its place. The problem of injustice appears in practical formulations when dealing with other groups or the state. In a practical context, an act can be called fair if the parties to the relationship get what they are entitled to. Rights then give birth to obligations. In political philosophy, the state is called fair if it can give full rights to its people's rights. In exchange for fulfilling these rights, individuals give up some of their freedoms to the state to protect common interests. That is the central concept of Rousseau's social contract.²⁹

Suppose you follow Rousseau's description of justice. In that case, the estuary of the social contract is a collective good, and the state is positioned as a traffic policeman who regulates individual rights so that they do not collide with each other. However, in practice, there is always dissatisfaction. Countries, where their citizens give freedom must be able to sort out which actions can be punished and which actions are subject to sanctions for violations, including the severity and severity of a sanction. This arrangement is the state's right, which must still try to prevent abuse of authority, including the imposition of decisions, for example, dissatisfaction with the murder case, the victim or her family disapproving of the court's decision. The judge's decision, if drawn in the above theory, represents the justice arrangements formulated by the state. Suppose it is purely a social contract theory. Is it possible for the victim or the victim's family to participate in formulating sanctions that take sides or satisfy the victim's or her family's sense of justice? The answer is no. Based on the social contract theory; the victim must accept

²⁹ Jean Jacques Rosseau, *On Social Contract*, ed. Cole (New York: Dover Publications, 2003).

the punishment given by the judge (the state) to the criminal. The family can only accept the decision even if they later file an objection (appeal or cassation). It is not in the context that the victim or the victim's family has succeeded in intervening with law enforcement officials.

Therefore, the concept of restorative justice can be widely used in criminal cases of homicide, especially culpable homicide. In this crime, the perpetrator gets forgiveness from the victim's family or heirs. The judge (the state) is still authorized to carry out legal proceedings against the perpetrator, but the heirs' role is the basis for considering the verdict. If it is impossible to be acquitted after forgiveness, criminals must be educated (lessons). Such a concept is in harmony with the rules of Islamic criminal law; as mentioned above, Islam makes forgiveness the basis for sentencing. If the heirs agree to forgive, the judge can release the perpetrator without any other punishment. If there is no forgiveness, or there are heirs who disagree, then the criminal sanction imposed is the payment of a maximum *diat* of 100 camels or if it is equivalent to 6 billion rupiahs. If the family does not forgive, then the *diat* that is paid is the heirs' right.

According to Abdurrahman Wahid³⁰, Islam maintains the values of retaliation but with a note. *Qisās* law, for example, remains a normative Islamic value, but not all forms of reciprocal punishment can be applied in modern times. The punishment of cutting hands is no longer applicable. Nevertheless, the reciprocal character is still maintained, for example, the determination of compensation for losses (*diat*) caused to other parties. Textual sources say that compensation can be done with property or money, so religious law then allows the growth of various types of compensation, including reparations or replacement costs for body organs or their maintenance.

In such a perspective, said Gus Dur, modification of the legal form can continue to be carried out based on codified religious law materials. Modifications to the legal form sometimes come in total, such as cutting hands, stoning, and enslaving people who have a disability for various reasons. Punishment of others is changed to confinement. Thus, Gus Dur continued, converting legal sanctions to the level of sanctions given tends to decrease. If, in

³⁰ Abdurrahman Wahid, "Nilai-Nilai Normatif dan Reaktualisasi Ajaran Islam: Sebuah Pengantar," in *Ensiklopedi Ijmak: Persepakatan Ulama dalam Hukum Islam* (Jakarta: Pustaka Firdaus, 1982).

the past, *muḥṣan*'s stoned to death, the current punishment is lighter than imprisonment. Slavery even disappeared entirely according to the demands of humanity. In this perspective, the resilience of Islamic normative values persists in the face of changing legal materials. The concept of reciprocity will always find its form in the principle of compensation and reparation. The criminal principle must be subject to permanent sanctions that can be preserved in the form of punishment in the form of imprisonment and fines, and so on.³¹

So, is such a law fair? We return to the concept of *qiṣāṣ* justice in Islamic law. Islam classifies human actions into four rights. *First*, Allah's pure rights include the fields of worship, *māliyah* and *'uqūbāt*.³² In the rights of Allah, no one can abort his rights. The *muqal* does not have the right to vote or abort it. *Second*, a mixture of the rights of Allah and the rights of servants, but Allah's rights are won over. An example of this category is the punishment for accusing adultery, which contains elements of maintaining human honour and avoiding hostility between humans—giving such hadd punishment the benefit of society because it is the right of Allah. The state exercises rights in the second category.

Third, the rights of pure servants include material rights and existence rights. A person, for example, has the right to receive the goods purchased after giving. A person receives compensation for damaged goods, and so on. Such rights are human rights. Fourth is the right of Allah and the rights of the servant, but the rights of the servant are won. *Jarīmah qiṣāṣ* in Islamic law falls into this category. *Qiṣāṣ* contains the values of preserving life and protecting the human soul. It is the benefit of society and belongs to Allah. However, if viewed from another perspective that *qiṣāṣ* can extinguish the fire of anger and heal the hearts of humans who want revenge, it benefits individuals. *Qiṣāṣ* is a right for people who are affected by calamities, and this, according to Khallāf, tends to be stronger. Therefore, when a person commits the crime of murder,

³¹ Sa'di Abu Habieb, *Ensiklopedi Ijmak: Persepakatan Ulama dalam Hukum Islam*, ed. Sahal Mahfudh and Bisri Mustofa (Jakarta: Pustaka Firdaus, 1987), xi–xii; Moh. Dahlan, Zakiyuddin Baidlawy, and Sugiono Sugiono, 'Gus Dur's Ijtihād Paradigm of Contemporary Fiqh in Indonesia', *al-Ahkam* 29, no. 2 (2019): 167, <https://doi.org/10.21580/ahkam.2019.29.2.4193>.

³² 'Abd al-Wahhāb Khallāf, *ʿIlm Uṣūl al-Fiqh* (Kairo: Maktabah al-Da'wah al-Islāmiyah Shabab al-Azhar, 1978), 210–16.

he can be punished by *qiṣāṣ* or not depending on the forgiveness of his family or heirs.

The *qiṣāṣ* law contains two rights, namely God's rights and human rights, where human rights take precedence. In *qiṣāṣ* law, the victim's family has full rights compared to the state's rights. The victim's family can pardon the killer or not pardon. Meanwhile, the state representing the public interest has the right to take action and punish a murderer. Meanwhile, the victim's family in positive law is not given the authority to grant pardons or stop the continuation of the case. According to the author, calling the victim's family lenient in prosecuting *qiṣāṣ* criminals is inappropriate to open the way for new criminal acts. Forgiveness is not the result of a request from the person who committed the crime but comes from the heart of the person who has the right to seek revenge. It means if the person who was hurt consciously and sincerely forgives, he no longer wants to take revenge or do *jarīmah* against the person who has been forgiven.

Qiṣāṣ in Arabic means following in his footsteps. According to al-Fayumi, *qiṣāṣ* is often interpreted as punishing the killer by killing, injuring the injured, or cutting off the hand of the person who cut the hand.³³ In terms, *qiṣāṣ* has the meaning of being treated like what he did. The government must implement the *qiṣāṣ* law when *mustahiq al-qiṣāṣ* raise the case. In *mustahiq al-qiṣāṣ*, it is punishment *qiṣāṣ* when the conditions are met. *Mustahiq al-qiṣāṣ* is also allowed to make peace or even forgiveness. While the best is forgiveness, then peace.

The legal basis of *qiṣāṣ* explicitly contains several texts, including QS. 2: 178, QS. 17: 33, and al-Mā'idah (5): 45. In his work *Tafsir al-Misbah*, Quraish Shihab³⁴ explains that the *qiṣāṣ* verse shows a guarantee of survival for humans. The Qur'an explains that the punishment for the perpetrators of crime only follows the way and the consequences of their treatment of the victim. With *qiṣāṣ* law, the lives of other people are guaranteed, and even the lives of many people are guaranteed. The law of acts shows us that the problem of retaliation is possible beyond the limits of justice so that when it is

³³ Aḥmad al-Fayūmī, *al-Miṣbāḥ al-Munīr* (Beirut: Dār al-Fikr, n.d.), 505.

³⁴ M Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an* (Jakarta: Lentera Hati, 2002).

chosen, it is not one life that is threatened but the life of another. The location of justice in *qisās* seems to be squeezed between public and individual interests. In the story, what matters is the public interest, the individual interest and the actor's interest.

The public interest, for example, is contained in the death penalty for murderers. The interests of the individual victim or his family are carried out in two ways, namely repaying the hurt debt of the victim's family by punishing the perpetrator or the victim's family receiving the money paid by the perpetrator because of the pardon. The perpetrator's interests are realized when the victim's family forgives the perpetrator, and then the perpetrator gets freedom by paying *diat*. In the story, Islam pays more attention to the interests of the victim's family, which are directly related to the interests of the perpetrators of the crime.

In this way, Islamic law, as reflected in *qisās* law, indirectly contributes to the meaning of modern law by using reform or rehabilitation to improve the perpetrators of criminal acts. Islam outlines the need to bridge the relationship between the perpetrator and the victim's family.

Conclusion

The following conclusions can be drawn from the explanation above: *First*, *diat* and peace money are two different concepts. *Diat* is the gift of property to the victim's family in exchange for the crime or murder committed. Meanwhile, if it refers to Article 229, paragraph 1 of the LLAJ Law, peace is assistance to the heirs through medical expenses or funeral costs. These two concepts are similar in that property giving is equally addressed to the heirs. The difference lies in its function. *Diat* is a substitute for the soul killed after receiving clemency from the heir. As for peace, it is an obligation to provide compensation to the family left behind and an attempt to apologize.

Second, the amount of assistance given to heirs is different. Payment is regulated in the form of 100 camels. At the same time, the peace money is based on an agreement with the victim's family by considering the perpetrator's ability. Of the 7 cases above, all of them contained peace from the victim's family, followed up with the provision of compensation with different nominal. From this, it is found that a narrative of punishment is found that the greater the compensation given to the victim's family, the lighter the verdict

will be. However, these two laws have different entity bases, although there are normative values between Islamic law and positive Indonesian law.

Third, this law inspires modern legal schools that the imposition of punishment is not limited to imposing sanctions according to the level of the act but has been transformed into various variants of punishment. The concept of forgiveness appears in the theory of restitution justice. It emphasized the opportunity for forgiveness and reconciliation between the parties. The primary difference is that *diat* is the reason for the abolition of crime, while peace money is not. It only serves as a basis for leniency. In the future, restorative justice needs to be expanded beyond light crimes. The state (judge) has the authority to carry out legal proceedings against criminal offenders, but the heirs' role must be considered in the sentencing. If it is not possible to be released after forgiveness, then the verdict is interpreted as *ta'zīr* or a lesson for criminals so as not to repeat their actions.

This study uses data from court decisions related to culpable homicides in Semarang during the last five years. The perspective used is a normative and comparative study. Therefore, this research can continue with various other approaches, such as a psychological or philosophical perspective to seek universal values from the theory of *diat*, to provide new perspectives in theories about *diat*.^[a]

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