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The Conceptual Relationship of Restorative Justice and Diyat in Murder Cases: An Analysis of Thematic Interpretations of the Verses Qiṣāṣ and Diyat

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Abstract

This study aims to analyze the conceptual relationship between restorative justice and diyat mechanisms in murder cases based on the verses of qiṣāṣ and diyat in the Qur`an. This study departs from the tendency of previous studies that discuss restorative justice and diyat separately, so that they have not explained much about the suitability or conceptual boundaries of the two. The study uses a qualitative method with a library research type through a thematic interpretation approach (maudhu'i) of QS. Al-Baqarah [2]: 178 and QS. Al-Nisa [4]: 92 combined with a conceptual analysis of the principles of restorative justice. The result show that dyat contains values that are in line with restorative justice, such as forgiveness, compensation, perpetrator responsibility and reconciliation between the parties. However, this study also found that diyat is not entirely identical to modern restorative justice because islamic criminal law still places qiṣāṣ as the main mechanism in intentional murder, while diyat applies through forgiveness from the victim's family. Restorative values appear to be more dominant in accidental murder, while retributive dimensions remain in intentional and semi-intentional murder. Thus, the conceptual contribution of this research suggests that diyat in the Qur`an can be understood as a prototype of restorative justice that integrates the values of restoration, responsibility, and proportional retribution in resolving murder cases.

INTRODUCTION

The development of modern criminal law shows a paradigm shift from a system that is oriented towards *retributive justice* to a settlement that emphasizes restorative *justice*.[1] This approach sees criminal acts not only as a violation against the state, but also as a damage to the relationship between the perpetrator, the victim and the community. Therefore, the settlement of the case is directed at the recovery of the victim's family, accountability of the perpetrator, and reconciliation through the active participation of the parties.[2] This development makes *restorative justice* one of the important paradigms in the contemporary criminal justice system because it is considered more capable of realizing substantive justice through a balance between the interests of victims, perpetrators, and society rather than an approach that is solely oriented towards retaliation.[3]

In the treasures of Islamic criminal law, values that are in line with *restorative justice* can be found in the *diyat* mechanism in murder cases as regulated in the Qur'an, especially in QS. Al-Baqarah [2]: 178 and QS. Al-Nisa [4]: 92. *Diyat* is not only an alternative to *qiṣāṣ*, but also serves as a form of compensation for the victim or his family and opens up space for a more peaceful settlement through forgiveness and reconciliation.[4] This suggests that the Qur'an has offered a model approach that bears some resemblance to restorative justice.

However, understanding *diyat* as a form of *restorative justice* cannot be done simply. In contrast to the modern *concept of restorative justice* which places victim recovery, perpetrator accountability, and reconciliation as the main efforts in resolving criminal cases.[5] Meanwhile, Islamic criminal law still maintains the *punishment of qiṣāṣ* as the main mechanism in intentional murder, while *diyat* can be applied if the victim's heirs choose to grant forgiveness to the perpetrator.[6] These differences show that the relationship

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[1] Veronica Vinas, "How did restorative justice get onto the government agenda, and why does its implementation differ? A multiple streams approach," 2024, https://www.boomportaal.nl/tijdschrift/TIJRJ/TIJRJ-D-23-00012

[2] Adam Crawford, "Restorative justice, voluntariness and the ongoing challenges of institutionalisation," 2024, https://www.boomportaal.nl/tijdschrift/TIJRJ/TIJRJ-D-24-00027

[3] Fadilah Agustin dan Ammelya Vega, "The Application Of Restorative Justice As A New Paradigm Of Punishment In The New Criminal Code (Law No. 1 Of 2023) In Misdemeanor Crimes," *Responsive Law* 17, no. 2 [2026]: 201–12, https://doi.org/10.33603/responsif.v17i2.12255

[4] Putri Setioningtias Estirahayu et al., "The Application of Restorative Justice in a Criminal Act," *Indonesian Law Enforcement Journal* 5, no. 1 [2024]: 38., https://doi.org/10.51749/jphi.v5i1.139

[5] Masahiro Suzuki dan Tamera Jenkins, "Redefining forgiveness in restorative justice," *Criminal Justice Studies* 37, no. 3 [2024]: 273–77, https://doi.org/10.1080/1478601X.2024.2349586

[6] Siti Zubaidah Ismail, "Proposing Diyat As An Alternative To Death Penalty For The Crime Of Murder In Malaysia," *Sharia Journal* 32, no. 3 [2024]: 497–503, https://doi.org/10.22452/syariah.vol32no3.6

between *diyat* and *restorative justice* requires a more in-depth conceptual analysis so as not to cause a disdain for the Islamic criminal law system or modern *restorative justice* theory .

Several previous studies have examined the relationship between restorative justice and Islamic criminal law, including *First*, an article written by Budi Sastra Panjaitan (2022)[7], the article discusses the protection of victims in Islamic law and its relationship with *restorative justice*, but the focus of the study is still limited to the victim protection aspect without elaborating on the conceptual relationship between the mechanisms *Düsseldorf* and the principles *restorative justice*. *Second*, money articles written by Husni Tamrin and Kiagus Anwar (2023)[8], the article examines restorative justice from the perspective of siyasah syar'iyyah by focusing on the authority of the prosecutor's office, so that it has not placed the verses *Qiṣāṣ* and *Düsseldorf* as an object of analysis. Third, the article written by Kurniati K. & Muh Ihkhsan (2026)[9], in the article, the focus of the study is on compatibility *Qiṣāṣ* and *Düsseldorf* with positive Indonesian law. Fourth, an article written by Dudung Abdul Aziz and Darwiti Setiani (2024)[10], the article discusses *Düsseldorf* as an alternative to the death penalty in the reform of Islamic law through a juridical-normative approach. Fifth, an article written by Taufiq Yulianto (2023)[11], the article examines the *restorative justice* As an alternative, the settlement of criminal cases in general without linking it to the mechanism *Düsseldorf* in the Qur'an. Thus, these studies have not specifically analyzed the conceptual relationship between *restorative justice* Modern and Mechanism *Düsseldorf* based on the interpretation of the verses of the Qur'an.

The research gap that can be identified from previous studies shows that discussions of *restorative justice* and *diyat* still tend to be placed in two separate domains. Most research on *restorative justice* focuses more on procedural and implementive aspects of the modern criminal justice system, while the study of *diyat* in the Qur'an is generally limited to normative jurisprudence as an alternative *to qiṣāṣ*. As a result, there has not been much research that has examined in depth the conceptual relationship between *diyat*

[7]Budi Sastra Panjaitan, "Victim Protection in Cases of Murder and Persecution Based on Islamic Law and Its Relationship with Restorative Justice," *Jurnal Bina Mulia Hukum* 7, no. 1 [2022]: 1–16.
[8]Husni Tamrin and Kiagus Anwar, "Restorative Justice as the Authority of the Prosecutor's Office in the Perspective of Siyasah Syar'iyah," *SOL JUSTICIA* 6, no. 1 [2023]: 44–54.
[9]Kurniati K. Muh Ihkhsan, "The Implementation of Qisas and Diyat in the Indonesian Criminal Law System: A Normative Analysis of the Compatibility of Islamic Sharia with Positive Law," *Media Legal Indonesia (MHI) Published by Yayasan Daarul Huda Krueng Mane*, advance online publication, January 6, 2026.
[10] Dudung Abdul Aziz and Darwiti Setiani, "Diyat as a Substitute for the Death Penalty as a Reform of Criminal Law in Indonesia," *USM LAW REVIEW JOURNAL* 7, no. 3 [2024]: 1925–38.
[11] Taufiq Yulianto, "Restorative Justice as an Alternative to Solving Criminal Cases," *Orbith* 19, no. 2 [2023].

and restorative justice through an analysis of *the verses of qiṣāṣ* and *diyat*. The position of this research lies in the effort to bridge the two domains through an interpretation approach so that the relationship between restorative and retributive values in the *diyat* mechanism can be understood more comprehensively.

Based on this description, this study aims to analyze the conceptual relationship between *restorative justice* and *diyat* mechanisms in murder cases based on QS. Al-Baqarah [2]: 178 and QS. Al-Nisa [4]: 92. The novelty of this research lies in the analysis that shows that *diyat* cannot be positioned as a concept identical to modern *restorative justice*, but as a legal mechanism that integrates the values of restoration, forgiveness, responsibility of the perpetrator, and elements of reparation proportionately. Academically, this research is expected to enrich the study of Islamic criminal law as well as contribute to the study of the Qur'an through conceptual readings of *the verses of qiṣāṣ* and *diyat* with contemporary *restorative jusrice* theory .

METHODS

This research uses a qualitative method with a type of *library research* or literature study that involves data collection and data analysis. The selection of this method is based on the object of study in the form of Qur'anic verses about *qiṣāṣ* and *diyat*, along with tafsir literature, Islamic criminal law, and *restorative justice*, so that all virgins are obtained through literature studies. The approach used is thematic interpretation (tafsir maudhu'i) combined with descriptive-analytical to examine the conceptual relationship between *restorative justice* and *diyat* based on QS. Al-Baqarah [2]: 178 and QS. Al-Maidah [5]: 45 as the main focus of the analysis, as well as QS. Al-Nisa [4]: 92 and QS. Al-Isra [17]:33 as a supporting verse to explain the classification of murder and its legal consequences.

The data sources of this study consist of primary sources and secondary sources. Primary sources include the Qur'an and books of tafsir used in research, while secondary sources are books, journal articles and previous research related to *restorative justice* and Islamic criminal law. The data collection in this study is through a documentation study by identifying various appropriate literature, then analyzed through the stages of verse interpretation, identification of the concept of diyat, and comparative analysis of the principles of *restorative justice* to find conceptual relationships and boundaries of differences.

RESULTS AND DISCUSSION

1. The Concept *of Restorative Justice*

Restorative justice is an approach to criminal justice that began to develop in the 1970s, which was introduced by Albert Eglash, a psychologist from the United States as an alternative to the *retributive justice* scanning system.[12] In the *Handbook on Restorative Justice Programmes*, *restorative justice* is an approach that offers an alternative path to justice for perpetrators, victims, and society. This approach supports the safe participation of victims in resolving existing situations, as well as providing opportunities for those who are responsible for the harm caused by their actions to the people they have hurt.[13] Another definition, according to Eva Achjani Zulfa, *restorative justice* is a concept that exists as a response to the development of the criminal justice system by emphasizing the importance of community and victim involvement, which has tended to be neglected in the prevailing criminal justice system mechanism.[14] These various definitions show that restorative justice is not only understood as a mechanism for resolving criminal cases, but as an approach that places victim recovery, perpetrator accountability, and community involvement as the main goal of resolving cases. Thus, the main orientation of *restorative justice* is not to sanction the perpetrators, but to restore social relations that have been disrupted due to criminal acts.

In the international sphere, discussions on *restorative justice* no longer only focus on its effectiveness as an alternative to criminal case resolution, but also on the measure of success in realizing restorative goals. So far, *restorative justice* is often seen as an approach that can reduce the level of recidivism of perpetrators. However, the results of the meta-analysis conducted by Fulham et al, show that the effectiveness *of restorative justice* in suppressing recidivism is not always higher than conventional criminal justice mechanisms. The findings then prompted the development of international academic discussions on the need to change the success indicators of *restorative justice*, so that they are no longer measured based on the low recidivism rate, but also on the ability of the process to meet the needs of victims, build a sense of justice, and increase accountability of perpetrators.[15]

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[12] Ahmad Razaki Rambe and Zaid Alfauza Marpaung, "Accidental Murder From An Islamic Criminal Law Perspective (An Analysis Of The Concept Of Restorativejustice)," *Legisia Journal* 16, no. 1 [2024]: 75.
[13] *Handbook on Restorative Justice Programmes Second Edition*, 2020, 4.
[14] Husni Tamrin and Kiagus Anwar, "Restorative Justice As The Authority Of The Prosecutor's Office In The Perspective Of Siyasah Syar'iyah," *Sol Justicia* 6, no. 1 [2023]: 45., https://doi.org/10.54816/sj.v6i1.706
[15] Lindsay Fulham dkk., "The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Relevant Outcomes," *Criminology & Criminal Justice* 25, no. 5 [2025]: 1486–512, https://doi.org/10.1177/17488958231215228

Furthermore, Fulham et al., explained that *restorative justice* actually shows more consistent advantages in increasing victim *satisfaction*, strengthening the perception of procedural *justice*, and encouraging the growth of *offender accountability*. These findings show that the main orientation of *restorative justice* is not just to produce punitive decisions, but to build a case resolution process that is able to restore between victims, perpetrators, and the community.[16] Therefore, the current development of international literature tends to view *restorative justice* as a paradigm of justice that places recovery, participation, and responsibility as the main indicators of successful criminal settlement, not just as a mechanism to reduce the repetition of criminal acts.

Based on these various views, it can be understood that *restorative justice* has developed from just an alternative to resolving cases to a justice paradigm that places the restoration of social relations as the main goal. If at the beginning of its development *restorative justice* was understood as a mechanism for resolving conflicts outside the judicial process, the development of the latest literature shows that this approach has evolved into a normative framework that emphasizes victim participation, perpetrator accountability, recovery, and reconstruction of social relationships. As such, this approach is now recognized not only as process-oriented but also as outcome-oriented, and can be applied at all stages in the criminal justice system.[17] Therefore, this study views that the relevance of *restorative justice* to the concept *of diyat* is not measured by the similarity of the form of settlement, but by the suitability of the values contained in the two concepts.

These developments also affect legal policies in various countries, including Indonesia. The principles of *restorative justice* began to be adopted through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and Attorney General Regulation (Perja) Number 15 of 2020. Both regulations show that restorative justice is the resolution of criminal cases that involve perpetrators, victims, families, from both parties, and other related parties to jointly find a fair solution by emphasizing the restoration of the situation as it was, not retribution.[18] This policy aims to restore the situation as it was before the loss due to the suspect's actions.[19]

The provision regarding the existence of a peace agreement between the victim and the perpetrator shows that the concept of restorative justice in Indonesian positive law

[16] Fulham dkk.
[17] Nur Amin Saleh, *Restorative Justice* [Klaten: PT. Literasi Indonesia Group, 2025], 25
[18] Taufiq Yulianto, "Restorative Justice As An Alternative To Solving Criminal Cases," *Orbith* 19, no. 2 [2023]: 155.
[19] Tamrin and Anwar, "Restorative Justice As The Authority Of The Prosecutor's Office In The Perspective Of Siyasah Syar'iyah," 47.

has relevance to the principle of forgiveness in surah al-Baqarah verse 178. In the verse, it shows that the victim's family is given space to forgive the perpetrator so that the *punishment of qiṣāṣ* can be replaced with *diyat*. This is in line with the *restorative justice* mechanism in PERJA No. 15 of 2020 which places peace and the restoration of social relations as the basis for resolving criminal cases. Thus, the Qur'anic values regarding reconciliation and peace are related to the development of Indonesian law.

2. *Diyat-Murder* in the Qur'an

Etymologically, the term *diyat* comes from the word *wada-yadi-wadayan-diyatan* which means "flowing". However, in the form of *maṣdar*, the word *diyat* refers to the payment of a certain amount of property as a ransom given to the victim or the victim's guardian due to the crime of persecution (*jināyāt*). As for terminology, *diyat* is understood as compensation in the form of property that must be paid by the perpetrator to the victim's family as a result of the act of murder or persecution, especially when there is forgiveness from the victim's family.[20]

In the perspective of Islamic law, *diyat* is understood as the financial compensation paid by the perpetrator to the victim's family as an alternative to the implementation of *qiṣāṣ*. This concept has a normative basis in the Qur'an as explained in surah al-Baqarah verse 178

> The Prophet (peace and blessings of Allaah be upon him) said: "O Messenger of Allaah (peace and blessings of Allaah be upon him) and I am the Messenger of Allaah (peace and blessings of Allaah be upon him). "Blessed are those who have mercy on you, and those who have mercy on you, and those who have mercy on you, and those who have mercy on you."

"O you who have believed, it is obligatory for you to perform qisas with regard to those who are killed. Free people with free people, slaves with slaves with slaves, and women with women. Whoever obtains forgiveness from his brother should follow him in a proper manner and should pay him in a good manner. That is the leniency and mercy of your Lord. Whoever transgresses the limit after that, he will have a very painful punishment."

The verse emphasizes that the original law for intentional murder is the implementation of *Qiṣāṣ* as a form of protection of human rights. However, the verse also opens up the possibility of settlement through forgiveness given by the victim's family as stated in the phrase .So they will be able to see what they are doing. According to al-Tabari,

[20] Mahendra Kusuma and Rosida Diani, "Qishash Diyat In Islamic Criminal Law Reflects Justice From The Victim's Side," *Journal Dynamics* 2, no. 2 [2022]: 49., https://doi.org/10.54895/dinamika.v2i2.1829

the verse explains that if the victim's family gives forgiveness to the perpetrator of the murder, he should be punished *Qiṣāṣ* by accepting *Düsseldorf* As a substitute, both parties have an obligation to carry out the settlement properly.[21] A similar interpretation is put forward by ibn Kathir which shows that the victim's family has room to forgive and accept *Düsseldorf*. Furthermore, he quotes the narration of Ibn 'Abbad through Mujahid and al-Dahhak who interprets the phrase .So they will be able to see what they are doing as a situation when the victim's guardian chooses to accept *Düsseldorf*, although having the right to sue *Qiṣāṣ*.[22] Meanwhile, contemporary mufassir, Quraish Shihab emphasized that *Qiṣāṣ* It is not only understood as a criminal sanction, but also as a legal mechanism that represents the value of justice, crime prevention, forgiveness, and the benefit of society.[23] According to him, Islamic teachings are not solely oriented towards retaliation against the perpetrators of criminal acts. Provisions regarding *Qiṣāṣ* in the Qur'an also provides an opportunity for the victim or his family to forgive and choose a settlement through *Düsseldorf* as an alternative that prioritizes peace.[24] In the context of modern life, the implementation of these provisions can be harmonized with the applicable legal system, as long as it maintains the fundamental principles set forth in the Qur'an, namely the protection of the soul and the realization of justice.

In addition to QS. Al-Baqarah [2]: 178, provisions on *Qiṣāṣ* and the space for forgiveness is also affirmed in the Qur'an. Al-Maidah [5]: 45 as follows:

> And the Prophet (peace and blessings of Allaah be upon him) said: "O Messenger of Allaah (peace and blessings of Allaah be upon him) and I am the Messenger of Allaah (peace and blessings of Allaah be upon him) and I am the Messenger of Allaah (peace and blessings of Allaah be upon him). The Messenger of Allah (peace and blessings of Allaah be upon him) said: "The Messenger of Allaah (peace and blessings of Allaah be upon him) said, "O Messenger of Allaah (peace and blessings of Allaah be upon him), I am the Messenger of Allaah (peace and blessings of Allaah be upon him)."
>
> "We have decreed for them (the Children of Israel) in it (the Torah) that life (is repaid) with life, eyes with eyes, nose with nose, ears with ears, teeth with teeth, and wounds (even) have their kisha (the same recompense). Whoever relinquishes (his right of kisash),

[21] Jarir Al-Tabari, *The Qur'an is more important than the Qur'an*, Jil. 1 [Beirut: Muassisah al-Risalah, 1994], 480
[22] Ibn Kathir, *Tafsir al-Qur`an al-'Adzim*, Jil. 1 [Riyadh: Dar Al-Tayyibah, 1999], 490
[23] Quraish Shihab, *Tafsir Al-Misbah: Message, Effect and Compatibility of the Qur'an*, Vol.1 [Tangerang: Lentera Hati, 2017], 393
[24] Ida Kurnia Shofa and Mohammad Arif, "THE SIGNIFICANCE OF THE LAW OF QISHASH WITH THE MA'NA-CUM-MAGHZA APPROACH," *AT-TAISIR: Journal of Indonesian Tafsir Studies* 3, no. 2 [2022]: 17–28, https://doi.org/10.51875/attaisir.v3i2.136

then it (becomes) a sin atonement for him. Whoever does not decide (a matter) according to the decree that Allah has revealed, then they are the wrongdoers."

In interpreting فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ, al-Tabari argues that a person who has the right to demand *qiṣāṣ* or *diyat* can choose to waive that right by granting forgiveness to the perpetrator. According to the opinion he cited, forgiveness is a remission for the perpetrator for the actions he has committed.[25] Furthermore, ibn Kathir also interpreted the phrase as an encouragement to forgive the perpetrators of criminal acts. According to him, if the victim or guardian of the victim chooses to forgive and renounce his right to demand *qiṣāṣ*, then the forgiveness becomes a penance for the perpetrator, as well as bringing rewards to the one who forgives.[26] Similarly, Quraish Shihab argues that the use of تَصَدَّقَ the word indicates that the waiver of the right to demand *qiṣāṣ* should be done with sincerity as alms are given solely for the sake of Allah. According to him, Al-Maidah verse 45 discusses criminal acts that are committed deliberately so that the forgiveness given to the perpetrator is a moral choice in accordance with the sharia. However, the recommendation to forgive is not intended to eliminate the provisions of *qiṣāṣ*, because the law has an important purpose, namely to prevent the occurrence of acts of persecution, to provide a sense of justice for the victim and family, and to avoid the practice of revenge that can cause injustice.[27]

Both verses show that the Qur'an places *qiṣāṣ* as the basic provision in the case of murder. However, if there is forgiveness from the victim's family, then the settlement must be taken in a good way, including through *diyat payments*.[28] Based on this interpretation, it can be seen that the concept *of diyat* is built through two complementary dimensions. Surah Al-Baqarah verse 178 emphasizes the mechanism for resolving murder cases after forgiveness from the victim or the victim's guardian, while surah Al-Maidah verse 45 emphasizes the moral dimension of forgiveness as an action that must be based on ihklasan without eliminating the position *of qiṣāṣ* as a legal provision. Thus, *diyat* in the Qur'an is not only understood as compensation for the crime of murder, but also as a settlement mechanism that integrates the law, respect for the rights of the victim and the implementation of forgiveness in accordance with the provisions of the sharia.

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[25] Jarir Al-Tabari, *The Qur'an is more important than the Qur'an*, Jil. 3, 106
[26] Ibn Kathir, *Tafsir al-Qur`an al-'Adzim*, Jil. 3, 214
[27] Quraish Shihab, *Tafsir Al-Misbah: Message, Effect and Compatibility of the Qur'an*, Vol. 3, 108
[28] Kurniati K. Muh Ihkhsan, "The Implementation of Qisas and Diyat in the Indonesian Criminal Law System: A Normative Analysis of the Compatibility of Islamic Sharia with Positive Law," *Media Legal Indonesia (MHI) Published by Yayasan Daarul Huda Krueng Mane*, advance online publication, 6 January 2026, 1117., https://doi.org/10.5281/Zenodo.18160625

Although the Qur'an has established *diyat* as one of the mechanisms for resolving the crime of murder, its application does not apply equally to every case. The form of criminal responsibility is determined according to the actions committed by the perpetrator, so Islamic criminal law distinguishes murder into several classifications. The difference in classification has implications for different consequences of the perpetrators, both in the application *of qiṣāṣ*, *diyat*, and *kafarat*. Therefore, understanding the classification of murder is important to explain the position of *diyat* in Islamic criminal law.

The classification of murder according to jurists is divided into three categories, namely intentional murder, semi-intentional murder, and accidental murder. *First*, intentional killing, which is basically subject to *qiṣāṣ*, but can be turned into *diyat* if there is forgiveness from the victim's family. Intentional murder is an act carried out by a person with the aim of killing with the tools used to kill.[29] According to Wahbah al-Zuhaili, intentional murder is a deliberate act that is hostile to a person with something that can usually kill, by injuring or with heavy tools either directly or for certain reasons, such as iron meat, weapons or with large sticks.[30] As explained in surah al-Isra verse 33 regarding the prohibition of intentional killing;

> Do not kill a person whom Allah has forbidden (to kill), except for a righteous reason. Whoever is killed in a persecuted manner, We have given power to his guardian. However, he (the guardian) should not go beyond the limit in killing (*qiṣāṣ*). Indeed, he is the one who gets help.

This verse is explained in Tafsir al-Misbah, that Allah forbids all forms of murder without a justifiable reason. However, in the event of a wrongful killing, the victim's guardian is given the right to demand *qiṣāṣ* or ask for compensation (*diyat*) through the competent authorities. Nevertheless, the Qur'an emphasizes that the victim's family should not go beyond the limit in demanding retaliation or committing acts of vigilante vigilance.[31] This interpretation shows that the Qur'an not only emphasizes the aspect of punishment for the perpetrator, but also regulates the settlement of cases proportionately to prevent excessive revenge. In this context, *the diyat* mechanism can be understood as a form of settlement that contains the value of recovery and control of social conflicts.

In addition, this verse also shows that murder is an unlawful act to be committed. This impact has long-lasting consequences for both the perpetrator, the perpetrator's

[29] Sari Yulis et al., "Criminal Law Policy Towards the Punishment of Qishas and Diyat for Perpetrators of Murder in Qanun Jinayat Aceh," 25.
[30] Wahbah al-Zuhaili, *Islamic Fiqh wa Adillatuhu* [Damascus: Darul Fikir, 1984], 543
[31] Quraish Shihab, *Tafsir Al-Misbah*, Vol. 7 [Tangerang: Lentera Hati, 2017], 460

family and the victim. The legal consequences of intentional murder are in the form of the implementation *of qiṣāṣ* as explained in surah Al-Baqarah verse 178.

Second, semi-intentional murder is an act committed consciously by the perpetrator, but without the intention to take the victim's life. Elements in this type of murder include the existence of intentional acts, these acts have the potential to result in death, and the occurrence of death as a consequence of actions committed by the perpetrator.[32] In Islamic law, the sanction imposed is *the mughalla diyatẓah*. This is because there is an element of intentionality in the action, not solely taking the victim's life. Therefore, *the diyat provisions* in semi-intentional murder are almost identical to intentional murder in terms of aggravation, although they are not entirely identical. On the other hand, perpetrators of semi-intentional murder are generally not subject to *the punishment of qiṣāṣ*.[33] This is indeed not explicitly based in the Qur'an but is the result of the construction of fiqh scholars based on pads *naṣ* and the characteristics of criminal acts.

Third, murder by accident, according to Ahmad Wardi, quoted from Wahbah al-Zuhaili is an act that has no intention to kill either in terms of the act or the object.[34] This accidental murder is almost the same as the crime of intentional murder, which is the main crime in the form of *diyat* and *kafarat*. In addition, there are alternative punishments such as *ta'zīr* and fasting. The additional sanctions imposed include the loss of the right to inherit and the loss of the right to receive a will from the victim.[35] The rules for accidental killing are also explained in the Qur'an, which is found in surah al-Nisa verse 92.

> And when they kill the believers, they do not kill the believers, and they do not kill the believers. The Messenger of Allah (peace and blessings of Allaah be upon him) said: "O Messenger of Allaah (peace and blessings of Allaah be upon him) and I am the Messenger of Allaah (peace and blessings of Allaah be upon him) and I am the Messenger of Allaah (peace and blessings of Allaah be upon him). Oh my God, God is the All-Knowing, the All-Wise.
>
> It is not proper for a believer to kill a believer, except because he is wrong. Whoever kills a believer for wrongdoing should set free a servant of the believers and pay the

[32] Yulis and Syahputra, 25.
[33] George Muhammad Maulana Helmy Gozali and Tajul Arifin, "Murder in the Perspective of Hadith Narrated by Bukhari Muslim and Article 338 of the Criminal Code," *Social Symbiosis : Journal of Integration of Social and Political Sciences* 1, no. 3 [2024]: 83., https://doi.org/10.62383/sosial.v1i3.401
[34] Fredy Andrianto, "Sanction of Intentional Murder from the Perspective of Islamic Criminal Law and Positive Law," *Al-Mazaahib: Journal of Comparative Law* 10, no. 1 [2022]: 85., https://doi.org/10.14421/al-mazaahib.v10i1.2726
[35] Yulis and Syahputra, *Legalization Of Qishash And Diyat Punishment For Murderers In Qanun Jinayat Aceh*, 25.

ransom handed over to his family, unless they (the murdered family) release the payment. If he is killed from those who are against you, even though he is a believer, (let the murderer) set free the servant of the believers. If he is killed from the people (disbelievers) who have a covenant with you, he will pay the ransom handed over to his family and set free the servant of the believers. Whoever does not get (a righteous servant) should fast for two consecutive months as a way of repentance from Allah. Allah is All-Knowing, All-Wise.

The verse explains several legal provisions, namely[36] *first*, if a believer accidentally kills another believer, then he is obliged to pay *kafarat* in the form of freeing a believing servant, as well as paying *the diyat* given to the victim's family. *Second,* if a believer accidentally kills another believer who is from a group that is hostile to him, then the obligation imposed is only *kafarat* in the form of freeing a servant of the believer. *Third,* if a believer accidentally kills a non-Muslim who has a peace agreement, then he is obliged to pay *kafarat* by freeing the believer's servant and performing *diyat* to the victim's family. *Fourth,* in the condition that it is not possible to free the sahaya servant, then the obligation can be replaced by fasting for two consecutive months.

Thus, *diyat* for accidental murder is included in the category *of diyat mukhaffafah* (*light diyat*), so the payment can be paid in installments or made for a period of up to three years. The responsibility of *diyat* payment is not only charged to the perpetrator, but can also involve the family. If the perpetrator and his family are unable to bear these obligations, then the state is obliged to bear them through *the baitul mal* fund (state treasury).[37]

Through the implementation *of the diyat*, the victims and their heirs are placed in a position of honor, where their rights are recognized so that social relations and human values are maintained. In addition, protection of the rights of victims is also seen in the determination of sanctions for the perpetrators of murder if proven guilty, namely in the form of *qiṣāṣ* (death penalty) or *diyat* if pardoned. This provision aims to protect the interests of victims and their families.[38]

Based on the entire verse and the interpretation of the mufassir, it can be understood that the application *of diyat* in Islamic criminal law is not single, but is adjusted to the classification of the crime of murder. The difference in legal consequences shows that the

[36] Rafida Sinulingga and R. Sugiharto, *Comparative Study of Criminal Sanctions for Murder in the Criminal Code (KUHP) with Islamic Law in the Context of Criminal Law Reform*, 1, no. 1 [2020]: 37.
[37] Sinulingga and Sugiharto, *Comparative Study of Criminal Sanctions for Murder in the Criminal Code (KUHP) with Islamic Law in the Context of Criminal Law Reform*, 37.
[38] Solin et al., "The Implementation of Restorative Justice at the Dairi District Attorney's Office in the Perspective of Islamic Law," 2024, 4162.

sharia considers the fault of the victim, the position of the victim, and the form of accountability. This normative construction will be the basis for analyzing the relationship between *the diyat* mechanism and the principle *of restorative justice* in the next discussion.

3. A Conceptual Analysis of *Restorative Justice* in Murder

To assess the extent to which *the concept of diyat* can be understood in the perspective of restorative justice, a clear analytical framework is needed regarding the main principles of *restorative justice*. In general, the principle of restorative justice emphasizes the recovery of victims, the responsibility of the perpetrators, and the involvement of the community in the case settlement process.[39] Using these indicators, the concept of *diyat* can be analyzed whether it truly reflects restorative justice in its entirety or contains only some of its elements.

One of the values that shows the conceptual relationship between *restorative justice* and *diyat* is the recovery of victims through the active involvement of affected parties in the case settlement process. In the mechanism of *diyat*, the principle is explained as stated in the Qur'an. Al-Baqarah verses 178-179, that is, the victim's family has the right to continue to demand the implementation of *qiṣāṣ*. The goal is not to take revenge for the crime of murder, but to maintain human rights as a human right from God. The command to perform *diyat* or to grant forgiveness to the perpetrator is evidence of the legal commitment *of qiṣāṣ* to the protection of human dignity.[40] This position shows that Islamic criminal law does not completely leave the settlement of cases to the state or the perpetrator, but recognizes the rights of the victim's family as the party who directly suffers losses. From the perspective of *restorative justice*, such a character reflects an orientation to victim recovery because the settlement of cases does not ignore the interests of the aggrieved party.

In addition to providing space for the recovery of the victim, the *diyat mechanism* also emphasizes the importance of the responsibility of the perpetrator. The obligation to pay *diyat* shows that the perpetrator is not only held accountable for his actions, but also compensated for what he has done. In accidental murder, this responsibility is even strengthened by the obligation of *kafarat* as explained in the Qur'an. Al-Nisa verse 92. The combination of *diyat* and *kafarat* shows that accountability in Islamic criminal law has two dimensions, namely the horizontal dimension as the restoration of the rights of the victim

[39] Estirahayu et al., "The Application of Restorative Justice in a Criminal Act," 33.
[40] Mira Maulidar, "Philosophical Correlation Between Restorative Justice And Diyat In The Islamic Criminal Law System," *At-Tasyri': Scientific Journal Of Muamalah Study Program*, January 19, 2022, 151, https://doi.org/10.47498/tasyri.v13i2.856

and the vertical dimension as accountability to Allah. This shows that *the mechanism of diyat* is not only aimed at resolving social conflicts, but also forms the moral consciousness of the perpetrator.

Furthermore, community involvement in the case settlement process also has a strong meaning for the implementation of *restorative justice*. It is based on the right of every society to live in security and peace. Therefore, when a criminal act occurs, the settlement is not only the responsibility of the law enforcement officers, but also involves the community as part of the social environment where the crime occurred. From the perspective of *restorative justice*, crime is seen as a conflict that arises between the perpetrator and the victim. Thus, case settlement is prioritized through the participation of all parties, including the community.[41] This involvement also reflects the community's responsibility to maintain social order and restore relationships that have been disrupted due to criminal acts.

However, the analysis of *the mechanism of diyat* also shows a difference with the concept of *restorative justice*. Criminal settlement through *diyat* in Islamic law is not the main mechanism for resolving criminal acts. In intentional murder, the law of origin remains in the form of *qiṣāṣ* as a form of protection for the victim, while *diyat* can be applied if it receives forgiveness from the victim's family. On the other hand, in accidental murder, *diyat* is a legal consequence that must be fulfilled along with *kafarat*. This difference shows that restorative values in Islamic criminal law are present without removing the retributive function. Thus, *restorative justice* in the *diyat* mechanism does not merely replace *qiṣāṣ*, but complements the purpose of upholding justice that provides space for peace.

This conceptual relationship is further emphasized if analyzed using the perspective of *maqāṣid al-syarī'ah*, the *diyat* mechanism shows that Islamic criminal law is not solely oriented to provide sanctions to the perpetrator, but also shows the protection of the rights of the victim. Al-Syatibi explained that there are five purposes in the concept *of maqāṣid al-syarī'ah* or called *kulliyat al-khamsah*, namely *hifdz al-din* (safeguarding religion), *hifdz al-aql* (safeguarding reason), *hifdz al-nafs* (safeguarding the soul), *hifdz nasab* (safeguarding offspring), *hifdz al-mal* (safeguarding property).[42] In relation to the context of *diyat*, the most dominant purposes of sharia are *hifdz al-nafs* and *hifdz al-mal*. The protection of the soul (*hifdz al-nafs*) is realized through the establishment of *qiṣāṣ* as the law of origin in intentional killing, so that human life is guaranteed protection and can

[41] Maulidar, 151
[42] Imam Al-Syatibi, *Al-Muwafaqat fi Ushul al-Syariah*, Jil. 3 [Pakistan: Dar ibn 'Affan, 1997], 300

provide a preventive effect. However, the above verses do not rule out the possibility of achieving protection through the mechanism of forgiveness followed by the payment of *diyat*.

In addition to *hifdz al-nafs*, the *diyat* mechanism also reflects the protection of property (*hifdz al-mal*). Diyat payment is a form of accountability of the perpetrator for the losses suffered by the victim. Therefore, *diyat* has a dual function, namely as a legal sanction against the perpetrator as well as an instrument of restoration of the rights of the victim. Based on this perspective, *diyat* can be understood not only as a substitute for *qiṣāṣ*, but as a legal mechanism that integrates the protection of the soul, the restoration of the rights of the victim, and the responsibility of the perpetrator.

Based on this analysis, it can be understood that the conceptual relationship between *restorative justice* and *diyat* lies in the same value orientation in the form of protection for victims, responsibility of the perpetrator and the provision of forgiveness. However, this conformity does not make *diyat* synonymous with *restorative justice*, because its application still places *qiṣāṣ* as the main provision for intentional killing. Thus, the relationship between *diyat* and *restorative justice is* more precisely understood as a conformity of values rather than a conceptual equivalence. This conclusion is the basis for a more systematic analysis of the similarities and differences between *restorative justice* and *diyat*.

4. Comparative Analysis of *Restorative Justice* and *Diyat* Mechanisms in Murder Cases

Based on the conceptual analysis of *the verses of qiṣāṣ* and *diyat*, it can be understood that *restorative justice* and *the mechanism of diyat* have fundamental similarities and differences. The equation shows the suitability of value orientation in the settlement of criminal acts, while the difference lies in different settlement mechanisms. Therefore, this comparison aims to map the common points and fundamental differences between modern conceptions of law and Islamic law in order to see the extent to which the Qur'an has integrated restorative values in the Islamic criminal law system.

a. Conceptual Encounter Point: Recovery and Responsibility

Philosophically, good *Restorative Justice* or *Düsseldorf* Starting from the same paradigm, which sees criminal acts not only as violations of state law, but as disturbances to human relations and social balance.

1) Restorative Justice Focus: *Restorative Justice* emphasizes improving the conditions of victims and society rather than simply punishing the perpetrators. This is in line with the *function of diyat* in Islam which aims to provide compensation (*takhfīf)* and mercy on behalf of the victim's family.

2) Active Participation: Both place victims and perpetrators as the main subjects in resolving cases through deliberation for consensus, not just objects in the criminal justice system.
3) Forgiveness as a Catalyst: In the Qur'an surah al-Baqarah verse 178, the element of forgiveness (*al-'afw*) is the main entrance to the restorative mechanism, as *restorative justice* requires a peace agreement between the two parties.

b. Differentiation Based on Criminal Typology

The depth of restorative value in the Qur'an depends heavily on the classification of the perpetrator's intent (*mens rea*), which distinguishes it from *the more common modern* restorative justice:

1) Accidental Killing: In this category, restorative values are dominant and are the main sanctions. The *diyat mechanism* here fully functions as an instrument for the economic and social recovery of the victim's family.
2) Intentional Killing: In contrast to *pure restorative justice* which is integrative in nature, the Qur'an still maintains the retributive element through *qiṣaṣ* as the main mechanism. However, the Qur'an provides a restorative "lifesaving valve" in the form of *diyat* if the victim's family forgives, indicating a shift from vengeance to recovery.

c. Fundamental Differences and Limitations

Despite the similarities in principle, there are some limitations that make *diyat* not entirely identical to modern *restorative justice*:

1) Legal Character: *Modern restorative justice* is understood as a comprehensive legal procedure and judicial system within a state of law. Meanwhile, *diyat* in the perspective of the Qur'an is better understood as a foundation of values and a "prototype"[43] of restorative justice that integrates forgiveness with financial responsibility.
2) Collective Involvement: In Islam, the responsibility of *diyat payment* is not only imposed on the perpetrator, but can involve the perpetrator's family (*'aqilah*) or even the state through *Baitul Mal*. This goes beyond the concept of compensation in *modern restorative justice* which is generally still individual between the perpetrator and the victim.

[43] *A prototype is* an initial working model, sample, or simulation of a physical or digital product that is created to test concepts, features, and designs before mass production. It is not a final product, but rather a visualization tool to evaluate functionality, find flaws, and get initial *feedback*.

To clarify the similarities and differences between the two, here is a comparison between *the principles of modern* restorative justice and the *diyat* mechanism in resolving murder cases:

No.	Comparative Aspects	***Restorative Justice* Modern**	***Diyat* (Qur'anic Perspective)**
1.	Basic Definition	A case resolution approach that focuses on victim recovery, perpetrator responsibility, and social balance.	Compensation is in the form of property that the perpetrator must pay to the victim's family as a result of a criminal act, especially when there is a pardon.
2.	Legal Basis	Positive law, such as the SPPA Law No. 11/2012 and Perja No. 15/2020 as well as the theory of modern legal psychology.	The Qur'an Surah Al-Baqarah verse 178 and Al-Nisa verse 92 as well as the normative construction of Islamic jurisprudence.
3.	Main Objectives	Restoring disturbed relationships, rehabilitating perpetrators, and preventing the recurrence of criminal acts.	Providing leniency (*takhfif*) and mercy, as well as being a means of reconciliation through forgiveness.
4.	Process Mechanism	Actively involve perpetrators, victims, and the community through mediation or deliberation for consensus.	Depending on the forgiveness of the victim's heirs; if forgiven, the *punishment of qiṣaṣ* turns into diyat payment.
5.	Form of Responsibility	Remediation, compensation, or repair of damage in accordance with the peace agreement.	Payment of a certain amount of property (such as 100 camels) whose type is determined based on the murder category.
6.	Involvement of Others	The community plays the role of mediator and guardian of public order.	The perpetrator's family ('*aqilah*) or the state through *Baitul Mal* can be

			involved in bearing the payment if the perpetrator is unable to afford it.
7.	Nature of Justice	Fully restorative and integrative.	The integration between the retributive (*qiṣaṣ*) and restorative (*diyat*) elements, is thus referred to as the "initial form" of restorative justice.

Based on this comparison, it can be understood that the relationship between *restorative justice* and *diyat* is more appropriately positioned as a complementary relationship. *Restorative justice* provides a conceptual framework to understand the importance of victim restoration, while the Qur'an goes through the mechanism *of qiṣāṣ* and *diyat* without eliminating the functions of soul protection and justice enforcement. Thus, *the diyat* mechanism can be seen as a form of case resolution that integrates a balance between legal certainty, victim protection, perpetrator responsibility and social welfare in accordance with sharia principles.

5. Implications of the *Implementation of Diyat* on the Indonesian Criminal Law System

The implications of *the concept of diyat* on the Indonesian criminal law system can be understood through its relevance to the *restorative justice paradigm*. Although *the diyat* is an Islamic criminal law institution which cannot be adopted normatively into the Indonesian legal system, it has the values contained in it, including victim recovery, perpetrator responsibility, deliberation, forgiveness and is in accordance with the direction of Indonesian criminal law reform which is no longer oriented towards retribution, but also on recovery between victims, perpetrators and the community.

One example of the application of diyat in the modern context can be seen in the case of Eti binti Toyib, an Indonesian worker in Saudi Arabia who was sentenced to death for allegedly killing her employer. In the process of resolving it, Eti's release took a long time and intensive negotiations with the victim's family. In the end, the victim's family was willing to forgive on the condition that *the diyat payment* was four million riyals or the equivalent of around Rp15.5 billion. After *the diyat* was fulfilled, Eti was finally released from the threat of the death penalty.[44] The *diyat* payment in this case was not fully borne

[44] Lamsiur Kinanti et al., "Indonesian Workers (TKI) in Saudi Arabia who Also Fight for the Struggle of Diplomacy of the Republic of Indonesia," *JLEB: Journal of Law, Education and Business* 2, no. 1 [2024]: 234, https://doi.org/10.57235/jleb.v2i1.1608

by Eti's family, but was assisted by various parties in raising funds. Most of the funds, which are around IDR 12.5 billion or 80% of the total *diyat*, come from donations from the Amil Zakat Infaq Shadaqoh Nahdlatul Ulama Institute (LAZISNU). In addition, the West Java Provincial Government also helps through the Jabar Peduli program by collecting ASN alms which is carried out in two stages, namely IDR 1 billion in the first phase and IDR 400 million in the second phase.[45] This case shows that *diyat* payments are not always charged individually, but can involve social support. As in the perspective of Islamic law, this condition has relevance to the concept of the role of *Baitul Mal* or the state treasury in helping to pay *diyat* for perpetrators who cannot afford it.

The case from the perspective of Islamic criminal law shows that the settlement of murder cases does not always stop at the execution of the crime, but can involve a peace mechanism between the perpetrator and the victim. Although this mechanism takes place in the Saudi Arabian legal system, this case shows that the value of perpetrator responsibility, victim forgiveness, and social support has relevance to the principle of *restorative justice* that has also developed in the Indonesian legal system.

The concept *of diyat* has relevance to the principles that are also reflected in the mechanism *of restorative justice*. This is based on the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The regulation stipulates that criminal cases, including due to the element of negligence as mentioned in Article 5 Paragraphs 3, 4, and 6 letters b, that accidental murder can be resolved through a restorative justice mechanism on the condition that there is a peaceful agreement between the perpetrator and the victim or his family and there are efforts to recover the losses caused. This provision opens up space for the settlement of cases outside the court channels, with the aim of restoring social and psychological conditions as before the crime occurred.[46]

Based on this description, the concept *of diyat* has implications for the development of the Indonesian criminal law system, especially in strengthening the *restorative justice* paradigm that places victim recovery to settlement through deliberation. This implication is not interpreted as the application *of diyat* as a type of criminal in national law, but rather as a strengthening of values in the reform of Indonesia's criminal law policy so that it is more oriented towards restorative justice.

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[45] Andra Adyatama, "Pay a Fine of Rp15.2 Billion, Eti TKI from Majalengka Cancels Punishment," IDN Times West Java, July 14, 2019, https://jabar.idntimes.com/news/jawa-barat/bayar-denda-rp15-2-milyar-eti-tki-asal-majalengka-batal-dihukum-mati-00-d8hnw-8lmwg5

[46] Rambe and Marpaung, "The Crime Of Accidental Murder From The Perspective Of Islamic Criminal Law (An Analysis Of The Concept Of Restorativejustice)," 80-82.

CONCLUSION

Based on the results of the research, it can be understood that the concept of diyat in the Qur'an has a close relationship with the principle *of restorative justice*, especially in the aspects of victim recovery, the responsibility of the perpetrator, and the involvement of the victim's family in the case settlement process. This value is reflected in surah al-Baqarah verse 178 and surah al-Nisa verse 92 which not only affirm the punishment *of qiṣāṣ*, but also opens up space for forgiveness and settlement through *diyat* as a form of leniency. However, *diyat* is not entirely synonymous with modern *restorative justice*. In the case of intentional killing, the Qur'an still places *qiṣāṣ* as the main mechanism so that the retributive element is still maintained. Meanwhile, *diyat* can only be applied if there is forgiveness from the victim's family. In contrast, in accidental killings, restorative value appears to be more dominant because *diyat* functions as an instrument of recovery and responsibility, rather than retaliation. This shows that the application of restorative values in Islamic law is contextual in accordance with the type of criminal act that occurred.

The findings of the study provide a theoretical contribution by clarifying the position of *the concept of diyat* in the discourse of Islamic criminal law with *restorative justice*. This study emphasizes that *diyat* cannot be directly equated with *restorative justice*, but contains values contained in restorative. This conceptual clarification enriched the study of Islamic criminal law and the development of contemporary criminal theory. From the practical side, this study shows that the values contained in *diyat* can be a normative reference in developing *restorative justice policies* in Indonesia, especially strengthening the orientation of victim recovery, the responsibility of perpetrators and the settlement of cases through peace.

This research is still limited to a normative study of the concept of *diyat* based on Qur'anic verses, so it has not examined its implementation both in judicial practice and in comparison with the legal system in various countries. Therefore, the suggestion for further research is to develop a comparative study between the concept of *diyat* and the implementation of *restorative justice* in various legal systems, or empirical research on the effectiveness of the application of restorative values in resolving all kinds of criminal cases. The development of the study is expected to expand the contribution of Islamic criminal law to the reform of the criminal justice system that is more oriented towards justice, restoration, and benefit.

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