

Restorative Justice in Islamic Criminal Law: A Comparative Study of Diyat and Modern Victimology

Muhammad Jaelani

23203012055@student.uin-suka.ac.id

UIN Sunan Kalijaga Yogyakarta

Fadhli Muhaimin Ishaq

Dosen03505@unpam.ac.id

Universitas Pamulang

M. Yusuf

m.yusuf@uinjambi.ac.id

UIN Sulthan Thaha Saifuddin Jambi

Abstract

Contemporary criminal justice systems, largely influenced by retributive penal theory, have been criticized for their limited capacity to address victims' interests. Indonesian positive law, including Law No. 31 of 2014 on the Protection of Witnesses and Victims and Law No. 20 of 2025 on Criminal Procedure Law, also continues to exhibit normative gaps in victim-centered justice mechanisms. This article examines diyat in fiqh jinayah as an instrument of restorative justice and analyzes its contribution to the development of Islamic victimology within contemporary criminal law. This study employs normative legal research using statutory, conceptual, and comparative approaches. Primary legal sources consist of the Qur'an, Hadith, and classical fiqh jinayah literature, while secondary sources include legislation, international legal instruments, books, and scholarly journal articles. Data were collected through library research and analyzed using qualitative descriptive and comparative methods. The study identifies four major contributions of diyat to contemporary victimology. First, diyat provides structural compensation guarantees through the institution of 'aqilah, which distributes financial responsibility collectively. Second, it recognizes victim autonomy as a juridical right through haqq al-adami, granting determinative authority to victims or their legal heirs. Third, the mechanism of 'afw (forgiveness) incorporates moral and relational restoration beyond conventional restitution. Fourth, diyat institutionalizes community participation through 'aqilah and 'asabiyyah (social solidarity). These principles constitute a coherent framework of Islamic victimology compatible with universal restorative justice principles and relevant to Indonesia's criminal justice reform.

Keyword :Restorative Justice, Islamic Victimology, Diyat

Abstrak

Sistem peradilan pidana istem peradilan pidana modern yang banyak dipengaruhi oleh teori pembedaan retributif sering dikritik karena kurang memperhatikan kepentingan korban. Di Indonesia, hukum positif, termasuk Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban serta Undang-Undang Nomor 20 Tahun 2025 tentang Hukum Acara Pidana, masih menunjukkan adanya kekurangan dalam mekanisme keadilan yang berorientasi pada korban. Artikel ini mengkaji diyat dalam fikih jinayah sebagai instrumen keadilan restoratif dan menganalisis kontribusinya terhadap pengembangan viktimologi Islam dalam hukum pidana kontemporer. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan. Sumber hukum utama terdiri dari Al-Qur'an, Hadis, dan literatur fikih jinayah klasik, sedangkan sumber sekunder meliputi peraturan perundang-undangan, instrumen hukum internasional, buku, dan artikel ilmiah. Data dikumpulkan melalui studi kepustakaan dan dianalisis secara deskriptif kualitatif serta komparatif. Hasil penelitian menunjukkan empat kontribusi utama diyat bagi viktimologi modern. Pertama, diyat memberikan jaminan kompensasi yang lebih kuat melalui lembaga 'aqilah, yang membagi tanggung jawab pembayaran secara kolektif. Kedua, diyat mengakui otonomi korban sebagai hak hukum melalui konsep haqq al-adami, yang memberikan kewenangan kepada korban atau ahli warisnya untuk menentukan penyelesaian perkara. Ketiga, mekanisme 'afw (pemaafan) tidak hanya berfokus pada ganti rugi, tetapi juga pada pemulihan hubungan sosial dan moral. Keempat, diyat mendorong partisipasi masyarakat melalui konsep 'aqilah dan 'asabiyyah (solidaritas sosial). Keempat prinsip tersebut membentuk kerangka viktimologi Islam yang selaras dengan prinsip-prinsip universal keadilan restoratif dan relevan untuk mendukung reformasi sistem peradilan pidana di Indonesia.

Keyword : keadilan restorative, islam , Viktimologi, Diyat

A. Introduction

Contemporary criminal justice systems, shaped predominantly by retributive penal theory, face persistent criticism for their structural failure to address victim needs and restore disrupted social relationships. Scholars such as Christie, Zehr, and Sullivan argue that state-centered justice has displaced victims from proceedings nominally concerned with their own harm, reducing them to evidentiary instruments rather than principal actors.¹ Empirical research

¹ Nils Christie, "Conflicts As Property*," *The British Journal of Criminology* 17, no. 1 (January 1977): 1-15, <https://doi.org/10.1093/oxfordjournals.bjc.a046783>. hlm. 21.

corroborates this critique: victims in retributive proceedings consistently report low levels of perceived fairness and limited sense of resolution.²

Against this background, restorative justice (RJ) emerged as a substantive alternative, reframing the central question of criminal law from what punishment the offender deserves to what harm has been done and what obligations arise from it.³ Yet the historical marginalization of victims within modern criminal law remains structurally entrenched. With the consolidation of the nation-state and the professionalization of criminal procedure, victims were reduced to witnesses for the prosecution, their substantive rights transferred to state institutions. Zehr describes this as “secondary victimization”: the very institutions claiming to deliver justice impose additional burdens of exclusion upon those they purport to serve.⁴ Legislative advances—including the UN Declaration of Basic Principles of Justice for Victims of Crime (1985) and Indonesia’s Law No. 31 of 2014 have not fully resolved the tension between state-controlled prosecution and genuine victim agency.

A central institution within *fiqh jinayah* is *diyat*, a system of financial compensation for offenses against life and bodily integrity, grounded in the Qur’an (Q.S. Al-Baqarah: 178; Q.S. An-Nisa: 92). Unlike the modern criminal fine paid to the state, *diyat* vests determinative authority in the victim or their heirs (*wali al-dam*), including the right to grant pardon (*‘afw*) a morally embedded mechanism explicitly valorized within the Qur’anic framework that secular RJ models have not fully achieved.⁵ These victim-centered principles were articulated within Islamic jurisprudence as early as the seventh century CE, more than a millennium before the emergence of modern RJ theory, positioning *fiqh jinayah* as a historically prior source of victim-oriented justice.⁶

² J. A. M. Wemmers, “Victims in the Criminal Justice System,” *A Study into the Treatment of Victims and Its Effects on Their Attitudes and Behaviour*, 1996, <http://hdl.handle.net/20.500.12832/2916>. hlm .4.

³ John Braithwaite, *Restorative Justice & Responsive Regulation* (Oxford University Press New York, NY, 2001), <https://doi.org/10.1093/oso/9780195136395.001.0001>. hlm 1

⁴ Howard Zehr, *The Little Book of Restorative Justice* (Pennsylvania: Good Books, 2002). hlm. 28.

⁵ Ramizah Wan Muhammad, “Forgiveness and Restorative Justice in Islam and the West: A Comparative Analysis,” *ICR Journal* 11, no. 2 (December 2020): hlm. 280, <https://doi.org/10.52282/icr.v11i2.786>.

⁶ Susan C. Hascall, *Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?*, 2011, <https://doi.org/10.15779/Z385P40>. hlm. 40.

Contemporary RJ discourse nonetheless remains largely Eurocentric, overlooking non-Western legal systems as sources of epistemic contribution.⁷ Three specific gaps motivate this study: (1) existing literature discusses diyat primarily in normative terms without situating it within a systematic victimological framework; (2) dominant RJ models draw almost exclusively from Anglo-American and Scandinavian traditions, obscuring non-Western contributions; and (3) few works connect diyat with modern victimology in a rigorous comparative manner, nor examine its implications for Indonesia's criminal procedure reform under Law No. 20 of 2025.⁸ Addressing these gaps, this study asks: to what extent can diyat in *fiqh jinayah* be conceptualized as an alternative victimological framework compatible with universal principles of restorative justice, and what are its theoretical and normative implications for Indonesian criminal law reform.

B. Research Methods

This study employs normative legal research, which focuses on the analysis of legal norms, principles, and doctrine rather than empirical social phenomena. Three approaches are applied in combination. First, the *statutory approach*, examining Law No. 20 of 2025 on Criminal Procedure (KUHP), Law No. 31 of 2014 on the Protection of Witnesses and Victims, and the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. Second, the *conceptual approach*, analyzing theories of restorative justice, victimology, and Islamic criminal law to build the analytical framework of the study. Primary legal materials comprise the Qur'ān, Hadith, classical *fiqh jinayah* literature as well as the aforementioned legislation and international legal instruments. Secondary legal materials include books, journal articles, research reports, and other scholarly writings relevant to restorative justice, victimology, and Islamic criminal law. Tertiary legal materials consist of legal dictionaries and encyclopedias used to clarify technical terminology. Data were collected through library research, systematically gathering and reviewing the primary and secondary legal materials described above. Analysis was conducted using

⁷ Meredith Rossner and Helen Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins," *Annual Review of Criminology* 7, no. 1 (January 2024): hlm. 357, <https://doi.org/10.1146/annurev-criminol-030421-040921>.

⁸ Joko Budi Darmawan et al., "Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values," *MILRev: Metro Islamic Law Review* 4, no. 1 (May 2025): hlm. 91., <https://doi.org/10.32332/milrev.v4i1.10435>.

qualitative descriptive and comparative methods, applying four interpretive techniques.

C. Discussion And Research Results

The Concept of Restorative Justice and Victimology Theory

Restorative justice (RJ) emerged as a major paradigm in criminal law during the 1970s as a challenge to the retributive and rehabilitative models that had long dominated Western penal theory. Howard Zehr explained the main difference between retributive and restorative justice by arguing that retributive justice views crime as a violation against the law and the state, whereas restorative justice sees crime as a violation against people and social relationships.⁹ This reorientation shifts the central question of criminal proceedings from *what punishment does the offender deserve* to *what needs to be done to repair the harm*, restoring relationships among the offender, victim, and community. This reorientation is not merely procedural but paradigmatic it reconstitutes the very purpose of criminal proceedings from punishing an offender to healing a rupture in social relationships. Christie's earlier and equally foundational argument that the state effectively "steals" conflicts from their rightful owners the victim and the offender provides the normative basis for why victim agency must be restored to the center of criminal proceedings.¹⁰

John Braithwaite's theory of reintegrative shaming further consolidated the RJ paradigm by demonstrating that the most effective responses to crime are those that induce remorse and reintegration rather than stigmatization.¹¹ Mark Umbreit's empirical research on victim-offender mediation (VOM) programmes documented higher levels of victim satisfaction and perceived fairness in restorative processes compared to conventional adversarial procedures. At the institutional level, the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002) consolidated these developments into a normative framework applicable across jurisdictions.

Strang's longitudinal study of the Reintegrative Shaming Experiments (RISE) in Canberra provided rigorous empirical support for Braithwaite's

⁹ Declan Roche, ed., *Restorative Justice*, 1st ed. (Routledge, 2017), <https://doi.org/10.4324/9781351150125>. hlm. 18.

¹⁰ William R. Wood and Masahiro Suzuki, "Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice," *Social & Legal Studies* 29, no. 6 (December 2020): hlm. 44, <https://doi.org/10.1177/0964663920911166>.

¹¹ John Braithwaite, *Crime, Shame and Reintegration*, 1st ed. (Cambridge University Press, 1989), <https://doi.org/10.1017/CBO9780511804618>. hlm. 55.

theoretical claims, demonstrating that victims who participated in restorative conferences reported significantly higher levels of emotional restoration and perceived procedural fairness than those who proceeded through conventional court processes. McCold and Wachtel's typology of restorative practices further distinguished between fully restorative, mostly restorative, and partly restorative processes providing an analytical framework for evaluating the degree to which any given mechanism genuinely centers victim experience¹²

Victimology, as a sub-discipline of criminology, examines the victim's role, rights, and needs within the criminal justice system. Benjamin Mendelsohn and Hans von Hentig pioneered early victimological inquiry, focusing primarily on victim typologies and victim-offender relationships. Contemporary victimology, however, has expanded considerably beyond these origins to encompass victim rights, secondary victimization, and the structural barriers that prevent victims from obtaining meaningful redress. Jo-Anne Wemmers' comparative studies demonstrate that victims consistently prioritize recognition, participation, and information over punitive outcomes, underscoring the inadequacy of state-centric criminal procedures that reduce victims to evidentiary witnesses.

The convergence of RJ theory and victimology has produced what scholars term the *victim-centered paradigm*: a model in which the victim's agency, needs, and rights constitute primary normative considerations rather than secondary institutional concerns.¹³ This paradigm challenges the Westphalian monopoly of the state over criminal proceedings and opens analytical space for non-Western legal traditions that independently developed victim-oriented mechanisms. The concept of *diyat* in Islamic jurisprudence occupies precisely this space.

Johnstone and Van Ness argue that the victim-centered paradigm remains theoretically incomplete so long as it draws exclusively from Western liberal legal traditions, as this limitation reproduces the very epistemic exclusions it claims to overcome. Gavrielides' comparative study across forty jurisdictions confirms that non-Western restorative mechanisms including Islamic, African, and Indigenous traditions demonstrate structural features that Western RJ models have independently sought but not yet achieved, particularly in relation to guaranteed compensation and community accountability. This epistemic gap directly

¹² Ezzat Fattah, "Justice for Crime Victims: Has the Time Finally Come for a Radical Paradigm Shift?," *Temida* 25, no. 1 (2022): hlm. 26, <https://doi.org/10.2298/TEM2201007F>.

¹³ D. W. Ness and K. H. Strong, "Restoring Justice: An Introduction to Restorative Justice: Fifth Edition," *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, January 1, 2014. hlm. 22.

motivates the present study's engagement with diyat as a source of theoretical contribution to modern victimology.¹⁴

The Concept of Diyat In Islamic Jurisprudence

A key issue in every criminal justice system is determining against whom a crime is committed and who has the main authority to resolve it. This issue shapes criminal law, including who may start proceedings, waive claims, receive compensation, and determine the purpose of punishment. In modern criminal law, especially within the post-Westphalian tradition, crime is generally understood as a public wrong against the state, which gives the state authority over prosecution and criminal proceedings. In contrast, *fiqh jinayah* applies a different framework. In cases of homicide and bodily injury, particularly within *qisas* and *diyat*, the victim or the victim's heirs have a central role in deciding the form of settlement. Hallaq's historical analysis of Islamic legal institutions establishes that this victim-centered architecture was not incidental but constitutive: the classical Islamic state derived its legitimacy partly from its role as guarantor of private rights rather than as monopolist of penal authority. This distinction fundamentally separates Islamic criminal law from the Westphalian model which state sovereignty and prosecutorial monopoly are treated as coextensive.¹⁵

Classical jurists explain this through the distinction between *haqq Allah* and *haqq al-adami*. *Haqq Allah* relates to public order and morality, while *haqq al-adami* concerns individual rights that may be enforced, transferred, compromised, or waived by their holder. In homicide and bodily injury cases, many jurists considered *qisas-diyat* to fall mainly under *haqq al-adami* because the direct harm is suffered by the victim and their family. Contemporary scholarship confirms that this distinction remains important in understanding Islamic criminal law. Ibn Qudamah's statement that *diyat* belongs to the heirs rather than the deceased further shows the inheritable and private nature of the claim.¹⁶

¹⁴ Antony Pemberton, "Dangerous Victimology: My Lessons Learned from Nils Christie," *Temida* 19, no. 2 (2016): hlm. 257, <https://doi.org/10.2298/TEM1602257P>.

¹⁵ Ibraheem Tayseer Ahmad, "The Islamic State in Contemporary Thought: A Critical Analysis of Wael Hallaq's Perspective," *Journal of Posthumanism* 5, no. 5 (April 2025), <https://doi.org/10.63332/joph.v5i5.1307>. hlm. 34.

¹⁶ Ahmad Hotib, *Al-Mughni Jilid 12 : Pembahasan Tentang al-Jiraah, Diyat, Sumpah, Perang Terhadap Pemberontak / Ibnu Qudamah; Penerjemah : Ahmad Hotib, Fathurrahman* (Jakarta: Pustaka Azzam, 2007). hlm. 345.

This structure creates legal consequences different from state-centred criminal systems. In most modern jurisdictions, prosecution is controlled by the state and victims often have only a limited procedural role. By contrast, in *fiqh jinayah*, the victim's heirs may demand *qisas*, forgive without compensation, or accept *diyat* through negotiation. The role of the state is not to replace victim agency but to supervise legality, prevent coercion, and ensure lawful outcomes. Comparative studies on victim-centred justice note that such models challenge the assumption that criminal accountability must always belong exclusively to the state. Powers' study of Islamic criminal adjudication in pre-modern Morocco demonstrates empirically how *qadi* courts functioned as procedural guarantors of victim rights rather than as agents of state prosecution providing detailed case documentation of *wali al-dam* exercising determinative authority over case outcomes across a range of homicide and bodily injury cases. El Fadl's analysis of the relationship between Islamic governance and individual rights further establishes that the state's supervisory role in *qisas-diyat* was constitutionally constrained by the primacy of private rights, making it structurally distinct from the discretionary prosecutorial authority characteristic of modern criminal justice systems.¹⁷

Within this framework, *diyat* should not be equated with a modern criminal fine. Fines are generally paid to the state for breaches of public order, whereas *diyat* is directed to the victim or heirs as compensation for harm caused by unlawful conduct. Therefore, its function is closer to compensation or restitution than to revenue-based punishment. Studies on restorative compensation mechanisms also show that direct compensation to victims tends to strengthen perceptions of procedural fairness and substantive justice.¹⁸ In addition, *diyat* has a moral dimension because payment reflects acknowledgment of wrongdoing and contributes to restoring damaged social relations.

The normative basis of this institution is explicitly grounded in Qur'an 2:178, which prescribes *qisas* in unlawful killing while simultaneously recognising pardon and compensatory settlement. This provision demonstrates that Islamic criminal law is not exclusively structured around retaliation. Rather, it incorporates a legally recognised route toward de-escalation, mercy, and

¹⁷ Shakeel Akhtar Thakur, Nasreen Akhtar, and Prof.Dr.Matloob Ahmad, "Islamic Courts And Criminal Law: An Analytical Study On The Implementation Of Qisas, Diyat, And Ta'zir," *Al-Aasar* 3, no. 1 (January 2026): hlm. 30, <https://doi.org/10.63878/aaj1387>.

¹⁸ Rossner and Taylor, "The Transformative Potential of Restorative Justice." hlm. 270.

negotiated restoration. Recent literature on Islamic legal ethics has emphasised that forgiveness in such contexts is not merely supererogatory but embedded within a broader framework of reconciliation and communal stability.¹⁹ Thus, *qisas* and *diyat* should be read as coexisting modalities within a plural penal structure.

From the perspective of penal theory, *diyat* does not fit neatly within either retributivist or utilitarian paradigms. Retributive theories justify punishment as deserved suffering proportionate to culpability, whereas utilitarian theories evaluate punishment by deterrence, incapacitation, or aggregate welfare.²⁰ *Diyat* is only partially compatible with either framework. Its orientation is more closely aligned with restoring the normative imbalance generated by wrongdoing through responsibility-taking and material repair. For this reason, recent scholarship increasingly situates Islamic compensation mechanisms within broader conversations on corrective justice, restorative justice, and relational accountability.

The prominence of private rights in *qisas-diyat* does not imply the absence of public authority. Classical governance literature assigned rulers responsibility for maintaining order, ensuring due process, and enforcing valid claims.²¹ Contemporary analyses of Islamic criminal administration similarly note that state institutions historically functioned as guarantors of procedure rather than sole owners of penal claims.²² This distinction offers a significant comparative insight: victim participation and public authority need not be mutually exclusive categories.

In current criminal justice reform debates, *diyat* offers an important model for reconsidering the distribution of rights within criminal proceedings. It shows that criminal accountability can include strong victim participation without removing institutional oversight. Therefore, the study of *diyat* remains relevant

¹⁹ Abdulaziz Sachedina, "Islamic Ethics and the Genome Question, Edited by Mohammed Ghaly," *Journal of Islamic Ethics* 6, no. 2 (January 2021): hlm. 316, <https://doi.org/10.1163/24685542-12340052>.

²⁰ Kasper Lippert-Rasmussen, "'To Serve and Protect': The Ends of Harm by Victor Tadros," *Criminal Law and Philosophy* 9, no. 1 (March 2015): hlm. 49, <https://doi.org/10.1007/s11572-013-9216-y>.

²¹ Chibli Mallat, "Mapping Saudi Criminal Law," *The American Journal of Comparative Law* 68, no. 4 (December 2020): hlm. 836, <https://doi.org/10.1093/ajcl/avaa032>.

²² Farhad Malekian, "Islamic Law Justice Systems," in *The Encyclopedia of Criminology and Criminal Justice*, 1st ed., ed. Jay S. Albanese (Wiley, 2013), hlm. 6, <https://doi.org/10.1002/9781118517383.wbecj181>.

not only for Islamic legal history but also for contemporary discussions on restitution, mediation, restorative justice, and alternative approaches to punishment.

Comparative Analysis : Diyat and Modern Restorative Justice

Comparative scholarship examining *diyat* within fiqh jinayah and contemporary restorative justice frameworks has largely remained at the level of descriptive parallelism, identifying shared features such as victim involvement, offender accountability, and non-retributive resolution mechanisms. While such comparisons are analytically useful, they often fall short of addressing the more substantive question concerning the normative and structural effectiveness of each system in realising restorative objectives. A more rigorous inquiry requires moving beyond surface similarities to evaluate whether *diyat* merely resembles RJ or whether it offers distinct advantages or limitations within specific dimensions of justice.

First, *diyat* demonstrates a structural advantage in victim authority. Empirical research indicates that victim participation in RJ programmes is frequently mediated and constrained by institutional actors—what Van Ness and Strong conceptualize as “state capture” of restorative processes.²³ By contrast, the right to pardon (‘afw) and to accept *diyat* is classified as *haqq al-adami*^{2014a} a private legal entitlement that cannot be unilaterally overridden by state authority, positioning the victim as a rights-holder with determinative control over the outcome. Doak's comparative constitutional analysis confirms that no contemporary Western criminal procedure code including KUHP 2025 confers upon victims the equivalent of *haqq al-adami*: a substantive private right to determine case outcomes that is legally protected from prosecutorial override. This structural gap between formal victim participation and genuine victim autonomy is precisely what *diyat*'s rights architecture addresses.²⁴

Second, *diyat* incorporates a moral and spiritual dimension addressing a key limitation of secular RJ models. The Qur’anic foundation of *diyat* (Qur’an 2:178) explicitly valorizes forgiveness as an act associated with piety, providing

²³ Tinneke Van Camp and Jo-Anne Wemmers, “Victim Satisfaction with Restorative Justice: More than Simply Procedural Justice,” *International Review of Victimology* 19, no. 2 (May 2013): hlm. 117, <https://doi.org/10.1177/0269758012472764>.

²⁴ J. P. P. L. Acevedo, “Jonathan Doak, Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties,” *Journal of International Criminal Justice* 7, no. 2 (May 2009): hlm. 442, <https://doi.org/10.1093/jicj/mqp026>.

an intrinsic motivational basis for reconciliation that secular frameworks lack.²⁵ Third, moral and relational dimensions of restoration (al-ta'wīḍ al-kāmil). The institution of 'afw embeds forgiveness within a normative framework that simultaneously preserves victim agency—the Qur'an morally elevates pardoning while the victim retains the juridical right to demand qisās or diyat. This model integrates moral restoration without sacrificing victim autonomy, resolving a tension that contemporary RJ theory has not fully addressed.²⁶ Fourth, community participation as a structural mechanism. The 'aqilah mechanism, conceptualized by Ibn Khaldun through social solidarity, distributes both financial responsibility and normative accountability across the community offering a model for designing community-based compensation systems that engage broader social networks beyond the dyadic offender-victim relationship.²⁷

The Contribution of Diyat to Modern Victimology

Having established the structural and normative dimensions of *diyat* and its comparative relationship with contemporary RJ frameworks, it is now possible to address the foundational question posed by this study: what specific contributions does *diyat* offer to modern victimology as a theoretical and normative discipline? This question requires moving beyond analogy to identify concrete points at which the classical Islamic framework advances, supplements, or challenges contemporary victimological theory.

First: a structural guarantee of victim compensation Modern victimology consistently identifies the failure of compensation mechanisms as one of the most significant sources of secondary victimization. In most contemporary jurisdictions, restitution orders are contingent upon the offender's financial solvency and judicial discretion, producing inconsistent outcomes that frequently disadvantage victims. *Diyat* provides a structurally different model. The principle of 'aqilah distributes financial liability across the offender's kinship or social collective, ensuring that the victim's right to compensation is not extinguished by individual insolvency. Al-Shafi'i's classical ruling that the obligation of *diyat* is not extinguished by the insolvency of the offender establishes a form of victim protection that exceeds the conditional nature of restitution schemes in most modern legal systems. This principle offers modern victimology a conceptual

²⁵ Braithwaite, *Restorative Justice & Responsive Regulation*. hlm. 12.

²⁶ Theo Gavrielides, *Comparative Restorative Justice* (Cham: Springer International Publishing AG, 2021). hlm. 8.

²⁷ Nurit Tsafir, *Collective Liability in Islam: The 'Aqila and Blood Money Payments*, 1st ed. (Cambridge University Press, 2020), <https://doi.org/10.1017/9781108654241>. hlm. 15.

model for designing collective compensation guarantees an area in which contemporary systems remain structurally

Second: victim autonomy as a juridical right, not a procedural concession. Contemporary victimology distinguishes between formal victim participation the right to attend, observe, or submit impact statements and substantive victim autonomy the right to determine the mode and outcome of resolution. Most modern criminal procedure codes, including Indonesia's new KUHAP formally recognize victim participation but stop short of conferring determinative authority upon victims. *Diyat*, by contrast, vests in the victim or their heirs a substantive legal entitlement classified as *haqq al-adami* to choose among retaliation, compensation, or unconditional pardon. This classification as a private right, rather than a procedural privilege, means that victim agency cannot be overridden by prosecutorial or judicial discretion. This distinction is theoretically significant: it repositions the victim from a procedural participant to a rights-holder with determinative authority a transition that modern victimology advocates but has not yet institutionalized in most legal systems.

Third: moral and relational dimensions of restoration. A persistent limitation of secular RJ models is their difficulty in incorporating moral and spiritual dimensions of healing without imposing specific value frameworks upon participants. The institution of *'afw* (forgiveness) within *diyat* addresses this limitation by embedding forgiveness within a normative framework that simultaneously preserves victim agency: the Qur'ān not only permits but morally elevates the act of pardoning, associating it with piety and ethical excellence. Crucially, this moral valorization operates as an incentive rather than a compulsion the victim retains the juridical right to demand *qisās* or *diyat* regardless. This model offers modern victimology a framework for integrating moral and relational restoration without sacrificing victim autonomy resolving a tension that contemporary RJ theory has not fully addressed.

Fourth: community participation as a structural mechanism. Modern victimology increasingly recognizes that crime is not merely an interpersonal event but a disruption of social relationships and communal norms. Despite this recognition, most contemporary criminal justice systems continue to individualize wrongdoing, abstracting it from its social embeddedness. The *'aqilah* mechanism, conceptualized by Ibn Khaldun through the notion of *'asābiyyah* (social solidarity), distributes both financial responsibility and normative accountability across the community. This collective dimension not

only guarantees victim compensation but also incentivizes internal norm enforcement within communal networks. As a contribution to modern victimology, this mechanism offers a model for designing community-based compensation systems that go beyond the dyadic offender-victim relationship to engage broader social networks in the restoration process.

D. Conclusion

This study This study This study shows that diyat in Islamic criminal law (*fiqh jinayah*) is not only a form of financial compensation but also a victim-centered model of justice. It reflects key principles of restorative justice, including repairing harm, respecting victim autonomy, ensuring offender accountability, and supporting social reintegration. The study argues that these principles existed in Islamic legal tradition as early as the seventh century, long before restorative justice was formally developed in Western scholarship. The study also contributes to the development of Islamic victimology by identifying four main principles: guaranteed compensation, comprehensive reparation, community participation, and victim autonomy. In doing so, it challenges the dominance of Eurocentric perspectives in restorative justice studies. In addition, mechanisms such as 'aqilah and the Qur'anic concept of 'afw (forgiveness) may provide advantages over many modern compensation systems because they offer stronger structural support for victims. These findings are relevant to Indonesia's criminal justice reform under Law No. 20 of 2025. A victimology framework based on diyat could support mandatory restitution, collective compensation guarantees, and restorative justice mechanisms that are consistent with the 1945 Constitution and Pancasila values, without requiring the Islamization of national law. Finally, the study recommends further research on the practical implementation of diyat, comparative legal anthropology, the jinayah system in Aceh as a restorative justice case study, and comparisons between Islamic and national compensation systems to support future legal reform.

References

- Acevedo, J. P. P. L. "Jonathan Doak, Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties." *Journal of International Criminal Justice* 7, no. 2 (May 2009): 442–43. <https://doi.org/10.1093/jicj/mqp026>.
- Ahmad, Ibraheem Tayseer. "The Islamic State in Contemporary Thought: A Critical Analysis of Wael Hallaq's Perspective." *Journal of Posthumanism* 5, no. 5 (April 2025). <https://doi.org/10.63332/joph.v5i5.1307>.

- Braithwaite, John. *Crime, Shame and Reintegration*. 1st ed. Cambridge University Press, 1989. <https://doi.org/10.1017/CBO9780511804618>.
- . *Restorative Justice & Responsive Regulation*. Oxford University Press New York, NY, 2001. <https://doi.org/10.1093/oso/9780195136395.001.0001>.
- Christie, Nils. "CONFLICTS AS PROPERTY*." *The British Journal of Criminology* 17, no. 1 (January 1977): 1–15. <https://doi.org/10.1093/oxfordjournals.bjc.a046783>.
- Fattah, Ezzat. "Justice for Crime Victims: Has the Time Finally Come for a Radical Paradigm Shift?" *Temida* 25, no. 1 (2022): 7–26. <https://doi.org/10.2298/TEM2201007F>.
- Gavrielides, Theo. *Comparative Restorative Justice*. Cham: Springer International Publishing AG, 2021.
- Hascall, Susan C. *Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?* 2011. <https://doi.org/10.15779/Z385P40>.
- Hotib, Ahmad. *Al-Mughni Jilid 12 : Pembahasan Tentang al-Jiraah, Diyat, Sumpah, Perang Terhadap Pemberontak / Ibnu Qudamah; Penerjemah : Ahmad Hotib, Fathurrahman*. Jakarta: Pustaka Azzam, 2007.
- Joko Budi Darmawan, Fendy Suhariadi, Suparto Widjojo, Mia Amiati, and Amjad Hamad Abdullah. "Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values." *MILRev: Metro Islamic Law Review* 4, no. 1 (May 2025): 269–94. <https://doi.org/10.32332/milrev.v4i1.10435>.
- Lippert-Rasmussen, Kasper. "'To Serve and Protect': The Ends of Harm by Victor Tadros." *Criminal Law and Philosophy* 9, no. 1 (March 2015): 49–71. <https://doi.org/10.1007/s11572-013-9216-y>.
- Malekian, Farhad. "Islamic Law Justice Systems." In *The Encyclopedia of Criminology and Criminal Justice*, 1st ed., edited by Jay S. Albanese, 1–6. Wiley, 2013. <https://doi.org/10.1002/9781118517383.wbeccj181>.
- Mallat, Chibli. "Mapping Saudi Criminal Law." *The American Journal of Comparative Law* 68, no. 4 (December 2020): 836–92. <https://doi.org/10.1093/ajcl/avaa032>.
- Ness, D. W., and K. H. Strong. "Restoring Justice: An Introduction to Restorative Justice: Fifth Edition." *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, January 1, 2014, 1–235.

- Pemberton, Antony. "Dangerous Victimology: My Lessons Learned from Nils Christie." *Temida* 19, no. 2 (2016): 257–76. <https://doi.org/10.2298/TEM1602257P>.
- Ramizah Wan Muhammad. "Forgiveness and Restorative Justice in Islam and the West: A Comparative Analysis." *ICR Journal* 11, no. 2 (December 2020): 277–97. <https://doi.org/10.52282/icr.v11i2.786>.
- Roche, Declan, ed. *Restorative Justice*. 1st ed. Routledge, 2017. <https://doi.org/10.4324/9781351150125>.
- Rossner, Meredith, and Helen Taylor. "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins." *Annual Review of Criminology* 7, no. 1 (January 2024): 357–81. <https://doi.org/10.1146/annurev-criminol-030421-040921>.
- Sachedina, Abdulaziz. "Islamic Ethics and the Genome Question, Edited by Mohammed Ghaly." *Journal of Islamic Ethics* 6, no. 2 (January 2021): 316–19. <https://doi.org/10.1163/24685542-12340052>.
- Shakeel Akhtar Thakur, Nasreen Akhtar, and Prof.Dr.Matloob Ahmad. "ISLAMIC COURTS AND CRIMINAL LAW: AN ANALYTICAL STUDY ON THE IMPLEMENTATION OF QISAS, DIYAT, AND TA'ZIR." *Al-Aasar* 3, no. 1 (January 2026): 24–42. <https://doi.org/10.63878/aaj1387>.
- Tsafrir, Nurit. *Collective Liability in Islam: The 'Aqila and Blood Money Payments*. 1st ed. Cambridge University Press, 2020. <https://doi.org/10.1017/9781108654241>.
- Van Camp, Tinneke, and Jo-Anne Wemmers. "Victim Satisfaction with Restorative Justice: More than Simply Procedural Justice." *International Review of Victimology* 19, no. 2 (May 2013): 117–43. <https://doi.org/10.1177/0269758012472764>.
- Wemmers, J. A. M. "Victims in the Criminal Justice System." *A Study into the Treatment of Victims and Its Effects on Their Attitudes and Behaviour*, 1996. <http://hdl.handle.net/20.500.12832/2916>.
- Wood, William R., and Masahiro Suzuki. "Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice." *Social & Legal Studies* 29, no. 6 (December 2020): 903–24. <https://doi.org/10.1177/0964663920911166>.
- Zehr, Howard. *The Little Book of Restorative Justice*. Pennsylvania: Good Books, 2002.