

Implementation of diyya involving a murder case in Malaysia: Challenges and resolutions

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ABSTRACT

In Islamic criminal law, the punishment known as diyya not only penalizes the offender but also provides compensation to the victim's family for the life lost. However, the issue of implementing diyya, particularly in cases of murder, has long been debated among academics. Suggestions to implement diyya within the Malaysian legal system have also been put forward by the Yang di-Pertuan Agong, who recognizes its potential if incorporated into the existing legal framework. Nevertheless, to date, no official decision has been made by the relevant authorities to implement diyya. The obstacles faced by legal authorities in implementing diyya may include legal complexities, procedural challenges, and issues related to public perception. Therefore, this article aims to examine diyya from an Islamic perspective, analyze the existing legal framework governing murder cases in relation to the possible implementation of diyya, and discuss the challenges associated with its implementation along with potential resolutions. These proposed resolutions are formulated based on Islamic principles and their reasonableness within the context of Malaysia's legal system, societal structure, and contemporary realities. This article adopts a qualitative research methodology, relying on the analysis of sources such as books, academic journals, legal statutes, online materials, and other relevant documents. By examining the challenges and proposing appropriate solutions, this study seeks to contribute toward the potential integration of diyya into the Malaysian legal system in a manner that upholds justice for both offenders and the victims' families.

Keywords: Diyya, murder case, challenges, resolutions, Malaysia

INTRODUCTION

Diyya is a form of Islamic criminal law that allows the payment of compensation by a perpetrator who causes injury or death to the victim or the victim's family. In recent times, diyya has gained significant attention in Malaysia. Rooted in Islamic jurisprudence, diyya aims to ensure justice, promote reconciliation, and provide financial support to the victim's family. Within the Malaysian legal system, diyya is believed to have the potential to offer an alternative approach to addressing murder cases by emphasizing principles of restorative justice. The broader context of criminal

justice in Malaysia underscores the importance of examining the challenges and potential resolutions related to the implementation of diyya in murder cases. Recent legal reforms and public debates surrounding diyya reflect a growing interest in developing a comprehensive framework that respects religious and cultural perspectives while ensuring justice for all parties involved. Malaysia, as a multicultural and multi-religious country, presents a unique context for the implementation of diyya. The nation's legal system is founded on a combination of civil law and Islamic law principles.

Although Malaysia has a well-established legal framework governing criminal offences, the application of diyya within this framework raises important legal and practical questions that must be addressed to ensure its effective implementation and compatibility with the broader criminal justice system. The discussion surrounding the implementation of diyya in Malaysia has become increasingly prominent; however, no official decision has yet been made by the government to adopt it, particularly in relation to murder cases, despite recognition by various authorities of its potential within the Malaysian legal system. Despite the potential benefits of implementing diyya in murder cases, significant challenges remain within the Malaysian legal framework. These challenges include legal complexities, procedural constraints, and issues related to public perception. Understanding and addressing these challenges are essential for developing a comprehensive framework that facilitates the effective implementation of diyya, while ensuring justice, accountability, and reconciliation for all parties involved. Accordingly, the primary research problem focuses on how diyya can be effectively implemented in murder cases within the Malaysian legal system, taking into account legal, cultural, and societal factors.

LITERATURE REVIEW

According to the Quran, Surah An-Nisa verse 92, diyya is a compensation payment presented to the deceased family because of killing by mistake, and according to hadith, if anyone kills another, they have two options: accepting qisas or getting a pardon with the payment of diyya (Awang, 2012). According to Hilmi Musa (2015), diyya is a term used in Islamic criminal law as a substitute punishment for qisas involving murder and the main punishment for murder with partial intention and killing by mistake.

According to Hasanah (2016), in her thesis, *Pemikiran Abu Hanifah Tentang Diyya Qatlu Al-Amd*, the author seeks to understand why, in his opinion, there is no diyya for intentional murder, but according to Jumhur, there are diyya in replacement for qisas in intentional murder, and how Imam Abu Hanifah *istinbath* a *hukm* clarifies that there is no diyya for replacement of qisas in intentional murder. The finding indicates that there are no diyya because qisas are compulsory and diyya cannot replace the qisas, and releasing qisas in return for diyya is not forgiveness but a peace treaty. Besides, the author criticises the fact that she did not agree with the opinion of Imam Abu Hanifah and states that diyya should be imposed on murderers even if they have been forgiven by the victim's family because, in the event of murder, the one who suffers the loss is the victim's family.

Besides, an article under the title *Law of Murder under Islamic Criminal Law: An Analysis* by Pervin (2016) highlights the law of murder in Islamic criminal law and examines the origin as well as a way of proving murder in Islamic criminal law of murder. The finding points out various types of murder from an Islamic perspective and the punishment for each type of murder. Besides, only intentional murder has qisas as a punishment, and for other types of murder, the punishment is diyya.

Based on the article above, it can be seen that the authors are focusing on diyya from an Islamic perspective. This can help the researcher seek out diyya in murder based on an Islamic

perspective to provide the best explanation of diyya according to the Islamic perspective in this research.

Based on Adil (2022) in his article, *The Right to Life and the Death Penalty: The Shariah Response to International Law*, the article aims to endeavour the human right to life from both perspectives, Islam and the Federal Constitution, to analyse the position of the death penalty in the context of the law in Malaysia and the Shariah point of view, examine international legal claims regarding the abolition of the death penalty, and highlight the Shariah response. The finding indicates that Islam and federal constitutional law recognise the right to life except in situations where killing is permissible. In Islam, not all death sentences in Islamic law are fixed and immutable. So, abolishing the death penalty in law is the right way. Besides, the United Nations (UN), through the Human Rights Council and international demands, has called for the total abolition of the death penalty. Most countries have responded to this call by abolishing the death penalty in their countries, including 106 countries that have abolished the death penalty for all criminal offences, and there are 142 countries that have abolished the death penalty in general law. The author adds that according to sharia, Islamic criminal law gives a human the right to choose a qisas or replace it with a diyya. Based on this article, it gives a clear situation to implement diyya in the legal system since the death penalty is not mandatory, which means diyya has a chance to be implemented. However, this article did not mention any challenges to implementing diyya in the legal system.

Moreover, based on Khalil's (2022) article, *Siyah Syar'iyah Approach to Dealing with Current Criminal Legislation Issues in Malaysia*, beginning with the whole planned repeal of the death penalty for 33 offences in 2018, the government's position then shifted to the adjustment of the mandatory death sentence to the discretionary death penalty for 9 offences in 2019. Following the presentation of the study report in June 2022, the policy was revised to include 11 offences, including Section 302: Punishment for the offence of murder specified under Section 300, in the amendment of the mandatory death penalty to the discretionary death penalty. Besides, from an Islamic perspective, the death penalty under Section 300 for murder is classified under qisas punishment. As a result, this punishment is not mandatory, and when the law is amended, the rights of these victims should be taken into account. Therefore, it is in accordance with Sharia to change the mandatory punishment provision to one that is based on the judge's discretion. However, this research did not discuss it from a siyasah syar'iyah perspective, as this research aims to analyse challenges and seek a resolution in the implementation of diyya in murder cases. Therefore, the researcher will attempt to examine this topic to analyse any challenges and resolutions in the implementation of diyya under Section 300.

According to Awang (2012), in his article *Diyya (Blood Money) as Substitution to Capital Punishment: An Attempt Towards Harmonisation Between Shari'ah and Malaysian Penal Code*, the author argues that:

"The present law focuses only on the punishment of the offender, disregarding totally the plight and grief of the victim's family. It seems a mockery that the law provides compulsory insurance whereby compensation is payable to the family of the victim of a traffic accident arising from mere negligence but does not compensate where the offender intentionally uses a vehicle to kill another."

The author criticises that the existing law nowadays, especially regarding the law governing homicide cases in Malaysia, does not provide the family of the victim with compensation, even if the perpetrator intentionally used a car to kill another to make it look like negligence. This is unfair to the victim's family in murder cases because if the murderer got forgiveness from the YDPA, he or she only got imprisonment or a fine but did not have to pay compensation to the victim's family. Based on this article, it is in accordance with the aims of this research to seek a resolution to any challenges that arise in implementing diyya in the Malaysian

legal system. This article gives a crystal-clear picture of the weaknesses of current law if Islamic criminal law is not implemented in Malaysia, even though it does not discuss any challenges that arise in implementing diyya.

According to Yusof, on his website, *Melaksanakan Diyya Melalui Lembaga Pengampunan: Perspektif Perlembagaan*, the author aims to introduce an implementation of diyya from a constitutional perspective through the pardon board. The finding indicates that the concept of pardon in Article 42 of the Federal Constitution gives power to the YDPA, YDPN and Malay sultanate to grant a pardon, rerites and acts on the advice of the pardon board consisting of the Attorney General or his representative, Menteri Besar or Chief Minister or Minister of Federal Territories. Besides, the author discusses how this power to pardon originates from 'royal prerogative of mercy' in English legislation but does not become an obstacle for the goodness of Islam, even though originally the government did not have the power of pardon in criminal offences according to Islam. Then, the author gives an example of how the pardon board plays a role in how to apply diyya. Based on the data on this website, it does not have a long gap with this research because it has introduced one of the resolutions to resolve the challenge of implementing diyya in the Malaysian legal system.

Next, according to Abdul Mutalib et al. (2022) in the article *Determining the basis of diyya payment property in the Malaysian context*, in order to implement diyya in the Malaysian legal system, the question that needs to be focused on is the property to be used as a medium to pay diyya. The authors point out the concept of diyya property in Malaysia's context of application and the kinds of property that can be used to make diyya payments. The diyya rate and ways to set the rate in Malaysia have also been covered in this article. The finding indicates that the currency that is in Malaysia, the ringgit Malaysia, using the ratio of exchange of dirhams, is applicable in Malaysia.

According to Musa Hilmi (2015), in the article *The Use of Gold and Silver in Determining Value in Diyya Compensation: An Analysis on the Value of Current Currency Exchange*, the author argues that implementing diyya in the Malaysian legal system is difficult if using a camel as a medium to pay diyya. This article aims to seek an alternative method to replace a camel as a medium to pay diyya. Then, the author has introduced the use of an alternative medium, which is gold and silver, as a determinant of rate value to pay a diyya based on the rate value of gold and silver in Malaysia. Besides, the author has discussed how to pay a value of diyya using the concept of 'aqilah if the perpetrator cannot afford to pay diyya.

Based on the articles above, the authors have an answer to one of the challenges in the implementation of diyya, which is about the medium and the rate of value of diyya. This research aims to analyse the challenge and seek a resolution about the implementation of diyya on the property to be used to pay diyya, and the article above has helped the researcher complete it.

In accordance with the article *Acceptance and Refusal of the Non-Muslim Society in Malaysia towards Islamic Criminal Law: A Discussion from the Perspective of Malaysian Culture* by Azman et al. (2021), the authors aim to discuss Islamic criminal law from the perspective of Malaysian culture and to analyse acceptance and rejection of the non-Muslim community in Malaysia against Islamic criminal law as well as describe suggestions for improvement against Islamic criminal law in Malaysia. The authors highlight that non-Muslims feel that if Islamic criminal law is implemented, it will give advantages to Malays and Muslims as the status quo in Malaysia and will also threaten culture and religion because they are forced to accept the law or Islamic religious law. Based on this article, the authors did not explain the law of murder in Malaysia; however, it did not prevent the researcher from using this article as a reference because it will help the researcher come up with a resolution on how to convince a non-Muslim that diyya,

one of the Islamic criminal laws, can be implemented in the Malaysian legal system without threatening their culture and religion.

In the article *Implementation of Diyya in the Legal Framework in Malaysia: Challenge to Contemporary Islamic Jurisprudence* by Ismail (2012), the author highlights the need to study current jurisprudence to implement diyya as a law in Malaysia to adapt to current modern progress, as emphasised by Yusuf al-Qardawi, who stated that one of the special features of Islamic jurisprudence is its ability to grow and renew and its flexible nature that allows it to face any problem that arises, regardless of its size. Thus, a new *ijtihad* is required to adapt to the current situation. The author discusses diyya, whether it is under Islamic law or civil law in Malaysia, in order to implement diyya in the Malaysian legal system, and the author explains that the nature of punishment in Islamic criminal law is torture, but diyya does not have an obvious nature in Islamic criminal law. Based on this article, it will give a clear perspective on diyya to help the researcher in examining diyya, whether it is under the jurisdiction of Islamic law or civil law, as Malaysia has legal complexities, resulting in the implementation of diyya in the legal system.

METHODOLOGY

This research adopts a qualitative research approach using a grounded theory methodology to explore and understand the challenges and potential resolutions related to the implementation of diyya in murder cases in Malaysia. The grounded theory approach is well suited to this study, as it enables an in-depth examination of complex social phenomena, including legal and cultural practices, perceptions, and lived experiences. This approach facilitates the development of theoretical insights through a systematic analytical process aimed at identifying challenges and formulating resolutions related to the implementation of diyya. By employing grounded theory, this research seeks to capture rich and nuanced data that can provide meaningful insights into the multifaceted nature of diyya implementation. Data collection in this study is primarily conducted through document analysis. This method involves the systematic examination of textual materials using content analysis, which provides an objective description of communication messages that are printed, transmitted, or illustrated. Through document analysis, the content of texts is examined by interpreting words, meanings, images, symbols, ideas, themes, and messages conveyed within the documents. This process enables the identification and extraction of relevant information related to the issues under investigation. Accordingly, this study analyses various relevant and authoritative sources, including books, academic journals, working papers, theses, scientific studies, scholarly articles, legal statutes, and official documents, in order to obtain a comprehensive understanding of the challenges and possible resolutions concerning the implementation of diyya in murder cases in Malaysia.

RESULT AND DISCUSSION

The aims and solutions to predetermined questions are highlighted in this study. The following topics are discussed:

Diyya from an Islamic perspective

The *fuqaha* define diyya, or compensation, as the sum made good by the one who kills or injures the victim or his family, regardless of whether the crime was committed intentionally or accidentally (Ismail, n.d.). The word diyya is derived from Arabic *ودي - يدي* means rights of the

slain party. Diyya can also refer to compulsory property (Samudin, 2021). The scholars are different in their opinions regarding diyya. Some scholars say diyya is a punishment because of the criminal, and some say it is compensation. Ibn 'Irfah, a scholar of the Maliki school, states that diyya is property that must be paid for the murder committed on free human beings in exchange for blood or his injuries as determined by sharia (Al-Ansari). Abdul Qadir 'Awdah was of the opinion that diyya is an alternative punishment to qisas punishment if it takes the place of qisas punishment, and at the same time, it is also a punishment original to a semi-criminal offence on purpose (Awdah). Therefore, Diyya can be defined as payment of indemnity for killing and injuring a human being (Awang, 2012). The concept of diyya is derived from the Qur'an, as articulated in Surah al-Nisā', verse 92:

“And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment [diyya] presented to his [i.e., the deceased's] family [is required], unless they give [up their right as] charity. But if he [i.e., the deceased] was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allāh. And Allāh is ever Knowing and Wise.”

Besides, in hadith the prophet said:

“Anyone who is killed, his legal heirs have two options against his murderer: to exact qisas or to pardon him upon diyya.” (Khan, n.d.)

There are two types of diyya, which are soul diyya (Diyya Nyawa) and limb diyya (Diyya Anggota), and the value of diyya depends on the types of murder, which are intentional murder, quasi-intentional murder, and murder by mistake (Al-Bakri, 2022). Scholars, in their opinion, believe that diyya must be paid in the shape of a camel, but if the camels cannot be obtained, diyya can be paid by using gold and silver according to their value, as practiced by Khulafa Rasyidin. Amongst scholars except Hanafi school, diyya was agreed upon as a substitute punishment for willful murder and the original punishment for quasi-intentional murder and murder by mistake. Next is an explanation about the types of murder, the value of diyya, and the method of payment (Al-Bakri, 2022).

The exact punishment for intentional murder is qisas, but if the victim's family wants to remise, they can accept a diyya with conditions: the diyya must be paid using the offender's own property and cannot be delayed. If the camels cannot be obtained, the value of the diyya will depend on the value of the camels. The value of diyya for intentional murder is 100 camels, which, as agreed amongst scholars, consists of a variety of types of camels, namely:

1. Thirty Hiqqah (3 years old female);
2. Thirty Jadhah (4years old female); and
3. Fourty pregnant khalifah (5 years old and above)

Next, the value of diyya for quasi-intentional murder is the same as with intentional murder, but it can be paid by the offender's family property, and it must be made in 3 years, 1 per 3 for each year.

Lastly, the value of diyya for murder by mistake is 100 camels, but it is divided into 5 types of camels, namely:

1. 20 makhadh female camels that are one-year-old female camels,
2. 20 labun female camels that are two-year-old female camels,
3. 20 labun male children,
4. 20 hiqqahs and
5. 20 jaza'ahs.

Methods of payment for murder by mistake are the same as for quasi-intentional murder. The type of diyya in this case is diyya mukhaffafah. In the hadith narrated by Ibn Mas'ud, the Prophet SAW said, In the diyya for murder, no intention is 20 hiqqah camels, 20 jadh'ah camels, 20 makhadh bint camels, 20 Labun bint camels, and 20 camels, Ibnu Makhadh's camel" (Hilmi, 2015).

Existing Legal Framework Relating to Murder Cases in Implementation Diyya

In Malaysia, the regulations related to murder are contained in the Penal Code (Act 574), specifically in Section 300, explaining murder by intent and how the murderer will be accused. In Section 302, it is stated that the accused of murder is likely to get the death penalty, life imprisonment, or whipping if convicted of wilful murder.

According to Section 304 of the Penal Code, it contains information about quasi-intentional murder and its punishment. Section 304(a) states the sentence of imprisonment up to 30 years and a fine if convicted, to the extent that one has an intention to cause death or cause bodily harm likely to cause death. Section 304 (b) states the sentence of imprisonment up to 10 years or a fine or both if convicted, to the extent the accused has knowledge that the act can cause death but without intention.

Besides, in Section 304A, it talks about killing by mistake or negligence and its punishment, which is imprisonment up to 2 years, a fine, or both.

As stated above, there is no fine for punishment for intention murder; even the death penalty has been abolished by the government to give a judge discretion to impose any judgement aside from the death penalty, but the fine is contained for quasi-intentional and murder by mistake. The concept of diyya in fine is still not fully practiced in regulations related to the law of murder.

Besides, it is aligned with Islamic criminal law, which requires qisas as contained in Section 302 to impose the death penalty, but diyya must be a substitute punishment for qisas, and the concoction of diyya in Sections 304 and 304A in line with Islamic criminal law provides diyya as the original punishment. However, in Section 302, there is no punishment based on compensation payments. So, it is not in line with what Islamic law stipulates about death as a substitute punishment.

Moreover, the concept and framework of the diyya model also exist under Section 426 of the Criminal Procedure Code (Act 593). This section provides that, apart from a fine or imprisonment, the court may also order the accused to pay compensation to the victim or the victim's family members if the case involves any injury, loss, or death on the part of the victim (Al-Bakri, 2022) but according to Ramkarpal Singh, a Deputy Minister in the Prime Minister's Department (Law and Institutional Reform), "so far provisions are used involving the Code of Criminal Procedure through Section 426, which means that compensation is given to the court and not to other parties" (Fadli, 2023) . However, this section is only applicable if the Deputy Public Prosecutor makes the application and it is still not fully applied in criminal cases (Al- Bakri,

2022). It can be seen that the role of a criminal court is more sanction- prescribing and less as an economic adjuster, for which the civil court is there. (Ismail, 2011) So, in the regulation of Malaysia, the concept of diyya has been applied even though it is not fully practiced, and it is necessary to review the practice of diyya in the regulation, especially in the law of murder and its procedure.

Last but not least, the concept of diyya regarding the power of pardon is identical with the power of pardon in Article 42 of the Federal Constitution and must not be forgotten and is worthy of discussion. Article 42 states that the Yang di-Pertuan Agong has the power to grant pardons, reprieves, and respites in respect of all offences that have been tried by court martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, and the Ruler or Yang di-Pertua Negeri of a state has the power to grant pardons, reprieves, and respites in respect of all other offences committed in his state. The connection between diyya and this article lies in the power of 'pardon', as in Islamic teaching, the one who has the power to pardon the offender is the victim's family, while in this article, the one who has the power to pardon is the Ruler. Thus, it is important to further examine this article in order to implement diyya in the legal system.

Challenges in Implementation of Diyya in Murder Cases

A big obstacle to Diyya's adoption in murder cases is making sure it is consistent with Malaysia's judicial system. Due to Malaysia's dual legal system, which combines Islamic and civil law, incorporating Diyya within the current legal framework is more difficult. The difficulty lies in maintaining the values of justice, equality, and human rights while balancing Sharia with legal aspects.

The gap between Sharia law and civil law in Malaysia is displayed in their source of law, jurisdiction, punishment, and legal philosophy. Alas, these gaps have become a hindrance to harmonising diyya in the legal system. The source of law for civil law is enacted by the legislative body in parliament, while Sharia law is enacted by the DUN. Then, the jurisdiction for civil law is applicable to all states, Muslim and non-Muslim, and the court jurisdiction has power in civil law, while Sharia law is distinguished between states, only applicable to Muslims, and the court jurisdiction only has power under Sharia law. In Malaysia, all criminal cases will go to civil procedure, and sharia law generally regulates only personal matters, likely family matters such as marriage, divorce, and so on. Legal philosophy in civil law focuses on the resolution of disputes, while Sharia law integrates legal, moral, and religious principles due to the many punishments derived from the Quran and Hadith. Not only that, but punishment in civil law focuses on punitive measures like the death penalty, fines, and imprisonment, while sharia law is concerned with the public interest and welfare of the victim, such as the victim's family, which can choose to accept the death penalty or continue the death penalty in the case of murder.

Besides, from an Islamic perspective, the concept of diyya means that compensation must be given to the victim's family, but in Section 426, the court does not have the power to provide compensation without a request by the prosecutor; instead, the court usually gives a fine as punishment to the offender, and the one who is entitled to the fine payment is the government, and the victim's family will get nothing, which is why it is less applicable in criminal cases (Al-Bakri, 2022). The Federal Court in *PP v. Johan Mutalib* felt that Section 426 contemplates the injured person and not the government; therefore, the government cannot be the recipient of such compensation. (Ismail, 2011).

Then, diyya is identical with the power of pardon from the victim's family, but the power of pardon in Article 42 contradicts the concept of diyya, as in Islamic perspective, the one who has the power to pardon the offender is the heir's victim, not the ruler. The concept of pardon in

Article 42 does not come from Islamic teaching, and it has been linked with the practice of 'Royal Prerogative of Mercy' in English law since 1617 (Fathi, n.d.). There are some arguments that the stipulation of diyya is not mentioned in Article 42 and is outside the jurisdiction of the YDPA, YDPN, and pardon board, making it unsuitable for practice in the legal system (Fathi, n.d.).

Fairness and transparency, as they apply to the legal framework, are another component of compatibility. While Diyya places a strong emphasis on forgiving, reuniting, and providing recompense, it must not compromise the effort to provide justice for victims and their families. Finding a good balance between the restorative ideals of Diyya and the requirement to uphold justice and accountability within the judicial system is difficult. The quest for justice for the victims and their families must not be hampered by Diyya, which advocates for peace and forgiveness. This means that Diyya should not give criminals a way to escape just punishment or avoid the repercussions of their acts.

It is argued that the government maintains the right to commute a death sentence, that the perpetrator should compensate the victim's family rather than pay a fine to the government, and that the court may also imprison him as punishment. The current legal system completely ignores the suffering and anguish of the victim's family and only concentrates on punishing the culprit (Awang, 2012). Even though the concept of diyya exists in regulations, the rights of the victims and their families are still not upheld. Even though the offender has been punished, their fate is still undefended because the punishment, like the death penalty, only satisfied their will because they felt that was a fitting punishment. But if the deceased was a breadwinner for the family, what about the fate of the family after his or her absence?

Additionally, while Diyya offers a restorative method of resolving disputes through compensation, difficulties occur in calculating the right compensation amounts, which contrasts the Diyya principles with the obstacles of figuring out fair and reasonable financial recompense for the harm inflicted. In contrast to other types of damages in legal systems, determining compensation in Diyya claims entails evaluating immaterial elements such as psychological anguish, loss of support, and emotional discomfort. These intangible losses are difficult to precisely define and difficult to put a monetary value on. To make sure that the compensation sum is appropriate and realistic, it is also necessary to consider the economic conditions of the criminal and the victim's family.

Finding a balance between offering appropriate compensation and avoiding placing an undue financial burden on the perpetrator is another difficulty. As Diyya seeks to promote reconciliation rather than continue a cycle of economic misery, it should not place an excessive burden on the offender. To make sure that the compensation sum is reasonable and within the offender's means to pay, it is essential to take their financial resources into account. Careful analysis and evaluation are necessary to strike a balance between the victim's or the victim's family's interests and the offender's financial resources.

On the other hand, cultural and social perceptions play a significant role in shaping attitudes towards Diyya. Traditional cultural and social beliefs often emphasise the importance of blood revenge or retribution as a means of achieving justice in cases of severe crimes such as murder. These beliefs may view Diyya as an alternative approach that deviates from the customary notion of justice and may be met with resistance or scepticism from segments of society that adhere strongly to these traditional beliefs.

Moreover, Malaysia is multi-cultural and multi-racial, which means multi-religions will have different perspectives on the implementation of diyya, as diyya is an Islamic criminal law. Non-Muslims in Malaysia will feel that if Islamic criminal law is implemented, it will give advantages to Malays and Muslims as the status quo in Malaysia and will also threaten culture and religion because they are forced to accept the law or Islamic religious law (Azman et al.,

2021). They also feel the Islamic criminal law should only apply to Muslim. Thus, it will hinder the effectiveness of the implementation of diyya in murder cases.

Resolutions to Overcome the Challenges in the Implementation of Diyya

There are many ways to address the challenges that hinder the effectiveness of the implementation of diyya in murder cases. First, to solve the problem of Diyya incompatible with Malaysia's legal system, a good solution is to change the laws and set clear rules that make Diyya possible to be implement. So, a key to address is harmonising a diyya with Islamic criminal law in Thus, it is proposed that amendments should be implemented to the Federal Constitution, the Criminal Procedure Code, and the Penal Code in order to incorporate diyya into Malaysian law. (Awang, 2012).

Contemporary maqasid-oriented analyses emphasise that institutional mechanisms must be systematically structured to align with the overarching objectives of the Shariah (Al-Bohari et al., 2025). This principle suggests that the implementation of diyya should not be confined to formal legislative incorporation alone but must also be supported by a coherent operational framework capable of realising substantive justice in accordance with Islamic legal objectives.

In addition, recent scholarship highlights the necessity of organising policy implementation according to the proper prioritisation of the five essential protections of Shariah to avoid imbalance in achieving legal objectives (Ab Rahman et al., 2025). Within the context of diyya reform, this prioritisation implies that the preservation of life (hifz al-nafs) must occupy primary consideration, followed by the protection of property (hifz al-mal), thereby ensuring that the administration of justice remains consistent with the foundational aims of Islamic criminal law.

In article 42 of Federal Constitution clause (1):

“The Yang di-Pertuan Agong has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya and the Ruler or Yang di-Pertua Negeri of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his state.”

According to (Awang, 2012), the clause is proposed to be added to the aforementioned law following the term "state." "Except for the offences under sections 302 and 304 of the Penal Code unless section 302C of the Penal Code grants the Government the right to pardon."

Then, in clause (2) of article 42, "Subject to clause (10), and without prejudice to any provision of federal law relating to remission of sentences for good conduct or special service, any power conferred by federal or State law to remit, suspend or commute sentences for any offence shall be exercisable by the Yang di-Pertuan Agong if the sentence was passed by a court-martial or by a civil court exercising jurisdiction in the federal territories of Kuala Lumpur, Labuan and Putrajaya and, in any other case, shall be exercisable by the Ruler or Yang di-Pertua Negeri of the State in which the offence was committed:"

The clause is proposed to be added to the aforementioned law following the term "committed." "Except for the offences under sections 302 and 304 of the Penal Code unless section 302C of the Penal Code grants the Government the right to pardon." (Awang, 2012).

Besides, there should be an amendment to sections 302, 304 and 304A to include the word "diyya" or "compensation" in the law and give the victim's family the power to grant pardon,

choose the death penalty, or accept compensation as a substitute punishment regarding wilful murder.

Moreover, to give an effective implementation of diyya, there should be an amendment to the criminal procedure code regarding Section 426 that allocates the court's power to order the accused to pay compensation. However, the problem is that the order must be necessary upon application by the deputy public prosecutor (Al-Bakri, 2022) and compensation will be given to the court and not the other party (Fadli, 2023). Then, the amendment should be that compensation must be given to the victim's family, not other parties, as the victim's family was very affected, and to amend that the victim's family does not require an application by the deputy public prosecutor to claim compensation. Thus, this amendment will make the procedure for providing said compensation easier, as the court does not need to wait for an application from the prosecutor.

Not only that, to ensure the effectiveness of diyya, it should take advantage of the Pardon Board's role as a "middleman" between the YDPA, YDPN, Ruler of the State, and the victim's family to grant pardon. Every state has its own pardon board. So, to use the power of pardon without challenging the Ruler's authority in Article 42, in accordance with the general authority of Article 42, the Pardon Board of Pahang, for instance, may establish guidelines for the performance of penance that are valid under the authority of the Sultan and the Pardon Board of Pahang. In this regard, the secretariat of the Pardon Board can ask the family of the deceased, in accordance with Islamic law, if they want to seek compensation, directly pardon, or maintain the death sentence when the accused is found guilty of murder. If the deceased's family decides to accept diyya, the Board of Pardons may then provide an offer of pardon in accordance with the power granted by Article 42, provided that the offender first makes arrangements for the payment of diyya in sum determined by the sharia's. Once the diyya is paid in full, the criminal is freed without first receiving a death sentence (Fathi, n.d.).

Moreover, in determining an appropriate and equitable amount of diyya within the Malaysian legal system, while taking into account cultural and economic considerations, the authors suggest that diyya may be paid based on the current market value of gold and silver. The juristic disagreement among scholars regarding the form of diyya, whether it should be paid in camels, gold, or silver, has opened the door for ijihad. This juristic diversity allows flexibility in selecting the most appropriate ruling (hukm) in accordance with contemporary circumstances. This approach is supported by the Islamic legal maxim:

لا يُنكَرُ الْمُخْتَلَفُ فِيهِ، وَإِنَّمَا يُنكَرُ الْمُجْمَعُ عَلَيْهِ

"Matters over which there is juristic disagreement are not subject to condemnation; only matters upon which there is consensus may be reproached."

As long as differing scholarly opinions are supported by sound and unambiguous evidence, such differences are acknowledged and accepted within Islamic jurisprudence. Conversely, a particular view may be disregarded if it lacks valid proof or strong legal reasoning (Zuhayli, 2006). In this regard, the use of gold and silver as a basis for determining the value of diyya is considered appropriate, as their prices remain relatively stable due to their consistent valuation in the global market.

Based on customary Malaysian economics, using the Malaysian currency as a transaction medium is most appropriate to be applied in diyya payments through gold or silver rates value. Currency is an intermediary medium between buyers and sellers. In today's context, because all economic transactions around the world use currency, diyya property is the certified currency of a country (Abdul Mutalib et al., 2022). So, to calculate the value of diyya based on gold and silver, let take an example of 1 dinar equal to pure gold value (916) weighing 4.25g, so the value for 1g

of gold is RM239.55 and equal to 1000-dinar, equivalent to RM1,018,087.50 (Abdul Mutalib et al., 2022). If 1 dirham is equal to the pure silver value (999) weighing 2.975g, so the value for 1g of silver is RM2.75, then 1 dirham will be equivalent to RM8.20. So, 12000-Dirham is equivalent to RM98,400.00 (Abdul Mutalib et al., 2022). Based on the calculation above, the value based on silver is more appropriate to be applied because it seems the benefits are more apparent to the payer and the recipient, and the value of gold seems too much for the Malaysian community, which will hinder the effectiveness of the implementation of diyya in Malaysia (Hilmi, 2015).

However, the question arises: if the offender is poor and cannot afford to pay diyya to the victim's family, it seems the implementation of diyya is just in vain. So, how do we tackle this issue? The writers suggest replacing diyya with Takaful or social insurance. The concept of takaful is similar to the concept of 'aqilah. In Islamic perspective, the burden of paying the compensation is not only placed on the offender but also exists one system as a backbone to help pay the diyya on behalf of the offender, namely 'aqilah (Samudin, 2021). According to (Awang, 2012):

“Social insurance has in common the second objective of 'aqilah as it aims to lighten the burden of beneficiaries' maintenance in the event of materialization of a social contingency by apportioning the cost on the beneficiary himself, his employer, and the state. The principle of Hirfah may be applied to make a common cause of contingency protection with the beneficiary's employer in sharing the cost of providing social insurance benefit. Therefore, the technique of social insurance does not appear to be incompatible with the institution of 'aqilah. Here, one needs not be unusually alarmed with the term 'insurance'. It has already been discussed how social insurance is not strictly based on the principles of insurance. The objectives are uppermost in case of social insurance:

- (1) Welfare of the economically underprivileged; and
- (2) Lightening the burden of contingencies on their victims.”

Based on the text above, it can be seen that the concept of social insurance is acceptable as it is aligned with the concept of 'aqilah in Islam to back up an offender to pay diyya. Aqilah's notion of contribution is similar to how funding is made in today's Takaful practices. In the meantime, the recompense provided under the al- 'Aqilah doctrine is comparable to the Takaful indemnity (benefits) provided to the victim or his heirs today (Billah, 2011) . One may argue that Takaful (Islamic insurance) may operate as a substitute for diyya in contemporary society or to take the position of the institution of 'aqilah, which is no longer in existence. As a result, the takaful concept essentially represents a continuation of pre-Islamic practice (Awang, 2012). Frankly, it is a recommendation to the government to establish a social insurance scheme at the state or federal level. This scheme will help provide compensation to the heirs' victims so they can continue living in case the offender is unable to provide compensation (Noor, 2019).

The abolition of the death penalty received strong criticism from the community, which thought it was a fitting punishment for criminals in intentional murder case. In addition, Islamic criminal laws such as diyya are also opposed and criticised by non- Muslims because they think they will not get justice and will affect their religion if Islamic laws such as diyya are implemented in Malaysia, even though the concept of diyya already exists in Malaysian law. Furthermore, the death penalty only gives satisfaction to the victim's family without defending their fate if the deceased family member is the main pillar of earning a living. To clear such thinking, the writer will suggest several recommendations that likely produce a favourable atmosphere because this action has been confirmed since the Prophet SAW performed it when the Islamic kingdom first came into existence. Prophet SAW first established a broad climate of justice in society before insisting on hudud. There is no discrimination, and all socioeconomic strata are treated equally under the law, meaning that rights and justice are protected (Azman et al., 2021).

The next recommendation focuses on ongoing oversight and further increasing the studies and research that highlight the aspects of *tasamuh* or tolerance in Islamic criminal law, focusing on *diyya* (Azman et al., 2021). This concern is to guarantee that the application of Islamic criminal law in Malaysia is flawless and achieves the goals of *sharia* Islamic criminal law, which must be administered carefully and meticulously. Besides, society lacks knowledge about the true nature of Islamic criminal law, as in Islam, the death penalty is not mandatory and grants the victim the right either to choose retaliation or pardon the offender upon receiving compensation. Even though *diyya* is Islamic criminal law, it does not mean it cannot be implemented by non-Muslims, as *diyya* is naturally unilateral and universal to be practiced by all people regardless of their religion and races. In addition, if a non-Muslim, known as *kafir mu'ahad*, like in Malaysia, has been killed by a Muslim, they are entitled to *qisas* or pardon the offender upon receiving *diyya* (Al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah., 2006). Therefore, the writer recommended that before implementing Islamic criminal punishment, which is *diyya*, a committee monitoring at the state and national level be constituted, as well as a training programme for the authorities (Azman et al., 2021). The writer deems the suitable place for the committee to govern is under the Deputy Minister-Prime Minister Department (Law and Institutional Reform). It may seek a collaboration with the Syariah Judiciary Department Malaysia to conduct research on *diyya* to be amended in the legal system

CONCLUSION

Ultimately, the implementation of *diyya* in murder cases in Malaysia presents a complex interplay of challenges and potential resolutions. Exploring and identifying these challenges and corresponding solutions is essential, as it may facilitate the gradual implementation of *diyya* within the Malaysian legal system. The application of *diyya* has the potential to support victims' families by alleviating their burdens, as they are the parties most affected by such crimes, while also offering offenders sentenced to death an opportunity for repentance.

Throughout this research, the authors have examined the multifaceted obstacles that arise in attempts to integrate *diyya* into the existing legal framework, including issues related to legal compatibility, procedural constraints, and public perception. Introducing *diyya* as part of Malaysia's legal system remains a significant challenge, despite longstanding discussions and proposals, particularly since the Yang di-Pertuan Agong advocated for its implementation. His Majesty recognized the potential of *diyya* to deliver benefits not only to victims' families through financial support, but also to the government by enabling a more comprehensive application of Islamic law, as well as to offenders by providing a second chance for repentance.

Nevertheless, the Malaysian government continues to undertake in-depth research on the feasibility of implementing *diyya* in murder cases. In this regard, Pakistan may serve as a relevant reference point, as it has incorporated *diyya* into its criminal law framework. Pakistan, which is predominantly Hanafi Sunni Muslim, introduced the *Qisas and Diyat Ordinances* in 1990, amending Sections 229 to 338 of the Pakistan Penal Code. These amendments replaced British-era laws governing murder and bodily harm with provisions more closely aligned with *Shariah* principles. Notably, the reforms allow the legal heirs of a deceased person to accept *diyya* compensation in lieu of demanding *qisas*-based punishments for murder or bodily harm (Saif, 2020). In addition, the concept of *diyya* has also been reflected in Malaysian jurisprudence, as illustrated in the case of *PP v. Low Lu Keng*, decided by R. Tallalla J. on 21 January 1992. In this case, the court ordered, *inter alia*, that the respondent pay RM10,000 as compensation to Too Choo, the widow of the victim of culpable homicide (Ismail, 2011).

Overall, this research may assist relevant stakeholders in identifying the challenges associated with implementing *diyya* and proposing viable solutions, while also providing guidance for legal practitioners. The successful implementation of *diyya* could contribute to a

more holistic and restorative approach to justice by promoting reconciliation, forgiveness, and societal healing. By embracing diyya, Malaysia may demonstrate its commitment to justice without discrimination between Muslims and non-Muslims, as well as its capacity to impose punishment while respecting cultural values and traditions, thereby fostering a more compassionate and harmonious society.

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