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### **Diat System Application Model In Reality in Malaysia: A Case Study of Road Accidents**

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#### **Abstract**

Accidents have been unavoidable throughout the ages. It can happen to anyone unexpectedly, whether by negligence or not. Accidents usually bring losses to the victim, especially if they lead to injury or death. Islam, as a religion of revelation, provides a unique accident compensation mechanism called diat. It is conceptually a comprehensive and unprejudiced accident compensation system characterised by punishment and compensation. Punishment applies to the offender, and compensation applies to the

victim. Understanding the concept of *diat* is critical, especially in acknowledging the social responsibility outlined by Islam in its execution process. This paper intends to examine the concept and development of the time-tracking system and discuss the implementation model of this system in modern life, especially in Malaysia. The data obtained was based on a qualitative study through document analysis, expert interviews and observation. The researcher analysed data descriptively and comparatively. The implementation model described is conceptual because it has yet to be practised in the modern world. The study results established that this system is efficient in contemporary society and complies with the principle of justice. Accordingly, the researcher recommends that the government, as a regulator, specify a particular body (*diat* committee) that will manage matters related to compensation and introduce *diat* takaful insurance. The government must also improve legislation to allow this system to operate comprehensively.

## **1. Introduction**

It is paramount to understand that the *diat* system is not just compensation for the victim but also operates as a punishment for the negligent party. This uniqueness distinguishes this system from some accident compensation systems that are currently available. For example, the Fault base system (FBS) practised in Malaysia concentrates on the question of who is guilty and imposes a punishment that has been set on them according to the law, but at the same time, it ignores the future of the victim. It is possible that the victim can claim compensation through Tort law, but one has to go through a lengthy and pricey process. This system is also distinct from the No-Fault Liability (NFL) system attended in some countries, such as New Zealand. In the NFL system, contrasting circumstance ensues where the victim is given more attention to neglecting the aspect of punishment for the negligent party. *Nevertheless, the Diat* system balances these two extreme views. The phrases 'punishment and compensation' used in this paper cannot be interpreted in the conventional legal sense. It holds an acquaintance and uniqueness one can only find in Islamic criminal law. Thus, the *diat* system has a dual approach which is first to defend the future of accident victims and second, through its punishment feature, it becomes an efficacious accident prevention mechanism in everyday life.

## **2. Research problem**

The rate of accidents involving death and injury is increasing day by day. It is alarming as it can transpire anytime suddenly. One of the most common types of accidents is traffic accidents. It happens daily and may be the most common cause of death or injury worldwide.

According to statistics released by the Malaysian Ministry of Transport, the accident rate in Malaysia has grown in the ten years from 2010 to 2019 (Figure 1).

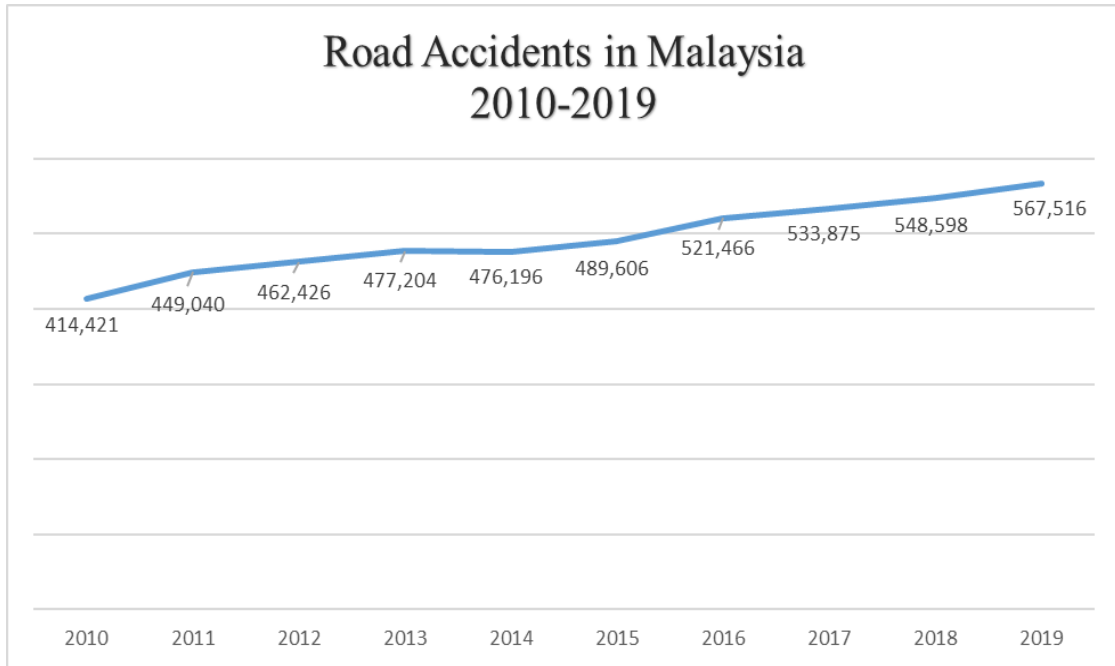


Figure 1: Official Portal Reference of the Ministry of Transport Malaysia

Whereas through sources documented by the PDRM, the number of deaths due to road accidents in Malaysia registered the highest number for the ten years in 2016, with 7,152 deaths. In comparison, the lowest number was in 2018, with 6,284 deaths (KPM Portal: 2016).

Further, the Malaysian Road Safety Research Institute (MIROS) noted that from January to September 2022, the number of deaths due to road accidents throughout this year demonstrated a 52 per cent increase compared to last year (Pandemic period). Statistics show 4,378 people died in the period, 1,055 higher than last year. If road deaths for the fourth quarter of 2022 register at least 1,790, then the number (deaths) will be higher than the pre-pandemic level in 2019, cited a spokesperson for the Malaysian Road Safety Research Institute. (FMT:2022).

The latest data also shows that the number of seriously injured road users rose sharply, with 3,406 cases or 92.5 per cent higher than last year. Motorcycle users registered the highest number of deaths with 2,916 or 66.6 per cent; cars (776); pedestrians (233); trucks (139); vans (95); four-wheel drive vehicles (94); bicycles (79); other vehicles (29) and buses (17). Forty-five per cent of motorcyclists deaths affect victims between the ages of 16 and 29. (FMT:2022).

This phenomenon illustrates the seriousness of the crisis faced. This analysis includes two purposes. In addition to its fundamental goal to provide adequate compensation to victims of accidents or crimes, it also effectively decreases the rate of accidents through the *diat* system that the researcher will explain.

### 3. Diat definition

Diat is an amount of property that one must deliver to the victim or his heirs as punishment and compensation for the offence of killing or causing death and

injuring or causing injury to someone (Lukman:2015). Diat punishment is the original punishment for similar offences, intentionally and unintentionally. At the same time, it is a substitute punishment for intentional crimes. Substitute punishment occurs when one cannot carry out the original punishment (qisas punishment) for specific grounds.

Based on this description, its scope is focused on offences involving bodily harm, such as death or injury and does not interest property and personality. In short, the original punishment divides into three categories of offences, namely:

- i. The crime of intentional homicide.
- ii. Misdemeanours resulting in accidental death.
- iii. Misdemeanours involving accidental injury.

In the road accidents context, only categories ii and iii are related to the concerned question.

#### **4. Diat ruling**

Diat punishment splits into two forms. That is

- i. Extreme Diat ( mughallazah )
- ii. Light Diat ( mukhaffafah )

Extreme diat is charged on intentional and similar criminal offences, while light diat is imposed on unintentional offences. It is evident through the words of the Prophet Muhammad (PBUH), which says, "The penalty (diat) for a similar intentional killing is the same as the death diat for a deliberate killing (which has been forgiven by the victim's guardian). In both situations, the criminal is not subject to qisas" (Dar Qutny:1966).

In the context of a traffic accident, the original punishment levied is a light diat. For the Syafie and Hanbali sects, they add three more reasons that allow a light diat to convert into an extreme diat, which applies if one commits mistakes as follows (Lukman: 2015):

If it happens in Haram, which is Mecca.

If it occurs in the sacred months, namely the months of Zulkaedah, Zulhijah, Muharram and Rajab.

If it transpires against a muhrim

#### **5. Philosophy of diat ruling**

As an alternative to the efforts to reduce the accident rate and at the same time as a defence to the innocent victims, the researcher tried to present a theory of the execution of diat punishment whose method is almost the same as the existing tort law. The law of tort, especially the tort of negligence, is relatively similar to what Islam demands. The difference is in the quantum of compensation imposed following the respective legal principles.

Tort implies a wrongful or unauthorised act or omission that results in the interest of the injured party claiming damages. The intended damages are either

compensation, injunction or self-help. Torts consist of various categories; among those related to this is the tort of negligence (Venugopal: 2001).

Realising the similarities between the Tort law and the diat system makes it easier to 'Islamise' the existing Tort law than to draft a new diat law. For that purpose, a quantum model of diat, arsy and hukumah must be made with current value measurements based on local currency values. In addition, the element of aqilah needs to be redefined to match the demands of the times.

In the context of implementing capital punishment in Malaysia, when an accident occurs that can cause someone to bear criminal responsibility, the plaintiff can make a compensation claim against the defendant for the losses suffered. The essential component that the plaintiff has to prove in his claim concerning any accidental criminal offence is the existence of negligence on the part of the defendant. This feature also decides the rate the plaintiff must bear if the defendant confirms this crime is an accessory crime (Zuhayli:2003).

If the plaintiff proves negligence on the defendant's part, then the defendant and his aqilah will be charged according to a certain diat. Scholars, however, can't reach a unanimous answer on how much the diat should be borne by the offender in this matter. For the Maliki and Hanbali sects, the rate of diat paid by the offender is less than 1/3 diat; the Hanafi sect suggests starting from 1/20 diat and below, while the Syafie sect proposes that all diat payments are borne by the 'aqilah, while the offender bears no diat at all (al-Syafi'ie: t.t., Zuhayli:1997, 'Awdah:1992).

In the context of its execution in Malaysia today, the three sectarian views above can be integrated and applied according to the talfiq method (Lukman: 2004). Talfiq means combining the opinions of sects or mujtahids to be practised by a muqallid (public individual) in a single sharia law. This method is certified by scholars as one of the sources of Islamic law, and even it has been widely practised, especially in codifying statutes. Based on the talfiq method, one can use authoritative scholars' opinions to designate the maximum and minimum burden the offender should bear. This rate is to be based on several arguments, among them is:

Even if the offender does not commit a criminal offence because there is no criminal intent, he is guilty because of his negligence in the duty to be careful. Since he is guilty, he must be punished.

According to Islamic law, unintentional killing is subject to diat and kaffarah (expiation). Diat is man's right, while kaffarah is the right of Allah (SWT). The kaffarah is freeing a mukmin (believing) servant; if he is unable to do so, he must fast 60 days in a row (Surah al-Nisa 4:92). Since the slavery system is impossible in the modern days, therefore the kaffarah diat is fasting for 60 days in a row. Kaffarah can be considered as a punishment for offenders, but in today's context, it is not a punishment that can give the meaning of ردع والزجر because fasting is a worship that is hidden from human knowledge. Hence, there needs to be another punishment that can deliver a lesson to the offender.

Only taking the opinion of one sect may cause biases. If according to Syafie's sect, diat will not be able to bring awareness to criminals because they do not share the burden of death. Therefore, every accident that happens does not teach him a lesson. According to the Maliki and Hanbali sects, there are times when an accident occurs not due to the negligence of the offender. It occurs due to external factors beyond human control. In this situation, imposing a diat on the offender due to an act for which he is not at all responsible is persecution.

The fact is, punishing the offender needs to be in line with his level of responsibility for one accident. This is justice. Therefore, if it is proven that the offender was negligent in his actions, he has to bear the diat following the percentage of his negligence. The maximum rate that one can impose on the offender is a rate that is less than 1/3 of that in the Maliki and Hanbali sects. Meanwhile, there is no minimum rate as in the Syafie sect. This principle is the top quality in determining the quantum of diat, arsy and hukumah in a single criminal offence.

## **6. Accident compensation management models**

In building a diat system implementation model, some previous models have been assessed as a guide and comparison. Among them are the fault base system or better known as FBS, and the no-fault liability system or NFL.

Fault-based system (FBS) is a compensation system that relies on the existence of 'fault elements'. The party found guilty will be accountable for compensating the victim's direct or indirect losses, such as recovery costs. Nonetheless, the process of getting justice through this system takes work. It has to go through the tort claim process, which usually costs high legal fees. This situation compels most victims not to be able to initiate a claim. It will be more troublesome if they lose the lawsuit. Tort cases also often take a long time. In short, FBS succeeds in punishing the offender but fails to defend the victim.

No-Fault liability/compensation (NFL) is one example from victimology studies and closely resembles the diat system. In general, it is a compensation scheme established by the government for accident victims to support their lives, especially to compensate for the losses they suffered as a result of the accident.

In 1974, the New Zealand government presented citizens with a 'personal injury' funding system. It is called a No-Fault Liability scheme. The government created this scheme to replace the existing scheme in Tort law, which is the Fault-based system (FBS). The Accident Compensation Corporation (ACC) runs the NFL, a government body that handles private injury claims. According to this system, injured victims will receive government-funded compensation through ACC without establishing who is at fault. In the meantime, the offence of negligence will still be punished according to the law (Bronwyn et al.:2002).

According to experience in New Zealand, the process of claiming compensation is straightforward and starts from a minimum period of three weeks to a maximum of nine months. According to the 2005 record, the ACC has approved more than 40% of the claims made. This figure is expected to increase to 50%

after the 2005 reforms formed due to public criticism of the ACC (Marie Brismark & Ron Paterson:2009). This record authenticates that the NFL successfully secured victims' welfare.

In discussing the advantages of the NFL, Marie Brismark & Ron Paterson have highlighted the weaknesses of the FBS primarily practised in the United States. According to them, the US experienced a failure in terms of the system it practised, where it could not defend the victims. In most cases, victims are not entitled to compensation because their injuries were not caused by negligence. Even if it is due to negligence, most victims, especially the poor and elderly, are unlikely to file a lawsuit, let alone receive compensation; even for some, they are successful in claiming compensation. Finally, paradoxically, the law expected to defend the victim has oppressed the victim. It has given the wrong signal to legal justice (DM Studdert et al.: 2005). The victim's depressed state will make them respond negatively to the law, the surrounding community, and even themselves. This series of hardships in life will most likely cause new crises in society, which may also be partly criminal concerns. However, this situation is unlikely if the NFL is practised. Victims will get funding from the government, and one can avoid the side problems mentioned earlier.

In Malaysia, the NFL concept was first communicated in 1984 in the House of Representatives (Dewan Rakyat) session, the sixth Parliament, the second term. Starting from here, it began to garner engagement, especially from legal experts. In August 2007, the Attorney General, Tan Sri Abdul Gani Patail, suggested that the NFL scheme be introduced to victims involved in road accidents to replace the existing FBS scheme, which is being attended. Therefore, on 12 November 2007, a public lecture delivered by Mr David Cocharane entitled "No Fault Liability In New Zealand: Lesson For Malaysia" was held at the Putrajaya International Convention Centre. From 2008 until now, this issue has been proposed to the public to get input and views. Nonetheless, until now, it has

yet to be enforced

The situation differs in diat systems. Diat is a form of 'punishment and compensation' found in Islamic criminal law. Furthermore, it applies offences related to limb crimes, as already discussed. Diat is not the value of the destroyed or injured body part but is compensation with eclectic wisdom and purpose. Among them is to ease the victim's anger and revenge on the criminal, cover the victim's losses due to accidents, avoid the emergence of adverse symptoms of the impact of life and act as a functional road accident prevention mechanism.

Usually, when an accident happens, it will influence the livelihood of the victim or his family. According to customary law, a person who has committed a road offence resulting in death or injury can be charged under section 41(1) of the Road Transport Act 1987, which leads to imprisonment and a fine. Under this provision, the victim does not get any benefit. The offenders must be punished, and victims must not be defended. As a result, the victim is abandoned and can develop unrest in society due to the pressure of life. Even if there is a defence

against them based on Tort Law, it has to be done through an individual process. Hence, it makes it problematic for the victim. Furthermore, in this law, compensation money is imposed on the offender. In this context, if the offender is from the poor, it does not ease the victim. The victims will not get their full rights, and the criminals will not be able to fulfil their full responsibilities. Victims will remain oppressed, leading to mistreatment in the social system.

However, it is different in the diat system. It makes the compensation money belong to the victim or his heirs. This situation helps the victims continue their lives even if they cannot return to their original state before the accidents. It can also indirectly avoid unfavourable conditions that may arise in the community, such as theft, robbery, and prostitution.

Interestingly, the diat system observes that its burden is borne by aqilah. This situation reveals that the system prioritises the victim's welfare rather than punishing the offender. In this context, the principle is pertinent because the offender has committed a "non-criminal mistake/ignorance". In this context, one can see that social responsibility is clearly stated; even if someone commits the fault, the burden is shared by the community. The concept of society fostered through the diat system is based on the nature of helping and supporting fellow human beings.

Nonetheless, at the same time, it does not deny that diat is also a punishment. In this situation, the offender is fined according to the degree of negligence as discussed.

From another aspect, the existence of a diat system will reduce the rate of road accidents when all road users are sensitive to the responsibilities of the diat. It is clear that the diat system is part of the social security provided by Islam to humans.

Therefore, one can see that the diat system is part of the social responsibility oriented by Islam in cases of accidents. It is distinguished by helping to overcome the spirit of grudges against other people. The concept is expansive. Even if it is compensation for the victim, it is also a punishment for the offender and can present the meaning of deterrence to all road users. Thus, this is a social responsibility mechanism in Islam and a practical road accident prevention mechanism.

## **7. Diat compensation implementation model**

In formulating the proposed implementation model of this *diat* system, research was conducted through in-depth interviews with field experts through focus group discussion (FGD) and the distribution of questionnaires to 300 respondents. It seeks to make the data more precise and reliable.

Based on the study, there are some urgent needs in the following matters

- i. Create written legislation related to *diat* compensation.
- ii. The government will act as a regulator.
- iii. While the insurance company acts as the operator of this system by creating a *diat* fund.



- iv. There should be a unique body member of the *diat* committee.
- v. Prepare injury compensation schedule.

A written law or act needs to be created to implement this system. This is so that the commission of this system is controlled and authorised by law. This view is by the opinions of experts and surveys (see table 1).

Table 1. Diat System Implementation Method

No	Statement	Low	Moderate	High
1	Get the support of the majority of the people before implementation.	20(6.7%)	85(28.6%)	192(64.6%)
2	Ask for the opinion of legal and sharia experts before implementation.	1(0.3%)	32(10.7%)	265(88.9%)
3	Give understanding to the public first about this system before it is implemented.	1(0.3%)	37(12.4%)	261(87.3%)
4	Implement a <i>diat</i> system without having to refer to public opinion.	114(38.3%)	100(33.6%)	84(28.2%)
5	Obliging every road user to contribute to a fund or <i>diat</i> insurance.	27(9.1%)	111(37.2%)	160(53.7%)
6	The user can choose whether to choose a <i>diat</i> system or conventional insurance.	23(7.8%)	93(31.4%)	180(60.8%)
7	Empowering <i>takaful</i> institutions involved.	4(1.3%)	50(16.8%)	243(81.8%)
8	Create written legislation (act) related to <i>diat</i> .	3(1.0%)	50(16.8%)	244(82.2%)
9	Provide comprehensive training to the agencies involved starting from the claim process, judgment and compensation payment.	3(1.0%)	48(16.2%)	246(82.8%)
10	Reduce bureaucracy in the payment process.	4(1.3%)	49(16.4%)	245(82.2%)
11	Involve all relevant agencies.	2(0.7%)	28(9.4%)	267(89.9%)

As the most potent and vital body, the government will act as a supervisor in this system. While the insurance company will collect contributors' funds through the concept of *wakalah* and *iltizam bi al-tabarru'*. In this context, the government needs to establish '*diat takaful*' or a body that it can name to take on the role of trustee of diat funds

The government must also establish a *diat* committee that resolves all straightforward contributory claims (based on the accident compensation code formed). It will be referred to the court if it involves complicated cases. This committee should ease the claim process period to benefit the victims.

The government must create a comprehensive accident compensation code to guide the committee in determining the claim's value. With this code, the claim process will be faster.

## 8. Simulation of the implementation of the diat compensation model

The implementation of *diat* compensation needs to go through several stages until one can fully implement it. Four essential things need to be identified in the performance of this system:

1. Determination of *diat* property and its rate.
2. The payer and recipient of *diat*.
3. Claims procedure.
4. The role of the regulator.

### Diat Property And Its Rate

There are several opinions regarding the form of property and the payment rate. Some of the different property conditions among scholars are camels, gold, silver, cows, goats and Yemenite clothing (Lukman: 2004). In the current context, an easy and practical approach proposes *diat* property to use silver at the current rate for the value of 12,000 Dirhams. This rate is based on the determination of the hadith of the Prophet Muhammad PBUH.

In this context, 1 Dirham is equivalent to 2.975g of pure silver per the standards of sayidina Umar al-Khattab (Yadiah portal: 2022). Therefore, 12000 Dirhams equals  $2.975g \times 12,000 = 35,700g$ . If the value of 1 gram of silver for the year 2022 is worth RM3.54 (issued by PZS), then the value of one *diat* is  $RM3.54 \times 35,700 = RM126,378$

In the context of weighing *diat*, most scholars believe there is no need for extreme *diat* if payment is made using other than camels. Nevertheless, some scholars, especially from the *Imamiyya* and *Ibadiyya* sects, believe that if payment is completed using other than camels, then the rate for extreme *diat* is increased by 1/3 of the standard *diat* rate. (Jassas:1993).

### Payers and receivers of diat

The beneficiary is either a crime victim, a victim's heir or *Bayt al-Mal*. This law is confirmed through the Qur'an in Surah al-Nisaa 4:92 and the words of the Prophet Muhammad PBUH *وأنا وارث من لا وارث له أعقل عنه وأرثه* and its translation: I (*Bayt al-Mal*) am the heirs for those who have none. I am *aqilah* to them, and I inherited their wealth.

While the *diat* payer is one of the following four groups in order: *aqilah*, villagers (in the case of *qasamah*), *Bayt al-Mal* and criminals, this law is based on the actions and commands of the Prophet Muhammad PBUH. (Abu 'Uwanah: 1998).

### Evolution of the Concept of Aqilah

*Aqilah*, in the age of ignorance, is the tribe of a race. Tribe members become 'aqilah to each other because they have pledged loyalty to unite and help each other in good and bad times.

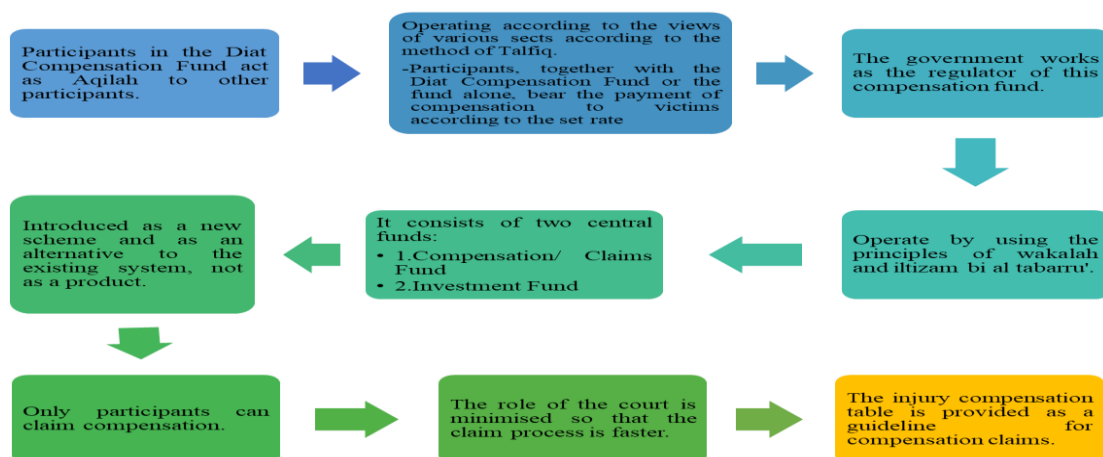
In the early days of Islam, this spirit of tribalism became increasingly less when faced with universal Islamic brotherhood. Consequently, the tribe no longer became 'aqilah; instead, it shifted to the asabah kinship. This is because the nature of helping each other, which is at the core of the 'aqilah system, is no longer evident in tribal institutions but occurs in asabah kinship groups.

In the period of Sayidina Umar (RA), when the diwan was introduced, he saw that the diwan had taken over the role of the tribe and members of the asabah kinship in this context. Then, he decided that aqilah was a diwan member.

Based on this evolution, one can conclude that the determination of aqilah does not happen by tawqify (based on nas) but rather by the ijtiḥad of the companions. Thus, through the results of the current study, one found that the current aqilah, especially in Malaysia, can be borne by insurance companies (Lukman:2021).

The insurance company will act as a particular body that will manage the fund. The money will be collected and distributed from this fund according to the rules set. Figure 2 below illustrates how diat funds operate.

Diagram 2: *Diat* fund operation.



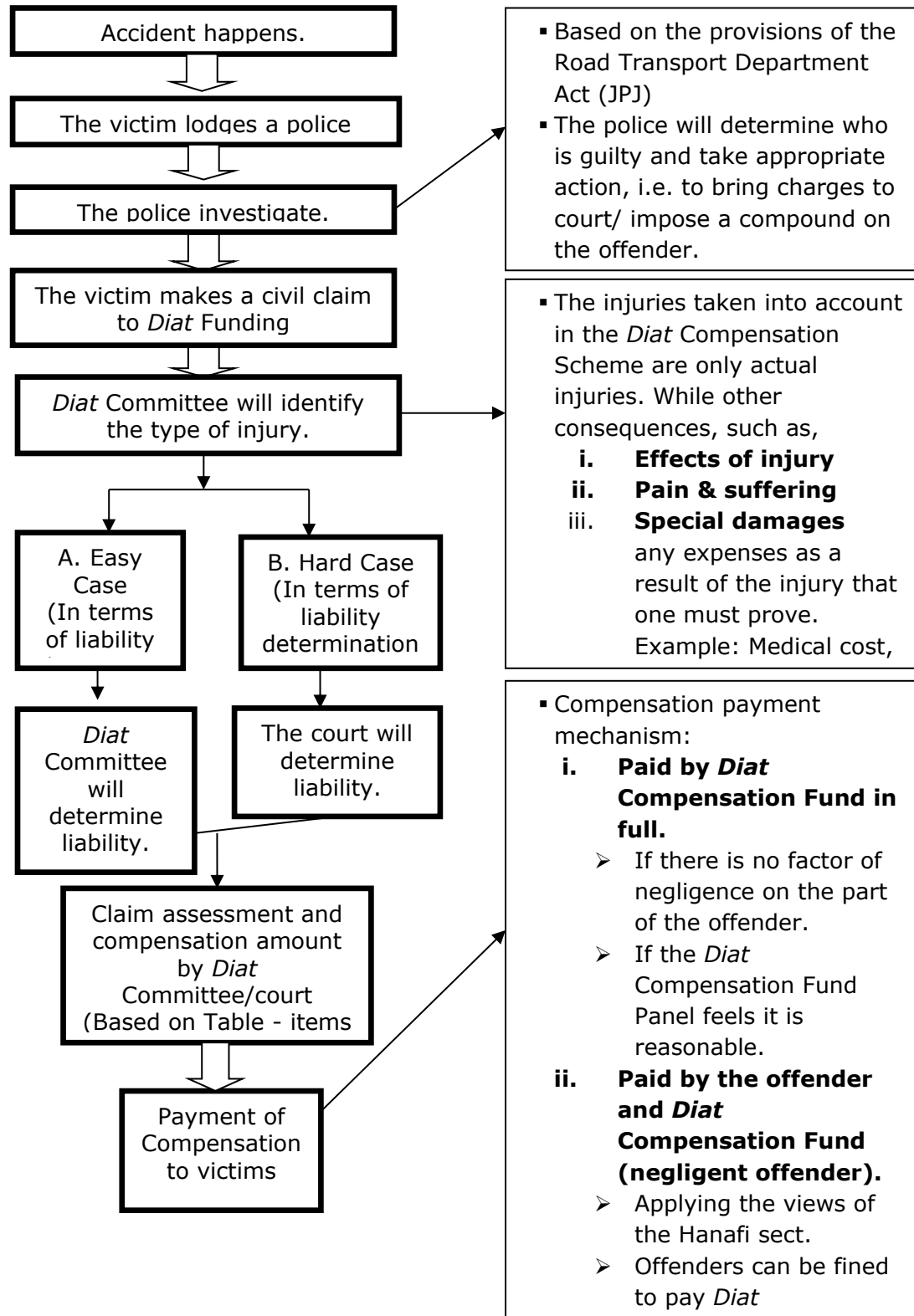
With this *aqilah*, does it mean that criminals will be free from any responsibilities and burdens? Scholars argue on this issue. One can sum it up in three pertinent opinions, namely

- i. Imam Malik and Imam Ahmad think that the amount of compensation that is less than 1/3 of the *diat* will be borne by the criminal alone. Whereas if the amount of compensation exceeds 1/3, according to Imam Ahmad, it will be entirely paid by the *aqilah*, while according to Imam Malik, the criminal along with the *aqilah* will bear the burden (Malik:1997).
- ii. According to Imam Abu Hanifah, the amount of compensation that is less than 1/20 of the *diat* will be borne by the criminal. The amount of compensation that exceeds the value of 1/20 of the *diat* will be borne by the criminal and *aqilah* (al-Kasani:1998).
- iii. Unlike Imam Syafi'e, the amount of compensation is all borne by the *aqilah*, whether it is a little or a lot. At the same time, criminals will not assume any burden (al-Syafi'ie: n.d.).

### Claims procedure

The claim process is one of the crucial facets. It can illustrate the extent to which the system effectively addresses the problems faced by the claimant. Overall, the claim process can be seen in Figure 3.

Diagram 3: *Diat* compensation claim process



### The role of regulators

The implementation of this system demands law enforcement. Hence, the government must act as a regulator and handle the course of this system. It is also recommended that specific activities relating to *diat* compensation be enacted, in addition to revising, amending or supplementing the existing provisions in the *takaful* act 1984, the road transport act (amendment) 2020, and several other interconnected acts.

Additionally, several essential matters concerning establishing the body that will manage the *diat* fund need to be analysed, especially those involving the body's contributions and obligations. The matters related to this premium *diat* are summarised in the table below:

NO.	ITEM	Description
1.	Law enforcement	The premium <i>diat</i> must be legally enforced,
2.	Coverage Period	The coverage period for <i>the diat</i> premium needs to be set.
3.	Premium	Premiums contributed by participants are paid directly into the <i>Diat</i> Compensation Fund.
4.	Proof of payment	The premium payment receipt, along with the serial number (certificate of payment with serial number), will be given to the contributor after the payment is made.
5.	Akad and <i>sighah</i>	There needs to be an <i>akad</i> and <i>sighah</i> ( <i>akad</i> and <i>qabul</i> ) between the contributor and the operator of the <i>Diat</i> Compensation Fund.
6.	Compensation Guarantee	<i>Diat Takaful</i> Scheme Operators must ensure that funds are always adequate for claims from contributors.

The compensation rate, known as the *diat* code, must be established to facilitate claiming and delivering compensation. In this context, Islamic law has determined this rate through the Qur'an, hadith, and the *ijtihad* of scholars. It is the establishment of this code and its enforcement from a legal point of view that is critical.

### Conclusion

Ergo, this system is seen as more promising than the existing system because it underlines both sides of the victim and the offender. The soundness of this system is unquestionable because Allah creates it. Nevertheless, the question is, how can this system be executed effectively? As an initial step to a more fruitful discussion, this model of implementing the *diat* system needs to be acknowledged first.

## Appreciation

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