

## The Criminal Acts of Qisas and Diyat from the Perspective of Islamic Law

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<p><b>Article History</b>            Received : 2019-07-04            Revised: 2019-07-14            Published: 2019-07-30</p> <p><b>Keywords:</b>            Qisas, Diyat, Islamic Criminal Law, Jinayah.</p>	<p>This study aims to analyze the concept of qisas and diyat crimes from an Islamic legal perspective and their relevance in the context of modern law. Qisas is a form of punishment that is proportionate to the perpetrator of a crime, especially regarding the loss of life and body parts, while diyat is compensation or restitution given to the victim or the victim's family as an alternative to implementing qisas. Both concepts have a strong legal basis in the Qur'an and Hadith, which shows that Islamic criminal law has systematically regulated the protection of the right to life. The research method used is normative legal research with a conceptual and legislative approach. The data used are secondary data obtained through literature studies, including primary, secondary, and tertiary legal materials. Data analysis was conducted qualitatively by interpreting and reviewing various relevant legal sources. The research results show that qisas and diyat not only function as sanctions, but also embody the values of justice, humanity, and balance. Qisas provides a deterrent effect and ensures justice for the victim, while diyat opens up space for a more peaceful resolution through forgiveness. In the context of modern law, the concept of diyat shares similarities with the restorative justice approach, which emphasizes restoring the relationship between the perpetrator and the victim. Therefore, the values embodied in qisas and diyat remain relevant for study and can serve as a reference in developing a more humane and just criminal law.</p>

### I. INTRODUCTION

Criminal law is a crucial instrument for maintaining order and justice in society. From an Islamic legal perspective, criminal law is known as jinayah, which regulates acts prohibited by sharia and the sanctions imposed on violators. A crucial aspect of Islamic criminal law is the concept of qisas (retribution) and diyat (restitution), which specifically regulates crimes against life and body parts. This concept emphasizes not only retribution but also values of justice, humanity, and balance in law enforcement.

Qisas etymologically means "equitable retribution," while terminologically it refers to the imposition of a punishment equal to the perpetrator's actions, such as the death penalty for intentional murder or an equivalent punishment for assault. Diyat is a form of compensation or reparation given to the victim or the victim's family in lieu of qisas. Both concepts are firmly grounded in the Quran and

Hadith, demonstrating that Islamic criminal law has detailed provisions regarding the protection of human life for centuries.

In practice, qisas and diyat are not solely intended to punish the perpetrator, but also to provide space for a more humane resolution. Islam grants the victim's family the right to choose between demanding qisas or offering forgiveness by accepting diyat. This demonstrates that Islamic criminal law contains a strong moral and social dimension, where the values of forgiveness and reconciliation are highly valued. Thus, this concept serves not only as a law enforcement tool but also as a means of maintaining harmony in society.

However, the application of qisas and diyat is often debated, especially in the context of modern societies with varying legal systems. Some consider the concept of qisas too harsh and inconsistent with human rights principles, while others argue that this law reflects true justice because it provides punishment commensurate

with the perpetrator's actions. These differing views demonstrate the importance of in-depth study of the concepts of qisas and diyat, so that they can be understood comprehensively and not viewed from a single perspective.

In Indonesia, as a predominantly Muslim country, discourse on the application of Islamic legal values within the national legal system continues to develop. Although Islamic criminal law has not yet been formally implemented within the national legal system, some of its values, such as restorative justice and deliberation-based resolution, have begun to be incorporated into judicial practice. This demonstrates that the concepts of qisas and diyat have significant relevance in the contemporary legal context, particularly in efforts to find more equitable alternatives for resolving criminal cases.

Based on this background, it is understandable that the concepts of qisas and diyat in Islamic criminal law represent a form of regulation that is oriented not only toward punishment, but also toward justice, balance, and the common good. Therefore, a study of the crimes of qisas and diyat is crucial to understand how these concepts can be applied or adapted within modern legal systems. With a deeper understanding, it is hoped that a legal system can be created that not only upholds justice but also upholds humanitarian values and peace within society.

## II. RESEARCH METHODE

This research employs a normative legal or juridical-normative approach, focusing on the legal norms contained in Islamic legal sources and relevant legislation. This approach was chosen because the research aims to understand the concepts of qisas and diyat based on Islamic sharia provisions and to examine their relevance in the context of modern law.

The approaches used in this research are a conceptual approach and a statutory approach. The conceptual approach is conducted by examining basic concepts in Islamic criminal law, particularly those related to qisas and diyat, including their definitions, legal basis, and the purpose of their application. Meanwhile, the statutory approach is conducted by examining various regulations related to criminal law, both in Indonesian national law and sources of Islamic law such as the Qur'an and Hadith.

The data sources used in this study are secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the Qur'an, hadith, and fiqh books discussing Islamic criminal law. Secondary legal materials include books, scientific journals, research results, and other literature relevant to the topic of qisas and diyat. Tertiary legal materials include dictionaries, encyclopedias, and other sources that provide additional explanations to the primary and secondary legal materials.

The data collection technique in this study was conducted through library research, namely collecting and analyzing various literature related to the research topic. The data obtained was then classified according to the main research problem, thus facilitating the analysis process.

The data analysis technique used is qualitative analysis, which systematically describes and interprets the collected data to obtain clear and focused conclusions. The analysis is conducted by examining the relationship between the concepts of qisas and diyat in Islamic law, the principles of justice, and their relevance in modern legal systems. Through this research method, it is hoped that a comprehensive understanding of the concepts of qisas and diyat in Islamic criminal law will be achieved, as well as how these concepts can be

scientifically studied within the context of current legal developments.

### III. RESULTS AND DISCUSSION

In Islamic criminal law, the concepts of qisas and diyat are an important part of the jinayah system which regulates criminal acts against the human soul and body parts. These two concepts not only function as a form of sanction against criminals, but also reflect the values of justice, humanity and balance in social life. Qisas is generally understood as a retaliatory punishment commensurate with the perpetrator's actions, while diyat is a form of compensation or compensation given to the victim or the victim's family as an alternative to carrying out qisas.

Conceptually, qisas affirms the principle of retributive justice in Islamic law, where every crime must be met with an appropriate punishment. This principle aims to provide a sense of justice for victims and prevent uncontrolled acts of revenge in society. In practice, qisas is applied in certain cases, such as intentional murder and serious assault resulting in serious injury or loss of limb. However, the application of qisas cannot be carried out haphazardly; it must meet strict requirements, such as the presence of intent, clear evidence, and the absence of forgiveness from the victim or their family.

On the other hand, diyat (retribution) presents a form of flexibility within Islamic criminal law. Diyat allows for peaceful resolution of cases by providing compensation to the victim. This demonstrates that Islamic law is not solely oriented toward revenge but also prioritizes the values of peace and reconciliation. In many cases, the victim's family has the right to choose whether to seek retribution or offer forgiveness by accepting diyat. This choice reflects respect for individual rights and provides an opportunity to avoid protracted conflict.

The legal basis for qisas and diyat is

explicitly stated in the Qur'an and Hadith. In Surah Al-Baqarah, verse 178, Allah SWT commands the implementation of qisas in cases of murder, but also encourages forgiveness and accepting diyat as a form of leniency. This verse shows that although qisas is a legitimate right, forgiveness remains the preferred option in many situations. Furthermore, Surah Al-Ma'idah, verse 45, explains the principle of equitable punishment, emphasizing that every violation must be repaid proportionately. The Hadith of the Prophet Muhammad (peace be upon him) also emphasize the importance of forgiveness and peaceful resolution, thus strengthening the position of diyat as an integral part of the Islamic legal system.

Crimes that fall under the category of qisas and diyat generally involve murder and assault. In Islamic law, murder is divided into several types: intentional, deliberate, and unintentional. In intentional murder, the perpetrator may be subject to qisas as the primary form of punishment. However, if the victim's family forgives, the perpetrator is required to pay diyat. Meanwhile, in cases of unintentional murder, the punishment usually consists of diyat without qisas. This division demonstrates that Islamic law has a clear classification in determining the type of sanctions based on the level of culpability of the perpetrator.

In addition to murder, qisas also applies to cases of assault that result in injury or disability. In this case, the principle of proportionality remains the primary basis for sentencing. However, implementing qisas in assault cases often faces technical challenges, particularly in ensuring equality between the injuries caused and the punishment imposed. Therefore, in many cases, settlement through diyat is often chosen because it is considered more practical and avoids the risk of injustice.

The primary purpose of implementing qisas and diyat is to uphold justice and maintain order

in society. With strict and proportionate punishments, it is hoped that they will serve as a deterrent to perpetrators and deter others from committing similar acts. Furthermore, this concept also aims to protect the right to life, a fundamental value in Islam. Human life is considered invaluable, and any violation of it must be handled seriously.

Furthermore, qisas and diyat also contain profound social and moral wisdom. Allowing room for forgiveness demonstrates that Islamic law is not solely oriented toward formal justice but also toward restoring social relations. In many cases, resolving the conflict through diyat can help defuse conflict between perpetrators and victims, creating a more harmonious atmosphere in society. This aligns with Islamic principles that prioritize peace and brotherhood.

In the context of modern law, the concepts of qisas and diyat are often the subject of discussion and debate. Some believe that qisas is inconsistent with human rights principles, primarily because it is considered too harsh. However, upon closer examination, these concepts actually embody universal values of justice, such as equitable punishment and protection for victims. In fact, the concept of diyat bears similarities to the restorative justice approach currently widely applied in modern legal systems.

Restorative justice emphasizes the importance of reparation for the victim's losses and the involvement of all parties in the settlement process. In this regard, diyat (restitution) can be seen as an early manifestation of this concept in Islamic legal tradition. Furthermore, the principles of deliberation and forgiveness inherent in Islamic law align with the current approach to peaceful dispute resolution.

In Indonesia, although Islamic criminal law has not been formally implemented in the national legal system, the values embodied in

qisas and diyat remain relevant. Several practices of resolving criminal cases through mediation or a family approach demonstrate the influence of these values in society. Therefore, studying qisas and diyat is crucial to understanding how these concepts can contribute to the development of a more just criminal law.

Thus, qisas and diyat in Islamic criminal law are concepts that serve not only as law enforcement mechanisms but also as a means to achieve justice that balances the interests of the perpetrator, the victim, and society. Through a comprehensive understanding of these concepts, it is hoped that common ground can be found between Islamic legal values and modern legal principles, thus creating a more humane and just legal system.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

Based on the discussion regarding the criminal acts of qisas and diyat from the perspective of Islamic law, it can be concluded that qisas and diyat are an important part of the Islamic criminal law system (jinayah) which regulates crimes against the soul and members of the human body. Qisas reflects the principle of equitable justice, where the perpetrator is punished according to his actions, while diyat is a form of compensation given as an alternative solution through forgiveness.

The concepts of qisas and diyat have a strong legal basis in the Quran and Hadith, demonstrating that Islam highly values justice, protection of human life, and balance in law enforcement. Furthermore, the choice between implementing qisas and paying diyat demonstrates that Islamic law is not solely oriented toward retribution but also allows for humanitarian values, such as forgiveness and reconciliation.

The primary purpose of implementing qisas and diyat is to uphold justice, prevent crime, and

maintain order in society. Furthermore, this concept also contains social wisdom, namely fostering peace and avoiding prolonged conflict between perpetrators and victims. In the context of modern law, although the application of qisas remains a matter of debate, the values embodied in the concept of diyat are relevant to the currently developing restorative justice approach. Therefore, qisas and diyat can be understood as legal systems that are not only firm but also humane, thus remaining relevant for study in the development of contemporary criminal law.

### B. Suggestions

Based on the findings of this study, it is recommended that the understanding of qisas and diyat be further strengthened within academic and legal discussions to promote a comprehensive perspective on Islamic criminal law that emphasizes justice, protection of human life, and humanitarian values. Educational institutions and scholars are encouraged to deepen studies on the implementation and relevance of qisas and diyat in contemporary legal systems, particularly in relation to restorative justice approaches that prioritize reconciliation, compensation, and conflict resolution.

Furthermore, policymakers and legal practitioners should consider the values embodied in diyat, such as forgiveness, mediation, and social harmony, as references in developing more humane and balanced criminal justice mechanisms. Greater public awareness is also needed regarding the objectives of qisas and diyat, not merely as punitive measures but as instruments for maintaining justice, preventing crime, and fostering peace within society. Future research is expected to further explore the adaptation of Islamic criminal law principles in responding to modern legal

challenges while preserving the essence of justice and humanity contained in Islamic teachings.

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