

Compensation Versus Diyat in Accident Cases in Malaysia: Towards A Harmonised Framework for Victims' Rights Under Civil and Islamic Law

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ABSTRACT

Road traffic accidents remain a leading cause of mortality, permanent disability, and economic loss in Malaysia, imposing substantial burdens on victims and their dependants. While Malaysia's civil compensation framework—governed primarily by the Civil Law Act 1956, the Road Transport Act 1987, and compulsory motor insurance—provides financial redress, it often suffers from procedural complexity, prolonged litigation, and inconsistent awards due to heavy reliance on judicial discretion and actuarial estimations. In contrast, Islamic law offers a structured compensation regime through *diyat* (blood money), *arsh* (prescribed compensation for specified injuries), and *hukumat al-'adl* (judicially assessed compensation for non-specified injuries), grounded in legal certainty, proportionality, and *maqasid al-Shariah*. Despite Malaysia's dual legal system, scholarly exploration into harmonising these civil and Islamic compensation principles remains limited. This article addresses that gap through a comparative doctrinal analysis of the conceptual foundations, objectives, and assessment methodologies underpinning Malaysian civil law and Islamic jurisprudence. Drawing upon statutory provisions, judicial decisions, classical juristic authorities, and contemporary legal scholarship, the study demonstrates that both traditions share common normative objectives: restoring justice, protecting victims' rights, and ensuring equitable compensation. Building upon these shared foundations, the article proposes a harmonised compensation framework consistent with Malaysia's constitutional architecture that selectively incorporates *diyat*-based principles. This model aims to improve consistency, procedural efficiency, and victim-centred protection, contributing to the broader discourse on legal pluralism and strengthening access to justice within Malaysia's legal landscape.

Keywords: Compensation; *Diyat*; Road Traffic Accidents; Restorative Justice; *Maqasid al-Shariah*

INTRODUCTION

Road traffic accidents constitute one of the most critical public health, safety, and socioeconomic challenges globally. Beyond immediate fatalities and physical trauma, collisions frequently induce long-term financial hardship, psychological distress, diminished earning capacities, and broader social disruptions for victims, their dependants, and society. Consequently, an optimal compensation regime must extend beyond mere financial redress to actively uphold core tenets of fairness, proportionality, legal certainty, and expeditious

access to justice. In respect with the jurisdiction of Malaysia, personal injury claims arising from road traffic accidents are primarily anchored in the law of negligence, reinforced by specific statutory provisions governing motor vehicle liabilities and compulsory third-party insurance frameworks. The legislative foundation is anchored heavily in the Civil Law Act 1956 (Act 67) and the Road Transport Act 1987 (Act 333). Upon establishing legal negligence, claimants may seek both special damages—such as documented medical expenses, rehabilitation costs, and historical loss of earnings—and general damages intended to compensate for pain, suffering, loss of amenities, permanent disability, and future pecuniary losses. Despite the comprehensive nature of Malaysia's civil compensation system, several structural shortcomings continue to constrain its overall efficacy. The quantification of damages, particularly concerning non-pecuniary losses and long-term economic consequences, relies heavily on broad judicial discretion, actuarial estimations, and complex evidential thresholds. While judicial flexibility permits individualised tailoring, it frequently engenders award inconsistencies for comparable injuries. Furthermore, protracted disputes regarding liability, medical causation, and quantum evaluation often trigger extended litigation cycles, inflated legal expenditures, and severe compensation delays. These systemic frictions have generated persistent policy and scholarly calls for targeted structural reforms aimed at maximizing predictability and procedural efficiency. Conversely, Islamic jurisprudence (*fiqh*) presents a robust, structured alternative paradigm through the doctrine of *diyat* (financial compensation for unlawful death and bodily injury). Historically anchored within the domain of *jinayah* (Islamic criminal law), *diyat* functions to restore social equilibrium, protect the welfare of victims or their legal heirs, and alleviate the economic shocks of wrongful harm. This framework operates alongside *arsh* (prescribed monetary compensation for specific bodily injuries) and *hukumat al-'adl* (judicially assessed compensation for unquantified or non-specified injuries). Collectively, these mechanisms embed principles of legal certainty, strict proportionality, restorative justice, and the preservation of human dignity (*maqasid al-Shariah*). Unlike conventional tort frameworks that heavily depend on individualized judicial discretion, Islamic compensation doctrines rely on standardized markers of valuation intended to streamline consistency and equitable distribution. Contemporary legal scholarship increasingly recognizes the applicability of these principles outside classical criminal contexts, positioning them as viable frameworks for modern negligence and civil compensation systems. Within Malaysia's plural legal framework, the intersection of civil compensation norms and Islamic legal principles offers profound potential for institutional development. Although prior academic literature has evaluated the conceptual distinctions separating civil tort damages from *diyat*, existing studies have largely concentrated on binary debates—specifically, whether *diyat* should entirely supplant conventional tort remedies or serve as an isolated alternative quantification mechanism. Scant attention has been directed toward constructing an integrated architecture capable of harmonizing civil liability rules, constitutional boundaries, modern insurance and takaful structures, and the macro-objectives of *maqasid al-Shariah*. This omission constitutes a notable gap in contemporary legal scholarship, particularly amid surging interest in restorative justice, victim-centric reforms, and pluralistic legal synthesis in Malaysia. This article addresses this gap by investigating the viability of incorporating selected *diyat* principles into Malaysia's existing accident compensation regime through a harmonisation model rather than a substitution approach. To systematically explore this objective, the study addresses three primary research questions: (i) What are the principal conceptual and operational similarities and differences between personal injury compensation under Malaysian civil law and *diyat* under Islamic jurisprudence? (ii) To what extent do both compensation structures safeguard the legal rights, welfare, and financial security of road traffic accident victims? (iii) How can selective principles of *diyat* be practically integrated into Malaysia's existing civil liability and insurance framework without conflicting with constitutional mandates or destabilizing current compensation mechanisms? This article posits that a harmonised framework represents the most pragmatic and constitutionally sound approach to modernizing Malaysia's accident compensation landscape. Rather than dismantling the established tort-based system, foundational principles underpinning *diyat*—namely legal certainty, proportionality, restorative justice, and enhanced victim protection—can effectively complement civil law remedies.

Doing so directly mitigates persistent systemic flaws including award discrepancies, procedural delays, and predictive uncertainty. Ultimately, this dual-stream integration preserves Malaysia's constitutional integrity while advancing overarching commitments to equity, institutional efficiency, and human dignity shared by both legal traditions.

Literature Review: Comparative Legal Foundations and Normative Frameworks

Civil Compensation under Malaysian Law

Personal injury claims arising from road traffic accidents in Malaysia are primarily governed by the common law of negligence, where the fundamental objective of damages is the doctrine of *restitutio in integrum*—to restore the injured party, so far as monetary compensation permits, to the position they would have occupied had the wrongful act not occurred. This principle underpins the assessment of both pecuniary and non-pecuniary losses and has long served as the cornerstone of Malaysian tort law.

Notwithstanding its well-established doctrinal foundation, the Malaysian civil compensation framework continues to face several structural challenges. The assessment of damages, particularly for pain and suffering, loss of amenities, permanent disability, and future economic loss, remains largely dependent on judicial discretion, actuarial estimation, and expert medical evidence. While this individualized approach enables courts to consider the specific circumstances of each claimant, it frequently produces inconsistent awards in cases involving comparable injuries, thereby diminishing legal certainty and predictability. The absence of comprehensive statutory guidelines or standardised compensation schedules for non-pecuniary losses further contributes to disparities in judicial outcomes.

In addition, the burden of proving liability, causation, and quantum often necessitates extensive evidential proceedings, prolonging litigation, increasing legal costs, and delaying compensation for victims. These challenges have generated sustained academic and policy discussions concerning the need for procedural reforms, greater consistency in damage assessment, and more efficient mechanisms capable of balancing judicial flexibility with legal certainty. Consequently, contemporary scholarship increasingly advocates reforms that enhance transparency, predictability, and accessibility while preserving the compensatory objectives of Malaysian tort law.

Jurisprudential Foundations of *Diyat*

Within Islamic jurisprudence, *diyat* constitutes a structured system of financial compensation designed to redress unlawful death and bodily injury while promoting reconciliation, restorative justice, and social stability. Unlike conventional tort damages, which rely predominantly on judicial assessment of individual loss, Islamic law incorporates predetermined and principled methods of compensation intended to ensure consistency, proportionality, and equitable treatment.

Classical jurists generally classify compensation for bodily injury into three principal categories:

Diyat: Full financial compensation payable for wrongful death or the total loss of specified bodily functions.

Arsh: Predetermined compensation prescribed for specific bodily injuries whose values have been recognised within Islamic jurisprudence.

Hukumat al-'Adl: Judicially assessed compensation applicable where no fixed arsh exists, allowing courts to determine equitable compensation based on the nature and severity of the injury.

Although these principles originated within the classical law of *jinayah* (Islamic criminal law), contemporary Islamic legal scholarship increasingly recognises their relevance to civil liability, negligence, insurance, and victim compensation. Rather than representing a rigid historical doctrine, *diyat* is widely regarded as a dynamic legal mechanism capable of responding to changing socioeconomic conditions, evolving healthcare costs, institutional insurance systems, and modern compensation frameworks.

This adaptability provides a valuable conceptual foundation for exploring the harmonisation of Islamic legal principles with contemporary accident compensation regimes.

Maqasid al-Shariah as the Normative Foundation for Compensation Reform

The theory of *Maqasid al-Shariah* provides the overarching normative framework for evaluating the compatibility of Islamic legal principles with modern accident compensation systems. As the higher objectives of Islamic law, the *maqasid* seek to promote justice, public welfare (*maslahah*), and the prevention of harm (*mafsadah*), thereby ensuring that legal rules serve the broader interests of individuals and society.

Three objectives are particularly relevant to accident compensation:

- i) Protection of Life (Hifz al-Nafs):** Safeguards human life, bodily integrity, and physical well-being by recognising the legal consequences of injury and wrongful death.
- ii) Protection of Wealth (Hifz al-Mal):** Seeks to alleviate the financial hardship experienced by victims and their dependants through fair and adequate compensation.
- iii) Protection of Human Dignity and Intellect (Hifz al-'Ird and Hifz al-'Aql):** Promotes psychological well-being, respect for personal dignity, and equitable treatment through transparent and accessible legal processes.

Viewed collectively, these objectives reinforce the ethical foundations of restorative justice by emphasising fairness, proportionality, and victim-centred protection. Accordingly, *Maqasid al-Shariah* provides an appropriate theoretical framework for assessing how selected principles of *diyat* may complement Malaysia's existing civil compensation regime while remaining consistent with constitutional principles and contemporary legal practice.

Research Design and Approach

This study employs a qualitative doctrinal legal methodology supplemented by comparative legal analysis to examine the intersection of Malaysian civil compensation law and the Islamic doctrine of *diyat* in road traffic accident cases. Doctrinal legal research is well-suited for the systematic identification, interpretation, and critical evaluation of statutory frameworks, judicial precedents, and Islamic jurisprudential texts governing personal injury compensation. This approach allows for the identification of conceptual divergences, normative convergences, and practical pathways for legal harmonization within Malaysia's pluralistic legal architecture.

Primary and Secondary Legal Sources

The investigation relies primarily on authoritative legal materials, categorized as follows:

Malaysian Statutory and Constitutional Framework: The Federal Constitution, Civil Law Act 1956, Road Transport Act 1987, Financial Services Act 2013, Islamic Financial Services Act 2013, and associated subsidiary legislation, alongside reported judicial decisions concerning negligence, personal injury, and compensation.

Islamic Jurisprudential Sources: Primary texts comprising the Qur'an and authentic Hadith, complemented by classical juristic doctrines across the four major Sunni schools (Hanafi, Maliki, Shafi'i, and Hanbali), as well as contemporary scholarship addressing *diyat*, *Maqasid al-Shariah*, and restorative justice frameworks.

Secondary Sources: Peer-reviewed journal articles, academic monographs, law reform reports, conference proceedings, and official publications from governmental and international bodies, providing broader comparative and policy perspectives.

Comparative Analytical Framework

The comparative analysis is structured across three core dimensions:

Conceptual Foundations: An examination of the underlying legal philosophies, objectives, and conceptions of justice shaping Malaysian civil compensation and diyat.

Assessment Methodologies: A comparative evaluation of judicial discretion under Malaysian tort law relative to the structured compensatory mechanisms of *diyat*, *arsh*, and *hukumat al-'adl*.

Systemic Efficacy: An assessment of both frameworks regarding their capacity to safeguard victims' rights, ensure legal certainty, facilitate timely relief, and maintain procedural fairness.

Through this methodology, the study isolates constitutionally compatible principles of *diyat* capable of supplementing Malaysia's existing civil compensation regime while respecting the structural parameters of its dual legal system.

Scope and Limitations

This study is strictly confined to the legal frameworks governing personal injury and fatal road traffic accidents in Malaysia. It undertakes a comparative doctrinal analysis of Malaysian civil compensation law and the Islamic doctrine of *diyat*, focusing on their conceptual foundations, governing legal principles, assessment methodologies, and potential for harmonization within Malaysia's pluralistic legal system. The investigation draws upon relevant statutory provisions, judicial precedents, and authoritative Islamic jurisprudential sources concerning bodily injury and wrongful death.

To maintain analytical rigor, the study excludes other domains of civil liability—such as medical negligence, contractual liability, employer liability, product liability, and occupational accidents—as these are governed by distinct legal regimes and policy considerations. Furthermore, intentional criminal offenses and the criminal dimensions of Islamic law (*jinayat*) fall outside the scope of this research, except where the historical evolution of *diyat* informs its contemporary viability as a restorative financial remedy.

Crucially, this study does not advocate the incorporation of Islamic criminal sanctions into Malaysia's civil justice system. Instead, it adopts a harmonization-oriented approach, examining how select civil dimensions of *diyat*—namely structured compensation, proportionality, restorative justice, and victim-centric protection—might complement the existing civil framework. The proposed model operates strictly within Malaysia's constitutional parameters, respecting the federal distribution of legislative powers and the jurisdictional demarcation between civil and Shariah courts while striving to enhance fairness, consistency, and efficiency in accident compensation.

Legal Certainty and Judicial Assessment

A primary challenge within Malaysia's civil compensation regime lies in balancing judicial flexibility with legal certainty. Although Section 28A of the Civil Law Act 1956 provides statutory guidance for assessing future pecuniary losses via the multiplier-multiplicand approach, the valuation of non-pecuniary losses—such as pain and suffering, loss of amenities, and permanent disability—relies heavily on judicial discretion. Consequently, compensation awards for comparable injuries frequently vary, diminishing predictability and exacerbating disputes over quantum.

Conversely, the Islamic doctrine of *diyat* incorporates a structured mechanism for evaluating bodily injury. Through *arsh*, predetermined compensation is prescribed for specified injuries, while *hukumat al-'adl* permits judicial assessment where no fixed valuation exists. This dual mechanism successfully balances legal certainty with judicial discretion, mitigating unnecessary conflict while preserving equitable outcomes in exceptional cases.

Although the direct adoption of classical *arsh* schedules is neither feasible nor appropriate within Malaysia's contemporary legal architecture, these underlying principles offer valuable insights for reform. Developing structured assessment guidelines or indicative compensation frameworks for frequently litigated injuries could enhance consistency in judicial decision-making, curtail quantum-related litigation, facilitate early settlements

through insurers and takaful operators, and bolster public confidence in the compensation system. Thus, the contribution of *diyat* lies not in supplanting judicial discretion, but in informing a more transparent and predictable framework for its exercise.

DISCUSSION AND RECOMMENDATIONS

Towards a Harmonised Framework

Synthesis of Findings

The comparative analysis demonstrates that Malaysian civil compensation law and the Islamic doctrine of *diyat*, despite stemming from distinct traditions, pursue parallel normative objectives: restoring victims, alleviating financial hardship, upholding justice, and fostering social stability following wrongful injury or death.

Nevertheless, the implementation mechanisms diverge significantly. Malaysian tort law prioritizes individualized assessment under *restitutio in integrum*, enabling courts to tailor compensation to the specific circumstances of each claimant. While this offers flexibility, it simultaneously engenders inconsistent awards, protracted litigation, evidential complexity, and elevated legal costs. Conversely, the Islamic framework combines fixed compensation (*diyat* and *arsh*) with structured judicial discretion (*hukumat al-'adl*), thereby promoting legal certainty, proportionality, procedural efficiency, and restorative justice.

These findings indicate that the two systems are not mutually exclusive. Instead, their complementary strengths provide a robust foundation for a balanced compensation framework that preserves judicial flexibility while enhancing consistency, transparency, and accessibility.

Constitutional Compatibility and Legal Harmonisation

Any integration of Islamic legal principles into Malaysia's accident compensation framework must operate strictly within the constitutional distribution of legislative power. Under the Federal Constitution, tort law, civil procedure, insurance, and commercial transactions fall within Parliament's legislative competence under the Federal List of the Ninth Schedule. State legislative authority regarding Islamic law is principally confined to personal status, family law, religious administration, and specified offenses under the State List.

Accordingly, establishing a separate Shariah-based compensation regime for road traffic accidents would encounter severe constitutional and jurisdictional hurdles. This study rejects a substitution model in favour of a harmonization approach that preserves the existing civil justice system while incorporating selected normative principles derived from *diyat*.

Such harmonization can be operationalized through targeted legislative and policy reforms, including the development of structured compensation guidelines for common bodily injuries, increased reliance on standardized medical assessment protocols, strengthened mechanisms for expedited settlements via insurers and takaful operators, enhanced recognition of restorative justice principles within compensation procedures; as well as improved victim-centric support throughout the claims lifecycle.

These reforms can be implemented via precise amendments to federal legislation, particularly the Civil Law Act 1956 and the Road Transport Act 1987, without disrupting the constitutional allocation of legislative powers or the jurisdictional boundaries between civil and Shariah courts. Ultimately, the ethical foundations of *diyat* can enrich, rather than replace, Malaysia's existing tort compensation regime.

CONCLUSION

This article demonstrates that meaningful harmonization between Malaysian civil compensation law and selected principles of the Islamic doctrine of *diyat* is both legally viable and constitutionally sound. Rather than advocating the replacement of Malaysia's established tort framework, the study proposes a

complementary model wherein the structured and restorative features of *diyat* inform the continued evolution of civil compensation law. By integrating principles of proportionality, legal certainty, restorative justice, and victim-centric protection, the proposed framework provides a practical avenue for improving consistency, procedural efficiency, and equitable outcomes in road traffic accident compensation. Beyond its domestic application, the study contributes to comparative legal scholarship by illustrating how civil and Islamic legal traditions can be constructively harmonized within a pluralistic legal system, providing a normative baseline for future legislative reform and empirical inquiry.

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