

Research Article

Diyat, Dhaman And Road Accident Compensation Claims In Malaysia

Rehah Binti Ismail^{1*}, Mohd Norazmi Nordin², Nurfaradilla Haron³, Marina Abu Bakar⁴

¹fakulti Undang-Undang, Universiti Teknologi Mara, Malaysia

²cluster Of Education And Social Sciences, Open University Malaysia

³ucsi University, Kuala Lumpur, Malaysia

⁴kuliyah Of Shariah And Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (Unishams),
Kedah, Malaysia

Emel :Ismailrehah@Gmail.Com

*Corresponding Author: Ismailrehah@Gmail.Com

Abstract

Diyat Is A Good Compensation Claim System For Road Accident Cases And Should Be Applied In Malaysia. The Offense Of A Road Accident Stems From Negligence Which Can Be Categorized In The Scope Of A Crime Against An Individual. This Leads To A Fine Of Diyat. This Study Hopes That The Government And Sharia Practitioners Can Consider That The Quantum Of Personal Injury Under Civil Law And Compensation In Road Accident Cases In Malaysia Can Be Adjusted According To Diyat And Dhaman So That Fair Justice Is Given To Victims Or Families Of Victims. Section 90 (2) Of The Road Transport Act 1987 Provides For A Fine For A Motor Car Owner Violating The Provisions Of The Law If He Does Not Have An Insurance Policy. The Fine Provides Awareness To Insurance Owners About The Risk Of Incurring Losses As A Result Of The Negligence Of A Road Accident. Payment Of Damages Will Be Obtained After The Court Hearing And The Insurance Company's Claim Is Fully Settled. This Study Aims To Examine The Problems That Exist In The Existing Compensation System In Malaysia And Propose That The Diyat Method To Resolve Cases Out Of Court. Therefore, This Study Is A Proposal Towards An Out -Of - Court Settlement Through A Method Based On Justice And Shariah Compliance. The Research Methods Used In This Article Are Literature Review And Case Study.

Keywords: Diyat, Dhaman, Compensation, Road Accident, Syariah

Introduction

Road Accidents Affect Loss Of Life, Destruction To Vehicles, Limb Injuries As Well As Grief To The Family Members Of The Victims And Victims Involved In The Accident. Therefore, One Of The Ways To Alleviate The Burden Borne By The Victims Of Road Accidents Is By Making A Civil Claim Under Civil Law In Malaysia. The Value And Quantum Of Compensation To Be Received By The Victim Of A Road Accident Or A Family Member Of The Victim Is Inadequate. Therefore, Several Provisions Of Civil Law Need To Be Reviewed And Amended So That Fair Justice Is Given To The Victims And Family Members Of The Victims Of The Road Accident.

Past Studies

According To Muhammad Najib (2012), Diyat Has Existed Since The Time Of The Arab Jahiliyyah. Diyat Is A Punishment That Is The Practice Of The Arabs And Is Adopted By Islamic Law With An Update On Its Implementation. Diyat Is Property Or Money That A Criminal Must Pay To The Guardian Or Heirs Of His Victim As

Compensation For Committing A Crime Involving Death Or Injury Of Limbs Or Loss Of Limb Function. Diyat Is An Alternative Punishment As Well As The Original Punishment. Diyat Is Prescribed As The Original Punishment For Cases Of Semi -Intentional And Unintentional Murder.

Diyat From The Point Of View Of Sharia

From The Point Of View Of Sharia, The Provision Of Al-Diyat (الدية) Through The Revelation Of The Qur'an And Hadith. The Implementation Of Compensation Claims Practiced In Malaysia Is To Protect Insurers. To Avoid A False Claim For Damages, There Are Several Elements That Need To Be Proved By The Person Claiming The Damages. The Advent Of Islam Has Confirmed Diyat As A System Certified By Sharia Through Reference To The Quran And Hadith. According To Salleh Buang (1999), The Function Of Compensation Is To Put A Person In His Original State As Before An Offense Was Committed. In The Diyat System Or Insurance The Principle Already Exists.

The Purpose Of Damages In Diyat Is In Line With Modern Law Today. According To Shahidul Islam (2015) That The Purpose Of Damages Is To Put The Plaintiff In The Proper Position If The Tort Offense Does Not Occur. This Study Is Based On The Diyat Approach As A Method Of Amicable Settlement. Diyat Prioritizes The Welfare Of The Victim Rather Than The Punishment Of The Offender As Practiced In Today's System.

There Are Two Bases In A Claim For Damages In The Diyat System. The Two Bases Are The Presence Of Infringement Of Rights And The Presence Of Injury. The Diyat System Provides Compensation For Bodily Injuries Only Excluding Property. Al-Zuhayli (1998) Is Of The View That It Does Not Mean That Damage Or Loss Of Property Cannot Be Claimed But The Space To Claim Remains Only It Is Located In A System Called Property Guarantee Or Al-Dhaman. This Claim Is A Good Solution As Compensation Money For Very Important Injuries Will Be Obtained At An Immediate Rate.

The Advent Of Islam Has Confirmed Diyat As A System Certified By Sharia Through Reference To The Revelation Of The Quran And Hadith. Diyat In Terms Of Language Is The Right Of The Murder Victim (Ibn Manzur, 2003). The Term Diyat, On The Other Hand, Refers To A Number Of Properties That Are Substitutes For Members (Ibn Abidin Et Al., 1992). Diyat According To Its Etymology Means Compensation. The Term Diyat Is Clearly Stated In A Hadith Narrated By Abi Daud, Namely:

لَا يُقْتَلُ مُؤَمِّمٌ بِكَافِرٍ وَمَنْ قَتَلَ مُؤَمِّمًا مُتَعَمِّدًا دَفَعَ إِلَى أَوْلِيَاءِ الْمَقْتُولِ فَإِنْ شَاءُوا قَتَلُوهُ وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ

The Rate Of Compensation For Injuries And Loss Of Limbs Is Widely Referred To Based On The Hadiths Of The Prophet Saw. Hadith Narrated By Abu Bakr Ibn 'Ubadillah Ibn' Umar, From 'Umar Radhiyallahu' Anhu From The Prophet Saw Said Which Means:

"On The Nose When Broken All Subject To Diyat 100 Camels, On One Hand 50 Camels, One Foot 50 Camels, One Eye 50 Tails, Wounds That Hit The Skin Of The Brain One -Third (Diyat) Murder, Wounds That Reach The Head Cavity Or Abdomen One -Third (Diyat) , Wounds That Make Bones Visible 5 Tails, And On Each Finger Diyatnya 10 Tails " .

Hadith Narrated By Abu Daud

Al-Dhaman (الضمان) From Syariah Perspective

According To Siti Aisyah (2020), Islamic Law Provides For Diyat As A Compensation Mechanism That Only Covers Bodily Injury And Loss Of Life. Any Risk Of Damage Involving Property, Damages In The Form Of Dhaman Will Be Imposed.

Claims For Compensation In Islamic Law

Compensation In Islamic Law Is Based On The Dalil Naqli Which Is Al-Quran In Surah Al-Anbiya 'Verses 78 And 79 Which Are:

وَدَاوُدَ وَسُلَيْمَانَ إِذْ يَحْكُمَانِ فِي الْحَرْثِ إِذْ نَفِثَ فِيهِ غَتَمُ
الْقَوْمِ وَكُنَّا لِحُكْمِهِمْ شَاهِدِينَ ﴿٧٨﴾

فَفَهَّمْنَاهَا سُلَيْمَانَ وَكُلًّا آتَيْنَاهَا حُكْمًا وَعِلْمًا وَسَخَّرْنَا مَعَ دَاوُدَ
الْجِبَالَ يُسَبِّحُنَ وَالطَّيْرَ وَكُنَّا فَاعِلِينَ ﴿٧٩﴾

The Verse That Tells The Story Of Prophet David And His Son Prophet Solomon When Giving Punishment Regarding Goats That Damage The Crops Of The Villagers At Night Is The Source Of The Existence Of A Form Of Compensation For Any Type Of Damage That Occurs (Muhammad Shahibul, 2015). In This Case, The Prophet Solomon Ruled That The Owner Of The Garden Was Entitled To Detain A Goat That Damaged The Crop For Some Period To Take Advantage Of The Milk And Fur As Compensation For Returning As If To Its Original Condition. This Is In Line With The Goal Of Damages In Modern Law Today Which States That The Purpose Of Damages Is None Other Than To Put The Plaintiff In The Proper Position Should The Tort Offense Not Occur (Salleh Buang, 1999).

Compensation From A Civil Perspective

According To Rk Nathan 1998; Siti Aisyah 2020, In Civil Cases There Are General Damages And Special Damages Covering Losses In The Form Of Money Before Trial Including Property Such As Vehicle Damage And Transportation Costs. General Damages Include Future Financial Losses. Special Compensation Is Loss In The Form Of Money Before Trial Including Property Matters Such As Vehicle Damage And Transportation Costs. To Ensure That Justice Is Given To The Victims Of Road Accidents, The Process Of Claiming Compensation With The Correct Method And Shariah Compliant Must Be Implemented As Best As Possible By The Legislature. This Includes Trying To Resolve Road Accident Cases Within A Reasonable Period Of Time. Therefore, Payment Of Compensation Within An Immediate Period Can Be Made If The Element Of Indemnity Is Reduced To A Claim For Bodily Injury Or Death Only. Therefore, This Concept Fosters A Good Process In Resolving Road Accident Claims Cases In A Short Period Of Time That Takes One Year (Siti Khadijah, 2015).

Claims For Damages For Injury In Section 28a Of The Civil Law Act 1956 (Act 67) States That In Awarding Damages For Future Loss Of Income, If A Plaintiff Reaches The Age Of 50 Years Or More At The Time Of His Injury, There Is No Damages For Loss Will Be Awarded. The Age Limit May Be Relevant In The Last 10 Years. Most Malaysians Now Retire At The Age Of 60 But Not Many Apply For Retirement At The Age Of 65. Therefore, It Is Proposed That An Amendment Be Made To Amend This Section By Substituting The Age Limit For Compensation For Loss Of Income In The Future To 60 Years According To The Current Employment And Retirement Situation.

Case Study Of Personal Injury In Road Accident Cases

Siti Khadijah (2015) Summarizes That In The Case Of Shanmugam A/L Gopal V. Zinal Abidin Bin Nazim [2003] 3 Mlj 76, The Plaintiff In This Case Sought General Compensation For The Injuries He Suffered Such As “Laceration Wound 10 X 5cm Over Frontal Region, Laceration Wound Over Bilateral Knee, Abrasion Wound Over Right Lumbar And Suprapubic And Deformity Over Left Distal End Radius”. Plaintiff Also Lost 3 Upper Teeth As A Result Of The Accident.

Siti Khadijah (2015) Also Concluded That In The Case Of Mahamad Asri V. Southern Sawmill Sdn Bhd & 1 Other & Third Party, [Kuantan Sessions Court, Pahang] (Case No.: 53-817-2010 Year 2011-S3), The Court Awarded Damages Of Rm10,000.00 For Multiple Abrasions And Laceration Wounds. The Most Serious Laceration Injury Was On The Plaintiff's Face, Which According To The Medical Report Was 10x5cm Above The Eyebrows, Had Left A Permanent Scar On The Plaintiff's Face. The Plaintiff In This Case Was 17 Years Old In 2015. The Scars On The Plaintiff's Face Will To Some Extent Affect The Plaintiff Who Is Still Unmarried And Also Still Young. The Scars On

Plaintiff's Face Affected The Prospects For Plaintiff To Get Married And Also To Some Extent Affected Plaintiff's Self -Confidence In Finding A Suitable Job. Plaintiff Has Not Worked To This Day Since Being Involved In The Accident. The Plaintiff Has Applied To The Court To Consider Compensation Of Rm18,000.00 For The Plaintiff's Injuries.

The Demand For Diyat Is Based On Islamic Law

Referring To Table 1, The Rate Of Diyat Fine Is As Follows:

Type Of Injury				
Loss	Injuries	Diyat Rate	The Percentage Need To Pay	Reparation In Malaysian Ringgit (Rm)
The Tongue	1 Diyat		100%	Rm680,000.00
Sense Of Taste	1/5 Diyat		20%	Rm136,000.00
Sight	1 Diyat		100%	Rm680,000.00
Conversation	1 Diyat		100%	Rm680,000.00
Smell Sense	1 Diyat		100%	Rm680,000.00
Hearing	1 Diyat		100%	Rm680,000.00
Out Of Mind	1 Diyat		100%	Rm680,000.00

Source Table 1: Excerpted From The Reference Book Entitled Diyat Dalam Perundangan Islam Page 92

Civil Damages Claim

Referring To The Calculation Of Accident Compensation Claims In Malaysia Is Based On The Compendium Of Personal Injury Awards Revised As Of October 26, 2010 And The Laws Act 1956 As In Table 2 As Follows:

Injuries	Light	Severe
Cerebral Concussion/Loss Of Consciousness	Rm5,000.00	
Subdural Haematoma With Burr Hole Craniotomy	Rm15,000.00	Rm25,000.00
Mild Personality Or Behavioural Changes	Rm20,000.00	Rm40,000.00
Memory Impairment	Rm20,000.00	Rm45,000.00
Intellectual Impairment	Rm50,000.00	Rm150,000.00
Motor Impairment (Weakness Of Limbs) Hemiplegia	Rm40,000.00	Rm65,000.00
Bedridden State With Awareness	Rm250,000.00	Rm300,000.00
Persistent Vegetative State (Coma)	Rm150,000.00	Rm200,000.00

Source Table 2: Excerpted From Compendium Of Personal Injury Awards 26 October 2010 Page 17

The Compensation Award In Table 2 Depends On Several Factors Including:

- (I) Age Of Plaintiff-Whether Plaintiff Is Child, Adult While Still Alive;
- (ii) Whether Male Or Female;
- (iii) Whether The Plaintiff Is Single Or Was Married At The Time Of The Road Accident So As To Jeopardize The Marriage As A Result Of The Road Accident;
- (iv) Whether The Injury Affects The Whole Brain; And
- (V) Whether The Injury Affected The Plaintiff's Previous Work.

Research Methods

This Study Applies A Qualitative Method By Focusing On Library Research (Dihartawan, 2018) Which Is Sourced From Primary Sources Such As Al-Quran And Al-Hadith As Well As Secondary Sources Obtained From Research And Reading Through Websites, Articles, Journals, Reference Books And Legal Acts. Islam And Civilizations Related To This Study. In Addition, This Study Examines Civil And Sharia Case Studies.

Findings And Discussion

This Study Finds That The Punishment Of Diyat And Dhaman In The Context Of Islamic Law Proves That Islam Prioritizes Human Kindness In Providing Compensation For Personal Injury Or Loss Of Life. However, Whether There Is A Limit Or Limitation In The Provision Of Compensation, That Is, The Victim Should Not Expect To Obtain An Unreasonable Amount Of Compensation. Therefore, The Victim Is Only Entitled To Claim Compensation Only For The Actual And Apparent Amount Of Loss And Has Been Limited In The Punishment Of Diyat And Dhaman. This Study Suggests That Diyat And Dhaman In Islamic Law Can Be Refined With Provisions In Civil Law In Line With The Progress Of The Country Today. Therefore, This Study Hopes That The Government And Lawmakers Can Consider That The Quantum For Personal Injury Under Civil Law And Compensation Compensation In The Case Of Road Accidents In Malaysia Is Adjusted According To Diyat And Dhaman.

Recommendations And Conclusions

According To Siti Aisyah (2020), In Order To Create A Comprehensive Compensation System, A Fund Known As The Automobile Fund Needs To Be Established. This Fund Is To Protect The Victims Who Are Not Covered By Insurance During The Accident Or The Victims Run Away To Get Their Rights That They Should Have. Therefore, The Funds Can Be Taken From Some Road Taxes Paid By Road Users. In Addition, The Concept Of Diyat Is A Concept Of Punishment That Proves That Islam Is Beautiful Because It Prioritizes Brotherhood Among Human Beings With The Method Of Mutual Forgiveness To Eliminate The Prolonged Feelings Of Resentment From The Parties Involved In Road Accidents.

Appreciation/Acknowledgement

The Author Would Like To Thank The Lecturers Of Universiti Teknologi Mara, Malaysia For Their Moral Support Until The Production Of This Article.

References

1. Al-Quran
2. Al-Hadis
3. Akta Pengangkutan Jalan Raya 1987
4. Akta Had Masa 1953 (Akta 254)
5. Akta Undang-Undang Sivil 1956 (Akta 67)
6. Al-Zuhayli, Wahbah. 1998. Nazariyyat Al-Daman Wa Ahkam Al-Masuliyah Al-Madaniyyah Wa Al-Jinaiyyah Fi Al-Fiqh Al-Islami Dirasah Muqaranah. Dimasyq: Dar Al-Fikr.
7. Abi Daud, Sulaiman Ibn Al-Asy'as. 1996. Sunan Abi Daud. Beirut: Dar Al-Kutub Al-Ilmiyyah.
8. Compendium Of Personal Injury Awards Revised As At 26 October 2020. Available Online

- At<<https://klbar.org.my/members/document-downloads/>> Akses 10 Jun 2021
9. Dihartawan (2018), Budaya Keselamatan (Kajian Kepustakaan) Vol 14, No.1. Issn: 2549-6883 (Online).Jurnal Kedokteran Dan Kesehatan<<https://doi.org/10.24853/jkk.14.1.98-108>>Akses 10 Jun 2021
 10. Ibn Abidin, Muhammad Amin, Hashiah Ibn Abdidn Wa Ardd Al-Muhtar Ala Al-Durr Al-Mukhtar Syarh Tanwir Al-Absar. Dar Al-Fikr. Beirut. Jilid 6. 1992, 573.
 11. Ibn Manzur, Jamaluddin Bin Muhammad Bin Muhammad Lisan Al-Arab. Dar Sadir. Beirut. Jilid 6.2003.Hlm 373
 12. Mohd Khair, Siti Khadijah And Md Dahlan, Nuarrual Hilal (2015) Pampasan Gantirugi Dalam Kes-Kes Kemalangan Jalan Raya Di Malaysia Dalam Perundangan Sivil Dan Islam: Suatu Kajian Kes. In: Usm International Conference On Social Sciences 2015 (Usm-Icoss2015), 27th – 28th August 2015, Rainbow Paradise Beach Resort, Penang.
 13. Mohd Khair, S., Md Dahlan, N., & Wahab, H. (2019). Konsep Liabiliti Dan Pemberian Pampasan Ganti Rugi Dalam Kemalangan Jalan Raya Menurut Perundangan Islam. Uum Journal Of Legal Studies, 10(2), 45-77. Doi:10.32890/Uumjls.10.2.2019.9128
 14. Muhammad Najib Bin Abdullah (2012). Diyat Dalam Perundangan Islam < <http://dms.usim.edu.my:80/jspui/handle/123456789/6891>> Akses 11 Jun 2021
 15. Muhammad Shahibul Islam, Et. Al. (2015). Compensation Of Road Accidents In Islamic Law: An Analysis, Journal Of Islam, Law And Judiciary, Volume 1, Issue 4.
 16. Rk Nathan, Nathan On Negligence, Malayan Law Journal Sdn Bhd. Kuala Lumpur, 1998,Hlm 329
 17. Salleh Buang, 1999. Undang-Undang Kecuaian Di Malaysia, Terjemahan. Asiah Mohd Yusof, Kuala Lumpur: Dewan Bahasa Dan Pustaka
 18. Siti Aisyah Samudin, Siti Zubaidah Ismail (2017), Diyat Sebagai Mekasnisme Tuntutan Pampasan Luar Mahkamah Bagi Kes Kemalangan Jalan Raya Di Malaysia: Tinjauan Dari Aspek Pengharmonian Sosial. The International Seminar On Islamic Jurisprudence In Contemporary Society (Islac 2017) Isbn: 978-967-0899-57-2
 19. Siti Aisyah Samudin (2020). Pampasan Ganti Rugi Ke Atas Mangsa Kemalangan Jalan Raya: Titik Integrasi Antara Diyat Dan Insurans. E-Journal Of Islamic Thought And Understanding Volume 2<<http://ejitu.uitm.edu.my/e-issn:2006-9617>> Akses 9 Jun 2021
 20. Siti Khadijah,Nuarrual Hilai Md Dahlan (2015). Pampasan Gantirugi Dalam Kes-Kes Kemalangan Jalan Raya Di Malaysia Dalam Perundangan Sivil Dan Islam: Suatu Kajian Kes. Usm International Conference On Social Science (Usm-Icoss) , 27-28 August 2015.Eisbn 978-967-11473-3-7
 21. Yogesh Hole Et Al 2019 J. Phys.: Conf. Ser. 1362 012121