

***Diyah* (Blood Money) as Substitution to Capital Punishment: An Attempt Towards Harmonisation Between *Shari'ah* and Malaysian Penal Code**

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Abstract: The Islamic Criminal Law (ICL) and The Malaysian Penal Code (MPC) provide capital punishment for cases of intentional murder. Both legal systems also recognised pardon in certain cases. While MPC provides only pardon by Pardon Board, ICL on the other hand, offers three options to the victim's family, namely, to demand for *Qisas*(killing in retaliation by the authority), *Diyah* (Blood Money), and Pardon, the last being the best option and praised by God. In the absence of *Diyah* under MPC (Act 574) section 302, it is therefore suggested that the provision of *Diyah* should be included. This is in order to resolve the problems of backlog of murder cases waiting for execution, which is rampant in Malaysia, to response to the call for abolishment of capital punishment and harmonisation process between the said two legal systems. This article will try to look for means and ways for harmonisation between the ICL and MPC. By using *Diyah* many lives could be saved from the gallows. *Diyah* is very much encouraged by the Law Giver of Islamic Law. In the past, there was a system of *al-'Aqilah* (tribal fund) to pay for blood money. But the system is no longer popular now because of migration and losing structure of family bond. Perhaps, the current system of *Takaful* (Islamic insurance) can replace and taking its role in *Diyah* paying process. All these issues will be discussed in details in this article.

Key words: *Shari'ah*, Malaysian Penal Code, *Diyah*, *Takaful* and pardon.

INTRODUCTION

Crimes and their punishments under Islamic criminal law can be divided into three categories. They are Hudud (fixed punishments), *Qisas* (killing and hurts in retaliation) and *Tazir*(discretionary punishment). There are seven types of Hudud crimes:

1. Adultery. (The punishments is 100 lashes for unmarried man or woman (*ghayr muhsan*) and stoning to death for married man or woman (*muhsan*);
2. Theft. (The punishment is cutting of the hand when the elements of crime are fulfilled);
3. Robbery (*Hirabah*). (The punishments are cutting off hand and leg in opposite side, killing, crucifixion or banishment);
4. Drinking alcohol or intoxicating substance. (The punishment is 40 or 80 lashes);
5. False accusation of adultery.(The punishment is 80 lashes);
6. Rebel. (The punishment is killing); and
7. Apostasy. (The punishment is killing after counselling and no repentance).

As for *Qisas* crime and its punishment there are three categories i.e. intentional murder, quasi-intentional murder and murder by mistake. As regard to the intentional murder, the heirs of the victim have been given three choices whether they want killing in retaliation, blood money or pardon. As for quasi-intentional murder, the available punishments are blood money or pardon. The same goes to murder by mistake. Another aspect of *Qisas* punishment is for the cases of causing bodily injury. The punishment is also retaliation based on proportionality according to the seriousness of the injury such as tooth with tooth, eye with eye and so on. Finally, *Tazir* is a discretionary punishment enforced as a right of Allah (s.w.t.) or of a human being, for offences neither involve *Hudud* nor *Qisas*. The aim of *Tazir* is to discipline, reform, and deter the offender.

Intentional Murder:

The first type of *Qisas* crime is intentional murder. Under Islamic Criminal law, intentional murder is a crime when a person willfully and has the intention of causing death to a victim (Anwarullah, 1997).

God said in the Qur'an:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا

“But whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allah (s.w.t.) has become angry with him and has cursed him and has prepared for him a great punishment.” (Qur'an, al-Nisa', ayah 93)

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Narrated Abdullah bin Umar:

“One of the evil deeds with bad consequence from which there is no escape for the one who is involved in it is to kill someone unlawfully.”(Sahih al-Bukhari, Hadith No. 3)

Narrated Abdullah bin Amr:

The Prophet (s.a.w.) said, "*Al-Kaba'ir* (the grave sins) are: To associate Allah (s.w.t.) with other object (as partners), to be undutiful to one's parents," or said, "to take a false oath." (The sub-narrator, Shubah is not sure) Muadh said: Shu'bah said, "*Al-Kaba'ir* (the grave sins) are: (1) to associate Allah (s.w.t.) with other object, (2) to take a false oath (3) and to be undutiful to one's parents," or said, "to murder (someone unlawfully). (Sahih al-Bukhari, Hadith No 4.)

The Muslim jurists have stated that there are three basic conditions for intentional murder:

The Victim Must Be A Living And Protected Human Being(Masum Al-Dam):

The first condition for intentional murder is that the victim must be a living human being at the time of death irrespective of colour, territory, religion, sex, status, health or age. Thus, if a person, with intention of causing death attacks with a deadly weapon on a dead person, he is not liable to intentional murder.

Murder Must Be The Result Of The Act Of The Accused:

The second condition for the intentional murder is that the murder must be the result of a fatal act of the accused. Thus, if the act of the accused is not of the nature which in the ordinary course is not likely to cause death, he will not be liable to intentional murder.

The Offender Must Have The Intention To Cause Death Of The Victim

The third condition and the main element of intentional murder is that the offender must have intended to cause death to the victim. Criminal intention means willingness of a person to do a prohibited act or refrain from a mandatory act knowing that the act he is going to commit or omit is forbidden(Anwarullah, 1997).

Under Islamic law, the heirs of the victim have two choices as regard to the punishment:

- (a) Demand for retaliation i.e., *qisas*; or
- (b) Blood money, i.e. *diyah*.

If they do not want the offender to be punished, they can pardon him (Audah, 2005).The Jurists thus concur that the legal heir of the victim in case of intentional murder is allowed to pardon the offender either without anything or with *diyat* or any other valuable thing (Anwarullah, 1997). According to Imam Malik, only the male near relatives of the victim on father's side like son, father, brother, uncle or the woman who is the direct heir of the victim have the right to pardon the offender. But, Imam AbuHanifah, Imam Shafi'i and Imam A'Imad said that all legal heirs whether male or female have the right to pardon.

It is pertinent to mention that none except the heirs of the victim have the right to pardon the offender even a ruler or his authorized representative or officer. However, a ruler can pardon the offender with the consent of the heir.

If the victim has more than one heir, and one of them waives the punishment of retaliation, the offender shall be liable to *diyat*. When there are more than one victim(s), the waiver of the punishment of retaliation by the heirs of one victim shall not affect the right of retaliation of the heirs of other victim. Where there is more than one offender, the waiver of retaliation of one offender shall not affect the right of retaliation against other offender. Similarly, according to the majority of the Muslim jurists, if a victim before his death has himself waived the punishment of retaliation to the offender, the offender shall not be punished with retaliation. But, Imam Malik held that the offender in such case shall be liable to retaliation as the victim has pardoned the offender before the commission of the crime which is not effective. Furthermore, the heirs of the victim, who pardon the punishment of retaliation, must be adult and sane (Anwarullah, 1997).

On the other hand, under Malaysian Penal Code, whoever commits murder shall be punished with death (Section 302, Malaysian Penal Code). As regard to the element of murder, it can be divided into four:

- (a) if the act by which the death is caused is done with the intention of causing death;
- (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
- (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
- (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid(Section 300, Malaysian Penal Code).

However, the Yang di-Pertuan Agong (Supreme Ruler) 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 and Labuan; and the Ruler or Yang di-Pertua Negeri of a State has power to grant

pardon, reprieves and respites in respect of all other offences committed in his State. (Article 42, Malaysian Federal Constitution).

Diyah (Blood money):

Diyah can be defined as payment of indemnity for killing and injuring a human being. Therefore, the word *diyah* as far as homicide is concerned denotes the amount of compensation paid to the next of kin of the deceased as a substitute in cases of murder and as the original reparation in case of quasi intentional murder and killing by mistake (S.S., Shah Haneef, 2000).

The concept of *diyah* originates in the Qur'an and the *Sunnah*. Allah (s.w.t.) said:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنَ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنَ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فِدْيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامٌ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا.

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 presented to the deceased's family [is required] unless they give [up their right as] charity. But if 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 Allah (s.w.t.). And Allah (s.w.t.) is ever Knowing and Wise. (Qur'an, al-Nisa', ayah 92)

The *Sunnah* also affirms this whereby the Prophet (s.a.w.) said:

"Anyone who is killed, his legal heirs have two options against his murderer: to exact *qisas* or to pardon him upon *diyah*." (Sahih al-Bukhari, Kitab al-Diyat).

In another Hadith, the Prophet (s.a.w.) said:

"If anyone kills a man deliberately, he is to be handed over to the relative of the one who has been killed; if they wish can retaliate or if they like can accept blood-money." (Sunan Abi Daud, Kitab al-Diyat).

The Muslim jurists, although agreed that one hundred camels is payable for wilful murder, differed on the types of camel payable. According to Ata', Imam Shafi'i, Imam Ahmad ibn Hanbal, and Muhammad ibn Hasan, aggravated (*Mughallazah*) is payable for wilful murder, that is the *diyah* consists of varieties of camels. On the other hand, Shafi'is scholars held that the one hundred of the more expensive types of camels namely:

1. Thirty Hiqqah (3 years old female);
2. Thirty Jadhah (4 years old female); and
3. Forty pregnant khalifah (5 years old and above). (Al-Sagoff, S.A., 2006).

According to Sayyid Sabiq (Contemporary Egyptian scholar), aggravated damages are only applicable when paying *diyah* by way of camels and not by way of gold, silver or other means.

However, the scholars of the Hanbali school maintain that aggravated damages for wilful murder is payable for anyone of the following three cases:

1. Killing in and around Makkah vicinity (Haram);
2. Killing in the months where warfare and bloodshed are prohibited that is the month of *Rajab*, *Dhulqaidah*, *Dhulhijjah* and *Mularram*; and
3. Killing whilst a person is in *ihram*. (The pilgrim in the state of performing *Hajj* or *Umrah*).

Imam AbuHanifah however is of the view that *diyah* is payable only for homicide resembling murder and homicide by mistake. There is no *diyah* for wilful murder. The heirs of the victim may only choose the punishment of *qisas* or forgive the offender. However, the offender may by agreement compensate the victim's family (*badl-Sulh*), and pay the sum immediately without delay. Imam Malik in one of his opinions is also of the same view that there is no *diyah* for wilful murder except *Sulh*.

In addition, Imam AbuHanifah and Imam Malik, hold that the amount of compensation (*Sulh*) payable, if the heirs of the deceased consent to *diyah*, would be four sets of camels:

1. Twenty-five binti Makhad (1 year old females);
2. Twenty-five binti Labun (2 year old females);
3. Twenty-five Hiqqah (3 year old females); and
4. Twenty-five Jadhah (4 year old females).

It is clear that there is unanimity amongst scholars that the *diyah* for wilful murder is one hundred camels. However, they only differ on whether to aggravate the payment of *diyah* or not. To the Hanafi scholars, aggravation is in the form of the offender bearing personally the responsibility to pay *diyah* whereas the Shafii and Hanbali scholars aggravate the compensation by increasing the amount of compensation payable through better varieties of camels. The Malikis however, divide their opinions between the two opinions above. Therefore, modern legislation can reconcile the above differences of opinions by taking the stand whether to

recognize aggravation of the compensation for murder. The purpose of *diyyah* is primarily to mollify the feelings of the injured relations. Aggravated *diyyah* perhaps, would serve this purpose. Furthermore, the Quran advises the offender that after the victim's family has forgone the right to *qisas*, he should grant any reasonable demand, and compensate them with handsome gratitude (Al-Sagoff, S.A., 2006).

The increased amount of compensation however may result on the offender being unable to pay the sum and thus exposes him to the punishment of *qisas*. In today's circumstances, we must not overlook that family ties are as strong as before. The Quran has stipulated that "in the law of equality there is (saving of) life to you" (Al-Baqarah, ayah 179) and it would run against the Quranic injunction if the amount of *diyyah* becomes an obstacle to achieve the desired result. On the other hand, the thought of one's relation receiving the death penalty is so revolting that the human compassion to save life may yet come to the offender's rescue.

The Kelantan Syariah Criminal Code (II) Enactment, 1993 recognizes for the payment of *diyyah* in place for *qisas*. Clause 27(2) (a) of the Enactment provides that the court shall not impose the punishment of death for wilful murder where the *wali* (guardian) remits the *qisas*. Under Clause 28 of the Enactment, the *wali* may at anytime pardon the offender sentenced to death with or without *diyyah*. (Al-Sagoff, S.A., 2006).

Institution of 'Aqilah:

The word '*aqilah*' derived from the root word *al-'aql* which literally signifies an act of withholding or restraining. Juridically it is so-called because the '*qilah*', by paying the compensation, restrain the legal heirs of the victim from being oppressed and complaining. In the second sense, they are called '*aqilah*' because in the pre-Islamic era, they used to take the camels as compensation for killing to courtyard of the next of kin of the victim (S.S., Shah Haneef, 2000). '*Aqilah*' refers to '*asabah*' (relatives), (Ahmad Fathi Bahansi, 1982), from the father's side. (Abdul Qadir 'Audah, 2003).

Narrated by Abu Hurairah:

"Allah's Apostle gave a verdict regarding an aborted fetus of a woman from Bani Lihyan that the killer (of the fetus) should give a male or female slave (as a *Diyyah*) but the woman who was required to give the slave died, so Allah's Apostle gave the verdict that her inheritance be given to her children and her husband and the *Diyyah* be paid by her '*Asabah*.'" (Sahih al-Bukhari, Hadith No. 44).

Al-Mughirah b. Shubah reported:

"A woman killed her fellow-wife with a tent-pole. Her case was brought to Allah's Messenger (s.a.w.), and he gave judgment that blood-wit should be paid by the relatives (of the offender) on the father's side. And as she was pregnant, he decided regarding her unborn child that a male or a female slave of good quality be given. Some of her offender's relatives said: Should we make compensation for one who never ate, nor drank, nor made any noise, who was like a nonentity? Thereupon Allah's Messenger (s.a.w.) said: He was talking rhymed phrases like the rhymed phrases of desert Arabs." (Sahih Muslim, Hadith No. 4171).

The doctrine of *al-'aqilah* used to be practiced based on a mutual agreement among the ancient Arab tribes. It was a common practice among the tribes that if any member of a particular tribe would have been killed unintentionally by a member of a different tribe, the heirs of the deceased would have to be paid by the paternal relatives of the accused with an amount of blood-money (*Diyyah*) as a pecuniary remedy. Those paternal relatives used to be known as *al-'Aqilah* (Ma'sum Billah, 2011).

'*Aql*' is imposed on those who are supposed to support (*ahl al-nusrah*) the killer by their silence or otherwise. Hence, '*aqilah*' may be:

- a) Blood relationship (*qarabah*) with the killer;
- b) *Hilf* or covenant to support that community;
- c) '*Aqd mawalat*' or an agreement to share the burden of the other whether monetary or otherwise. It started in the beginning of Islam, when a non-believer accepted faith on the exhortation of a Muslim, the two were bound by agreement to help each other. Sarakhsi holds that acceptance of faith is only an illustration and not a condition of this kind of agreement and that any two persons can enter into '*aqd mawalat*;
- d) *Wala'* or inclusion of a freed slave in the family of the previous master;
- e) '*Idd*' or counting a person as member of the group. Such a person might have immigrated and assumed customs and manners of the group so that he is identified with it for all practical purposes;
- f) *Qasamah* or imposition of voluntary collective fine for the payment of '*aql*;

The Prophet (s.a.w.) made an award by validating an agreement between the Ansar and the Jews when the former claimed *diyyat* on the latter; and

- g) *Hirfah* or trade, if the members help each other and provide protection to fellow tradesmen. (Hasan, N., 1984),

Can Blood Money replaced by Takaful?

The Muslim Jurists and the authorities in addressing the concept of '*aqilah*' and the inherent problems with the classical theory of '*aqilah*' as discussed by Muslim jurists advanced their opinions as follows:

Ibn 'Abidin says:

“As today the system of mutual assistance has died away, and *Bait al-Mal* no more exists, thus the correct proposition is that the offender must make the payment.”

However, this position poses a problem because if 3 to 4 dirhams is to be taken from the offender annually, he would not be able to pay the amount for the whole life.

Imam al-Nawawi in *hisal-Majmu'* maintains:

The burden of *diyah* cannot be imposed on the members of the confederate, nor on the share holders in a company, even not on the members in a social organization. However, they can organize themselves into a class organization which protects them and pays the *diyah* on their behalf. This holds good as an alternative particularly for Muslims who live in non-Muslim states and they have no *Bait al-Mal*.

'Awdah suggests:

To impose the *diyah* on the offender would lead to spilling of the blood without consequences since the majority of the offenders are poor, and if it is imposed upon the *Bait al-Mal*, it would be a very heavy burden upon it, however, this should not be a hindrance towards establishing justice and equality in the society. The alternative is for the government to constitute a public taxation department whose levies should be allocated for redemption for such compensation. (S.S., Shah Haneef, 2000).

The central idea of the doctrine of *al-'Aqilah* is that the members of the accused's tribe used to be mutually agreed to a financial contribution for the purpose of protecting him (the accused) from financial liability arising out of causing a culpable homicide. This form of contribution has the resemblance with the contribution paid in today's *Takaful* practices. Meanwhile the compensation paid under the doctrine of *al-'Aqilah* has also the resemblance with today's *Takaful* indemnity (benefits) paid to the victim or his heirs (Ma'sum Billah, 2011).

It may be seen that the twin purposes of the system of *maaqil* are:

- (i) Prevention of unnecessary bloodshed; and
- (ii) Sharing a burden which is necessarily heavy on one person.

Social insurance has in common the second objective of '*aqilah* as it aims to lighten the burden of beneficiaries' maintenance in the event of materialisation 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. (Hasan, N., 1984). 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.

Some scholars have already expressed their opinions on the permissibility of social insurance schemes in Islam. Sheikh Abu Zahrah holds: 'Social insurance which is instituted by the state whether for workers or salaried employees, whether limited to specific groups or applicable in general, are right and permissible (Hasan, N., 1984).

Alsagoff said:

“Consequently, the notion of insurance in Islam is indeed acceptable, and there is nothing wrong in devising a system requiring each industry or those engaging in a particular activity (such as drivers of motor cars or surgeons), to pay a specific voluntary or compulsory amount monthly or annually, to collectively bear the burden of compensation for an unintentional harm committed by one of them in the course of his work, provided that insurance should not be for commercial gain nor bear any taint of usury or include any reasonable *gharar*.” (Al-Sagoff, S.A., 2006).

It can be said that *Takaful* (Islamic insurance) can play its role as a substitution to *diyah* in modern day society or to replace the institution of '*aqilah* which is no longer existed now. Therefore, the system of *takaful* itself is a continuity of the practice of pre-Islamic Arabia (Hassan, Rusni 2011).

Harmonization between Malaysian Penal Code and Islamic Criminal Law:

In the case of wilful murder, the Malaysian Penal Code makes no provision for compensation in place of the death sentence. The Ruler of the State, acting in accordance with Article 42 of the Federal Constitution, in which the offence was committed, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:

- (a) Death;
 - (b) Imprisonment; or
 - (c) Fine.
- (Section 301, Malaysian Criminal Procedure Code)

Upon commutation of the death sentence, which is at the discretion of the Ruler of the State, the court may punish the offender with imprisonment or fine. Thus, a person who uses a car intentionally kills another, upon commutation of his death sentence, does not have to pay compensation to the victim's family. The present motor vehicle compulsory insurance scheme does not provide compensation for the intentional acts of the insured that caused the death of another. It is submitted that government retains the right to commutation of the death sentence, instead of a fine to the government, the offender should pay compensation to the victim's family and that the court may also punish him with imprisonment. 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. (Al-Sagoff, S.A., 2006).

To introduce *diyah* as a part of Malaysian law, it is submitted that there should be some amendments to the Federal Constitution, the Criminal Procedure Code and the Penal Code. (Al-Sagoff, S.A., 2006).

a) Article 42 Power of Pardon.

(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.

The proposed amendment is to add after the word 'state' at the above provision with the clause:

"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."

(2) 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 proposed amendment is to add after the word 'committed' at the above provision with the clause:

"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." (Al-Sagoff, S.A., 2006).

Conclusion:

The role of *diyah* is very significant as an alternative to the death penalty. The payment of *diyah* will help the government to reduce the crowd in prison and the cost of maintenance for the prisoners who are waiting for the execution of the death penalty. It also will save many lives from the gallows as well as a way to support the human rights campaign against death penalty. Besides, the payment of *diyah* will help to support the victim's family especially if the victim is the bread-winner. At least, it may reduce the financial burden of the heirs. Furthermore, the present law (The Federal Constitution, Malaysian Penal Code the Criminal Procedure Code) should be amended in order to give the opportunity for the heirs of the victim to exercise their rights to choose the punishment provided in accordance with the Islamic law.

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