



Offenders' Inability to Pay Restitution to Victims: An Islamic Criminal Law Perspective

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ABSTRACT

This study examines the problem of offenders' inability to fulfill restitution obligations to victims from the perspectives of Indonesian positive law and Islamic criminal law. The study is motivated by the limited effectiveness of restitution enforcement within the Indonesian legal system, which remains heavily dependent on the offender's financial capacity, resulting in the suboptimal fulfillment of victims' rights in practice. This research aims to analyze the regulation of restitution under Indonesian positive law and to explore the concept of diyat in Islamic criminal law as an alternative approach to addressing offenders who are unable to pay restitution. This study employs normative legal research using statutory, conceptual, and comparative approaches, analyzed qualitatively through library research. The findings reveal that Indonesian positive law positions restitution as a form of individual criminal responsibility without providing a comprehensive mechanism for situations in which offenders lack the financial capacity to satisfy such obligations. Consequently, the fulfillment of victims' rights frequently remains ineffective in practice. In contrast, Islamic criminal law offers a more flexible and restorative approach through mechanisms such as the postponement of payment for individuals experiencing economic hardship, as reflected in Qur'an Surah Al-Baqarah (2): 280, the concept of 'āqilah as a form of collective responsibility, and the potential involvement of social institutions in ensuring the fulfillment of victims' rights. This study argues that the principles of Islamic criminal law possess significant relevance for the development of a restitution system that is more equitable, humane, and victim-oriented while simultaneously taking into account the offender's economic circumstances.

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1. Introduction

The development of contemporary criminal justice systems has witnessed a significant paradigm shift from offender-centered punishment toward a more victim-

oriented approach that emphasizes the protection and restoration of victims' rights.¹ This transformation reflects a broader understanding of criminal justice in which the objective of legal intervention extends beyond retribution and deterrence to include the recovery of material, psychological, and social harms suffered by victims.² Within this framework, restitution has emerged as one of the most important mechanisms for victim recovery, requiring offenders to compensate victims for losses resulting from criminal conduct.³ The international recognition of restitution is reflected in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which encourages states to ensure victims' access to justice and effective remedies (Article 3), including restitution as an integral component of criminal proceedings (Article 9).⁴ Consequently, restitution has increasingly been regarded as a concrete manifestation of victim-oriented justice, positioning victim recovery as a central objective of modern criminal justice systems.⁵

Despite its normative importance, the practical implementation of restitution remains fraught with challenges, particularly when offenders lack the financial capacity to satisfy restitution orders.⁶ This circumstance creates a fundamental dilemma between the victim's right to obtain effective reparation and the principle of fairness toward offenders who are genuinely unable to fulfill their financial obligations. From the perspectives of restorative justice, victimology, and social justice theory, the inability of offenders to pay restitution cannot be viewed merely as a technical problem of judgment enforcement. Rather, it constitutes a substantive justice issue involving the reconciliation of competing interests between victim protection and offender rights.⁷ The normative recognition of restitution rights becomes largely symbolic when victims fail to receive meaningful compensation,

¹ T P de Ávila, "Evolution of Victims' Access to Criminal Justice in Brazil," in *Victims' Access to Justice: Historical and Comparative Perspectives*, 2022, 209–26, <https://doi.org/10.4324/9781003160830-15>; M Groenhuijsen, "Victims' rights and restorative justice: Piecemeal reform of the criminal justice system or a change of paradigm?," in *Crime, Victims and Justice: Essays on Principles and Practice*, 2017, 63–79, <https://doi.org/10.4324/9781315094335-9>.

² M Kalter dan M Uitslag, "RESTORATIVE WORK AND VICTIM AWARENESS," in *Forensic Social Work: Supporting Desistance*, 2025, 333–45, <https://doi.org/10.4324/9781003603139-27>.

³ A C Cares dan S H Haynes, "Restitution," in *The Encyclopedia of Corrections*, 2017, 1–5, <https://doi.org/10.1002/9781118845387.wbeoc010>.

⁴ J.-A. Wemmers, "Restitution: Helping victims or offenders?," in *An International Perspective on Contemporary Developments in Victimology: A Festschrift in Honor of Marc Groenhuijsen*, 2020, 283–94, https://doi.org/10.1007/978-3-030-41622-5_20.

⁵ T Saputra, A M Mursyid, dan A Widyawati, "Application of Restitution for Criminal Acts Victims: Between Rules and Reality," *Indonesian Journal of Criminal Law Studies* 9, no. 2 (2024): 333–56, <https://doi.org/10.15294/ijcls.v9i2.50320>.

⁶ J A McConnell dan E H McConnell, "Restitution," in *The Encyclopedia of Criminology and Criminal Justice*, 2014, 1–5, <https://doi.org/10.1002/9781118517383.wbeccj314>; R M Sitompul et al., "The strategy for fulfilling restitution payments for victims of human trafficking criminal acts," *Edelweiss Applied Science and Technology* 9, no. 5 (2025): 1566–75, <https://doi.org/10.55214/25768484.v9i5.7234>.

⁷ I Ardiansyah et al., "Taking Restitution Seriously? Victim-Oriented Gaps in the Criminal Justice System ," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 1–44, <https://doi.org/10.15294/ijcls.v10i1.19636>;

while the rigid enforcement of restitution obligations against indigent offenders risks generating new forms of injustice.⁸

In Indonesia, the protection of crime victims has been institutionally strengthened through Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 on Witness and Victim Protection.⁹ The legislation guarantees victims' rights to compensation, restitution, and various forms of assistance administered through the Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban - LPSK).¹⁰ Restitution functions as a mechanism through which victims may recover both material and immaterial losses arising from criminal offenses.¹¹ This principle is further elaborated in Government Regulation No. 44 of 2008, which defines restitution as compensation provided by offenders or third parties in the form of property restoration, financial reimbursement for losses and suffering, or payment for specific remedial measures.¹² Despite these legal guarantees, several studies have demonstrated that restitution remains difficult to implement effectively in practice. For example, Ardiansyah et al. (2025) found that among sixty-one sexual violence cases adjudicated by the Kaimana District Court, only one resulted in a restitution award for the victim.¹³ This finding indicates that the normative recognition of restitution rights has not always been accompanied by effective implementation mechanisms. The situation becomes even more problematic when restitution enforcement encounters the economic incapacity of offenders, while Indonesian positive law has yet to provide a comprehensive framework for addressing such circumstances.¹⁴

This issue becomes particularly compelling when examined from the perspective of Islamic criminal law. Unlike retributive approaches that primarily emphasize punishment, Islamic criminal law regards justice, victim restoration, reconciliation, and social responsibility as interconnected objectives. Within the tradition of *fiqh al-jināyah*, victim recovery is reflected through various legal instruments, including *diyāt* (blood

⁸ A S Gladfelter, B Lantz, dan R B Ruback, "Beyond Ability to Pay: Procedural Justice and Offender Compliance With Restitution Orders," *International Journal of Offender Therapy and Comparative Criminology* 62, no. 13 (2018): 4314–31, <https://doi.org/10.1177/0306624X18759195>.

⁹ Syahril Martono Wiryawan dan Melly Setyowati, *Pemberian Bantuan Undang-Undang Perlindungan Saksi Dan Korban: Sebuah Observasi Awal* (Jakarta: Indonesia Corporation Watch, 2007).

¹⁰ Zulkifli Ismail, *Buku ajar perlindungan saksi dan korban* (Malang: PT. Literasi Nusantara Abadi Grup, 2023).

¹¹ Siswanto Sunarso, *Viktimologi dalam Sistem Peradilan Pidana*, (Sinar Grafika, Jakarta, 2014) h. 49.

¹² Dikdik M. Arief Gultom dan Elisatri Mansur, *Urgensi Perlindungan Korban Kejahatan Antara Norma Dan Realita* (Jakarta: Raja Grafindo, 2008).

¹³ Ardiansyah et al., "Taking Restitution Seriously? Victim-Oriented Gaps in the Criminal Justice System."

¹⁴ Vivi Ariyanti, "Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 33–48. <https://doi.org/10.24090/mnh.v0i1.2224>

compensation),¹⁵ *ta'wīd* (financial compensation),¹⁶ *damān* (liability and indemnification),¹⁷ and *ṣulḥ* (amicable settlement),¹⁸ all of which function as mechanisms of compensation and reconciliation between offenders and victims.

The normative foundation concerning the importance of compensation and restorative settlement can be found in Qur'an 2:178:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ﴿١٧٨﴾

“O you who believe! *Qisās* is prescribed for you in cases of murder: the free for the free, the slave for the slave, and the female for the female. But if remission is granted by the victim's brother, then the prescribed course should be followed with fairness, and compensation should be paid with kindness. This is a concession and a mercy from your Lord. Whoever transgresses thereafter shall have a painful punishment”. (QS. Al – Baqarah (2) : 178).

This verse demonstrates that Islamic law does not merely emphasize retribution through *qisās* but also provides room for forgiveness, compensation (*diyah*), and equitable settlement (*bi al-ma'rūf*). Accordingly, victim recovery in Islamic criminal law is not understood solely as a financial obligation but as a moral and social responsibility aimed at restoring social equilibrium, protecting victims' rights, and achieving balanced justice for all parties involved.

Despite its strong emphasis on victim restoration, Islamic criminal law does not disregard the circumstances of offenders as legal subjects who are likewise entitled to fair treatment.¹⁹ Within this framework, Islamic criminal law upholds the principles of proportionality, justice, and the protection of individuals experiencing hardship. The issue of an offender's inability to fulfill financial obligations arising from criminal liability has long attracted the attention of classical Muslim jurists, who developed various mechanisms to address such situations. These mechanisms include deferred payment arrangements, the

¹⁵ A Hapsin dan N Nurdin, “Diat and Peace Money in the Crime of Culpable Homicide,” *Al-Ahkam* 32, no. 2 (2022): 189–210, <https://doi.org/10.21580/ahkam.2022.32.2.12413>.

¹⁶ H Widodo et al., “Restitution as an Instrument of Justice for Victims of Domestic Sexual Violence: A Study of Positive and Islamic Law in the Contemporary Era,” *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 676–99, <https://doi.org/10.32332/milrev.v4i1.10436>.

¹⁷ A B Bin Mohamad, “Islamic tort law,” in *Comparative Tort Law: Global Perspectives*, 2021, 469–516, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85129810059&partnerID=40&md5=86394eff1ea851750065797d1ce33f01>.

¹⁸ A Akman, “A Comparative View at Settlement (Compromise) Agreement and Alternative Dispute Resolution Methods in Islamic-Ottoman and Modern Turkish Law,” *Hitit Theology Journal* 20, no. 2 (2021): 1029–56, <https://doi.org/10.14395/hid.953936>.

¹⁹ M Munir, “Fundamental guarantees of the rights of the accused in the islamic criminal justice system,” *Hamdard Islamicus* 40, no. 4 (2017): 45–65, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85052999028&partnerID=40&md5=08e4c41d25aeb13b82d8743cde4f7151>.

involvement of ‘*āqilah* as a form of collective responsibility,²⁰ and institutional intervention through *Bayt al-Māl*.²¹ Such approaches demonstrate that Islamic criminal law is not exclusively concerned with the formal enforcement of obligations but also incorporates broader considerations of social justice, collective solidarity, and the principle of *raf‘ al-ḥaraj* (the removal of hardship). Consequently, the inability of offenders to pay restitution should not be viewed merely as a problem of legal compliance but rather as an effort to achieve an equitable balance between the fulfillment of victims’ rights and the protection of economically disadvantaged offenders.

A growing body of scholarship has examined restitution from a variety of perspectives. Some studies have focused on the effectiveness of restitution enforcement and the protection of victims’ rights within criminal justice systems,²² Other scholars have analyzed restitution through the lenses of restorative justice, victim-oriented justice, and *maqāṣid al-sharī‘ah*, emphasizing the importance of victim recovery and the preservation of public welfare (*maṣlahah*).²³ Furthermore, several studies have highlighted the potential role of Islamic legal institutions such as *diyah*, ‘*āqilah*, and *Bayt al-Māl* in supporting more comprehensive restorative justice mechanisms.²⁴

However, the existing literature remains limited in several important respects. First, most studies concentrate on the fulfillment of victims’ rights, the effectiveness of restitution implementation, or the normative foundations of compensation mechanisms in Islamic law. Comparatively little attention has been paid to the specific problem of offenders who are financially unable to satisfy restitution orders. Second, previous studies have generally examined Islamic compensation mechanisms independently rather than exploring how they may function collectively as an integrated framework for addressing restitution insolvency. Third, the potential integration of *maqāṣid al-sharī‘ah*, ‘*āqilah*, and *Bayt al-Māl* into a coherent institutional model capable of reconciling victims’ rights with offenders’ economic incapacity has received limited scholarly attention, particularly within the context of Indonesia’s contemporary criminal justice system. As a result, a significant theoretical gap

²⁰ Munir.

²¹ Amir Syarifudin, *Garis-garis Besar Fiqh* (Jakarta: Kencana, 2003).

²² Widodo dan Tonggat, “Restitution Mechanism for Rape Victims in Aceh: An Analysis of The Normative Shortcomings of Qanun Jinayat,” *Legality: Jurnal Ilmiah Hukum* 34, no. 1 (2026): 67–90, <https://doi.org/10.22219/ljih.v34i1.42091>; S H Haynes, A C Cares, dan R B Ruback, “Reducing the harm of criminal victimization: The role of restitution,” *Violence and Victims* 30, no. 3 (2015): 450–69, <https://doi.org/10.1891/0886-6708.VV-D-13-00049>; Widodo et al., “Restitution as an Instrument of Justice for Victims of Domestic Sexual Violence: A Study of Positive and Islamic Law in the Contemporary Era.”

²³ Hapsin dan Nurdin, “Diat and Peace Money in the Crime of Culpable Homicide”; Fauzan, “Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law,” *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 183–202, <https://doi.org/10.29240/jhi.v7i1.4308>.

²⁴ J Sriwidodo, “Ensuring Restorative Justice Through Penal Mediation in Indonesia: An Examination from the Perspective of Islah (Reformation) in Islamic Criminal Law,” *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 3 (2024): 45–57; I Kamalludin et al., “Designing a Digital Trust Fund for the Justice for Sexual Violence Victims Based on Islamic Criminal Law,” *Jurnal Hukum Islam* 23, no. 2 (2025): 459–500, <https://doi.org/10.28918/jhi.v23i2.04>.

remains regarding how restitution can be effectively implemented when offenders lack the financial means to comply with judicial orders.

This study seeks to address these gaps by proposing an integrative conceptual framework for resolving restitution obligations in cases involving financially incapable offenders. The novelty of this research lies in the formulation of a hybrid model that combines three interrelated dimensions. The first dimension is collective responsibility through the institution of *'āqilah*, which expands the burden of compensation beyond the individual offender and incorporates communal accountability. The second dimension is institutional intervention through *Bayt al-Māl*, which functions as a public mechanism for safeguarding victims' rights when private compensation proves unattainable. The third dimension is the application of *maqāṣid al-sharī'ah* as a normative foundation for substantive justice, ensuring that legal responses promote the protection of life, property, human dignity, and social welfare. By integrating these three elements, the proposed framework reconceptualizes restitution not merely as an individual financial obligation but as a collective and institutional responsibility grounded in restorative justice and social solidarity.

Accordingly, this article contributes to the growing literature on victim compensation and Islamic criminal law by offering a theoretical model that bridges the gap between Indonesian positive law and Islamic legal principles in addressing the problem of restitution insolvency. Unlike conventional approaches that rely primarily on individual offender liability, the proposed framework provides a broader conception of justice that incorporates victim protection, offender accountability, social responsibility, and institutional support within a unified restorative paradigm.

Based on these considerations, this study aims to analyze the regulation of restitution under Indonesian positive law and to examine the mechanisms available within Islamic criminal law for addressing situations in which offenders are unable to satisfy restitution obligations. This article argues that Islamic criminal law offers a more balanced and holistic approach by integrating victim protection, offender responsibility, social justice, and humanitarian values within the framework of *maqāṣid al-sharī'ah*. To achieve this objective, the study addresses two principal research questions: (1) How is restitution for victims of crime regulated under Indonesian positive law? (2) How can the principles of Islamic criminal law provide a fair mechanism for fulfilling victims' rights without disregarding the protection of offenders who lack the financial capacity to pay restitution?

2. Legal Material and Methods

This study employs a normative legal research design to systematically examine legal norms, principles, and doctrines governing victim restitution and the legal consequences of offenders' inability to fulfill restitution obligations. A doctrinal approach is considered appropriate because the study seeks to construct a normative framework concerning victim protection, criminal responsibility, and substantive justice within both Indonesian positive law and Islamic criminal law. Accordingly, the analysis extends beyond the textual

interpretation of legal provisions to explore the philosophical foundations, legal principles, and theoretical justifications underlying restitution mechanisms in both legal systems.

To achieve these objectives, the study adopts three complementary approaches: the statutory approach, the conceptual approach, and the comparative approach. The statutory approach is employed to examine the Indonesian legal framework governing victim protection and restitution, particularly Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on Witness and Victim Protection and Government Regulation Number 44 of 2008 concerning Compensation, Restitution, and Assistance to Witnesses and Victims. The conceptual approach is used to analyze the legal concepts of restitution, criminal responsibility, victim protection, proportionality, restorative justice, and substantive justice. Meanwhile, the comparative approach facilitates a systematic comparison between restitution mechanisms under Indonesian positive law and compensation principles within Islamic criminal law, particularly in cases involving offenders who lack the financial capacity to satisfy restitution obligations.

The legal materials utilized in this study consist of primary, secondary, and tertiary sources. Primary legal materials include statutory regulations concerning victim protection and restitution, as well as authoritative sources of Islamic law, including the Qur'an, Hadith, and classical and contemporary *fiqh al-jināyah* literature addressing *diyāh*, *ta'wīd*, *ḍamān*, *'āqilah*, and *Bayt al-Māl*. Secondary legal materials comprise scholarly books, peer-reviewed journal articles, and previous studies relevant to restitution, victimology, restorative justice, and Islamic criminal law. Tertiary legal materials, including legal dictionaries and encyclopedic references, are employed to clarify legal terminology and conceptual interpretations.

The collected legal materials are analyzed qualitatively through doctrinal reasoning and prescriptive legal analysis. The analytical process involves legal interpretation, conceptual synthesis, and comparative evaluation to identify similarities, differences, and potential areas of integration between Indonesian positive law and Islamic criminal law regarding restitution. To strengthen the normative assessment, the study employs *maqāṣid al-sharī'ah* as its principal analytical framework. In particular, the objectives of preserving life (*ḥifẓ al-nafs*), property (*ḥifẓ al-māl*), justice (*al-'adl*), and public welfare (*maṣlahah*) serve as normative benchmarks for evaluating the adequacy of existing restitution mechanisms and for assessing alternative solutions when offenders are financially incapable of fulfilling restitution orders.

Through this analytical framework, the study evaluates whether the current restitution regime adequately balances the rights of victims and offenders and examines the potential integration of *'āqilah* and *Bayt al-Māl* as complementary mechanisms for ensuring victim recovery without imposing disproportionate burdens on indigent offenders. The ultimate objective of the analysis is to formulate an integrative normative model that reconciles victim protection, offender accountability, social solidarity, and substantive justice within a restorative framework informed by the objectives of Islamic law.

3. Results and Discussion

3.1. Restitution Regulation under Indonesian Positive Law

Within contemporary criminal justice systems, restitution constitutes a victim-protection mechanism aimed at restoring losses resulting from criminal conduct. Unlike criminal fines, which are payable to the state, or civil damages arising from private legal relationships, restitution possesses a distinct legal character because it is paid directly by the offender to the victim as a consequence of the criminal act committed.²⁵ Consequently, restitution serves not only as a form of offender accountability but also as a mechanism for restoring victims' rights within the framework of victim-oriented justice.²⁶ In this regard, restitution reflects the principle of *restitutio in integrum*, which seeks to return victims, as far as possible, to the position they occupied prior to the occurrence of the offense.²⁷

The legal basis for restitution in Indonesia is primarily established through Law Number 13 of 2006 on Witness and Victim Protection, as amended by Law Number 31 of 2014. Under Article 1(11) of the amended law, restitution encompasses compensation for loss of property or income, suffering directly related to the criminal offense, and medical as well as psychological treatment expenses incurred by victims.²⁸ This framework is further strengthened by Government Regulation Number 7 of 2018, as amended by Government Regulation Number 35 of 2020 concerning Compensation, Restitution, and Assistance for Witnesses and Victims, and by Supreme Court Regulation Number 1 of 2022 concerning Procedures for the Resolution of Applications and the Award of Restitution and Compensation to Crime Victims.²⁹ Collectively, these regulations demonstrate a significant shift in Indonesian criminal justice policy toward greater recognition of victims' rights as an integral component of the criminal justice process.³⁰

Procedurally, applications for restitution may be submitted by victims, their family members, heirs, or legal representatives during the stages of investigation, prosecution, or

²⁵ Lukwira dan Andreas Lucky, "Restitusi Sebagai Hukuman Tambahan Yang Bermanfaat Bagi Pelaku dan Korban Tindak Pidana.," *Deviance Jurnal Kriminologi* 1, no. 1 (2017): 57, <https://doi.org/https://dx.doi.org/10.36080/djk.592>.

²⁶ Eva Achjani Zulfa, *Keadilan Restoratif di Indonesia* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2021).

²⁷ Sapti Prihatmini, "Pengajuan Dan Pemberian Hak Restitusi Bagi Anak Yang Menjadi Korban Kejahatan Seksual," *Repository Universitas Jember*, 2019, <https://doi.org/https://doi.org/10.21107/ri.v14i1.4768>.

²⁸ Lies Sulistiani, "Problematika Hak Restitusi Korban Pada Tindak Pidana Yang Diatur Kuhp Dan Di Luar Kuhp," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 81–101, <https://doi.org/https://doi.org/10.23920/jbmh.v7i1.948>.

²⁹ Siti Hudzaifah Miftahul Jannah, Ernita Rahmadhani Bym, dan Muh. Chaerul Anwar, "Perma 1/2022: Solusi atau Sekadar Formalitas dalam Pemenuhan Restitusi bagi Korban Tindak Pidana?," *INNOVATIVE: Journal Of Social Science Research* 5, no. 2 (2025), <https://doi.org/https://j-innovative.org/index.php/Innovative>.

³⁰ Jazmine Azzahra dan Muhammad Teguh Syuhada Lubis, "Mekanisme Pelaksanaan Restitusi Terhadap Korban Kekerasan Seksual (Studi Komparatif Hukum di Indonesia dan Thailand)," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 1 (2025): 117–130, <https://doi.org/https://doi.org/10.24269/ls.v9i1.11387>.

trial. Applications may be filed directly through law enforcement authorities or through the Witness and Victim Protection Agency (LPSK). In this process, LPSK is responsible for conducting both administrative and substantive assessments, including the verification of losses suffered by victims. Where the application is submitted prior to judgment, LPSK's assessment serves as the basis for incorporating restitution claims into the prosecutor's indictment and sentencing request.³¹ Conversely, where the application is submitted after a judgment has acquired final and binding legal force, restitution may be awarded through a separate judicial mechanism as provided under Supreme Court Regulation Number 1 of 2022. Normatively, therefore, Indonesian law has established a relatively comprehensive procedural framework through which victims may seek restitution.

Despite these developments, the effectiveness of restitution remains subject to significant practical limitations. One of the most persistent challenges concerns the dependence of victim recovery on the offender's financial capacity.³² The existing restitution framework is fundamentally built upon the assumption that offenders constitute the primary source of compensation for victims' losses.³³ However, the relevant legislation provides no clear criteria for determining offender insolvency and offers limited guidance regarding alternative mechanisms when offenders genuinely lack the financial means to satisfy restitution orders. Consequently, the realization of victims' restitution rights frequently depends upon the offender's economic condition and ownership of executable assets.

This limitation becomes particularly evident during the enforcement stage. Under Supreme Court Regulation Number 1 of 2022, offenders are required to satisfy restitution obligations within thirty days after a restitution order becomes legally binding. If payment is not made within that period, an additional fourteen-day extension may be granted. Thereafter, prosecutors are authorized to seize and auction the offender's assets in order to satisfy the restitution award. Nevertheless, the effectiveness of this mechanism depends entirely on the existence of assets capable of execution. In practice, many offenders possess insufficient property or no assets at all, rendering restitution orders difficult or impossible to enforce.

Where restitution remains unpaid, Indonesian law provides for a substitute penalty in the form of imprisonment for a maximum period of one year. While this mechanism reflects the state's effort to enforce judicial decisions, it remains rooted in an individualized conception of criminal responsibility and fails to provide an alternative scheme capable of guaranteeing victim recovery in cases of offender insolvency. As a result, restitution rights

³¹ Silvy Permatasari, Anandy Satrio Purnomo, dan Fitri Astari Asril, "Mekanisme Pemenuhan Restitusi oleh Pelaku Tindak Pidana yang Mengakomodir Kepentingan Korban Tindak Pidana Perdagangan Orang sebagai Bagian Integral dari Sistem Peradilan Pidana Indonesia," *Padjadjaran Law Review* 6 (2018): 78.

³² Riandini dan Viandra Rahmasari, "Pemenuhan Hak Restitusi Terhadap Korban Tindak Pidana Kekerasan Seksual Di Pontianak Studi Kasus Putusan Pengadilan No. 9/Pid.Sus-Anak/2023/Pn Ptk.," *Jurnal Fatwa Hukum* 8, no. 1 (2025): 12, <https://doi.org/https://Doi.Org/10.3783/Jfh.V8i1.89597>.

³³ Youfan Alyafedri dan Ismail Koto, "Kebijakan Hukum Terhadap Problematika Pemberian Pemenuhan Hak Restitusi Korban Tindak Pidana Yang Diatur KUHAP Dan Diluar KUHAP," *UNES Law review* 6, no. 4 (2024): 11643–11653, <https://doi.org/https://doi.org/10.31933/unesrev.v6i4.2006>.

that are formally recognized under statutory law may remain unrealized in practice because the ultimate consequence imposed upon the offender consists merely of additional penal suffering rather than actual compensation for the victim.

From the perspective of victim protection, this substitute imprisonment mechanism raises a fundamental concern. Although imprisonment may be justified as a sanction for non-compliance with restitution orders, it does not provide any material or immaterial recovery to victims. Victims remain uncompensated for the losses they have suffered, while the state merely substitutes financial liability with an additional punitive measure imposed upon the offender. In this sense, substitute imprisonment reflects an offender-oriented approach that prioritizes punishment rather than a victim-oriented approach focused on effective restoration.

Beyond the issue of offender insolvency, restitution implementation also encounters difficulties in assessing victims' losses. In judicial practice, restitution is generally easier to award for losses that can be quantified economically, such as lost income, medical expenses, or property damage. By contrast, immaterial harms - including psychological trauma, emotional suffering, social stigma, and diminished quality of life - often receive inadequate recognition and compensation.³⁴ This limitation is particularly problematic given that contemporary victimology has increasingly emphasized that non-economic harms may generate consequences that are more severe and enduring than purely material losses.

The foregoing analysis demonstrates that although Indonesian positive law has established a relatively robust normative foundation for protecting victims' rights through restitution, the existing framework remains limited in its ability to ensure effective recovery when offenders are unable to satisfy restitution obligations. The current restitution regime remains largely offender-dependent, meaning that the realization of victims' rights is contingent upon the offender's economic capacity, while the role of the state in guaranteeing effective victim recovery remains comparatively restricted. Consequently, a significant gap persists between the formal recognition of restitution rights and the actual recovery obtained by victims. This gap provides an important basis for exploring alternative approaches within Islamic criminal law, particularly through the institutions of *'āqilah* (collective responsibility), *Bayt al-Māl* (institutional intervention), and *maqāṣid al-sharī'ah*-based principles of substantive justice. These mechanisms may offer a more balanced framework capable of reconciling victim protection, offender accountability, and broader considerations of social justice.

3.2 Restitution and Victim Recovery in Islamic Criminal Law: Toward a Multi-Tier Compensation Framework

The concept of victim recovery in Islamic criminal law is founded upon the premise that a criminal act constitutes not only a violation of public order but also an infringement upon individual rights that gives rise to both moral and legal obligations to repair the harm

³⁴ Alyafedri dan Koto.

suffered by victims.³⁵ Within this framework, justice is not achieved solely through punishment but through the restoration of social equilibrium and the re-establishment of the rights disrupted by criminal conduct.³⁶ This principle is reflected in various institutions of *fiqh al-jināyah*, particularly *diyah*, which demonstrates that victim compensation occupies a central position within the Islamic conception of criminal justice. Accordingly, victim recovery should not be viewed merely as an ancillary consequence of punishment but rather as a substantive objective of the legal system itself.³⁷

Although *diyah* differs conceptually and juridically from restitution under Indonesian positive law, both institutions perform a comparable function as mechanisms for compensating victims for harms resulting from unlawful conduct. Restitution under contemporary criminal justice systems generally refers to compensation ordered by a court and imposed directly upon the offender, whereas *diyah* constitutes compensation payable to victims or their heirs in specific categories of criminal offenses recognized under Islamic law. The purpose of employing *diyah* in this study is therefore not to equate the two institutions but to utilize it as a conceptual lens through which the Islamic approach to offender responsibility and victim recovery may be examined, particularly in situations where offenders are unable to fulfill their financial obligations.

The normative foundation of this approach can be traced to Qur'an 2:178, which establishes a balanced relationship between *qisās*, forgiveness, and compensation through *diyah* delivered *bi al-ma'rūf*. Rather than emphasizing retaliation alone, the verse introduces a framework that accommodates reconciliation, compensation, and substantive justice. This restorative orientation is further reinforced by the well-known Prophetic tradition concerning the woman of *Banū Hudhayl*, in which the Prophet Muhammad assigned liability for *diyah* arising from accidental homicide to the offender's *'āqilah*.³⁸ The significance of this ruling extends beyond the specific facts of the case. It establishes the principle that responsibility for victim compensation need not always be borne exclusively by the offender but may, under certain circumstances, be distributed collectively. From a historical perspective, this illustrates that Islamic law recognized institutionalized forms of victim compensation centuries before the emergence of contemporary victim-oriented justice theories.

In classical Islamic jurisprudence, *diyah* primarily functioned as compensation for offenses against life and bodily integrity. However, its underlying rationale extends beyond

³⁵ Ahmad Razaki Rambe dan Zaid Alfauza Marpaung, "Tindak Pidana Pembunuhan Tidak Sengaja Perspektif Hukum Pidana Islam (Analisis terhadap Konsep Restorative Justice)," *Jurnal Hukum Universitas Sunan Giri Surabaya* 16, no. 1 (2024): 72. <https://doi.org/10.58350/leg.v16i1.487>

³⁶ Elda Maisy Rahmi, Ali Abu Bakar, dan Suhaimi, "Pelaksanaan 'Uqubat Restitusi terhadap Korban Perkosaan," *Kanun Jurnal Ilmu Hukum* 2 21, no. 2 (2019): 227–240, <https://doi.org/https://doi.org/10.24815/kanun.v21i2.11317>.

³⁷ Calvin dan Noor Azizah, "Tinjauan Hukum Pidana Islam terhadap Parameter Pemidanaan Hukuman Mati dalam KUHP Nasional," *Mutawasith: Jurnal Hukum Islam* 7, no. 1 (2024): 21. <https://doi.org/10.47971/mjhi.v7i1.923>

³⁸ Sadia Tabassum, Omar Mahmood Wattoo, dan Bakht Munir, "Islamic Injunctions on the Institutionalization of Aqilah: A Case Study of Vicarious Liability for Payment of Diyat," *Global Political Review* 5, no. 4 (2020): 1–10, [https://doi.org/https://doi.org/10.31703/gpr.2020\(V-IV\).01](https://doi.org/https://doi.org/10.31703/gpr.2020(V-IV).01).

financial payment. It serves to restore the rights of victims, preserve social harmony, and prevent cycles of retaliation that may threaten communal stability. Consequently, *diyah* embodies not only an economic dimension but also broader social and reconciliatory objectives. From a contemporary perspective, these underlying principles provide a normative foundation for reconstructing restitution mechanisms that encompass both material and non-material harms suffered by victims.³⁹

A distinctive feature of Islamic criminal law lies in its recognition of collective responsibility as a means of securing victim recovery without eliminating the offender's primary obligation. This principle is embodied in the institution of *'āqilah*, whereby certain relatives or members of the offender's social group participate in fulfilling compensation obligations based on the values of *ta'āwun* (mutual assistance) and social solidarity.⁴⁰ The objective of this mechanism is not to transfer liability away from the offender but to ensure that victims receive effective compensation even when individual financial capacity is limited. Historical studies indicate that *'āqilah* evolved from a pre-Islamic tribal institution into a recognized component of Islamic legal doctrine and continued to adapt alongside changing social and political structures.⁴¹

Importantly, historical evidence suggests that the collective dimension of victim compensation eventually acquired an institutional character. During the Umayyad period, *diyah* payments were at times administered through the *dīwān* system, reflecting the increasing involvement of public institutions in managing collective obligations.⁴² This development demonstrates that the principles underlying *'āqilah* were never confined to kinship-based structures alone but were capable of evolving in response to broader institutional transformations. Contemporary scholarship similarly argues that the solidarity function historically performed by *'āqilah* may be adapted through modern mechanisms such as Islamic insurance schemes (*takāful*) and collective compensation funds,⁴³ Such adaptations indicate that the essence of *'āqilah* lies not in its historical form but in its normative commitment to ensuring that victims are not deprived of compensation due to the offender's financial incapacity.

³⁹ Guntur Rambey, "Diyat Sebagai Sanksi Hukum Pembunuhan Dalam Perspektif Hukum Pidana Islam," *EduTech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial I* 1, no. 2 (2015), <https://doi.org/https://doi.org/10.30596/edutech.v1i02.584>.

⁴⁰ M Salehi dan S M Majidi, "The comparative analysis on liability of relative payer of blood money with sunnite jurisprudence from perspective of shiite jurisprudence," *Advances in Environmental Biology* 9, no. 2 (2015): 944–56.

⁴¹ Nurit Tsafirir, *Collective Liability in Islam: The Aqila and Blood Money Payments*, *Cambridge Studies in Islamic Civilization* (Cambridge: Cambridge University Press, 2020).

⁴² Nurit Tsafirir, ed., "The Dīwān Innovation in Umayyad Practice," in *Collective Liability in Islam: The Aqila and Blood Money Payments*, *Cambridge Studies in Islamic Civilization* (Cambridge: Cambridge University Press, 2020), 44–50, <https://doi.org/DOI: 10.1017/9781108654241.007>.

⁴³ A B M Husni et al., "Role of insurance in place of Aqilah in paying blood money resulting from accidents: An analytical study," *Social Sciences (Pakistan)* 9, no. 1 (2014): 58–64, <https://doi.org/10.3923/sscience.2014.58.64>; Uswatun Hasanah, "Insurance and Islamic Law," *Indonesian Journal of International Law* 9, no. 1 (2011): 133–1, <https://doi.org/10.17304/ijil.vol9.1.340>.

The institutional dimension of victim recovery is further reinforced through the concept of *Bayt al-Māl*. Traditionally functioning as a public treasury responsible for managing communal resources and promoting social welfare, *Bayt al-Māl* has increasingly been interpreted by contemporary scholars as a mechanism through which the state may assume responsibility when private compensation mechanisms prove insufficient. In the context of restitution, this approach becomes particularly relevant when offenders lack the financial means to satisfy compensation orders and no effective collective mechanism is available. Several contemporary studies have therefore proposed that public funds administered through institutions analogous to *Bayt al-Māl* may be utilized to guarantee victims' rights in situations of offender insolvency.⁴⁴ Such an approach reflects the understanding that victim protection is not solely an individual responsibility but also a matter of collective and institutional concern.⁴⁵

When examined systematically, these principles reveal a multi-tier compensation framework consisting of three interconnected levels of responsibility. The first level places primary responsibility upon the offender as the direct perpetrator of harm. The second level introduces collective responsibility through *'āqilah*, ensuring that compensation remains attainable when the offender's individual resources are insufficient. The third level involves institutional intervention through *Bayt al-Māl* or comparable public mechanisms capable of safeguarding victims' rights where both individual and collective resources fail. Unlike offender-dependent restitution regimes, this framework integrates individual, social, and institutional dimensions of responsibility into a coherent model of victim recovery.

The normative coherence of this model is further strengthened by the framework of maqāsid al-sharī'ah, particularly the objectives of protecting life (*ḥifẓ al-nafs*), property (*ḥifẓ al-māl*), and justice (*al-'adl*).⁴⁶ From this perspective, victim recovery is not merely a private financial obligation but a broader legal and social imperative directed toward the realization of substantive justice. At the same time, the principle of *raf' al-ḥaraj* requires that legal obligations remain proportionate to an individual's actual capacity. Consequently, while offenders remain primarily responsible for restitution, the burden of compensation need not be imposed in a manner that creates excessive hardship when alternative collective and institutional mechanisms are available.

This analysis demonstrates that Islamic criminal law offers a more comprehensive conception of victim recovery than models that rely exclusively upon individual offender liability. By integrating offender responsibility, collective solidarity, and institutional support within a unified normative framework, Islamic criminal law provides a restorative

⁴⁴ Widodo dan Tonggat, "Restitution Mechanism for Rape Victims in Aceh: An Analysis of The Normative Shortcomings of Qanun Jinayat."

⁴⁵ E Murdiana et al., "The Victim's Best Interest Principle in Islamic Law: An Examination of the Substance of Sexual Violence in Muslim Majority Countries in the Contemporary Era," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 33–60, <https://doi.org/10.32332/milrev.v5i1.10654>.

⁴⁶ Ardina Nur Inaya dan Imam Yazid, "Cyberstalking Crime in The Perspective of Islamic Criminal Law," *Jurnal Mercatoria* 18, no. 2 (2025): 129–131, <https://doi.org/https://doi.org/10.31289/mercatoria.v18i2.16652>.

approach capable of addressing one of the most persistent weaknesses of contemporary restitution systems: the inability of victims to obtain effective compensation when offenders are insolvent. Accordingly, the concepts of *‘āqilah*, *Bayt al-Māl*, and *maqāṣid al-sharī‘ah* provide not only historical legal doctrines but also valuable normative resources for rethinking the future design of victim compensation mechanisms in modern criminal justice systems.

3.3. Restitusi Comparative Analysis between Indonesian Positive Law and Islamic Criminal Law on Offenders’ Inability to Pay Restitution

Both Indonesian positive law and Islamic criminal law fundamentally recognize that victims of crime are entitled to reparation for losses arising from criminal conduct. This recognition is grounded in the basic principle of legal responsibility, which requires the party causing harm to provide compensation or restoration. Within this shared normative foundation, restitution in Indonesian law and *diyāh* in Islamic criminal law converge as instruments of victim compensation that are not solely oriented toward punishment, but also toward restoring social balance and protecting victims’ rights.

In the Indonesian legal system, restitution is regulated as a statutory right of victims under Law Number 31 of 2014 concerning Witness and Victim Protection, further operationalized through Government Regulation Number 7 of 2018 as amended by Government Regulation Number 35 of 2020, and Supreme Court Regulation Number 1 of 2022.⁴⁷ Normatively, restitution is imposed on offenders through judicial decisions and covers both material and immaterial losses suffered by victims.⁴⁸ However, the structure of Indonesian restitution law remains primarily grounded in an offender-dependent model, whereby the realization of victims’ rights is highly contingent upon the offender’s financial capacity and the availability of executable assets.

At the enforcement stage, offenders are granted a limited period to fulfill restitution obligations after a final and binding judgment. If payment is not made, enforcement proceeds through asset seizure and auction. However, in cases where offenders lack sufficient assets, the legal system does not provide an automatic substitute mechanism to ensure victim compensation, except in limited circumstances such as gross human rights violations or terrorism cases through state compensation schemes. Consequently, restitution often becomes an unenforceable right, meaning that although it is normatively recognized, it cannot always be effectively realized in practice.

In contrast, Islamic criminal law adopts a more distributive and multi-layered approach to victim compensation. The concept of *diyāh* as a form of restitution is not exclusively imposed on the offender but is embedded within a broader structure of shared

⁴⁷ Marlina, *Peradilan Pidana Anak Di Indonesia* (Bandung: Refika Aditama, 2009).

⁴⁸ Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan* (Yogyakarta: Graha Ilmu, 2010).

responsibility.⁴⁹ In situations where the offender is unable to fulfill the obligation, Islamic law introduces the doctrine of *‘āqilah*, whereby financial responsibility is distributed among the offender’s extended family or social group based on the principle of *ta‘āwun* (mutual solidarity). This principle is grounded in the Prophetic tradition concerning the case of the woman from Banū Hudhayl, in which the payment of *diyah* was assigned to the *‘āqilah* of the offender.

Furthermore, where collective responsibility is insufficient, Islamic criminal law recognizes the role of *Bayt al-Māl* as a public institution responsible for safeguarding social welfare and ensuring that victims’ rights are not left unfulfilled. In this sense, the state assumes a subsidiary role in guaranteeing compensation, thereby preventing victim deprivation when both individual and collective resources are inadequate. This structure reflects a multi-layered responsibility model consisting of three tiers: the offender, the *‘āqilah*, and the state (*Bayt al-Māl*).

A fundamental divergence between the two legal systems emerges in their treatment of offender insolvency. Indonesian positive law maintains a predominantly individualistic liability structure, in which failure of the offender to pay restitution does not automatically shift responsibility to the state or broader social institutions.⁵⁰ By contrast, Islamic criminal law adopts a distributed liability model that integrates individual responsibility with collective solidarity and institutional intervention to ensure the continuity of victim compensation.

From the perspective of victim protection effectiveness, the Indonesian model offers stronger procedural certainty and institutional clarity. However, its substantive effectiveness is limited by its heavy reliance on the offender’s economic capacity, thereby creating a potential justice gap between normative recognition of rights and their practical realization. Conversely, Islamic criminal law provides a more adaptive and resilient framework through the integration of individual liability, social solidarity, and state responsibility. Nevertheless, its application in modern legal systems requires contextual reconstruction to ensure compatibility with contemporary institutional structures and state-based criminal justice systems.

Therefore, this comparative analysis demonstrates that the effectiveness of restitution systems is not determined solely by regulatory completeness, but also by the underlying architecture of responsibility distribution in cases of offender insolvency. The Indonesian model emphasizes legal certainty and procedural formalism, whereas the Islamic model prioritizes substantive justice through social solidarity and institutional subsidiarity. The synthesis of these two approaches offers a conceptual foundation for developing a more

⁴⁹ Abdul Qadir Audah, *Al-Tasyrī Al-Jinā’ī Al-Islāmī Muqāranan Bil Al-Qānūn Al-Waḍ’ī* (Bogor: Kharisma Ilmu, 1989).

⁵⁰ Bambang Waluyo, *Viktimologi Perlindungan Korban dan Saksi* (Jakarta: Sinar Grafika, 2011).

comprehensive victim protection framework that combines legal certainty with restorative and substantive justice-oriented principles.⁵¹

4. Conclusion

This study concludes that both Indonesian positive law and Islamic criminal law recognize the victim's right to obtain compensation for losses arising from criminal acts. In this regard, restitution in Indonesian law and diyah in Islamic criminal law converge as normative instruments aimed at ensuring offender accountability and realizing substantive justice through victim-oriented recovery mechanisms. However, a significant divergence emerges in the structural design of liability when offenders are unable to fulfill restitution obligations due to economic incapacity. Indonesian positive law adopts an offender-dependent restitution model, whereby the realization of victims' rights is primarily contingent upon the offender's financial capacity and the availability of executable assets. This structure creates a persistent gap between the normative recognition of victims' rights and their effective enforcement in practice, resulting in what may be conceptualized as an "implementation deficit" in victim compensation.

In contrast, Islamic criminal law offers a more distributive and institutionally integrated framework. Through the mechanism of 'āqilah as a form of collective responsibility and *Bayt al-Māl* as a public institution for social welfare, Islamic criminal law constructs a multi-layered liability system that ensures the continuity of victim compensation even in cases of offender insolvency. This model reflects the underlying objectives of maqāṣid al-sharī'ah, particularly the protection of life (*ḥifẓ al-nafs*), property (*ḥifẓ al-māl*), and public welfare (*maṣlaḥah*), thereby embedding victim protection within a broader framework of substantive justice and social solidarity. Theoretically, this study contributes to the development of a comparative restorative justice framework by demonstrating that effective victim compensation cannot rely solely on individual liability, but requires an integrated structure of responsibility involving individual, social, and institutional actors. Accordingly, the findings suggest the need for a paradigm shift in Indonesian restitution law from an offender-dependent model toward a more inclusive and multi-tiered compensation system that allows for state-supported and socially embedded mechanisms of victim recovery when offenders are financially incapable.

Future legal reform may consider incorporating elements of collective and institutional responsibility, inspired by the principles of Islamic criminal law, to bridge the gap between normative victim rights and their practical realization within the Indonesian criminal justice system.

⁵¹ Muhammad Yunus Abdi dan Ramadani, "Perlindungan Hukum bagi Korban Pengancaman dan Penyebaran Data Pribadi oleh Debt Collector Perspektif Hukum Pidana Islam," *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam* 17, no. 1 (2025): 131. <https://doi.org/10.30739/darussalam.v17i1.4269>

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