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# Analysis of Islamic Principles Regarding the Payment of Diya for Insane Attacker from Bait al-Mal in Legitimate Defense

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### ABSTRACT

The principle that each individual is accountable for their own actions, known as the principle of personal responsibility, is a well-established and widely accepted concept. However, there are exceptions to this principle, such as the responsibility of the Bait al-Mal in paying Diya. One exception, as outlined in the Islamic Penal Code approved in 2013, involves the payment of Diya for an insane attacker. If an insane person attacks another individual and the latter kills the attacker in self-defense, the defending person is not liable under the principle of legitimate defense. According to the opinion of the majority of jurists, no one else should be held responsible either. However, some jurists argue that the Diya for such an insane person should be paid by the Bait al-Mal. This article employs a descriptive-analytical method and concludes that, considering the verses of the Quran and the existing traditions regarding legitimate defense, it is more appropriate not to include such a provision in the law. The traditions regarding legitimate defense, which consider the blood of the attacker as worthless, are more frequent, while the traditions regarding the legitimacy of paying Diya for the insane attacker are based on a single report and cannot stand against the traditions of legitimate defense.

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## 1. Introduction

Throughout history, humans have regarded self-defense as both necessary and a fundamental right to protect their lives and property in the face of aggression. The recognition of legitimate defense in various legal systems has a long-standing tradition. The need to safeguard human dignity and rights through proportionate defensive actions against unjust aggression forms the foundation of the concept of legitimate defense. As a well-established principle in criminal law, legitimate defense grants individuals the right to protect themselves against aggression, ensuring that such actions are not considered crimes and do not incur legal liability. Rooted in human nature, this principle allows individuals to respond to immediate threats to their life, honor, property, and family in an exceptional manner without facing punishment. However, under the Islamic Penal Code ratified in 2013, a new provision was introduced: if the attacker in a legitimate defense case is deemed insane, the payment of Diya for the insane attacker is to be made from the Bait al-Mal. In this article, after defining key terms in this field, the reasons of supporters and opponents of paying Diya for the insane attacker from Bait al-Mal will be examined and discussed, and opinions will be presented with supporting evidence.

Given that the provision of the payment of Diya for an insane attacker from Bait al-Mal is a new addition in the 2013 Penal Code, there is currently no independent scholarly article dedicated specifically to this topic. Existing research, such as "Paying Diya from Bait al-Mal" by Rahmdel (2019) and "A Legal and Jurisprudential Study of Paying Diya by the Bait al-Mal" by Sadeghi (2012), addresses the general concept of paying Diya from Bait al-Mal, making only a brief reference to this particular issue. In contrast, articles published before 2013, do not mention it at all. Based on the research conducted, it is evident that no independent study has specifically examined the issue of paying Diya for an insane attacker from Bait al-Mal from a jurisprudential and legal standpoint.

## 2. Diya

The term "Diya" is derived from the root word "wadi" meaning to drive away and reject (Zobeidi, 1994). It is evident from the terms used by jurists that different definitions have been presented: "The meaning of Diya is the financial compensation that becomes obligatory due to a crime against a human being. If the amount is specified, it is called Diya, and if it is not specified, it is called compensation" (Najafi, 1983).

"Diyaat is the plural of Diya and refers to the money that becomes obligatory due to a crime against a human being. The allocated Diya is the money that has a specific and determined amount, and the unspecified and undetermined money is called compensation" (Jabai Ameli, 1998). Imam Khomeini defines Diya in *Tahrir al-Wasilah* as follows:

The money that becomes obligatory due to a crime against a free person in the soul, whether the amount is specified or not. If the Diya is only applicable to specified amounts, it is called Diya, and for other cases, it is referred to as compensation." (Musavi Khomeini, 2015)

It can be understood from the definitions provided by the jurists that Diya is, first, a financial compensation paid due to a crime against a person's life or limb. Secondly, the amount is specified by the Sharia, and thirdly, it is paid to the victim or their heirs. In these definitions, the individual obligated to pay this money is not specified; only the author of *Jvahr* is mentioned in the definition, stating that the felon is obligated to pay (Najafi, 1983). However, other jurists have refrained from this restriction to provide a comprehensive definition, as there are cases in jurisprudence where the responsible party for paying Diya is not considered a felon. For this reason, other jurists have not included this restriction in the definition. Considering the definitions provided by the scholars, the best and most comprehensive definition that addresses all aspects of the matter is the one pointed out by Imam Khomeini in *Tahrir al-Wasilah* that is mentioned.

In Article 17 of the Islamic Penal Code, "Diya" is defined as follows: "Diya, whether fixed or unfixed, is a financial amount prescribed in sacred law for intentional crimes against life, limbs, or interests, or intentional crimes in cases where there is no right to retaliation, as determined by law."

## 3. Insanity

The word "insanity" literally means hiding and concealing, madness, infatuation, and becoming irrational. The feminine form of "insane" refers to being insane, mad, delirious, and irrational (Dehkhoda, 1994). The term "insanity is the destruction of reason," implies deviating from normal and

rational speech and behavior, except in rare cases (Jorjani,1986). Some consider insanity as a disturbance in the faculty of distinguishing good and bad (Tahanovi,1996). Others have defined insanity as "loss of reason" (Tousi,1967). Some jurists have considered madness to be a permanent corruption and a permanent deterioration of the intellect, not the kind of corruption and deterioration that arises from a mistake, oversight, or temporary unconsciousness and quickly disappears (Fazel Hendi,1984).

Therefore, according to the definitions, it can be argued that any condition that disrupts the rational and discerning faculties and leads to abnormal, pathological, and unconventional functioning without understanding and discernment is referred to as insanity.

#### **4. Bait al-Mal**

Bait al-mal has been used in two meanings in terminology. The first meaning refers to a category of public properties in which people have a share, emphasizing the financial aspect of Bait al-mal. The second meaning refers to a place where public properties are kept, highlighting the locational aspect. In most definitions presented for Bait al-mal, more attention has been paid to the locational aspect rather than the financial aspect. "Bait al-mal is a place where public properties belonging to all Muslims are provided and kept for their benefit" (Karaji, 2001). This meaning is considered having the relevant significance in this article.

#### **5. Legitimate Defense**

The legitimate defense consists of two components: defense and legitimate. Defense means a large wave from the sea, any large thing that repels it like itself, a great and large thing that repels it, just as defending means repelling an attack (Dehkhoda,1994). The word "legitimate" is also derived from the word "shari'a." Among the meanings of "shari'a" are: religion and doctrine, true and clear, the religion that God brought to His servants through the prophets, and the revelation of the path by God to us (Ibn Manzur, 1993).

Legitimate defense means committing a criminal act to defend one's own life, property, honor, or physical freedom or that of another against aggression or danger. It is considered among the justified causes of a crime and eliminates the criminal nature of the committed act. Legitimate defense is one of the important and controversial institutions in jurisprudence and criminal law. This discussion has long been accepted by different ethnic groups and religions; it has evolved over time and been raised in criminal law regulations and discussions. This institution has a significant impact on ensuring social order and combating crime. If the aggressor knows that, in the event of an infringement and violation of the rights protected by law, they will face preemptive action and direct defense, and that they do not enjoy any immunity, it reduces their motivation for aggression and committing a crime. Legitimate defense, following the valuable teachings of Islamic Sharia, has also been considered in Islamic criminal jurisprudence. Of course, our jurists have discussed and debated about it sporadically and in various topics. Imamyeh jurists agree that the blood and property of the attacker during the attack are permissible for the defender, and it is permissible for the defender to commit murder or destroy their property within the limits prescribed in legitimate defense. Therefore, when defense against the attacker is legally obligatory or permissible, in the event of murder, beating, and injury, the defender is not a guarantor (Aghababaei, 2000). It is stated in a narration from Imam Sadiq (Peace be upon him) that the blood of a thief and attacker is wasted, and the one who kills the attacker in legitimate defense is not liable for any guarantor (Maghrebi, 1965).

Legitimate defense is stated in Article 156 of the Islamic Penal Code, approved in 2013, as follows:

Anyone who finds themselves in a position to defend their honor, property, or life or that of others, against any kind of current or imminent danger or threat, while considering the levels of defense, and who commits an act that is deemed a crime under the law, will not be punishable if the conditions are met.

To achieve legitimate defense, conditions for defense and attack have been considered: 1. In clause (a) of Article 156, it is mentioned that the committed behavior must be necessary to repel the danger, implying that repelling the danger through other means, such as resorting to government forces, is not possible. The legitimacy of defense requires that committing criminal acts in the position of defense be the only possible means to repel the attack. Therefore, if the defender can refer to public authorities to

preserve honor, life, property, or that of others, resorting to legitimate defense is not possible. 2. Clause (b) of Article 156 states that the defense must be based on reasonable fear or rational fear. Sometimes the individual's perception of an attack on them may lead to defense, even if there is no actual attack. This perception and fear resulting from an attack are sometimes based on rational and customary grounds and sometimes irrational. 3. If the danger and attack have not occurred due to the individual's deliberate actions or the defense of others, such that A attacks and B defends themselves, A cannot harm B based on legitimate defense, as B's action is not an attack but self-defense (Goldoozian, 2014). 4. Clause (c) of Article 156 states that, "resorting to government forces without delay may not be possible, as in the presence of government forces, there is no reason for the individual to confront criminals themselves. If the attack can be repelled in a way such as resorting to government forces, then resorting to legitimate defense is not valid. Seeking assistance in these conditions is not valid." 5. The attack must be actual or imminent: actual attack refers to the symmetry between attack and defense, while an imminent attack means that the attack has not yet reached the level of activity, making any action for the defender other than defense impossible. In other words, if someone injures the attacker before the attack or shortly after, out of revenge, they cannot justify their actions as legitimate defense. Therefore, the defender must ensure that the attack and invasion are imminent and this certainty is based on reasonable evidence. In other words, a threat or danger that is not imminent, such as verbal threats, does not grant someone the right to rise in defense or to fear an attack in the future, as it provides an opportunity to defend against the threat or take other measures. Therefore, it will not constitute a valid case for defense. Moreover, when the attack is over and no longer threatens anyone, retaliatory behavior against the attacker will not be considered defense, but rather revenge and a form of personal retaliation that is contrary to general principles of criminal law. 6. An attack is unjust and contrary to law: If an individual acts legally and according to the law, one cannot defend against it. For example, if someone is tasked with enforcing a judgment, one cannot defend against them unless they exceed their limits, then the defense is permissible and has legitimacy. The meaning of an illegal attack is that the attack lacks legal description or, in other words, the attack is not based on a legal judgment or is contrary to the law. Additionally, an unjust attack refers to a category of attacks that have a legal origin. For example, law enforcement officers and judicial officers are entitled to arrest criminals for obvious crimes; however, if they exceed the limits set by the law and pose a threat to the rights and freedoms of individuals, such actions are considered unjust. 7. An attack can be against oneself or others: In Article 156 of the Islamic Penal Code, it is stated that "Defending the life, honor, dignity, property, or physical freedom of another person is permissible if they are a close relative of the defender, or if the responsibility for defending the person lies with the defender, or if the responsibility for defending the person lies with the defender and they have no means of seeking help."

In addition to self-defense, defending others is considered permissible in certain circumstances. 8. An attack may be against one's life, property, honor, or freedom. If a person commits a criminal act during legitimate defense to be exempt from pursuit and punishment, the defense must be against attacks that the legislator has previously defined in terms of type and nature. These attacks must pose a danger to the third person or defender (Ardebili, 2025).

According to the opinion of jurists, there are seven conditions for defense, although there are differences of opinion in this regard: The necessity of observing the steps (the necessity of defense), the necessity of establishing intent (the person who intends to defend must even be aware of the attacker's intention to attack), the possibility of customary dominance (the attack is imminent), the impossibility of escape, the suspicion of safety (the defense does not lead to the defender's own death), the absence of corruption, and the act with the intention of defense are the obligatory conditions observed in the opinions of the jurists (Askari, 2016).

## **6. Reasons for the Obligation of Legitimate Defense**

The most important and fundamental source for proving religious rulings is the Holy Quran. The jurists of the Ahl al-Bayt (PBUH) have relied on the verses of the Quran in the matter of the legitimacy of defense.

### 6-1. Quran Verses

"There will be retaliation in a sacred month for an offence in a sacred month, and all violations will bring about retaliation. So, if anyone attacks you, retaliate in the same manner. But be mindful of Allah, and know that Allah is with those mindful of Him." (The Quran 2:194)

There are two parts that can be used as evidence for the legitimacy of absolute defense: 1. The law of retaliation: This part independently provides evidence for the legitimacy of "defense." This sentence is composed of two words, "sanctity" and "retaliation," and the evidence for it depends on clarifying these two words. Tabarsi (1959) wrote: "Sanctities is a collection of sanctity, and sanctity is something that its preservation and protection are necessary, while it is forbidden to disrespect them." Tabatabaie (1955) wrote: "Sanctity is something that disrespecting it is forbidden and honoring it is necessary, and sanctity refers to the sanctity of the sacred month and the sanctity of the sacred place." However, the word retaliation literally means: "to retaliate and to act in the same way as the other person did." Alusi (1994) wrote: "Retaliation is to do something to a person like what they did to others." Retaliation means punishment, equality, and equivalence in action. The interpreters have also interpreted retaliation similarly: Burosawi (1926) wrote: "Retaliation is when people do something to a person like what they did to others." The views of the interpreters on interpreting this part of the verse can be categorized into two theories:

a) The word "sanctity" implies that the sanctity of the sacred months, sanctuaries, and the Sacred Mosque is respected. Some scholars have applied sanctity to these three cases. Ayatollah Tabatabaie (1955) has written: "If the sanctity of the sacred months is violated by war... believers can also fight against them in the sacred months and retaliate in kind." It highlights the point that if polytheists violate your sanctity in these sacred months, you can also retaliate in kind and defend your land. Therefore, breaking the sanctity of these months actually means breaking the sanctity of believers and initiating war and aggression in these months. b) Sanctity refers to any kind of sanctity and is not specific to the sacred months. Some interpreters have explicitly stated this generalization in interpreting sanctity. Shokani (Cited in Amini, 1948) wrote: "The intention is that every sanctity has retribution. Therefore, if someone violates your sanctity, you can also retaliate against them for the sake of retribution. Since the sentence is absolute, this statement must also be absolute in order for this absolute ruling to be deduced from it. Therefore, this statement indicates the legitimacy of the principle of defense and counteraction in kind against any violation of sanctity and aggression by aggressors. It includes defensive jihad and the defense of life and property and is not limited to the sacred months, the sanctuary, or the Sacred Mosque.

2. So whoever wrongs you, wrong them in the same way they wrongs you: This sentence is a derivative of the previous sentence and can be deduced from it. At the same time, this sentence itself independently implies the general rule of "reciprocity." There is no doubt that all types of defense, especially territorial defense, are clear examples of reciprocity.

Consider the following verse from the Surah Ash-Shura:

And those who, when they are wronged, seek help and take revenge. And the recompense of every evil is an evil like it. So whoever forgives and does good, their reward is with Allah. Indeed, He does not love the oppressors. And whoever seeks help [to take revenge] after they have been wronged, those are the ones on whom there is no blame. (The Quran 42:39-41)

The verse implies that, in any case, believers resist oppression and do not succumb to oppression, either by seeking help from others or by uniting and coordinating to defend themselves against the aggressor. Without a doubt, the punishment for every evil is an equal evil, encompassing all forms of defense, whether individual or organized defense (defensive jihad). However, the verses before and after this phrase emphasize defensive jihad more, making it clearer and more prominent. Therefore, the principle of the right to defense and retaliation allows a person who is being attacked to defend themselves and seek revenge against the enemy, including seeking help from others or uniting individuals against the aggressor. The concept of proportionality between aggression and defense is introduced, indicating that the response of the victim should be similar and equal to the aggression of the aggressor. The phrase, "the punishment for every evil is an equal evil" is mentioned in various verses of the Quran: And whoever does an evil deed will not be recompensed except for the like thereof, and they will not be wronged (The Quran 6:16). And those who have committed abominations will be recompensed with the like thereof (The Quran 10:27). And whoever does an evil deed will not

be recompensed except for the like thereof (The Quran 40: 40). However, the evidence before and after these verses indicates that these sentences are related to the punishment in the other world; God will punish the same act without any reduction. However, the verse in question is related to reciprocity and defense in this world.

Studying the above verses, we can conclude that many verses indicate the legitimacy of self-defense, and it has been established as one of the inalienable rights for individuals.

## 6-2. Traditions

Many traditions indicate the legitimacy of defense. Sayyed Abdul Ali Sabzewari believed that these traditions are most reliable. In addition to specific traditions related to defense, there are general principles that indicate the necessity of helping individuals who have been attacked or general principles that consider aiding the weak as the best charity (Najafi, 1983). A reliable tradition from Imam Sadiq (PBUH) states that if a man attacks you and intends to harm you, if you are able, defend yourself and strike back. For indeed, the thief is at war with God and His Messenger. Whatever harm comes to them from your strike is my responsibility (Horre Ameli, 1988).

In another reliable tradition, it is mentioned that Imam Sadiq, quoting his noble grandfather, states: Indeed, God supports the servant attacked in their home, and any harm that comes to the attacker from your strike is my responsibility (Najafi, 1983). In another tradition, Hammad narrated from Halabi from Abu Abdullah (PBUH) who states: "If an individual attacks another person to hit them, and they repel and injure or kill the person, there is nothing on the defender." He has also said, "There is no retaliation for anyone who initiates an attack and is attacked" (Horre Ameli, 1988).

Defense is a necessary command of reason, and all religious and non-religious societies have been committed to it and it has been accepted as a principle. In Islamic traditions, legitimate defense is considered a right and duty against aggression and oppression against life, property, and honor.

## 7. The Basis of Legitimate Defense Against an Insane Attacker

Different opinions have been expressed regarding the legitimacy of defense against an insane attacker. Some legal scholars believe that individuals who are exempt from punishment by the legislator cannot be punished for their actions. Therefore, it is not permissible to use legitimate defense to repel the attack of these individuals. In response, it can be said that these individuals have confused the nature of legitimate defense with the execution of punishment. Defense of the person under attack always takes place before the act of aggression, so that after the act, no matter how unauthorized it may be, the person who is the target of the attack cannot exhibit a criminal reaction toward the attacker; rather the execution of punishment for harms caused by the attack must be carried out by a righteous and competent authority. In general, the removal of the consequences of the attack will only be possible from this perspective. Therefore, it is completely wrong to consider the basis of legitimate defense as a form of punishment from the target person to the attacker or vice versa (Shahidi, 1978).

Some others consider defense against an insane or minor person justifiable and the defender not punishable; however, their justification is based on the theory of necessity and the idea that legitimate defense is considered a right to harm an insane or minor person without distinction. The justification of this group is not acceptable, as in addition to the fact that necessity as a justifying reason does not have explicit support in some countries like France, justifying defense against the actions of individuals without will, such as insane or minor, through the theory of legitimate defense aligns more closely with human and logical foundations. This is because legitimate defense is inherently more justifiable than necessity. The state of necessity is not preceded by an attack, and the person committing the act first commits an act of aggression, while in legitimate defense, the attack is initiated by another party, and the person committing the act only responds to and repels it. However, most people consider defense against these individuals justified, arguing that insane or minor individuals are not legally punishable for their actions; however, this does not mean that their lack of responsibility gives them the right to commit harmful acts against others. In fact, this group believes that since insane and minor individuals lack discernment, they do not have the will to carry out their actions, and therefore, should not be punished, which cannot justify to restrict the defense of others against their attacks or hold the defender responsible. It cannot be implied about this statement that self-defense against an attack is legitimate if all conditions are met (Shahidi, 1978).

Considering the above statements, it can be argued that if the conditions of legitimate defense, i.e., proportionality of defense to attack and the principle of easier then easier, are observed and the defense results in the death of the attacker, the blood of the attacker is considered wasted. Despite this, in cases where a person has been attacked by an insane person and the victim has killed the attacker in self-defense, some jurists argue for the responsibility of the Bait al-Mal. The Penal Code, by accepting the opinion of minority, has stipulated the payment of Diya from the Bait al-Mal in this case.

## **8. Opinions of Jurists Regarding the Payment of the Diya for an Insane Attacker from the Bait al-Mal**

Since defense against an insane person is considered legitimate, and if it is legitimate, blood is shed, some jurists are in favor of paying Diya for an insane attacker from the Bait al-Mal, while others oppose this. The following opinions and evidence will be discussed further.

### **8-1. Opinions of Supporters of Paying Diya for an Insane Attacker from the Bait al-Mal**

Some jurists believe that in the case of an insane person, the permission for legitimate defense against them is only to protect the defender's life, not to retaliate against them due to their aggressive intent and motivation. Therefore, there is no issue in paying Diya for the insane attacker because their life is respected, and it is not assumed that there is any intention to violate this respect towards the insane person (Hore Ameli, 1988).

In response to a question about paying Diya for an insane attacker, the judicial fatwa department states that: In this matter, some traditions have been entered, and in our opinion, the consensus among them aligns with what Imam Baqir (PBUH) states in a valid tradition: The Diya is from the Bait al-Mal (Rohani, 1999).

Supporters of paying Diya for an insane attacker from the Bait al-Mal rely on the following traditions:

Abu Basir's narration from Aba Jafar states: "If a person kills an insane individual in legitimate defense, Imam said: 'If they intended to repel the attacking insane man, then the person has no responsibility, neither retaliation nor Diya, and the Diya for the insane man is paid from the Bait al-Mal'" (Najafi, 1983).

In the aforementioned narration, the chain of transmission ends with Abu Basir Muradi, whom Ibn Shahr-e-Ashub has introduced as trustworthy in his book *Manaqib* (Ibn Shahr-e-Ashub, 1956). Ghazairi also states that despite the differences of opinion regarding Abu Basir, he considers the criticism only to be related to his religion, but he is trustworthy in the narration (Ibn Ghazaeri, 2001). Abu Basir also has a book in this regard. People in the chain of narrators of this narration, including Hassan ibn Mahboob and Ali ibn Ibrahim, are also trustworthy and reliable. Therefore, the narration has a high credibility in terms of chain of transmission. While the narration is trustworthy, the narration in question is based on a single report, and one report cannot be used to make a ruling in criminal matters (Kohantorabi & Lotfi, 2021).

Another tradition, which is similar to the first one, from Abu Alwerd says: "I presented to Imam Sadiq or Imam Baqir, 'May God grant you success in your worthy deeds. An insane person attacked someone with a sword, causing harm to him, and the person defended himself, took the sword from him, and killed him. In this case, the Imam said, 'In my opinion, he should not be killed for this act, and the Diya is not his responsibility. His Diya is the responsibility of the Imam, and his blood is not shed.'" (Hore Ameli, 1988). However, this narration is weak in terms of chain of transmission because of Abu al-Ward, who is unknown (Hajidehabadi, 2022).

The content of the tradition is as follows: If an insane man attacks a person and the person causes harm to him in self-defense, then neither retaliation nor Diya is obligatory on the person, and the Bait al-Mal is responsible for compensating the harm. But if the person causes harm to the insane man without defending himself, then there is no retaliation on him, but the Diya is his responsibility.

As mentioned, the main reason that jurists have presented is the traditions that have led to a ruling to pay the Diya from the Bait al-Mal, which can be justified in this way: by examining the documents of jurists (the two mentioned traditions), we find that these two traditions speak about two different situations. The first tradition (Abu Basir's narration) tells of an incident where the insane man committed a criminal act and the person defended himself, resulting in the insane man being killed. The second

tradition (Abu Alwerd's narration) is about the insane man committing a crime and the person taking self-defense action against him. Regarding the second narration, it must be noted that the protection of life is limited to killing the insane attacker, while the narration says that after attacking with a sword and inflicting a blow, the sane person took the sword and killed the insane person, while the sword was not in his hand. It can be said that in this case, there is no defense. Since the insane person is now disarmed, perhaps he would have fled if he had had time. Therefore, there is doubt, and we cannot assert that the killing of the insane person was a defense for the killer. Therefore, the second narration does not meet the conditions of legitimate defense. Furthermore, with the sword in hand, there is no attack from the insane individual, and this cannot be used as proof of the claim, because one of the most important conditions of legitimate defense does not exist. Thus, there is doubt, and we cannot conclude that the killing of the insane individual was a defensive act for the killer.

## 8-2. Opinions of Opponents of Paying the Diya for the Insane Attacker from the Bait al-Mal

If someone intentionally kills the insane man, and the insane man had the intention to attack them and they defended themselves, resulting in the death of the insane man, the killer is not responsible, and the blood of the insane man is shed. However, if the insane man did not intend to attack them and the person defended themselves against that individual, causing the death of the insane man, then the killer is responsible. If someone is intentionally killed, the Diya is the responsibility of the killer, but retaliation is not carried out. If the killing is by fault, the Diya is the responsibility of the sane person (Agheleh) (Ibn Edris Helli, 1989).

Helli (1989) does not consider the Bait al-Mal responsible for the Diya, assuming the attacker as one whose blood is wasted. A sane person is not killed for the actions of an insane man, even if it is intentional killing, and only Diya is required. If the sane person intended to defend themselves, the Diya is waived, and the responsibility for the Diya is not on them (Helli, 1989).

Opponents of paying the Diya for the attacker have relied on traditions of justifiable defense, based on the idea that the blood of the attacker is wasted. In response to this group, one of the jurists who is in favor of paying the Diya of an insane attacker from the Bait al-Mal argues that it is not clear that the traditions on legitimate defense cover the issue in question because these traditions are about the waste of the blood of a combatant and the punishment of someone who attacks another with intent and aggression. In contrast, the insane person lacks any understanding and intention in this regard. Thus, the permissibility of defending against an insane attacker is due to the obligation of legitimate defense. Therefore, since the insane person has no intention, their blood should not be wasted. On the other hand, since the legitimate defense is obligatory, the defender is not a guarantor. This is clear from the arguments on the legitimacy of defense. Consequently, there is no contradiction for the ruler to pay the Diya for an insane attacker from the Bait al-Mal (Tabatabaie, 1955). In response, it can be said that the traditions presented regarding legitimate defense indicate that some of these traditions concern thieves and combatants, while most of them are about stating a general and absolute rule. The traditions regarding legitimate defense are frequent, while the traditions about paying the Diya of the insane attacker are singular and cannot stand against the traditions of legitimate defense. In the science of the principles of jurisprudence, when there is a conflict between a single report and a frequent (mutawatir) report, the frequent (mutawatir) report takes precedence. The reason for this is that frequent (mutawatir) report is definitive in terms of issuance (its issuance is certain) and single report is indefinite in terms of issuance (its issuance is suspected). In other words, frequent (mutawatir) report is preferred over single report, which may have one or more narrators and may be subject to error due to the plurality of narrators and the certainty of its authenticity. If the conflict and the fallacy are proven, the principle is that the Bait al-Mal is not responsible (Sadeghi, 2012).

Based on the arguments presented by both supporters and opponents, it seems that the non-prediction of paying the Diya for the insane attacker from the Bait al-Mal in the Islamic Penal Code of 1996 is correct, and the inclusion of this issue in the approved law of 2013 contradicts the popular opinions of scholars and the traditions available regarding legitimate defense.

## 9. Conclusion

One of the important regulations in Islamic Penal Code is the rights and wrongs related to legitimate defense. In some cases, a person may take actions to defend themselves, their property, honor, or the



freedom of their own or others, which would normally be considered a crime under the law; however, under certain circumstances, this act will not be considered a crime and the defender will not face any punishment due to the loss of the criminal element. However, in the case of a defender who has defended themselves against an attack by an insane person, according to paragraph 3 of Article 156 of the Penal Code approved in 2013, the payment of Diya for the insane attacker from the Bait al-Mal is provided for. The issue of payment of Diya of the insane attacker from the Bait al-Mal is a matter of disagreement among jurists, each of whom has presented reasons for their opinions. Some consider the blood of the insane person worthless, while others believe that the Diya should be payed from the Bait al-Mal. Considering that the traditions regarding legitimate defense, which consider the blood of the attacker as worthless, are more frequent (mutawatir), and the traditions regarding the legitimacy of paying diya for the insane attacker are based on a single report and cannot stand against the traditions of legitimate defense, it follows that the theory of non-payment of diya for the insane attacker from the Bait al-Mal is stronger, assuming the principle of non-liability of the Bait al-Mal. It is suggested that the legal article in this regard be amended according to the well-known opinions of jurists, and necessary measures must be taken to care for insane people and prevent their aggression.

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