

# **Restorative justice and Prison Industry: Proposed *Waqf*-Based Model for creation of victim's fund**

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## *Abstract*

The Government spends more than RM30 per day for every prisoner and as to date, we have 40,000 prisoners around Malaysia. Even though the cost incurred is extremely high (RM511,100,000 annually), the crime rate continues to rise. The problem with the system nowadays is too much focus is rendered upon the offences committed by the concerned individuals and the rehabilitation of their behavior, rather than restoring the position of the crime victims back to their status quo, which would also be a move that is prudent and in line with universal humanistic objectives. The lack of self consciousness and accountability towards the crime, which is structured by the prison system itself means that at the moment, the system is not the best option with regard to preserving social justice. A theory that is founded upon responsibility and accountability has the potential to be an effective mechanism of to reduce the national crime rate. As a result, the Government's expenditure and the cost of crime can be reduced.

## *Introduction*

One of the two key aims of the criminal justice systems is "to reduce crime and the fear of crime and their social and economic loss". The economic, social or cost of crime is essentially a measure of the impact of crime on society. It gives us a way of measuring the impact of policies aimed at reducing crime and its consequences. A high level of understanding on the main impact of crime and the relative seriousness of the different types of crime is vital in highlighting areas where the related criminal policy needs to be enhanced. The cost-benefit analysis of alternative measures can help to inform the criminal justice system and other agencies about the most effective mix of policies that would be able to bring down the cost of crime.

The term 'crime victim' generally refers to any person, group or entity who has suffered injury or loss due to an illegal activity. The harm inflicted can be physical, psychological or economical. Direct or primary victims experience the act and its consequences firsthand. On the other hand, indirect or secondary victims also suffer emotionally or financially, but are not immediately involved or injured<sup>1</sup>. "No single phase of life within prison walls is more important to the public or to the inmate than efficient industrial operations and the intelligent utilization of the labor of prisoners," stated a Federal Bureau of Prisons report in 1949<sup>2</sup>. Nearly 50 years later, this statement is still true today. As long as society relies on incarceration to punish convicted offenders, it would be necessary to maintain vibrant industrial programmes to employ prisoners<sup>3</sup>.

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<sup>1</sup> Andrew Karmen, Crime Victims, An Introduction To victimology, 2<sup>nd</sup> edition, Brooks Cole, 1990, USA.

<sup>2</sup> [http://www.unicor.gov/about/organization/history/overview\\_of\\_fpi.cfm](http://www.unicor.gov/about/organization/history/overview_of_fpi.cfm)

<sup>3</sup> The California Prison Industry Authority (CALPIA) is an inmate work program that provides productive job opportunities for inmates in California correctional institutions. CALPIA's primary function is to rehabilitate inmates and facilitate their successful reentry into society, which is one of the main objectives of the California Department of Corrections and Rehabilitation (CDCR). CALPIA work assignments support prison safety, help reduce violence, reimburse victims, provide productive activity for inmates, and produce quality products. Retrieved from <http://www.pia.ca.gov/>

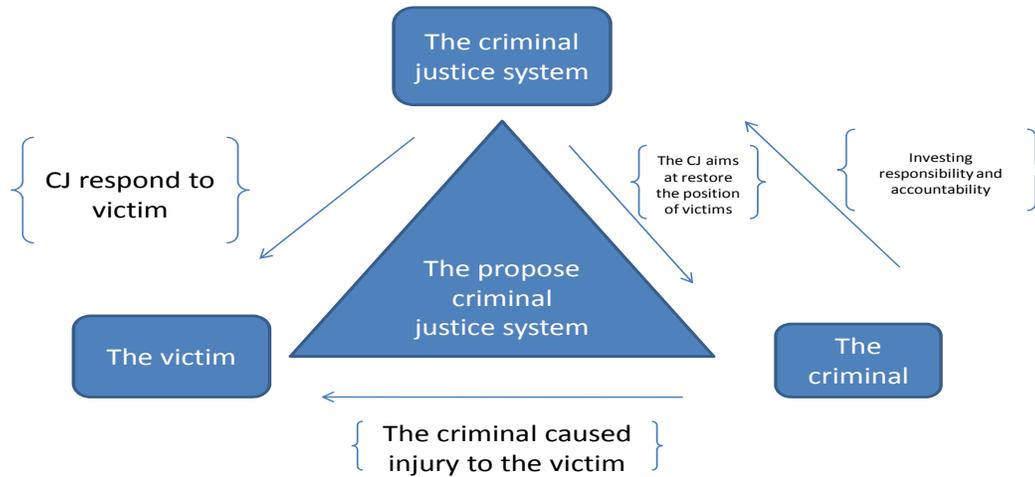
Crime causes huge negative impact to the economy. The Government would have to bear the cost of incarcerating the prisoners and the victims have to suffer the costs associated with being a crime victim. The costs suffered by the victims are the costs associated with victimization itself and the costs associated with the legal hassle that has to be borne by the victims. The victim's participation in the administration of justice results in financial burden, and other costs and inconveniences, not only to himself, but also to other individuals who are a part of his social network. Thus, it is not only the victims who suffer from serious mental and emotional suffering, as well as negative financial consequences, but it also involves the inner circle of the victim's social network.

The problems experienced by victims can be divided into four categories, as follows:

1. Time-related problems, including:
  - a. Unnecessary trips;
  - b. Long waiting time;
  - c. Time lost from work or school;
  - d. The number of adjournment experienced; and
  - e. Time spent to attend court hearings.
2. Financial problems, including:
  - a. Loss of income;
  - b. Transportation expenses;
  - c. Cost of attending court hearings;
  - d. Cost of parking;
  - e. Phone calls; and
  - f. Medical bills (trauma, insanity, injury and so on and so forth).
3. Personal problems; and
4. Problems with the current justice system.

The problems with the current justice system can be illustrated using the picture below. Once a crime committed, the current criminal justice system only focuses on the crime itself, without giving proper and due consideration to the victim himself/herself. The line of communication between the victim and the said system is not imbued with the element of feedback that will help to ensure the welfare of the victims in a more comprehensive manner. The current system's channel of communication is criminal-centric and it serves as the medium to punish and rehabilitate the criminal. At the same time, the criminal justice system somehow forgets about its role to create self consciousness on responsibility and accountability towards the damage that has been done. In addition, as too much emphasis is given with respect to the rights of prisoners, the authority tends to 'invest' more on them, without any thought of reaping any benefit from the amount expended.

Alternatively, the current system can be operated using a different approach, as shown in the figure below:

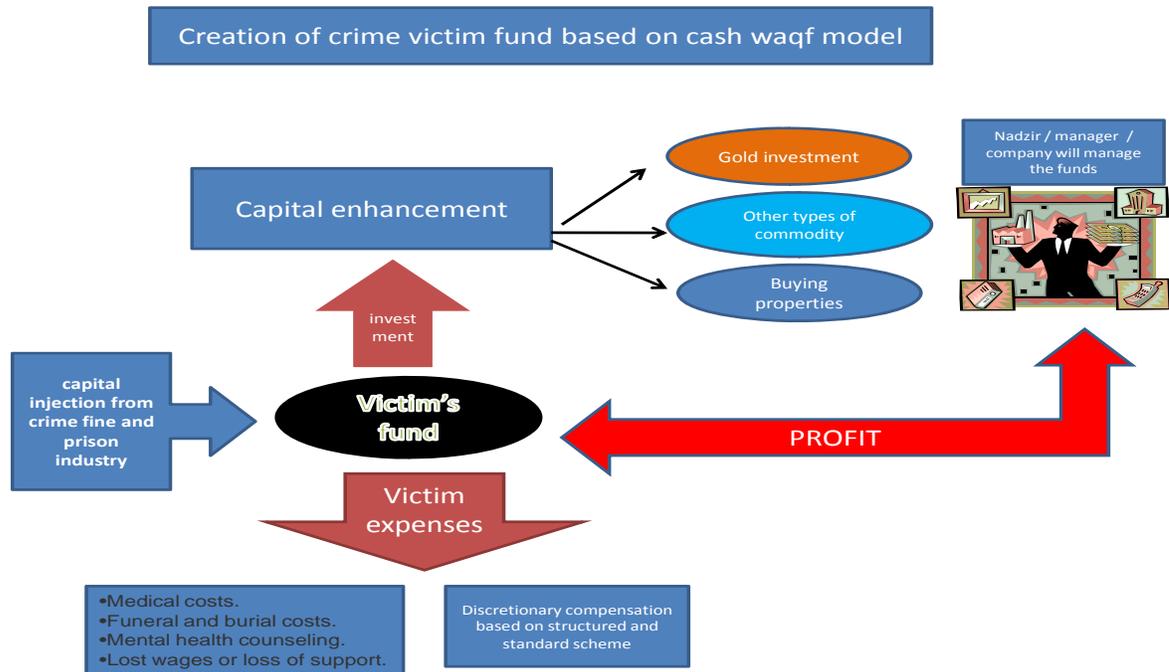


Therefore, the criminal justice system should be responsive and receptive to both parties, i.e. the criminal and the victim. At the same time, the criminal should be responsive to the damage that they have caused, which includes all the different facets of damages, from bodily harm to financial and emotional damages. This is where the line of responsibility will come in. For example, CALPIA (California Prison Industry Association)<sup>4</sup>, which is part of the American prison industry<sup>5</sup>, provides work assignments to approximately 5,900 inmates in 22 prisons. It

<sup>4</sup> Refer to <http://www.pia.ca.gov>. Court-ordered restitution/fines are deducted from the wages earned by CALPIA inmates and are transferred to the Crime Victims' Restitution Fund. CALPIA inmates receive wages between \$.30 to \$.95 per hour, before deductions.

<sup>5</sup> Since 1934, Federal Prison Industries, Incorporated—a wholly-owned corporation of the United States Government—has operated factories and employed inmates in America's Federal prisons. Also known as FPI or UNICOR, Federal Prison Industries, Inc., has made an incalculable contribution to law enforcement by contributing to the safety and security of Federal correctional institutions. At the same time, it has produced a wide array of products for use by the U.S. Government and provided tens of thousands of inmates with the vocational training and work experience they needed to become gainfully-employed, law-abiding citizens after release. FPI serves many constituencies—the public, prison staff, other Federal agencies, and even the inmates themselves. It is one of the most successful and cost-effective enterprises of the Federal Government.

operates more than 60 types of subsectors, which covers the services, manufacturing and agricultural industries. These industries produce a variety of goods and services, including flags, coffee, shoes, signs, binders, eye wear, gloves, office furniture, license plates, clothing, cell equipment and many more. The products and services of CALPIA are available to Government entities, including the federal, state and local governmental agencies, as well the public at large. This is what we call ‘prison industry’. Below is the proposed model on how the Government can create an undulating awareness of responsibility and accountability among the prisoners.



How does the model work?

Basically, there will be two sources of capital injection, i.e. from the fines paid by the criminals and the revenue generated by the prison industry. These two sources of capital will be channeled into a fund (Victim’s Fund) with two specific functions. The capital channeled into the fund will be utilized in two ways, i.e. to finance the payment to be made to the victims and to be invested. Furthermore, the payment to be made to the victims is divided into two, namely pecuniary loss (medical costs, funeral and burial costs, loss of income and monetary losses) and discretionary compensation, which is based on the *al-irs* (العرش). Within the context of the modern criminal justice system, the principle of *al-irs* can be implemented through a structured and standard scheme; a scheme provided by the Government. The management of the funds can be established by the government through one of their GLCs (Government Linked Companies) or a company with a *nadzir* as the trustee to manage the property.

Inmates would be paid for their labor out of the Corporation's revenues; the inmates could use their stipends to purchase goods from the institution commissary, i.e. to support their families, or

to pay fines or restitution..The profits from investment would go into the fund that would finance all industrial operations (including capital improvements) and also help subsidize programmes for inmates. Thus, the financial basis for the system has the advantage of requiring no additional burdens on taxpayers. A unique, intra-governmental multiplier effect came into play. Government money spent by an agency on prison industry-made furniture, for instance, also offset prison expenses. The Government, in other words, gets more value for its money; of course, that same money is eventually injected back into the national economy, in the form of staff salaries, inmate wages, and payments to private sector vendors.

How can the banking industry benefit from the above model?

This industry is an emerging market that has been overlooked by Islamic financial institutions, in their effort to dominate the retail and corporate sectors. Such a niche sector would prove to be profitable for Islamic financial institutions that dare pave the way to venture into it and thus, reap the rewards associated with being the first in the market (first mover advantage). There are several ways in which Islamic financial institutions can contribute and benefit from becoming involved in this sector, some of which are explained below:

1. Equity financing: Using contracts such as *musharakah* and *mudharabah*, Islamic financial institutions can finance the operations of this sector and subsequently, share the profits generated thereafter. However, this is with the assumption that the Islamic financial institutions are not involved in the overall scheme that includes the element of cash *waqf*, which requires the preservation of the corpus, except if the Islamic financial institutions agree that a certain percentage of the profit obtained would be channeled to the *waqf* fund;
2. *Istisna'*-based financial products: By leveraging on the management system of the prison authorities and the readily available labour in the form of inmates, the Islamic financial institutions can play a role in generating results in the real economy;
3. Cash *waqf*: Islamic financial institutions can exercise their social responsibility by contributing directly to the *waqf* fund, as stated above. Historically, it is very difficult to trace the practice of cash *waqf* in Arab countries, as the local Muslim jurists argued that the investment of cash *waqf* is subjected to *riba*. However, the situation changed during the Ottoman rule when the Ottoman courts approved cash *waqf* as early as the beginning of the 15<sup>th</sup> century. By the end of the 16<sup>th</sup> century, the use of cash *waqf* had become extremely popular all over Anatolia and the European provinces of the empire, which controlled much of Southeastern Europe, the Middle East and North Africa. By minimizing the problems of red tape and bureaucracy, schools, libraries, water conduits, bridges, roads, ports, lighthouses and pavements were built. The health sector was also not excluded from reaping the benefits of cash *waqf*. In this modern era, the prison system is one area where Islamic financial institutions can contribute, in the spirit of fulfilling the corporate social responsibility (CSR). As mentioned earlier, the capital in the cash *waqf* fund would be invested in low-risk investment avenues and subsequently, the profit generated would be used for a variety of purposes, including financing the operations of the prison industry.

## Rationale of the proposed model

### 1. Daily prisoner-related expenses is RM35<sup>6</sup> per prisoner

The yearly prisoner-related expenses is RM12,775. With 40,000 prisoners, this means that the yearly cost of incarcerating these inmates is RM511 million, thus diverting an average of RM42.9 million per month from the national economy. The government must begin to think in terms of the cost-benefit of incarcerating these prisoners, with the view of generating returns from it. The prisoners are of course not regarded as commodities, but with so much spent on them, a strategy that reforms their behavior and at the same time, contributes to the national economy would be a very much welcomed strategy indeed. As citizen myself, I am also concerned about the social responsibility of prisoners towards the victims. By paying the money to the government, it will only cause them to mitigate punishment, or what we call *as-suhtu*<sup>7</sup>.  
(السحت)

### 2. Safe prison management and better prison discipline through the reduction of idleness

Idleness in prison is dangerous. It can give rise to boredom and frustrations that can explode in disputes among inmates and in attacks by inmates upon prison staff. Prison industrial activity is, first and foremost, a management tool. It enhances discipline within prison by keeping inmates occupied and by raising their morale. During the 20th century, the periods of greatest unrest in prisons throughout the United States coincided with periods of depression in the prison.

### 3. Cost efficiency

It is more expensive to operate a prison where the inmates are idle, tense, and disruptive than it is to operate a prison where the inmates are busy and well disciplined. Investments in prison industries can lower expenditures on day-to-day prison operations and decrease the likelihood of having to expend resources to quell disturbances. Moreover, prison industrial programmes enable inmates to produce items of value for the Government, such as furniture, electronics, signs, military gear, and so forth. Sale of these products, in turn, generates revenue that can be used to offset expenses that would otherwise have to be met through appropriated funds. FPI staff salaries are funded out of such earnings, and, for many years, FPI revenues were also used to subsidize educational and other programmes for inmates.

### 4. Inmate job training and rehabilitation

The primary task of a prison is to confine offenders, but the secondary task is to provide inmates with ways to improve themselves during the confinement period. Prisons cannot magically rehabilitate offenders, but they can provide opportunities for inmates to reform their behavior and rehabilitate themselves. As former Federal Bureau of Prisons Director J. Michael Quinlan wrote, "We can't 'cure' criminal behavior, but we know that some programs work for some

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<sup>6</sup> Interview with Tn Haji Supri, Prison Deputy Manager, Kajang Prison

<sup>7</sup> Payment made to the government to mitigate punishment of the criminal and as a matter of fact the money paid or fine paid should go to the victims of crime. The practice among the Jews and was eliminated by the prophet.

inmates some of the time." Prison work programmes are among those that can help. The work experience and vocational training they provide can increase ex-offenders' prospects for employment and reduce the likelihood of recidivism.

#### 5. Inmate financial responsibility

Inmates have families to help support, court-imposed fines to pay, and victims to recompense. The wages that they earn through employment in prison labor programmes, however meager, can help them meet those obligations. Under the Bureau's Inmate Financial Responsibility Program (IFRP), all inmates who have court recognized financial obligations must use at least 50 percent of their FPI earnings to pay their debts. Since the programmes began in 1987, more than \$80 million has been collected<sup>8</sup>.

### **Conclusion**

Government has to make wise decisions about priorities when there are limited sources available. The fight against crime has to take into account the issues of health, welfare, education, defence and other issues. It is imperative, therefore, to know the size and nature of the problems faced by the criminal justice system<sup>9</sup>. This paper is an attempt to fix all the pieces of the jigsaw. By giving inmates experience in various skilled trades and teaching them good work habits, industrial work would be an important rehabilitative activity. Prisoners should work because it is economically necessary, socially advisable and because it represents the most important element in the general attempt to solve the problem of delinquency. In short, if prisons are necessary to protect society, then prison industries are necessary to make those prisons function properly.

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<sup>8</sup> In its 60 years of operation, Federal Prison Industries, Inc., has provided meaningful employment for inmates, developed sound educational and vocational training programs for inmates, and helped minimize the economic impact of prison labor on the private sector. As a component of the Federal Bureau of Prisons, its operations are limited to the correctional institutions of the Federal Government. But it has played a strong leadership role throughout the field of corrections and has served as an example to the prison systems of the various States. The history of FPI is a critical chapter in the history of corrections in general, and of prison work programs in particular. Retrieved from [www.pia.gov](http://www.pia.gov)

<sup>9</sup> It must be stressed that these figures can at best be regarded as estimates only. While comparisons between these estimates for 1996 and those for 2008 will inevitably be taken as indicating likely changes over this eleven-year period, this interpretation should be used with great caution as, in some cases, the basis for estimation has changed significantly owing to improved data sources.