

## **Criminal Liability for Unintentional Homicide: A Comparative Study of Islamic and Indonesian Law**

**Alhadi Fadhli<sup>1\*</sup>, Ruslan Abdul Gani<sup>2)</sup>, Rahmi Hidayati<sup>3)</sup>**

<sup>1,2,3)</sup>Master's Program in Islamic Criminal Law, Graduate School, Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi

\*Corresponding Author

Email: [mailto:sh\\_adi@rocketmail.com](mailto:sh_adi@rocketmail.com)

---

### **Abstract**

*This research examines criminal liability in cases of unintentional homicide through a comparative study between Islamic criminal law and Indonesian positive criminal law at the Jambi District Court. Unintentional homicide is an act that results in the loss of human life without malicious intent, yet it raises serious legal issues regarding criminal responsibility. In Indonesian positive criminal law, such acts are classified as negligence offenses under Article 359 of the Criminal Code, with sanctions in the form of imprisonment or confinement. In contrast, Islamic criminal law recognizes the concept of qatl al-khaṭā', which emphasizes moral and social responsibility through the payment of diyat and the fulfillment of kafarat without the application of retaliatory punishment. This study aims to analyze the implementation of criminal liability for unintentional homicide under positive criminal law, examine the concept of criminal liability from the perspective of Islamic criminal law, and compare their similarities, differences, and implications for criminal justice reform. The research employs an empirical juridical method with a qualitative approach, using literature review, analysis of legislation and court decisions, and interviews with judges at the Jambi District Court. The findings show that positive criminal law remains predominantly punitive and offender-oriented, while Islamic criminal law offers a more restorative approach focused on victim recovery and social harmony. This study concludes that restorative justice values in Islamic criminal law are relevant for reformulating criminal liability in unintentional homicide cases to promote a more humane, proportional, and just national criminal justice system*

**Keywords:** *Criminal Liability, Unintentional Homicide, Islamic Criminal Law, Positive Criminal Law, Restorative Justice*

---

## **INTRODUCTION**

Homicide constitutes one of the most serious crimes within any legal system because it directly involves the deprivation of human life, a value universally recognized as a fundamental human right (Dzhuska et al., 2021). In Indonesia, the right to life is constitutionally protected as part of the state's obligation to safeguard human dignity and security (Yanto, 2016). Nevertheless, criminal law differentiates homicide based on the presence or absence of intent, distinguishing between intentional killing and homicide committed without intent (Wechsler & Michael, 1937). Unintentional homicide, which generally arises from negligence, carelessness, or failure to observe due caution, presents a complex legal and moral problem because the perpetrator does not possess the intention to kill, yet the resulting loss of life remains irreversible and socially disruptive (Stark, 2016).

Within Indonesian positive criminal law, unintentional homicide is classified as a negligence-based offense and regulated under Article 359 of the (Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP), 2023). This provision affirms the principle that negligence (*culpa*) may give rise to criminal liability when it results in fatal consequences, even in the absence of malicious intent (*dolus*). The regulation reflects the classical doctrine of culpability as explained by (Moeljatno, 2015) who argues that criminal punishment is justified when a person can be blamed for failing to exercise the legally required standard of care. In line with this perspective, (Rahardjo, 2009) emphasizes that criminal law

must be understood not merely as a rigid system of sanctions but as a social institution aimed at achieving substantive justice.

The increasing incidence of negligence-related deaths, particularly those arising from traffic accidents and workplace incidents, has generated renewed debate regarding the effectiveness and proportionality of retributive punishment (Gilchrist, 2017). Empirical observations indicate that most offenders in unintentional homicide cases act without criminal intent and often within broader structural contexts of inadequate supervision or safety regulation. This raises fundamental questions about whether imprisonment alone sufficiently addresses the needs of victims and their families.

Several previous studies have examined different dimensions of criminal liability for negligence-based homicide. First, (Rahmatika, 2020) analyzed judicial reasoning in traffic accident cases under Article 359 KUHP and found disparities in sentencing outcomes, largely influenced by judicial interpretation of *culpa* and mitigating factors. Second, (Turnip & Budiman, 2025) demonstrated that Indonesian courts tend to prioritize custodial sentences while giving limited attention to compensatory or restorative mechanisms for victims. Third, (Alam et al., 2024) explored the philosophical foundations of liability in Islamic criminal law and concluded that *diyāt* embodies a restorative paradigm centered on the victim's family rather than state authority. Fourth, (Ahmad et al., 2023) conducted a comparative doctrinal analysis of *culpa* in positive criminal law and *qatl al-khaṭā'* in Islamic jurisprudence, highlighting differences in the orientation of sanctions and the integration of moral accountability. Fifth, (Rahmawati, 2025) examined the implementation of restorative justice policies in negligence cases and found that mediation and compensation mechanisms remain underutilized despite regulatory support for restorative approaches. Although these studies contribute valuable insights, most remain normative or doctrinal, with limited empirical focus on district court practice where legal norms are concretely applied. Moreover, comprehensive comparative research integrating judicial application under positive criminal law with the normative framework of Islamic criminal law remains scarce.

From the perspective of Islamic criminal law, unintentional homicide is categorized as *qatl al-khaṭā'*, namely the causing of death without intent to kill. Unlike positive criminal law, Islamic law excludes *qiṣās* (retaliation) in such cases but imposes responsibility through *diyāt* (compensation) and *kaffārah* (expiation). These mechanisms reflect restorative and moral objectives rooted in the protection of life (*ḥifẓ al-naḥs*) as part of the *maqāṣid al-sharī'ah*. As explained by (Kamali, 2008; Minhaji, 1992) Islamic criminal liability integrates legal responsibility with ethical and spiritual dimensions, thereby promoting reconciliation and social harmony. The contemporary relevance of restorative justice is further articulated by (Zehr, 2015) who conceptualizes justice as a process of repairing harm and involving victims, offenders, and communities in dialogue and restoration. This perspective resonates with Islamic criminal law principles yet remains only partially integrated into Indonesian criminal justice practice. Against this background, this research examines how criminal liability for unintentional homicide is applied under Indonesian positive criminal law at the Jambi District Court, how Islamic criminal law conceptualizes such liability, and how the similarities and differences between the two systems may inform ongoing criminal justice reform. By situating judicial practice within comparative legal theory and prior empirical studies, this study seeks to contribute to the development of a more balanced and justice-oriented approach to negligence-based homicide in Indonesia.

## RESEARCH METHODS

This study employs an empirical juridical (socio-legal) research design with a qualitative approach to examine the application of criminal liability for unintentional homicide under Indonesian positive criminal law and to compare it with the concept of liability in Islamic criminal law. Empirical juridical research is understood as a method that analyzes law not only as normative rules (law in books) but also as implemented in judicial practice (law in action), thereby integrating doctrinal legal analysis with field-based inquiry. This approach is consistent with socio-legal research perspectives developed by scholars such as (Rahardjo, 2009), who emphasize that the effectiveness and meaning of legal norms must be examined within their social context and institutional application.

The research was conducted at the Jambi District Court, selected purposively because it has jurisdiction over negligence-based homicide cases regulated under Article 359 of the Indonesian Criminal Code (KUHP) and represents local judicial practice within a socio-religious community setting. The research subjects consist of judges of the Jambi District Court who were selected purposively as key informants based on their institutional authority and experience in adjudicating relevant criminal cases. In qualitative legal research, purposive sampling is appropriate when informants are chosen based on their competence and relevance to the research problem, enabling in-depth exploration of judicial reasoning and decision-making processes.

The data analyzed include both primary and secondary legal materials. Primary data were obtained through field research by means of in-depth, semi-structured interviews with judges, supported by direct observation of court proceedings and the judicial environment. Secondary data were collected through a literature study consisting of statutory regulations, court decisions, scholarly books and journal articles on criminal liability theory, and Islamic legal sources. The normative analysis of Indonesian criminal law refers, *inter alia*, to the Indonesian Criminal Code (KUHP), particularly Article 359 concerning negligence causing death, and doctrinal discussions on *culpa* (negligence), *mens rea*, and criminal responsibility. The theoretical framework on criminal liability is also informed by general principles of criminal law as developed in continental legal doctrine. In examining Islamic criminal law, the study refers to primary sources, namely the Qur'an and Hadith, as well as classical and contemporary *fiqh* literature discussing *qatl al-khaṭā'* (unintentional killing), *diyat* (compensation), and *kaffārah* (expiation). The analysis draws upon the works of prominent jurists such as Wahbah al-Zuhayli and Abdul Qadir Audah, who elaborate on the foundations and objectives of Islamic criminal liability within the broader framework of *maqāṣid al-sharī'ah* (the objectives of Islamic law), particularly the protection of life (*ḥifz al-nafs*).

Data collection techniques therefore include interviews, observation, and documentation review. Data analysis was carried out qualitatively using descriptive and interpretative techniques through data reduction, categorization, and thematic analysis. The study examines patterns of judicial reasoning in applying legal norms, identifies the construction of *culpa* and sentencing orientation in negligence-based homicide cases, and subsequently conducts a comparative legal analysis between Indonesian positive criminal law and Islamic criminal law. The comparison focuses on the foundations (basis of fault and accountability), forms (imprisonment, compensation, expiation), and objectives (retribution, deterrence, restoration, and social harmony) of criminal liability.

The research findings are presented systematically in narrative form to explain how legal responsibility is constructed in judicial practice and how restorative principles embedded in Islamic criminal law particularly through the mechanisms of *diyat* and reconciliation may contribute conceptually to the reform and humanization of criminal justice approaches to unintentional homicide in Indonesia.

## RESULT AND DISCUSSION

### Results

#### Application of Criminal Liability for Unintentional Homicide under Indonesian Positive Criminal Law at the Jambi District Court

The findings demonstrate that the application of criminal liability for unintentional homicide at the Jambi District Court is firmly grounded in Article 359 of the Indonesian Criminal Code (KUHP), which criminalizes negligence causing the death of another person. In judicial practice, the element of *culpa* constitutes the decisive foundation of liability. The panel of judges consistently focused on two principal components: (1) the existence of a breach of the duty of care that should reasonably have been exercised by the defendant, and (2) a direct causal relationship between the negligent conduct and the victim's death.

An examination of Decision Number 42/Pid.B/2020/PN.Jbi reveals that the court undertook a structured assessment of both factual and juridical elements. The judges evaluated witness testimonies, technical workplace documents, expert explanations regarding safety standards, and the defendant's own statements. Through this evidentiary process, the court concluded that the defendant, a heavy equipment operator, failed to comply with established operational safety procedures. This omission was deemed a form of professional negligence that directly led to a fatal workplace accident.

Importantly, the judges explicitly ruled out the presence of *dolus* (intent), thereby distinguishing the act from intentional homicide. The absence of malicious intent did not eliminate criminal responsibility but instead shifted its qualification to negligence-based homicide under Article 359 KUHP. This reasoning reflects a doctrinally consistent application of the fault principle (*asas kesalahan*), whereby punishment is imposed only when a culpable mental element whether intent or negligence is established.

In determining the sentence, the court imposed one year of imprisonment. The decision reflects an individualized sentencing approach, taking into account mitigating factors such as the defendant's cooperative behavior during trial, genuine remorse, and lack of prior criminal record. The punishment was framed as proportional to the degree of negligence and its consequences. Nevertheless, the findings indicate that the overall orientation of positive criminal law remains predominantly offender-focused and state-centered. The victim's family had limited formal involvement in determining the outcome, and no structured restorative mechanism such as mandatory compensation or mediated reconciliation—was integrated into the sentencing framework.

#### Criminal Liability for Unintentional Homicide under Islamic Criminal Law

From the perspective of Islamic criminal law, unintentional homicide is categorized as *qatl al-khaṭā'*, meaning the causing of death without intent to kill. Although the absence of intent excludes the application of *qiṣāṣ* (retaliatory punishment), Islamic law nevertheless affirms that liability remains obligatory. The Qur'anic framework mandates two principal consequences: the payment of *diyat* (financial compensation to the victim's heirs) and the performance of *kaffārah* (expiation), typically through freeing a slave or, in contemporary interpretation, fasting for two consecutive months.

The findings highlight that Islamic criminal law conceptualizes responsibility in both legal and moral dimensions. *Diyat* functions not merely as material restitution but as a structured mechanism for restoring social equilibrium between the offender and the victim's family. The victim's heirs occupy a central role in determining acceptance of compensation and facilitating reconciliation. Meanwhile, *kaffārah* embodies personal spiritual accountability, reinforcing the ethical dimension of human conduct.

Interviews with Islamic law scholars in Jambi confirm that Islamic criminal responsibility extends beyond the technical evaluation of intent. Even when malicious intent is absent, the harm caused to human life necessitates restoration. This approach underscores the maqāṣid al-sharī'ah principle of protecting life (*hifz al-nafs*), positioning accountability as both a social obligation and a moral purification process. Consequently, Islamic criminal law demonstrates a restorative orientation that integrates compensation, reconciliation, and spiritual reform.

### **Comparative Analysis and Implications for Criminal Justice Reform**

The comparative findings reveal both convergence and divergence between Indonesian positive criminal law and Islamic criminal law in addressing unintentional homicide. Both systems recognize negligence as a legitimate basis for liability and affirm the sanctity of human life. However, they diverge significantly in penal orientation and in the role assigned to victims. Indonesian positive criminal law emphasizes legal certainty, deterrence, and formal accountability through imprisonment. Justice is enforced primarily by the state, and sanctions are directed toward the offender. In contrast, Islamic criminal law prioritizes restorative justice by centering the interests of the victim's family and promoting reconciliation through *diyāt* and *kaffārah*. While positive law focuses on proportional punishment, Islamic law integrates compensation and moral restoration.

These findings suggest that the philosophical divergence lies not in the recognition of negligence but in the objectives of punishment. The restorative principles embedded in Islamic criminal law offer relevant insights for criminal justice reform in Indonesia. Integrating structured compensation mechanisms, mediation, and reconciliation processes into negligence-based homicide cases could complement existing penal measures. Within the socio-religious context of Jambi, such an approach has the potential to strengthen public trust in judicial institutions and promote a more balanced model of accountability—one that harmonizes legal certainty with substantive justice, social restoration, and moral responsibility.

### **Discussion**

#### **Application of Criminal Liability for Unintentional Homicide under Indonesian Positive Criminal Law at the Jambi District Court**

The application of Article 359 of the Indonesian Criminal Code (KUHP) by the Jambi District Court in Decision Number 42/Pid.B/2020/PN.Jbi demonstrates a doctrinally consistent interpretation of negligence (*culpa*) as the basis of criminal liability. According to (Moeljatno, 2015), criminal responsibility arises when a person can be blamed for failing to exercise the level of caution required by law. The court's reasoning reflects this doctrine by carefully examining whether the defendant breached an objective duty of care and whether that breach causally resulted in the victim's death.

The evidentiary assessment including witness testimonies, workplace safety documents, and the defendant's own statements indicates that the judges applied both objective and subjective standards of negligence. The explicit exclusion of *dolus* (intent) confirms adherence to the principle of fault (*asas kesalahan*), distinguishing negligence-based homicide from intentional killing. This reasoning aligns with the perspective of Satjipto Rahardjo, who emphasizes that law enforcement must interpret legal norms proportionally and contextually to achieve substantive justice.

The sentencing decision of one year's imprisonment reflects the principle of individualization of punishment. Mitigating factors such as the defendant's remorse, cooperation, and lack of prior criminal record were considered. However, as noted in the findings of (Rahmatika, 2020) Indonesian courts generally maintain an offender-oriented and state-centered approach, with imprisonment as the primary sanction and limited formal mechanisms for victim restoration. The key judicial findings can be summarized as follows:

**Table 1. Summary of Court Findings in Decision No. 42/Pid.B/2020/PN.Jbi**

Aspect	Description
Legal basis	Article 359 KUHP
Nature of offense	Unintentional homicide due to negligence
Defendant	Heavy equipment operator
Key element proven	<i>Culpa</i> and causal relationship
Sentence	One year imprisonment
Judicial approach	Individualized and proportional punishment

This table illustrates that the court's approach was legally consistent and proportionate, yet primarily retributive–deterrent in orientation. The limited role of the victim's family in the adjudication process indicates that restorative dimensions remain underdeveloped within positive criminal law practice.

### Criminal Liability for Unintentional Homicide under Islamic Criminal Law

In Islamic criminal law, unintentional homicide is categorized as *qatl al-khaṭā'*. The absence of intent excludes *qiṣās* (retaliation), yet accountability remains mandatory. As explained by (Kamali, 2008) Islamic law seeks to protect essential human interests (*maqāṣid al-sharī'ah*), particularly the protection of life (*hifẓ al-nafs*). Therefore, even negligent acts resulting in death require both legal and moral responsibility.

The Qur'anic mandate of *diyat* (compensation to the victim's heirs) and *kaffārah* (expiation) reflects a restorative framework. (Minhaji, 1992) notes that Islamic criminal sanctions combine restitution and moral purification, thereby integrating social and spiritual accountability. Furthermore, (Alam et al., 2024) emphasizes that Islamic criminal law centers the victim's family as a primary stakeholder in achieving justice. In this framework, liability is not limited to punishment by the state but extends to reconciliation and restoration of harm. The offender bears responsibility not only before legal authority but also before God and society.

### Comparative Analysis and Implications for Criminal Justice Reform

A comparison between the two systems reveals both similarities and differences. Both recognize negligence as a basis for liability and affirm the sanctity of human life. However, their penal orientations differ significantly. Positive criminal law emphasizes legal certainty and deterrence through imprisonment, whereas Islamic criminal law prioritizes restorative justice by centering the victim's family and encouraging reconciliation. The comparison can be summarized in the following table:

**Table 2. Comparison of Criminal Liability for Unintentional Homicide**

Aspect	Positive Criminal Law	Islamic Criminal Law
Basis of liability	Negligence ( <i>culpa</i> )	<i>Qatl al-khaṭā'</i>
Orientation of sanction	Retributive–deterrent	Restorative–spiritual
Main sanction	Imprisonment	<i>Diyat</i> and <i>kaffārah</i>
Role of victim's family	Limited	Central
Objective	Legal order and deterrence	Social and moral restoration

The divergence lies not in the recognition of negligence but in the philosophy of punishment. As argued by (Zehr, 2015) justice should focus on repairing harm and involving victims in meaningful ways. The Islamic model of *diyat* resonates strongly with this restorative paradigm.

In the socio-religious context of Jambi, integrating restorative mechanisms such as structured victim compensation, mediation, and reconciliation into negligence-based homicide cases may enhance substantive justice without undermining legal certainty. Such reform would align with the sociological vision of law proposed by Satjipto Rahardjo, advocating for a humane and responsive criminal justice system. Accordingly, while Article 359 KUHP has been applied consistently and proportionally by the Jambi District Court, incorporating restorative principles

inspired by Islamic criminal law may contribute to a more balanced, justice-oriented approach to unintentional homicide in Indonesia.

## CONCLUSION

This study concludes that criminal liability for unintentional homicide in Indonesian positive criminal law, as applied by the Jambi District Court, is fundamentally based on the element of negligence and is oriented toward formal accountability through imprisonment, with sentencing determined by the degree of fault and the individual circumstances of the offender. While this approach ensures legal certainty and upholds the principle of culpability, it tends to prioritize the perpetrator's liability over the restoration of harm suffered by the victim and their family. In contrast, Islamic criminal law conceptualizes unintentional homicide (qatl al-khaṭā') as an act that, despite the absence of intent, still requires comprehensive moral and legal responsibility through the mechanisms of diyat and kaffārah, which emphasize social reconciliation, moral accountability, and the protection of human life as a fundamental value. The comparative analysis demonstrates that both legal systems share a common commitment to safeguarding life, yet differ in their penal orientation, with positive criminal law leaning toward retributive justice and Islamic criminal law emphasizing restorative justice. Therefore, the integration of restorative principles derived from Islamic criminal law into the national criminal justice framework is relevant and necessary to develop a more humane, proportional, and substantively just approach to criminal liability for unintentional homicide in Indonesia

## REFERENCES

- Ahmad, G., Mudzhar, M. A., Rosyid, M., & Ritonga, M. R. (2023). The Death Penalty in Extraordinary Crimes: A Study on Killing Deception (Qatl al-Ghīlah). *Hikmatuna: Journal for Integrative Islamic Studies*, 9(1), 14–29.
- Alam, S., Aunuh, N., & Fajrin, Y. A. (2024). The concept of restorative justice in Islamic criminal law: Alternative dispute settlement based on justice. *KnE Social Sciences*, 642–651.
- Dzhuska, A. V., Kaminska, N. V., & Makarukha, Z. M. (2021). MODERN CONCEPT OF UNDERSTANDING THE HUMAN RIGHT TO LIFE. *Wiadomości Lekarskie*, 74(2), 341–350. <https://doi.org/10.36740/WLek202102131>
- Gilchrist, G. M. (2017). Individual accountability for corporate crime. *Georgia State University Law Review*, Forthcoming. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2999099](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2999099)
- Kamali, M. H. (2008). *Shari'ah Law: An Introduction*. Simon and Schuster.
- Minhaji, A. (1992). *Joseph Schacht's contribution to the study of Islamic law*. <https://escholarship.mcgill.ca/concern/theses/fx719n47j>
- Moeljatno. (2015). *Asas-Asas Hukum Pidana*. Rineka Cipta.
- Rahardjo, S. (2009). *Penegakan hukum: Suatu tinjauan sosiologis*. <https://library.stik-ptik.ac.id/detail?id=9217&lokasi=lokal>
- Rahmatika, D. N. (2020). *Fraud Auditing Kajian Teoretis Dan Empiris*. Deepublish. [https://books.google.com/books?hl=id&lr=&id=gk5bEQAAQBAJ&oi=fnd&pg=PP1&dq=Rahmatika.+&ots=mFBTh3QxdU&sig=2WcQ-Gw\\_uM-vDOfnffgONBpXN4I](https://books.google.com/books?hl=id&lr=&id=gk5bEQAAQBAJ&oi=fnd&pg=PP1&dq=Rahmatika.+&ots=mFBTh3QxdU&sig=2WcQ-Gw_uM-vDOfnffgONBpXN4I)
- Rahmawati, D. (2025). Fulfillment Of The Rights Of Domestic Violence Victims Through Restorative Justice Policy. *JURNAL ILMIAH ADVOKASI*, 13(1), 1–15. <https://doi.org/10.36987/jiad.v13i1.6975>
- Stark, F. (2016). *Culpable Carelessness: Recklessness and Negligence in the Criminal Law*. Cambridge University Press.

- Turnip, R. F., & Budiman, M. (2025). The Concept of Criminalization of Judicial Negligence: The Merit System and Decision Evaluation as Judicial Reform. *Interdisciplinary Social Studies*, 4(4), 555–566. <https://doi.org/10.55324/iss.v4i4.913>
- Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP), Pub. L. No. 1 (2023).
- Wechsler, H., & Michael, J. (1937). A Rationale of the Law of Homicide: I. *Columbia Law Review*, 37(5), 701–761. <https://doi.org/10.2307/1116923>
- Yanto, O. (2016). Death Penalty Execution And The Right To Life In Perspective Of Human Rights, 1945 Constitution Of The Republic Of Indonesia, And Indonesian Law. *Yustisia*, 5(3), 643–662. <https://doi.org/10.20961/yustisia.v5i3.8804>
- Zehr, H. (2015). *The Little Book of Restorative Justice: Revised and Updated*. Simon and Schuster.