

CRIMINAL LIABILITY FOR THE NEGLIGENCE OF STATE OFFICIALS IN THE CASE OF OJOL BEING RUN OVER WHICH CAUSED DEATH IN THE CRIMINAL CODE AND ISLAMIC CRIMINAL LAW

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ABSTRACT

This article examines the criminal liability of state officials in the case of the death of online motorcycle taxi driver Affan Kurniawan who was run over by a Brimob tactical vehicle, by placing it within the framework of the New Criminal Code (Law No. 1 of 2023) and Islamic criminal law as two systems that both emphasize the protection of life and accountability of power. This normative juridical law research uses a legislative, conceptual, and case approach, by analyzing the provisions of the Criminal Code, the doctrine of *fiqh jinayah*, and the legal facts of the Affan case. The results show that in the Criminal Code, the actions of the authorities meet the elements of negligence that causes death, thus opening up the space for criminalization against the driver and the commander, while in Islamic criminal law the configuration of these acts is in line with *qatl al-khatha* which requires *diyat*, *kafarat*, and the possibility of *ta'zir*. Comparative analysis shows a common point on the principle of guilt and rejection of impunity, but differs in the form and orientation of sanctions, the Criminal Code tends to be retributive-preventive with imprisonment and office sanctions, while Islamic criminal law more explicitly integrates restorative justice for victims. This article emphasizes the need to adopt the values of substantive justice of jurisprudence to enrich the practice of applying the Criminal Code to the negligence of state officials.

Keywords: Negligence of State Apparatus, Criminal Liability, New Criminal Code, Islamic Criminal Law

INTRODUCTION

The rule of law requires every state administrator to act according to the law, uphold human dignity, and protect the human rights of citizens without exception (Auria et al., 2024). In this context, law enforcement officials hold a very strategic position as a representation of the state's presence in the public space, both in ordinary circumstances and in emergency situations such as protests and security disturbances. Restrictions and regulation of the use of force by the authorities, especially when operating high-risk facilities and infrastructure such as tactical vehicles, are crucial to prevent the occurrence of excessive violence and violations of citizens' right to life. On the other hand, the concept of error in criminal law, including intentionality and negligence (forgetfulness) underlies criminal liability so that any actions of the apparatus that pose a serious risk must be assessed within the framework of the principle of "no crime without fault" as affirmed in the New Criminal Code (Law No. 1 of 2023). Thus, the relationship between the use of force by state officials, professional standards, and the potential for negligence that leads to the loss of life is an important theme in contemporary criminal law studies.

In Indonesia, the dynamics of law enforcement in the context of crowds, demonstrations, and security control often raise issues regarding the standards of use of force and accountability of the authorities. Various reports by human rights institutions show that there is a pattern of *excessive use of force* in the handling of protests, which often leads to serious injuries and even death of civilians. In practice, the regulation of procedures for securing protests and police operations often clashes with the reality on the ground,

when the authorities are faced with the pressure of the situation and the limitations of immediate supervision of the use of dangerous means such as tactical vehicles. This condition raises normative and empirical questions about how the state, through its criminal law system, assesses and enforces criminal liability for the actions of the authorities whose negligence results in the loss of the lives of others. Furthermore, the public debate on impunity, transparency of the internal law enforcement process, and protection of victims underscores the urgency of studies that link positive regulations with the practices of the authorities in the field.

The tragedy that befell Affan Kurniawan, a young online motorcycle taxi driver, is a concrete illustration of the problem of negligence of state officials in mass security operations. Affan died after being hit and run over by a tactical vehicle (rantis) belonging to the Metro Jaya Police Brimob Unit during the handling of protests around the Bendungan Hilir area and the DPR/MPR RI Building on August 28, 2025, even though he was not part of the main protesters but was carrying out work activities as an ojol driver (Media, 2025). Initial footage and reports showed that the rantis was driving at high speed in areas where there were still residents and motorists, raising strong suspicions of negligence in vehicle control and a disregard for the principle of prudence by the officers on duty. Komnas HAM later qualified the incident as a form of excessive use of force and declared Affan's death an extrajudicial killing, while urging transparent and accountable law enforcement against the police members involved (Tempo.co, 2025). The case of Affan Kurniawan is thus a relevant object of study to examine the limits of the negligence of state officials and the implications of criminal liability in the perspective of the New Criminal Code and Islamic criminal law.

Studies on criminal liability due to the negligence of the authorities and accidents that cause death have been sufficiently developed in the Indonesian legal literature. Diandra (2022), in an article entitled "Criminal Liability for Traffic Negligence That Causes the Loss of Lives of Others (Case Study Case Number 198/Pid.Sus/2021/PN PBR)" analyzes the fulfillment of the elements of negligence and the protection of victims' rights based on Article 310 paragraph (4) of Law No. 22 of 2009 concerning Road Traffic and Transportation (Diandra, 2022). Farida and colleagues (2023), through the article "Criminal Responsibility for Criminal Acts in Traffic That Result in the Death of Others", concluded that the application of Article 310 paragraphs (3) and (4) of the LLAJ Law is juridically appropriate, but sanctions do not fully reflect the deterrent effect (Faida et al., 2023). Juima (2025), in a thesis entitled "Criminal Liability of Hit-and-Run Perpetrators That Result in Death from the Perspective of Islamic Criminal Law", examines the basis for judges' consideration of hit-and-run crimes that cause death (Friday, 2025). Normatively, a number of recent studies on the "implications of Law Number 1 of 2023 concerning the Criminal Code on the concept of criminal responsibility" also affirm the reconfiguration of the regulation of errors (*dolus* and *culpa*) as the basis for punishment, which is relevant to assess the standard of prudence of state officials in carrying out their duties.

However, these studies generally focus on the negligence of civilian drivers in traffic accidents and have not specifically examined the negligence of state apparatus operating tactical vehicles in the context of handling protests. There have not been many studies that systematically link the criminal accountability regime in the New Criminal Code, especially the regulation of errors and reasons for criminal expungement for officials who carry out the orders of office with the concrete situation of the use of rantis that leads to the death of

civilians. Similarly, studies that integrate the perspective of Islamic criminal law, such as the concept of jinayah due to negligence (*khatha'*) and the obligation of *diyat* or other forms of compensation in analyzing the negligence of state apparatus in security operations, are still very limited and generally conceptual without departing from actual cases. This research offers novelty by making the case of Affan Kurniawan a meeting point between the normative analysis of the New Criminal Code and Islamic criminal law to formulate the parameters of the negligence of state officials and a more accountable and fair criminal liability model for victims.

Based on this description, this study aims to comprehensively analyze criminal liability for the negligence of state officials by relying on the provisions of positive law and Islamic criminal law. In particular, this study will examine three main things. First, how criminal liability for the negligence of state officials in the Criminal Code, especially within the framework of the New Criminal Code (Law No. 1 of 2023) which regulates the forms of fault, culpa, and provisions related to the implementation of office duties. Second, how is criminal liability for the negligence of state officials from the perspective of Islamic criminal law, including the classification of negligent acts and their criminal consequences. Third, how is the relevance of criminal liability for the negligence of state officials according to the Criminal Code and Islamic criminal law in formulating clearer accountability standards for state officials in similar cases in the future.

METHODS

This research is a normative juridical legal research that focuses on the analysis of criminal liability for the negligence of state officials in the New Criminal Code (Law No. 1 of 2023) and from the perspective of Islamic criminal law, by making the case of the death of online motorcycle taxi driver Affan Kurniawan the object of concrete study through a case approach (Rizkia & Fardiansyah, 2023). The approach used includes, a statute approach to systematically examine the provisions of the New Criminal Code, regulations related to the authority and responsibilities of law enforcement officials, as well as relevant shari'i nash-nash, conceptual approach to critically analyze the concept of guilt (culpa and *Khatha'*), Jarimah *qatl al-khatha'*, Düsseldorf, and the purpose of the crime, as well as the case approach to reconstruct and analyze the legal facts in the Affan case within the framework of the two legal systems. Primary legal materials consist of laws and regulations (New Criminal Code and sectoral regulations related to the apparatus), the Qur'an and hadith, as well as official decisions or documents related to the handling of the Affan case; secondary legal materials are in the form of criminal law and jurisprudence books, journal articles, and previous research results, while tertiary legal materials are in the form of legal dictionaries, encyclopedias, and other relevant supporting sources. The collection of legal materials was carried out through literature studies and tracing of official documents as well as credible mainstream media reports, then analyzed qualitatively with descriptive-analytical and argumentative-comparative techniques to assess the fulfillment of the elements of negligence that can be punished, compare the construction of criminal liability according to the Criminal Code and Islamic criminal law, and formulate the relevance of both in the context of the accountability of state apparatus in the case of Affan Kurniawan.

RESULT AND DISCUSSION

Criminal Liability for the Negligence of State Apparatus in the Criminal Code

Criminal liability in Indonesian criminal law basically rests on the principle of no crime without fault (*nulla poena sine culpa*) which is now reaffirmed in the New Criminal Code (Law No. 1 of 2023) (Reumi et al., 2026). Error in the juridical sense is understood as the reprehensible psychic relationship between the perpetrator and the prohibited act, which includes intentionality (*dolus*) and forgetfulness (*culpa*). Thus, criminal liability not only requires the objective fulfillment of the elements of the criminal act (acts and consequences), but also requires the ability to be responsible, a certain form of fault, and the absence of a forgiving reason. The New Criminal Code maintains this structure by placing the element of guilt as the main condition of criminalization, while opening up very limited possibilities for accountability without fault in the special conditions explicitly defined by law (Lubis, 2022). In the context of Affan Kurniawan's case, the key question is whether Brimob members operating and in tactical vehicles have committed acts that objectively cause death and, subjectively, can be reproached for at least being negligent in carrying out security duties.

The concept of negligence (*culpa*) in the Criminal Code is understood as a form of offense that is lower than intentionality, but still contains an element of reproach because the perpetrator does not carry out the duty of care that is normatively expected of him (Sengi, 2019). Classical and contemporary literature generally distinguishes between *culpa lata* (gross forgetfulness) and *culpa levis* (mild forgetfulness), which in practice can be seen from the degree of deviation of the perpetrator's behavior from the standards of due care, his position and profession, as well as the level of risk inherent in the activities carried out. Within the framework of the Criminal Code, forgetfulness is constructed as the absence of actions that should have been carried out or carried out in an imprudent manner, even though the perpetrator is able to suspect the possibility of the occurrence of prohibited consequences and has a legal obligation to prevent it (Nurhakim et al., 2026). On state apparatus operating tactical vehicles in the midst of civilian crowds, such a standard of caution is logically higher because they hold authority and control potentially lethal instruments (Zulfaidah et al., 2026). In the case of Affan Kurniawan, the rantis maneuver in an area where there are still known civilian road users shows a strong indication of deviation from the minimum standard of caution that should be carried out by trained officials.

The elements of the criminal act of negligence that causes death in the classic Criminal Code are known, among others, through Article 359, which threatens everyone who because of his fault (forgetfulness) causes the death of another person (Paruntu et al., 2024). In principle, the New Criminal Code maintains a criminal construction similar to formulating a criminal act that results in death due to negligence, although the numbering of the article has changed and given a new systematic context regarding criminal guilt and liability. The objective elements include unlawful acts in the form of acts or omissions that are contrary to legal obligations, the existence of a causal relationship between the act and the occurrence of death, and the predictable nature of the consequences by the perpetrator who is reasonable. The subjective element lies in the error of forgetfulness, namely that the perpetrator should be able and obliged to take into account the risk, but fails to act according to the appropriate standard of prudence. If drawn from the Affan case, the operation of tactical vehicles at a certain speed around the demonstration site that is still accessed by civilians raises the question of whether the maneuver pattern is in line with

operational standards and internal rules that prioritize the protection of citizens' lives. If it is proven that safety procedures were neglected and the result of death arose directly from the negligence of the driver or the vehicle commander, then the elements of the criminal act of negligence that caused the death are basically met.

The position of state officials in Indonesian criminal law is basically subject to the principle of equality before the law, so that in principle there is no criminal immunity just because someone is a member of the National Police or law enforcement officials (Hertika, 2020). However, the New Criminal Code and sectoral regulations such as the Police Law and the Government Regulation on the Discipline of Police Members recognize the existence of acts of office, orders of positions, and certain justification reasons that can affect the existence or not of the unlawful nature of an act (Febriyanti, 2024). On the one hand, the apparatus is given special authority, including the use of certain powers and means (e.g. *rantis*) in the context of law enforcement and security maintenance, which can be juridically justified as long as it is carried out in accordance with procedures and proportions. On the other hand, this authority also gives birth to higher standards of professionalism and prudence, so that the negligence of the apparatus is actually seen more seriously because it is carried out by subjects who have training, authority, and access to dangerous instruments (Fikhruhu et al., 2026; Islam et al., 2026). In the case of Affan Kurniawan, the fact that the perpetrator is a member of the Brimob who is carrying out his duties does not automatically remove criminal liability, but must be tested whether their actions are really within the corridor of a legitimate position order and carried out in a way that is not excessive.

The application of the articles of the Criminal Code to the concrete events that killed Affan Kurniawan requires a careful factual reconstruction of the series of events before, during, and after the riot ran over the victim. Based on official police reports and statements, the seven Brimob members who were in the tactical vehicle could potentially be held criminally responsible for the actions that resulted in death, in addition to ethical sanctions and internal discipline. Normatively, the offense of negligence that caused death in the New Criminal Code can be directed to the driver and the party who gave the command if it can be proven that there was negligence in controlling the vehicle, choosing a track lane, or ignoring the presence of other road users in front of the vehicle. In a positive criminal law perspective, the liability structure can involve the main perpetrator (the driver), the participant (e.g. the commander of the vehicle who ordered a certain speed), or even organizational corporate liability if it is regulated by special provisions. When the police themselves stated that criminal elements were found in the Affan case and planned to conduct a case, this shows that, at least *prima facie*, the elements of unlawful acts and the result of death have been considered relevant to be examined in the framework of negligence (Ramadan & Zacharia, 2026). The next challenge is to qualify the level of error whether it is limited to forgetfulness or close to *dolus eventualis* and to determine the subject who is most worthy of criminal responsibility.

Although dogmatically there is room to ensnare the authorities with the crime of forgetfulness that causes death, law enforcement practices show various structural and cultural obstacles. Internal supervisory institutions such as the Propam Division or the Code of Ethics Commission often move faster in imposing ethical sanctions than criminal proceedings, so administrative sanctions tend to "replace" criminalization when both should be able to run cumulatively (Khairi et al., 2025). In addition, the position of the

apparatus as part of a law enforcement institution often causes a conflict of interest, especially when the investigation and investigation process is carried out by the same institution as the perpetrator (Romadhoni et al., 2025). In the context of Affan's case, the more prominent initial focus on the ethical sanctions against the seven Brimob members can be seen as an indication that internal mechanisms may take precedence over the creation of a comprehensive criminal case. Another obstacle is the evidence of negligence in court, especially when the authorities argue that their actions were carried out in an urgent situation and in order to maintain public order, thus trying to place themselves in the corridor of justification or pardon.

From the point of view of the researcher, the case of Affan Kurniawan shows that the normative construction of the New Criminal Code that places guilt as the core of criminal responsibility is not fully effective if it is not followed by the political courage of law and order to ensnare state officials who are negligent proportionately. The operation of rantis in areas with the presence of civilians, without adequate perimeter security and without fully controlled maneuvers, leads to the conclusion that the standard of prudence of the apparatus is not carried out as it should, so that juridically it meets the parameters of gross negligence. If in similar cases against civilians the police tend to apply negligence that causes death with the threat of imprisonment, then the inconsistency will be evident if the authorities themselves stop at ethical sanctions or light sentences. In the framework of a democratic state of law, the application of the New Criminal Code should reinforce the message that state authorities are always accompanied by greater responsibility, not preferential treatment before the criminal law.

Criminal Liability for the Negligence of State Apparatus in Islamic Criminal Law

Criminal liability in Islamic criminal law is rooted in the principle that every human act that causes harm to the soul, property, or honor of another person must be held accountable according to the degree of his guilt before Allah and before man (*al-mas'uliyah al-jinaiyah*). In *fiqh*, accountability is not solely measured by the consequences caused, but also by the inner condition of the perpetrator, the level of intentionality, and the duty of prudence that should be carried out, especially for those who hold the mandate of power (Kholik, Zulfaidah, et al., 2026). The state apparatus, in this perspective, is the trustee (*ammunition*) who are obliged to protect the lives and safety of the community, so that their negligence is seen as a violation of the mandate and principle of justice (*al-'adalah*). If such negligence results in the loss of life, Islamic criminal law places it as a form of *jarimah* that must be accounted for through the mechanism *Düsseldorf*, *Kafarat*, and sometimes *ta'zir*, depending on the character of the act as well as its position in the power structure (Siregar & Azizah, 2026). In the case of Affan Kurniawan, the negligence of the apparatus operating the tactical vehicle can be seen as a failure to carry out the mandate of life guard, so in principle it cannot be left without a clear form of accountability within the framework of jurisprudence.

Jarimah in Islamic criminal law is understood as any act that is prohibited by the Shari'ah and threatened with certain sanctions, both related to the rights of Allah and human rights. Classically, *jarimah* is classified into three categories: *hudud* (criminal acts with sanctions definitively determined by the nash, such as adultery or theft), *Qisas-Düsseldorf* (criminal acts related to violations against life and limbs, with sanctions in the

form of appropriate retribution or compensation), and *ta'zir* (criminal acts whose sanctions are handed over to the *ijtihad* of the ruler or judge). Murder and persecution, whether intentional or unintentional, are included in the realm *Qisas-Düsseldorf* because it touches the rights of victims and their families as well as the community's right to life protection (Kholik et al., 2025). In the context of state apparatus, negligence that causes the death of civilians such as in the case of Affan is conceptually included in the *jarimah Qisas-Düsseldorf*, because the object violated is human life that must be maintained in its honor. Thus, the position of the apparatus does not exclude them from the category of *jarimah*, but only adds to the dimension of moral and institutional responsibility in regulating the implementation of sanctions.

The concept of oblivion (*Khatha'*) in the perspective of Islamic law occupies its own position among the forms of sins of *jinayah* (Sari & Rambe, 2020). The scholars of jurisprudence distinguish between intentional murder (*qatl al-'amd*), semi-intentional murder (*syibh al-'amd*), and accidental murder (*qatl al-khatha'*), where *qatl al-khatha'* occurs when the perpetrator does not intend to kill, but his actions or omissions factually cause death. *Khatha'* does not remove liability, but changes the form of sanctions from *Qisas* become *Düsseldorf* and *Kafarat*, because the element of intentionality is not met. In the case of officers operating tactical vehicles, *Khatha'* can arise when they do not take into account the risk of maneuvering in the midst of a crowd of citizens, do not implement adequate safety standards, or ignore danger signs around *rantis*. This negligence, when viewed through the lens of jurisprudence, shows that the authorities have failed to carry out their obligations *ihitiyath* (prudence) which is normatively higher in level because they control potentially lethal means and are given authority by the state.

Accidental homicide (*qatl al-khatha'*) in Islamic criminal law has a clear legal consequence, namely the obligation *Düsseldorf* and *Kafarat*. In many books of *jinah fiqh* it is stated that *qatl al-khatha'* occurs when the perpetrator commits an act of *mubah* or even an act that is ordered, but accidentally results in the death of another person, for example in hunting, driving, or carrying out certain professional duties (Fadil et al., 2025). Sanctions *Qisas* was not applied because there was no intention to kill, but the perpetrator still assumed responsibility by paying *Düsseldorf* (Death Penalty) and *Death Kafarat*, usually in the form of freeing slaves or, if unable to do so, fasting for two months in a row. From this point of view, the actions of the officers who drive the *rantis* in the context of security duties may be basically an activity justified by the *Shari'ah*, but when carried out with negligence and resulting in Affan's death, the pattern of the case is close to the structure of the *qatl al-khatha'*. Obligations *Düsseldorf* and *Kafarat* In such contexts, not only shouldering the burden on the individual perpetrator, but also opening up room for institutional involvement if the negligence reflects systemic deficiencies in training, procedures, and supervision.

The Qur'an provides a strong normative foundation regarding the prohibition of taking life and the arrangement of accidental killing. In the case of *qatl al-khatha'*, it is relevant to quote the words of Allah:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً ۚ وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ ۖ

إِلَّا أَنْ يَصَدَّقُوا ۖ فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ إِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ ۖ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ ۚ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ يَوَكِّنَ اللَّهُ عَلَىٰمَا حَكِيمًا ۙ ٩٢ (النساء:)

Translation of the Ministry of Religion 2019

92. It is not proper for a believer to kill a believer, except because he is wrong. Whoever kills a believer because he is wrong, he should set free a believer's servant and (pay) the ransom that is handed over to his family, unless they (the murdered family) release the payment. If he is (killed) from those who are against you, and he is a believer, (let the murderer) set free the believer's servant. If he is (killed) from the (disbelievers) who have a covenant with you, (the murderer) should pay the ransom handed over to his family and set the believer's servant free. Whoever does not get (the righteous slave) should fast for two consecutive months as a way of repentance from Allah. Allah is All-Knowing, All-Wise. (An-Nisa'/4:92)

This verse explains that even if the murder occurred by mistake, the perpetrator still bears material (*diyat*) and spiritual (*kafarat*) responsibilities, which indicates that negligence that leads to death should not be left unpunished. If this framework is applied to Affan's case, then the death of the victim due to the negligence of the state apparatus requires a mechanism of compensation that is appropriate for the family and a form of compensation that is proportionate to the severity of the consequences.

In the application of the concept of Islamic criminal law in the case of Affan Kurniawan, several elements of *qatl al-khatha'* seem relevant to be tested. First, the officers who operate the rantis act in the context of security duties which in principle can be categorized as *mubah* activities, even to a certain extent mandatory, because they aim to maintain public order. Second, Affan's death was not the purpose of their actions, so the element of 'amd (deliberateness) is not visible, but the negligence in taking into account the risk of the presence of civilians in the rantis line strengthens the indication of *khatha'*. Third, the difference in strength and position between the armed forces and the ojol driver places the authorities as parties with greater capacity to prevent fatal accidents, so that failure to be careful should be considered more morally and legally burdensome. In the fiqh jinayah scheme, these conditions tend to be directed to the obligation of *diyat* to the heirs of Affan and, to a certain extent, *kafarat* for the direct perpetrators; while the form of *ta'zir* can be imposed to uphold aspects of prevention and social justice.

When compared to the reality of positive law enforcement, the principles of Islamic criminal law seem more assertive in placing negligence that results in loss of life as a matter of moral, spiritual, and material responsibility at the same time. In practice, the handling of the Affan case emphasizes more internal ethical sanctions and a criminal process that tends to be slow, while the aspect of restoring the rights of the victim's family through a fair compensation scheme has not yet emerged. In *jiyah* jurisprudence, *Düsseldorf* not just financial compensation, but a symbol of acknowledgment of wrongdoing and the return of some of the rights of the victims that have been uprooted, which if ignored has the potential to perpetuate a sense of social injustice (Badriyah et al., 2025). In addition, the failure of the state to ensure the existence of a mechanism *Düsseldorf* or equal compensation for victims

of the negligence of the authorities shows that there is a gap between the rhetoric of citizen protection and the practice on the ground. If the principles of Islamic justice are applied consistently, the state cannot hide behind internal procedures to avoid the obligation of responsibility for the lives of its citizens lost due to the negligence of the authorities.

From the perspective of the researcher, the Islamic criminal law framework offers a critical lens to assess the negligence of the state apparatus in the case of Affan Kurniawan as more than just a procedural violation, it is a violation of the trust of the guardianship of the soul that Allah imposes on the ruler and his apparatus. The categorization of this event as *qatl al-khatha'* open the space to demand personal and institutional responsibilities, through the *Düsseldorf*, *Kafarat*, and *ta'zir* which is designed not only to punish, but also to restore the rights of victims and prevent the recurrence of similar incidents. When compared to the tendency of a positive system that often stops at disciplinary sanctions, *fiqh jinayah* actually demands a settlement that touches more on the dimension of substantive justice for the victim's family. In the context of a Muslim-majority country such as Indonesia, the integration of *fiqh jinayah* values in the policy of handling violations by the authorities can strengthen the moral legitimacy of national law and close the gap in impunity that often occurs. Thus, the analysis of Islamic criminal law on the Affan case is an important foothold for formulating a fairer and more comprehensive model of accountability of state officials, which can then be critically compared with the construction of accountability in the New Criminal Code in the previous section.

Relevance and Comparison of Criminal Liability Between the Criminal Code and Islamic Criminal Law

The comparative analysis of criminal liability between the New Criminal Code and Islamic criminal law in the case of Affan Kurniawan basically departs from two different legal traditions, but both place the protection of life as the main goal (Kurniawan, 2022). The New Criminal Code (Law No. 1 of 2023) formulates criminal liability based on the principle of guilt, while Islamic criminal law develops the concept of *al-mas'uliyah al-jinā'iyah* which links criminal responsibility to the perpetrator's trust and moral obligation before Allah and man. In both systems, the officer who operated the tactical vehicle to kill Affan could not be positioned as a "neutral" party, but rather as a legal subject who held a position of high trust and therefore assumed a heavier standard of prudence. Comparative approach to criminal law (*comparative legal analysis*) allows us to see how the New Criminal Code and jurisprudence conceptualize the wrongs, consequences, and forms of reparations for victims, and the extent to which both are relevant to prevent impunity in events such as the Affan tragedy.

Judging from the concept of criminal responsibility, the New Criminal Code emphasizes that everyone can only be held accountable for criminal acts committed intentionally or due to forgetfulness (Article 36 paragraph (1) of Law No. 1 of 2023), and the purpose of punishment is directed at prevention, restoring balance, and protecting the community (Article 51) (Aripkahan et al., 2025). Islamic criminal law, through the concept of *jarimah* and personal responsibility, views that every perpetrator, including the apparatus, is responsible for the consequences of his actions according to the degree of error, with a combination of worldly dimensions (*Düsseldorf*, *ta'zir*) and *ukhrawi* (*Kafarat*). Normatively, both systems require a relationship between acts, mistakes, and consequences; however,

Islamic law adds a dimension of trust and sin that strengthens the moral obligation of the apparatus to avoid reckless actions that have the potential to take lives. In the context of Affan's case, the New Criminal Code opens up space for the criminalization of Brimob members' negligence, while Islamic criminal law in parallel demands material accountability (*Düsseldorf*) and spiritual (*Kafarat*) for death that occurred unintentionally but through serious negligence.

A comparison of the concept of guilt shows that culpa in the Criminal Code and *Khatha'* in Islamic law has a tangent point, but it is placed in a different frame of value. Culpa is understood as a form of fault when the perpetrator neglects to meet the standards of prudence that are objectively expected of him, especially if he knows or should have known the potential consequences of being prohibited but still acts with less care. Meanwhile, *Khatha'* In fiqh, jinayah is an act that results in a crime against the soul or property without any intention, for example in *qatl al-khatha'*, but still incur responsibilities in the form of *Düsseldorf* and *Kafarat*. In Affan's case, rantis maneuvers in areas that are still inhabited by civil road users can be understood as a heavy culpa from the perspective of the New Criminal Code at the same time *Khatha'* serious from the perspective of Islamic law, because the apparatus should be able to predict the dangers inherent in the use of tactical vehicles. The difference is that the concept *Khatha'* emphasizing that the negligence, even if it is not intentional, still requires spiritual and material "redemption", whereas the concept of culpa in practice is often reduced to imprisonment or fines that do not always touch the recovery of the victim.

In terms of the qualification of the act and the type of sanction, the Criminal Code positions the actions of negligent officials to cause death as a criminal act of negligence that causes the death of another person (a derivative of the concept of Article 359 of the old Criminal Code which was systematically readopted in the New Criminal Code), with the main sanctions in the form of imprisonment and/or fines (Aljufri et al., 2025). Islamic criminal law categorizes the act as jarimah *qatl al-khatha'* who are included in the group *Qisas-Düsseldorf*, with the principal sanction in the form of *Düsseldorf* that must be paid to the victim's family and *Kafarat* in the form of certain worship, in addition to the possibility of *ta'zir* when deemed necessary for the sake of general prevention (Kholik, 2026). The New Criminal Code, especially through Article 51, has also begun to adopt restorative and corrective nuances by placing criminalization as a means of restoring social balance, but recovery instruments such as restitution and compensation have not been operationally as strong as the concept *Düsseldorf* in the jurisprudence of jinayah. In Affan's case, the threat of dishonorable dismissal and imprisonment of seven Brimob members shows an emphasis on repressive sanctions against the perpetrators, while a comprehensive compensation mechanism for the victim's family has not yet emerged explicitly in the public sphere. At this point, Islamic criminal law offers a more explicit model of sanctions targeting the recovery of the victim, so as to complement the retributive and preventive tendencies in the Criminal Code.

Table 1. Differences between the Criminal Code and Islamic Criminal Law in the case of the death of a victim

Aspects	New Criminal Code (Law No. 1/2023)	Islamic Criminal Law	Analysis in the Affan Case
Basis of liability	The principle of	<i>Al-mas'uliyah</i>	<i>al-</i> Both demand

	wrongdoing, only intentional or intentional can be punished (Article 36 paragraph (1))	<i>jina'iyah</i> based on trust and sin, every consequence of the soul demands proportional responsibility	accountability from the apparatus; the position of the apparatus as a trustee strengthens the burden of responsibility.
Forms of error	Culpa (forgetfulness) as the failure to meet the standard of due diligence	<i>Khatha'</i> (mistakes/accidents) that still give rise to <i>diyat</i> and <i>kafarat</i>	Rantis maneuvers against civil public spaces can be qualified as a serious culpa as well as serious <i>khatha'</i> .
Qualification of deeds	Criminal act of negligence causing death (derivative of the structure of Article 359)	Jarimah <i>qatl al-khatha'</i> in the <i>group of qisas-diyat</i>	Both systems recognize events as attacks on the soul, although the normative formulations are different.
Main sanctions	Additional imprisonment, fines, and sanctions; multifaceted criminal objectives (Article 51)	<i>Diyat, kafarat, and ta'zir</i> , emphasizing the restoration of sacrifice and redemption	Affan's handling still highlights imprisonment and dismissal; the pattern of <i>diyat</i> is yet to be seen.
Position of state apparatus	Subject of general law, but has a justifying/excuse reason related to the order of office	The subject of the individual who bears the trust; waliyul amri is authorized to impose <i>additional ta'zir</i>	There is no immunity; the mandate of office can actually be a reason for burdening in the Islamic moral perspective.

The relevance of the two legal systems in the context of the Affan case can be seen when we examine the purpose of criminalization and the form of protection for victims. The New Criminal Code, through Article 51, explicitly mentions the restoration of balance and reconciliation of perpetrators, victims, and society as one of the criminal goals, but the normative apparatus that operationalizes this idea still rests on imprisonment and fines, while the instrument of victim recovery is often left to civil law or a separate compensation mechanism. Fiqh jinayah, on the other hand, integrates the goal of restorative justice into the structure of criminal sanctions through *Düsseldorf* and *Kafarat*, so that the criminalization of negligence that caused death as in the Affan case automatically contains

an element of direct compensation to the victim's family (Rafid, 2022). In a Muslim society such as Indonesia, this makes Islamic criminal law relevant as a source of value to strengthen the aspect of victim recovery in law enforcement policies against the authorities, without having to negate the applicability of the Criminal Code as a positive law.

Criticism of the effectiveness of both systems suggests that each has weaknesses that need to be honestly recognized. The New Criminal Code provides a relatively clear dogmatic framework for ensnaring negligent officials, but law enforcement practices are often hampered by institutional factors, such as conflicts of interest when officers investigate their own colleagues and a tendency to prioritize ethical sanctions over criminal ones. (Kholik, Syifa, et al., 2026). Islamic criminal law, despite the concept *Düsseldorf* and *His ta'zir* offers a strong model of restoration and prevention, facing implementation challenges in a national legal system that adheres to the principles of formal legality and legal pluralism. In Affan's case, these two weaknesses seem to go hand in hand: on the one hand, the criminal proceedings against seven Brimob members were slow and more highlighted in terms of dismissal, on the other hand, the idea of *diyat*-style compensation that can restore the dignity of the victim's family is not necessarily adopted within a positive legal framework. As a result, the public's sense of substantive justice is likely to be unfulfilled, despite formal legal procedures.

From the perspective of researchers, the comparative synthesis between the New Criminal Code and Islamic criminal law actually opens up opportunities to formulate a more complete and test-resistant model of state apparatus accountability in cases of fatal negligence such as the Affan Kurniawan tragedy. The New Criminal Code can remain the main juridical framework for regulating criminal accountability through the principles of guilt, culpa regulation, and modern penal goals, while jurisprudence contributes to the logic of concrete restorative justice through the concept of *Düsseldorf*, *Kafarat*, and *ta'zir* contextual. In the long term, the integration of these values can be realized through the strengthening of the mechanism of restitution and mandatory compensation for victims of the negligence of the authorities, the affirmation of the state's institutional responsibility, as well as a penal policy that places the apparatus as a trustee who can be subject to liability if negligent. The Affan case could set an important precedent: if handled consistently with these two frameworks, it not only solves one case, but also marks a structural correction to the pattern of impunity and paves the way for fairer standards of accountability of state apparatus in Indonesia.

CONCLUSION

Based on all descriptions and analyses, it can be concluded that the negligence of the state apparatus in the case of Affan Kurniawan's death juridically meets the parameters of criminal liability in the New Criminal Code and in Islamic criminal law. Within the framework of the Criminal Code, the act of operating tactical vehicles in public spaces that are still filled with civilians without adequate prudence puts the apparatus, especially the driver and commander, in the position of the perpetrator of the negligence that caused the death, so that the principle of no crime without fault is fulfilled and there is no valid justification to remove its unlawful nature. In Islamic criminal law, the configuration of the facts is in line with the construction of *qatl al-khatha'*, where the apparatus as the trustee of public security acts without the intention of killing, but neglects to carry out *the obligation*

of ihtiyath so as to cause loss of life which must be accounted for through *diyat*, *kafarat*, and if deemed necessary *ta'zir*. The comparison of the two systems shows a strong convergence point in the recognition that the fatal negligence of the apparatus should not be left without criminal and civil consequences, but differs in emphasis: the Criminal Code emphasizes more prison sentences and organizational sanctions, while Islamic criminal law explicitly integrates the dimensions of victim recovery and moral redemption of the perpetrator. Thus, the position of the researcher emphasizes that the case of Affan Kurniawan should be a precedent for a more consistent application of criminal accountability of state officials, by combining the strictness of criminal justice in the style of the Criminal Code and the orientation of restorative justice in the style of Islamic criminal law, so that the mandate to protect the lives of citizens does not stop at the level of rhetoric, but is manifested in law enforcement.

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