

## Reconstructing the Criminal Liability of Security Forces for Firearms Misuse from the Perspectives of Positive Law and Islamic Criminal Law

Fathan Wahidan Syamsul Rizal<sup>1\*</sup>, Maskur Rosyid<sup>2</sup>

<sup>1,2</sup> Universitas Islam Negeri Walisongo, Semarang, Indonesia

<sup>1</sup>[fthnwahidan@gmail.com](mailto:fthnwahidan@gmail.com), <sup>2</sup>[masykurxrejo@walisongo.ac.id](mailto:masykurxrejo@walisongo.ac.id)

Submitted: 9 February 2026 Revision: 25 March 2026 Accepted: 7 April 2026 Published: 14 April 2026

\*) Corresponding Author

Copyright ©2026 Authors

### Abstract

The use of firearms by security forces constitutes an extraordinary exercise of state authority because it is directly related to the protection of citizens' right to life. However, in practice, the use of lethal force often results in casualties outside of real threats, raising the issue of the criminal liability of security forces. This study aims to analyze the criminal liability for firearms misuse by security forces from the perspectives of Indonesian positive law and Islamic criminal law and to compare the two to determine the limits of the legitimacy of the state's use of lethal force. The study employs normative legal methods, drawing on statutory, conceptual, and comparative approaches. Legal materials are analyzed qualitatively through deductive reasoning and systematic interpretation. The results show that positive law assesses liability based on the elements of intent or negligence, and on justifications such as self-defense. In contrast, Islamic criminal law assesses liability based on the classification of multiple errors: *'amd*, *shibh al-'amd*, and *khatā'*, which are oriented towards protecting life (*hifz al-nafs*). A comparison of the two shows that positive law provides legal certainty. In contrast, Islamic criminal law provides an in-depth moral evaluation. The integration of the two approaches results in a model of criminal accountability that treats the use of firearms as a limited authority subject to both legal and ethical controls, thereby strengthening officials' accountability within the criminal justice system. This study contributes theoretically by integrating positive criminal law and Islamic criminal law into a comprehensive model of criminal liability, combining juridical and moral evaluations. Practically, it offers a framework to strengthen law enforcement accountability and prevent impunity in the misuse of firearms.

**Keywords:** Criminal Accountability, Firearms Abuse, Security Forces, *Al-Mas'ūliyyah Al-Jinā'iyah*.

### Abstrak

Penggunaan senjata api oleh aparat keamanan merupakan pelaksanaan kewenangan negara yang luar biasa karena secara langsung berkaitan dengan perlindungan hak hidup warga negara. Namun, dalam praktiknya, penggunaan kekuatan mematikan seringkali mengakibatkan korban jiwa di luar ancaman nyata, sehingga menimbulkan isu tanggung jawab pidana aparat keamanan. Studi ini bertujuan untuk menganalisis tanggung jawab pidana atas penyalahgunaan senjata api oleh aparat keamanan dari perspektif hukum positif Indonesia dan hukum pidana Islam, serta membandingkan keduanya untuk menentukan batasan legitimasi penggunaan kekuatan mematikan oleh negara. Studi ini menggunakan metode hukum normatif, dengan mengacu pada pendekatan hukum perundang-undangan, konseptual, dan komparatif. Materi hukum dianalisis secara kualitatif melalui penalaran

### How to Cite this Article

Rizal, F. W. S., & Rosyid, M. (2026). Reconstructing the Criminal Liability of Security Forces for Firearms Misuse from the Perspectives of Positive Law and Islamic Criminal Law. *Al-Rasīkh: Jurnal Hukum Islam*, 15(1), 56–70. <https://doi.org/10.38073/rasikh.4585>

deduktif dan interpretasi sistematis. Hasil penelitian menunjukkan bahwa hukum positif menilai tanggung jawab berdasarkan unsur kesengajaan atau kelalaian, dan pembenaran seperti pembelaan diri. Sebaliknya, hukum pidana Islam menilai tanggung jawab berdasarkan klasifikasi berbagai kesalahan: *'amd* , *shibh al-'amd* , dan *khatā'* , yang berorientasi pada perlindungan kehidupan (*ḥifz al-nafs*). Perbandingan keduanya menunjukkan bahwa hukum positif memberikan kepastian hukum. Sebaliknya, hukum pidana Islam memberikan evaluasi moral yang mendalam. Integrasi kedua pendekatan tersebut menghasilkan model pertanggungjawaban pidana yang memperlakukan penggunaan senjata api sebagai wewenang terbatas yang tunduk pada kontrol hukum dan etika, sehingga memperkuat pertanggungjawaban pejabat dalam sistem peradilan pidana. Penelitian ini memberikan kontribusi secara teoretis dengan mengintegrasikan hukum pidana positif dan hukum pidana Islam ke dalam model tanggung jawab pidana yang komprehensif, menggabungkan evaluasi yuridis dan moral. Secara praktis, penelitian ini menawarkan kerangka kerja untuk memperkuat akuntabilitas penegakan hukum dan mencegah impunitas dalam penyalahgunaan senjata api.

**Kata Kunci:** Pertanggungjawaban Pidana, Penyalahgunaan Senjata Api, Pasukan Keamanan; *Al-Mas'ūliyyah Al-Jinā'iyah*.

## INTRODUCTION

The use of firearms by security forces constitutes the most extreme form of state authority because it directly impacts citizens' right to life. In a democratic state governed by the rule of law, this authority may be exercised only as a last resort. It must adhere to the principles of legality, necessity, and proportionality. These principles constitute the universal standard for the use of force by law enforcement officers under international human rights law and modern policing practices.<sup>1</sup> Therefore, the use of firearms is not merely a technical matter of law enforcement but also concerns the state's legitimacy in protecting human rights.

In practice, Indonesia continues to face numerous incidents of firearms use by security forces that result in fatalities. Several cases demonstrate that these actions are often carried out in circumstances where there is no direct threat to the officer's life. This phenomenon aligns with global research findings that deviations from the use of lethal force often arise from discretionary power without adequate oversight.<sup>2</sup> This situation raises serious issues such as declining public trust, alleged violations of the right to life, and questions about the limits of the state's authority to use force in the modern criminal justice system.

<sup>1</sup> Geoffrey P. Alpert and Roger G. Dunham, *Understanding Police Use of Force* (Cambridge University Press, 2004), <https://doi.org/10.1017/CBO9780511499449>; P. A. J. Waddington, "Use of Force," *Policing* 1, no. 3 (2007): 249–51, <https://doi.org/10.1093/police/pam047>; Seth W. Stoughton et al., *Evaluating Police Uses of Force* (New York University Press, 2020), <https://doi.org/10.18574/nyu/9781479814657.001.0001>.

<sup>2</sup> James J. Fyfe, "Observations on Police Deadly Force," *Crime & Delinquency* 27, no. 3 (1981): 376–89, <https://doi.org/10.1177/001112878102700305>; William Terrill and Eugene A. Paoline, "Examining Less Lethal Force Policy and the Force Continuum," *Police Quarterly* 16, no. 1 (2013): 38–65, <https://doi.org/10.1177/1098611112451262>.

Normatively, the use of firearms is regulated by the Police Law and the National Police Chief's Regulation on the use of force. However, these regulations are not always complied with in practice. The discrepancy between legal norms and the reality of law enforcement demonstrates that the issue of firearms misuse is not only about procedural violations but also concerns the criminal accountability of officers as legal subjects exercising state authority. In studies of police accountability, failing to link procedural violations to criminal accountability risks institutional impunity.<sup>3</sup>

Several previous studies have positioned the issue of firearms use by officers primarily within the framework of positive legal accountability and human rights protection. Skinner (2023) asserts that the use of lethal force by officers must be viewed as an obligation of state accountability within the framework of international human rights law, as deaths resulting from officer actions are an indicator of the legitimacy of the rule of law.<sup>4</sup> In the Indonesian context, Ismail, Hapsoro, and Rezaldy (2023) demonstrate that officer violence during demonstrations reflects a failure to uphold the value of dignified justice in law enforcement.<sup>5</sup> Similarly, Lestari and Hariyanto (2024) emphasize that the practice of extrajudicial killings cannot be resolved through internal disciplinary mechanisms alone but must be processed as criminal accountability to ensure victim protection.<sup>6</sup>

Other studies also highlight officers' authority and discretion. Amalia and Turnip (2023) state that deviations from police discretion still give rise to legal liability if they violate regulations and professional codes of ethics.<sup>7</sup> Nainggolan, Rahman, and Razak (2022) emphasize that the use of firearms can only be justified when there is a real threat to life, so discretionary authority cannot be used as a justification for the use of lethal force.<sup>8</sup> Meanwhile, Kinanti et al. (2022) show that police brutality is closely related to weak institutional oversight and a lack of officer accountability.<sup>9</sup> Although these studies have examined officer accountability from a normative and institutional perspective, these studies are still limited to the formal-legal dimension and have not yet linked it to

---

<sup>3</sup> Andrew Goldsmith, "Police Reform and the Problem of Trust," *Theoretical Criminology* 9, no. 4 (2005): 443–70, <https://doi.org/10.1177/1362480605057727>; Samuel E. Walker and Carol A. Archbold, *The New World of Police Accountability* (SAGE Publications, Inc., 2020), <https://doi.org/10.4135/9781544339214>.

<sup>4</sup> Stephen Skinner, "Enhancing Accountability for Police Use of Lethal Force: Global Monitoring and Comparative Benchmarking," *Policing: A Journal of Policy and Practice* 18, no. paad100 (2024), <https://doi.org/10.1093/police/paad100>.

<sup>5</sup> Ismail et al., "Akuntabilitas Penegakan Hukum Terhadap Aparat Kepolisian Yang Melakukan Tindak Kekerasan," *JH Ius Quia Iustum* 30, no. 3 (2023): 602–21, <https://doi.org/10.20885/iustum.vol30.iss3.art7>.

<sup>6</sup> Ni Komang Ayu Diah Lestari and Diah Ratna Sari Hariyanto, "Pertanggungjawaban Oknum Aparat Kepolisian Dalam Melakukan Tindakan Kekerasan Dan Extrajudicial Killing Kepada Pelaku Tindak Pidana," *Kertha Negara : Journal Ilmu Hukum* 12, no. 2 (2024): 172–85.

<sup>7</sup> Apri Amalia and Johannes Mangapul Turnip, "Pertanggungjawaban Hukum Kepolisian Yang Melakukan Kealfaan Dalam Tindakan Diskresi Terhadap Tindak Pidana Lalu Lintas," *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 2 (2023): 119–33, <https://doi.org/10.55606/birokrasi.v1i2.560>.

<sup>8</sup> Daniel Junwaldi MP Nainggolan et al., "Alasan Penggunaan Kekerasan Dengan Senjata Api Oleh Anggota Polri," *Journal of Lex Theory (JLT)* 3, no. 2 (2022), <https://doi.org/10.52103/jlt.v3i2.1503>.

<sup>9</sup> Tasya Putri Kinanti et al., "Police Brutality Terhadap Kaum Afrika- Amerika: Penggunaan Kekuatan Dan Akuntabilitas Kepolisian Di Minnesota Tahun 2020," *DIKSHI (Diskusi Ilmiah Komunitas Hubungan Internasional)* 3, no. 2 (2024): 468–82.

the concept of classification of errors in Islamic criminal law (*al-mas'ūliyyah al-jinā'iyah*) as a framework for the ethical-juridical evaluation of the state's use of lethal force.

Although various studies have addressed the use of deadly force by law enforcement officers from the perspectives of legal accountability, human rights, and police discretion, these studies still place officer accountability within the legal-formal framework of positive law and have not addressed the ethical-normative construction of culpability. Yet, the issue of firearm use by law enforcement officers is not only related to procedural violations but also concerns the moral legitimacy of the state's authority to protect human life. Therefore, this study offers a novel approach by examining firearm misuse through a comparative analysis of the doctrine of culpability in positive criminal law and the concept of *al-mas'ūliyyah al-jinā'iyah* in Islamic criminal law, specifically through the classification of '*amd*, *shibh al-'amd*, and *khaṭā'*' as a framework for evaluating the level of officer accountability. This approach is expected to provide a more comprehensive assessment model by integrating the legal and moral dimensions in determining the limits of the state's use of lethal force.

Based on this background, this study analyzes criminal liability for firearms misuse by security forces from the perspective of positive law and Islamic criminal law, comparing the two to determine the limits of the legitimacy of the state's use of lethal force. This study also formulates a normative basis for strengthening the accountability of security forces within the criminal justice system.

## RESEARCH METHOD

This research is a normative legal study with a prescriptive-analytical nature, aimed at formulating the construction of criminal liability for the misuse of firearms by security forces. The study uses a statutory, a conceptual, and a comparative approach to Indonesian positive law and Islamic criminal law.

Primary legal materials include the Criminal Code, Law Number 2 of 2002 concerning the Indonesian National Police, the National Police Chief's Regulation on the Use of Force, and Islamic legal sources such as the Quran, Hadith, and Islamic jurisprudence literature discussing the concept of *al-mas'ūliyyah al-jinā'iyah*. Secondary legal materials include textbooks, scientific journal articles, and prior research relevant to the criminal liability of security forces and the state's use of lethal force.

Legal materials were collected through a literature review. The legal materials were analyzed qualitatively using deductive reasoning through systematic interpretation and comparative legal construction. The results of the analysis are used to assess the level of error of officers based on the classification of intent in positive law and Islamic criminal law. A normative model of criminal responsibility is formulated to strengthen accountability for law enforcement officers.

## RESULTS AND DISCUSSION

### **The Concept of Criminal Liability in Indonesian Positive Law Regarding the Use of Firearms by Security Forces**

Criminal liability in Indonesian positive law is based on the fundamental principle of "geen straf zonder schuld" (no crime without fault). This principle holds that a person can be punished only if it is proven that they committed an unlawful act accompanied by fault, either intentional or negligent. In Indonesian criminal law doctrine, this principle serves as the basis for assessing whether an officer's actions constitute the performance of state duties or constitute a crime. This principle is recognized as a fundamental norm of criminal liability, although it is not always explicitly stated in law.<sup>10</sup>

In the context of firearms use by security forces, culpability is assessed based on the limits of authority to use force. National Police Regulation No. 1 of 2009 and human rights principles place firearms as a last resort to protect life from a real threat. If a shooting occurs outside of these conditions, the officer is no longer acting as an executor of state authority but rather as a legal subject subject to criminal responsibility.<sup>11</sup> Thus, the legality of an action is not determined by the officer's status, but by the fulfillment of the requirements of necessity and proportionality.

Indonesian positive law also recognizes a dualism of officer responsibility: disciplinary/ethical and criminal. Misuse of firearms cannot be adequately resolved through internal mechanisms if the act meets the elements of a crime, because procedural violations resulting in loss of life constitute a violation of the right to life. Therefore, officers can still be subject to provisions of the Criminal Code, such as murder or assault resulting in death, if proven to have exceeded their authority.<sup>12</sup>

Furthermore, culpability for the use of firearms is assessed based on the concrete circumstances of the incident. If a shooting is carried out in self-defense against a real and imminent threat, it may be considered a justification (noodweer). Conversely, if officers are negligent or fire without an immediate threat, then culpa or even dolus may be met. It demonstrates that police discretion is not immunity from the law, but somewhat limited authority subject to the principle of general criminal liability.<sup>13</sup>

---

<sup>10</sup> Fasa Muhamad Hapid et al., "Penerapan Asas Geen Straf Zonder Schuld Dalam Penindakan Terhadap Kejahatan Penyalahgunaan Teknologi Deepfake," *JURNAL USM LAW REVIEW* 7, no. 3 (2024): 1155–74, <https://doi.org/10.26623/julr.v7i3.9686>; Ahda Mutaqqin, "A Review of the Principle Geen Straf Zonder Schuld in Criminal Liability for Fraud Through Mystical Ritual Modus," *Jurnal Peradaban Hukum* 2, no. 2 (2024): 58–61, <https://doi.org/10.33019/jph.v2i2.6>.

<sup>11</sup> Aulia Rahman Hasibuan, "The Rule of Law Shoots Dead Where Police Do against Criminals," *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no. 1 (2022): 154–62, <https://doi.org/10.30596/dll.v7i1.8489>; Piqi Rizki Padhilah et al., "Use of Firearms by Police Forces in the Perspective of Legal Sociology: A Study on Violence Control and Human Rights," *PALAR (Pakuan Law Review)* 11, no. 1 (2025): 205–14, <https://doi.org/10.33751/palar.v11i1>.

<sup>12</sup> Ari Eko Prasetyawan et al., "Convergence of Criminal Law Instruments in the Misuse of Firearms by Police Officers: A Review of the Criminal Code, the Police Law, and the Human Rights Law," *KRTHA BHAYANGKARA* 19, no. 3 (2025): 869–79, <https://doi.org/10.31599/krtha.v19i3.4152>.

<sup>13</sup> Philicia Manuhutu et al., *Penerapan Sanksi Pidana Terhadap Anggota Polri Yang Melakukan Penyalahgunaan Senjata Api*, 3, no. 1 (2023): 1–13; Hasibuan, "The Rule of Law Shoots Dead Where Police Do against Criminals."

Thus, Indonesian positive law positions officers as legal subjects who remain subject to the general criminal liability regime when using firearms beyond their authority. The state grants legitimacy only if the action meets the standards of legality, necessity, and proportionality. If these standards are violated, the officer's actions shift from official to personal criminal acts. This concept demonstrates that the use of lethal force is not an officer's right but rather a limited authority that always carries criminal liability.

### **The Concept of Criminal Liability in Islamic Criminal Law (*Al-Mas'ūliyyah Al-Jinā'iyah*) for the Loss of Life**

Islamic criminal law places criminal liability (*al-mas'ūliyyah al-jinā'iyah*) as a consequence of human actions that result in harm to life, property, or honor. This principle stems from the concept of protection of life (*ḥifẓ al-naḥs*) as one of the primary objectives of Sharia (*maqāṣid al-sharī'ah*). Therefore, any act resulting in loss of life must be judged by the perpetrator's culpability, not just its consequences. This assessment confirms that Islamic criminal law is not merely repressive but also ethical, linking accountability to the morality of the act.<sup>14</sup>

Criminal accountability in Islam is based on the capacity to act (*ahliyyah*) and the element of intent (*qaṣd*). A person can only be held accountable if they are sane, mature, and act consciously. Therefore, Islamic criminal law considers culpability as a primary element in determining the type of sanction. This approach differs from modern law, which often focuses on the construction of unlawful acts, because Islamic law directly links criminal acts to the perpetrator's intent and will.<sup>15</sup>

In cases of loss of life, Islamic criminal law classifies murder into three categories: '*amd* (intentional), *shibh al-'amd* (semi-intentional), and *khaṭā'* (unintentional).<sup>16</sup> Intentional murder occurs when the perpetrator intends the victim's death with a lethal instrument, thus incurring the penalty of *qiṣāṣ*. Semi-intentional murder occurs when the perpetrator wants to cause harm but uses a non-conventional lethal instrument, and therefore is subject to heavy *diyat*.<sup>17</sup> Murder by mistake is subject to light *diyat* and the obligation of expiation.<sup>18</sup> This classification demonstrates that the level of responsibility

<sup>14</sup> Makhrus Munajat, "Transformasi Hukum Pidana Islam Dalam Tata Hukum Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 1–13, <https://doi.org/10.24090/mnh.v0i1.2124>.

<sup>15</sup> Teguh Prasetyo, "Pidana Dalam Hukum Islam Dan Perbandingan Dengan Hukum Pidana Nasional," *Jurnal Hukum IUS QUIA IUSTUM* 12, no. 30 (2005): 262–74, <https://doi.org/10.20885/iustum.vol12.iss30.art8>; Maimun Maimun, "Fiqh Jinayah Sebagai Landasan Pendidikan Hukum Islam Untuk Meningkatkan Kesadaran Hukum Di Kalangan Mahasiswa," *Al Mizan Jurnal Hukum Islam Dan Ekonomi Syariah* 11, no. 2 (2024): 369–80, <https://doi.org/10.54621/jiam.v11i2.925>.

<sup>16</sup> Gunaldi Ahmad et al., "Principles of Reversal Burden of Proof in the Perspective of Indonesian Criminal Law and Islamic Law," *Jurnal Hukum Islam* 20, no. 2 (2022): 355–78, <https://doi.org/10.28918/jhi.v20i2.6749>.

<sup>17</sup> M. Nurul Irfan et al., "Murder by Treachery in Islamic and Indonesian Criminal Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 2 (2025): 164–81, <https://doi.org/10.30631/alrisalah.v25i2.2039>.

<sup>18</sup> Abu Hapsin and Nazar Nurdin, "Diat and Peace Money in the Crime of Culpable Homicide," *Al-Ahkam* 32, no. 2 (2022): 189–210, <https://doi.org/10.21580/AHKAM.2022.32.2.12413>.

depends on the severity of the perpetrator's wrongdoing, not solely on the outcome of the death.<sup>19</sup>

This approach demonstrates that Islamic criminal law conceptually applies the principle of proportionality. The greater the element of intent, the more severe the criminal responsibility. Thus, this system serves both as a moral and a legal mechanism to maintain a balance between protecting life and ensuring justice for the perpetrator. Even in the development of modern Indonesian law, the concept of *al-mas'ūliyyah al-jinā'iyyah* is seen as contributing to the formulation of the idea of culpability in the new Criminal Code, particularly with respect to intent and the harm caused.<sup>20</sup>

Thus, Islamic criminal law views loss of life as a serious violation of fundamental human rights that must be assessed through a multi-layered culpability structure. This system not only determines sanctions but also assesses the ethical legitimacy of the perpetrator's actions. This framework is relevant for evaluating the actions of state officials, as it distinguishes between legitimate use of force, negligence, and abuse of authority based on the perpetrator's level of moral and legal culpability.

### **Characteristics of Firearms Misuse by Security Forces**

Firearms misuse by security forces generally occurs when the use of force ceases to be based on the principles of necessity and proportionality. International standards stipulate that officers may only use firearms to protect life from a serious and imminent threat. When these requirements are not met, shootings are categorized as excessive use of force.<sup>21</sup>

In practice in Indonesia, violations frequently occur during crowd control and in non-emergency law enforcement. Research shows that officers often use firearms in situations that could have been resolved with non-lethal techniques. This pattern suggests that firearm use is influenced more by repressive responses than by objective threat assessments.<sup>22</sup>

Another characteristic is the weakness of internal oversight and institutional accountability. Ineffective oversight results in officers' actions being resolved more often through ethical mechanisms than through criminal proceedings. This situation creates structural impunity because violations of the right to life are not always followed by criminal justice.<sup>23</sup>

Furthermore, firearms misuse is often related to officer discretion in the field. Discretion, which should be limited, becomes broad authority when the threat standard is

---

<sup>19</sup> Riswadi Riswadi, "Perbuatan Pidana Bughah Dalam Hukum Pidana Islam," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 3, no. 1 (2014), <https://doi.org/10.22373/legitimasi.v3i1.336>.

<sup>20</sup> Junaidi Abdillah et al., "Contribution Model of Al-Mas' Ūliyyah al-Jinā'iyyah in the Formulation of Criminal Liability in Indonesia's New Criminal Code," *Al-Ahkam* 34, no. 2 (2024).

<sup>21</sup> United Nations, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Havana, Cuba, 1990).

<sup>22</sup> Ismail et al., "Akuntabilitas Penegakan Hukum Terhadap Aparat Kepolisian Yang Melakukan Tindak Kekerasan."

<sup>23</sup> Skinner, "Enhancing Accountability for Police Use of Lethal Force: Global Monitoring and Comparative Benchmarking."

not objectively measured. As a result, the decision to shoot is based on the officer's subjective perception, rather than clear legal parameters.<sup>24</sup>

Another pattern is the use of firearms in personal conflicts or non-duty situations. Several cases show officers using official weapons for purposes other than law enforcement. Such incidents confirm that firearms misuse stems not only from procedural errors but also from abuse of official authority.<sup>25</sup>

Thus, firearms misuse by officers follows a relatively consistent pattern: failure to meet the imminent threat standard, a predominance of repressive approaches, weak oversight, abuse of discretion, and the use of weapons outside of official duties. These characteristics indicate that the primary problem is not merely violations of technical procedures, but also the failure of the legal accountability system to limit the state's authority to use lethal force.

### **Analysis of Criminal Liability from a Positive Law Perspective**

Indonesian positive law assesses the use of firearms by officers based on the principle of culpability (*geen straf zonder schuld*). Officers only gain legal legitimacy if their actions meet the requirements of legality, necessity, and proportionality. If a shooting is carried out without a clear threat to life, the action is no longer considered the performance of official duties but rather a personal criminal act.<sup>26</sup>

Within the criminal law framework, culpability is divided into intent (*dolus*) and negligence (*culpa*). A shooting carried out with awareness of the possibility of the victim's death can be classified as murder, while a shooting resulting from procedural negligence can be charged with negligence resulting in death. The determination of these categories depends on the specific circumstances of the incident and the officer's standard of professional care.<sup>27</sup>

Furthermore, positive law recognizes justifications such as self-defense (*noodweer*). Officers can only use these justifications when there is a real and immediate attack. If the threat is not immediate or can be avoided by other means, the justification is lost, and criminal liability remains.<sup>28</sup>

In law enforcement practice, firearms misuse is often resolved through internal disciplinary mechanisms. However, ethical resolution does not eliminate criminal liability if the elements of the offense are met. Criminal penalties remain necessary

<sup>24</sup> Nainggolan et al., "Alasan Penggunaan Kekerasan Dengan Senjata Api Oleh Anggota Polri."

<sup>25</sup> Amnesty Indonesia, "Cederai 2024 Dan Awali 2025, Perlu Evaluasi Besar Penggunaan Senjata Api TNI-Polri," 2025, <https://www.amnesty.id/kabar-terbaru/siaran-pers/cederai-2024-dan-awali-2025-perlu-evaluasi-besar-penggunaan-senjata-api-tni-polri/01/2025/>.

<sup>26</sup> Aulia Rahman and Hakim Hasibuan, "The Rule of Law Shoots Dead Where Police Do against Criminals," *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no. 1 (2022): 154–62, <https://doi.org/10.30596/dll.v7i1.8489>; Hapid et al., "Penerapan Asas Geen Straf Zonder Schuld Dalam Penindakan Terhadap Kejahatan Penyalahgunaan Teknologi Deepfake"; Mutaqqin, "A Review of the Principle Geen Straf Zonder Schuld in Criminal Liability for Fraud Through Mystical Ritual Modus."

<sup>27</sup> Moeljatno, *Asas-Asas Hukum Pidana* (Rineka Cipta, 2002).

<sup>28</sup> Rendy Marselino, "Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2)," *Jurist-Diction* 3, no. 2 (2020): 633, <https://doi.org/10.20473/jd.v3i2.18208>.

because the violation concerns the right to life, which is protected by the Constitution and general criminal law.<sup>29</sup>

The use of firearms for crowd control must also adhere to the principle of progression. If officers immediately use lethal force without the non-lethal phase, the action exceeds their discretionary authority. Police discretion does not grant immunity; rather, it confers limited jurisdiction subject to the principle of criminal liability.<sup>30</sup>

Legal assessment also takes into account the professional standards of officers. Because officers are trained to use firearms, their standard of care is higher than that of civilians. Therefore, officers' errors are typically judged as conditional intent (*dolus eventualis*) when they are aware of the fatal risk but still pull the trigger.

Thus, Indonesian positive law limits the use of firearms to situations of extreme necessity, always accompanied by criminal liability. When the requirement of a real threat is not met, the officer's actions shift from official conduct to criminal conduct. This analysis demonstrates that the limits of state legitimacy in the use of lethal force lie in the fulfillment of the elements of culpability and the absence of a valid justification.

#### **Analysis of Firearms Misuse from an Islamic Criminal Law Perspective**

Islamic criminal law assesses acts that take life through the concept of *al-mas'ūliyyah al-jinā'iyah*, namely, criminal liability based on the intention, will, and consequences of the act. This principle is rooted in the purpose of Sharia to protect the soul (*hifz al-nafs*). Therefore, any use of lethal force must be tested to determine whether it was truly necessary to preserve life or constituted a violation of the right to life.<sup>31</sup>

In Islamic criminal law, the assessment of culpability not only looks at the outcome of death, but also at the perpetrator's intentionality. An officer who shoots with the knowledge that his actions are potentially lethal can be categorized as *'amd* (intentional). This category applies even if the perpetrator did not explicitly intend death, as long as he understood the lethality of the weapon used.<sup>32</sup>

If an officer did not intend to kill but used a dangerous weapon in a disproportionate situation, then his actions fall under *shibh al-'amd* (semi-intentional). In this category, Islamic criminal law still imposes heavy responsibility because the perpetrator was aware of the high risk to life.<sup>33</sup> Therefore, professional negligence does not eliminate responsibility but only affects the level of punishment.

---

<sup>29</sup> Prasetyawan et al., "Convergence of Criminal Law Instruments in the Misuse of Firearms by Police Officers: A Review of the Criminal Code, the Police Law, and the Human Rights Law."

<sup>30</sup> Nainggolan et al., "Alasan Penggunaan Kekerasan Dengan Senjata Api Oleh Anggota Polri."

<sup>31</sup> Munajat, "Transformasi Hukum Pidana Islam Dalam Tata Hukum Indonesia."

<sup>32</sup> M. Ighsaan Taliep, "A Comparative Study of Intentional Homicide (al-Qatl al-'Amd) in Shari'ah and the Modern Human Rights Concept of Right to Life for Murderers," *AL-WASAṬIYYAH: IPSA Journal of Islamic Studies* 1, no. 1 (2022): 81–100, <https://doi.org/10.58409/ipsajis.vi1.8>; Muhammad Al Amin Bascin and Sudirman Suparmin, "An Examination of Attempted Murder in Islamic Criminal Law," *Jurnal Daulat Hukum* 7, no. 3 (2024): 319–26, <https://doi.org/10.30659/jdh.v7i3.40635>; Riswadi, "Perbuatan Pidana Bughah Dalam Hukum Pidana Islam."

<sup>33</sup> Gunaldi Ahmad et al., "The Death Penalty in Extraordinary Crimes: A Study on Killing Deception (Qatl al-Ghīlah)," *Hikmatuna: Journal for Integrative Islamic Studies* 9, no. 1 (2023): 14–29, <https://doi.org/10.28918/hikmatuna.v9i1.945>.

Meanwhile, the category of *khaṭā'* (unintentional) only applies if the result of death is truly unintentional and could not have been reasonably foreseen. In the context of armed forces, the standard of care is so high that errors are rarely categorized as *khaṭā'*. It is because the use of firearms inherently carries a fatal risk that the perpetrator must understand.<sup>34</sup>

Islamic criminal law also recognizes justifications such as self-defense (*daf' al-ṣā'il*). However, self-defense is only valid when there is a real, immediate, and unavoidable threat. If the action exceeds the danger, criminal liability still applies because Sharia prohibits excessive action in self-defense.<sup>35</sup>

This concept demonstrates that position does not absolve responsibility. Officers remain considered individuals (*mukallaf*) who bear the moral and legal consequences of their actions. Abuse of authority is even more serious because it violates the mandate of power, which is supposed to protect the public.

Thus, Islamic criminal law views the use of firearms by officers as an act that must meet both moral and legal standards. If there is no real threat to life, the act tends to fall into the category of *'amd* or *shibh al-'amd*, thus retaining criminal responsibility. This approach asserts that the legitimacy of the use of lethal force depends not on rank but on the degree of culpability and the protection of human life.

### **Comparison and Reconstruction of Criminal Liability of Officials**

Indonesian positive law and Islamic criminal law both base criminal liability on fault. Positive law uses the principle of "*geen straf zonder schuld*." In contrast, Islamic criminal law uses the concept of *al-mas'ūliyyah al-jinā'iyyah*. Both reject punishment without fault, but differ in how they assess the quality of fault. Positive law emphasizes the elements of the act and its consequences. In contrast, Islamic law assesses both intention and the consequences of the act.

In positive law, fault is classified as intentional (*dolus*) and negligence (*culpa*). The distinction focuses on the perpetrator's mental attitude toward the consequences. In contrast, Islamic criminal law divides fault into "*'amd*," "*shibh al-'amd*," and "*khaṭā'*." This division is more detailed because it considers the means, method, and level of risk of the act. As a result, Islamic law provides a broader spectrum of responsibility assessments than positive law.

Another difference arises in justification. Positive law recognizes the right of self-defense (*noodweer*) when there is a real and immediate attack. Islamic criminal law also recognizes self-defense (*daf' al-ṣā'il*), but requires strict proportionality and prohibits excess. Thus, while both permit the use of lethal force, Islamic law places stronger moral restraints on excessive force.

In the practice of firearms use by law enforcement officers, positive law often struggles to distinguish between negligence and conditional intent (*dolus eventualis*). This assessment relies on subjective evidence in court. In contrast, Islamic criminal law

<sup>34</sup> Syamsul Anwar, "Dalālah Al-Khaṭī Wa Āliyyāt al-Ijtihād: Dirāsah Uṣuliyyah Bi Iḥālāh Khāṣṣah Ilā Qaḍiyah al-Qatl al-Raḥim," *Al-Jami'ah: Journal of Islamic Studies* 41, no. 1 (2003).

<sup>35</sup> Prasetyo, "Pidana Dalam Hukum Islam Dan Perbandingan Dengan Hukum Pidana Nasional."

assesses the weapon's danger and the context of the action, making it easier to qualify high-risk acts as serious misconduct.

Positive law views the office as not absolving criminal responsibility, but in practice, internal ethical resolutions often arise. Islamic criminal law rejects this distinction because each individual is considered a *mukallaf* (independent) who is directly responsible for their actions. Therefore, abuse of authority is viewed as a more serious offense because it involves a betrayal of trust.

Based on this comparison, it is clear that positive law emphasizes procedural certainty, while Islamic criminal law emphasizes the moral legitimacy of actions. Positive law ensures the legality of law enforcement officers' actions. In contrast, Islamic law assesses the ethical appropriateness of the use of force. These differences demonstrate that each system has both advantages and limitations in evaluating officers' use of firearms.

Criminal accountability reconstruction can be conducted by integrating both approaches. The first assessment is performed through positive legal standards, then strengthened by an evaluation of culpability based on the classifications of '*amd*, *shibh al-'amd*, and *khaṭā*'. This model allows for accountability that is not only legally valid but also morally just.

Thus, the reconstruction of criminal accountability for officers positions the use of firearms as a limited authority subject to two layers of control: juridical and ethical. This combined approach strengthens officer accountability, clarifies the limits of the legitimacy of lethal force, and prevents impunity in law enforcement practices.

## CONCLUSION

This study found that criminal liability for misuse of firearms by security forces under Indonesian positive law depends on the fulfillment of the elements of fault, either intentional or negligent, and the absence of a justifiable reason, such as a defense of necessity. However, in practice, the assessment is often limited to procedural legality, making it difficult to distinguish between negligence and conditional intent. Meanwhile, Islamic criminal law, through the concept of *al-mas'ūliyyah al-jinā'iyyah*, assesses actions based on the degree of multiple culpability ('*amd*, *shibh al-'amd*, and *khaṭā*') and the objective of protecting life (*hifz al-nafs*). A comparison of the two shows that positive law provides legal certainty. In contrast, Islamic criminal law provides a more in-depth moral evaluation. Therefore, misuse of firearms by security forces generally tends to be considered a serious offense, as the deliberate use of lethal weapons outside of a real threat cannot be justified either legally or ethically. Academically, this study recommends developing a criminal accountability concept that integrates a formal-legal approach with an ethically based evaluation of culpability to enrich the doctrine of culpability in national criminal law. Practically, law enforcement officials need to implement stricter standards for the use of force by assessing the level of risk before using firearms and ensuring that every violation is processed through criminal mechanisms, not just internal discipline. This integration is expected to clarify the limits of the legitimacy of the state's use of

lethal force and strengthen the accountability of officials in the criminal justice system. In this study, the scope is limited to the comparison between Indonesian positive criminal law and Islamic criminal law, so it has not yet considered a deeper perspective of international law or comparative practices from other countries. Third, this study has not operationally tested the integration model offered in the criminal justice system, so its implementability is still conceptual. Based on these limitations, further research is suggested to develop a comparative study involving international law or the practices of other countries, which is also important to enrich the analysis and strengthen the validity of the proposed model.

## REFERENCES

- Abdillah, Junaidi, Tri Nurhayati, Najichah Najichah, Lira Zohara, and Muchammad Tholchah. "Contribution Model of Al-Mas' Ūliyyah al-Jinā'iyah in the Formulation of Criminal Liability in Indonesia's New Criminal Code." *Al-Ahkam* 34, no. 2 (2024).
- Ahmad, Gunaldi, Maskur Rosyid, M. Atho Mudzhar, and Mhd Rasid Ritonga. "Principles of Reversal Burden of Proof in the Perspective of Indonesian Criminal Law and Islamic Law." *Jurnal Hukum Islam* 20, no. 2 (2022): 355–78. <https://doi.org/10.28918/jhi.v20i2.6749>.
- Alpert, Geoffrey P., and Roger G. Dunham. *Understanding Police Use of Force*. Cambridge University Press, 2004. <https://doi.org/10.1017/CBO9780511499449>.
- Amalia, Apri, and Johannes Mangapul Turnip. "Pertanggungjawaban Hukum Kepolisian Yang Melakukan Kealfaan Dalam Tindakan Diskresi Terhadap Tindak Pidana Lalu Lintas." *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 2 (2023): 119–33. <https://doi.org/10.55606/birokrasi.v1i2.560>.
- Amnesty Indonesia. "Cederai 2024 Dan Awali 2025, Perlu Evaluasi Besar Penggunaan Senjata Api TNI-Polri." 2025. <https://www.amnesty.id/kabar-terbaru/siaran-pers/cederai-2024-dan-awali-2025-perlu-evaluasi-besar-penggunaan-senjata-api-tni-polri/01/2025/>.
- Anwar, Syamsul. "Dalālah Al-Khafī Wa Āliyāt al-Ijtihād: Dirāsah Uşuliyah Bi Iḥālah Khāṣṣah Ilā Qaḍiyah al-Qatl al-Raḥim." *Al-Jami'ah: Journal of Islamic Studies* 41, no. 1 (2003).
- Bancin, Muhammad Al Amin, and Sudirman Suparmin. "An Examination of Attempted Murder in Islamic Criminal Law." *Jurnal Daulat Hukum* 7, no. 3 (2024): 319–26. <https://doi.org/10.30659/jdh.v7i3.40635>.
- Fyfe, James J. "Observations on Police Deadly Force." *Crime & Delinquency* 27, no. 3 (1981): 376–89. <https://doi.org/10.1177/001112878102700305>.
- Goldsmith, Andrew. "Police Reform and the Problem of Trust." *Theoretical Criminology* 9, no. 4 (2005): 443–70. <https://doi.org/10.1177/1362480605057727>.
- Gunaldi Ahmad, M. Atho Mudzhar, Maskur Rosyid, and Mhd Rasid Ritonga. "The Death Penalty in Extraordinary Crimes: A Study on Killing Deception (Qatl al-Ghīlah)."

- Hikmatuna: Journal for Integrative Islamic Studies* 9, no. 1 (2023): 14–29. <https://doi.org/10.28918/hikmatuna.v9i1.945>.
- Hapid, Fasa Muhammad, Ija Suntana, and Muhammad Yayan Royani. “Penerapan Asas Geen Straf Zonder Schuld Dalam Penindakan Terhadap Kejahatan Penyalahgunaan Teknologi Deepfake.” *JURNAL USM LAW REVIEW* 7, no. 3 (2024): 1155–74. <https://doi.org/10.26623/julr.v7i3.9686>.
- Hapsin, Abu, and Nazar Nurdin. “Diat and Peace Money in the Crime of Culpable Homicide.” *Al-Ahkam* 32, no. 2 (2022): 189–210. <https://doi.org/10.21580/AHKAM.2022.32.2.12413>.
- Hasibuan, Aulia Rahman. “The Rule of Law Shoots Dead Where Police Do against Criminals.” *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no. 1 (2022): 154–62. <https://doi.org/10.30596/dll.v7i1.8489>.
- Irfan, M. Nurul, Maskur Rosyid, and Muhammad Fauzinudin Faiz. “Murder by Treachery in Islamic and Indonesian Criminal Law.” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 2 (2025): 164–81. <https://doi.org/10.30631/alrisalah.v25i2.2039>.
- Ismail, Fakhris Lutfianto Hapsoro, and Andi Muhammad Rezaldy. “Akuntabilitas Penegakan Hukum Terhadap Aparat Kepolisian Yang Melakukan Tindak Kekerasan.” *JH Ius Quia Iustum* 30, no. 3 (2023): 602–21. <https://doi.org/10.20885/iustum.vol30.iss3.art7>.
- Kinanti, Tasya Putri, Putu Ratih Kumala Dewi, and A. A. Bagus Surya Widya Nugraha. “Police Brutality Terhadap Kaum Afrika- Amerika: Penggunaan Kekuatan Dan Akuntabilitas Kepolisian Di Minnesota Tahun 2020.” *DIKSHI (Diskusi Ilmiah Komunitas Hubungan Internasional)* 3, no. 2 (2024): 468–82.
- Lestari, Ni Komang Ayu Diah, and Diah Ratna Sari Hariyanto. “Pertanggungjawaban Oknum Aparat Kepolisian Dalam Melakukan Tindakan Kekerasan Dan Extrajudicial Killing Kepada Pelaku Tindak Pidana.” *Kertha Negara: Journal Ilmu Hukum* 12, no. 2 (2024): 172–85.
- Maimun, Maimun. “Fiqh Jinayah Sebagai Landasan Pendidikan Hukum Islam Untuk Meningkatkan Kesadaran Hukum Di Kalangan Mahasiswa.” *Al Mizan Jurnal Hukum Islam Dan Ekonomi Syariah* 11, no. 2 (2024): 369–80. <https://doi.org/10.54621/jiam.v11i2.925>.
- Manuhutu, Philicia, Saartje Sarah Alfons, and Denny Latumaerissa. *Penerapan Sanksi Pidana Terhadap Anggota Polri Yang Melakukan Penyalahgunaan Senjata Api*. 3, no. 1 (2023): 1–13.
- Marselino, Rendy. “Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2).” *Jurist-Diction* 3, no. 2 (2020): 633. <https://doi.org/10.20473/jd.v3i2.18208>.
- Moeljatno. *Asas-Asas Hukum Pidana*. Rineka Cipta, 2002.
- Munajat, Makhrus. “Transformasi Hukum Pidana Islam Dalam Tata Hukum Indonesia.” *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 1–13. <https://doi.org/10.24090/mnh.v0i1.2124>.

- Mutaqqin, Ahda. "A Review of the Principle Geen Straf Zonder Schuld in Criminal Liability for Fraud Through Mystical Ritual Modus." *Jurnal Peradaban Hukum* 2, no. 2 (2024): 58–61. <https://doi.org/10.33019/jph.v2i2.6>.
- Nainggolan, Daniel Junwaldi MP, Sufirman Rahman, and Askari Razak. "Alasan Penggunaan Kekerasan Dengan Senjata Api Oleh Anggota Polri." *Journal of Lex Theory (JLT)* 3, no. 2 (2022). <https://doi.org/10.52103/jlt.v3i2.1503>.
- Padhilah, Piqi Rizki, Umar Rojikin, and Beni Ahmad Saebani. "Use of Firearms by Police Forces in the Perspective of Legal Sociology: A Study on Violence Control and Human Rights." *PALAR (Pakuan Law Review)* 11, no. 1 (2025): 205–14. <https://doi.org/10.33751/palar.v11i1>.
- Prasetyawan, Ari Eko, Edi Saputra Hasibuan, and Diana Fitriana. "Convergence of Criminal Law Instruments in the Misuse of Firearms by Police Officers: A Review of the Criminal Code, the Police Law, and the Human Rights Law." *KRTHA BHAYANGKARA* 19, no. 3 (2025): 869–79. <https://doi.org/10.31599/krtha.v19i3.4152>.
- Prasetyo, Teguh. "Pidana Dalam Hukum Islam Dan Perbandingan Dengan Hukum Pidana Nasional." *Jurnal Hukum IUS QUIA IUSTUM* 12, no. 30 (2005): 262–74. <https://doi.org/10.20885/iustum.vol12.iss30.art8>.
- Rahman, Aulia, and Hakim Hasibuan. "The Rule of Law Shoots Dead Where Police Do against Criminals." *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no. 1 (2022): 154–62. <https://doi.org/10.30596/dll.v7i1.8489>.
- Riswadi, Riswadi. "Perbuatan Pidana Bughah Dalam Hukum Pidana Islam." *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 3, no. 1 (2014). <https://doi.org/10.22373/legitimasi.v3i1.336>.
- Skinner, Stephen. "Enhancing Accountability for Police Use of Lethal Force: Global Monitoring and Comparative Benchmarking." *Policing: A Journal of Policy and Practice* 18, no. paad100 (2024). <https://doi.org/10.1093/police/paad100>.
- Stoughton, Seth W., Jeffrey J. Noble, and Geoffrey P. Alpert. *Evaluating Police Uses of Force*. New York University Press, 2020. <https://doi.org/10.18574/nyu/9781479814657.001.0001>.
- Taliep, M. Ighsaan. "A Comparative Study of Intentional Homicide (al-Qatl al-‘Amd) in Shari‘ah and the Modern Human Rights Concept of Right to Life for Murderers." *AL-WASATYYAH: IPSA Journal of Islamic Studies* 1, no. 1 (2022): 81–100. <https://doi.org/10.58409/ipsajis.vi1.8>.
- Terrill, William, and Eugene A. Paoline. "Examining Less Lethal Force Policy and the Force Continuum." *Police Quarterly* 16, no. 1 (2013): 38–65. <https://doi.org/10.1177/1098611112451262>.
- United Nations. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Havana, Cuba, 1990.
- Waddington, P. A. J. "Use of Force." *Policing* 1, no. 3 (2007): 249–51. <https://doi.org/10.1093/police/pam047>.

Walker, Samuel E., and Carol A. Archbold. *The New World of Police Accountability*. SAGE Publications, Inc., 2020. <https://doi.org/10.4135/9781544339214>.