



**JUDGE'S CONSIDERATION IN THE CASE OF NEGLIGENCE CAUSING DEATH
ACCORDING TO ISLAMIC CRIMINAL LAW
(Study of Decision Number 238/Pid.B/2023/PN Bir)**

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Abstract

Criminal acts due to negligence (*culpa*) resulting in death are an important issue in the Indonesian criminal law system and Islamic criminal law. This research is motivated by the decision of the Bireuen District Court Number 238/Pid.B/2023/PN Bir, where the defendant was found guilty of his negligence in installing high-voltage electric wires which caused the death of another person. The formulation of the problem in this study includes how the judge considered in making a decision and how the analysis of Islamic criminal law on cases of negligence causing death to another person with the *qatlul khatha'* theory. This study uses a normative juridical method by analyzing the results of the decision Number 238/Pid.B/2023/PN Bir. The results of the study show that the panel of judges has determined the elements of Article 359 of the Criminal Code, but did not consider the level of negligence as conscious negligence. According to the perspective of Islamic criminal law, the defendant's actions have fulfilled the elements of *qatlul khatha'*, therefore, it is appropriate to be charged with paying *diyat* and *kaffarat*.

Keywords: Negligence, *Qatlul Khatha'*, *Diyat*, Islamic Criminal Law, Court Verdict

A. Introduction

A criminal act can arise not only from the deliberate intention of the offender (*delik dolus*), but also from negligence or carelessness (*delik culpa*), where the perpetrator does not intend to cause harm. Cases involving negligence are quite common in society and often require a detailed understanding of the circumstances leading to the offense. For example, when a person's negligence results in another's death, the situation can be complicated by

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attempts to attribute the victim's death to natural causes or the victim's own actions. This complexity makes it an important topic for legal scholars and practitioners to explore in order to ensure justice is fairly administered across all levels of society.

One notable case illustrating criminal negligence is the decision by the Bireuen District Court in case number 238/Pid.B/2023/PN Bir. The defendant, Ibrahim Bin Ibn Abbas, was found guilty of causing the death of Husayn Bin Ishak due to negligence. Ibrahim had installed a high-voltage electric fence to protect his plantation, but when he discovered the victim electrocuted by this fence, he panicked and attempted to conceal the incident by burying the body. The court concluded that Ibrahim's negligence directly caused the victim's death, convicting him under Article 359 of the Criminal Code and sentencing him to one year and six months in prison.

Several previous studies have examined similar issues of criminal liability for negligence resulting in death (Aditya et al., 2016). For instance, research by Aulia Risky Aditya and colleagues analyzed a case involving unsafe electrical installations, emphasizing that negligence under Article 359 can lead to criminal responsibility. Another study by Muhammad Faisal Syahputra and Zainab Ompu Jainah (Syahputra & Jainah, 2024) focused on traffic violations causing death, highlighting the legal consequences under traffic law. Additionally, research by Eka Suryani and Nelvitia Purba explored judicial considerations in sentencing traffic accident offenders. While these studies share a focus on negligence and legal accountability, the current research uniquely incorporates Islamic criminal law perspectives, particularly the concept of *qatlul khatha'*, to deepen the analysis of negligence and legal responsibility (Suryani, 2024).

However, interestingly, in the case with decision number 238/Pid.B/2023/PN Bir, based on the perpetrator's statement in court, the perpetrator admitted that he had eliminated evidence in the form of the victim's body by burying it and the perpetrator had also thrown away the victim's search equipment so that it would not be known by others. The Panel of Judges did not consider this fact as an attempt to eliminate evidence by the perpetrator in the trial decision. Based on the perpetrator's confession to the court, the perpetrator should have been sentenced to a heavier sentence due to the disappearance of evidence carried out by the perpetrator.

Based on the description that has been submitted above, further study is needed related to the problem of forgetfulness that causes death from the perspective of Islamic criminal law with the theory of *qatlul khatha'* which focuses on the consideration of the Bireun District Court Judge in deciding the case of forgetfulness that causes death in Decision Number 238/Pid.B/2023/PN Bir.

B. Method

The research method is a series of activities in seeking the truth of a research study, which begins with a thought that forms the formulation of the problem so that it gives rise to an initial hypothesis, with the help and perception of previous research, so that the research can be processed and analyzed which finally forms a conclusion (Sahira, 2021).

The research employs an empirical juridical approach, which combines the study of legal regulations and literature with real-world observation. This method allows the

researcher to analyze legal issues by examining both primary sources, such as court decisions, and secondary sources, including journals and scholarly articles. The normative aspect of the research involves a thorough review of relevant laws and literature to establish a solid theoretical foundation for the study.

Qualitative research methods are used to explore the subject matter in depth, focusing on descriptive data gathered from written materials and interviews. The study analyzes the interplay of social phenomena and legal principles by interpreting data collected from various sources (Umar, 2004). The primary data comes from Decision Number 238/Pid.B/2023/PN Bir, while secondary data includes literature that provides context and explanation for the primary legal materials (Muhaimin, 2020).

Data collection techniques in this study involve systematic interviews with key informants, such as a member of the panel of judges in the referenced case, as well as documentation of court decisions (Mulyana, 2010). Additional supporting information is sourced from books, articles, internet resources, and other research materials. The data is then organized, analyzed, and synthesized systematically to identify patterns and draw comprehensive conclusions that address the research questions.

C. Findings and discussion

1. An Overview of Forgetfulness That Causes Death According to Positive Law and Islamic Criminal Law

Terminologically, *Guilt* comes from Latin meaning negligence, mistake, forgetfulness, or carelessness. The four terms are the same word form to define the meaning of unintentional error (Jonaedi Efendi & Lutfianingsih, 2016).

The Criminal Code (KUHP) does not provide a specific definition of the term *Guilt*, but legal experts define *Guilt* as forgetfulness based on the formulation of Article 359 of the Criminal Code which reads "Whoever because of his fault (his negligence) causes the death of another person, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year." (Kitab Undang-Undang Hukum Pidana Pasal 359, n.d.) Based on this article, *Guilt* or forgetfulness can be defined as a person who due to his negligence or forgetfulness not due to intentionality causes the loss of the life of another person who is subject to criminal sanctions. In a narrow sense, forgetfulness refers to a form of mistake in which the perpetrator of a criminal act acts unintentionally, but due to a lack of caution so that unwanted acts occur. The term "culpa" is explained in *Memory of Explanation* (MvT) when the Dutch Minister of Justice submitted a Draft Criminal Code. In the explanation, "negligence" is described as: a) lack of consideration that should have been considered; b) lack of necessary knowledge or understanding; and c) lack of discretion that should be realized (Sari & Rambe, 2020).

In law and jurisprudence, *Guilt* defined as *A Lack of Providence* or *A lack of caution*, which means a lack of ability to predict the likely occurrence of certain consequences, or a lack of prudence which all refer to the concept of lack of prudence or attention (Sari & Rambe,

2020). Forgetfulness itself can appear in two main forms, even if the act is done consciously: (Chandra, 2022)

- a. Conscious forgetfulness (*bewuste schuld*), which is when the perpetrator is aware of the actions taken and the potential consequences, but still believes or hopes that the consequences will not occur.
- b. Unconscious forgetfulness (*onbewuste schuld*), which is when the perpetrator is not aware of the possible consequences of his actions, even though he should have been able to predict it in advance.

According to Van Hattum, conscious forgetfulness is only a simple form of awareness of the possibilities that arise, and does not fall into the category *Dolus Eventualis*. Therefore, the difference between these two forms of forgetfulness is considered not very significant. Basically, forgetfulness is a normative concept, not a reflection of a real situation (not a *Factual understanding*). To determine whether a person is negligent, his judgment must be viewed externally based on the situation at hand and how a person should act in those circumstances (Chandra, 2022).

Based on the provisions of Law Number 1 of 1960 concerning Amendments to the Criminal Code, criminal punishment for crimes *Guilt* aggravated to a maximum of five years which was previously only one year so that the formulation of the article regarding the offence *Guilt* changes sound to "*Whoever because of his negligence (forgetfulness) causes the death of another person is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year*". This is in line with the government's intention to reduce the number of traffic accidents due to driver carelessness that results in the death of others. The government feels that with a maximum sentence of one year, it cannot have a deterrent effect even though because of its carelessness it not only causes losses to themselves but also death to others (Sepang & Lembong, 2022).

Article 359 of the Criminal Code stipulates that every person due to his negligence causing the death of another person must be sentenced to a maximum of 5 years in prison and at least 1 year in prison. Interpreting the above Article based on the elements of the criminal formulation regulated by Article 359, namely: (Ishaq, 2022)

- a. Who Is

The term "who's who" is used to identify who is the perpetrator of a criminal act, namely the subject of the law who commits a crime and has the capacity to account for his actions. In this context, what is meant by a legal subject who is capable of responsibility is an individual who, based on his condition and mental capacity, can be held accountable for his actions. According to the doctrine of criminal law, this ability is defined as a perpetrator who is in a conscious state when committing a criminal act.

- b. Because of his forgetfulness

This element shows that the victim's death was the result of an unwanted act by the defendant (perpetrator). The provisions in the article remain valid in any

situation, as long as the negligence committed has actually caused the loss of a person's life. This remains valid even though there are special regulations outside the Criminal Code that also regulate criminal threats against such negligent acts.

c. Elements cause the death of others

This element indicates that negligent acts committed by the subject of the law resulted in the death of another person.

In the perspective of Islamic criminal law, forgetfulness is known as the term *Khatha'*. In terms of, *Khatha'* refers to the forgiven act. In this context, the wrong intention or lack of knowledge of the perpetrator is not a consideration, because there is no element of intentionality or prudence in his actions, so that the perpetrator is not considered guilty (M. Abdul Mujieb, Maburi Tholhah, 2002). In the book *Al-Ahkam Al-Sulthaniyah* The work of Imam al-Mawardi, *Khatha'* It is interpreted as an act that causes the death of another person without any element of intentionality, so that the perpetrator is not subject to sanctions. Meanwhile, according to Abdul Kadir Audah in his work *Tasyri' al-Jina'i al-Islami*, *Khatha'* is the act of a person who has no intention of killing, but the result of his actions actually results in the death of another person (Marpaung, 2024).

In the book *Al-Mughni* by Ibn Qudamah, *Khatha'* Defined as someone who does not intend to kill others because of his deeds such as someone who intends to shoot game but his arrow misses and hits another person until he dies (Qudamah, 2010). Ahmad Wardi Muslich distinguishes two forms of acts that arise from negligence (*Al-Khatha'*), namely: (Muslich, 2004)

- a. The perpetrator deliberately committed an act without intention that actually led to the occurrence of *jarimah*. Errors or omissions in this category fall into two types:
 - 1) Mistake in acting, for example someone who intends to shoot a bird, but the bullet misses and hits someone else.
 - 2) Confused in conjecture, like a soldier who shoots someone he thinks is an enemy, but it turns out that the person is his teammate.
- b. The perpetrator has no intention of committing any act or *gesture*, but the act occurred due to his negligence or lack of care.

Hanafi in his work *Principles of Islamic Criminal Law*, divides two forms of error or omission, namely: (Hanafi, 2005)

- a. *Al-khatha' fi as-syakhsi* is a form of objective error (mistake in the target), which is when someone commits an act of *jarimah* with the aim of killing a certain person, but it is someone else who is the victim. This means that mistakes occur in the implementation of their actions. For example, A intends to shoot B to kill him, but because B dodges, the shot instead hits C who is near B.
- b. *Al-khatha' fisy-syakhsyah* is a form of subjective error (mistake in judging a person's identity), which occurs when the perpetrator kills someone who is mistaken for someone else. The mistake lies in the wrong perception or suspicion of the

perpetrator. For example, A intends to kill B and is convinced that the person he killed is B, but after being examined it turns out that the person killed is C.

In Islamic criminal law, forgetfulness that results in the death of another person is known as the term *qatlul khatha'*, namely murder that occurs without any element of intention, intention, or intention of the perpetrator, either to the act or the victim. An example is someone who throws a stone at a tree, but the stone hits another person and causes death (Az-Zuhaili, n.d.). In the context of Islamic law, accidental murder has different legal consequences than intentional killing. Perp *qatlul khatha'* He is not subject to a punishment equivalent to the perpetrator of intentional murder. Generally, the perpetrator is asked to pay *Düsseldorf* (fine) to the victim's family as a form of compensation and as an effort to reconcile the two parties (Sutoyo & Hasbi, 2024).

The *Fuqaha* emphasizing that the main characteristics of *qatlul khatha'* lies in the absence of an element of intentionality in the actions of the perpetrator, but rather due to negligence or lack of care, which ultimately leads to the death of another person. This element is the fundamental differentiator between *qatlul khatha'* and other types of murder (Sutoyo & Hasbi, 2024).

Thus, *qatlul khatha'* is a form of murder that occurs due to negligence, not because of the intention to take life. In contrast to intentional murder, where the perpetrator does have the intention to kill or injure the victim to the point of death. However, the two have something in common, namely both use tools that can cause death.

Allah SWT. has forbidden murder except for murder committed intentionally as stated in Surah An-Nisa' verse 92:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقتُلَ مُؤْمِنًا إِلَّا خَطَاءً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاءً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَّةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا

"And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise."

This verse not only forbids a believer to kill another believer, but the prohibition is very strict, even stating as if it is impossible for a believer to kill another believer. If that happens, it can only happen due to negligence. If a person kills a believer, whether a child or an adult, male or female, unintentionally, then he is obligated to set free a believer's servant, even if he has to sell his property for it, and pay *Düsseldorf* to the victim's family in a good, easy, and

sincere way. However, if the victim's family is sincere and gives alms by freeing the killer from the obligation to pay *Düßeldorf*, then it is also accepted. If the victim is a believer from a group that is hostile to you, even though he is a believer, then the murderer is still obliged to free the servant of the believer. Meanwhile, if the victim comes from a group of infidels who have a peace treaty with you and do not attack each other, then the murderer is obliged to pay *Düßeldorf* to the victim's family and to free the servants of the believers. If the murderer is unable to obtain a righteous servant, then he must fast for two consecutive months as a form of repentance, in accordance with Allah's decree (Shihab, 2019).

An act of forgetfulness that causes death is said to be an act of wrongful murder (forgetfulness) or *Al-Qatlul Khatha'* (accidental) when meeting the following elements:(Az-Zuhaili, n.d.)

- a. There is an act that causes death.

Acts that result in death must be committed unintentionally by the perpetrator or due to his negligence.

- b. The occurrence of the act was due to mistakes.

Basically, wrongdoing is the main difference between negligence-caused homicides and other homicides. No sanctions are imposed on a person who commits a mistake, unless his or her actions cause harm to others. In Islamic law, the measure of error is measured by negligence, lack of care, or the feeling that there will be no bad consequences. Thus, this error occurs due to negligence that results in the loss or death of another person.

- c. There is a causal relationship between the wrong act and the victim's death.

This element states that the victim's death was caused by the fault of the negligent perpetrator. In other words, the perpetrator's negligence was the cause of the victim's death.

In Islamic criminal law, accidental murder or forgetfulness can be subject to different legal consequences, depending on the context of the case. Wrongful death will not be punished in the same way as intentional murder. Punishment for accidental murder in Islamic law for a person *Mukallaf* is paying *Düßeldorf* (Sari & Rambe, 2020). According to Imam Shafi'i, *Düßeldorf* for this act is classified as *Diyat Mukhaffafah* that is *Düßeldorf* which is reminded. The relief can be seen from three aspects, namely: (Sutoyo & Hasbi, 2024)

- a. The obligation to pay *diyat* is imposed on *the aqilah* (family). In Islamic law, if a person commits accidental murder by mistake (*qatlul khatha'*), the sanctions or consequences applied will depend on the specific situation. This could include the payment of *diyat* (fines) to the victim's family in lieu of lost life, or other forms of liability in accordance with the applicable laws of the country and the interpretation of applied Islamic law.
- b. Payments can be made in installments within a period of three years. In the context of *diyat* (fine) payments in Islamic law, if the responsible party is unable to pay the entire amount at once, the payment can be paid in installments for up to three years. This is a form of relief provided so that the party concerned can fulfill his obligations without

being financially burdened. The main principle in paying *diyat* is to provide justice to the victim's family, while considering the financial ability of the perpetrator or his family.

- c. The composition of *the diyat* is divided into five groups, namely: a. 20 *hiqqah* (camels entering the fourth year) b. 20 *jaz'ah* (camels entering the fifth year) c. 20 *bintu makhad* (female camels entering the second year) d. 20 *bintu labun* (female camels entering the third year) e. 20 *ibn labun* (male camels entering the third year).

In addition, in the case of payment *Düsseldorf* using a substitute for camels because there are no camels in a particular area or the price of camels that is far above the standard price, Imam Abu Hanifah, Imam Malik, and Imam Shafi'i in *Qaul Qaddim* agreed that *Düsseldorf* It can be replaced with gold or silver with a value of one thousand dinars for gold and ten thousand dirhams for silver. Imam Shafi'i in *Qaul Jadid* argues that *Düsseldorf* can be paid at the price of the camel using the local currency (Sutoyo & Hasbi, 2024).

Exist *Sikhism* scholars of the school related to payment *diyat*. In the view of the Hanafiyah and Malikiyah madhhab, *Düsseldorf* can be paid according to the agreement between the victim's family and the perpetrator, if there is no agreement, then *Düsseldorf* Paid according to the provisions of Sharia', which is 100 camels. Meanwhile, scholars of the Shafi'i and Hanbali madhhab agree that *Düsseldorf* 100 camels were still paid in full and there was no agreement in the payment (Hamim, 2020). However, if there is forgiveness from the heirs of the accidental murder victim, then *Düsseldorf* can kill one-third of 100 camels (Ibrahim, 2016).

In addition to the obligation to pay *diyat*, a mukallaf who commits accidental murder is also required to serve the *kaffarat sentence*. *Kaffarat* is a form of atonement to Allah for the deeds committed by a person who is burdened with legal obligations. Apart from being a punishment, *kaffarat* is also a form of worship. Therefore, this punishment is entirely imposed on the perpetrator's property, without the help of others. The *jurists* agree that *kaffarat* is mandatory in the case of accidental murder, considering that the perpetrator has no intention of killing the victim. In this context, *the kaffarat* punishment for murder caused by negligence is in the form of an obligation to free the servant of the believer, or if that is not possible, then the perpetrator must fast for two consecutive months.

In addition to the main punishment in the form of *Düsseldorf* and *Kaffarat*, in Islamic law there are also other consequences for the perpetrator of accidental murder, namely the elimination of inheritance and will rights if the victim is the person who has the right to inherit property or give a will to the perpetrator. Scholars argue that murder by negligence is still considered an unlawful act. Therefore, even if the murder occurred due to negligence, the abolition of inheritance and will rights still applies as a consequence for the perpetrator (Hasibuan, 2020).

2. Bireuen District Court Judge's Considerations in Deciding the Case of Negligence Causing Death

In the decision, urgent judges' considerations are used to understand the reasoning of the panel of judges in deciding a case. In this case, the panel of judges focused on considering the elements of Article 359 of the Criminal Code to decide the guilt of the defendant based on the single indictment of Article 359 of the Criminal Code charged by the public prosecutor.

Article 359 of the Criminal Code stipulates that every person due to his negligence causing the death of another person must be sentenced to a maximum of 5 years in prison and at least 1 year in prison. As stipulated in the article, the elements that compose it are:

1. Whose element of goods;
2. Elements due to forgetfulness;
3. Elements cause the death of others;

Furthermore, the panel of judges assesses and considers the fulfillment of these elements so that it can be decided in accordance with article 359 of the Criminal Code as follows:

a. The "Whose Goods" Element

The Panel of Judges considered that the term in the element of "who's who's goods" in this context refers to any person or legal entity that has the capacity to be a subject of law, namely the party to whom rights and obligations are charged and can be the perpetrator of a criminal act.

To avoid errors in identifying the perpetrator (*error in persona*), his identity must be clearly stated in the indictment. Based on the indictment read out by the public prosecutor, the defendant who appeared at the trial, namely Ibrahim bin Ibn Abbas, had confirmed his identity as stated in the indictment. This is also supported by the testimony of the witnesses at the trial that are mutually agreeable. Therefore, the panel of judges believes that in this case, the term "who's who's property" refers to the defendant Ibrahim bin Ibn Abbas, so that this element is considered to have been fulfilled.

b. The element of "due to forgetfulness"

The Panel of Judges considered that the term "due to negligence" refers to the consequences that arise as a result of actions or deeds carried out by the perpetrator or defendant with lack of care, carelessness, lack of vigilance, or negligence in carrying out their duties. If the perpetrator acts more carefully and vigilantly, then the incident can actually be prevented.

Based on the facts revealed at the trial, it is known that since 2022, the defendant has installed electric wire around his garden located in Pinto Rimba Village, Peudada District, Bireuen Regency. The purpose of this wire installation is to prevent the entry of wild animals such as monkeys and pigs into the garden.

Then, on Wednesday, October 18, 2023, at around 14.00 WIB, when the Defendant was cleaning his garden, he found the victim Husaini bin Ishak dead near the electric wire, with the position of the wire at the victim's feet.

Because of panic, the defendant covered the victim's body with banana leaves, then dug the ground using a hoe and spear with a size according to the victim's body. After that, the defendant dragged the victim's body into the hole and put a sack of rice that was previously near the victim into the hole before finally covering it with soil and dry leaves to hide the incident. After that, the Defendant returned to the house to clean himself.

On Friday, October 20, 2023, at around 14.00 WIB, Witness Budiah, Witness Azhari, and Witness Bairi together with residents of Jaba Village found the body of Husaini bin Ishak buried in the Defendant's garden in a decomposed condition and emitting a strong odor.

The defendant is known to have installed six red lights along the electric wire as markers, with a distance between the lights of about 50 meters. However, the Defendant did not report the incident to the authorities because he was afraid.

Based on the above description, the Panel of Judges considered that even though the Defendant had installed the lamp as a marker, the considerable distance, namely 50 meters, made it less effective in warning others about the dangers of the electric wire. Warning lights should be installed at a closer distance, for example every 5 or 10 meters, to make it easier to see and understand by people around the garden. Thus, the Panel of Judges believes that the element of "due to forgetfulness" in this case has been met.

c. The element of "causing others to die"

Considering that what is meant by "dead or dying" is a condition in which a person has lost his life and is no longer alive. This is characterized by the dysfunction of the body's organs, such as the absence of a heart rate and the absence of respiratory activity.

Based on the results of the Visum et Repertum issued by the Regional General Hospital dr. Fauziah with number 110/2023 dated October 24, 2023, which was made and signed by the examining doctor, dr. Cut Farah Izzaty, found the results of the examination of the victim Husaini Bin Ishak as follows:

- General inspection:
 - Head/neck: A laceration was found under the lip measuring three centimeters long and one centimeter wide.
 - Body: There is a blackish lesion on the right chest measuring nine centimeters long and six centimeters wide.

- Hands: Blackish marks were found in the folds of the left front hand measuring seven centimeters long and five centimeters wide. Blackish marks were also seen on the front left wrist measuring ten centimeters long and five centimeters wide, as well as bruises on the back of the left hand measuring six centimeters long and five centimeters wide.
- Legs: Reddish bruises appear on the left groin with a length of six centimeters and a width of five centimeters, as well as on the left thigh with a length of six centimeters and a width of four centimeters. In addition, a laceration was found on the lower leg of the left front leg measuring four centimeters long and three centimeters wide. There is also a clear blackish mark on the sole of the right foot measuring six centimeters long and five centimeters wide.
- Conclusion: The victim was taken to the Emergency Installation of dr. Fauziah Bireuen Hospital in a state of death. From the results of the examination, it was found that there were blackish marks, reddish bruises, and lacerations that were suspected to be strong due to electric shock.

Based on the above considerations, the panel of judges believes that the element of "causing the death of another person" has been legally proven. Thus, all elements in Article 359 of the Criminal Code have been met, so that the Defendant is legally and convincingly declared guilty of committing a criminal act as charged in the single indictment.

Before deciding the case, the panel of judges considered various incriminating and mitigating factors in its decision. The aggravating factor was the negligent act of the defendant that caused the death of the victim, Husaini bin Ishak, while the mitigating factor was the honest and open attitude shown by the defendant during the trial, as well as his efforts to reconcile with the victim's family. Based on these considerations, the panel of judges decided to impose the sentence that was considered the fairest for the defendant.

Based on the descriptions of the above considerations, the panel of judges considered that the defendant was legally and convincingly guilty of his negligence that resulted in the death of another person, so for the sake of the law in accordance with the intent of Article 359 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Law, and other laws and regulations relevant to this case, the defendant was sentenced to imprisonment for 1 year and 6 months and charged to pay a case fee of Rp 5,000,- .

This decision was taken in a deliberative session of the Bireuen District Court Panel of Judges on Thursday, January 25, 2024, led by R. Eka P. Cahyo. N., S.H., M.H. as the chairman of the panel, with Rangga Lukita Desnata, S.H., M.H. and Fuady Primaharsa,

S.H., M.H. as member judges respectively. The decision was then read out in an open session to the public on Tuesday, January 30, 2024, by the chairman of the panel accompanied by member judges, and assisted by H. Romi, S.E., S.H. as the Substitute Registrar. The hearing was also attended by Aditya Gunawan, S.H. as the Public Prosecutor, and the Defendant who was accompanied by his Legal Advisor.

In this decision, the panel of judges did not consider the elimination of evidence as a mitigating factor in the crime. In an interview between the author and Rangga Lukita Desnata, the panel of judges did not consider the omission of evidence in its verdict because it was not charged by the public prosecutor in his indictment. Thus, the panel of judges can only consider each act that is implicitly charged without the need to consider anything other than the indictment (Desnata, 2025).

In criminal law, the panel of judges cannot decide cases outside of the indictment and the public prosecutor's demands because it can violate the principle *of ultra petita* (the principle that judges should not issue a verdict that exceeds or exceeds the demands submitted by the public prosecutor). Therefore, to impose a heavier criminal sentence, an appeal can be filed to the High Court.

The author also argues that even though this verdict has sentenced the defendant, it is still considered unfair. This is due to the lack of consideration from the panel of judges on two crucial factors that show that the defendant's negligence cannot be categorized as a minor error. The first factor is the installation of electrical wires with very high voltages. The voltage used in this case far exceeded the reasonable limit for the prevention of wild animals, especially wild boars. In safety standards, electrical wires installed to repel animals usually have a voltage low enough to only provide a mild shock effect without endangering lives. However, in these cases, the voltage used is so high that it can pose a serious risk to anyone who comes into contact with it, including humans. The use of excessive stress for the sole purpose of driving wild boars away is extremely dangerous and has the potential to cause fatal accidents.

The second factor is the installation of warning signs that are placed too far from the location of the electrical wire. The presence of warning signs that are not clearly visible or not in a strategic place can cause people passing through the area to be unaware of the lurking danger. In these conditions, people do not have the opportunity to take precautionary measures, which further increases the risk of accidents.

In addition, the installation of warning signs within 50 meters on the electric wire actually causes confusion for people passing through the area. In environmental conditions dominated by gardens without clear markers, people who see signs from a distance will have difficulty determining the exact location of the high-voltage electrical wire. As a result, they can continue to walk without realizing the impending danger until

they end up having an accident. Ideally, warning signs should be installed at a closer distance to be more effective in providing warnings to anyone passing by.

The lack of attention to these two aspects further shows that the sentence imposed on the defendant did not fully consider the important factors in the case. Supposedly, the determination of punishment also takes into account negligence in the installation of electrical wires and warning signs, so that the legal decisions taken truly reflect a sense of justice for all parties.

In addition, according to the author in this case, the defendant can be said to have committed a conscious negligence because he knew the risks of installing high-voltage electrical wires, but still left them without adequate preventive measures. The defendant was actually aware of the possibility of danger but did not take the steps that should have been taken to prevent accidents, such as lowering the electrical voltage or installing signs at a closer and periodic distance.

In a case of conscious forgetfulness like this, the legal responsibility becomes heavier because the defendant is aware of the potential danger, but still leaves the risky condition unmitigated. Therefore, court decisions should not only focus on the defendant's guilt alone, but also consider factors that aggravate the situation, such as non-adherent safety standards and negligence in giving clear warnings. It is important that the legal decision truly reflects justice and does not simply impose a sentence without taking into account all relevant aspects, especially this ruling will set an unfair legal precedent for similar cases in the future.

3. Analysis of Islamic Criminal Law on Forgetting That Causes Death with *the Theory of Qatlul Khatha'* in Decision Number 238/Pid.B/2023/PN. Beer

According to Islamic criminal law, a person is considered to have committed accidental murder or forgetfulness (*qatlul khatha'*) when fulfilling the predetermined elements. The jurists in Islamic law emphasize that in the case of murder due to forgetfulness (*Khatha'*), the main element that must be considered is the absence of intentional elements. This type of murder occurs not because of the intent to kill, but rather as a result of a lack of caution, which ultimately leads to the death of another person. This element is the main factor that distinguishes murder due to forgetfulness from intentional and semi-intentional murder. In determining whether the perpetrator of a criminal act due to forgetfulness can be held accountable or not, this element of negligence is a very important aspect to consider (Syamsurizal, 2023).

Referring to the case of loss of life due to forgetfulness contained in the decision of the panel of judges of the Bireuen District Court Number 238/Pid.B/2023/PN Bir, the defendant has fulfilled the elements to be found guilty of committing *qathlul khatha'*, that is:(Az-Zuhaili, n.d.)

1. There is an act that causes death.

The defendant is known to have installed electrical wires with a high voltage of four amperes around his garden located in Pinto Rimba Village, Peudada District, Bireuen Regency since 2022. The installation of the high-voltage electric wire was originally intended to prevent the entry of wild boars and monkeys into the garden. However, on Wednesday, October 18, 2023, at around 14.00 WIB, the victim, Husaini bin Ishak, was found dead with the position of the electric wire at the victim's feet. Thus, the defendant's act of installing a high-voltage electrical wire has caused the death of another person, so that this element is fulfilled.

2. The occurrence of the act was due to mistakes.

The defendant installed electric wires with the aim of keeping wild boars and monkeys from entering the garden and damaging the crops. However, the installation of wires with very high tensions actually causes the death of others. The defendant never intended to kill someone with the electric wire he was attached. Therefore, this act can be considered as the negligence or forgetfulness of the defendant, so that these elements have been fulfilled.

3. There is a causal relationship between the wrong act and the victim's death.

The death of the victim, Husaini bin Ishak, was caused by an electric current coming from an electric fence wire installed by the defendant. This death was proven through the chronology of the case, namely the victim's condition when found by the defendant near the electric fence wire, which was then strengthened by *Visum et Repertum* evidence from dr. Fauziah who concluded that the victim died due to an electric shock. Thus, the causal relationship between the defendant's wrongful act and the victim's death has been proven, so that this element is met.

Based on the above explanation, the elements *of qatlul khatha'* have been met, so it can be concluded that the defendant has committed unintentional murder. Therefore, the defendant can be punished and asked to account for his actions by paying *diyat* as much as 100 camels and serving the punishment *of kaffarat*.

However, if the victim's family decides to forgive, then the payment *Düsseldorf* can be deducted by one-third of the 100 camels or the equivalent in local currency, and the perpetrators are still required to serve their sentences *Kaffarat*. This is different from positive legal provisions, where peace efforts are considered a mitigating factor and can reduce punishment, as in the verdict 238/Pid.B/2023/PN Bir which the author meticulously examined, even though peace between the defendant and the victim's family has not been fully achieved. Nevertheless, the judge still considered the peace efforts made by the defendant as a mitigating factor in the verdict, even though the agreement has not been reached (Ibrahim, 2016).

From the perspective of Islamic law, mere efforts for peace without a concrete agreement are not enough to relieve the obligation to pay diyat. As emphasized in the sharia, if there is no real peace agreement, then the diyat must still be paid in full according to the applicable provisions.

D. Conclusion

Based on the descriptions of the discussion above, the author can conclude that: In this decision Number 238/Pid.B/2023/PN Bir, the panel of judges has appropriately considered the elements in the provisions of Article 359 of the Criminal Code based on the facts of the trial and evidence. However, the panel of judges did not consider the factors revealed in the facts of the trial, namely the level of negligence of the defendant which can be said to be careless and the negligence that was realized for leaving a high-voltage electric fence without adequate mitigation so that the sentence decided reflected an injustice to the victim's family.

The elements of *qathlul khatha'* as accidental murder in *the rubu' fiqh jinayah* in the decision Number 238/Pid.B/2023/PN Bir are appropriate so that the defendant should be sentenced, but the panel of judges acknowledged the peace efforts that caused the sentence given to be lighter. This is not in accordance with the provisions of Islamic criminal law, as long as there is insufficient effort to remove the obligation to pay *diyat*. If there is no peace agreement, *diyat* must still be paid in full. In addition to *diyat*, the perpetrator is obliged to carry out *kaffarat* (slave liberation or fasting for two consecutive months).

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