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Normative Critique of Passive Money Laundering Formulation in Indonesian Criminal Law: An Islamic Proportionality Perspective

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Abstract

Money laundering crimes are generally classified into active and passive forms. In the Indonesian context, passive money laundering based on Article 607 paragraph (1) letter (c) of the Criminal Code adopts the pro parte dolus pro parte culpa model which equates criminal liability between intentional acts and those committed due to negligence. This approach raises normative issues related to the principle of proportionality which requires differentiating sanctions based on the degree of error. This study aims to analyze the principle of proportionality in Islamic criminal law and evaluate the suitability of the formulation through a comparative approach. This study uses normative legal methods with legislative, conceptual, and comparative approaches. The analysis was carried out on the provisions of Indonesian criminal law, Islamic criminal law principles, and several relevant foreign legal systems. The results of the study show that Islamic criminal law expressly distinguishes the level of error in the imposition of sanctions, as reflected in the concepts of qisas and diyat. This principle is also in line with a number of modern legal systems that separate intentional crimes (dolus) and negligent crimes (culpa) with different criminal consequences. On the other hand, the pro parte dolus pro parte culpa model in the Criminal Code has the potential to obscure these differences by imposing equivalent sanctions, thereby weakening the principle of proportionality and risking substantive injustice. This research contributes theoretically through strengthening the study of comparative criminal law based on the integration of Islamic law perspectives, as well as practically by recommending the reformulation of criminal policies to ensure more optimal proportionality and justice.

***Keywords**: Passive Money Laundering, Indonesian Criminal Law, Principle of Proportionality, Islamic Criminal Law, Criminal Liability.*

Abstrak

Tindak pidana pencucian uang umumnya diklasifikasikan ke dalam bentuk aktif dan pasif. Dalam konteks Indonesia, pencucian uang pasif berdasarkan Pasal 607 ayat (1)

huruf (c) KUHP mengadopsi model pro parte dolus pro parte culpa yang menyamakan pertanggungjawaban pidana antara perbuatan yang disengaja dan yang dilakukan karena kelalaian. Pendekatan ini menimbulkan persoalan normatif terkait prinsip proporsionalitas yang mensyaratkan pembedaan sanksi berdasarkan derajat kesalahan. Penelitian ini bertujuan untuk menganalisis prinsip proporsionalitas dalam hukum pidana Islam serta mengevaluasi kesesuaian formulasi tersebut melalui pendekatan komparatif. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif. Analisis dilakukan terhadap ketentuan hukum pidana Indonesia, prinsip-prinsip hukum pidana Islam, serta beberapa sistem hukum asing yang relevan. Hasil penelitian menunjukkan bahwa hukum pidana Islam secara tegas membedakan tingkat kesalahan dalam penjatuhan sanksi, sebagaimana tercermin dalam konsep qisas dan diyat. Prinsip ini juga sejalan dengan sejumlah sistem hukum modern yang memisahkan antara tindak pidana yang disengaja (dolus) dan yang lalai (culpa) dengan konsekuensi pemidanaan yang berbeda. Sebaliknya, model pro parte dolus pro parte culpa dalam KUHP berpotensi mengaburkan perbedaan tersebut dengan menetapkan sanksi yang setara, sehingga melemahkan prinsip proporsionalitas dan berisiko menimbulkan ketidakadilan substantif. Penelitian ini berkontribusi secara teoritis melalui penguatan kajian hukum pidana komparatif berbasis integrasi perspektif hukum Islam, serta secara praktis dengan merekomendasikan reformulasi kebijakan pemidanaan guna menjamin proporsionalitas dan keadilan yang lebih optimal.

Kata Kunci: Pencucian Uang Pasif, Hukum Pidana Indonesia, Prinsip Proporsionalitas, Hukum Pidana Islam, Pertanggungjawaban Pidana.

INTRODUCTION

One form of crime that has emerged as a significant social phenomenon in today's advanced and highly developed societies is *money laundering*. Money laundering denotes the practice of disguising the unlawful source of funds so that they appear legitimate.[1] The term *money laundering* is commonly traced to the alleged practices of Al Capone, who reportedly concealed proceeds from illegal activities such as whisky trafficking, prostitution, extortion, and gambling through cash-based laundromat businesses in the United States during the 1920s and 1930s (Camacho, 2016). The term later gained wider recognition during the 1970s Watergate scandal, where it was used to describe the process by which illicit political campaign funds associated with

[1] Contreras, Alfredo, and Edgar Villa Pérez. 2026. "Strategic Choices in Money Laundering: Smurfing, Layering, and Financial Over-Diversification." *Journal of Economic Criminology* 11: 1–7. https://doi.org/10.1016/j.jeconc.2025.100199; Opsunggu, Eben Patar, and Azis Budianto , trans. 2025. "Regulatory Harmonization of Plea Bargaining for Petty Corruption in Indonesia's Criminal Justice System". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 374-85. https://doi.org/10.63142/al-battar.v2i3.450.

Richard Nixon's re-election committee were transferred abroad, particularly to Mexico, and subsequently reintroduced into the United States.[2]

Money laundering has evolved into a pervasive global phenomenon alongside the increasing complexity of transnational crime and has become a central concern within international legal regimes. Money laundering does more than just hide illegal funds; it also threatens the stability of financial systems and erodes public trust in law enforcement institutions.[3] In recent years, the rise of digital financial systems and cryptocurrencies has further complicated detection and enforcement efforts, thereby intensifying the need for legal frameworks that are not only effective but also normatively justifiable.[4]

Despite global initiatives aimed at eradicating it, money laundering continues to occur.[5] Within Indonesia, money laundering is considered a relatively new form of crime, formally recognized following the enactment of Law Number 15 of 2002 concerning the Criminal Act of Money Laundering. This law has undergone two amendments, first through Law Number 25 of 2003, which provides amendments to Law Number 15 of 2002 on Money Laundering, and subsequently through the enactment of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering, which remains in force to this day. Furthermore, with the introduction of Law Number 1 of 2023 concerning the new Criminal Code (hereinafter referred to as the Criminal Code), several provisions under Law Number 8 of 2010

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[2] Mintoff, Yana, and Mary Grace Vella. 2025. "Money Laundering and the Crime Nexus: A Case Study in Malta." *Journal of White Collar and Corporate Crime* 6 (2): 127–142. https://doi.org/10.1177/2631309X241261656; Hartati, Titin, and KMS Herman , trans. 2025. "Strengthening Notary Reporting Obligations to Prevent Money Laundering in Property Transactions". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 290-99. https://doi.org/10.63142/al-battar.v2i3.452.

[3] Levi, Michael, and Peter Reuter. 2020. "Money Laundering." *Crime and Justice* 49 (1): 233–308. https://doi.org/10.1086/708453

[4] Campbell-Verduyn, Malcolm. 2021. "Bitcoin, Crypto-Coins, and Global Anti-Money Laundering Governance." *Crime, Law and Social Change* 75 (3): 283–305. https://doi.org/10.1007/s10611-017-9756-5; Putra, Agus, Nawan Pujianto, Irfan Rizky Hutomo, and Susila Esdarwati , trans. 2025. "Reconstructing Independence of Indonesia's Corruption Eradication Commission After Supervisory Board Reform in Criminal Justice". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 248-58. https://doi.org/10.63142/al-battar.v2i3.456.

[5] AlQudah, Anas, et al. 2025. "Money Laundering in Global Economies: How Economic Openness and Governance Affect Money Laundering in the EU, G20, BRICS, and CIVETS." *Journal of Risk and Financial Management* 18 (6): 319. https://doi.org/10.3390/jrfm18060319

particularly those categorized as core crimes have been incorporated into Law Number 1 of 2023 concerning the Criminal Code.

In general, the subjects of money laundering offenses can be classified into four main categories. First, the principal offender, namely the individual who directly launders the illicit funds. Second, individuals who facilitate the principal offender in processing the proceeds of crime may likewise be classified as money launderers. Third, an individual may be categorized as a money launderer by possessing assets that they know or reasonably suspect to be derived from criminal activity. Fourth, a person who contributes to the design or planning of money laundering schemes even without direct participation in their execution may also fall within this category, such as accountants, notaries, or legal practitioners who advise on strategies intended to conceal or disguise illicit assets, including through tax avoidance arrangements.[6] From a classificatory perspective, the first category constitutes active money laundering offenders, the second and fourth categories represent accomplices, while the third category is identified with passive money laundering offenders.

The categorization of money laundering offenses has been formally integrated into Indonesia's legal system, as set forth in Article 607 of the Criminal Code. This provision distinguishes money laundering into two principal forms: active and passive. Active money laundering, as regulated under Article 607(1)(a) and (b), includes a range of actions such as placing, transferring, converting, or concealing the origin of assets that are known or reasonably believed to stem from criminal activities, with the purpose of disguising or obscuring their illicit source. Conversely, passive money laundering, as stipulated in Article 607(1)(c), pertains to conduct involving the receipt or control of assets obtained from criminal proceeds.

The fundamental distinction between these two forms lies in the nature of the conduct, where active money laundering involves deliberate actions aimed at concealing illicit assets, while passive money laundering emphasizes the possession or acceptance of such assets. Additionally, the provision defines the scope of predicate offenses, covering a wide range of crimes including corruption,

[6] Amrani, Hanafi. 2015. *Hukum Pidana Pencucian Uang: Perkembangan Rezim Anti Pencucian Uang dan Implikasinya terhadap Prinsip Dasar Kedaulatan Negara, Yurisdiksi Pidana dan Penegakan Hukum*. Yogyakarta: UII Press.

narcotics offenses, fraud, and other offenses punishable by a specified term of imprisonment.[7]

Thus, Article 607 of the Criminal Code not only classifies the forms of money laundering but also delineates the scope of conduct and predicate offenses underlying such crimes. This formulation reflects a systematic approach in structuring money laundering offenses within Indonesian positive law, although it still raises conceptual issues that warrant further examination, particularly concerning criminal liability and proportionality.

As set out in the formulation of Article 607 of the Criminal Code as outlined above, the legal subject is expressed through the phrase "any person." In this regard, Article 145 of the Criminal Code provides that "any person" encompasses both natural persons and corporations. Accordingly, the offense of money laundering under Article 607 of the Criminal Code can be perpetrated by either a natural person (*natuurlijk persoon*) or a legal entity (*rechtspersoon*).[8]

From the core provisions on money laundering offenses outlined above, it is evident that the subjective element is formulated through the phrase "known or reasonably suspected". The term "known" corresponds to intent (*dolus*), while "reasonably suspected" corresponds to negligence (*culpa*). This indicates that the offense of money laundering is constructed under a dual form of culpability, namely *pro parte dolus pro parte culpa*. An offense formulated in this manner incorporates both intent and negligence within a single provision, subject to the same range of criminal sanctions.[9]

In the case of money laundering offenses *in casu* passive money laundering as formulated in Article 607 paragraph (1) letter (c) of the Criminal Code constructed under the dual culpability model (*pro parte*

[7] Putra, Agus, Nawan Pujianto, Irfan Rizky Hutomo, and Susila Esdarwati , trans. 2025. "Reconstructing Independence of Indonesia's Corruption Eradication Commission After Supervisory Board Reform in Criminal Justice". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 248-58. https://doi.org/10.63142/al-battar.v2i3.456; Samosir, Marlina, Raymundus Loin, Diana Farid, Hanira Hanafi, and Anna Boumpa , trans. 2026. "Optimizing Asset Recovery in Corruption Cases: Evaluating Indonesia's Legal Framework and the Need for Non-Conviction Based Forfeiture". Al-Battar: Jurnal Pamungkas Hukum 3 (1): 55-66. https://doi.org/10.63142/al-battar.v3i1.463.

[8] Hartati, Titin, and KMS Herman , trans. 2025. "Strengthening Notary Reporting Obligations to Prevent Money Laundering in Property Transactions". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 290-99. https://doi.org/10.63142/al-battar.v2i3.452.

[9] Ruba'i, Masruchin. 2001. *Asas-Asas Hukum Pidana*. Malang: UM Press.

dolus pro parte culpa), the provision stipulates criminal penalties of up to 5 (five) years' imprisonment along with a fine reaching category VI (IDR 2,000,000,000). These sanctions apply specifically to individual offenders (*natuurlijk persoon*). Where the perpetrator of passive money laundering is a corporation (*rechtspersoon*), the applicable sanction is a fine with a maximum amount of IDR 100,000,000,000 (one hundred billion rupiah), as stipulated in Article 7 paragraph (1) of Law Number 8 of 2010.

Accordingly, perpetrators of passive money laundering whether acting with intent (*dolus*) or negligence (*culpa*), and whether as natural persons (*natuurlijk persoon*) or legal entities (*rechtspersoon)* are subject to equivalent categories of criminal sanctions within their respective classifications. For individual offenders, the applicable penalties consist of imprisonment for a maximum of 5 (five) years and a fine up to category VI (IDR 2,000,000,000). Meanwhile, for corporate offenders, the sanction takes the form of a fine with a maximum amount of IDR 100,000,000,000 (one hundred billion rupiah).

The normative construction of passive money laundering offenses as stipulated in Article 607 paragraph (1) letter (c) of the Criminal Code formulated under the *pro parte dolus pro parte culpa* model gives rise to significant juridical concerns. In particular, it creates the potential for offenders who act negligently (*culpa*) to be punished with the same severity, or even more harshly, than those who act intentionally (*dolus*), despite the fundamental principle that different degrees of culpability should correspond to differentiated criminal sanctions.This issue had long been anticipated by scholars such as Jan Remmelink and B. F. Keulen and G. Knigge Nieboer, who observed that the *pro parte dolus pro parte culpa* model contains an inherent weakness: both the culpa variant and the dolus variant are subjected to the same range of criminal penalties.[10]

Therefore, such a condition can be clearly understood as a phenomenon that runs counter to fundamental legal principles, particularly the principle of *nulla poena sine culpa* (no punishment without fault). The operationalization of this principle is manifested in two forms of culpability intent (*dolus*) and negligence (*culpa*) in which

[10] Remmelink, Jan. 2003. *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta: Gramedia Pustaka.

intent represents a higher degree of blameworthiness compared to negligence.[11]

At its core, the issue regarding the link between culpability and sentencing centers on the principle that punishment should be imposed in a proportional manner. Indeed, many scholars regard this principle as an independent legal doctrine, complementing both the principle of legality and the principle of *nulla poena sine culpa* (no punishment without fault). The significance of proportionality is such that it is considered a fundamental principle governing the imposition and administration of criminal sanctions.[12]

Proportionality in this context refers to the limits within which criminal punishment may be imposed. Accordingly, punishment is deemed proportional when it is applied to the offender within the bounds of their culpability. On the other hand, a sanction is no longer regarded as proportional if it goes beyond the level of culpability assigned to the offender.[13] In essence, culpability functions as a limiting principle in determining the measure of punishment, such that the severity of punishment must not exceed the degree of fault involved.[14]

Existing scholarship on money laundering has largely focused on regulatory effectiveness and institutional responses. Andiojaya (2025) empirically demonstrates that strengthening anti-money laundering (AML) policies can reduce various forms of crime such as corruption, bribery, and environmental offenses by restricting the flow of illicit funds.[15] On the other hand, a systematic literature review by Anjani and Widiastuti highlights that global anti-money laundering (AML) research continues to be predominantly dominated by regulatory, compliance-based, and policy implementation

[11] Chazawi, Adami. 2014. *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*. Malang: Bayumedia Publishing.

[12] Huda, Chairul. 2011. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group.

[13] *Ibid.*

[14] Saleh, Roeslan. 1994. *Masih Saja Tentang Kesalahan*. Jakarta: Karya Dunia Fikir.

[15] Andiojaya, Agung. 2025. “Do Stronger Anti-Money Laundering (AML) Measures Reduce Crime? An Empirical Study on Corruption, Bribery, and Environmental Crime.” *Journal of Economic Criminology* 8: 100157. https://doi.org/10.1016/j.jeconc.2025.100157

approaches within the financial sector.[16] In a more specific context, Fhatnur's study reveals that despite the continuous development of anti-money laundering (AML) legal frameworks, the effectiveness of law enforcement remains constrained by various structural challenges, including regulatory gaps, limited cross-border cooperation, and difficulties in adapting to the rapid evolution of financial technologies.[17] Furthermore, a recent study by Mallika B.K. and V.H. Ramasubramanian demonstrates that technology-driven and data analytics based approaches have become a dominant trend in enhancing the detection of suspicious transactions, although their effectiveness remains highly dependent on the quality of institutional implementation.[18]

Overall, contemporary scholarship indicates that the dominant focus of anti-money laundering (AML) research remains on regulatory effectiveness, technological advancements, and institutional capacity in combating financial crime. However, the normative dimension underlying the construction of money laundering offenses and criminal liability has received comparatively limited attention.

While existing studies provide valuable insights into regulatory frameworks, institutional performance, and enforcement mechanisms, they tend to overlook the normative foundations of money laundering offenses themselves. In particular, the relationship between culpability and proportionality in the formulation of criminal law has not been sufficiently examined. Even where culpability is acknowledged, the analysis remains largely descriptive and fails to critically assess the implications of adopting a dual culpability model, especially in terms of its impact on substantive justice.

Accordingly, a notable research gap remains, particularly the lack of an in-depth examination of the *pro parte dolus pro parte culpa* framework in passive money laundering when assessed through a proportionality perspective rooted in Islamic criminal law.

To fill this gap, the study raises two main questions: (1) how the principle of proportionality is understood in Islamic criminal law, and (2) the extent to which the formulation of passive money laundering in Article 607(1)(c) of the Indonesian Criminal Code aligns with that principle This study contributes theoretically by advancing comparative

[16] Anjani, A., and H. Widiastuti. 2024. "The Puzzle of Money Laundering: A Literature Review of Regulations and Implications." *Journal of Accounting and Investment* 25 (3): 1088–1108. https://doi.org/10.18196/jai.v25i3.21492

[17] Fhatnur, Y. S. A. 2024. "Dynamics and Strategies of Law Enforcement of Money Laundering Offences in Indonesia." *Indonesian Journal of Law and Economics Review* 19 (2). https://doi.org/10.21070/ijler.v19i2.1286

[18] Mallika, B. K., and V. H. Ramasubramanian. 2025. "Anti-Money Laundering System in Detecting and Preventing Money Laundering Activities: A Systematic Review." *Journal of Money Laundering Control* 28 (2): 385–407. https://doi.org/10.1108/JMLC-07-2024-0108

criminal law discourse through the integration of Islamic legal principles into contemporary legal analysis. Practically, it offers policy-oriented recommendations for reformulating sentencing frameworks to ensure greater proportionality and substantive justice.

RESEARCH METHODS

This study employs a normative legal research design, focusing on the analysis of legal norms and principles relevant to passive money laundering offenses. This research examines statutory provisions and doctrinal frameworks to assess their conformity with the principle of proportionality in Islamic criminal law. To achieve this objective, the study adopts three main approaches: the statute approach, the conceptual approach, and the comparative approach. The statute approach is used to analyze Article 607(1)(c) of the Indonesian Criminal Code and related regulations, while the conceptual approach explores key legal doctrines, particularly culpability and proportionality in criminal law theory. In addition, the comparative approach is employed to examine how different legal systems regulate criminal liability, specifically by comparing Indonesia with selected jurisdictions namely the Netherlands, Australia, Germany, and Spain with particular attention to the distinction between intent (*dolus*) and negligence (*culpa*) in money laundering offenses.

The sources of legal material used in this research are divided into primary and secondary categories. Primary legal materials include relevant statutory regulations, such as the Indonesian Criminal Code and Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, along with relevant legal frameworks from the selected comparative jurisdictions. In addition, court decisions namely Decision Number 440/Pid/B/2015/PN.Jkt.Sel and Decision Number 1088/Pid/B/2011/PN.Jkt-Sel are incorporated as primary legal references. Secondary legal materials include academic literature, such as Scopus-indexed international journal articles, scholarly books, and legal doctrines discussing money laundering, criminal responsibility, and proportionality, including viewpoints derived from Islamic criminal law. Data collection is carried out through library research, involving a structured process of identifying, categorizing, and analyzing relevant legal sources to ensure a thorough examination of the research issue.

The data are analyzed using a prescriptive analytical method grounded in legal reasoning. This involves interpreting legal norms, constructing normative arguments, and evaluating the consistency

between positive law and the underlying legal principles used as benchmarks. The analysis is qualitative in nature and emphasizes logical, systematic, and argumentative reasoning, including a comparative assessment of how culpability is structured across different legal systems. The results of the analysis are used to determine whether the formulation of passive money laundering under Article 607(1)(c) of the Indonesian Criminal Code reflects the principle of proportionality, and to develop normative recommendations for reformulating sentencing policies to achieve greater proportionality and substantive justice.

RESULTS AND DISCUSSION

Theoretical Foundation of Proportionality

Departing from the three fundamental elements of criminal law act, culpability, and punishment it is evident that there is an intrinsic interrelationship among them. This is particularly apparent when viewed from the perspective of punishment, whether formulated *in abstracto* by the legislature or imposed *in concreto* by the judiciary. Ideally, both the prescribed and the imposed punishment must correspond to the nature of the act committed as well as the degree of culpability attributable to the offender. Where an act produces severe harm or is regarded as highly reprehensible by society, it should be subject to, or result in, more severe punishment compared to acts whose consequences are less significant or whose degree of social blameworthiness is relatively low. Similarly, punishments formulated or imposed for acts committed with intent (*dolus*) are generally distinguished from those committed through negligence (*culpa*). All of these considerations are grounded in the fundamental notion of equivalence or, in other terms, the principle of proportionality.

Andi Hamzah argues that the principle of proportionality (*proportionaliteitsbeginsel*) is a doctrine requiring a balance between the protection of violated legal interests and the maintenance of legal order. For instance, law enforcement officers should not resort to shooting a suspect during an arrest before undertaking other measures that are proportionate and less excessive.[19] According to J. Angelo Corlett, however, offenders ought not to be punished disproportionately to the harm they have wrongfully caused to others,[20] This statement

[19] Hamzah, Andi. 2008. *Terminologi Hukum Pidana*. Jakarta: Sinar Grafika.

[20] Corlett, J. Angelo. 2013. *Responsibility and Punishment*. Dordrecht: Springer Science+Business Media.

underscores that the proportionality of sanctions constitutes a core principle in criminal law.

The idea of proportionality in punishment is grounded in the concept of censure, which is manifested through the imposition of unpleasant consequences. The severity of such punitive measures is closely linked to the degree of blameworthiness: the greater the censure, the harsher the treatment imposed on the offender. In a sanction that embodies both reproach and punitive force, the seriousness of the penalty is assessed based on a proportional balance between the gravity of the offense and the offender's degree of fault, on one side, and the severity of the punishment imposed, on the other.[21]

The theory of proportionate sentencing is rooted in the classical view of Cesare Beccaria, who emphasized the necessity of a balance between punishment and culpability.[22] Cesare Beccaria argues that it is not only in society's interest to prevent crime, but also to ensure that its occurrence decreases in proportion to the harm it inflicts on the public. Accordingly, the measures designed to deter individuals from committing offenses should be calibrated to reflect both the extent to which such acts harm the common good and the motivations that drive them. From this perspective, a balanced relationship between the severity of crimes and the punishments imposed is essential..[23] Cesare Beccaria further explains that when two offenses causing different levels of harm to society are punished equally, individuals may feel no greater deterrent against committing the more serious offense, especially if it offers greater benefits.[24]

The classical doctrine of Cesare Beccaria articulates two fundamental principles in the imposition of punishment:[25]

a) That *"let the punishment fit the crime"*, which reflects the view that punishment must be proportionate and capable of preventing the occurrence of crime;
b) The elimination of judicial discretionary power in adjudicating cases, based on the notion that judges function merely as the mouthpiece of the law (*la bouche de la loi*).

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[21] Ali, Mahrus. 2018. "Proporsionalitas dalam Kebijakan Formulasi Sanksi Pidana." *Jurnal Hukum Ius Quia Iustum* 25 (1): 137–158. https://doi.org/10.20885/iustum.vol25.iss1.art7

[22] Zulfa, Eva Achjani, and Indriyanto Seno Adji. 2011. *Pergeseran Paradigma Pemidanaan*. Bandung: Lubuk Agung.

[23] Beccaria, Cesare. 1986. *On Crimes and Punishments*. Cambridge: Hackett Publishing Company.

[24] *Ibid.*, p. 16.

[25] Zulfa, Eva Achjani, and Indriyanto Seno Adji. *Loc. Cit.*

According to Eva Achjani Zulfa and Indriyanto Seno Adji, the theory most closely associated with proportionality in sentencing is the desert theory. This perspective holds that the severity of criminal sanctions must be commensurate with the offender's culpability. It is strongly correlated with the maxim *"only the guilty ought to be punished,"* which in Indonesian criminal law is recognized as the principle of *geen straf zonder schuld* (no punishment without fault) holds that criminal liability cannot be imposed on someone who is not culpable, and that any sanction must be proportionate to the level of fault attributable to the offender.[26]

Desert theory requires a balance between culpability and punishment. Within the classical retributive perspective, the talionic doctrine introduces the concept of *"an eye for an eye,"* which is often associated with desert theory. However, Andrew von Hirsch and Andrew Ashworth note a fundamental distinction between the two: desert theory is primarily concerned with proportionality in sentencing, rather than with strict equivalence of retaliation for a criminal act.[27] The theory of proportionality in sentencing aims to minimize injustice arising from disparities in the type or severity of criminal sanctions imposed. In a particular case, a judge may consider that a lighter sentence is proportionate to the offender's culpability, whereas in another case, proportionality may only be achieved through the imposition of a more severe punishment, depending on the gravity of the offense and the degree of fault involved.[28]

Andrew von Hirsch distinguishes the concept of proportionality in sentencing into two principal categories, namely cardinal proportionality and ordinal proportionality. Ordinal proportionality requires that the ranking of the severity of criminal sanctions correspond to the ranking of the seriousness of criminal conduct. In other words, the more serious the offense, the higher the level of punishment that should be imposed within the sentencing hierarchy.[29]

Cardinal proportionality, in contrast, underscores the need to preserve a rational equilibrium between the absolute severity of punishment and the gravity of the offense. In other words, the sanction imposed should not only

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[26] *Ibid.*, p. 38-39.

[27] *Ibid.*, p. 39.

[28] *Ibid.*

[29] von Hirsch, Andrew. 1983. "Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale." *Journal of Criminal Law and Criminology* 74 (1): 209–248. https://scholarlycommons.law.northwestern.edu/jclc/vol74/iss1/3

be relatively appropriate but also proportionate in an overall sense to the level of culpability involved.[30]

According to Andrew von Hirsch, the concept of ordinal proportionality comprises three principal elements. First is parity, which requires that offenders who commit crimes of comparable seriousness should receive sanctions of similar severity. This principle does not necessarily imply identical penalties for all acts within the same statutory category, as variations in the degree of harm and culpability must be taken into account. However, once such variations are controlled for, the resulting sanctions should be broadly equivalent in their level of onerousness. Second is rank-ordering, which holds that imposing a harsher penalty for one offense than another expresses a greater degree of censure, and this is justified only when the former offense is indeed more serious. Accordingly, the structure of penalties should be arranged so that their relative severity reflects the hierarchy of offense seriousness. Third is the spacing of penalties, which concerns the relative distance between sanctions. For example, where offenses X, Y, and Z are ordered by increasing seriousness, and Y is substantially more serious than X but only slightly less serious than Z, the difference in punishment between X and Y should be greater than that between Y and Z. Such calibration ensures that the gradation of penalties accurately reflects the degree of blameworthiness associated with each offense.[31]

The comparison between the classical theory of proportional sentencing proposed by Cesare Beccaria and the modern theory developed by Andrew von Hirsch reflects a significant evolution in the concept of penal justice. Beccaria emphasizes that punishment must be proportionate to the harm caused by crime to society, with deterrence as its primary objective. The principle of *"let the punishment fit the crime"* serves as the foundation, accompanied by the idea of limiting judicial discretion in order to ensure legal certainty. In contrast, von Hirsch advances a more systematic approach that focuses on the correspondence between punishment and the offender's level of culpability. He distinguishes between ordinal proportionality which requires that the ranking of penalties correspond to the seriousness of offenses and cardinal proportionality which emphasizes maintaining a reasonable balance between the absolute level of punishment and the gravity of the wrongdoing. Accordingly, while Beccaria establishes the normative foundation of proportionality oriented toward societal interests, von Hirsch refines it into a more structured framework that prioritizes individual justice and contributes to minimizing sentencing disparities.

[30] *Ibid.*
[31] *Ibid.*

Proportionality in Islamic Criminal Law

The principle of proportionality in sentencing is likewise acknowledged in Islamic criminal law, as illustrated in Qur'an Surah al-Baqarah (2:178), which directs that *qiṣāṣ* be applied on the basis of justice and equivalence such as a life for a life, a man for a man, a woman for a woman, a free person for a free person, and a slave for a slave. At the same time, if the victim’s family chooses to grant forgiveness, the offender may instead be obliged to provide *diyah* (compensation) to the victim’s family in a fair and appropriate manner.[32] In essence, within Islamic criminal law, homicide entails primary sanctions in the form of *qiṣāṣ* (retaliation) or *diyah* (compensation).[33]

Linguistically, *qiṣāṣ* means “to follow in one’s footsteps,” implying equivalent retaliation, requital, or just recompense. Thus, a person who exacts *qiṣāṣ* follows the trace of the offender’s act by responding in a manner proportionate to the harm committed. In its *sharīʿah* sense, *qiṣāṣ* refers to a form of retributive justice whereby the perpetrator of a crime is subjected to a sanction commensurate with the offense. In cases of homicide, the offender may be subject to capital punishment, while in cases involving bodily injury, the offender may receive a corresponding injury equivalent to that suffered by the victim.[34] *Qiṣāṣ* represents a reform from earlier forms of collective punishment imposed upon tribes or clans into a system of individual liability, whereby punishment is directed solely at the perpetrator of the offense.[35] Meanwhile, *diyah* constitutes a form of *ʿuqūbah māliyah* (financial punishment), which is granted to the victim if they are still alive, or to their heirs (*walī*) if the victim has passed away, rather than to the state.[36]

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[32] Fatoni, Syamsul, et al. 2025. “Asas Proporsionalitas: Perspektif Hukum Positif dan *Maqāṣid Syarīʿah* dalam Sistem Peradilan Pidana.” *Jurnal Hukum Ius Quia Iustum* 32 (1): 46–71. https://doi.org/10.20885/iustum.vol32.iss1.art3

[33] Nurrizkiya, Syifa, and E. Sulyati. 2025. “Sanksi Tindak Pidana Pembunuhan Akibat Pengeroyokan dalam Putusan Mahkamah Agung Nomor 101/Pid.B/2018/PN Bau: Analisis Hukum Pidana Islam.” *Legalite: Jurnal Perundang-Undangan dan Hukum Pidana Islam* 10 (2): 163–176. https://doi.org/10.32505/legalite.v10i2.13636

[34] Madjrie, Abdurrahman, and Fauzan Al-Anshari. 2003. *Qishas: Pembalasan yang Hak*. Jakarta: Khairul Bayan Sumber Pemikiran Islam.

[35] Ruba’i, Masruchin. 2012. *Aneka Pemikiran Hukum Nasional yang Islami*. Malang: UM Press.

[36] Muslich, Ahmad Wardi. 2005. *Hukum Pidana Islam*. Jakarta: Sinar Grafika.

In cases of homicide, *qiṣāṣ* is a divinely prescribed sanction that must be applied in instances of intentional killing.[37] A homicide is classified as intentional killing when it fulfills certain essential elements: the victim is a human being whose life is protected under divine law; the act committed results in death; and the perpetrator possesses the intention to take the life of another person.[38] *Qiṣāṣ* is a legal institution rooted in ontological and theological principles, placing justice at the forefront within the framework of *maqāṣid al-sharīʿah*.[39] Nevertheless, the application of *qiṣāṣ* is, as far as possible, to be avoided and may instead be substituted with *diyah*.[40] The imposition of capital punishment (*qiṣāṣ*) in Islamic criminal law is not absolute. In cases of intentional homicide, there exists an alternative sanction in the form of *diyah*, particularly where the victim's family grants forgiveness to the perpetrator.[41] However, not all instances of homicide are subject to *qiṣāṣ*; in certain cases, the imposition of *diyah* alone is deemed sufficient.[42] In cases of unintentional homicide, the victim's family is afforded certain options: (1) the offender pays *diyah* (compensation); (2) the offender performs *kafārah* by freeing a believing slave; and (3) if this is not feasible, the offender is subject to a moral sanction, namely fasting for two consecutive months.[43]

This differentiation indicates that, within Islamic criminal law, qiṣāṣ serves as the principal sanction for intentional homicide, while diyah functions either as an alternative or as the primary punishment in cases of unintentional homicide. Such a structure demonstrates that the imposition of sanctions is calibrated according to the gradation of culpability, thereby embodying the principle of proportionality in sentencing

Expanding upon this proportionality framework, its underlying rationale may be linked to the broader aims of *maqāṣid al-sharīʿah*, which prioritize the safeguarding of essential human interests: religion

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[37] Zainuddin. 2007. *Hukum Pidana Islam*. Jakarta: Sinar Grafika.

[38] Santoso, Topo. 2016. *Asas-Asas Hukum Pidana Islam*. Jakarta: Rajawali Pers.

[39] Halimang, S. T., et al. 2025. "Justice and *Qiṣāṣ* in Islamic Law: The Views of Muslim Scholars and Intellectuals at Makassar City, South Sulawesi." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 9 (1): 617–642. https://doi.org/10.22373/sjhk.v9i1.26164

[40] Ruba'i, Masruchin. *Op. Cit.*, p. 12.

[41] *Ibid.*, p. 25.

[42] Madjrie, Abdurrahman, and Fauzan Al-Anshari. *Op. Cit.*, p, 28.

[43] Zainuddin. *Op. Cit.,* p. 35.

(*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), property (*ḥifẓ al-māl*), and lineage (*ḥifẓ al-nasl*).These five essential elements establish that sentencing must account for both the circumstances of the offense and the degree of culpability, ensuring that the criminal justice system functions not solely as an instrument of punishment, but as a purposeful and value-driven framework consistent with the principle of *raḥmatan lil-ʿālamīn* (mercy for all creation).[44] *Ḥifẓ al-dīn*, *ḥifẓ al-nafs*, *ḥifẓ al-ʿaql*, *ḥifẓ al-māl*, and *ḥifẓ al-nasl* constitute the five essential elements of *maqāṣid al-sharīʿah*.[45]

Accordingly, *maqāṣid al-sharīʿah* should not be understood merely as a set of normative values, but as a transformative framework that reinforces the principle of proportionality in sentencing. By mandating that sanctions correspond to both the gravity of the offense and the degree of the offender's culpability, it guides the development of a criminal justice system that promotes substantive justice, safeguards human dignity, and responds to the demands of an inclusive and equitable global society.[46]

In this regard, the regulation of qiṣāṣ and diyah—by incorporating considerations of culpability and contextual circumstances can be seen as a concrete manifestation of proportionality grounded in *maqāṣid al-sharīʿah*. Accordingly, *maqāṣid al-sharīʿah* serves not only as a normative benchmark but also as a philosophical basis for achieving substantive justice, ensuring that legal norms are oriented toward public welfare and the safeguarding of fundamental human interests. This perspective further emphasizes that sentencing must remain proportionate and should not go beyond the broader protective aims reflected in the five essential elements.[47]

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[44] Syamsul Fatoni, et al. *Op. Cit*, p. 66.

[45] Besri, and Mohamad Ali Hisyam. 2024. "Analisis Aksesibilitas Ramah Lansia pada Destinasi Wisata Religi Makam Air Mata Ibu di Kabupaten Bangkalan dalam Perspektif *Maqāṣid Syarīʿah*." *Journal of Islamic Economic and Law* 1 (1): 63–73. https://doi.org/10.59966/jiel.v1i1.1269

[46] Ibrahim, Zumiyati Sanu, et al. 2025. "Integration of *Maqāṣid al-Sharīʿah* in the Criminal Law Reform to Achieve Justice and Human Dignity." *Jurnal Hukum Islam* 23 (1): 105–144. https://doi.org/10.28918/jhi.v23i1.04

[47] Arafat, Muhammad, and Asmuni. 2025. "Implementation of *Maqāṣid al-Sharīʿah* in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia." *Al-Sulthaniyah* 14 (1). https://doi.org/10.37567/al-sulthaniyah.v14i1.3577

Critique of Dual Culpability Model

Modern criminal law systems in various countries, including Indonesia, fundamentally uphold the principle of *nulla poena sine culpa* (no punishment without guilt) as a primary doctrine operating alongside the principle of legality. Historically, this principle derives from the Latin maxim *actus non facit reum, nisi mens sit rea* conveys that a person cannot be deemed guilty based solely on an act, unless it is accompanied by a culpable mental state or guilty intent.[48]

With regard to the principle of *nulla poena sine culpa* (no punishment without fault), criminal law doctrine generally acknowledges two primary forms of culpability: intent (*dolus*, *opzet*) and negligence (*schuld*, *culpa*). In practical terms, criminal responsibility cannot be established in the absence of either of these elements. This dual structure of culpability serves as the foundation for differentiating between intentional offenses and those arising from negligence.

The forms of culpability *dolus* (intent) and *culpa* (negligence) in principle exhibit different degrees of blameworthiness. As stated in the *Memorie van Toelichting*, negligence (*culpa*) in all provisions of the second book in which this term appears is, on the one hand, the opposite of intent (*opzet*), and on the other hand, the opposite of accident.[49] Referring to the explanation in the *Memorie van Toelichting a quo*, intent (*dolus*) is the antithesis of negligence (*culpa*); accordingly, it is reasonable to regard negligence as a less blameworthy form of culpability than intent.

The difference in the degree of blameworthiness between intent (*dolus*) and negligence (*culpa*) has clear implications for the determination of sanctions. One of the fundamental meanings of culpability is that it serves as a measure in both the formulation and imposition of criminal penalties. Accordingly, it is rational to conclude that the statutory sanctions for negligent offenses should be formulated more leniently than those for intentional offenses.

For example, within the Indonesian Criminal Code, several offenses demonstrate that negligent forms (*culpa*) are sanctioned more

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[48] Kurdi, et al. 2025. "The Relevance of the Principle of No Criminal Punishment without Fault (*Geen Straf Zonder Schuld*) in Corporate Criminal Liability in Indonesia." *Jurnal Mercatoria* 18 (2): 209–218. https://doi.org/10.31289/mercatoria.v18i2.16610

[49] Smidt, H. J. 1891. *Geschiedenis van het Wetboek van Strafrecht*. Haarlem: H. D. Tjeenk Willink.

leniently than intentional forms (*dolus*). Article 308 of the Criminal Code, representing the intentional form (deliberately causing fire, explosion, or flood), carries a penalty of up to 9 (nine) years' imprisonment if it endangers persons or property, up to 12 (twelve) years if it causes serious injury, and up to 15 (fifteen) years if it results in death. In contrast, Article 311 of the Criminal Code, which reflects the negligent form namely causing a fire, explosion, or flood due to negligence is subject to a maximum penalty of 5 (five) years' imprisonment or a fine up to category V (IDR 500,000,000). This distinction clearly reflects the principle that negligent conduct, being less blameworthy than intentional conduct, warrants lighter criminal sanctions.

A comparable illustration is found in Article 458 of the Criminal Code, which reflects the intentional form (*dolus*) of unlawfully causing another person's death and is subject to a maximum penalty of 15 (fifteen) years' imprisonment. By contrast, Article 474 paragraph (3) of the Criminal Code represents the negligent form (*culpa*) with the same resulting consequence namely, causing the death of another person through negligence and prescribes a considerably lighter sanction, with a maximum of 5 (five) years' imprisonment or a fine up to category V (IDR 500,000,000).

In essence, from a theoretical standpoint, negligence (*culpa*) is regarded as a less blameworthy form of culpability than intent (*dolus*), and this is directly reflected in the severity of criminal sanctions (*strafmaat*). Accordingly, offenses committed through negligence are subject to lighter penalties than those committed intentionally, thereby aligning with the principle of proportionality in criminal law.

The incorporation of the culpability element "known or reasonably suspected" reflects that the offense *a quo* is constructed using a *pro parte dolus pro parte culpa* model. This formulation gives rise to two distinct possibilities. First, the offender possesses actual knowledge that the assets received, controlled, or utilized originate from criminal activity; in such circumstances, the conduct is intentional (*dolus*). Second, the offender should reasonably have suspected that the assets in question derive from a criminal act; in this case, although there is no actual knowledge, the individual fails to exercise proper caution, thereby acting negligently (*culpa*). In essence, the offense *a quo* may be perpetrated either with intent or due to negligence.

Meanwhile, the sanctions prescribed in the offense *a quo* consist of a maximum imprisonment of 5 (five) years and a maximum fine of

one billion rupiah. These sanctions apply specifically to individual offenders as the subjects of the offense. Accordingly, whether the offense *a quo* is committed intentionally (*dolus*) or through negligence (*culpa*), the applicable sanctions remain the same namely, a maximum of 5 (five) years' imprisonment and a maximum fine of one billion rupiah. This equivalence is illustrated in the following table:

Table 1. Structure of Passive Money Laundering under Article 607(1)(c) (Individual Offenders)

Article	**Material Act**	**Form of Culpability**	**Criminal Sanction**
Article 607 Paragraph (1) Letter (c) of the Criminal Code	The perpetrator knows that the assets received, controlled, or used constitute proceeds of a criminal offense.	Intent (dolus)	Maximum imprisonment of five years and a fine up to category VI
	The perpetrator ought reasonably to suspect that the assets received, controlled, or used constitute proceeds of a criminal offense.	Negligence (*culpa*)	

With regard to money laundering offenses committed by corporations, the applicable sanctions differ from those imposed on individual offenders. For corporate perpetrators, the governing provision is Article 7 paragraph (1) of Law Number 8 of 2010 provides that the primary sanction takes the form of a fine of up to IDR 100,000,000,000 (one hundred billion rupiah). When this provision is read in conjunction with Article 607 paragraph (1) letter (c) of the Criminal Code, the resulting framework can be outlined as shown in the following table:

Table 2. Corporate Passive Money Laundering under Article 607(1)(c) and Law No. 8/2010

Article	Material Act	Form of Culpability	Criminal Sanction
Article 607 Paragraph (1) Letter (c) of the Criminal Code in conjunction with Article 7 Paragraph (1) of Law Number 8 of 2010	The perpetrator knows that the assets received, controlled, or used constitute proceeds of a criminal offense.	Intent (dolus)	A maximum fine of one hundred billion rupiah
	The perpetrator ought reasonably to suspect that the assets received, controlled, or used constitute proceeds of a criminal offense.	Negligence (*culpa*)	

Thus, the distinction between individual and corporate perpetrators of passive money laundering lies primarily in the nature of the sanctions imposed. For individuals, penalties are cumulative, comprising both imprisonment and fines, whereas for corporations the sanction is singular, namely a fine. Despite this difference, both categories are treated alike in a critical respect: the law does not distinguish between offenses committed intentionally (*dolus*) and those arising from negligence (*culpa*), as identical sanctions are prescribed irrespective of culpability. This legislative approach, arguably unintended, reveals an inherent structural weakness in the statutory design, insofar as it equates two qualitatively distinct forms of fault.

Such uniformity raises a fundamental theoretical concern. In orthodox criminal law doctrine, *dolus* and *culpa* embody different degrees of blameworthiness and, as such, warrant differentiated penal responses. The principle of proportionality requires that punishment be calibrated to the offender's level of culpability. By collapsing this distinction, the current formulation risks undermining both doctrinal coherence and normative fairness. Moreover, the design of statutory sanctions is not merely symbolic; it directly shapes judicial sentencing practices, thereby magnifying the practical consequences of such inconsistencies.

This problem is particularly evident in Article 607 paragraph (1) letter (c) of the Indonesian Criminal Code (*KUHP*), which defines a single form of conduct passive money laundering while simultaneously accommodating two distinct fault elements. Because the *actus reus* remains uniform, there is no variation in conduct upon which to ground a differentiated assessment of seriousness. Consequently, the evaluation must rest exclusively on culpability, under which intentional conduct is inherently more serious than negligent conduct.

From a proportionality standpoint, this necessitates a clear doctrinal and legislative distinction between intentional and negligent forms of passive money laundering. Offenses committed with *dolus* should attract more severe sanctions than those grounded in *culpa*. More broadly, this analysis suggests that future legislative policy should avoid the *pro parte dolus pro parte culpa* model, both within the Criminal Code and in special statutes. Instead, offenses capable of being committed under different fault standards should be codified in separate provisions, each accompanied by sanctions proportionate to the respective degree of culpability.

Against this backdrop, the incorporation of a mixed fault element (*pro parte dolus pro parte culpa*) in Article 607 paragraph (1) letter (c) KUHP appears theoretically incompatible with both the doctrine of culpability and the principle of proportionality in sentencing. At a deeper normative level, the provision *a quo* departs from these foundational principles, thereby raising concerns of substantive injustice.

This theoretical inconsistency reflects a structural weakness at the legislative stage, with potential spillover effects on law enforcement and adjudication. Ultimately, it exposes a disjunction between *das sollen* and *das sein*: the former representing the normative ideals of

culpability and proportionality, and the latter the existing statutory framework, which has yet to fully align with those principles.

The theoretical critique outlined above can be further substantiated by facts observed in judicial practice. This is reflected in Decision Number 440/Pid/B/2015/PN.Jkt.Sel and Decision Number 1088/Pid/B/2011/PN.Jkt-Sel, both of which concern passive money laundering offenses, yet reveal fundamental differences in the form of culpability attributed to the offenders. It must be emphasized that these decisions were rendered under the regime of Law Number 8 of 2010, in which Article 5 paragraph (1) was formulated using the *pro parte dolus pro parte culpa* model.

In these decisions, it is evident that, on the one hand, there are offenders who were proven to have known that the assets they received originated from criminal activity, thereby qualifying their conduct as intentional (*dolus*). On the other hand, there are also offenders who were deemed to have merely "should have suspected," indicating a form of negligence (*culpa*).

In Decision Number 440/Pid/B/2015/PN.Jkt.Sel, the offender with *dolus* was sentenced to imprisonment for 2 (two) years and 2 (two) months and a fine of IDR 100,000,000. Conversely, in Decision Number 1088/Pid/B/2011/PN.Jkt-Sel, the offender with *culpa* was subjected to a more severe punishment, namely 4 (four) years of imprisonment and a fine of IDR 350,000,000.

From a normative standpoint, these decisions do not violate statutory provisions, as the sentences imposed remain within the maximum penalty prescribed by law. However, from a theoretical perspective, this condition is inconsistent with the principle of proportionality, which requires a balance between the severity of punishment and the degree of culpability. In the Aristotelian conception of justice, particularly vindicative justice, the benchmark of justice lies in the principle of *nulla poena sine culpa*, meaning that punishment or liability must correspond to the degree of fault attributable to the offender.[50]

In this regard, from the perspective of Islamic criminal law, criminal liability in principle is imposed only upon intentional acts that are prohibited by the *sharīʿah*, and not upon acts committed by mistake. This aligns, in essence, with the principle of *nulla poena sine*

[50] Atmadja, I Dewa Gede. 2013. *Filsafat Hukum: Dimensi Tematis dan Historis*. Malang: Setara Press

culpa recognized in modern criminal law doctrine. As stated in Qur'an Surah Al-Ahzab (33:5), *"There is no blame upon you for what you do by mistake, but only for what your hearts intend."* Similarly, the Prophet Muhammad stated: *"My community has been absolved of liability for mistakes, forgetfulness, and acts committed under compulsion."* However, Islamic law provides a limited exception in the context of criminal offenses involving the loss of life and bodily harm. In such cases, punishment may still be imposed despite the presence of error, although the nature and severity of the sanction differ from those applicable to intentional acts.[51]

In Islamic criminal law distinct from a liberal-individualistic paradigm the imposition of sanctions is also based on the gradation of culpability. In cases of unintentional homicide (*khaṭa'*), criminal liability differs fundamentally from that of intentional killing. The applicable sanction is not *qiṣāṣ* (retaliatory execution), but rather the obligation to free a slave and to pay *diyah* (compensation); where these are not feasible, the offender must fulfill *kaffārah* in the form of fasting for two consecutive months. Beyond these instances, liability for unintentional acts in Islamic law is generally exceptional in nature.

Thus, from the perspective of the proportionality principle in Islamic criminal law, there is a clear differentiation in the severity of punishment between offenses committed intentionally and those arising from negligence. Accordingly, from this perspective, the formulation of passive money laundering based on a *pro parte dolus pro parte culpa* model presents inherent conceptual and practical issues, as it leads to a non-proportional structure of sanctions. Such disproportionality at the level of statutory formulation may, in turn, produce a domino effect in the form of disproportionate sentencing in practice. In this regard, Islamic values that may be adopted for the development of law enforcement in Indonesia include the application of proportionality in sentencing, aimed at safeguarding the essential objectives of the *maqāṣid al-sharīʿah*: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), property (*ḥifẓ al-māl*), and lineage (*ḥifẓ al-nasl*). These objectives require that sentencing take into account the condition and culpability of the offender, thereby ensuring that the criminal justice system functions as a purposive framework oriented toward *raḥmatan lil-ʿālamīn* (mercy for all creation).[52]

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[51] Santoso, Topo. *Op. Cit*, p. 138-139.
[52] Syamsul Fatoni, et al. *Op. Cit*, p. 66.

Reconstruction Model of Passive Money Laundering Liability Based on Proportionality Principles in Islamic Criminal Law

Based on the preceding analysis, it becomes clear that the formulation of criminal penalties for passive money laundering must differentiate between acts carried out with intent and those resulting from negligence. From the perspective of proportionality particularly as reflected in Islamic criminal law intentional conduct warrants more severe punishment than negligent conduct due to its higher degree of seriousness. Consequently, a meaningful differentiation in sanctions can only be achieved where these two forms of culpability are regulated separately. Such a legislative approach reflects a rational and coherent penal policy.

In advancing the reconstruction of culpability and sanctioning frameworks for passive money laundering under Article 607 paragraph (1) letter (c) of the Indonesian Criminal Code, a comparative legal analysis becomes essential. This study therefore examines the regulatory models of Australia, the Netherlands, Germany, and Spain. The selection of these jurisdictions is deliberate: the Netherlands, Germany, and Spain represent civil law systems, while Australia represents a common law system. The inclusion of both legal traditions aims to strengthen the analytical foundation and enhance the robustness of the proposed reformulation.

The Australian legal framework illustrates a multi-level regulatory model encompassing both federal and state jurisdictions. At the federal level, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* refers directly to the *Criminal Code Act 1995*, particularly Division 400. Within this system, three principal forms of culpability *intention, recklessness,* and *negligence* serve as the basis for criminal liability. Sections 400.3 to 400.8 adopt a layered structure that integrates the degree of culpability with the economic value of the assets involved, thereby producing a stratified and proportionate sanctioning system. This approach is largely mirrored in state legislation, where offenses are consistently differentiated based on levels of fault. However, this proportionality-based model is not uniformly applied, as evidenced by Western Australia, where sanctions are not explicitly differentiated according to culpability.

A comparable yet more structurally concise approach is found in the Netherlands. Although the *Wet ter voorkoming van witwassen en financieren van terrorisme* (Wwft) provides a specific regulatory framework, substantive criminal provisions are located within the

Wetboek van Strafrecht, particularly Articles 420bis and 420quater. These provisions clearly distinguish between intentional (*dolus*) and negligent (*culpa*) money laundering, with corresponding differences in the severity of sanctions. This demonstrates a direct and explicit implementation of culpability-based proportionality within the statutory framework.

Similarly, German criminal law reflects a coherent integration between administrative regulation under the *Geldwäschegesetz* (GwG) and substantive criminal law in Section 261 of the *Strafgesetzbuch*. The provision broadly criminalizes conduct involving proceeds of crime, including passive forms such as acquiring and possessing illicit assets. Crucially, it differentiates between intentional conduct and negligent conduct defined as being "recklessly unaware" with significantly lighter sanctions for the latter. This distinction reinforces the centrality of culpability in structuring criminal liability.

In Spain, a dual framework is also evident. While the *Prevention of Money Laundering and Terrorist Financing Act* (Act 10/2010) provides definitional guidance, substantive criminal liability is governed under Article 301 of the *Criminal Code*. This provision distinguishes between intentional conduct and conduct resulting from serious negligence, with proportional differences in sentencing. As in other jurisdictions, acts such as acquiring and possessing illicit assets are recognized as elements of passive money laundering, and their sanctioning is directly tied to the degree of culpability.

From a comparative perspective, despite variations in legislative techniques, a consistent pattern emerges across these jurisdictions. First, all four countries maintain specific anti-money laundering statutes while relying on their respective criminal codes as the primary basis for defining offenses and sanctions. Second, each system places culpability at the core of sentencing differentiation, with intentional offenses invariably attracting more severe penalties than negligent ones. This indicates that the distinction between *dolus* and *culpa* constitutes a universal principle underpinning proportionality in modern criminal law.

Nevertheless, each jurisdiction exhibits distinct strengths and limitations. Australia demonstrates a sophisticated and multi-variable sentencing model, albeit with regulatory fragmentation and inconsistencies. The Netherlands and Germany offer clearer culpability-based distinctions but tend to integrate active and passive money laundering within a unified normative structure. Spain similarly

applies proportional differentiation, although it does not fully separate active and passive forms of the offense.

Against this backdrop, the comparative findings underscore the necessity for future criminal law reform to clearly differentiate between forms of culpability in passive money laundering offenses. Such differentiation must be explicitly reflected in the formulation of sanctions to ensure consistency with the principle of proportionality and to enhance substantive justice within the legal system.

CONCLUSION

From a normative perspective, this study asserts that the principle of proportionality in criminal law is not solely a contemporary doctrinal development, but is also firmly rooted in Islamic criminal law through the concept of *maqāṣid al-sharīʿah*. Within this framework, punishment must be proportionately determined in relation to the protection of five essential values: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), property (*ḥifẓ al-māl*), and lineage (*ḥifẓ al-nasl*). Proportionality, therefore, operates as both a limiting and guiding principle, ensuring that criminal sanctions correspond to the offender's degrees of blameworthiness while simultaneously advancing the broader objectives of justice and social protection. Any legal formulation that disregards the distinction between intentional (*dolus*) and negligent (*culpa*) conduct risks undermining not only doctrinal coherence but also the substantive justice envisioned within the *maqāṣid al-sharīʿah* framework.

In addressing the research questions, this study concludes that the formulation of passive money laundering under Article 607 paragraph (1) letter (c) of the Indonesian Criminal Code developed using the *pro parte dolus pro parte culpa* approach is not aligned with the principle of proportionality. By equating sanctions for intentional and negligent conduct, the provision obscures the fundamental distinction in culpability and thereby creates the potential for disproportionate punishment. Comparative analysis further demonstrates that jurisdictions such as Australia, the Netherlands, Germany, and Spain consistently differentiate sanctions based on levels of fault, reinforcing the centrality of culpability in modern criminal law. Accordingly, the current Indonesian framework reveals a clear disjunction between *das sollen* (the normative ideal grounded in proportionality) and *das sein* (the existing legal reality), which continues to accommodate a structurally flawed approach to criminal liability.

In view of these findings, this study proposes a comprehensive reconsideration of the legal framework regulating passive money laundering. Specifically, offenses committed with *dolus* and those arising from *culpa* should be codified in separate provisions, each accompanied by sanctions proportionate to the respective degree of culpability. The continued reliance on the *pro parte dolus pro parte culpa* model should be abandoned, as it inherently undermines the principle of proportionality. From an academic perspective, this study contributes to the advancement of comparative criminal law by integrating Islamic legal principles into contemporary legal analysis, thereby offering a more nuanced and value-oriented framework for assessing criminal liability. Ultimately, this study advances the argument that a just and legitimate penal system cannot be achieved without embedding proportionality grounded in both culpability and the objectives of *maqāṣid al-sharīʿah* as a foundational principle in the formulation of criminal law.

BIBLIOGRAPHY

Ali, Mahrus. 2018. "Proporsionalitas dalam Kebijakan Formulasi Sanksi Pidana." *Jurnal Hukum Ius Quia Iustum* 25 (1): 137–158. https://doi.org/10.20885/iustum.vol25.iss1.art7.

AlQudah, Anas, et al. 2025. "Money Laundering in Global Economies: How Economic Openness and Governance Affect Money Laundering in the EU, G20, BRICS, and CIVETS." *Journal of Risk and Financial Management* 18 (6): 319. https://doi.org/10.3390/jrfm18060319.

Amrani, Hanafi. 2015. *Hukum Pidana Pencucian Uang: Perkembangan Rezim Anti Pencucian Uang dan Implikasinya terhadap Prinsip Dasar Kedaulatan Negara, Yurisdiksi Pidana dan Penegakan Hukum*. Yogyakarta: UII Press.

Andiojaya, Agung. 2025. "Do Stronger Anti-Money Laundering (AML) Measures Reduce Crime? An Empirical Study on Corruption, Bribery, and Environmental Crime." *Journal of Economic Criminology* 8: 100157. https://doi.org/10.1016/j.jeconc.2025.100157.

Anjani, A., and H. Widiastuti. 2024. "The Puzzle of Money Laundering: A Literature Review of Regulations and Implications." *Journal of Accounting and Investment* 25 (3): 1088–1108. https://doi.org/10.18196/jai.v25i3.21492.

Arafat, Muhammad, and Asmuni. 2025. "Implementation of *Maqāṣid al-Sharīʿah* in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia." *Al-Sulthaniyah* 14 (1). https://doi.org/10.37567/al-sulthaniyah.v14i1.3577.

Atmadja, I Dewa Gede. 2013. *Filsafat Hukum: Dimensi Tematis dan Historis*. Malang: Setara Press.

Beccaria, Cesare. 1986. *On Crimes and Punishments*. Cambridge: Hackett Publishing Company.

Besri, and Mohamad Ali Hisyam. 2024. "Analisis Aksesibilitas Ramah Lansia pada Destinasi Wisata Religi Makam Air Mata Ibu di Kabupaten Bangkalan dalam Perspektif *Maqāṣid Syarīʿah*." *Journal of Islamic Economic and Law* 1 (1): 63–73. https://doi.org/10.59966/jiel.v1i1.1269.

Campbell-Verduyn, Malcolm. 2021. "Bitcoin, Crypto-Coins, and Global Anti-Money Laundering Governance." *Crime, Law and Social Change* 75 (3): 283–305. https://doi.org/10.1007/s10611-017-9756-5.

Chazawi, Adami. 2014. *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*. Malang: Bayumedia Publishing.

Contreras, Alfredo, and Edgar Villa Pérez. 2026. “Strategic Choices in Money Laundering: Smurfing, Layering, and Financial Over-Diversification.” *Journal of Economic Criminology* 11: 1–7. https://doi.org/10.1016/j.jeconc.2025.100199.

Corlett, J. Angelo. 2013. *Responsibility and Punishment*. Dordrecht: Springer Science+Business Media.

Fhatnur, Y. S. A. 2024. “Dynamics and Strategies of Law Enforcement of Money Laundering Offences in Indonesia.” *Indonesian Journal of Law and Economics Review* 19 (2). https://doi.org/10.21070/ijler.v19i2.1286.

Fatoni, Syamsul, et al. 2025. “Asas Proporsionalitas: Perspektif Hukum Positif dan *Maqāṣid Syarīʿah* dalam Sistem Peradilan Pidana.” *Jurnal Hukum Ius Quia Iustum* 32 (1): 46–71. https://doi.org/10.20885/iustum.vol32.iss1.art3.

Hartati, Titin, and KMS Herman , trans. 2025. “Strengthening Notary Reporting Obligations to Prevent Money Laundering in Property Transactions”. Al-Battar: Jurnal Pamungkas Hukum 2 (3): 290-99. https://doi.org/10.63142/al-battar.v2i3.452.

Halimang, S. T., et al. 2025. “Justice and *Qiṣāṣ* in Islamic Law: The Views of Muslim Scholars and Intellectuals at Makassar City, South Sulawesi.” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 9 (1): 617–642. https://doi.org/10.22373/sjhk.v9i1.26164.

Hamzah, Andi. 2008. *Terminologi Hukum Pidana*. Jakarta: Sinar Grafika.

Huda, Chairul. 2011. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group.

Ibrahim, Zumiyati Sanu, et al. 2025. “Integration of *Maqāṣid al-Sharīʿah* in the Criminal Law Reform to Achieve Justice and Human Dignity.” *Jurnal Hukum Islam* 23 (1): 105–144. https://doi.org/10.28918/jhi.v23i1.04.

Kurdi, et al. 2025. “The Relevance of the Principle of No Criminal Punishment without Fault (*Geen Straf Zonder Schuld*) in Corporate Criminal Liability in Indonesia.” *Jurnal Mercatoria* 18 (2): 209–218. https://doi.org/10.31289/mercatoria.v18i2.16610.

Levi, Michael, and Peter Reuter. 2020. "Money Laundering." *Crime and Justice* 49 (1): 233–308. https://doi.org/10.1086/708453.

Madjrie, Abdurrahman, and Fauzan Al-Anshari. 2003. *Qishas: Pembalasan yang Hak*. Jakarta: Khairul Bayan Sumber Pemikiran Islam.

Mallika, B. K., and V. H. Ramasubramanian. 2025. "Anti-Money Laundering System in Detecting and Preventing Money Laundering Activities: A Systematic Review." *Journal of Money Laundering Control* 28 (2): 385–407. https://doi.org/10.1108/JMLC-07-2024-0108.

Mintoff, Yana, and Mary Grace Vella. 2025. "Money Laundering and the Crime Nexus: A Case Study in Malta." *Journal of White Collar and Corporate Crime* 6 (2): 127–142. https://doi.org/10.1177/2631309X241261656.

Muslich, Ahmad Wardi. 2005. *Hukum Pidana Islam*. Jakarta: Sinar Grafika.

Nurrizkiya, Syifa, and E. Sulyati. 2025. "Sanksi Tindak Pidana Pembunuhan Akibat Pengeroyokan dalam Putusan Mahkamah Agung Nomor 101/Pid.B/2018/PN Bau: Analisis Hukum Pidana Islam." *Legalite: Jurnal Perundang-Undangan dan Hukum Pidana Islam* 10 (2): 163–176. https://doi.org/10.32505/legalite.v10i2.13636.

Opsunggu, Eben Patar, and Azis Budianto , trans. 2025. "Regulatory Harmonization of Plea Bargaining for Petty Corruption in Indonesia's Criminal Justice System". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 374-85. https://doi.org/10.63142/al-battar.v2i3.450.

Putra, Agus, Nawan Pujianto, Irfan Rizky Hutomo, and Susila Esdarwati , trans. 2025. "Reconstructing Independence of Indonesia's Corruption Eradication Commission After Supervisory Board Reform in Criminal Justice". Al-Battar: Jurnal Pamungkas Hukum 2 (3): 248-58. https://doi.org/10.63142/al-battar.v2i3.456.

Remmelink, Jan. 2003. *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta: Gramedia Pustaka.

Ruba'i, Masruchin. 2001. *Asas-Asas Hukum Pidana*. Malang: UM Press.

Ruba'i, Masruchin. 2012. *Aneka Pemikiran Hukum Nasional yang Islami*. Malang: UM Press.

Samosir, Marlina, Raymundus Loin, Diana Farid, Hanira Hanafi, and Anna Boumpa , trans. 2026. "Optimizing Asset Recovery in Corruption Cases: Evaluating Indonesia's Legal Framework and the Need for Non-Conviction Based Forfeiture". Al-Battar: Jurnal Pamungkas Hukum 3 (1): 55-66. https://doi.org/10.63142/al-battar.v3i1.463.

Saleh, Roeslan. 1994. *Masih Saja Tentang Kesalahan*. Jakarta: Karya Dunia Fikir.

Santoso, Topo. 2016. *Asas-Asas Hukum Pidana Islam*. Jakarta: Rajawali Pers.

Smidt, H. J. 1891. *Geschiedenis van het Wetboek van Strafrecht*. Haarlem: H. D. Tjeenk Willink.

von Hirsch, Andrew. 1983. "Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale." *Journal of Criminal Law and Criminology* 74 (1): 209–248. https://scholarlycommons.law.northwestern.edu/jclc/vol74/iss1/3.

Zainuddin. 2007. *Hukum Pidana Islam*. Jakarta: Sinar Grafika.

Zulfa, Eva Achjani, and Indriyanto Seno Adji. 2011. *Pergeseran Paradigma Pemidanaan*. Bandung: Lubuk Agung.

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