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Reconstruction of Criminal Negligence in Criminal Law Based on Justice Values

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ABSTRACT: The 1945 Constitution of the Republic of Indonesia article 1 paragraph (3) states "The State of Indonesia is a State of Law". Indonesia is a country based on law, so it is only fitting that the law be made supremacist, where everyone must submit and obey without exception. In Indonesian criminal law, negligence is interpreted as "careless, careless, careless or careless", without any separation between the meaning of "careless" and the meaning of "recklessness", so that even though criminal acts of negligence result in many fatalities, the perpetrator can only charged with negligence. This research is normative juridical research *(legal research)* with a conceptual approach*,* a statutory approach *and* a comparative *law approach.* The results of this research are that the element of recklessness *(recklessness)* can be constructed into negligence and has a higher/more serious position as an element of error than conscious negligence *(bewuste schuld)* or unconscious negligence *(onbewuste schuld),* because in the legal dictionary *Black's Law Dictionary* that in principle the level of error contained in the principle of recklessness *is* greater than in the principle of negligence. So that later the criminal sanctions for perpetrators of recklessness *(recklessness)* will be heavier because they took risks deliberately and these risks cannot be justified.

KEYWORDS: Reconstruction, Negligence, Justice

I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia article 1 paragraph (3) states *"The State of Indonesia is a State of Law"*. Indonesia is a country based on law, so it is only fitting that the law be made supremacist, where everyone must submit and obey without exception. Law is actually a crystallization of values that reflect the social construction of society. There is no law that does not represent value. Usually the value here is respect for fundamental beliefs and their nature is so sacred as to be used as a basis for life. Thus, law is an expression of these values and recently law which is based on sacred values is charged with functions both operationally and substantially.[1]

Values are the basis for Norms. Values can be interpreted as a measure that a society or group realizes or not to determine what is right, good and so on. Values influence people's behavior. Measures called values, for example: honesty, loyalty, purity, usefulness, beauty, honor, decency, and so on. Values are more abstract than Norms. The value *system* of a nation, society or group is not the same, therefore the norms that apply in one nation, society or group do not always apply to other nations, communities or groups.

Some of the norms are legal norms. It is called a legal norm, if society, with its tools, can enforce its enactment. This legal norm becomes a legal rule, if it takes the form of a certain formulation. This formulation is important so that people know what the law is. The formulation of written legal rules is called regulations. For example, Article 338 of the Criminal Code reads: *"Whoever deliberately takes the life of another person, is threatened with murder, with a maximum prison sentence of 15 years"*. The norm that lies "behind" this rule is: this person is prohibited from killing. The value that lies "behind" the norm is: survival or compassion for fellow living.[2]

In Indonesian criminal law, it is known that *Wetboek van Strafrecht* (hereinafter referred to as **the Criminal Law Book** based on Article VI paragraph (2) of Law Number 1 of 1946), is the main source of legislation that regulates criminal law in the form of crimes and crimes. Violation of legal regulations regarding public interests that apply in Indonesia. Basically, the presence of

[1]Esmi Warassih Pujirahayu, Derita Prapti Rahayu, Faisal, (2020), *Sociology of Law, an Introduction to the Dimensions of Law and Society,* First printing, Yogyakarta: Litera. P . 57.

[2]Sudarto, (2018), *Criminal Law 1*, Cet. fifth (Revised Edition), Semarang: Sudarto Foundation. p. 2

criminal law in society is intended to provide a sense of security to individuals and groups in society in carrying out their daily activities.

Provisions regarding criminal acts of negligence/negligence that cause another person to die are regulated in article 359 of the Criminal Code which reads: *"Any person who, through 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.* [3]The provisions of Article 359 of the Criminal Code regarding mistakes that result in the death of another person emphasizes that every person who commits an act unintentionally/negligently, as long as the act fulfills the elements of a criminal act, the act still has legal consequences in the form of imposition of criminal sanctions on the perpetrator. Criminal sanctions themselves are sorrow or suffering that is inflicted on someone who is guilty of committing an act that is prohibited by criminal law. With these sanctions it is hoped that people will not commit criminal acts.[4]

A criminal act is an act that violates legal regulations which is threatened with criminal sanctions by applicable law and must be held accountable. A criminal act occurs not only because of the intention of a perpetrator, but there is a criminal act that occurs because of a careless, negligent attitude. So it can be understood that criminal acts do not only occur because of the intention of the perpetrator but can also occur because of the negligence or negligence of the perpetrator.

The Criminal Code does not provide an understanding of negligence (*culpa*),[5] nor does the Criminal Code (hereinafter referred to as **the Criminal Code** based on Article 623 of Law Number 1 of 2023) not provide an understanding of negligence *(culpa),* but the definition of negligence is left to the judge's consideration based on an explanation. Article 474 paragraph (1): "This provision does not provide a formulation regarding the meaning of negligence. In general, the definition of negligence indicates that the perpetrator did not want the consequences of his actions to occur, namely death or injury. However, in concrete incidents there are difficulties in determining whether an action can be called negligence. For example, someone who is driving a vehicle in such a way that it endangers public traffic which is likely to cause casualties. Therefore, based on these considerations, the definition of negligence is left to the judge's consideration to assess the case at hand".[6]

Criminal acts of negligence also often occur in social life, especially in terms of traffic on highways. Everyone must obey traffic rules when on the road. If one person disobeys, fatal consequences can occur. [7]Article 310 paragraph (4) of the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as **the LLAJ Law**) also regulates negligence which results in the death of another person, reading: *"In the event of an accident as referred to in paragraph (3) which results in the death of another person, shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 12,000,000.00 (twelve million rupiah)".*

Indeed, in Indonesian criminal law, negligence is defined as "careless, careless, careless or imprudent", so that even though the criminal act resulted in many fatalities, the perpetrator can only be charged with the article of negligence. This is different from the concept of gradation of forms of error in England criminal law which separates *recklessness* from *negligence* , where *recklessness* can be included in *dolus eventualis* (intentional deliberate action) or included in *bewuste schuld* (negligence that is aware).

Based on this background description, this research is entitled "Reconstruction of Criminal Acts of Negligence in Criminal Law based on Justice Values". The formulation of the problem is how to reconstruct criminal acts of negligence in criminal law based on the value of justice?

II. MATERIALS AND METHODS

This research uses a normative juridical research method, namely legal research carried out by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem being studied.[8] Researchers use secondary data with legal materials in the form of primary legal materials, secondary legal materials and tertiary legal materials.

This research uses a statutory approach *which* will explore the applicable regulations, namely the Criminal Code, the Criminal Code and the LLAJ Law. Researchers also use a conceptual approach, which is meant by a conceptual approach as Peter Mahmud Marzuki explains in his book, namely moving from the views and doctrines that develop in legal science.[9] Then, by using a comparative law approach, as stated by Rudolf D. Schless, *comparative law* is a technique or way of working on actual foreign legal elements in a legal problem.[10]

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[3]Moeljatno, (2018), *Criminal Code, Criminal Code*, thirty-third printing, Jakarta: Bumi Aksara. p. 127

[4]Mahrus Ali, (2011), *Basics of Criminal Law*, Jakarta: Sinar Graphics. p. 194

[5]Wirjono Prodjodikoro, (2003), *Principles of Criminal Law in Indonesia,* Bandung: Refika Aditama. p. 72

[6]Editorial Sinar Graphics, (2023), *Criminal Code 2023 Criminal Code Republic of Indonesia Law No.1 of 2023,* First Printing. Jakarta: Sinar Graphics. p. 323

[7]Rinto Raharjo, (2014), *Orderly Traffic*. 1, Jakarta: Shafa media. p. 22

[8]Soerjono Soekanto, Sri Mamudji. (2021). *Normative Legal Research (A Short Review).* Jakarta: Rajawali Press. p. 13

[9]Peter Mahmud Marzuki. (2021). *Legal Research.* Jakarta: Prenada Media. p. 135

[10]Barda Nawawi Arief, (2011). *Comparative Criminal Law,* Ninth edition, Jakarta: Rajawali Press. p. 5

The data collection method was carried out using library research to collect secondary data in order to obtain the theoretical basis and data needed by researchers in analyzing research problems. The data collection technique in this research uses qualitative data analysis techniques and the results of the research will then be presented in a scientific work regarding the reconstruction of criminal acts of negligence in criminal law based on the value of justice.

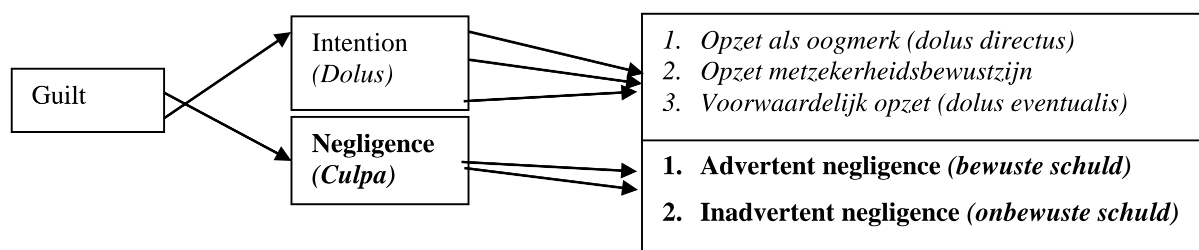
III. RESULTS AND DISCUSSION

Construction of criminal acts of negligence in Indonesian criminal law

In criminal law science, several authors mention several conditions for negligence: 1) Hazewinkel-Suringa, legal science and jurisprudence defines *schuld* (negligence) a. lack of guessing b. lack of caution. 2) Van Hamel, negligence contains two conditions: a. not making estimates as required by law b. not taking precautions as required by law. 3) Simons, generally *schuld* (negligence) has two elements: a. no caution b. predictable consequences. 4) Pompe: There are three types of negligence *(onachtzaamheid)*: a. can predict *(kunnen verwachten)* the emergence of consequences b. knowing the possibility *(kennen de mogelijkheid)* c. can recognize *the possibility (kunnen kennen van de mogelijkheid).*

In accordance with the theory of negligence, to determine the existence of negligence in a person, **it must be determined from the outside how he should act by taking the measure of the inner attitude of people in general if they were in the same situation as the perpetrator. And in determining** the creator's lack of care, a measure can be used of **whether he "had an obligation to do something else"**. This obligation can be taken from the provisions of the law or from outside the law by paying attention to all the circumstances of what the person should do. If he doesn't do what he should do, then that is the basis for saying that he is negligent.[11]

The gradation of forms of error in Indonesian criminal law is described using the following scheme:



Picture. 1 Gradation of forms of error in Indonesian criminal law

As a result of the construction of negligence as mentioned above, it has an impact on the formulation of every article regarding the criminal act of negligence in the law, both in the Criminal Code, the Criminal Code and the LLAJ Law, which applies a relatively light criminal threat, even if the act This criminal negligence results in the loss of the lives of one person or hundreds of people. In this case, the victim and the victim's family should also pay more attention to getting the justice that has been advocated for in the law.

Construction of the criminal offense of negligence in England criminal law

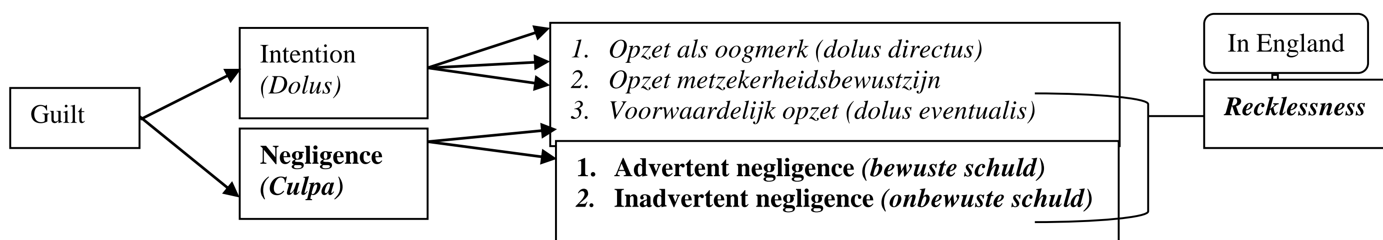
Principle *(Actus Non Facit Reum Nisi Mens Sit Rea)* Although never formulated in law, **England criminal law also adheres to the principle of guilt** which is formulated in Latin *actus non facit reum nisi mens sit rea (an act does not make a person guilty, unless the mind is legally blameworthy*). Based on this principle, there are two conditions that must be met for a person to be convicted, namely a prohibited external act *(actus reus)* and an evil/disgraceful inner attitude *(mens rea).*

Mens rea is often translated as *guilty or wicked mind*, but according to the authors, this translation is considered inaccurate or could be misleading. According to LB Curzon, JC Smith, and Brian Hogan, *mens rea* still exists even if someone acts honestly (in good faith) or with a clean conscience and believes that their actions are in accordance with morals and are right according to the law. A person's inner attitude which includes *mens rea* can be: *intention* (intentional), *recklessness* (recklessness), and *negligence* (negligence or lack of caution).

It is said that there is *recklessness* if someone deliberately takes a risk that cannot be justified *(deliberate taking of an unjustifiable risk).* For example, A drives a car fast in the hope of getting home quickly. He does not expect a collision or hurt people, but he can imagine/estimate the possibility of such an outcome. If it turns out that A hits B, then in this case there is *recklessness*. So in essence, ***recklessness* is "taking a deliberate risk" and that risk is an unjustifiable risk.**[12]

Meanwhile, the gradations of forms of error in England criminal law are described using the following scheme:

[11]Sudarto, *Op Cit.* p. 163
[12]Barda Nawawi Arief, *Comparative Criminal Law, Op Cit*. p. 36



Picture. 2 Gradations of forms of Mistake in England criminal law

Reconstruction of criminal acts of negligence in criminal law based on the value of justice

Law enforcement contains the supremacy of substantial values, namely justice. However, since the use of modern law, the courts are no longer a place to seek justice. The judiciary as a law enforcer is nothing more than a mouthpiece for the law, which enforces the rules of the game and procedures. The judiciary, which used to be a place to seek justice, has become a place to implement laws and procedures. Legislative regulations as modern law have caused very large and fundamental changes in the administration of law. Modern law often becomes a burden on the society that receives it. Modern law makes itself inaccessible and incomprehensible to society. Laws are made based on rules and logic. [13]Justice is what is to be realized in the law enforcement process. But there are still many judges who always use the law in enforcing the law. Law enforcement which always uses laws has limitations. Because judges will only use the law in resolving cases and will not explore the values that live in society *(living law).*[14]

Formulating criminal law policies based on the value of justice, according to Barda Nawawi Arief, the essence of legal reform/development does not lie in the formal and external aspects (such as the formation of new laws), but instead lies in this immaterial aspect, namely building a culture of spiritual values from the law. Apart from improving moral quality, upholding justice requires improving scientific quality. Formulative legislative policies (in the context of reforming the drafting of laws) need to be accompanied by reforms in the quality of science (law and justice science). As a country that is based on the Godly Pancasila, in formulating criminal provisions it must follow the guidance of the Divine guidelines (guidelines of God Almighty) regarding how to formulate a just criminal law policy.[15]

Barda Nawawi Arief, [16]said that the quality of justice is certainly not only related to the quality of legal science and other sciences, but what the public really hopes for is the quality of science and attitudes about how to uphold justice itself, legislators and law enforcers must know that justice is carried out "for the sake of justice based on the belief in Almighty God". For example, in the Al-Quran which states, among other things:

1. *"When you punish people (bainan nass), then punish them fairly*. (QS An-Nisa: 58)
2. *"Uphold truth and justice even for yourself, your parents, or your close relatives (cronies)".* (QS An-Nisa: 135)
3. *"Do not follow your desires because you want to deviate from truth/justice".* (QS An-Nisa: 135)
4. *"Let not your hatred of a people or group encourage or cause you to act unfairly".* (QS Al-Maidah: 8)

The demands for justice according to the Qur'an above clearly contain universal principles, namely: the principle of equality *(equality, indiscrimination),* no favoritism *(non-favouritism, anti-nepotism),* impartiality *(fairness, impartiality)* and the principle of objectivity (no subjective). These universal principles/values currently appear to be weakening or experiencing erosion. Improving the quality of law enforcers regarding the guidance of justice based on Almighty God above, of course, is not only limited to "knowledge" *(knowledge/cognitive) abilities*, but is expected to embody their beliefs and attitudes, that if justice based on divine guidance is not followed and implemented, it will destroy society.

appropriate that recklessness *(recklessness)* can be constructed into negligence and has a higher/more serious error element position than conscious negligence *(bewuste schuld)* or unconscious negligence *(onbewuste schuld),* because in the legal dictionary *Black's Law Dictionary states* that in principle the elemental level The errors contained in the principle of recklessness *are* greater than those in the principle of negligence . So that later the criminal sanctions for perpetrators of recklessness *(recklessness)* will be heavier because they took risks deliberately and these risks cannot be justified. This is in accordance with the definition of recklessness *in* criminal law.

[13]Suteki, (2010), professor's inauguration speech with the title "The Policy of Not Enforcing the Law *(Non Enforcement of Law)* for the Glory of Substantive Justice", at Diponegoro University. p. 14

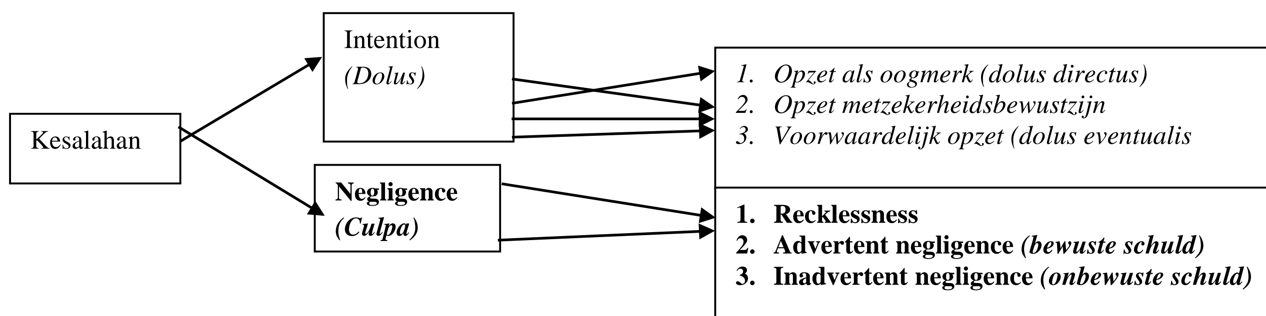
[14]Haryono, (2019), "Law Enforcement Based on Substantive Justice Values (Study of Constitutional Court Decision No. 46/PUU-VII/2012)", Progressive Law Journal, Vol. 7, no. 1. p. 22

[15]Eko Soponyono, (2017), speech delivered at the inauguration of a professor with the title "The Wisdom of the Qur'an in Reforming Criminal Law to Realize Religious Justice" , at Diponegoro University. p. 12

[16]Barda Nawawi Arief, (2018), *Law Enforcement Issues and Criminal Law Policy in Combating Crime,* Fifth Edition, Jakarta: Prenada Media Group. p. 7

Reconstruction of Criminal Negligence in Criminal Law Based on Justice Values

From **the reconstruction explanation criminal acts of negligence in criminal law based on the value of justice** above, the gradations of forms of error in criminal law can be described using the following scheme:



Picture. 3 Reconstruction of criminal acts of negligence in criminal law based on the value of justice

To clarify the differences between recklessness *(recklessness),* conscious negligence *(onbewuste schuld)* and unconscious negligence *(onbewuste schuld),* **a table of differences in criteria for types of negligence in criminal law** is made as follows:

No.	**Difference**	**Recklessness**	**Advertent negligence**	**Inadvertent negligence**
1	take risks deliberately	yes	No	No
2	imagine or predict the consequences	yes	yes	No
3	do what should be done according to written and unwritten laws	No	No	No

IV. CONCLUSIONS

Reconstruction of criminal acts of negligence in criminal law based on the value of justice is carried out by constructing the element of recklessness *(recklessness)* into negligence because the element of recklessness *(recklessness)* has a higher/more serious position as an element of error than conscious negligence *(bewuste schuld)* or unconscious negligence *(onbewuste schuld),* based on the legal dictionary *Black's Law Dictionary* which states that in principle the level of error contained in the principle of recklessness *is* greater than in the principle of negligence . So the criminal sanctions for perpetrators of criminal acts of reckless negligence *(recklessness)* should be heavier, because they took risks intentionally and these risks cannot be justified.

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Constitution

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