

A Juridical Analysis of the Elements of Intentionality and Negligence in Criminal Acts

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ABSTRACT

This research aims to legally examine the elements of intentionality and negligence in criminal acts as the basis for a person's criminal responsibility. The main problem in this study is how the concepts of intentionality and negligence are understood in criminal law and how they are applied in criminal justice practice. This research uses a normative legal research method with a literature study approach, namely by examining various sources such as laws and regulations, opinions of criminal law experts, and court decisions related to the research topic. The results of the study show that intentionality and negligence have quite fundamental differences in determining the fault of the perpetrators of criminal acts. Intentionality occurs when a person commits an act with the will or awareness that his act may cause consequences that are prohibited by law. Meanwhile, negligence occurs when a person is not careful or ignores the obligation to act carefully so as to cause harm or adverse consequences to others. The difference between the two elements affects the evidentiary process in court, the determination of whether or not the elements of the criminal act are met, and the severity of the criminal sanctions imposed. Therefore, the precise determination of whether an act was committed intentionally or due to negligence is essential to ensure justice, legal certainty, and the application of proportionate punishment in the criminal justice system.

Keywords: Intentionality, Negligence, Criminal Act, Criminal Liability, Criminal Law.

I. Introduction

Criminal law functions as an instrument of social control to maintain order, justice, and legal certainty in society. One of its core elements is criminal liability, which requires the fulfillment of both the act (*actus reus*) and fault (*mens rea*) (Alfero & Rahayu, 2024). Fault is generally divided into intentionality (*dolus*) and negligence (*culpa*). This distinction is not merely theoretical; it directly affects the determination of applicable legal provisions, the process of proof in court, and the imposition of sanctions (Shidiq, Samuji, & Haniyah, 2025). Therefore, a clear understanding of these concepts is essential to ensure fairness and consistency in law enforcement. In practice, however, the interpretation of intentionality and negligence in Indonesia often varies among investigators, prosecutors, and judges. This inconsistency is reflected in court decisions that differ in assessing similar acts. As a result, legal uncertainty arises and may lead to injustice for justice seekers. This issue has become increasingly significant alongside rapid technological, industrial, and social developments, which have increased the complexity of criminal acts. Empirical trends also show a rise in negligence-based crimes, such as traffic accidents, medical malpractice, workplace incidents, and

environmental violations. However, in some cases, acts that are more appropriately categorized as negligence are prosecuted under intentional provisions, resulting in disproportionate legal consequences. One of the main problems is the absence of clear and uniform juridical indicators to distinguish intentionality from negligence.

The Indonesian Criminal Code does not explicitly define these concepts, leaving their interpretation dependent on legal doctrine, jurisprudence, and judicial reasoning. This situation creates broad opportunities for subjectivity. In addition, modern forms of crime often fall into gray areas, such as *dolus eventualis* (awareness of risk) and *culpa lata* (gross negligence) (Mahardhika, Astuti, & Mustaffa, 2023). These blurred boundaries make it more difficult for judges to accurately assess the degree of fault, particularly when balancing substantive justice and human rights considerations (Morokuhy, Rompas, & Aling, 2025). Previous studies have examined intentionality and negligence from doctrinal and case-based perspectives. However, many of these studies remain limited in scope. Methodologically, they are often descriptive in nature without employing deeper comparative or analytical approaches. Empirically, they rely on a limited number of cases, making it difficult to identify broader patterns. Furthermore, several studies do not provide concrete recommendations to address inconsistencies in legal application (Marbun, Eddy, & Moertiono, 2025). Based on these gaps, this study aims to conduct a juridical analysis of the concepts and application of intentionality and negligence, identify key problems in practice, and propose solutions to improve consistency and legal certainty. The findings are expected to contribute not only to academic discourse and legal practice but also to the development of a more just, proportional, and human rights-oriented criminal justice system.

II. Literature Review and Hypothesis Development

2.1. The Concept of Intentionality in Criminal Law

Intentionality is a form of fault in criminal law that serves as the basis for determining a person's criminal responsibility. In criminal law doctrine, intentionality is defined as the mental attitude of a perpetrator who consciously intends or is aware of the consequences of their actions. This means that the perpetrator commits an act with full awareness that the act may result in consequences prohibited by law. Therefore, intentionality is often associated with the perpetrator's intention or willingness to commit an unlawful act. Criminal law scholars distinguish intentionality into several forms. The first is intentionality as direct intent (*dolus directus*), which occurs when the perpetrator directly intends the consequences of their actions. The second is indirect intent (*dolus indirectus*), which occurs when the perpetrator realizes that certain consequences will inevitably result from their actions. The third is conditional intent (*dolus eventualis*), which occurs when the perpetrator is aware of the possibility of prohibited consequences but nevertheless proceeds with the act. These forms of intentionality reflect the perpetrator's level of awareness regarding their actions and often become important considerations in the evidentiary process in court.

2.2. The Concept of Negligence in Criminal Law

Negligence is a form of fault that differs from intentionality. Negligence occurs when a person commits an act without intending to cause a prohibited consequence, but the consequence arises due to a lack of care or failure to fulfill the obligation to act cautiously. In criminal law, negligence is commonly interpreted as a failure to exercise the level of caution or vigilance that a reasonable person should demonstrate in a particular situation. Negligence may occur when a person fails to foresee the consequences of their actions, even though they reasonably should have been able to anticipate them. For example, in a traffic accident case, a careless driver may cause injury or even death to another person. In such a case, the perpetrator does not intend to produce those consequences, but harmful consequences still occur due to reckless or careless behavior. Therefore, negligence can still give rise to criminal liability even in the absence of intentionality.

2.3. The Difference Between Intentionality and Negligence in Criminal Liability

Intentionality and negligence are two forms of fault that differ fundamentally in criminal law. The primary difference lies in the perpetrator's mental attitude toward the act and its consequences. In cases of intentionality, the perpetrator possesses the intention or awareness that certain consequences will result from their actions. In contrast, in cases of negligence, the perpetrator does not intend to cause those consequences, but they occur due to a lack of caution or failure to fulfill the required duty of care. These differences also affect the degree of criminal liability and the severity of the sanctions imposed. Criminal acts committed intentionally are generally subject to more severe sanctions because the perpetrator knowingly engages in unlawful conduct. On the other hand, criminal acts resulting from negligence are usually punished less severely because the perpetrator lacks direct intent to cause harmful consequences. In criminal justice practice, judges must carefully analyze whether an act was committed intentionally or negligently, as this determination significantly affects whether the elements of a criminal offense are fulfilled and the type of sanctions that may be imposed on the perpetrator.

III. Research Method

This study employs a normative legal research method with a library research approach. The normative legal research method was selected because the study focuses on examining legal norms, legal principles, and criminal law doctrines related to the elements of intentionality and negligence in criminal acts. This approach is used to understand how the concept of fault in criminal law is formulated and applied within the system of criminal liability. Accordingly, this study views law as a system of norms analyzed through various relevant legal sources, including legislation and the opinions of legal scholars. The type of research used is descriptive-analytical research. The descriptive approach aims to systematically explain the concepts of intentionality and negligence as regulated in criminal law. Meanwhile, the analytical approach is used to examine more deeply the differences in characteristics, indicators, and juridical implications of these two elements in determining criminal liability. Through this method, the research not only explains existing concepts but also analyzes how these concepts are applied in legal practice and how their differences influence the process of proof and the imposition of criminal sanctions. The data sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to criminal law, particularly the Criminal Code (KUHP), as well as court decisions containing judges' considerations regarding the elements of intentionality and negligence. Secondary legal materials consist of criminal law textbooks, scientific journal articles, previous research findings, and expert opinions discussing the theories of fault, intentionality (*dolus*), and negligence (*culpa*).

Tertiary legal materials include legal dictionaries, legal encyclopedias, and other reference sources used to clarify terms, concepts, and definitions related to the research object. The data collection technique was conducted through a literature review by searching for, collecting, and examining various legal materials relevant to the research topic. This process was carried out systematically by identifying legal sources related to the concepts of intentionality and negligence in criminal law. Each legal material obtained was then classified and analyzed based on its relevance to the research problem. In addition, this study also examined several court decisions to understand how judges interpret and apply the elements of fault in criminal justice practice. The data analysis in this study uses a qualitative juridical analysis method. The collected legal materials were analyzed through a process of legal interpretation using both conceptual and statutory approaches. The conceptual approach was used to understand criminal law theories and doctrines related to the elements of intentionality and negligence, while the statutory approach was used to examine positive legal provisions governing the elements of fault in criminal acts. The results of the analysis were then systematically and logically organized to produce prescriptive conclusions, providing a clearer understanding of the importance of accurately determining the elements of intentionality and negligence in order to ensure justice and legal certainty within the criminal justice system.

IV. Result and Discussion

4.1. Definition of Intentionality and Negligence in Criminal Acts According to Criminal Law

In criminal law, the element of fault is the primary requirement for holding a person criminally liable. A well-known fundamental principle is *geen straf zonder schuld*, which means “no punishment without fault.” In the context of criminal law, fault is closely related to the perpetrator’s mental attitude or state of mind when committing an act prohibited by law. This element of fault distinguishes criminal acts that are morally and legally accountable from actions that merely result in harmful consequences without the perpetrator’s awareness or intention (Ramadhina, Siswanto, & Tamza, 2025). Doctrinally, fault in criminal law is divided into two main forms, namely intentionality (*dolus*) and negligence (*culpa*). This distinction plays a crucial role because it determines the degree of the perpetrator’s fault and the type of criminal sanctions that may be imposed. Intentionality and negligence reflect the level of awareness and intention of the perpetrator regarding the act and its consequences. Therefore, a proper understanding of the meaning and characteristics of these two elements is essential for ensuring fair and proportionate criminal law enforcement. Intentionality is generally defined as a mental state in which the perpetrator is aware of and intends the act being committed, along with the consequences that may arise from that act. Intentionality contains both an element of knowledge (*weten*) and an element of will (*willen*). The perpetrator not only realizes that the act is prohibited by law but also consciously directs their actions toward producing certain consequences. Therefore, intentionality is often regarded as the most serious form of fault in criminal law. Intentionality is not understood as a single concept but is divided into several forms. The purest form is direct intent (*dolus directus*). In this form, the consequences prohibited by law are the primary objective of the perpetrator’s actions. The perpetrator consciously and deliberately intends for those consequences to occur. For example, a person may intentionally take another person’s life for a specific purpose. In such a case, the relationship between the perpetrator’s intention and the resulting consequences is clear and direct. In addition to direct intent, criminal law also recognizes indirect intent (*dolus indirectus*). In this form, the resulting consequences are not the perpetrator’s primary objective, but the perpetrator knows with certainty that those consequences will occur as a result of their actions. Although the consequences are not directly intended, the perpetrator remains criminally liable because they are fully aware of the certainty of those consequences. In other words, the perpetrator accepts such consequences as an unavoidable result of their actions. Another form of intentionality that frequently generates debate in judicial practice is conditional intent or *dolus eventualis*. In this situation, the perpetrator is aware that their actions may produce prohibited consequences but nevertheless continues with the act while accepting the associated risks.

The perpetrator does not directly desire the consequences but demonstrates indifference toward the possibility of harmful outcomes. This form of intentionality often occupies a gray area between intentionality and negligence, requiring careful juridical analysis by law enforcement authorities. In contrast to intentionality, negligence is a form of fault characterized by a lack of caution or attention toward consequences that should reasonably have been foreseeable. In cases of negligence, the perpetrator does not intend for the consequences to occur and is generally unaware that such consequences may arise. However, the perpetrator is expected to foresee and prevent those consequences by acting according to the applicable standard of care. Therefore, negligence is often associated with a failure to fulfill the legal duty to act carefully. Negligence in criminal law reflects a lower degree of fault compared to intentionality. Nevertheless, negligence may still result in criminal liability if certain elements are fulfilled. The essential elements of negligence include the existence of an act, the occurrence of consequences prohibited by law, and a causal relationship between the act and the resulting consequences. Furthermore, it must be proven that the perpetrator had the ability to act more carefully but failed to do so. In criminal law doctrine, negligence is also divided into several forms, including conscious negligence and unconscious negligence. Conscious negligence occurs when the perpetrator is aware of the risk or possible harmful consequences but assumes that those consequences will not occur. In contrast, unconscious negligence occurs when the perpetrator is

entirely unaware of the risk, even though, according to objective standards, they should have been able to recognize and anticipate the consequences. This distinction is important in assessing the degree of fault and determining proportionate criminal sanctions. The fundamental difference between intentionality and negligence lies in the perpetrator's mental attitude toward the consequences of their actions. In intentionality, there is an intention to produce or acceptance of the consequences, whereas in negligence there is neither intention nor acceptance of those consequences. A negligent perpetrator does not desire the harmful outcome and would generally attempt to avoid it if aware of the risk. However, due to a lack of caution or attention, harmful consequences nevertheless occur.

4.2. The Difference Between the Application of Intentionality and Negligence in Criminal Justice Practice

The distinction between the application of intentionality and negligence in criminal justice practice is one of the most crucial issues in criminal law enforcement. Although these two elements are doctrinally well distinguished, their implementation in judicial practice often encounters various challenges. This is because the element of fault is subjective in nature and must be proven through objective facts revealed during the trial process. Therefore, the application of the elements of intentionality and negligence largely depends on the ability of law enforcement officials to interpret and establish the perpetrator's mental attitude based on the available evidence. The application of the element of intentionality is generally characterized by evidence showing that the perpetrator possessed full intention, will, or awareness regarding both the act and its consequences. The public prosecutor must be able to prove that the defendant's actions were carried out consciously and with a specific purpose, or at least with acceptance of consequences prohibited by law. Such proof is usually established through witness testimony, the defendant's statements, documentary evidence, and a sequence of events indicating planning, motives, or deliberate conduct. In contrast, the application of the element of negligence in criminal justice practice focuses primarily on proving the perpetrator's failure to act with the level of care required by applicable standards. In negligence cases, the central issue is not the perpetrator's intention or desire, but whether the perpetrator neglected the legal duty to act cautiously. In such cases, judges assess whether the perpetrator should reasonably have been able to foresee the resulting consequences and whether preventive measures that should have been taken were neglected. The distinction between the application of intentionality and negligence is also reflected in the structure of indictments prepared by public prosecutors. In cases involving intentionality, indictments are generally framed by emphasizing malicious intent, specific objectives, or awareness of consequences. The indictment often includes details regarding motives, the instruments used, the manner in which the act was committed, and circumstances indicating an intention to produce certain consequences. Meanwhile, in negligence cases, the indictment focuses more on acts of carelessness, negligence, or failure to comply with applicable procedural standards. During the trial stage, the difference in the application of intentionality and negligence becomes increasingly evident through the manner in which judges evaluate evidence. In intentionality cases, judges tend to examine the sequence of events before, during, and after the act in order to identify indications of intent or acceptance of consequences.

Judges consider whether the act was spontaneous or planned, whether there was a conflict or specific motive, and how the perpetrator behaved after the act occurred. All of these aspects are used to infer the perpetrator's mental attitude. Conversely, in negligence cases, judges focus more on the standard of conduct that should reasonably have been observed in a particular situation. The assessment is conducted using objective standards, namely how a reasonable and prudent person would have acted under similar circumstances. Judges also consider whether the perpetrator had the ability and opportunity to prevent the harmful consequences and whether the perpetrator violated legal obligations or professional ethical standards inherent in their position. The distinction between the application of intentionality and negligence also affects the proof of causation between the act and its consequences. In intentionality cases, causation is often easier to establish because the resulting consequences are either intended or accepted by the perpetrator. In negligence cases, however, causation frequently becomes a point of dispute because the

consequences are unintended and may be influenced by external factors. Therefore, judges must carefully determine whether the harmful consequences genuinely resulted from the perpetrator's negligence or from unforeseeable events. The difference in the application of intentionality and negligence also influences sentencing considerations. Cases proven to involve intentionality are generally punished more severely than negligence cases. This is based on the assumption that intentionality reflects a higher degree of moral fault. In contrast, in negligence cases, judges tend to consider mitigating factors, such as the absence of malicious intent, the defendant's remorse, and remedial actions taken after the incident occurred. Inconsistencies in the application of intentionality and negligence in criminal justice practice present serious challenges to the principles of legal certainty and justice. Differences in judicial decisions involving similar factual circumstances may create perceptions of injustice within society. Therefore, clearer and more consistent interpretative guidelines regarding the indicators of intentionality and negligence are necessary to ensure that criminal law is applied objectively and proportionately.

4.3. Implications of Judicial Determinations of Intentionality and Negligence on Criminal Liability

The determination of the elements of intentionality and negligence has fundamental juridical implications for criminal liability. In criminal law, criminal liability is not determined solely by the existence of an act that fulfills the elements of a criminal offense, but also by the existence of fault on the part of the perpetrator. Fault serves as the basis for the legitimacy of the state to impose criminal sanctions. Therefore, whether an unlawful act is committed intentionally or negligently greatly influences whether the perpetrator can be held criminally liable, as well as the severity of the sanctions that may be imposed. The first and most significant juridical implication concerns the fulfillment of the elements of a criminal offense. In criminal law, not every act causing harmful consequences can be punished unless it fulfills the elements of fault as formulated by law. Many criminal provisions explicitly require the existence of intentionality. Therefore, if an act is committed merely through negligence, the perpetrator cannot be held criminally liable under those provisions. Conversely, certain criminal offenses specifically regulate negligence as a form of fault, making proof of intentionality irrelevant. Thus, accurately determining the appropriate element of fault is essential in deciding whether an act may be subject to criminal sanctions. The next juridical implication relates to evidentiary requirements during trial proceedings. Intentionality and negligence require different standards of proof. In cases involving intentionality, the public prosecutor must prove the perpetrator's intention, awareness, or acceptance of the prohibited consequences. Such proof is often complex because it concerns the perpetrator's mental state, which cannot be directly observed. In contrast, in negligence cases, proof focuses more on demonstrating a violation of the standard of care that should have been observed by the perpetrator. This difference in evidentiary standards demonstrates that determining the element of fault directly affects evidentiary strategies and judicial assessment during the trial process. The determination of intentionality and negligence also has implications for the severity of criminal liability imposed on the perpetrator. Intentionality is regarded as a more serious form of fault because it reflects a deliberate intention or acceptance of harmful consequences. Consequently, criminal acts committed intentionally are generally punishable by more severe penalties than acts committed through negligence. Negligence, on the other hand, is considered a less serious form of fault because the perpetrator does not desire the harmful consequences, although they may still be blamed for failing to exercise proper care. This implication reflects the principle of proportionality in criminal punishment.

Furthermore, determining the element of fault also affects the application of the principles of justice and legal certainty. If an act that was actually committed through negligence is improperly classified as intentional, it may violate the sense of justice because the perpetrator is treated as though they acted with malicious intent. Conversely, if an act that should be categorized as intentional is instead treated as negligence, the objectives of criminal punishment, including deterrence and the protection of society, may not be achieved. Therefore, the determination of intentionality and negligence must be conducted carefully and objectively. Other juridical implications relate to the types of punishments and legal measures that may

be imposed by judges. In intentionality cases, judges tend to impose principal penalties in the form of imprisonment for relatively longer periods, especially when the resulting consequences are severe. In negligence cases, judges often consider lighter alternatives, such as fines, probation, or suspended sentences. This distinction demonstrates that determining the element of fault affects not only the existence of criminal liability but also the specific form of sanctions imposed. The juridical implications of determining the element of fault can also be observed in the application of the principle of legality. This principle requires that a person may only be punished if their actions clearly fulfill the elements of an offense as stipulated by law. Therefore, if the law explicitly requires intentionality, extending the interpretation to include negligence may violate the principle of legality. Conversely, disregarding provisions that specifically regulate negligence may also weaken the effectiveness of criminal law. Accordingly, the determination of the elements of intentionality and negligence must always be based on applicable positive law.

V. Conclusion

Based on the discussion above, it can be concluded that intentionality and negligence are the primary elements in determining criminal liability. Intentionality reflects the perpetrator's intention or acceptance of actions and consequences prohibited by law, and is therefore regarded as a more serious form of fault. In contrast, negligence reflects the perpetrator's failure to act with the level of care required by applicable standards, even in the absence of an intention to cause harmful consequences. In criminal justice practice, distinguishing between intentionality and negligence is not always straightforward because the perpetrator's mental attitude must be inferred from objective facts revealed during the legal process. Inaccuracies in determining the element of fault may lead to legal uncertainty and injustice in sentencing. Therefore, a comprehensive and consistent understanding is necessary in applying these two elements so that criminal law enforcement can properly reflect the principles of justice, legal certainty, and proportionality.

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