



Legal Protection Of Defendants When The Mens Rea Element Is Not Proven: A Criminal Law Perspective In Indonesia

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ABSTRACT (10 PT)

Criminal responsibility is fundamentally based on the principle of culpability, according to which criminal punishment should only be imposed upon a person whose conduct satisfies both the objective and subjective requirements of a criminal offense. The subjective dimension of criminal responsibility is commonly expressed through the concept of mens rea, which may take the form of intention, knowledge, awareness, negligence, or another legally prescribed mental state. The failure to establish the required mens rea therefore raises a fundamental question concerning whether criminal liability may legitimately be imposed upon a defendant. This article examines the legal protection afforded to defendants when the mens rea element alleged by the prosecution cannot be proven before the court. The research employs a normative juridical method using statutory, conceptual, and case approaches. The analysis focuses on Law Number 1 of 2023 concerning the Criminal Code, as amended by Law Number 1 of 2026 concerning Criminal Adjustments, and Law Number 20 of 2025 concerning the Criminal Procedure Code. The study argues that mens rea cannot be treated as a secondary or merely formal element where the relevant offense expressly requires intent or negligence. The prosecution is required to establish all elements of the offense, including the legally required mental element, through lawful evidence and rational judicial reasoning. The principles of legality, culpability, presumption of innocence, fair trial, burden of proof, and judicial independence constitute interconnected safeguards against wrongful conviction. When the required mens rea cannot be established, proof of the external conduct alone should not be sufficient to sustain criminal liability. The article concludes that the failure to prove an essential subjective element requires a judicial determination favorable to the defendant in accordance with the applicable procedural law. Such protection should not be understood as an obstacle to criminal justice but as an essential manifestation of the rule of law.

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1. INTRODUCTION

Criminal law represents one of the most powerful instruments through which the state exercises its authority over individuals. Through criminal law, the state determines conduct considered sufficiently harmful to society to justify the imposition of criminal sanctions. Because criminal punishment may deprive an individual of liberty, property, reputation, and other fundamental interests, the exercise of criminal jurisdiction must be subject to strict legal and evidentiary limitations.

The legitimacy of criminal punishment cannot therefore be determined solely by asking whether a prohibited act occurred. Criminal law must also address whether the person who performed the act can legitimately be held responsible for it. This distinction constitutes the conceptual basis for separating the objective element of criminal conduct, commonly associated with actus reus, from the subjective element, commonly associated with mens rea.

The expression mens rea is traditionally used to describe the mental state accompanying criminal conduct. Depending upon the offense and applicable legal system, it may encompass intention, knowledge, recklessness,



negligence, awareness of circumstances, or another legally recognized form of culpability.¹ The precise content of mens rea, however, cannot be determined independently of the relevant statutory provision. The mental element must be identified from the formulation and structure of the offense.

The distinction between conduct and culpability is particularly important in cases in which the prosecution succeeds in demonstrating that the defendant performed the external act but cannot sufficiently establish the defendant's mental state. In such cases, the existence of actus reus does not automatically establish criminal responsibility. The court must determine whether the complete set of statutory elements has been established.

This principle has become increasingly important under Indonesian criminal law following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The statute entered into force on 2 January 2026 and represents a fundamental transformation of Indonesia's national criminal law. The law has subsequently been amended through Law Number 1 of 2026 concerning Criminal Adjustments.

Article 36 of Law Number 1 of 2023 expressly regulates criminal responsibility. Article 36 paragraph (1) establishes that criminal responsibility may only be imposed upon a person who commits a criminal offense intentionally or negligently, while paragraph (2) establishes intentional conduct as the general basis and recognizes negligent liability where expressly determined by legislation.² This provision provides a direct statutory foundation for the principle of culpability.

The significance of this provision lies in the fact that criminal responsibility is no longer merely inferred from traditional doctrinal formulations. The requirement of culpability has been explicitly incorporated into the general provisions of the national Criminal Code.

At the procedural level, the legal framework has also changed substantially. Law Number 20 of 2025 concerning the Criminal Procedure Code entered into force on 2 January 2026 and repealed Law Number 8 of 1981. The new Criminal Procedure Code strengthens the rights of suspects, defendants, convicted persons, witnesses, victims, persons with disabilities, and advocates and introduces a number of procedural reforms.

The combination of substantive criminal law reform and procedural reform creates an important context for examining the protection of defendants when mens rea is not proven.

The central problem is that a mental state is inherently internal. Unlike physical conduct, intention or knowledge cannot normally be observed directly. Courts therefore infer mental states from objective circumstances, including conduct before and after the alleged offense, communications, preparation, knowledge of circumstances, possession of relevant information, relationships between persons, and other evidence.³ Such inference is legitimate, but it creates a potential danger. If the court moves too quickly from proof of external conduct to a conclusion concerning intention, the distinction between actus reus and mens rea may effectively disappear. A harmful result may be mistaken for proof of intention, knowledge may be treated as equivalent to intention, or negligence may be transformed into intentional conduct without sufficient legal justification.

The problem is particularly acute where the indictment contains an explicit subjective element. Words such as “intentionally,” “knowingly,” “with the purpose,” or equivalent formulations signal that the prosecution bears a specific obligation to establish the relevant mental state. Consequently, the question of mens rea is not merely a matter of criminal law theory. It directly affects the validity of a conviction. The Supreme Court's jurisprudence provides an illustration. In Decision Number 987 K/PID/2015, the Court considered the question of whether the element of “intentionally” had been proven. The case materials show the argument that the prosecution had failed to establish when and how the defendant allegedly removed the relevant documents. The case demonstrates the importance of linking the factual circumstances to the alleged intention rather than merely asserting that intention existed.⁴ The

¹ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka), pembahasan mengenai kesalahan dan pertanggungjawaban pidana.

² Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Pasal 36. UU tersebut berlaku sejak 2 Januari 2026 dan saat ini berstatus berlaku dengan perubahan melalui UU No. 1 Tahun 2026.

³ Jan Remmelink, *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 Utama).

⁴ Mahkamah Agung Republik Indonesia, Putusan Nomor 987 K/PID/2015, 19 Oktober 2015. Direktori Putusan MA mencatat persoalan apakah unsur “dengan sengaja” telah terbukti dan pentingnya pembuktian mengenai kapan dan bagaimana perbuatan tersebut dilakukan.



.....
requirement to prove mens rea also corresponds with the presumption of innocence. The defendant must not be required to prove the absence of intent merely because the prosecution has demonstrated the occurrence of an external act. Doing so would effectively reverse the burden of proof. In a rule-of-law state, the prosecution's failure to establish an essential element must have legal consequences. Otherwise, the statutory requirement would become meaningless.

The present research therefore focuses on two principal questions. First, how is mens rea positioned within the Indonesian system of criminal responsibility after the enactment of the new Criminal Code? Second, what form of legal protection should be provided to a defendant when the required mens rea cannot be proven?

The purpose of this article is not to argue that mens rea must be proven in precisely the same manner in every criminal case. Rather, the article seeks to establish a principled framework for determining when the mental element is legally required, how it may be proven, and what consequences should follow when the prosecution fails to establish it. The research is significant because the protection of defendants and the effectiveness of criminal law enforcement should not be regarded as opposing objectives. Effective criminal justice is not measured merely by the number of convictions but by the accuracy, legality, fairness, and legitimacy of those convictions.

2. RESEARCH METHOD

This research employs a normative juridical method. Normative legal research examines law as a system of norms, principles, doctrines, statutory provisions, and judicial decisions.⁵ The method is appropriate because the principal issues examined concern the interpretation and application of legal rules governing criminal responsibility, mens rea, evidence, and defendant protection.

The research employs three principal approaches.

First, the statutory approach is used to examine relevant provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code as amended by Law Number 1 of 2026, Law Number 20 of 2025 concerning the Criminal Procedure Code, Law Number 48 of 2009 concerning Judicial Power, and other relevant legislation.

Second, the conceptual approach is used to examine the concepts of mens rea, actus reus, culpability, criminal responsibility, presumption of innocence, burden of proof, legal protection, and due process.

Third, the case approach is used to examine relevant decisions of the Supreme Court and other judicial institutions concerning the interpretation and proof of intention and criminal responsibility.

The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and judicial decisions. Secondary legal materials include books, journal articles, academic writings, and legal commentaries concerning criminal law and criminal procedure. Tertiary materials are used to clarify legal terminology and concepts.

The analysis is qualitative and prescriptive. The collected legal materials are systematically examined to formulate legal arguments concerning the relationship between mens rea, the burden of proof, and legal protection for defendants.

3. THEORETICAL FRAMEWORK

A. Theory of Criminal Responsibility

Criminal responsibility is conceptually distinct from the occurrence of a criminal act. A person may perform conduct corresponding to the objective elements of an offense without necessarily being criminally responsible. Criminal responsibility requires an additional assessment concerning whether the conduct can legally be attributed to the person as culpable conduct. Moeljatno explains that criminal responsibility is closely connected with the existence of fault. Criminal liability is therefore not simply a consequence of the occurrence of a prohibited act but requires a normative basis for blaming the person who committed it.⁶ Similarly, Roeslan Saleh places fault at the center of criminal responsibility. The state may impose punishment only where the defendant can properly be reproached for the conduct under the applicable legal standard.⁷ The principle can therefore be summarized as: criminal act + culpability + absence of a justification or excuse = criminal responsibility. This formula illustrates why proof of conduct alone cannot automatically establish criminal liability.

⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers).

⁶ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta).

⁷ Roeslan Saleh, *Pikiran-Pikiran tentang Pertanggungjawaban Pidana* (Jakarta: Ghalia Indonesia).



B. Theory of Mens Rea

The concept of mens rea originated in the common-law tradition but has broader comparative significance in modern criminal law. The concept generally refers to the mental state required for criminal responsibility in relation to the relevant offense.⁸ The mental element may involve intention, knowledge, recklessness, negligence, or other forms of culpability. The precise standard depends upon the legal system and statutory formulation. In Indonesian criminal law, mens rea should therefore be understood functionally. The question is not whether every criminal offense uses the terminology mens rea, but whether the relevant offense requires a particular subjective condition.

This approach is consistent with the new Criminal Code, which expressly recognizes intentional and negligent conduct as foundations of criminal responsibility.

C. Theory of Legal Protection

Legal protection can be understood as a mechanism for safeguarding individual rights against unlawful or arbitrary exercise of state authority.⁹ In criminal proceedings, legal protection has at least two dimensions. The first is preventive protection, which seeks to prevent unlawful treatment before a final judicial determination. Examples include access to counsel, the right to remain silent, the right to challenge evidence, and the presumption of innocence. The second is repressive protection, which operates when a violation or wrongful judicial determination has already occurred. Examples include acquittal, appellate review, cassation, judicial review, rehabilitation, compensation, and other remedies provided by law. The distinction is particularly relevant to cases involving unproven mens rea. Preventive safeguards ensure that the defendant can challenge the prosecution's evidence, while repressive safeguards provide remedies where the court ultimately determines that criminal responsibility has not been established.

Mens Rea Within The New Indonesian Criminal Code

A. Article 36 and the Principle of Culpability

The new Criminal Code provides an explicit statutory foundation for criminal responsibility through Article 36. The provision states that criminal responsibility may only be imposed upon a person who commits a criminal offense intentionally or negligently.¹⁰ The provision has at least three important implications. First, criminal responsibility is linked to culpability. Second, intention constitutes the general basis of criminal responsibility unless the law provides otherwise. Third, negligence cannot simply be presumed; it must be punishable under a statutory provision. This structure represents a significant development because it establishes a general framework for analyzing the subjective dimension of criminal liability. The principle must nevertheless be applied together with the specific formulation of each offense. If the offense requires intention, the court must determine whether intention has been established. If the offense expressly permits liability based upon negligence, the court must determine whether the conduct satisfies the applicable negligence standard.

B. Intention as a Subjective Element

Intention is a mental condition and therefore cannot ordinarily be established through direct observation. Courts must generally infer intention from objective circumstances. However, inference must not be confused with presumption. An inference is a logical conclusion drawn from established facts. A presumption, by contrast, may improperly shift the evidentiary burden if it treats a disputed mental state as automatically established. For example, the proposition: "The defendant performed the act; therefore the defendant intended the result" does not necessarily follow logically. The proper question is: "What established facts demonstrate that the defendant was aware of the relevant circumstances and acted with the legally required intention?" This distinction is critical to preventing wrongful conviction.

Actus Reus And Mens Rea: Two Distinct Dimensions Of Criminal Liability

The relationship between actus reus and mens rea is often described as complementary. The external conduct establishes what the defendant did, while the mental element establishes the legally relevant state of mind accompanying that conduct. The two elements should nevertheless be examined independently. Suppose a person causes damage to another's property. The physical damage may establish the external element. But whether the person is criminally liable for an intentional property offense depends upon the relevant statutory requirements. The same physical consequence may arise from:

⁸ Andrew Ashworth, *Principles of Criminal Law* (Oxford: Oxford University Press), pembahasan mengenai culpability dan mental elements in criminal liability.

⁹ Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu).

¹⁰ Republik Indonesia, UU No. 1 Tahun 2023, Pasal 36. Ketentuan ini menjadi salah satu fondasi normatif mengenai hubungan antara tindak pidana, kesengajaan, dan kealpaan.

1. intentional conduct;
2. negligence;
3. accident;
4. mistake;
5. lawful conduct; or
6. conduct justified or excused under applicable law.

Consequently, the physical result alone cannot determine criminal responsibility. This is why the principle of culpability is indispensable. Without it, criminal law could become a system of strict liability in which punishment depends primarily upon the occurrence of a prohibited result rather than blameworthy conduct. Strict liability may exist in exceptional areas where legislation clearly establishes it, but such exceptions should not be expanded by judicial assumption.¹¹

The Burden Of Proof In Criminal Proceedings

A. General Principle

The burden of proving criminal guilt rests primarily upon the prosecution. This principle follows logically from the presumption of innocence. The defendant enters the trial process without a prior legal obligation to establish innocence. It is the prosecution that alleges the existence of the criminal offense and therefore must substantiate the allegation. The evidentiary process is consequently not simply a contest between two parties. It is a mechanism through which the state must justify the exercise of its coercive authority. The current Criminal Procedure Code, Law Number 20 of 2025, expressly strengthens procedural rights and reforms the criminal justice system.¹² Its enactment demonstrates the legislature's intention to develop a more comprehensive system of procedural protection.

B. Proof of Subjective Elements

Proof of mens rea presents special evidentiary difficulties because intention or knowledge is internal. The prosecution may establish it through circumstantial evidence. Relevant circumstances may include:

- conduct before the offense;
- conduct during the offense;
- conduct after the offense;
- communications;
- planning or preparation;
- knowledge of relevant facts;
- possession of particular information;
- concealment;
- attempts to avoid detection; and
- other circumstances logically connected with the alleged mental state.

However, each circumstance must be examined critically.

A defendant's conduct after an alleged offense, for example, may be consistent with consciousness of guilt, but it may also have an innocent explanation. The court must therefore consider alternative explanations. This requirement is particularly important where the prosecution's case depends heavily on circumstantial evidence.

Presumption Of Innocence And The Protection Of Defendants

The presumption of innocence is one of the most fundamental principles of criminal justice.

Its practical meaning is that the defendant must be treated as innocent until guilt is established according to law. The principle operates at several levels. First, it affects the attitude of law enforcement authorities toward the suspect and defendant. Second, it influences the allocation of the evidentiary burden. Third, it guides judicial interpretation where the evidence does not establish guilt. Fourth, it limits the ability of the court to substitute suspicion for proof. In cases involving mens rea, the presumption of innocence is particularly significant because subjective mental states are susceptible to speculation. If the prosecution establishes that the defendant performed an act but cannot establish the required intention, the defendant should not be required to prove: «I did not intend to commit the offense.» Instead, the prosecution must establish: «The defendant did intend to commit the offense.» The difference

¹¹ Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru (Jakarta: Kencana).

¹² Republik Indonesia, UU No. 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana. Undang-undang tersebut memperkuat hak tersangka, terdakwa, terpidana, saksi, korban,



is fundamental. The first formulation shifts the burden toward the defendant. The second preserves the prosecution's obligation to establish guilt.

Principle Of Legality As Protection Against Expansive Criminal Liability

The principle of legality constitutes another important safeguard. The principle requires criminal liability to have a legal basis and prevents individuals from being punished for conduct that was not criminalized by law. The new Criminal Code places legality among its fundamental principles.¹³ The principle also affects interpretation of mens rea. Where the statutory provision requires intentional conduct, the court cannot simply substitute negligence for intention because the defendant's conduct produced a serious consequence. Likewise, where a statute requires knowledge, the court should not automatically equate knowledge with purpose or intention.

Such distinctions may appear technical, but they are essential because criminal punishment must correspond to the legal definition enacted by the legislature. Judicial interpretation may clarify the meaning of a statutory term, but it should not create a materially broader basis for criminal liability.

The Principle Of Culpability

The principle of culpability is the normative foundation for requiring mens rea. The principle means that criminal punishment should be imposed only where the individual can properly be blamed for the offense. Barda Nawawi Arief explains the importance of balancing criminal policy with protection of individual rights.¹⁴ Criminal law must protect society while preventing excessive or arbitrary use of punishment. Eddy O.S. Hiarij similarly places fault and criminal responsibility within the systematic structure of criminal law.¹⁵ The principle of culpability therefore performs a limiting function. It limits:

1. the state's power to punish;
2. the interpretation of criminal provisions;
3. judicial inference concerning subjective elements;
4. the use of circumstantial evidence; and
5. the possibility of conviction based solely upon harmful consequences.

The principle also supports proportionality. The greater the criminal sanction, the stronger the justification required for imposing it.

Distinguishing Intention, Knowledge, And Negligence

One of the most important analytical problems in criminal adjudication is the tendency to treat different mental states as interchangeable. They are not. Intention generally involves a conscious decision concerning conduct and, depending upon the offense, its legally relevant consequences or circumstances. Knowledge concerns awareness of facts or circumstances. Negligence concerns failure to exercise the level of care required by law. These concepts may overlap factually but remain legally distinct. For example, a person may know that an object exists without intending to damage it. A person may foresee a risk without necessarily desiring the result. A person may cause harm through negligence without intending the prohibited consequence. The court must therefore determine which mental state is required by the specific offense. This distinction is particularly important under Article 36 of the new Criminal Code because the statute expressly differentiates intentional and negligent liability.¹⁶

Circumstantial Evidence and the Inference of Mens Rea

Circumstantial evidence can be highly relevant to proving mental state. Nevertheless, circumstantial evidence requires careful judicial reasoning. The existence of one suspicious circumstance may not be sufficient. The court should evaluate the circumstances cumulatively. For example, evidence of planning, acquisition of necessary tools, communication with co-perpetrators, concealment, and subsequent conduct may collectively support an inference of intention. Conversely, isolated circumstances should not automatically be interpreted as proof of guilt. The court should also consider whether the evidence permits an innocent explanation. This approach protects against confirmation bias in judicial reasoning. The evidentiary question should not be: "What evidence supports the conclusion that the defendant intended the act?" It should also be: "Is there a reasonable explanation of the evidence that is inconsistent with the alleged intention?" The second question is essential to meaningful judicial impartiality.

¹³ Republik Indonesia, UU No. 1 Tahun 2023, Pasal 1 mengenai asas legalitas. KUHP Nasional mulai berlaku 2 Januari 2026.

¹⁴ Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana

¹⁵ Eddy O.S. Hiarij, Prinsip-Prinsip Hukum Pidana.

¹⁶ Republik Indonesia, UU No. 1 Tahun 2023, Pasal 36 ayat (1) dan ayat (2).

Legal Protection When Mens Rea Is Not Proven

A. Substantive Protection

Substantive protection arises from the requirement that all elements of the offense must be established. Where mens rea constitutes an element of the offense and remains unproven, criminal responsibility cannot be established merely because the objective elements have been demonstrated. This is a consequence of substantive criminal law, not merely procedural leniency.

B. Procedural Protection

Procedural protection enables the defendant to challenge the prosecution's evidence. Such protection includes the right to:

- legal counsel;
- examine evidence;
- challenge witness testimony;
- present defense evidence;
- question the legal construction of the indictment;
- challenge unlawful evidence where legally available; and
- pursue available remedies.

The new Criminal Procedure Code expressly strengthens the position of defendants and advocates within the criminal justice process.¹⁷

C. Judicial Protection

Judicial protection occurs when the court objectively evaluates whether every element has been proven. The court must not compensate for evidentiary deficiencies through speculation. Where an essential element remains unproven, the legal consequences must follow from the applicable procedural framework. This is the point at which the distinction between acquittal and other forms of judicial determination becomes important. A court should identify precisely why the defendant cannot be convicted. The judgment should state whether:

1. the act itself was not legally proven;
2. the defendant was not proven to have committed the act;
3. an essential element of the offense was not established;
4. the conduct was justified;
5. the defendant was legally excused; or
6. another procedural or substantive ground prevents criminal responsibility.

Such precision improves legal certainty and facilitates appellate review.

The Role Of Defense Counsel

Defense counsel plays an essential role in protecting defendants where mens rea is disputed. The defense should not merely deny the prosecution's allegations. It should conduct a structured element-by-element analysis. For example: Element| Prosecution's allegation| Evidence| Defense issue External conduct| Defendant performed the act| Witness/document/electronic evidence| Whether evidence is reliable Knowledge| Defendant knew relevant circumstances| Circumstantial evidence| Whether knowledge is actually established Intention| Defendant intended the conduct/result| Inference from circumstances| Whether inference is logically sufficient Culpability| Defendant can be blamed| Totality of evidence| Whether alternative explanation exists This method allows the court to see precisely where the prosecution's proof may be deficient. Defense counsel may also distinguish between: "the defendant did something" and "the defendant intentionally committed the legally prohibited act." The distinction may determine the outcome of the case.

Mens Rea And Wrongful Conviction

The failure to establish mens rea can be directly connected to the problem of wrongful conviction. Wrongful conviction may occur where the court:

1. assumes intent from the mere occurrence of a prohibited result;
2. confuses knowledge with intention;
3. treats negligence as intention;
4. reverses the burden of proof;
5. relies upon weak circumstantial evidence;
6. ignores alternative explanations; or
7. fails to identify the evidence establishing the subjective element.

¹⁷ Republik Indonesia, UU No. 20 Tahun 2025 tentang KUHP. Salah satu tujuan reformasi KUHP adalah memperkuat hak tersangka dan terdakwa serta peran advokat dalam proses peradilan pidana.



The protection of defendants is therefore closely connected with the integrity of the criminal justice system. The legitimacy of criminal justice cannot be measured only through conviction rates. It must also be measured through the ability of courts to acquit persons when the prosecution has failed to establish criminal responsibility. This principle is consistent with the broader understanding of due process in criminal justice. Indonesian scholarship has emphasized that criminal justice is a complex system in which the interaction of legal actors and procedural structures significantly influences outcomes.¹⁸

Mens Rea In The Context Of The New KuhaP

The enactment of Law Number 20 of 2025 creates an important procedural context for the protection of defendants. The new Criminal Procedure Code strengthens the rights of defendants and other participants in criminal proceedings and introduces reforms concerning evidence, procedural safeguards, remedies, and the role of advocates.¹⁹ Although the substantive requirement of mens rea arises primarily from criminal law, its practical enforcement depends heavily upon criminal procedure. A defendant cannot meaningfully challenge the absence of mens rea unless the procedural system allows effective access to evidence, legal counsel, examination of witnesses, and judicial review. Consequently, substantive and procedural law should not be separated completely.

Substantive law determines what must be proven. Procedural law determines how it is proven. Judicial law determines whether the evidence satisfies the legal standard. The three dimensions operate together in determining criminal responsibility.

The Relationship Between Mens Rea And The Standard Of Proof

The standard of proof is particularly important because mens rea is often established indirectly. A court should not convict merely because intention is “possible.” The evidence must establish the mental element according to the standard required by the applicable criminal procedure.

This means that judicial reasoning should distinguish:

- possibility;
- suspicion;
- probability;
- strong inference; and
- legally sufficient proof.

The first three categories may be relevant during investigation, but criminal conviction requires the evidentiary standard established by law. Consequently, a court should be cautious where the prosecution's evidence demonstrates only that the defendant could have known or might have intended. The relevant question is whether the evidence establishes that the defendant did know or did intend, in accordance with the legal requirements of the offense. This distinction provides an important safeguard against conviction based upon conjecture.

Legal Analysis

The analysis developed in this article leads to the proposition that mens rea functions as both an element of criminal liability and a limitation upon state power. The first function is constitutive. Where the offense requires intention or another mental state, mens rea forms part of the legal structure that must be proven before criminal responsibility can arise. The second function is limiting. The requirement prevents the state from punishing persons merely because their conduct produced a prohibited result. The third function is protective. It protects defendants from being convicted where the prosecution cannot establish the subjective dimension of the offense. The fourth function is interpretive. It guides courts in determining the meaning of statutory terms such as “intentionally,” “knowingly,” and “negligently.” The fifth function is evidentiary. It requires courts to evaluate whether the evidence provides a rational basis for concluding that the defendant possessed the legally required mental state. These functions demonstrate that mens rea should not be treated as a secondary issue.

A Model Of Judicial Analysis When Mens Rea Is Disputed

A structured judicial approach may be formulated in five stages. Stage One: Identify the statutory mental element. The court must determine the exact mental state required by the offense. Stage Two: Identify proven objective

¹⁸ Aristo Marisi Adiputra Pangaribuan, “Menyegarkan Pendekatan Studi Hukum Acara Pidana,” *Mimbar Hukum* 33, no. 2 (2021): 373–400. Artikel tersebut menempatkan proses peradilan pidana sebagai proses multidimensional yang dipengaruhi interaksi berbagai aktor dalam sistem peradilan.

¹⁹ Republik Indonesia, UU No. 20 Tahun 2025 tentang KUHAP. Undang-undang tersebut juga mengatur pembaruan mengenai upaya paksa, praperadilan, keadilan restoratif, ganti rugi, rehabilitasi, restitusi, kompensasi, pengakuan bersalah, dan peran advokat.

facts The court must determine which facts are established by admissible evidence. Stage Three: Establish the inferential connection The court must explain how the established facts demonstrate the required mental state. Stage Four: Test alternative explanations The court should examine whether an innocent or less culpable explanation remains reasonably supported by the evidence. Stage Five: Determine the legal consequence

If the mental element is established, the court proceeds with the remaining elements of criminal responsibility. If it is not established, conviction for the offense requiring that element should not follow. This five-stage model may improve consistency in judicial reasoning and reduce the risk of conclusory findings.

Implications For Indonesian Criminal Justice

The recognition of mens rea as an essential component of culpability has several implications. First, prosecutors should formulate indictments with greater precision regarding the subjective element. Second, investigators should collect evidence capable of demonstrating the defendant's knowledge, intention, or negligence rather than focusing exclusively on the external conduct. Third, defense counsel should challenge the logical connection between the evidence and the alleged mental state. Fourth, judges should provide detailed reasoning concerning the subjective element. Fifth, appellate courts should review whether lower courts properly distinguished between objective facts and subjective conclusions. These reforms would contribute to greater consistency and fairness in criminal adjudication.

4. CONCLUSION

The principle of culpability occupies a fundamental position within the Indonesian criminal law system. Under the current Criminal Code, criminal responsibility is expressly connected to intentional or negligent conduct. The statutory formulation therefore provides a strong basis for recognizing the importance of mens rea in determining criminal liability. The prosecution must establish all legally required elements of the offense. Where the offense requires intention, knowledge, or another specific mental state, that element cannot be replaced by proof of the external conduct alone. The fact that a defendant performed a particular act does not necessarily establish that the defendant possessed the mental state required by law. The court must distinguish between conduct, knowledge, intention, negligence, and other forms of culpability. The legal protection of defendants in such cases derives from the combined operation of the principle of legality, culpability, presumption of innocence, burden of proof, fair trial, and judicial independence.

When the required mens rea remains unproven, the defendant should not be convicted merely because the prosecution has established a harmful result or external conduct. The court must determine the appropriate legal consequence under the applicable procedural law, including a determination favorable to the defendant where an essential element of the offense has not been established. The protection of defendants whose mens rea is not proven should therefore not be regarded as an impediment to criminal justice. It is an essential part of legitimate criminal justice. A state governed by law does not demonstrate strength by convicting every accused person. It demonstrates strength by ensuring that punishment is imposed only when guilt has been established according to law, evidence, and rational judicial reasoning. Accordingly, the failure to prove mens rea should be recognized as a substantive and evidentiary deficiency capable of preventing criminal responsibility where the mental element constitutes an essential component of the charged offense.

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