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RECONSTRUCTING THE PRINCIPLE OF INTENT (MENS REA) IN PUBLIC LEGAL LIABILITY

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ABSTRACT

This study seeks to reconstruct the principle of intent (mens rea) to make it more adaptive and applicable across various areas of public law, addressing the limitations of the narrow classical concept and the lack of research within the Indonesian context. Utilizing a qualitative-normative approach and a cross-disciplinary legal review including blasphemy law, corporate crime, juvenile justice, and government administration, the findings reveal that mens rea in the public sphere is complex and should be evaluated contextually, taking into account good faith, authority, policy goals, and public impact, rather than simply focusing on malicious intent. These results underscore the necessity for an adaptive mens rea framework to prevent legal uncertainty, avert the criminalization of legitimate policy, and ensure proportional accountability, distinguishing between administrative errors and criminal abuse of authority. This research contributes by broadening the analysis of mens rea within the public domain and asserts that this reconstruction is a crucial step toward balancing government accountability with the protection of individual freedoms. While the study is limited by its reliance on public documents, it suggests that future research should adopt empirical methods, such as interviews with law enforcement, to enhance the practical understanding of intent assessment in the field.

Keywords: Reconstruction; mens rea; legal liability

1. INTRODUCTION

The concept of mens rea, meaning "guilty mind," is a key principle within the criminal law system. It underscores that an individual cannot be held criminally liable solely for the commission of an unlawful act; it must also be shown that there was intent, awareness, or a specific mental state accompanying that act. Mens rea is crucial for establishing criminal responsibility, as criminal law assesses not only what a person has done (actus reus) but also the mental disposition of the offender at the time the act was committed.[1]

Additionally, this concept aims to ensure fairness in the enforcement of criminal law by distinguishing between acts committed intentionally and those that arise from negligence, accidents, or circumstances beyond the offender's control. By applying mens rea, the criminal

[1] Aris Munandar Ar and Aditya Slamet Rusbandi, "Peran Niat (Mens Rea) Dalam Pertanggungjawaban Pidana Di Indonesia" 1, no. 3 (2024): 240–52.

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justice system can assess the degree of moral blameworthiness of an individual, allowing punishment to be imposed in a proportional manner that aligns with the actual level of fault.

In public law, mens rea is essential for determining an individual's level of fault and plays a crucial role in ensuring substantive justice and protecting human rights during the law enforcement process. By incorporating the mens rea element, law enforcement authorities must establish the presence of a guilty mental state, such as malicious intent, deliberateness, or gross negligence, before imposing criminal penalties on an individual. This requirement helps prevent arbitrary punishment and reinforces the principle of due process, which demands fair and proportionate treatment of every individual under the law.[2]

Considering the psychological conditions and subjective aspects of offenders shifts the legal focus from merely the formal elements of a violation to the pursuit of substantive justice. This approach also helps protect human rights by reducing the risk of criminalizing actions taken without criminal intent or under coercive conditions. Furthermore, mens rea connects moral and legal dimensions, enabling the state to assess not only individuals' conduct but also their level of awareness and responsibility.

The evolution of modern crimes, including corporate crime, cybercrime, and collective offenses, has called into question the relevance and effectiveness of the traditional concept of mens rea (criminal intent). Challenges such as proving intent (malice aforethought or evil intent), systemic bias, and the limitations in addressing corporate and collective liability highlight the need to reconstruct the mens rea concept. This reconstruction would make it more adaptable to the complexities of contemporary law.[3]

Differences in how law enforcement officials and judges interpret and apply mens rea (the mental state or intent behind a crime) often lead to inconsistencies in court decisions. These varying interpretations create uneven standards of proof, which can undermine legal certainty and weaken the public's sense of justice. Therefore, the issues surrounding mens rea are not just theoretical; they have real implications for the effectiveness of law enforcement in practice.

In the realm of public law, especially in cases involving public interests or corporations, traditional approaches that focus solely on individual fault are increasingly seen as inadequate. New perspectives, such as the concept of corporate mens rea and a greater emphasis on the objective impact of actions, have been proposed to address the complexities of modern crimes. These new approaches offer a more suitable basis for assigning liability to corporate entities, whose structures and actions cannot always be explained using individual-centric measures of culpability.[4]

Given the evolving nature of contemporary offenses, it has become increasingly urgent to rethink the concept of mens rea within public law liability. Such reform is necessary to ensure that legal mechanisms can effectively respond to emerging challenges while upholding principles of justice and accountability. By re-examining this concept, the legal system can adaptively develop, balancing the protection of the public with the rights of individuals.

2. METHODS

[2] Puspita Lasambu, Hernawati Ras, and Joko Suroso, "EKSISTENSI UNSUR MENS REA SEBAGAI SYARAT PEMIDANAAN DALAM PUTUSAN PENGADILAN" 1 (2019): 18–26.

[3] INAL OFFENSE OF INTERCEPTION IN INDONESIA," *Hukum Responsif*, 2024, https://doi.org/10.33603/responsif.v15i2.9467.","plainTextFormattedCitation": "Ekky Aji Prasetyo, Sahuri Lasmadi, and Erwin, "CRIMINAL LIABILITY AND THE APPLICATION OF MENS REA IN THE CRIMINAL OFFENSE OF INTERCEPTION IN INDONESIA," Hukum Responsif, 2024

[4] Tubagus Ahmad Ramadan and Subianta Mandala, "Deconstructing Intentionality: Legal Fallacies in The Indonesian Criminal Code's Approach to Mens Rea," *Asian Journal of Social and Humanities*, 2025, https://doi.org/10.59888/ajosh.v3i9.564.

This research adopts a normative juridical (doctrinal) legal research design with a qualitative approach. The study focuses on examining legal norms, principles, and doctrines related to the principle of intent (mens rea) in the context of public legal liability. This approach is used to analyze how mens rea, which is traditionally associated with criminal law, can be conceptually reconstructed and applied within public law, particularly administrative and public legal responsibility.

The research employs several legal approaches, namely the statutory approach, conceptual approach, and comparative approach. Relevant statutes and regulations concerning public law and administrative liability are analyzed to identify the presence and role of intent or fault. Conceptual analysis is conducted by examining legal doctrines and scholarly opinions on mens rea and public liability, while comparative analysis is used to gain insights from different legal systems and theoretical perspectives.

Legal materials are collected through library research, consisting of primary legal materials such as legislation and court decisions, as well as secondary materials including legal textbooks and scholarly journal articles. The collected materials are analyzed qualitatively using legal interpretation and systematic legal reasoning to reconstruct the principle of intent (mens rea) into a coherent framework applicable to public legal liability. This research does not involve human subjects and therefore does not require specific ethical approval.

3. RESULTS AND DISCUSSION

The key finding reveals that an alarming 68% of court verdicts in Indonesia demonstrate significant ambiguity in defining mens rea (intent). This pervasive issue primarily originates from an antiquated legal framework, inadequate legal education, and external pressures affecting law enforcement officials.[5]

The widespread ambiguity in mens rea across 68% of Indonesian court verdicts highlights a critical crisis in criminal legal certainty. This situation is a direct result of the current legal framework's inability to adapt to the complexities of modern crime, further exacerbated by institutional shortcomings within the judiciary. To uphold the rule of law and effectively protect human rights, we must undertake a thorough reconstruction of the mens rea concept.

This situation affects the consistency of verdicts and diminishes legal certainty. Additionally, empirical research on professional judges indicates an outcome bias: the more severe the consequences of an act, the more likely judges are to presume malicious intent, even though this should not be the case according to legal doctrine.[6]

There exists a crucial research gap in understanding how the principle of mens rea (intent) is applied in public law, particularly concerning blasphemy, corporate crime, juvenile justice, and administrative violations. This gap not only breeds legal uncertainty but also poses a risk of human rights abuses. Recent studies reveal the absence of clear intent criteria and well-defined boundaries, allowing for the potential criminalization of actions that should be protected by the Constitution. This situation undermines legal predictability and raises urgent concerns about justice and fairness in our legal system.

In Indonesia, the blasphemy law lacks a clear mens rea requirement, leading to inconsistent legal interpretations that threaten freedom of opinion and religious expression. Notable cases, such as that of Basuki Tjahaja Purnama (Ahok), demonstrate how the absence of a clear intent

[5] Ramadan and Mandala.

[6] Markus Kneer and S Bourgeois-Gironde, "Mens Rea Ascription, Expertise and Outcome Effects: Professional Judges Surveyed," *Cognition* 169 (2017): 139–46, https://doi.org/10.1016/j.cognition.2017.08.008.

standard can result in legal outcomes shaped by external pressures and subjective judgments, ultimately undermining legal certainty and predictability.

A comparative analysis with Ireland and Canada shows that clearer definitions of mens rea and explicit boundaries within blasphemy laws enhance legal certainty and better protect freedom of expression. Ireland's reforms now require proof of intent and clearly define what behavior is protected, while Indonesia's law remains vague, increasing the risk of arbitrary enforcement.[7]

In the realm of corporate crime, the ambiguity surrounding the application of mens rea (intent) is a significant issue. Many corporate cases involving legal violations, such as corruption or fraud, fail to clearly differentiate between individual culpability and corporate liability. This problem is compounded by the reverse burden of proof mechanism, which requires the corporation or its officials to demonstrate that their wealth or actions did not arise from criminal activity. This approach raises concerns regarding fairness, legal certainty, and the protection of human rights, as it blurs the line between malicious intent and administrative negligence.

The administrative approach to corporate law enforcement, as seen in Australia, stresses the importance of transparency, accountability, and integrity. However, in the absence of a clear mens rea standard, there is a risk of over-criminalization, where administrative actions or procedural errors could be treated as criminal offenses without sufficient evidence of malicious intent. Therefore, it is essential to reformulate the concept of mens rea in corporate law to effectively distinguish between administrative mistakes and genuinely intentional criminal acts, thereby ensuring the protection of rights and the maintenance of legal certainty.[8]

In the context of the juvenile justice system, the unclear application of mens rea (intent) can significantly affect the protection of children's rights and the principles of procedural justice. Children often lack the same cognitive and moral maturity as adults; therefore, the assessment of their intent must be conducted carefully and proportionately. Ambiguity in defining mens rea in juvenile cases may result in children being penalized for actions that stem from ignorance, environmental influences, or a misunderstanding of the legal consequences.

Countries with progressive juvenile justice systems typically emphasize restorative and rehabilitative approaches rather than solely punitive measures. In Indonesia, however, there remains a tendency to apply the same mens rea standards to both children and adults, which can lead to injustices and violations of children's rights. Reformulating the concept of mens rea in the context of juvenile justice is crucial to ensure that the legal system truly protects the best interests of the child and prevents disproportionate criminalization.[9]

The global trend consistently reveals a significant gap between the ideal concept of mens rea (guilty intent) in legal theory and its actual application by judges and juries in practice. This phenomenon indicates that, although criminal law meticulously distinguishes between different levels of intent (purposely, knowingly, recklessly, and negligently), human cognitive processes and procedural pressures in the courtroom often take precedence over doctrinal reasoning. This is largely influenced by cognitive biases, such as outcome bias, where the more severe the consequences of a criminal act (actus reus), the more likely decision-makers are to assume malicious intent. Essentially, the legal reasoning that requires intent to be proven independently

[7] Loresta Cahyaning Lintang and Adriano Martufi, "The Alternative Concepts of Blasphemy Law in Indonesia: Legal Comparison with Ireland and Canada," *BESTUUR*, 2021, https://doi.org/10.20961/bestuur.v9i1.51632.

[8] Jawade Hafidz et al., "The Corruption Reduction with an Administrative Law Approach: Evidence from Australia," *Journal of Human Rights, Culture and Legal System*, 2024, https://doi.org/10.53955/jhcls.v4i3.396.

[9] Lintang and Martufi, "The Alternative Concepts of Blasphemy Law in Indonesia: Legal Comparison with Ireland and Canada."

of the outcome is frequently disregarded in favor of intuitive judgments swayed by the perceived severity of harm.[10]

The implications of this gap between doctrine and practice are significant for the criminal justice system. It leads to inconsistent verdicts and undermines legal certainty. If mens rea, as the basis for criminal liability, is applied unevenly based on a judge's biases or the visible impact of the harm, then legal predictability collapses, and the principle of substantive justice is violated. This can result in disproportionate punishment for defendants whose actions did not involve actual criminal intent.

Recognizing this international trend highlights the urgent need for reform. This should not only include revisions to legislative texts but also enhancements in training for judicial officers and standardization of court instructions. These measures will help ensure that standards of intent are applied consistently, accurately, and in accordance with fair legal principles.

Studies emphasize that addressing the ambiguity surrounding mens rea (guilty intent) requires a multidisciplinary approach, particularly by integrating cognitive psychology. This integration aims to standardize the assessment of intentionality. Traditional legal definitions of intent are often subjective, but cognitive psychology provides a more scientific and nuanced framework for analyzing a defendant's thought processes, information processing abilities, and understanding of risk.t[11]

Incorporating these insights is essential for providing empirical evidence regarding mental capacity and for reducing cognitive biases, such as outcome bias, that frequently affect verdicts. The goal of this reform is to ensure that mens rea assessments are grounded in a solid scientific understanding, thereby bridging the gap between legal doctrine and practical application.

Achieving this requires updates to legal doctrine, replacing moralistic terms with measurable descriptions of cognitive behavior, as well as building institutional capacity through judicial training. Ultimately, this standardization will lead to greater legal certainty and justice, particularly in sensitive cases involving juvenile justice and corporate crime.[12]

Research highlights that addressing the ambiguity surrounding mens rea (guilty intent) requires a multidisciplinary approach that incorporates cognitive psychology. This integration aims to standardize how intentionality is assessed. Cognitive psychology provides a scientific analysis of a defendant's thought processes and understanding of risk, offering a more nuanced perspective than traditional, subjective legal definitions.

Integrating these fields is essential for providing empirical evidence regarding mental capacity and for effectively reducing cognitive biases, such as outcome bias, which often cloud verdicts.[13]

The ultimate goal is to ensure that the assessment of mens rea is grounded in scientific understanding, thereby bridging the gap between legal doctrine and practice. This requires updating legal terminology to replace moralistic terms with descriptions based on cognitive behavioral principles, as well as building institutional capacity for judges. Such standardization is

[10] Kneer and Bourgeois-Gironde, "Mens Rea Ascription, Expertise and Outcome Effects: Professional Judges Surveyed."

[11] Robert Beattey and M Fondacaro, "The Misjudgment of Criminal Responsibility.," *Behavioral Sciences & the Law*, 2018, https://doi.org/10.1002/bsl.2354.

[12] Humam Balya, Muharrar Syukran, and Abrar Abrar, "PERAN MENS REA DALAM SISTEM HUKUM: ANALISIS HUBUNGAN DENGAN PRINSIP ETIKA DAN KEADILAN," *As-Salam: Jurnal Studi Hukum Islam & Pendidikan*, 2025, https://doi.org/10.51226/assalam.v14i1.713.

[13] Ramadan and Mandala, "Deconstructing Intentionality: Legal Fallacies in The Indonesian Criminal Code's Approach to Mens Rea."

expected to enhance legal certainty and justice, particularly in sensitive areas like juvenile justice and corporate crime.

4. CONCLUSION

This study confirms that the principle of intent (mens rea) in public law possesses complexities far exceeding the traditional concept of malicious intent in classical criminal law. The key finding is that mens rea must be reconstructed to be adaptive and contextual, assessed by considering factors like good faith, authority, policy goals, and the impact on public interest, rather than focusing solely on formal violations. This reconstruction is crucial for preventing the criminalization of legitimate expression (as seen in blasphemy cases) and ensuring proportional accountability for complex entities like corporations and public officials, distinguishing between mere administrative error and deliberate abuse of authority.

This renewal of the paradigm has critical implications for establishing a fair balance between legal certainty and substantive justice. In juvenile justice, the reconstructed mens rea supports restorative justice, while in administrative law, it shields public officials from criminal risk associated with legitimate policies enacted in the public interest. The study's contribution lies in expanding the mens rea analysis from dogmatic criminal law to a cross-disciplinary public law framework, filling a crucial gap in the existing literature.

Despite the research being limited by its reliance on public documents, the analysis of real-world cases provides a robust conceptual framework. Overall, the reconstruction of mens rea is a fundamental step toward strengthening government accountability while simultaneously protecting individual freedom. For future research, an empirical approach (involving interviews with law enforcement and officials) is recommended to gain a deeper understanding of practical assessment, ensuring the legal system remains just, predictive, and relevant to the dynamics of modern bureaucracy.

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