

## **The Juridical Analysis of the Culpa in Causa Principle in Indonesian Criminal Law Reform (Study of Law No. 1 of 2023)**

**Dyajeng Ayu Musdalifah<sup>1)</sup> & Ali Masyhar<sup>2)</sup>**

<sup>1)</sup>Faculty of Law, Universitas Negeri Semarang, Indonesia, E-mail: [dyajengams@gmail.com](mailto:dyajengams@gmail.com)

<sup>2)</sup>Faculty of Law, Universitas Negeri Semarang, Indonesia, E-mail: [ali\\_masyhar@mail.unnes.ac.id](mailto:ali_masyhar@mail.unnes.ac.id)

**Abstract.** *The explicit integration of the culpa in causa principle in Pasal 55 of Law No. 1 of 2023 one the New Indonesian Criminal Code (KUHP Baru) revolutionizes criminal law by limiting the misuse of grounds for exemption from punishment, such as necessity and self-defense, when the offender intentionally creates those conditions. Unlike the old KUHP's implicit reliance on jurisprudence, this provision strengthens the geen straf zonder schuld principle while balancing juridical pardon authority, through proof of subjective causality via at least two valid pieces of evidence. Courts distinguish it from objective justifications by analyzing initial intent, nullifying subsidiarity without eliminating the defendant's subjective fault. Impacts include optimized restorative justice, legal certainty, reduced impunity from provocation, and proportional individualized sanctions, fostering an adaptive penal system that protects victims while upholding humanity. This reform aligns continental doctrines with national contexts, enhancing juridical legitimacy.*

**Keywords:** Criminal; Culpa; Evidence; Juridical; Self-Defens.

### **1. Introduction**

The reform of Indonesian criminal law through Law No. 1 of 2023 concerning the Criminal Code, hereinafter referred to as the New Criminal Code, has marked a transition from the Dutch colonial paradigm to a more humanistic national legal system. The reform of Indonesia's criminal justice system aims to integrate the values of Pancasila, restorative justice, and modern criminological principles as mandated in Pasal 2 paragraph (1) of the New Criminal Code, which emphasizes criminal responsibility based on fault (Presiden Republik Indonesia, 2023). The enforcement of criminal law should not only consider the actions committed by

the perpetrator, but also examine the background behind the crime, which must be viewed from the perspective of the roles played by all parties involved in the crime (Alvat, 2025a).

Pasal 55 of the New Criminal Code accommodates the principle of culpa in causa through an explicit formulation that limits the grounds for criminal liability if the perpetrator intentionally created the circumstances. Pasal 55 of the New Criminal Code emphasizes that perpetrators of criminal acts are not exempt from criminal liability if they intentionally cause circumstances that negate criminal liability (Hukum et al., 2024). Thus, Pasal 55 of the New Criminal Code prevents the abuse of justifiable and exculpatory grounds by parties seeking to avoid criminal liability for their crimes. With the application of the culpa in causa principle, which although not directly regulated in the New Criminal Code, is sufficiently implied in Pasal 55 of the New Criminal Code, it can prevent perpetrators of criminal acts from escaping criminal responsibility. The culpa in causa principle refers to the principle that a person's fault or negligence that causes a criminal act to occur should not be used as a reason to eliminate criminal liability. The culpa in causa principle originates from Roman law and is recognized in Dutch criminal law doctrine, which has influenced the Indonesian Criminal Code, whereby perpetrators remain liable if their own negligence triggers the occurrence of a criminal act. Thus, this principle strengthens culpability and prevents the abuse of excuses (Malasai, 2019).

The provisions of the New Criminal Code differ from those stipulated in Law No. 1 of 1946 on Criminal Law, hereinafter referred to as the Old Criminal Code. The Old Criminal Code relied on doctrines such as *actio libera in causa* from Dutch law, whereby judges assessed the causality of the perpetrator's negligence subjectively without any specific Pasals. As a result, its application was inconsistent and often limited to cases of self-defense or force majeure. Pasal 49 paragraph (1) of the Old Criminal Code only mentions defense against direct attacks without the exception of culpa in causa, thus causing debate as to whether initial provocation can negate the grounds for defense. Meanwhile, the New Criminal Code has added the element of "intent" as a requirement, thereby preventing abuse of the grounds for defense (Malau, 2022).

The reform of Indonesian criminal law reflects social demands for a system that protects victims while providing space for the rehabilitation of offenders, in which the principle of culpa in causa plays a crucial role. Social injustice in the enforcement of criminal law often arises from the neglect of the context of causality of initial fault, especially in areas prone to crime. The principle of culpa in causa reflects society's expectation that individuals must be responsible for their own actions, especially if those actions consciously create a risky situation that then leads to a violation of the law. So, how can the principle of culpa in causa

be integrated into the New Criminal Code to optimize criminal justice? Based on the above issues, in this legal paper, the author aims to analyze the principle of culpa in causa in the reform of criminal law in Indonesia, namely with the enactment of Law No. 1 of 2023 concerning the Criminal Code.

## **2. Research Methods**

This study used doctrinal legal research or normative legal research with a qualitative research approach. The focus of the study is on the principle of culpa in causa in Law No. 1 of 2023 concerning the Criminal Code. The data sources used in this study are primary, secondary, and tertiary data sources, with primary legal materials in the form of legislation related to the issues raised. The data collection method used in this qualitative research is the triangulation technique in examining data validity. Meanwhile, the data analysis method used is an interactive model in the form of data reduction, data presentation, and conclusion drawing (Do Lab, 2021).

## **3. Results and Discussion**

### **3.1. The Principle of Culpa in Causa Integrated into the New Criminal Code for the Optimization of Criminal Justice**

The principle of culpa in causa is explicitly integrated into the New Criminal Code through Pasal 55, which prevents perpetrators of criminal acts from escaping responsibility solely on the grounds of criminal negligence if the perpetrator himself deliberately caused the conditions for the criminal act to occur. This condition reinforces the principle of *geen straf zonder schuld*, or no punishment without guilt, thereby balancing the judge's authority to grant juridical pardon in minor cases. Thus, the application of the culpa in causa principle has supported the optimization of criminal justice by ensuring the accountability of perpetrators who are responsible for their own emergency situations (Lembaga Bantuan Hukum Pengayoman, 2023). Pasal 55 of the New Criminal Code states that perpetrators are not exempt from criminal liability if they intentionally cause circumstances that constitute grounds for exemption from punishment. The integration of the culpa in causa principle prevents the abuse of grounds for exemption from punishment, thereby enhancing substantive and restorative justice in the criminal justice system.

In the Old Criminal Code, the principle of culpa in causa was applied in Pasal 49 on necessary defense, whereby provocation by the perpetrator could negate the subsidiarity of defense. The reform of the criminal justice system through the New Criminal Code comprehensively adopts the principle of culpa in causa to align with continental doctrines such as *actio libera in causa*, thereby shifting the regulation from implicit to explicit and enhancing legal certainty within the national criminal

justice system (*K3\_laporan\_RDPU\_dengan\_Prof*, n.d.). The Old Criminal Code did not explicitly formulate the principle of culpa in causa, but rather implicitly through jurisprudence and justifications whereby criminal acts resulting from the actions of individuals that caused the criminal acts to occur could negate the right to defense. Meanwhile, the New Criminal Code explicitly stipulates in Pasal 55 that perpetrators are not exempt from criminal liability if they intentionally cause circumstances that negate criminal liability.

**Table 1.** Comparison of the basic provisions of culpa in causa in the Old Criminal Code and the New Criminal Code

Aspect	Old Criminal Code ( <i>Wetboek van Strafrecht</i> )	New Criminal Code (Pasal 55 UU 1/2023)
Regulatory Basis	Implicitly through Pasal 49 (compelled defense) and doctrine	Explicitly exempt if intentionally causing a situation of criminal exemption"
Coverage	Limited to specific cases such as noodweer	Comprehensive, meaning applicable to all grounds for criminal exemption
Juridical Application	Dependent on case law and prone to subjectivity	Bound by norms, balancing juridical pardons
Culpability Relationship	Not directly related to the principle of geen straf zonder schuld	Strengthening the principle of guilt and preventing impunity (Hardhika, 2025).

The New Criminal Code is required to accommodate the principle of culpa in causa in order to balance juridical pardon with the prevention of impunity for perpetrators who deliberately create conditions that eliminate criminal liability. This need arises from the inconsistency of the Old Criminal Code, in which the principle of culpa in causa is only implicitly applied in Pasal 49, thus requiring an explicit formulation to strengthen the principle of geen straf zonder schuld. The New Criminal Code emphasizes that the flexibility of judges in granting juridical pardons in minor crimes must be balanced by the principle of culpa in causa or *actio libera in causa* so that perpetrators of crimes who are accountable and deserving of blame for their crimes or the emergency situation that occurred are punished. This responds to criticism of strict liability, which has the potential to violate culpability by ensuring that punishment is only imposed for personal mistakes.

Pasal 55 of the New Criminal Code requires judges to reject pardons if the evidence shows that the perpetrator is to blame for the emergency situation, such as the presence of provocative elements that led to the crime (Alvat, 2025b). In terms of evidence, the New Criminal Code does not specifically change the standard of proof of culpa in causa, but rather adopts the *convictie raisonnee* system from Pasal 183 of the Criminal Procedure Code, whereby prosecutors are required to prove the perpetrator's intent in creating conditions that negate criminal liability with at least two pieces of valid evidence that convince the judge. Pasal 55, with the main element being "the person himself deliberately caused the circumstances that led to the elimination of criminal liability," covers two main elements, namely:

- 1) The perpetrator's deliberate creation of an emergency situation
- 2) Direct causality between the initial act and the justification, such as in an emergency or self-defense.

The New Criminal Code defines intent as the perpetrator's awareness that their actions will trigger criminal liability, including gross negligence (culpa lata). For example, the perpetrator deliberately gets drunk in order to have the courage to commit a crime. Thus, the element of dolus fulfills culpa in causa even though the perpetrator was not fully conscious at the time of the incident.

The element of causality in the principle of culpa in causa requires a cause-and-effect relationship between the perpetrator's actions that led to the emergency situation and the resulting criminal act, which eliminates the subsidiarity of justifiable reasons. Significantly, the New Criminal Code limits the application of forced defense in order to maintain legal justice. Perpetrators who deliberately create an emergency situation that leads to a criminal act will lose their right to justification under Pasal 55 of the New Criminal Code, which ultimately results in the judge rejecting the defense of necessity and imposing criminal sanctions. Thus, the application of the culpa in causa principle breaks the chain of causal justification and changes the status from not guilty to liable for the criminal act that occurred. The culpa in causa principle does not eliminate the element of subjective fault on the part of the perpetrator, but rather reinforces it by adding a layer of causal accountability for the perpetrator's initial intent in creating the conditions for criminal exemption. Subjective fault such as dolus or culpa remains as a requirement of culpa in causa, whereby culpa in causa ensures that the perpetrator is accountable for the criminal act that has occurred. This is in line with the dualistic doctrine, whereby subjective aspects such as mens rea are separate from objective aspects, namely the act.

The grounds for exemption differ from culpa in causa. The grounds for exemption remove subjective faults such as insanity, which can negate an individual's ability

to be held responsible. Meanwhile, culpa in causa maintains the element of fault because the perpetrator consciously created their own emergency situation, which led to the criminal act. Therefore, the judge must ensure that the perpetrator is held accountable for their actions without violating the principle of geen straf zonder schuld (Mochammad Ridho Nasrullah, 2026). *Culpa in causa also differs from justifiable grounds, whereby culpa in causa nullifies subsidiary justifiable grounds such as in cases of emergency or noodweer if the perpetrator deliberately created the emergency situation themselves. Justifying reasons without culpa in causa can eliminate the objective unlawfulness, such as the existence of an official order as stipulated in Pasal 51 of the New Criminal Code. Meanwhile, culpa in causa is a subjective exception that maintains the perpetrator's mental fault or mens rea.*

**Table 2.** Comparison of the principle of culpa in causa with Justifiable Grounds in the New Criminal Code

Aspect	<i>Culpa in Causa</i> (Pasal 55)	New Criminal Code (Pasal 55 UU 1/2023)
Nature	Exceptions to justification, subjective	Objective, eliminate unlawful characteristics
Causal Element	The perpetrator deliberately created an emergency situation.	External circumstances, not caused by the perpetrator
Legal Effect	Reject justification/excuses, maintain criminal charges	Full acquittal

#### 4. Conclusion

The principle of culpa in causa is explicitly regulated in Pasal 55 of the New Criminal Code by limiting the misuse of grounds for exemption from criminal liability, such as emergency situations and necessary defense, if the perpetrator deliberately created such conditions, thereby strengthening the principle of geen straf zonder schuld (no punishment without guilt). This differs from the Old Criminal Code, which regulated the principle of culpa in causa implicitly, making it susceptible to abuse of justifying and exculpatory grounds. Therefore, by proving intent in the criminal act and the causal relationship, the perpetrator must be held accountable for their actions. The application of the culpa in causa principle can encourage proportional restorative criminal individualization without sacrificing justice and legal certainty or protection for victims from manipulative actions that lead to criminal acts. With the renewal of the New Criminal Code, Indonesia's criminal justice system has finally taken a step forward in reducing impunity while also

maintaining the principle of geen straf zonder schuld as a pillar of substantive justice.

## 5. References

### Journals:

Hukum, F., Unggul, U. E., & Barat, J. (2024). *Pedoman Pemidanaan Dalam Rekonstruksi Sistem Hukum Pidana Nasional 2023-2024. Lex Jurnalica*, 21(1), 134-143. <https://doi.org/10.47007/lj.v21i1.7757>

Malasai, L. (2019). *Asas Culpa In Causa (Penyebab Kesalahan) Sebagai Pengecualian Terhadap Pembelaan Terpaksa Menurut Pasal 49 Ayat (1) KUHP*. *VIII(8)*, 78–82. <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/Pasal/view/26797>

Mochammad Ridho Nasrullah, R. R. H. (2026). The Principle of Judges in Determining the Validity of Grounds for Criminal Expungement in the Criminal Justice System in Indonesia. *Indonesian Journal of Law and Economics Review*, 21(1), 1–12. <https://doi.org/10.21070/ijler.v21i1.1412>

Malau, P. (2022). Studi Komparasi Pasal 49 KUHP (W.v.S. Ned) terhadap Rancangan Undang-Undang KUHP Nasional. *Jurnal Tana Mana*, 3(2). <https://doi.org/https://doi.org/10.33648/jtm.v3i2.281>

Mochammad Ridho Nasrullah, R. R. H. (2026). The Principle of Judges in Determining the Validity of Grounds for Criminal Expungement in the Criminal Justice System in Indonesia. *Indonesian Journal of Law and Economics Review*, 21(1), 1–12. <https://doi.org/10.21070/ijler.v21i1.1412>

### Internet:

Alvat, P. A. (2025a). *Asas Culpa In Causa dan Actio Libera In Causa*. PopuliNews.Com. <https://populinews.com/2025/12/20/asas-culpa-in-causa-dan-actio-libera-in-causa/>

Alvat, P. A. (2025b). *Konstelasi Alasan Penghapus Pidana*. MariNews. <https://marinews.mahkamahagung.go.id/artikel/konstelasi-alasan-penghapus-pidana-0ec>

Do Lab. (2021). *Teknik Triangulasi Dalam Pengolahan Data Kualitatif*. <https://dqlab.id/teknik-triangulasi-dalam-pengolahan-data-kualitatif>

Hardhika, R. (2025). *Pergeseran Konsep Kesalahan dalam KUHP Nasional*. Hukum Online. <https://www.hukumonline.com/berita/a/pergeseran-konsep-kesalahan-dalam-kuhp-nasional-1t688c6b4fd700e/>

Lembaga Bantuan Hukum Pengayoman. (2023). *KUHP Series Episode 2: Menggali Perubahan Mendasar Berkaitan dengan Tindak Pidana dan Pertanggungjawaban Pidana dalam KUHP Baru*. LBH “Pengayoman”

Universitas Katolik Parahyangan. <https://lbhpengayoman.unpar.ac.id/kuhp-series-episode-2-menggali-perubahan-mendasar-berkaitan-dengan-tindak-pidana-dan-pertanggungjawaban-pidana-dalam-kuhp-baru/>

**Regulation:**

Presiden Republik Indonesia. (2023). Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana. *Direktorat Utama Pembinaan Dan Pengembangan Hukum Pemeriksaan Keuangan Negara Badan Pemeriksa Keuangan, 16100*, 1–345.

**Report:**

Brief Report of the Public Hearing of Commission III of the Indonesian House of Representatives with Prof. Muladi, S.H.