

Analysis of The Duality of The Elements of Actus Reus and Mens Rea for Police Investigations in Handling Criminal Investigations

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Abstract. *Investigators are obliged to understand the meaning of wrongdoing, the purpose of punishment, and the qualifications of crimes, which have implications for the interpretation of the elements of actus reus and mens rea. Some criminal law experts argue that without adequate proof of intent, a void in justice will arise. Actions without clear intent can lead to unfair punishment. Therefore, it is important for police investigators to be able to distinguish between acts committed with malice and those committed without significant intent. The aim of this research is to determine and analyze (1) the position of the actus reus and mens rea elements in the Indonesian criminal law system, (2) the implications of fulfilling the actus reus and mens rea elements in handling criminalization at the investigation stage by the police, (3) the urgency of understanding the actus reus and mens rea elements for police investigators in handling criminalization. The approach method used in this research is normative juridical. The specifications of this research are analytical descriptive. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Based on the research results, it can be concluded: (1) The actus reus aspect, namely physical acts prohibited in Law No. 1 of 2023 concerning the Criminal Code, remains the main basis before assessing guilt (mens rea). In the New Criminal Code, actus reus (unlawful acts) is generally regulated in a scattered manner, but the main principle is emphasized in articles on criminal responsibility such as Article 36 (criminal acts with intent/negligence). (2) Police investigators have a large role in the validity of a criminalization when associated with interpreting the elements of actus reus and mens rea of a criminalization. Proving actus reus (outward acts) and mens rea (inner intent) in the investigation stage is crucial to ensure that a person can be held criminally responsible based on the principle of dualism. (3) The reason why a high level of understanding of*

the two elements (actus reus and mens rea) is absolutely necessary for investigators as a matter of urgency is to prevent wrongful criminalization (miscarriage of justice). Investigators who do not understand mens rea have the potential to criminalize people who have no malicious intent, violating the principle of geen straf zonder schuld (no crime without fault).

Keywords: Actus Reus; Mens Rea; Police Investigator.

1. Introduction

Indonesia is a country based on law, in line with the contents of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states, "The Republic of Indonesia is a country based on law."¹These provisions explain that as a state based on law, in carrying out national and state life, a legal basis is needed to guarantee the protection and legal certainty of all its citizens.²

This means that every aspect of social life within Indonesia's sovereign territory is governed by Indonesian positive law. Conversely, it also means that anyone who violates applicable legal provisions and rules will be subject to sanctions in accordance with those laws. This is intended to create an orderly social lifestyle in accordance with its function as a tool of social control (law as a tool of social control) and a tool of social engineering (law as a tool of social engineering), according to Roscoe Pound.³

The rules that develop and develop within society are norms that must be obeyed by everyone. If an action that contradicts an existing norm or custom is violated by a member of society, the norm becomes a concrete form with sanctions for violators. Actions that violate a rule bind each individual as a supporter of rights and obligations.

Criminal law has many roles, one of which is to prevent crime. The development and reform of criminal law are closely related to decisions made in the criminal law-making process. Criminal law policy involves the creation of criminal law regulations that encompass both their content and application, as well as policies regarding the implementation of criminal law. Regulations in the formation of criminal law include criminal law policies that include determining prohibited

¹Sumaryono and Sri Kusriyah, (2020). The Criminal Enforcement of the Fraud Mode of Multiple Money (Case Study Decision No. 61 / Pid.B / 2019 / PN.Blora). Jurnal Daulat Hukum, 3 (1) March, p. 237

²Haris Wahyu Sunarno and Akhmad Khisni, (2020). Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court), Jurnal Daulat Hukum, 3 (1) March, p. 223

³H. Jacob Djasmani, (2011), Law as a Tool of Social Engineering in Legal Practice in Indonesia. Semarang: Diponegoro University, p. 365.

acts, the application of criminal sanctions, and criminal liability. "Meanwhile, criminal policy also includes policies related to criminal penalties, sentencing, and actions."⁴

The issue of crime and punishment, as a key element of the criminal system and the end result of the criminal justice process, continues to experience dynamic development. The development of the criminal law system and sentencing system is considered a reflection of the progress of a country's criminal law. Some believe that criminal penalties and the sentencing process indicate a country's level of civilization.

Law enforcement regulations, particularly criminal law enforcement, have been adjusted in several countries to reflect the evolving nature of criminal activity. This shift not only addresses the form of accountability but also includes who can be held criminally accountable. Therefore, these adjustments are based on current crime trends, which demonstrate a highly complex level of crime.

In the modern legal system, criminal penalties can only be imposed if a person commits a prohibited act and is accompanied by a justifiable error. Criminal liability is an individual's obligation to bear the consequences of their actions because they have committed a detrimental crime. Criminal liability is the responsibility of an individual for the crime they have committed. Strictly speaking, what the person is responsible for is the crime they have committed. Thus, criminal liability occurs because a crime has been committed by an individual. Criminal liability is essentially a mechanism established by criminal law to respond to violations of an agreement to reject a particular act.⁵

Responsibility for a crime committed by a person is to determine the fault and the crime committed. Criminal liability means that a person who has committed a crime does not necessarily have to be punished, but he must be held responsible for his actions; if elements of guilt are found in him, because a crime consists of two elements, namely the *actus reus* and *mens rea* elements.⁶

The scope of criminal law is known as *Mens Rea* and *Actus Reus*, which means that every act cannot make a person guilty unless it is done with evil intentions.⁷ This sentence can be concluded that in a criminal act, the most important issues to prove are the existence of an outward act as a manifestation of the will (*actus reus*) and mental condition, as well as the evil intent underlying the act (*Mens*

⁴Ekky Aji Prasetyo, Sahuri Lasmadi and Erwin, (2024). Criminal Accountability and the Application of *Mens Rea* in Criminal Acts of Interception in Indonesia. *Collegium Studiosum Journal*, 7 (1) June, p. 374

⁵Chairul Huda, (2006), *From No Crime Without Fault Towards No Criminal Responsibility Without Fault*, Jakarta: Kencana Prenada Media Group, p. 70

⁶Hasbullah F. Sjawie, (2015). *Corporate Criminal Liability in Corruption Crimes*, Jakarta: Prenada Media Group, p. 10.

⁷Mustafa Abdullah and Ruben Achmad, (1983). *Criminal Essence*, Gahlia Indonesia, Jakarta, p. 40

Rea). Without intent, a person is difficult to be found guilty even if the material act has occurred.⁸

Mens rea or error is a person's intention to commit a crime and is included in the element of inner attitude, which is a natural inner attitude only possessed by humans, therefore, only natural humans are considered to be subject to criminal responsibility.⁹ Meanwhile, *actus reus* is an act that is realized from the *mens rea*.

Regarding criminal liability, in addition to proving a criminal act (*actus reus*), a perpetrator must also demonstrate malicious intent (*mens rea*), or an element of guilt. This is perfectly reasonable; it would be unfair to rely solely on the *actus reus*.

The requirements for criminal punishment include objective and subjective elements. The objective element is the criminal act, and the subjective element is criminal responsibility. A criminal act (*actus reus*) is a physical element, meaning an act prohibited by law, and anyone who violates it will be subject to criminal sanctions.¹⁰ Criminal responsibility is the subjective or mental element of a crime. Intention, or *mens rea*, is one of the factors used to determine whether a person can be held criminally responsible.

Adherents of the dualistic school of thought distinguish between guilt (*mens rea*) and criminal conduct (*actus reus*). *Mens rea* is the mental element, while *actus reus* is the physical element. This understanding is based on the principle of "*actus non facit reum nisi men sit rea*," which means that no act can be subject to criminal sanctions without malicious intent.

Investigators are obliged to understand the meaning of wrongdoing, the purpose of punishment, and the qualifications of the crime, which have implications for the interpretation of the elements of *actus reus* and *mens rea*. Some criminal law experts argue that without adequate proof of intent, a void in justice will arise. Actions without clear intent can lead to unfair punishment.¹¹ Therefore, it is important for police investigators to be able to distinguish between actions carried out with bad intentions and actions carried out without significant intent.

Essentially, a thorough understanding of *actus reus* and *mens rea* enables police investigators to carry out their duties effectively, fairly, and in accordance with

⁸Manisa Sahar, et al., (2025). The Relevance of *Mens Rea* in the Principle of *Al-Umūr Bi Maqāṣidihā* and Its Relationship to Criminal Law. Publishing: Indonesian Journal of Law and Justice, 3 (2) December, p. 1

⁹Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, (2019). The Development of Corporate Regulation as Subjects of Criminal Law in Indonesia. *Media Bhakti Law Journal*, 3 (2) December, p. 119

¹⁰Moeljatno, (2018). *Principles of Criminal Law*, 9th Edition, Jakarta: Rineka Cipta, p. 59.

¹¹Aris Munandar Ar, et al., (2024). The Role of Intention (*Mens rea*) in Criminal Responsibility in Indonesia. *JIMMI: Multidisciplinary Student Scientific Journal*, 1 (3) October, p. 242

the law, ensuring that justice is upheld and individual rights are protected. *Mens rea* and *actus reus* are not merely Latin terms in legal theory, but are the primary foundations of criminal justice practice, particularly for the police during the investigation phase of criminal cases.

Based on this background, the author conducted research by choosing the title "Analysis of the Duality of *Actus Reus* and *Mens Rea* Elements for Police Investigators in Handling Criminalization".

2. Research Methods

The research carried out in this paper uses a Normative Juridical approach, namely research that uses an approach method to problems by looking at the norms or laws that apply as positive provisions, the following are theories that are relevant to this paper by linking its implementation to the facts found in the field.¹²

The research specifications used a descriptive analytical approach method, namely presenting and analyzing data systematically with the aim of providing the most accurate data possible about humans, conditions and other symptoms.¹³ Descriptive means that the author wants to describe and provide data as accurately, systematically, and comprehensively as possible. Analytical means grouping, combining, and comparing aspects related to the problem in theory and practice.

3. Results and Discussion

3.1. The Position of the *Actus Reus* and *Mens Rea* Elements in the Indonesian Criminal Law System

A legal system is a concept where a country implements its constitution, involving the legislative, executive, judicial, and citizenry to achieve a goal. The constitution serves as the foundation for the relationship between the state and its citizens, forming the basis for the foundation of a state. It encompasses powers and/or authorities regulated by law as a consequence of the development of national life.¹⁴

Before discussing the legal system further, it would be wise to first understand what law is. Discussing Indonesia's legal system is inextricably linked to the formation of the nation. A nation is formed from the determination or will of its

¹²Rangga Suganda. (2022). A Legal Approach Method in Understanding the Islamic Economic Dispute Resolution System. *Journal of Islamic Economics*, 8 (03), p. 2859

¹³Nana Sudjana, (2007). *Educational Research and Assessment*. Bandung: Sinar Baru Algesindo, p. 64

¹⁴Sahat Maruli T. Situmeang, (2020). *The Indonesian Legal System: Legal Substantive Components & Institutions in Criminal Justice*. First Edition, Logoz Publishing: Bandung, p. 1

people to achieve a common goal. Every country has a legal system, and legal systems vary from one country to another. This is due to the historical background of the nation or country itself. This is because what we have today is the result of the past, and what we do now determines the future. For example, logically, in a colony, the laws and regulations of the colonizing country are applied.¹⁵

The formation of a nation cannot be separated from politics. It could be said that the heart of a nation's law is its own legal politics. This can be seen in the foundations of a nation's constitution, for example, the 1945 Constitution, which serves as the foundation for fundamental norms, and Pancasila, the Indonesian state's fundamental principles.¹⁶ A legal system consists of interconnected subsystems that cannot function independently to achieve a goal. It can be likened to the human body, a system composed of several subsystems, or to a computer operating system. No matter how good or effective the laws or regulations are, if they are not supported by public legal awareness and enforcement, they are like writing on water.¹⁷

There are many ways to discuss a legal system. One way is to discuss it as "law," a set of rules or norms, written or unwritten, concerning right and wrong behavior, rights and obligations. "Law," in the sense of structure and regulation, is only one of three phenomena, all of which are coherent and very real. First, there are social and legal forces that somehow force their way in and shape "law." Second, then comes the "law" itself, the structures and regulations. Third, there is the impact of that law on behavior in the external world. Where does "law" come from and what are its consequences?¹⁸

The Indonesian criminal law system originates from continental Europe, also known as civil law. Indonesia adheres to the civil law system. This is due to the hegemony of Dutch power in Indonesia, resulting in Indonesia adopting a system inherited from the Dutch. Before the arrival of Dutch colonialism, Indonesia had no written criminal law, as each ethnic group in Indonesia had its own customary laws, most of which were unwritten, including customary criminal law.¹⁹

The nature, content, and provisions of criminal law naturally vary greatly, depending on the customary laws of each ethnic group. In other words, there is pluralism in criminal law. The arrival of Dutch colonialism introduced written criminal law, although only in the form of statutes (Bataviasche Statuten of 1642)

¹⁵Ibid

¹⁶Denada Damanik, Sri Hadningrum. (2024). The Indonesian National Legal System. *Journal of Transformative Scientific Education*, 8 (12) December, p. 312

¹⁷O. Adhayanto. (2015). Development of the National Legal System. *Journal of Legal Studies*, 5 (2), p. 163

¹⁸Ibid

¹⁹A. Abidin, (1987). *Principles of Criminal Law*. Bandung: Alumni, p. 78

and applicable only to Europeans. Meanwhile, indigenous Indonesians continued to apply their respective customary criminal laws. Thus, neither Europeans nor indigenous Indonesians had a specific codification applicable to the Dutch East Indies.²⁰

When discussing crimes, the principle of *actus non facit reum, nisi mens sit rea*, is well-known. An act does not make a person guilty unless the mind is guilty. In continental European legal systems such as Indonesia, this principle is often referred to as criminal liability in criminal law, where external actions are called *actus reus*. Therefore, *actus reus* is an external element; a person can be punished unless they have committed an illegal or unlawful act. Therefore, even if their actions meet the criminal terms stated in the legislation and are not justified, they still do not meet the requirements for criminal punishment. It is necessary to pay attention to the inner attitude (intent or purpose) of the perpetrator of the crime when breaking the law or committing an unlawful act.²¹

1. *Actus Reus*

In principle, a person can only be held criminally responsible for external conduct, which must be proven by a public prosecutor. In criminal law, this external act is known as *actus reus*. In other words, *actus reus* is the external element.²²

Actus reus refers to elements of real actions that can be observed objectively and have legal consequences.²³ *Actus reus* is a term that refers to an act that violates the law committed by a person, so that simply knowing that the act has been committed is not enough, but it is also important to confirm that the act violates the applicable regulations.²⁴

In legal literature, *actus reus* is often used as an equivalent to conduct for deviant behavior according to criminal law. Or in other words, *actus reus* is equated with the word conduct. Meanwhile, in legal literature, *actus reus* is stated to consist of act and omission or commission and omission, where in both phrases, act is the same as commission. Because the definition of *actus reus* does not only include act or commission, but also omission, Sutan Remy Sjahdeini argues that it is more appropriate to provide an equivalent to *actus reus* with the word behavior. Behavior, according to him, is the equivalent of the word conduct

²⁰Hanafi Amrani. (2019). The Politics of Criminal Law Reform. UII Press Yogyakarta, , pp. 17-24

²¹David Lind Budijanto Njoto. (2024). Reconstruction of the Principle of *Actus Non Facit Reum Nisi Mens Rea* in Criminal Acts. JIIP: Scientific Journal of Educational Sciences, 7 (3) March, p. 3344

²²Sutan Remy Sjahdeini, (2007). Op.Cit, p. 34.

²³Khaoeirun Nissa, et al. (2026). Qualification of *Actus Reus* and *Mens Rea* in Virtual Crime: A Normative Study of the Phenomenon of True Crime Community and Symbolic Violence in the Digital World. Journal of Innovative and Creativity, 6 (1) March, pp. 194-74

²⁴Mulyadi, et al. (2024). Analysis of the Differences between the Criminal Act of Theft in the New and Old Criminal Code (KUHP). Indonesian Legal Media (MHI), 2 (3) June-September, p. 98

in English, which is widely used to refer to behavior that violates criminal provisions. Furthermore, *actus reus* should not be equated with the words deed or action because those words are equivalent to the word act in English.²⁵

Commission is to commit a specific act prohibited by criminal law, and omission is to refrain from committing a specific act required by criminal law. Behavior has a broader meaning than an act or commission, which is synonymous with an act or commission. The definition of behavior is not limited to the meaning of an act to do something but also includes not committing a specific act. Based on the above explanation, it can be concluded that not committing a specific act required by criminal law cannot be considered an act or commission. However, it is still considered unlawful behavior.²⁶

In a legal context, the act must refer to the applicable statute or codification of positive law. This means that actions or deeds that violate certain laws or regulations can be considered *actus reus*. In law enforcement, to determine someone's responsibility, simply knowing that the act has been committed is not enough. It is also important to demonstrate that the act violates the applicable law. In a legal system based on the principle of positive law, written laws or regulations are the primary reference for determining whether an act falls under *actus reus*.²⁷

The *actus reus* (unlawful physical act) aspect in Indonesia's new criminal law (Law No. 1 of 2023 concerning the Criminal Code) remains the primary basis before assessing guilt (*mens rea*). In the New Criminal Code (Law No. 1 of 2023), *actus reus* (unlawful act) is generally regulated in a scattered manner, but the main principle is emphasized in the criminal liability articles such as Article 36 (criminal acts with intent/negligence) which states:

(1) Every person can only be held responsible for criminal acts committed intentionally or due to negligence. (2) Acts that can be punished are criminal acts committed intentionally, while criminal acts committed due to negligence can be punished if expressly determined in statutory regulations.²⁸

Article 36 as a representation of *actus reus* in terms of legal basis also has implications for Article 1 of the Criminal Code, which states that "no act can be subject to criminal sanctions and/or action, except by virtue of the criminal regulations in existing laws and regulations before the act was committed."²⁹The National Criminal Code also emphasizes the principle of material legality as a representation of *actus reus*, where an act can be punished not only based on

²⁵Sutan Remy Sjahdeini, (2007). Op.Cit, p. 34

²⁶Amir Ilyas, (2012), Op.Cit, p. 51

²⁷Aleksandar Fatic (1995). Op.Cit, p 9.

²⁸Article 36 of Law Number 1 of 2023 concerning the Criminal Code

²⁹Article 1 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code

the law, but also the law that lives in society (living law), as long as the act is considered against the law (actus reus).³⁰

Actus reus refers to an unlawful external act, encompassing actions, circumstances, and consequences. The following are key points regarding the actus reus aspect of the new criminal law:

a. Differentiation between Actus Reus and Mens Rea: In the new Criminal Code, actus reus is the objective element (physical act), while mens rea is the subjective element (mental attitude). A crime is only considered to have occurred if the actus reus is fulfilled, which is then followed by proof of mens rea.

b. Unlawful Acts (Wederrechtelijk): The actus reus aspect focuses on actual behavior that violates criminal provisions. This includes both commission (doing something prohibited) and omission (not doing something required).

In practice, a person who commits an actus reus (prohibited act) must be proven guilty (mens rea) in order to be punished (actus non facit reum nisi mens sit rea)³¹, except in certain cases (strict liability). Actus reus is the physical element or actual act, which is always paired with mens rea (malicious intent) in determining a crime.³²

2. *Mens Rea*

Mens reas is a legal term originating from Latin and literally meaning "evil mind." In the criminal law system, mens rea refers to the mental state or intention behind a person's criminal acts, or rather, will. Will is a person's desire, intent, or decision to do something or take a certain action. It reflects an individual's drive or motivation to achieve their goals. It is indeed a very long debate, as the mens rea being debated has many arguments, viewpoints, or aspects to consider. This debate may involve various differing opinions and it is often difficult to reach a clear agreement or resolution. If a person does not have the intent or purpose to commit a crime, it is difficult for them to engage in criminal activity.³³

Criminal responsibility in the Indonesian legal system requires a close relationship between actus reus (criminal acts prohibited by law) and mens rea

³⁰Article 2 of Law Number 1 of 2023 concerning the Criminal Code

³¹In the Black Law Dictionary, this principle is written as actus non reum facit nisi mens sit rea. Literally, this principle means that an act cannot make someone guilty if the intention is innocent. Usually, this principle is called "no punishment without fault" or geen straf zonder schuld (Dutch) or keine strafe ohne schuld (German). In some literature, this principle is abbreviated as actus reus mens rea. See: Bryan A. Garner, (1999), Black's Law Dictionary, Seventh Edition, West Group, St. Paul Minn, p. 1616

³²David Lind Budijanto Njoto. (2024). Op.Cit, p. 334

³³Rizki Romandona, Bukhari Yasin. (2024), Op.Cit, 6 (2) January, p. 6

(the perpetrator's guilty mental attitude).³⁴This principle emphasizes that punishment cannot be based solely on external actions, but must also be accompanied by an element of subjective fault in the form of intent, deliberate action, or at least negligence for which legal accountability is warranted. This provision is stipulated in the Criminal Code and reinforced by the prevailing criminal law doctrine in Indonesia, in line with the view of the majority of criminal law experts who consider fault to be a fundamental element of criminal responsibility.

This principle has significant consequences in criminal justice practice. A person who objectively commits an act that falls within the definition of a crime is not automatically subject to criminal punishment unless proven guilty.³⁵For example, a driver who hits a pedestrian due to brake failure due to a manufacturing defect, even though the unlawful act has clearly occurred, cannot be punished because there is no subjective fault on his part. This confirms that Indonesian criminal law adheres to the principle of *geen straf zonder schuld* (no punishment without fault), which serves to prevent arbitrary punishment and ensure that punishment is always in line with the principle of justice.³⁶

Indonesian criminal law recognizes several different forms of *mens rea*, namely intent, negligence, and specific intent in certain cases.³⁷Intention, or *dolus*, is a condition in which the perpetrator consciously and knowingly commits an unlawful act. On the other hand, negligence, or *culpa*, is a condition in which the perpetrator does not intend to violate the law but acts carelessly or negligently, resulting in a crime.³⁸The difference between intent and negligence determines the severity of the sanctions the perpetrator will receive.

The overall or dominant function of *mens rea* in criminal liability is:

a. To determine subjective fault or elements of fault in the perpetrator of a crime. *Mens rea* is one of the elements that must be proven by the prosecutor in a criminal process to show that the perpetrator had deliberate intent or malicious intent in committing an unlawful act. Evidence of *mens rea* is very important in determining a person's criminal responsibility, because it can distinguish between deliberate and unintentional actions;

b. *Mens rea* which can be proven to be used to mitigate the perpetrator's criminal liability. If a person commits a crime under duress or is threatened with

³⁴Ekky Aji Prasetyo, Sahuri Lasmadi and Erwin, (2024). Op.Cit, 7 (1) June, p. 381

³⁵Gita Febri Ana and Rehnalemken Ginting, (2015). Analysis of the Application of Article 359 of the Criminal Code Concerning Negligence Causing the Loss of Another Person's Life (Study of Decision Number: 267/PID.B/2011/PN/SKH), Jurnal Recidive, 4 (2) May-August, p. 184

³⁶Noval Dimas and Diandra Preludio, (2025). Criminal Liability for Traffic Violators. Nomos: Journal of Legal Research, 5(2) May, pp. 322-324

³⁷R. Renggong, (2017). Special Criminal Law. Prenada Media.

³⁸F. Riza & E. Asmadi, (2023). Indonesian Criminal Law. Umsu Press.

death, and the court can prove that there was no malicious intent, this can be taken into account when deciding on a lighter sentence;

Actus reus *Mens rea* has a central function as an instrument for balancing legal certainty, justice, and the protection of individual rights. Within the criminal law framework, legal certainty requires that punishment be imposed only based on clear, definite, and predictable rules. However, formal legal certainty is insufficient if it ignores substantive justice.

Because rigid application of the law without considering the perpetrator's mental state has the potential to create injustice. Therefore, the Indonesian criminal justice system must position *actus reus* and *mens rea* as primary elements in determining criminal culpability, so that court decisions not only reflect legal certainty but are also based on moral values and fundamental justice.³⁹

3.2. Implications of Fulfilling the Elements of Actus Reus and Mens Rea in Handling Criminalization at the Investigation Stage by the Police

Schaffmeister⁴⁰ states that a criminal act is a human act that falls within the scope of the formulation of a crime, is unlawful, and can be condemned. Unlike Simons and van Hamel, who state that an act in *strafbaar feit* consists only of behavior, Moeljatno explains that an act is behavior + events caused by the behavior or behavior + consequences and not just behavior. This differs from *strafbaar feit*, which includes the definition of criminal acts and mistakes.⁴¹

Jonkers and Utrecht view Simons' formulation as a complete formulation, which includes:

- 1) Threatened with criminal penalties by law;
- 2) Contrary to the law;
- 3) Committed by a guilty person;
- 4) The person is seen as responsible for his actions.⁴²

Simons, Van Hamel, and Vos all define the crime (*strafbaar feit*) in a comprehensive manner, without separating the act and its consequences on the one hand and responsibility on the other. AZ Abidin calls this formulation of the crime the monistic school of thought. Others, which separate the act and its consequences on the one hand and responsibility on the other, are called

³⁹Anom Sutrisno. (2025). The Role of Judges in Realizing Due Process of Law in, *Locus: Journal of Legal Science Concepts*, 5 (1) March, pp. 18-20

⁴⁰D. Schaffmeister, Nico Keijzer and E.P.H. Sutorius. (1995). *Criminal Law*. Yogyakarta: Liberty, p. 27

⁴¹Moeljatno, (2018). *Op.Cit*, p. 61

⁴²J.E. Jonkers. (1946), *Handboek van het Ned Indische Strafrecht*. Leiden: EJ Brill, p 83.

dualistic schools. Indeed, in England, a distinction is made between acts prohibited by law and punishable by law (*actus reus*) on the one hand and responsibility (*mens rea*) on the other.⁴³

In criminal law doctrine, the theory of the principle of fault (*schuld beginsel*) put forward by von Hippel emphasizes that a person can only be punished if proven to have committed a criminal act accompanied by fault.⁴⁴ This view is reinforced by Pompe's theory of criminal responsibility, which states that punishment without a guilty conscience will lose its moral legitimacy. This principle aligns with the principle of *geen straf zonder schuld* (no punishment without guilt), which has become the foundation of Indonesian criminal law, where punishment is only valid if there is a close relationship between the *actus reus* (criminal act) and *mens rea* (guilty conscience).

In theory, the implications of fulfilling the elements of *actus reus* and *mens rea* in handling criminalization at the police investigation stage are a representation of a theory of criminal law causality that The doctrine of causality is intended to determine the objective relationship between human actions and consequences that are not intended by law. This doctrine of causality is "a doctrine that questions the extent to which an action can be seen as the cause of a situation" or the extent to which a situation can be seen as a result of an action, and the extent to which a person who has committed such an action can be held accountable under criminal law.⁴⁵

In the theory of causality, one of the major theories is the theory of relevance, which is... This theory does not begin by distinguishing between causes and conditions, as with the generalizing and individualizing theories, but begins by interpreting the formulation of the offense in question. From the formulation of the offense that only contains the prohibited consequences, an attempt is made to determine what behaviors are intended when the prohibition is made. So, if in the generalizing and individualizing theories the important question is: is this behavior the cause of the prohibited consequences? Then the most important question in the relevance theory is: when the law determines the formulation of the offense, which behaviors are imagined by it to be able to give rise to the prohibited consequences?

Jan Remmelink argues that a number of authors, including van Hamel and Langemeijer, who essentially want to apply von Buri's teachings to the study of causality as it appears in statutory texts and a number of provisions containing other principles, therefore, on the basis of data that (at least in their view) lies

⁴³AZ Abidin. (1987), *Principles of Criminal Law Part One*. Bandung: Alumni, pp. 248-249.

⁴⁴Shulhan Iqbal Nasution, (2025). *Mens Rea: The Foundation of Criminal Responsibility in the Criminal Justice System in Indonesia*. *Iqtishaduna: Scientific Journal of Islamic Economic Law Students*, 7 (1) October, p. 799

⁴⁵Mulyati Pawennei and Rahmanuddin Tomalili, (2015). *Op.Cit*, p. 99.

outside of causality, they choose one or more causes from among the many possible causes. Therefore, they choose only the relevant causes, namely those that are presumably intended as causes by the legislator. Therefore, the legislator, for example in cases of assault resulting in the death of another person, will apply the qualification that the injury suffered (even in a way that is difficult to foresee) still opens up the possibility of the death of another person.⁴⁶

3.3. The Urgency of Understanding the Elements of Actus Reus and Mens Rea for Police Investigators in Handling Criminalization

In the world of criminal evidence, police investigators act as gatekeepers.⁴⁷The (entry point) of the criminal justice process must be able to make a sharp initial assessment of the probative value of evidence before deciding whether to continue the investigation or bring the case to prosecution. Mistakes at this stage can have fatal consequences, either resulting in the failure to convict the perpetrator or the criminalization of innocent parties.⁴⁸Therefore, the analytical skills and professional integrity of investigators are key factors in ensuring that any evidence used is truly valid, relevant, and obtained legally.

Elements such as actus reus and mens rea are closely linked to the evidentiary process during the investigation phase of a criminal case. A thorough understanding of the concepts and elements of actus reus and mens rea is crucial for investigators, as they form the basis for determining the level of culpability and ensuring a proper investigation. Without a thorough understanding of mens rea, the criminal justice process can potentially overlook the aspects of intent or negligence, which are crucial in assessing criminal responsibility. In Indonesia, the proper application of mens rea can promote equitable justice, where each case is evaluated based on the perpetrator's intent and awareness, ensuring that the punishment is more appropriate to the level of culpability.

This is a form of understanding the principle of material legality which is against the material law, called material because even though an act has been in accordance with the description in the law, it still has to be examined regarding the assessment of society whether the act is indeed reprehensible and deserves to be punished by the perpetrator or not reprehensible, or is seen as being too less reprehensible so that the perpetrator does not need to be subject to criminal sanctions, but is sufficient to be subject to sanctions in other legal rules, or other social rules. The meaning of material unlawful acts is an element related

⁴⁶Muh. Nizar, Amiruddin and Lalu Sabardi, (2019). *Op.Cit*, 7 (1) January, p. 190

⁴⁷The role of the police as gatekeepers stipulates that the police are the ones who filter criminal incidents, determine whether a case is worthy of legal processing, and initiate the law enforcement process. See: Aulia, (2014). *The Use of Discretion by the Police in Law Enforcement*. *Rechtidee Jurnal Hukum*, 9 (1) June

⁴⁸Iwan Rasiwan. (2025). *Op.Cit*, p. 98

to the principle of Culpability (determining the guilt of the perpetrator of the crime), or the value of legal justice that exists in society, and the level of propriety and fairness.⁴⁹

The legal reasoning aspect for Indonesian National Police investigators is crucial when correlated with determining the *actus reus* and *mens rea* of a criminalization, with increased capability in mastering legal knowledge in the interrelated aspects of criminal responsibility. In the theory of criminal responsibility, monistic and dualistic theories are considered in relation to the concept of criminal responsibility. In general, monistic theory does not separate criminal acts from errors. Because errors are an element of criminal acts, based on the principle of "no crime without error," errors are also an element of criminal responsibility. Proving all elements of a criminal act can prove both the crime and the existence of criminal responsibility. Proving a criminal act that contains an element of error, the perpetrator is responsible for the crime. The perpetrator is not punished is an exception, this exception can be caused by the perpetrator's inability to take responsibility or because of the elimination of criminal penalties. The elimination of criminal penalties can be in the form of excuses or justification.

The dualistic theory holds that there needs to be a separation between criminal acts (*strafbaar feit*) and mistakes (*schuld*), because only mistakes (*schuld*) constitute an element of criminal responsibility. According to the dualistic theory, criminal acts only encompass the characteristics of the act (*actus reus*), but criminal responsibility only concerns the characteristics of the person committing the crime.⁵⁰ Mistake (*schuld*) is a determining factor in criminal responsibility and is separated from the criminal act (*strafbaar feit*), so the element of intent as the main element of mistake (*schuld*) must be removed from the definition of a criminal act.⁵¹

Whether or not the person committing the act is at fault depends on their assessment of themselves, namely their mental state. The element of intent is not an element of the act but rather an element of criminal responsibility.⁵² The elements of the ability to be responsible and deliberate are not elements of a criminal act, but elements of criminal responsibility (which the monistic view calls subjective elements).⁵³

4. Conclusion

⁴⁹Youngky Fernando and Asti Wasiska. (2023). *Op.Cit*, June-December, p. 69

⁵⁰Chairul Huda, (2006). *Op.Cit*, p. 15

⁵¹*Ibid*

⁵²Moeljatno, (1983). *Op.Cit*, p. 27

⁵³Andi Zainal Abidin Farid and Andi Hamzah, (2010). *Op.Cit*, p. 233

1. The actus reus (prohibited physical act) aspect in the new Indonesian criminal law (Law No. 1 of 2023 concerning the Criminal Code) remains the main basis before assessing guilt (mens rea). In the New Criminal Code (Law No. 1 of 2023), actus reus (unlawful act) is generally regulated in a scattered manner, but the main principle is emphasized in the criminal liability article such as Article 36 (criminal acts with intent/negligence) which states: (1) Every person can only be held responsible for criminal acts committed intentionally or due to negligence. (2) Criminal acts are criminal acts committed intentionally, while criminal acts committed due to negligence can be punished if expressly determined in statutory regulations. Meanwhile, Mens rea (malicious intent/fault) is also accommodated in the New Criminal Code (Law No. 1 of 2023) and is fundamentally regulated in Article 36 paragraph (1), which emphasizes the principle of "no crime without fault." This article emphasizes that criminal liability can only be imposed if there is intent or negligence. And in the component of Article 36 paragraph (2) it is emphasized that mens rea includes criminal acts committed intentionally (dolus) or negligence (culpa).

2. Police investigators have a major role in the legitimacy of a criminalization when it comes to interpreting the actus reus and mens rea elements of a criminalization. Proving actus reus (outward actions) and mens rea (inner intentions) in the investigation stage is crucial to ensure that a person can be held criminally responsible based on the principle of dualism. Both are the main basis for determining whether an act is a crime or not, as well as ensuring justice. The important points of proof in an investigation include (1) The existence of a connection where the investigation must not only focus on physical actions (actus reus) without revealing the inner intentions (mens rea) of the perpetrator. Acts without malicious intent (for example: hitting because of tripping) are generally not criminally punishable; (2) Investigators are required to prove that actus reus (objective) and mens rea (subjective) are simultaneously fulfilled so that the case can be forwarded to prosecution; (3) In determining the legal construction structure, determining the certainty of the mens rea element helps investigators distinguish between intent (dolus) or negligence (culpa), which determines the article of suspicion; 3. The reasons why a high level of understanding of the two elements (actus reus and mens rea) is absolutely necessary for investigators as an urgency include: (1) Distinguishing criminal acts based on negligence construction (mens rea), namely investigators must be able to identify whether the act is based on dolus (intention) or culpa (negligence/negligence). A person cannot be punished only for committing a prohibited act (actus reus) if there is no mental error (mens rea), which often occurs in cases of pure accidents. This is implied by the example of a case where a careful investigator can distinguish between premeditated murder (the presence of strong mens rea) and death that occurs due to fatal negligence (culpa) or an overmacht situation (coercive force), which will result in a different legal construction. (2) Ensuring the validity of criminalization (actus reus), Actus

reus is an external element or real act that is prohibited by law. A high level of understanding by investigators is needed to ensure that the actions being investigated truly fulfill the elements of the crime stipulated in the law. An example of this case is the INS case where a rural resident in Badung Regency, Bali, had to face the trial process because he was accused of possessing four protected Javanese porcupines (*Hystrix javanica*). This case, when analyzed, where the actus reus (possessing protected animals) was proven, but the mens rea was not fulfilled because the defendant did not know that the action was prohibited, thus showing the crucial importance of proving both elements simultaneously.

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