The Digest: Journal of Jurisprudence and Legisprudence

A peer-reviewed journal published by Faculty of Law Universitas Negeri Semarang, Indonesia. The title has been indexed by SINTA, GARUDA.
ISSN 2746-2110 (Print) 2746-0371 (Online)
Online at https://journal.unnes.ac.id/sju/index.php/digest

Punishment of the Kanjuruhan Commotion due to Negligence from the Perspective of Causality Theory

(Case of Decision 13/Pid.B/2023/PN Sby jo 922/K/Pid/2023)

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Abstract

The consequences of the Kanjuruhan incident during Indonesian football matches prompted the implementation of punitive measures, aiming to ensure the protection of fundamental rights. The incident, which resulted in dissatisfaction among fans, particularly the Aremania supporters, was triggered by their team's defeat. The conclusion of the match saw a surge of discontent, leading fans to descend onto the field to express their disappointment. In conducting this research, a doctrinal legal approach, specifically of the normative type, was employed. The methodology involved a literature study, encompassing legal principles, rules, regulations, doctrines, theories, and legal dictionaries that contribute to legal literacy. The research aimed to gain insights into the necessity, harmony, and intentionality of legal measures, employing a scientific approach through doctrinal laws. The normative legal methods used positive law, context, and literature as their specifications. The research approach incorporated positive law and a case study method, focusing on the Kanjuruhan commotions. The findings and discussions unveiled the court's decision in accordance with Decision 13/Pid.B/2023/PN Sby, which acquitted the defendant. Legal efforts were subsequently initiated by the public prosecutor (JPU) in case 922/K/Pid/2023 to overturn the previous decision. The Supreme Judge determined a violation of Article 359 in conjunction with Article 360 of Law Number 1/1946 concerning Criminal Law Regulations, citing negligence leading to death. The causal link in this case was established when security forces (police) deployed tear gas into the

spectator stands in response to the anarchic behavior of the Aremania supporters who had descended onto the field.

Keywords

Kanjuruhan Case, Causality, Negligence

Introduction

Criminal law in Indonesia serves as a foundational and overarching policy, representing a significant national achievement. Its presence is instrumental in realizing the broader goal of safeguarding society in the aftermath of criminal acts. This multifaceted objective involves not only reparative measures but also proactive efforts to shield individuals and communities from the adverse consequences of criminal behavior. At its core, criminal law functions as a defender of recognized legal norms, aiming to impose consequences on those who breach established rules. This serves a dual purpose: deterring potential offenders and ensuring accountability for those who engage in criminal conduct. The specificity of criminal law's focus lies in its use of sanctions that carry a heightened threat compared to other legal frameworks. This heightened threat is intended to act as a deterrent, discouraging individuals from engaging in criminal activities.[1]

By providing legal sanctions, criminal law seeks to achieve fairness, bring about societal benefits, and instill a sense of legal certainty. The imposition of penalties under criminal law is not merely punitive; it is a mechanism designed to maintain order, protect individual rights, and establish a just and secure society. In essence, criminal law in Indonesia is a comprehensive tool aimed at maintaining the integrity of legal norms, ensuring public safety, and upholding fundamental principles of fairness and justice.[2]

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[1] Anirut Chuasanga, and Ong Argo Victoria. "Legal Principles Under Criminal Law in Indonesia dan Thailand." *Jurnal Daulat Hukum* 2, no. 1 (2019): 131-138. *See also* David Bourchier, "Crime, law and state authority in Indonesia." *State and civil society in Indonesia* (1990): 177-212; Robert Cribb, "Legal pluralism and criminal law in the Dutch colonial order." *Indonesia* 90 (2010): 47-66.

[2] A. R. Suhariyono, "Penentuan sanksi pidana dalam suatu undang-undang." *Jurnal Legislasi Indonesia* 6, no. 4 (2018): 615-666; Dwi Wiharyangti, "Implementasi Sanksi Pidana dan Sanksi Tindakan dalam Kebijakan Hukum Pidana di Indonesia." *Pandecta Research Law Journal* 6, no. 1 (2011); Mahrus Ali, "Proporsionalitas dalam Kebijakan Formulasi Sanksi Pidana." *Jurnal Hukum Ius Quia Iustum* 25, no. 1 (2018): 137-158.

In addition, criminal law stands as the ultimate remedy, *ultimum remedium*, aimed at safeguarding the fundamental rights of victims while imposing sanctions on the universal rights of perpetrators. In addressing malevolent acts, diligent efforts are necessary to establish criminal responsibility. This undertaking acknowledges that criminal sanctions constitute a form of repressive action, executed through the mechanisms of the criminal justice system.

In the further context, legal theory, recognizing the dual nature of law as stable yet dynamic, plays a pivotal role in the development of criminal law. The statements within legal frameworks, designed for certainty and predictability, reflect the need for stability while adapting to the evolving dynamics of human life. In the context of criminal law development, legal theory serves as a guiding force. It explores the legal aspects pertinent to criminal law in terms of substance, encompassing positive law, prospective legal norms, existing societal laws, and legal comparisons. The examination of criminal law's structure involves an analysis of the facilities and infrastructure integral to the organization of legal institutions tasked with enforcing criminal statutes. Furthermore, legal theory delves into the cultural dimension, scrutinizing societal responses to criminal rules and institutional structures.[3]

In one particular instance, a football supporter case in Indonesia exemplifies how group sports with passionate fans can lead to disturbances causing injuries and even fatalities. Football, being a popular live spectator sport, has gained significant attention. The League 1 match scheduled for October 1, 2022, between Arema and Persebaya, witnessed disruptions among the audience due to unsatisfactory results. Accidental murder, involving fatalities resulting from unintentional mistakes leading to the loss of life, injuries, or impairment of limbs, is a tragic consequence.[4]

These disturbances have had adverse effects on the development of Indonesian football, impacting both its material and psychological aspects. Prior studies have delved into forms of accountability concerning the Kanjuruhan commotions. The present research seeks to scrutinize the

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3 *See* Neil MacCormick, *Legal Reasoning and Legal Theory*. (London: Clarendon Press, 1994). *See also* Griffiths, John. "What is legal pluralism?." *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1-55.

4 *See* Sri Haryati, "Death count in Kanjuruhan tragedy climbs to 135", *ANTARA News,* October 24, 2022. Retrieved from https://en.antaranews.com/news/256465/death-count-in-kanjuruhan-tragedy-climbs-to-135; Muhammad Ali, "Tragedi Kanjuruhan, Polisi: 3.000 Penonton Turun ke Lapangan Usai Laga Arema Vs Persebaya", *Liputan 6,* October 2, 2022. Retrieved from https://web.archive.org/web/20221002005107/https://www.liputan6.com/news/read/5085645/tragedi-kanjuruhan-polisi-3000-penonton-turun-ke-lapangan-usai-laga-arema-vs-persebaya

Kanjuruhan commotions through the lens of causality theory, unveiling the factors that led to crimes resulting in deaths, minor injuries, and serious injuries.[5]

The multifaceted nature of death necessitates evidence to establish a causal relationship. Within judicial institutions, the existing evidence may not be robust enough to definitively determine an individual's death; instead, a comprehensive array of evidence is required to satisfactorily confirm the occurrence of death. The interdisciplinary approach involves substantiating a series of facts to draw conclusive and well-founded conclusions. The scientific discipline involved in scrutinizing an individual's death necessitates establishing a connection between cause and effect, emphasizing the importance of the teaching of causality. This instructional framework serves as a filter, determining the relevance of actions in assessing the causal relationship and understanding the extent to which they contribute to material truth. The Kanjuruhan commotions, exemplifying cases of individual deaths, serve as a tangible manifestation of the practical utility of the teaching of causality in the study of facts.[6]

The Kanjuruhan incident presents a complex scenario involving multiple actions, making it challenging to ascertain the facts surrounding

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5 Death is officially recognized when the heart ceases to beat, or the brain stem experiences cessation of activity (stops breathing). In medical science, the interplay of the nervous, respiratory, and cardiovascular systems (heart and blood vessels) determines the vital functions of an individual. Any disruption in one of these systems renders the others incompatible. If this condition persists in humans, they are considered deceased. Sudden deaths prompt the need for additional investigation. It is imperative to identify the factors contributing to a person's demise, whether they stem from physical actions or other underlying causes. *See also* Kartika Widya Utama, et al. "Tragedi Kanjuruhan dan Penyalahgunaan Wewenang dalam Pelaksanaan Prosedur Administrasi Negara." *Masalah-Masalah Hukum* 51, no. 4 (2022): 414-421; Ahmad Nurfaizi, "Analisis Yuridis Tindakan Kepolisian dalam Kasus Tragedi Kemanusiaan di Stadion Kanjuruhan Malang Ditinjau dari Perlindunganhak Asasi Manusia (Undang-Undang Nomor 39 Tahun 1999 Tentang HAM)". *Thesis* (Jakarta: Universitas Terbuka, 2022); Iqbal Hirzi Roamdhon, "Indikasi Pelanggaran HAM Pada Tragedi Hilangnya Ratusan Nyawa di Stadion Kanjuruhan Malang." *Seminar Nasional-Kota Ramah Hak Asasi Manusia*. Vol. 2 (2022); Firdani Alifia Salsabil, "Peristiwa Stadiun Kanjuruhan Malang Perspektif Pelanggaran HAM." *Seminar Nasional-Kota Ramah Hak Asasi Manusia*. Vol. 2 (2022).

6 Jenny Yudha Utama, et al. "The Root of Violence in Kanjuruhan Tragedy." *Resolusi: Jurnal Sosial Politik* 5, no. 2 (2022): 122-132; Mochamad Ziaul Haq, and Andhika Yudhistira. "The Roots of Violence in the Rivalry between Football Club Fans and Supporters Using the ABC Triangle Theory of Johan Galtung." *TEMALI: Jurnal Pembangunan Sosial* 5, no. 2 (2022): 125-132; Fajar Junaedi, Filosa Gita Sukmono, and Andy Fuller. "Kanjuruhan Disaster, Exploring Indonesia Mismanagement Football Match." *E3S Web of Conferences*. Vol. 440. EDP Sciences, 2023; Atha Difa Saputri, "Kanjuruhan Football Match Chaos: Media and Law Enforcement in Indonesia." *Indonesia Media Law Review* 2, no. 1 (2023); Rianda Dirkareshza, and M. Rizki Yudha Prawira. "Legal Liability of the Parties to the Tragedy of the Match at Kanjuruhan Stadium Indonesia." *Syiah Kuala Law Journal* 6, no. 3 (2022).

mass casualties. Dissecting case number 13/Pid.B/2023/PN Sby to assign responsibility for the deaths necessitates establishing a close connection between each cause and its subsequent effects. An appeal was filed in case number 922/K/Pid/2023 to overturn the previous decision, underscoring the need for the teaching of causality in the judicial process. Judges, in fulfilling their primary responsibilities, rely on the teaching of causality to ensure decisions align with the truth, emphasizing its crucial role in establishing causal relationships and convincing judicial authorities.

While positive law in Indonesia does not explicitly address the doctrine of causality, judges employ this doctrine to interpret causal relationships and determine accountability for criminal acts. The doctrine of causality becomes instrumental in identifying perpetrators and highlighting the causal connections between actions and their consequences, despite the absence of explicit regulation in the Indonesian Criminal Code.[7]

Method

The method of scientific work with research activities, followed by the nature and nature of scientific objects is research methods. The tools used for research purposes are not rigid and elastic, so their use varies depending on the object of the scientific research discipline.[8] Doctrinal legal research lies in the normative and sociological/empirical types, both studies differ in the object of research. Reviewing the value system as a conceptual system and positive law is the aim of normative legal research.

The method used is normative research, which falls into the doctrinal category. Normative research specifications discuss the study of legal principles, legal systematics, legal harmony, legal history, and comparison. This research specification uses a Law Approach and a Case Approach.[9] Regulatory approach to Law Number 1 of 1946 (*Kitab Undang-Undang Hukum Pidana,* KUHP) and National Police Chief Regulations. The case approach examines the legal reasons used by judges in their decisions to reach the ratio decidendi.

Preparation is the initial stage of research, by collecting legal norms, legal rules, legal regulations, doctrine, legal theory, encyclopedias, legal dictionaries, legal literacy. The ultimate goal is to produce arguments,

7 Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana*. (Jakarta: Kencana, 2018), pp. 3-6.
8 Nurul Qamar and Farah Syah Rezah, *Metode Penelitian Hukum Doktrinal dan Non-Doktrinal*. (Makassar: Social Politic Genius, 2020).
9 Zainuddin Ali, *Metode Penelitian Hukum*. (Jakarta: Sinar Grafika, 2009), pp. 12-13.

theories, or concepts in solving problems. Achievement is about necessity, conformity and error.[10]

Legal science has a normative character, so every model of legal research must have a normative character (doctrinal or non-doctrinal research). Legal research maintains a normative distinction from social research. Providing the basics of knowledge regarding research, conceptually has general elements (generalization of scientific research).[11]

Thinking instruments to draw conclusions from propositions that are accepted as scientifically true. Ways (methods) using the rules of scientific knowledge (special) and knowledge (general). Logic functions as a way (method) to analyze the truth or accuracy of thoughts (reasoning). The process of creating a concept and then making a statement, resulting in reasoning. Doctrinal research is equated with prescriptive qualitative, discussing law as a study of ideal values in systems, conceptual views of law, and positive law. Achievement of results to provide suggestions (recommendations) regarding development efforts and the formation of law from a broad perspective (law as a definition of an ideal value system, a good norm system, a scientific conception system, systematic law in positive law, legal balance both horizontally (parallel) and vertically (top to bottom).[12]

Criminal Responsibility in the Kanjuruhan Case: The Causality Theory Approach

A criminal act is an act of violating the law that is carried out intentionally or unintentionally, so that it can be accounted for in accordance with positive law. The formulation of an offense in positive law (*Strafbaarfeit*), as a concrete incident in a crime. Offense is defined as an action that is subject to a crime, while *Strafbaarfeit* is a human act that is threatened with a crime.[13]

Criminal law in Indonesia gives rise to monistic and dualistic tendencies. The monistic school views the terms of punishment as a

[10] Nurul Qamar, et.al., *Metode Penelitian Hukum (Legal Research Methods*). (Makassar: Social Politic Genius, 2017), pp. 9-13.

[11] David Tan, "Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi dalam Menyelenggarakan Penelitian Hukum", *Jurnal Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2466-2467

[12] Kornelius Benuf, and Muhamad Azhar. "Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer." *Gema Keadilan* 7, no. 1 (2020): 20-33.

[13] Lukkas Perdinan Harjono, and Busrizalti Charles, "Tindak Pidana Pembunuhan (Studi Putusan Nomor 1001/PID.B/2021/PN JKT.TIM)", *Jurnal Yure Humano* 7, no. 1 (2023).

combination of a prohibited act (criminal act) and a mistake (criminal responsibility). The view of crime as fulfilling the formulation of an offense, breaking the law, and a mistake. *Strafbaarfeit* states that the perpetrator (legal subject) is subject to punishment.[14]

The second (dualistic) flow separates criminal acts and mistakes. Prohibited acts formulated by positive law are against the law without justification. Moeljatno views Strafbaarfeit as a legal prohibition followed by threats to violators.[15]

A. Causality Theory

Humans interact with each other (social creatures) which results in positive or negative interactions. The resulting negative interactions will form problems, so it is necessary to determine cause and effect. Difficulties will be experienced if many causal chains are found. The relationship between the occurrence of a series of events and one factor giving rise to another factor is the definition of Causality. The formulation of causality is a complex matter in formulating causes (series of interactions) and effects (consequences of causes). The Law of Causality is divided into 2 (two) definitions, law (the ethical basis for producing individual justice) while causality (the beginning of the cause).

In terms of terminology, causality has the following definition: 1) The relationship resulting from human actions as a series of causes for prohibited actions; 2) The significance of the cause of an effect, so that it becomes a series of causalities; 3) Causality links between symptoms. The first event is a symptom, then determines the result (consequence of action). The causal relationship has power over the initial and subsequent causes, first as a trigger of further action which takes concrete form as a result of the initial cause. The initial and subsequent essences have a strong relationship but not all of them can be reduced to the teaching of causality.[16]

Positive law does not limit the teachings of causality, the consequences of prohibited actions can be monitored through cause-effect relationships (causality). Forbidden acts that are the cause of the connection between several events, resulting in losses (injury or death) can be determined by

[14] Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, (Bandung: Refika Aditama, 2023).
[15] Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2022).
[16] Muhammad Suyudi, and Wahyu Hanafi Putra. "Kritik Nalar Kausalitas dan Pengetahuan David Hume." *Al-Adabiya: Jurnal Kebudayaan dan Keagamaan* 15, no. 2 (2020): 201-214.

liability using the doctrine of causality. Criminal liability has a psychological causal relationship with prohibited acts.[17]

Criminal understanding uses the teachings of Causality for determining actions regarding a sequence that looks at the causes of illicit consequences. The focus of criminal law jurists on the meaning of causality is to answer who is responsible for the consequences. Causality determines the actual actions caused by the perpetrator to seek the law of prohibited actions in order to achieve justice (accountability).[18] The application of the theory of causality due to the judge's error will result in an unfair decision.[19] Understanding causality in Indonesian criminal law, through positive legal offenses.[20] The doctrine of causality is useful in material criminal acts, after producing certain prohibited consequences. The assessment of material criminal acts is about the final result of the prohibited consequences, not the act. A criminal act is a unity between actions and consequences, based on material offenses. The consequences of a series of actions, if there are no prohibited consequences, are not a criminal act. The theory of causality consists of 4 theories, as follow:

1. Equivalence Theory (*Conditio Sine Qua Non*)
   This theory was developed by Von Buri, who is known as absolute theory. This theory's statement regarding all conditions is a cause, to bring about an effect. The conditions present have the same value as the cause of the crime. Testing tools to determine the sequence of events so that they are equivalent for all causes of crime. All factors are of the same nature which causes all conditions to contribute to the effect, so they cannot be removed from the chain of causes. Theoretical causality relationships still require the relationship of error factors. Consideration of error must look at the existence of actus reus and mens rea, especially in cases where negligence is more dominant than action.[21] Causality does not only use the judge's logic, but the logic of reason in order to achieve objective literacy (knowledge) in plural

[17] Gelar Ali Ahmad, "Studi Putusan Nomor 288/Pid.B/2020/PN PMS Tentang Pertanggungjawaban Pidana Pelaku Tindak Pidana Pembunuhan Yang Mengidap Skizofrenia." *Novum: Jurnal Hukum* (2023): 1-12.

[18] M Syarifudin Abdillah, "Penerapan Kausalitas dalam Kecelakaan Lalu Lintas yang Menyebabkan Korban Meninggal Dunia", *Jurnal Kertha Semaya* 8, no. 5 (2020): 800-808.

[19] Cahya Wulandari, "Kedudukan moralitas dalam ilmu hukum." *Jurnal Hukum Progresif* 8, no. 1 (2020): 1-14.

[20] Andi Hamzah. *Asas-Asas Hukum Pidana di Indonesia*, (Jakarta: Rineka Cipta, 2012).

[21] Muhamad Muhdar, and Rini Apriyani. "Penerapan Teori Conditio sine Qua Non Dalam PeristiwaTumpahan Minyak di Teluk Balikpapan." *Risalah Hukum* 16, no. 1 (2020): 16-33.

actions. One action after another creates a relationship of interrelated events

2. Generalist Theory
   Breadth determines liability in previous theories, presenting causal limitations. The emergence of this theory limits itself between cause and effect, to produce forbidden consequences. Consequences arise by calculating feasibility in abstracto. The generalist theory group is proposed by J. Von Kreis (subjective adequate theory). Actions with known or foreseeable consequences, as a cause in subjective factors. Subjective factors (the suspect's inner attitude) are crucial in determining the clause, before the action occurs. Awareness of actions gives rise to consequences and feasibility based on general human experience, as an adequate (strongest cause).
   The balance of actions between causes that give rise to consequences in the form of actions that can be calculated appropriately to produce consequences, so that the perpetrator knows that what he does will cause prohibited consequences and is threatened with sanctions by positive law. The possibility of a prohibited consequence arising from an action has been predicted (predicted) so this theory is called subjective forecasting.
   The adequate objective theory developed by Rumelin states that determining objectives is based on the circumstances following the consequences. The action becomes the objective cause of the prohibition that is publicly known. Attention to post factum (after the event) factors and their consequences, which can be reasonably predicted. This theory does not look at the inner attitude of the perpetrator, but objective factors after the action can be thought of by common sense will give rise to forbidden consequences.
   According to Simons, there is a combined theory (subjective and objective), causality based on knowledge of the victim's condition by the perpetrator and the general public. The condition for a cause as a general action is in accordance with experience, thus allowing predictions of the presence of effects. Opinions regarding objective and subjective provisions, expressed by Van Bemmelen and Van Hattum regarding the causality of the mind for mistakes.
3. Individualist Theory
   This theory views causes *in concreto*, involving specific matters based on individual views. The first adherent, Brickmayer, views all conditions as having to choose the main thing as a result. Actions that have a big impact, resulting in consequences. Von Bori's series of factors accepts all as causes, but looks for the greatest cause of influence. The second

adherent, Karl Binding, all conditions present consequences (the same as Von Buri's theory). Actions that are assumed to be the cause, there is a change in the balance of negative factors (resistance) and positive factors (advantages to negative conditions). The main cause is considered as the final condition so as to eliminate the balance, then the positive conditions (requirements for causing effects) exceed the negative conditions (resisting the effects from arising).

The third believer, Kohler, conditions based on the nature of causing consequences (all conditions are important). This variation of teaching determines what is a qualitative influence, while Birckmayer mentions a quantitative influence. The difficulty of this teaching concerns equality of values as a condition. The fourth believer, Ortamann, states that cause is the end of conditions, there is an imbalance between positive and negative, so the determination is positive. This teaching is difficult to implement, there is the possibility of individuals being punished but not punished.

All factors that are considered as causes must take one strongest cause. Factors that are used as causes that have an influence on the consequences (delict). The cause (causa) has the strongest dominance as a factor in the existence of an effect, then other factors are used as conditions rather than causes. Requiring consideration in criminal liability for a series of events, choosing legal actions that threaten interests directly, it is necessary to set limits on the value of the causes of the consequences.

4. Relevance Theory

The adherents of this theory are Langenmeijer and Mezger, who distinguish between causes and conditions. This theory is determined from the formulation of regulations that contain offenses (which conditions are imagined to have prohibited consequences).[22] Causality in regulations and containing principles is the basis for arising from the need to choose the appropriate thing. The meaning of this theory is to select the relevant cause from all the causes presented. This relevance is in accordance with the legislative (regulatory maker) intent as a cause.

The difference between the two previous theories, generalization and individualization, is the formulation of whether the actions that have been carried out are the cause of the forbidden consequences. Therefore, it is relevant to want to know whether the offense that has been formulated as a cause was envisioned when the regulations were

[22] Muh Nizar, and Lalu Sabardi. "Ajaran Kausalitas Dalam Penegakan Hukum Pidana (Studi Putusan Mahkamah Agung Nomor 498 K/PID/2016)." *Jurnal Education and Development* 7, no. 1 (2019): 185-185.

made (legislative). This view is based on von Buri's teachings regarding causality in positive (written) regulations and provisions containing principles that exist in the data (located outside causality, by selecting one or several existing prohibited causes).

B. Understanding Negligence as a Category of Guidance Error

The element of a criminal act that violates the law (violating the formula of the offense) must look at the error factor. A person's crime is committed if it violates the law and can be accounted for. Consideration of criminal activity, errors and evidence form the basis of the judge's confidence in deciding the case (court decision).

The monodualistic school understands that to make a crime, it means paying attention to criminal acts and accountability. First, the elements of a criminal act are fulfilled if it violates the law, the formulation of the offense, and the loss of justification. Second, the element of criminal responsibility considers the factors of ability to be responsible, Dolus/Culpa, and loss of forgiveness. Monodualistic punishment aims to protect society and individuals (perpetrator).[23]

Mistake (*schlud*) is a determining factor in punishment, to punish or eliminate. The punishment that will be decided requires consideration of whether it is serious or light. The meaning of "*schlud*" is an oversight or culpa which refers to a mistake. In the theory of criminal responsibility, there must be an element of error (there is no crime without error). The definition of error means intentional (*dolus*), negligent (*culpa*) and accountable.[24]

The form of error is in the form of negligence or deliberate, which differentiates between the mental attitude of wanting (*dolus*) and carelessness (culpa). Punishment is not about people's bad attitudes, but criminal activity occurs. Forbidden acts result in losses, so the responsibility lies with the perpetrator.

Criminal means responsibility in several languages, namely *torekenbaarheid* (Dutch) and criminal liability or criminal responsibility (English). Enforcing punishment is a legislative (regulatory maker) goal for violators, resulting in prohibited consequences. Criminal liability concerns

[23] Mohammad Syifa Amin Widigdo, "Alternatif Penghukuman Selain Penjara: Analisis Hermeneutika Kritis dan Critical Legal Studies." *Jurnal Hukum Ius Quia Iustum* 30, no. 1 (2023): 91-113.

[24] Nanang Tomi Sitorus, Fitria Ramadhani Siregar, and Wenggedes Frensh. "Penetapan Tersangka Terhadap Korban Tindak Pidana Pencurian Yang Melakukan Pembelaan Terpaksa (Noodweer) dalam Hukum Pidana Indonesia." *Riau Law Journal* 5, no. 2 (2021): 227-239.

transferring punishment according to written law (registered criminal acts) to the perpetrator.

The legal rules for imposing criminal responsibility will occur if the perpetrator meets the legal criteria for imposing a sentence. The legislative body (creator) forms regulations to regulate accountability efforts for violators along with the sanctions (punishments) given. Criminal responsibility is applied to perpetrators who commit prohibited acts, with the threat of criminal punishment accompanied by absolute guilt. It is impossible for individuals to be given sanctions or responsibility if they do not carry out the prohibition.[25]

Accountability must pay attention to factors that are capable of distinguishing prohibited actions (reason) or according to the rules and knowing one's intentions regarding actions (feelings). If you do not have the ability to take responsibility, then the punishment will be lost. Forbidden acts caused by being present, due to inadvertence (negligence) due to obligations. Community losses are caused by obligations not being carried out according to procedures. The categories of responsibility are divided into *pleger* (act), *doen pleger* (commander), *Medepleger* (participate), and *Uitlokker* (advise) as legal subjects.[26]

> Article 359 of Law Number 1/1946 concerning Criminal Law Regulations
> *"Every person whose negligence causes the death of another person is subject to a maximum prison sentence of 5 (five) years"*

> Article 360 of Law Number 1/1946 concerning Criminal Law Regulations
> *"(1) Every person who through his fault (culpa) causes serious injury to another person, the maximum prison sentence is 5 (five) years or the maximum imprisonment is 1 (one) year."*
> *"(2) Every person through his fault (culpa) causes injury to another person, resulting in illness or hindering his duties (work), the maximum imprisonment is 9 months or 6 months imprisonment or a fine of four thousand five hundred rupiah"*

[25] Aryo Fadlian, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis." *Jurnal Hukum Positum* 5, no. 2 (2020): 10-19.

[26] Fakhri Rizki Zaenudin, and Hana Faridah. "Pertanggungjawaban Pidana Terhadap Afiliator Aplikasi Opsi Biner Ilegal dalam Hukum Pidana Indonesia." *Jurnal Hukum Sasana* 8, no. 1 (2022): 163-174.

Moeljatno defines negligence on purpose (*dolus*) and coincidence, which considers negligence on purpose. Culpa offenses as a whole (*quasideliet*) as a reduction in crime. Negligence has 2 (two) types, namely the offense of negligence which has prohibited consequences and does not have prohibited consequences. The difference is the criminal threat in cases of carelessness. Negligent acts produce prohibited consequences, which are punishable by crime.[27] Forgetfulness is not defined in positive regulation, but is explained through *memory van toelichting* (Mvt). The government's response memory (MvA) states that anyone who commits an evil act intentionally has the ability (intentionally). Meanwhile, regarding who accidentally (culpa) uses his evil abilities.

The request for individual criminal responsibility looks at whether the individual has been criminally removed. The criminal (punishment) is responsible for the perpetrator in the form of fulfilling the elements of the criminal act and the error. Placing the determining factors of criminal responsibility does not only look at it as a mental element.[28] A statement regarding the elements of a person's fault is a crucial aspect of criminal responsibility.[29]

Indonesia has written regulations which are presented in the form of codification in the form of the Criminal Code. The development of the Dutch colonial era (colonizers) provided codified criminal regulations in accordance with the provisions of the Criminal Code (Criminal Law), in reality there are still many uncodified written regulations (bookkeeping) in the form of laws.[30]

This case has presented a criminal act, even though tear gas was fired as a warning to the authorities, excessive use can cause harm. Security officers who do not use the principle of caution (negligence) in carrying out their duties can cause deaths.

C. Probative Cases from the Perspective of Causality Theory

Indonesia has spectators who are interested in sports (soccer), history records starting from China during the Han dynasty. Based on the Nielsen

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[27] Andrew Stefanus Ruusen, "Penegakan Hukum Pidana Karena Kelalaian Pengemudi Kendaraan Yang Mengakibatkan Kecelakaan Lalu Lintas." *Lex Crimen* 10, no. 2 (2021): 97-108.

[28] Chairul Huda. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. (Jakarta: Kencana Prenada Media, 2006).

[29] Muhamad Chanif, "Implementasi Pasal 44 KUHP sebagai alasan penghapus pidana dalam proses pemeriksaan perkara pidana." *MAGISTRA Law Review* 2, no. 1 (2021): 60-77.

[30] R Abdoel Djamali. *Pengantar Hukum Indonesia*. (Jakarta: Raja Grafindo, 2016).

"*World Football Report 2022*" survey, football is a sport that is interested in 40% of the world's population. The Asian region in the databox survey section found Vietnam ranked first with 75% while Indonesia was ranked third with a percentage of 69%. The Asian country with the highest interest in this field, even though it has not yet entered the world cup final.

Indonesian people view football as not just a sport, but foster a sense of equality. The presence of groups and identities with the same enthusiasm to support the matches of your favorite team fosters fanaticism. Individual behavior that has the characteristic of achieving the main goal without paying attention (ignoring) the negative impacts that arise. Forms of fanaticism in the field of soccer can be seen, the presence of supporters trying to watch the team's match. The presence of supporters can add to the spirit of the match, but forms of expression of love give rise to verbal aggressive actions.[31]

A major tragedy occurred on October 1 2022, shaking the world of Indonesian football. History records that there has been a major disaster, due to anarchism supporters in the Asian region. The Kanjuruhan commotion was ranked second as the event with the most fatalities. Previously, a similar incident had occurred in Peru, namely the Estadio Nacional.

The Kanjuruhan tragedy is clear evidence that people are not thinking intelligently, the dark events of football's past at the Peruvian National Estadio are repeating themselves.[32] The incident began when a goal scored by a Peruvian player was ruled out by the referee. This incident caused emotions among the supporters, two people entered the field and tried to hit the referee. The police attacked supporters. This behavior provokes other people's anger, so that commotions are inevitable. Throwing items onto the field and trying to get down the field was carried out by other supporters, feeling the same as chauvinism (loving the country too much) in this case the team's pride when competing. The chaos got out of control, at the initiative of the police firing tear gas. The shooting of tear gas caused other supporters to panic and were trampled during their efforts to save themselves.[33]

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[31] Mulkan Habibi et.al. "Analisis Framing Robert Entman Pemberitaan Tragedi Kanjuruhan di Media Asing", *Perspektif Komunikasi: Jurnal Ilmu Komunikasi Politik dan Komunikasi Bisnis* 7, no. 1 (2023): 43-64.

[32] Sumaina Duku, and Ahmad Harun Yahya. "Konstruksi Pemberitaan Tragedi Kanjuruhan (Analisis Framing di Detik. Com)." *Jurnal Ilmu Sosial, Humaniora dan Seni* 1, no. 2 (2023): 166-186.

[33] Gatri Putri Indasari Rahmani, and Awang Dharmawan, "Pola Pemberitaan Tragedi Kerusuhan Sepak Bola di Stadion Kanjuruhan Pada Surat Kabar Jawa Pos." *The Commercium* 7, no. 1 (2023): 229-240.

The beginning of the commotion was the defeat of Persebaya's match with Arema, causing anarchic behavior among the supporters. The disappointment of the Aremania (Arema) support team took repressive action to express anger. Anarchic behavior is carried out by going down the field to attack opposing players through violence. Security forces tried to contain the chaos, but the situation was getting out of control. Repressive measures were given as the main effort by the security forces by firing tear gas. The shooting point was in the stands and field which became the center of the chaos.

Legal action at the Surabaya District Court (PN) with registration 13/Pid.B/2023/PN Sby, acquitted the defendant. The judge has the authority to decide that he has not been legally proven and is guilty of committing a crime, so that the Surabaya District Court Decision Number 13/Pid.B/2023/PN Sby acquits all charges. The judge assessed that the Defendant was proven to have ordered members to fire tear gas into the middle of the field to break up the chaos, but the direction of the shot was carried by the wind so that it blew into the south stand.

The community is trying to get involved in this case by investigating it thoroughly, in this case finding out who is responsible. This study requires a series of events, to find out the reasons why prohibited acts occur, so that we can find out who is responsible (perpetrator). The Kanjuruhan tragedy requires an analysis of causality theory, to find a bright spot in the case.

Remmelink stated the understanding of causality in the Indonesian criminal regulations (KUHP), that the doctrine of relevance is close to being the basis for cause and effect. A different opinion, expressed by Wirjono Prodjodikoro, stated that law enforcement officers (prosecutors and judges) were given the freedom to determine the use of causality theory which they deemed appropriate to their thinking.[34] Punishers need to know who can be appointed to be responsible through the theory of causality. This theory is related to the principle of legality, where written law must exist before an action occurs. The application of the principle of legality includes lex scripta, lex certa, written law and clear rules so that the application of the principle of legality to old criminal law does not justify just being based on customary law.[35]

Casualties in the Kanjuruhan incident killed 135 people from security forces and supporters. The protection provided cannot guarantee safety, so the Kanjuruhan tragedy is proof of the failure of security efforts. The article

[34] Ahmad Sofian. *Ajaran Kausalitas dalam RUU-KUHP*. (Jakarta: Institute for Criminal Justice Reform, 2016).

[35] Beni Puspito, and Ali Masyhar. "Dynamics of Legality Principles in Indonesian National Criminal Law Reform." *Journal of Law and Legal Reform* 4, no. 1 (2023): 129-148.

of the criminal charge states explicitly "Criminal acts that result in death or injury due to negligence", so the formulation of a material offense resulting from negligence (negligence), law enforcement officials can understand as a material criminal act.

Indonesian criminal regulations implicitly state the doctrine of criminal acts that are qualified by their consequences in the Kanjuruhan case. The Kanjuruhan commotions resulted in prohibited acts (criminal acts) which were qualified as consequences (death, serious injury and minor injury). Penalty article 359 in conjunction with Article 360 of Law No. 1/1946 (KUHP), according to individualist teachings states that to determine the cause, choose one factor. The suspicion of the strongest factor relates to being able to predict the consequences, in the Kanjuruhan case, when they fired tear gas at the audience, the police officers already suspected that there would be a prohibited consequence. The use of tear gas is not in accordance with procedures and ignores precautionary guidelines, resulting in consequences that require responsibility.

The judge gives an acquittal to the defendant, if during the trial he is not legally proven guilty in accordance with Article 191 paragraph 1 (KUHAP). Legal remedies against an acquittal (free) decision cannot be appealed or PK (review) in accordance with Article 67 in conjunction with 244 of the Criminal Procedure Code in conjunction with Constitutional Court decision 114/PUU-X/2012.[36]

The legal remedy for cassation at the final level is carried out by the competent authority of the Supreme Court. A cassation request cannot be granted based on the Supreme Court's decision, meaning that the cassation decision cannot be appealed again. Cassation means cancellation (a final decision that is not in accordance with the law can be cancelled). The Cassation Decision with case number 922/K/Pid/2023, cancels the previous decision. This verdict resulted in the defendant being proven guilty of committing a crime, so he was sentenced to 2 years in prison.

The Kanjurahan commotions have a *casual verband* aspect in their formulation, according to Article 359 and Article 360 of Law Number 1/1946, they contain material criminal acts, due to negligence resulting in consequences (death), and which are judged by the consequences (causes that produce prohibited consequences). The formulation of the offense in the form of consequences can be fulfilled in the definition of "*causing death*" "*causing serious injury*". The article which formulates criminal acts

[36] Muhammad Zainal, "Tinjauan Yuridis Terhadap Upaya Hukum Kasasi Jaksa Penuntut Umum Atas Putusan Bebas Pada Kasus Baiq Nuril Berdasarkan Pasal 244 Kitab Undang-Undang Hukum Acara Pidana." *JUSTNESS-Journal of Political and Religious Law* 1, no. 1 (2021): 113-141.

assessed with aggravation can be seen in article 360 paragraph (1) (2), as a combination of elements of negligence (*culpa*) and assessed with aggravation, while article 359 is a criminal formulation of negligence which causes prohibited consequences.

The Kanjurahan commotion explains the causes by looking at the relevance of the consequences, in this case looking at the meaning of the National Police Chief's regulations and Article 359 in conjunction with Article 360 of Law No. 1/1946 (KUHP). The formation of positive law to regulate security in controlling the masses, the measures taken have exceeded the provisions. This case arises from several relevant reasons as follows:

1. Arema's defeat against Persebaya sparked the emotions of supporters (Aremania) who came down the field. The presence of provocateurs in this case meant that more and more crowds descended on the field, throwing flares, destroying facilities, burning officers' cars.
2. The problem escalated with the shooting of tear gas, its use to control the crowd excessively and targeting the grandstand area where there were still many spectators. The tear gas fired caused a cloud of smoke, causing panic to occur in the area inside the Kanjuruhan stadium. Supporters tried to leave the stadium to save themselves, but there was a stampede which resulted in shortness of breath, fainting and being trampled by the audience. Organizing the match does not comply with its main tasks and functions, ignores existing regulations and throws away responsibilities.[37]

The implementing committee for developing national football has not paid attention to the basics of saving the interests of the people (public). This means that access to the doors is locked, making it difficult to leave the stadium when tear gas is fired. The number of spectators exceeded the stadium capacity. Match ticket sales have exceeded capacity, from 38,054 (stadium capacity) to 43,000 and 42,526 tickets sold. This incident caused many spectators not to get seats, so the stadium became full and crowded. Apart from that, errors occurred in the construction of the building and the caretaker's negligence in closing the emergency door, making the evacuation process difficult. The stairs in the stadium were quite steep, so it was difficult to escape when tear gas was fired towards the stands.

Violations of points in PSSI 2021 procedures have occurred, considering the number of victims killed by tear gas when officers tried to control the crowd. The use of tear gas was demonstrated during mass

[37] Agus Ferianto, "Tragedi Suporter Kanjuruhan Malang: Analisis Twitter Sebagai Alat Komunikasi Digital Pemerintah dan Organisasi Sepakbola Indonesia." *Journal of Society Bridge* 1, no. 1 (2023): 1-16.

gatherings in the stands. The security forces have violated Article 19 of the 2021 PSSI security and safety rules regarding the use of sharp weapons or crowd dispersing tools when competing.

Security forces refuted the opinion and fired tear gas at the audience. However, it was very confusing if tear gas was not fired into the stands, because the audience experienced shortness of breath and red eyes. The commotions occurred not when supporters came down the field, but when security forces started firing tear gas.[38]

Conclusion

This study highlighted and concluded that the Kanjuruhan commotion, marred by the tragic death of 135 individuals during the Persebaya and Arema match, constitutes a violation of positive law, specifically infringing upon Article 359 in conjunction with Article 360 (1) (2) of Law No. 1/1946 (KUHP), which pertains to death resulting from negligence (culpa). Accountability for the perpetrator is contingent upon assessing the elements of the prohibited act (reason) or adherence to regulations, taking into account the individual's intent regarding the action (feelings). Should the capacity to assume responsibility be lacking, the imposition of punishment becomes void. The forbidden acts stemmed from presence, inadvertence (negligence), and the neglect of obligations, leading to losses within the community due to unfulfilled procedural obligations.

The Kanjuruhan commotion was precipitated by a lapse in understanding of their primary duties among police officers, resulting in the abandonment of responsibilities and arbitrary actions in their assignments. The causal link in the Kanjuruhan commotions was established by the excessive firing of tear gas toward the stands, deviating from procedural norms, coupled with locked stadium doors that prompted spectators to rush out in an attempt to secure their safety. This resulted in respiratory distress, trampling, injuries, and loss of life.

While Decision 13/Pid.B/2023/PN Sby asserted the absence of an unlawful act, with the judge stating that tear gas was directed towards the chaos in the middle of the field but was carried towards the stands by the wind, legal action in the form of an appeal was pursued. The Supreme Court's decision 922/K/Pid/2023 reinforced the prosecutor's indictment, establishing guilt for shooting tear gas at the audience, as the negligence of

[38] Airel Hamu Lee Hunggu, Rendy Riansyah Hidayat, and Herli Antoni. "Ketimpangan Putusan Hakim Surabaya dalam Menjatuhkan Vonis pada Tersangka dalam Tragedi Kanjuruhan." *Jurnal Pendidikan Tambusai* 7, no. 2 (2023): 5693-5699.

the police officer directly led to fatalities. The prescribed punishment for the perpetrator is imprisonment for a duration of 2 (two) years.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

The authors thank to the anonymous reviewer of this article vor their valuable comment and highlights.

HISTORY OF ARTICLE

Submitted : March 21, 2023
Revised : May 13, 2023; July 27, 2023
Accepted : September 20, 2023
Published : December 31, 2023