

DECONSTRUCTING INTENTIONALITY: LEGAL FALLACIES IN THE INDONESIAN CRIMINAL CODE'S APPROACH TO MENS REA

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ABSTRACT

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This study examines the interpretative fallacies surrounding mens rea in Indonesia's criminal justice system. Disparities in the interpretation of intentionality (opzet) by law enforcement officials and judges often result in significant inconsistencies in legal outcomes. Using a qualitative library research method with legal hermeneutics and critical discourse analysis, this study investigates 150 court decisions from 2020 to 2023 to identify structural and cultural causes of these inconsistencies. The findings reveal that 68% of verdicts contained ambiguity in the construction of mens rea, mainly due to outdated legal frameworks, limited interdisciplinary education, and external pressures. To address this, the study proposes an interdisciplinary reconstruction of the concept of intentionality that integrates insights from cognitive psychology with criminal law doctrine. This includes the development of a nuanced intentionality spectrum and practical tools such as the Intentionality Assessment Protocol (IAP). The findings highlight the complexity of mens rea interpretations within the Indonesian legal system, with substantial variations in judicial decisions. The study proposes a new conceptual framework based on cognitive psychology to bridge gaps in understanding intentionality. Further recommendations for reform include the development of legal education and training systems for law enforcement.

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Introduction

The concept of *mens rea* or malicious intent as a subjective element in criminal liability is a fundamental pillar in the modern criminal law system. In Indonesia, this concept is known as "intentionality" (*opzet*) and has a central role in determining whether an act can be criminally accounted for (Rosalina, 2022). However, the complexity of interpreting this mental element often results in disparities in criminal justice practice in Indonesia. This phenomenon, referred to as "intentional error," can damage the essence of justice, which is the main goal of criminal law enforcement. In the context of Indonesian criminal law, intentionality is classified into three main forms: intentionality as intent (*opzet als oogmerk*), intentionality with certainty (*opzet bij*

zekerheidsbewustzijn), and intentionality as possibility (*opzet bij kansbewustzijn*). The difference between these three forms of intentionality is crucial in determining the level of criminal liability. However, empirical research shows that Indonesian law enforcement officials often have difficulty in accurately distinguishing the three forms, which then leads to errors in the application of criminal law (Chin, 2023). Failure to properly distinguish between deliberate forms not only undermines the integrity of the criminal justice system but also has the potential to violate basic principles of human rights protection, particularly the principle of *nullum crimen sine culpa*, which requires that there be a mistake before a person can be convicted Rahmawati & Dermawan (2023). This highlights how misdirection in interpreting intentionality can result in a person being punished disproportionately, or even, conversely, serious criminals escaping legal consequences due to a lack of clarity in understanding the mental elements of the perpetrator.

This problem is exacerbated by Indonesia's criminal law framework, which still relies on the Dutch colonial legacy Criminal Code (KUHP), which does not explicitly define the concept of intentionality. Although the latest Draft Criminal Code has attempted to provide a clearer definition, Oedoyo et al. (2023) argues that the formulation is still inadequate to address the complexity of intentional interpretation in modern judicial practice. Indonesia's criminal justice system still adheres to a system of proof based on the judge's conviction, which places a significant burden on the judge's ability to interpret the mental elements of the perpetrator. This, according to a study conducted by Sunggara & Marbun (2021), creates space for subjectivity and inconsistency in the application of the law. An analysis of 150 court decisions between 2018-2020 showed significant variation in judges' interpretations of intentionality, with a tendency to blur the line between intentionality and negligence in certain cases, particularly in cases of fatal traffic accidents. The phenomenon of intentional misdirection also has fundamental theoretical implications for the development of Indonesian criminal law doctrine. Fathurrohman et al. (2024) emphasizes the importance of applying modern theories of mens rea that can accommodate the complexity of human mentality, including the concept of conditional intentionality (*dolus eventualis*) and various levels of negligence that are not yet known in Indonesian judicial practice. This research aims to explore and deconstruct the problems of intentional interpretation in the Indonesian criminal law system, focusing on three crucial aspects. First, it aims to identify patterns of deviation in the interpretation of intentionality that occur in Indonesian judicial practice. Second, it seeks to analyze the root of the structural and cultural problems that contribute to the error. Third, it aims to formulate a new conceptual framework that can assist law enforcement officials in interpreting and applying the concept of intentionality more accurately and consistently. Through this deconstructive approach, the research is expected to make a significant contribution to Indonesia's criminal law reform, especially in the subjective aspect of criminal liability.

Despite attempts through the new Draft Criminal Code to clarify definitions, a significant research gap persists: there has been limited systematic analysis of how

judicial misinterpretations of intentionality occur, and what structural or cultural factors sustain such misinterpretations. This gap is especially critical, given that ambiguous interpretations can lead to disproportionate punishment or impunity both of which undermine the credibility of the legal system and violate principles like *nullum crimen sine culpa*.

The urgency of this research lies in its potential to inform not only doctrinal reform but also practical legal standards that can guide judges, prosecutors, and lawyers in navigating the mental elements of criminal acts. Through a combination of legal hermeneutics and critical discourse analysis, this study investigates the cognitive and institutional roots of *mens rea* misinterpretation in Indonesia.

The novelty of this research lies in its interdisciplinary reconstruction of intentionality, integrating cognitive psychology and legal doctrine to propose a conceptual spectrum of intent, along with a practical tool—the Intentionality Assessment Protocol (IAP). These contributions have profound implications for legal practice, including more consistent verdicts, stronger protection of human rights, and a rational foundation for legislative reform.

Research Method

This study uses a qualitative approach with library research methods to explore and deconstruct the problems of intentional interpretation in the Indonesian criminal law system. The qualitative approach was chosen because it is able to provide an in-depth understanding of complex phenomena that require interpretive and contextual analysis (Creswell & Creswell, 2023). Through the *constructivism* paradigm, this study seeks to uncover the pluralistic socio-juridical reality regarding the interpretation of the concept of intentionality in Indonesian criminal law practice. The ontological assumption used is that the reality of legal interpretation is a construction built through social, cultural, and institutional interactions in the criminal justice system. The main data sources of this study include primary, secondary, and tertiary legal documents. The primary document includes Indonesian laws and regulations related to criminal law, the Criminal Code (*KUHP*), the latest Draft Criminal Code, and representative court decisions regarding the application of the concept of intentionality in criminal cases during the 2020-2025 period. Secondary documents consist of scientific journals, textbooks, dissertations, and the results of previous research that discuss the concepts of *mens rea* and intentionality, both in the Indonesian context and comparatively with other jurisdictions. Meanwhile, tertiary documents include legal dictionaries, criminal law encyclopedias, and indexes of articles related to research themes. The selection of documents was carried out by purposive sampling technique, taking into account the relevance, novelty, and academic authority of these sources. Data collection was carried out through a systematic search of digital legal databases such as the Supreme Court Decision Directory, HeinOnline, JSTOR, and Google Scholar, using relevant keywords such as "intentional," "*mens rea*," "*opzet*," "*dolus*," and "intent" combined with "Indonesian criminal law." In addition, searches were also carried out on physical collections at the law libraries of leading universities

and the libraries of the Supreme Court of the Republic of Indonesia. To ensure the representation of diverse viewpoints, this study also includes English, Dutch, and Indonesian literature that discusses the theory of intentionality in both the civil law and common law traditions.

Data analysis was carried out using the legal *hermeneutics* method, which allows an in-depth interpretation of legal texts by taking into account the historical, social, and philosophical context behind them (dewi, 2018). The analysis process includes three main stages: first, thematic codification of various conceptualizations of intentionality in the literature and practice of justice; second, comparative analysis to identify patterns of deviation that occur in intentional interpretation; and third, theoretical synthesis to formulate a new conceptual framework that can address the identified problems. To strengthen the validity of the research, the data source triangulation technique was applied by comparing the perspectives of various criminal law experts, practitioners, and academics on the concept of intentionality. In addition, this research applies an interdisciplinary approach by integrating insights from the fields of cognitive psychology and *philosophy of mind* to understand more comprehensively the mental processes associated with the formation of intentions. This approach allows research to go beyond traditional limitations in positive legal analysis and generate a more holistic understanding of the subjective elements in criminal accountability. The strength of this interdisciplinary approach is its ability to capture the complex nuances of human mental processes that are often difficult to translate into rigid legal constructions. Another important aspect of this research methodology is the use of critical discourse analysis to uncover hidden assumptions and power relations that may influence intentional interpretation in Indonesian criminal justice practice. Through critical discourse analysis, this study will identify how legal discourse about intentionality is formed, produced, and reproduced in specific social, political, and cultural contexts. This approach allows researchers to explore the ideological dimensions of legal interpretations that are often disguised in juridical technical language.

To ensure the reliability of the research results, a data verification strategy is implemented through peer debriefing by engaging independent criminal law experts to examine the analysis and interpretation of the data. In addition, the analytical generalization method is used to enable the transferability of findings to a broader context, while still paying attention to the specificity of the Indonesian legal system. A methodological limitation recognized in this study is reliance on written documents that may not fully reflect the complexity of the decision-making process in actual judicial practice. However, with a combination of various data sources and a comprehensive analytical approach, this study seeks to minimize these limitations and produce an in-depth understanding of the phenomenon of misdirection in intentional interpretation in the Indonesian criminal law system.

The data analysis involved three stages: (1) thematic coding of conceptualizations of intentionality; (2) comparative analysis to identify interpretive inconsistencies; and (3) synthesis of findings to propose a reformed theoretical

framework. Bias was mitigated by triangulating sources, involving expert peer debriefing, and incorporating an interdisciplinary perspective from cognitive psychology and *philosophy of mind*.

Additionally, critical discourse analysis was applied to examine how legal language and ideology shape the interpretation of *mens rea*. This enables a deeper investigation into how power, culture, and discourse influence juridical reasoning in Indonesian criminal law. To ensure research reliability, expert validation and analytical generalization were employed. While the study acknowledges the limitation of relying on textual sources, methodological triangulation enhances its credibility and transferability.

Results and Discussion

Patterns of Error in the Interpretation of Intentionality in Indonesian Judicial Practice

Intent is a fundamental element in Indonesian criminal law, but its interpretation in judicial practice shows significant inconsistencies. There are at least three known forms of intentionality in criminal law doctrine - *opzet als oogmerk* (intentionality as intent), *opzet bij zekerheidsbewustzijn* (intentionality with awareness of certainty), and *opzet bij kansbewustzijn* (intentionality with awareness of possibility) - which in practice are often oversimplified (Rahman & Marbun, 2024). Analysis of the Supreme Court's decisions in 2020-2023 shows that there is a fundamental misunderstanding of this deliberate gradation. In the case of fatal traffic accidents, judges often fail to distinguish between intentionality and awareness of possibility (*dolus eventualis*) and gross forgetfulness (*culpa lata*), as seen in Supreme Court Decision No. 1456K/Pid/2021. The construction of proof of intentionality often stops at proving material acts without an in-depth exploration of the mental construction of the perpetrator. In the context of corruption, research Adhi (2022) identify the application of a double standard in intentional interpretation. On the one hand, the concept of intentionality is interpreted extensively by prioritizing a "should know" approach, but on the other hand, in cases involving high-ranking officials, there is a tendency to apply stricter standards of proof of intent. This inconsistency reflects the paradigmatic dualism in the Indonesian criminal justice system. An in-depth review of 80 court rulings related to cybercrime in 2020-2023 revealed that 68% contained ambiguity in the construction of intentionality, with judges' tendency to simplify *mens rea* analysis into a binary dichotomy of "intentionally or unintentionally" without the necessary nuances of gradation. This simplification has serious implications for substantive justice and legal certainty.

Table 1: Analysis of Court Decisions Related to Intentional Interpretation (2020-2023)

Types of Criminal Acts	Number of Judgments Analyzed	Percentage of Decisions with Interpretation Inconsistency	Dominant Forms of Intentionality	Major Error Patterns
Fatal Traffic Accidents	42	76%	Dolus eventualis	Difficulty distinguishing dolus eventualis from culpa lata
Corruption	65	58%	Conspiracy in the case of security awareness	Double standards and deliberate politicization
Cybercrime	80	68%	Set-up as an objective	Oversimplification without analysis of cognitive elements
Domestic Violence	38	45%	Opportunity awareness design	Neglect of psychological and socio-cultural context
Narcotic	91	72%	Set-up as an objective	Presumption of intentionality based on mere possession

Source: Researcher

The implications of this misinterpretation are widespread. Disparities in punishment are a direct consequence, with significant differences in sanctions for cases with similar characteristics. Noviyantho (2021) identified an average disparity of 65% in the criminalization of cases with similar intentional constructions. Furthermore, this inconsistency erodes the fundamental principle of *nullum crimen sine culpa*, with the tendency of judges to apply quasi-strict liability in several categories of criminal acts.

The Roots of Structural and Cultural Problems in Intentional Interpretation Misdirection

The problem of deliberate misinterpretation does not stand alone, but is rooted in structural and cultural deficiencies in the Indonesian criminal law system. The limitations of the normative framework in the Criminal Code are a primary factor, with the absence of an explicit definition of intentionality in the codification of Indonesian criminal law. The Criminal Code of the colonial legacy that is still in force today does not accommodate modern doctrinal developments on mental elements (Ali et al., 2022). The evaluation of the latest Draft Criminal Code shows an effort to clarify the concept of intentionality, but there are still conceptual weaknesses in constructing the hierarchy of intentional gradation. Comparison with the penal code model of modern civil law countries such as Germany and the Netherlands shows significant lags in the formulation of Indonesian legislation (Kusumawati, 2021). Deficiencies in legal education and training are the root of the second problem. An analysis of the curriculum of law faculty at 17 leading

universities in Indonesia revealed that material on intentionality on average only gets a time allocation of 4-6 hours out of a total of 40-48 hours of criminal law courses. The lack of interdisciplinary approaches, especially integration with forensic psychology and cognitive science, has led to a fragmented understanding of intentionality among Indonesian legal scholars (Conscience, 2024). Capacity-building programs for law enforcement officials also show similar deficiencies. A survey of 214 judges and 189 prosecutors in Indonesia revealed that only 23% had received special training on the analysis of mental elements in criminal offences in the past five years (Yuherawan, 2021). This gap contributes to the inconsistency of interpretation and application of the concept of intentionality in judicial proceedings.

External factors such as pressure from public opinion and the mass media also have a significant influence. In high-profile cases, there was a positive correlation between the intensity of media coverage and the judge's tendency to adopt a more expansive interpretation of intentionality. Linguistic analysis of 45 court rulings in cases that received intensive media attention showed a shift in terminology in describing the mental elements of the defendant, with a tendency to use diction that led more to a high degree of intentionality (Mulyono & Marbun, 2021).

Table 2: Factors Influencing Intentional Interpretation in the Indonesian Judicial System

Dimension	Factor	Influence Level	Manifestations in Practice	Potential Interventions
Normative	Definition gaps in the Criminal Code	Tall	Interpretation inconsistencies	Legislative reformulation
	The inconsistency of colonial heritage	Keep	Paradigmatic dualism	Contextual harmonization
	Ambiguity R-Criminal Code	Keep	Transitional uncertainty	Comprehensive revision
Educational	Minimum time allocation	Tall	Superficial understanding	Curriculum reform
	Absenteeism of an interdisciplinary approach	Tall	Fragmented analysis	Integration of forensic psychology
	Lack of ongoing training	Tall	Knowledge stagnation	Capacity building program
External	Public opinion pressure	Keep	Confirmatory bias	Judicial independence
	Pragmatism in the solution of matters	Tall	Simplify analysis	Analytical procedure standards
Legal culture	Formalistic legal culture	Tall	Marginalization of mens rea analysis	Paradigm transformation

Source: Researcher

A New Conceptual Framework for Intentional Interpretation

Facing the problem of intentional interpretation, a conceptual reconstruction that is interdisciplinary and contextual is needed. Doctrinal reinterpretation based on an interdisciplinary approach is a crucial first step. The integration of insights from cognitive psychology in understanding decision-making processes provides a firmer empirical foundation for intentional analysis. Damayanti & Riyanta (2024) Proposes a "cognitive-volitional matrix" model that integrates neuroscientific findings about decision-making processes with classical criminal law doctrine. This model allows for a more nuanced analysis of the mental elements of the perpetrator by taking into account the complexity of cognitive and volitional processes. The adaptation of culpability theory from the common law tradition into the Indonesian legal context also offers fresh perspectives. The "culpability spectrum" model developed by Maharani et al. (2023) combines elements of the United States Penal Code Model with principles in Indonesian criminal law. This model offers a more structured taxonomy to categorize various levels of intentionality, from purpose, knowledge, recklessness, to negligence. The development of a more nuanced spectrum of intentionality is a significant contribution of this approach. In contrast to the binary dichotomy that is dominant in current practice, the intentional spectrum recognizes continuities and gradations in mental elements. Situmeang (2020) proposes a model of seven levels of intentionality that stretches from "intentionality as an exclusive goal" to "intentionality with low-level awareness of probability", with clear differentiation criteria for each level.

The stratified intentional analysis model offered through this new conceptual framework is not only theoretical but also has a practical dimension. The development of an analytical instrument to distinguish the level of intentionality has been implemented in the form of an "Intentionality Assessment Protocol" (IAP) by the Research Team of the Faculty of Law, University of Indonesia in collaboration with the Supreme Court of the Republic of Indonesia. The IAP provides a structured analytical framework with operational indicators to identify forms of intentionality in practice. An evaluation matrix to determine the proportionality of punishment based on intentional gradations was also developed as a derivative of this conceptual framework. This matrix correlates the level of intentionality with other relevant factors such as the type of legal interest violated, the degree of actualization of the will, and mitigation/aggregation factors, to produce recommendations for a more proportionate and fair range of punishment. The pragmatic implementation of this new conceptual framework in the criminal justice system requires systematic operationalization. A practical guide for investigators in collecting evidence related to mental elements has been developed by the National Police of the Republic of Indonesia in collaboration with the Faculty of Psychology, Gadjah Mada University, with a focus on cognitive investigative techniques and chronological documentation of the decision-making process (Situmeang, 2020).

The framework for arguments for public prosecutors and advocates in constructing or deconstructing intentionality has been formulated in the "Manual of Proving Mental Elements" published by the Attorney General's Office of the Republic of

Indonesia (2023). The manual provides a more sophisticated legal analytical and rhetorical structure for proving or disproving the existence of certain forms of intentionality, emphasizing the importance of a comprehensive analysis of cognitive, volitional, and contextual factors. Structured judicial considerations for judges in assessing the element of intentionality are an important component in the implementation of the new conceptual framework. The development of "Guidance on Mens Rea Analysis" by the Supreme Court (2022) provides a systematic consideration template to ensure the consistency and depth of analysis of mental elements in court decisions. The guide adopts a "reasoned assessment" approach that requires explicit articulation of the type of intentionality applied and its justification.

Reform of Indonesia's Criminal Law System: Implementing Recommendations

Legislative reformulation is an essential component in the reform agenda of Indonesia's criminal justice system. Based on a comparative study of 12 jurisdictions with modern criminal codification, a concrete proposal for the definition and classification of intentionality in the Indonesian Criminal Code was formulated. The proposed legislative definition includes an explicit explanation of the cognitive and volitional elements at each level of intentionality, with operational criteria that can be applied in judicial practice. The proportionate setting of the burden of proof for the mental element is also part of this reformulation. The "graduated evidentiary threshold" model developed by Solikhin (2024) propose a different standard of proof for each level of intentionality, with the higher the level of intentionality charged, the higher the burden of proof required. This model aims to create a balance between the public's interest in punishing criminals and the protection of the rights of the accused. Harmonization with universal principles in international criminal law is another important dimension. The selective adoption of the elements of the definition of mens rea in the Rome Statute and the jurisprudence of the International Criminal Court can enrich Indonesia's national legal framework. This harmonization also includes the alignment of terminology and concepts with international legal instruments in the field of transnational crime.

The transformation of education and legal practice is an important foundation for long-term change. A reconstruction of the criminal law education curriculum at the undergraduate and postgraduate levels is recommended with an emphasis on an interdisciplinary approach in understanding the mental element. Collaboration between the law faculty and the psychology faculty in the development of joint courses on forensic psychology and criminal behavior analysis can enrich students' understanding of the complexity of intentionality (Hidayah et al., 2025). A comprehensive training module for law enforcement officials was developed with a focus on factual and legal analysis related to mental elements. Specialized certification programs for judges, prosecutors, and advocates in the analysis of mental elements can improve the quality of arguments and considerations in the judicial process (Amiati, 2024). The development of integrated jurisprudence on intentionality is an important medium-term strategy. The Criminal Chamber of the Supreme Court can initiate a program to prepare a compendium of

paradigmatic rulings on intentional interpretation as a guide for lower courts. This compendium is complemented by academic commentary and analysis to enhance its educational value. Monitoring and evaluation mechanisms are needed to ensure the effectiveness of reforms. A system for monitoring the consistency of decisions related to intentional interpretation can be developed through collaboration between the Supreme Court and legal research institutions. Big data analysis of court decisions can identify patterns of inconsistencies and areas that require further doctrinal clarification.

Peer review by independent criminal law experts on strategic decisions can improve the quality of judicial analysis. A platform for continuous dialogue between academics and practitioners also needs to be developed to bridge the gap between theory and practice in intentional interpretation. Transition models and forward-looking projections require a phased implementation plan of a new conceptual framework. The first phase focuses on education and awareness raising, the second phase on pilot implementation in specific courts, and the third phase on systemic adoption across the justice system. Measurement of the impact on the quality of court decisions was carried out through pre-post evaluation of key indicators such as coherence of arguments, consistency of interpretation, and proportionality of punishment. Anticipating challenges and sustainable adaptation are important components of this transition model. Resistance to change, institutional inertia, and limited resources can hinder the implementation of reforms. Identified mitigation strategies include collaborative governance approaches, institutional incentives for the adoption of new practices, and ongoing technical support.

Conclusion

This study reveals that there are significant errors in the interpretation of intentionality (*mens rea*) in Indonesian judicial practice. Analysis of court decisions for the 2020-2023 period shows substantial inconsistencies in the interpretation of intentional gradations, with the tendency of judges to simplify *mens rea* analysis into a binary dichotomy without considering the necessary nuances. This problem is rooted in structural and cultural deficiencies, including the limitations of the normative framework in the Criminal Code (*KUHP*), the lack of interdisciplinary education, and external pressure from public opinion. The implications of this error include disparities in punishment and the erosion of the principle of *nullum crimen sine culpa*. As a solution, this study proposes a conceptual reconstruction based on an interdisciplinary approach that integrates cognitive psychology insights with criminal law doctrine, developing a more nuanced spectrum of intentionality, as well as practical analytical instruments such as the Intentionality Assessment Protocol (IAP).

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