

IMPLEMENTATION OF ARTICLES 359 AND 360 OF THE CRIMINAL CODE CONCERNING NEGLIGENCE RESULTING IN 132 CASUALTIES IN THE AREMA VS PERSEBAYA MATCH

Sunggul Sidabutar, Kusno, Ahmad Ansyari Siregar

*Faculty of Law, Universitas Labuhanbatu, Sumatera Utara, Indonesia
sunggulsidabutar50@gmail.com, kusno120485@gmail.com, ansyarisiregarsh@gmail.com*

ABSTRACT

This study aims to find out and analyze the implementation of articles 359 and 360 of the criminal code regarding negligence resulting in casualties. As well as knowing and analyzing the factors of negligence that resulted in casualties. This research belongs to the normative type of research. So it may be known that whoever by his negligence causes the death of any person shall be punished with imprisonment for not more than five years or imprisonment for not more than one year." In addition, the factors that caused the Arema vs Persebaya tragedy included ignoring time and ticket recommendations.

Keywords: *Articles 359-360 of the Indonesian Civil Code, Negligence, Loss of Life*

This article is licensed under [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) 

INTRODUCTION

One of the elements of a criminal act (strafbaarfeit) is " done by mistake (met schuld in Verband stand) / by mistake (dolus or culpa)" The act must be done with error. This error can be related to the consequences of the action or to the circumstances in which the act was done (Sudarto & Sudarto, 1990). The Criminal Code regulates criminal acts related to guilt, namely the crime of "because of the fault causing the death of people" which is stated in Article 359 of the Criminal Code which in full reads: "Whoever for his fault causes the death of a person shall be punished with imprisonment for a maximum of five years or imprisonment for a maximum of one year".

The crime of death of people is not desired at all by the accused, but the death is only the result of the defendant's lack of caution or negligence (delik culpa) (Goraph & Sengi, 2020).

Criminal acts due to negligence that result in the death of others often occur in traffic accidents. However, what will be discussed by the author is 132 casualties due to negligence committed by the Arema Malang VS Persebaya Surabaya match committee.

According to criminal law, accidents are a form of a criminal act, if the victim is injured, especially until death and in it there is an element of negligence.

Negligence is a criminal offense regulated in Article 359 and Article 360 of the Criminal Code (KUHP).

Article 359 of the Penal Code states that "Whoever through his negligence causes the death of another person, shall be punished with imprisonment for not more than five years or imprisonment for not more than one year".

Meanwhile, Article 360 of the Criminal Code states that:

1. "Whoever, through his negligence, causes another person serious injury, shall be punished with imprisonment for not more than five years or imprisonment for not more than one year".

2. "Whoever, through his negligence, causes injury to another person in such a way as to arise illness, illness or obstruction of carrying out the work of office or search for a certain time, shall be punished with imprisonment for not more than nine months or imprisonment for not more than six months or a fine of not more than three hundred rupiah".

Based on the foregoing, it can be concluded that a negligent committee can be brought to court to account for his actions if his actions have an element of negligence or negligence or there is no element of intentionality for his actions. Even if there is no intentionality from the perpetrator, it can still qualify Article 359 or Article 360 of the Criminal Code if the perpetrator's actions contain elements of negligence or negligence.

Negligence that results in the death of people is often not realized by the perpetrator, causing him to receive criminal threats. The judge must examine the criminal case carefully and thoroughly to prove the guilt of the defendant and give appropriate punishment if proven guilty of the defendant. The resolution of criminal acts "because of the wrongdoing causing the death of people" attracted the attention of the author to raise the subject, especially in the practice of examining criminal cases in the District Court (Waluyo, 2002) (T. Prasetyo, 2005).

According to the criminal law, a person who due to his negligence causes another person to die can be subject to Article 359 of the Criminal Code with a maximum penalty of imprisonment of five years or imprisonment of a maximum of one year.

The settlement of criminal cases is carried out through the stages of investigation, prosecution, and examination in court hearings. At the stage of solving criminal cases in court, it is the judge who plays a role in determining the guilt or innocence of the accused. The determination of the guilt or innocence of the defendant is based on the facts at trial based on witness statements, and the defendant's own testimony is linked to the available evidence.

Based on the background of the problem that has been described, the formulation of the problem in this study is as follows:

1. How is the implementation of articles 359 and 360 of the criminal code regarding negligence resulting in casualties?
How did negligence result in the loss of life?
2. The purpose of this study is in accordance with the formulation of the problem that has been put forward. Therefore the research objectives are:
 1. Knowing the implementation of articles 359 and 360 of the criminal code regarding negligence resulting in casualties.
 2. Know the factors of negligence that resulted in casualties?

METHOD

The research method used in this study is the normative legal research method. Normative legal research is legal research conducted by examining library materials or secunder data (Soekanto, 2007).

According to Peter Mahmud Marzuki (Marzuki, 2017), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced (B. Prasetyo & Jannah, 2005).

In this type of legal research, often the law is conceptualized as what is written in laws and regulations or the law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

RESULTS AND DISCUSSION

A. Implement Articles 359 and 360 of the Criminal Code concerning negligence resulting in loss of life

As the parent of the provisions of the Indonesian Criminal Law is the Criminal Code (KUHP), in addition it is also regulated in laws and regulations outside the Criminal Code (Handoko, 2018). Provided that the act meets the requirements for a person's conviction, namely fulfilling the formulation of offenses contained in the Criminal Code and laws and regulations outside the Criminal Code.

The crime of "because of negligence causing the death of persons" is expressly stipulated in Article 359 of the Criminal Code which in full reads "Whoever by negligence causes the death of a person shall be punished with imprisonment for not more than five years or imprisonment for not more than one year."

It is done and the Judge can order that his decision be announced. According to Soesilo in his book *The Criminal Code (KUHP)*. As well as the complete commentaries article by article, the provisions of this article are imposed on doctors, midwives, drug experts, drivers, coachmen, machinists who as experts in their respective jobs are considered to be more careful in doing their work.

If they neglect (neglect), causing death (Article 359 of the Criminal Code) or injury (Article 360 of the Criminal Code), they will be punished more severely. If the death of the person is referred to by the accused, then he is subject to Article 338 of the Criminal Code or 340 of the Criminal Code. Article 338 of the Criminal Code states that whoever intentionally removes the soul of another person is punished with murder with a prison sentence of up to fifteen years (Koto & Poeloengan, 2022) (Lestari & Ibrahim, 2018).

Soesilo called this crime "dead treason" or "murder" (doodslag). Here it requires an act that results in the death of another person, whereas death is intentional, meaning intended, included in the intention. If the death is not intended, not included in this article may fall under Article 359 of the Criminal Code, which is because of his negligence causing the death of another person, or Article 351 sub 3 of the Criminal Code, which is ordinary persecution resulting in the death of people, or Article 353 sub 3 of the Criminal Code, which is persecution first resulting in death, or Article 354 sub 2 of the Criminal Code, which is severe persecution resulting in death, or Article 355 sub 2 of the Criminal Code, namely severe premeditated persecution resulting in death.

Furthermore, Article 340 of the Penal Code states that whoever intentionally and premeditatedly removes the soul of another person shall be punished with premeditated murder (moord), with the death penalty or life imprisonment or temporary imprisonment for a duration of twenty years.

The crime in Article 340 of the Criminal Code according to Soesilo is called "premeditated murder" (moord). It can be said that this is an ordinary murder (doodslag) in Article 338 of the Criminal Code but carried out in advance (PAF Lamintang & Theo Lamintang, 2023). "Premeditated" (voorbedachte rade) i.e. between the onset of the intent

to kill and its execution, there is still time for the maker to calmly think about, for example, in what way the murder will be carried out.

This tempo should not be too narrow, but on the contrary it also does not need to be too long, what matters is whether in that tempo the maker can calmly still think, which in fact he still has a chance that he cancels his intention to kill, but he does not use.

In addition to Article 359 of the Criminal Code, in Book II of the Criminal Code there are several articles that contain elements of negligence / negligence, including (R. D. Prasetyo et al., 2019):

- a. Article 188 of the Criminal Code, namely because of his negligence caused the eruption of fires and so on. Article 188 of the Penal Code reads: " Whoever causes due negligence to fire, eruption or flood, shall be punished with imprisonment for not more than five years or imprisonment for not more than one year or a fine of not more than Rp. 4,500,- "If there is general danger to the goods because of it, if there is danger to the death of another person, or if it results in the death of a person.

According to Soesilo, the content of this article is the same as the content of Article 187 of the Criminal Code, the difference is that this Article is done not intentionally (delik culpa), while Article 187 of the Criminal Code is done intentionally (delik dolus). Of course, the penalty is lower than Article 187 of the Criminal Code. Article 187 states that whoever knowingly burns, causes an eruption or causes flooding, is punished:

- (1)Imprisonment for not more than twelve years, if the act may bring general danger to the goods;
- (2)Imprisonment for not more than fifteen years if his actions may bring mortal danger to others;
- (3)Life imprisonment or temporary imprisonment for a maximum of two years, if the act may bring death danger to others and the person dying as a result of the act.

This crime is a dolus offense meaning that it must be done intentionally if it is not done intentionally (due to negligence), then the person is punished according to Article 188 of the Criminal Code, which is the culpa delicacy.

- b. Article 231 paragraph 4 of the Criminal Code, namely because the negligence of the depositor caused the loss of confiscated goods. Article 231 paragraph 4 of the Criminal Code states that whoever due to his negligence releases goods that have been confiscated according to laws or releases from deposits or legal orders, or hides the goods, while he knows that the goods are released from the confiscation or deposit, shall be punished with imprisonment of not more than one month or a fine of not more than Rp. 1,800,-
- c. Article 360 of the Criminal Code, namely because of his negligence caused serious injury to others. Article 360 of the Criminal Code reads as follows:
 - (1)Whosoever by negligence causes grievous injury to any person shall be punished with imprisonment for not more than five years or imprisonment for not more than one year.
 - (2)Whoever, by negligence, causes injury to such a person that the person becomes temporarily ill or does not perform his office or work temporarily, shall be punished with imprisonment for not more than nine months or imprisonment for not more than six months or a fine of not more than Rp. 4,500,-. The content of this article is almost the same as Article 359 of the Criminal Code, the difference is that the result of Article

359 is the "death of a person", while the result in Article 360 of the Criminal Code is serious injury or injury that causes illness or obstruction of daily work.

- d. Article 409 of the Criminal Code, namely because of his negligence caused the equipment (railway roads, and so on) to be destroyed. Article 409 of the Criminal Code states that whoever due to his negligence causes a work mentioned in the above Article (Article 408 of the Criminal Code) to perish, damage or can no longer be used, punished with imprisonment for a maximum of one month or a maximum fine of Rp. 1,500,- Work referred to in Article 408 of the Criminal Code, namely by contravening the right to destroy, damage or make so that it can no longer be used, railway works, trams, telegraph wires, telephones or electricity, or works to hold water, water distribution or sewerage, gas or water pipes, or sewers if artificial, such channels or passages are used for public purposes. "Because of negligence" in Article 409 is accidental, but the damage was caused by lack of caution, negligence (*alpa*), lack of attention (*culpa*) (Budianto, 2021).

B. Negligence resulting in loss of life

In criminal law everyone who commits a criminal act can be given criminal sanctions, it is possible for police who commit criminal acts that due to their duty or negligence result in the death of a person or injury to a person (principle of equality before the law).

Although the police as law enforcers have the right of discretion as long as it can be proven that the death of the person due to negligence of the police, criminal sanctions can be applied, (because it includes exceeding their authority or abuse of authority).

In the Criminal Code ("KUHP"), negligence is usually referred to as error, carelessness, or negligence. This can be seen in, Article 359 of the Criminal Code: "Whoever through his fault (negligence) causes another person to die, shall be punished with imprisonment for not more than five years or imprisonment for not more than one year."

In criminal law negligence, error, carelessness or negligence is called *culpa*. *Culpa* is a mistake in general that has a technical meaning, which is a kind of mistake of the perpetrator of a criminal act that is not as serious as intentional, namely not being careful so that unintentional consequences occur (Goraph & Sengi, 2020).

It is possible that a policeman who commits negligence will be subject to criminal sanctions. Regarding the principle of discretion, the explanation is as follows: Indonesia recognizes the principle of discretion for a state institution including the police institution as contained and regulated in the Criminal Code and in Law Number 2 of 2002 concerning the Indonesian National Police (see article 16 paragraphs (1) and (2) and article 18 paragraphs (1) and (2)).

Discretion is a policy from state officials from the center to the regions which essentially allows public officials to carry out a policy that violates the law, with three conditions.

That is, in the public interest, still within the limits of its jurisdiction, and does not violate the general principles of good government.

Police discretion is basically the authority of the police based on the principle of general obligation of the Police, which is a principle that gives authority to police officials to act or not act according to their own judgment, in the framework of their general obligation to maintain, maintain order and ensure public security.

Police discretion in Indonesia is juridically regulated in article 18 of Law No. 2 of 2002, namely "In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment", This implies

that a member of the National Police who carries out his duties in the community alone, must be able to take decisions based on his own judgment in the event of a disturbance to order and security public or when a danger to public order and security arises.

A police official can apply discretion in various daily events but discretion is more focused on selective enforcement, which is related to factors that affect whether a violator of the law will be dealt with or not.

The use of the principle of discretion is closely related to other principles used in making decisions, namely:

- (1) The principle of jurisdiction is that every action of state administrative officials must not violate the law (must be in accordance with justice and propriety).
- (2) The principle of legality is: Every action of state administration officials must have a legal basis where the principle of legality is the most important thing in every government action.

So the use of the principle of discretion by the Police must pay attention to the principle of legality and the principle of Juridiktas. Talking about the factors of negligence that resulted in the occurrence of fatalities. Coordinating Minister for Political, Legal and Security Affairs of Indonesia.

Mahfud MD, revealed the factors that caused the Arema vs Persebaya tragedy, including ignoring time and ticket recommendations. Mahfud MD said that the organizers of the Arema vs Persebaya match had ignored the authorities' recommendation to hold the match in the afternoon instead of evening.

Mahfud MD also revealed that the government had recommended only 38,000 tickets be printed, but instead there were 42,000 people sold out.

Mahfud MD also said that the Government has increased improvements in the process of organizing football matches. But again, football, which has become one of the favorite sports for the wider community, often provokes supporters to vent emotions suddenly.

CONCLUSION

Based on the foregoing, it can be concluded that Whoever through his negligence causes the death of a person shall be punished with imprisonment for not more than five years or imprisonment for not more than one year."

In addition, the factors that caused the Arema vs Persebaya tragedy included ignoring time and ticket recommendations. From the major heartbreaking events that occurred, the Government had to solve the case that made 127 Fatalities complete.

REFERENCES

- Amiruddin, H. (2012). Zainal Asikin, Introduction to Legal Research Methods. *Jakarta: Rajawali Press.*
- Budianto, B. (2021). ANALYSIS OF THE EFFECT OF NIM, BOPO, LDR, LEVERAGE AND COMPANY SIZE ON FINANCIAL PERFORMANCE WITH INTELLECTUAL CAPITAL AS A MODERATING VARIABLE IN BANKING COMPANIES LISTED ON THE INDONESIA STOCK EXCHANGE. *JOURNAL OF HEALTH TECHNOLOGY AND SOCIAL SCIENCES (TEKESNOS)*, 3(1), 113–128.
- Goraph, F. A., & Sengi, E. (2020). Participatory method in drafting village regulations in Pitu village, North Maluku. *JMM (Journal of Independent Society)*, 4(2), 181–192.

- Handoko, D. (2018). *Criminal code*. Eve and AHWA.
- Koto, Z., & Poeloengan, A. H. (2022). Note in the Criminal Code Bill Book One related to the duty of the National Police as law enforcement. *Journal of Criminal Law and Criminology*, 3(2), 1–16.
- Lestari, N. L. G. D. A., & Ibrahim, R. (2018). The authority of the Denpasar City Government in regulating and controlling buildings along the coastal border area. *Kertha Negara Journal*, 4(08).
- Marzuki, M. (2017). *Legal Research: Revised Edition*. Pretone Media.
- PAF Lamintang, S. H., & Theo Lamintang, S. H. (2023). *Special Offenses Crimes Against Life, Body, and Health*. Ray Grafika.
- Prasetyo, B., & Jannah, L. M. (2005). Quantitative research methods. *Raja Grafindo Persada, Jakarta*.
- Prasetyo, R. D., Cahyo, Y., & Ridwan, A. (2019). Analysis of drainage system planning in flood management efforts in Gandusari District, Trenggalek Regency. *Journal of Technology Management & Civil Engineering*, 2(1), 131–143.
- Prasetyo, T. (2005). *Material Criminal Law*. Yogyakarta: Kurnia Kalam.
- Soekanto, S. (2007). *Normative legal research: A brief review*.
- Sudarto, H. P. I., & Sudarto, Y. (1990). *UNDIP Faculty of Law*. Semarang.
- Waluyo, B. (2002). *Legal Research in Practice*, Sinar Grafika. Jakarta.