

## **Oversight Resulting in the Death of Others According to Article 359 of the Criminal Code**

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### **Abstract**

As the times progress, more and more means of transportation are needed to meet the needs of humans. Mobility in traffic becomes an obstacle in dealing with vital error problems in traffic accidents. Indeed, such things cannot be denied in traffic, in intentional or even unintentional arrangements. Road traffic violations are actions or actions that are contrary to the provisions of traffic laws and regulations. In the Criminal Code (KUHP) criminal acts are divided into crimes (*misdrijven*) and violations (*overtredingen*). Cases of negligence that result in the death of other people are urgent matters to be discussed in a legal perspective, therefore the purpose of this paper is to find out the application of Article 359 of the Criminal Code so that people who commit criminal acts because their negligence causes people to die can be punished. In this study using normative legal research methods, which examines the law which is conceptualized as a norm or rule that applies in society and becomes a role model for everyone's behavior. The conclusion is that mistakes in criminal law are very important because a person cannot be convicted if he has no mistakes. And someone can be said to be guilty if he commits a crime, in a state of being able to take responsibility for what he has done intentionally or by negligence and there is no excuse for forgiveness.

**Keywords:** Mistakes, Death, Criminal Code



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### **INTRODUCTION**

The more development of the times, the more means of transportation needed to meet needs. Traffic is a means of public communication that plays a vital role in facilitating the development that we carry out. The traffic problem is a national scale problem that develops in tune with the development of society. The problem faced today is the increasing number of traffic accidents on the highway. It can be seen that humans are the main cause of traffic accidents on the highway, this occurs because of the driver's carelessness or negligence in driving his vehicle. The driver's carelessness often results in victims, whether the victim is seriously injured or the victim dies, not infrequently it even takes the driver's life. It is undeniable that almost every day we witness and hear about road accidents that claim someone's life, so this requires the attention of law enforcement officials. Law enforcement is a process that involves many things. According to Soerjono Soekanto, law enforcement is an activity of harmonizing the relationship of values which are spelled out in solid and embodying principles/views of values and attitudes as a series of final stages of value translation to create, maintain and maintain social peace. Concrete law enforcement is the application of positive law in practice as it should be obeyed. Therefore, providing justice in a case means deciding the law in concreto in maintaining and guaranteeing the observance of material law by using the procedural method stipulated by formal law. According to Satjipto Raharjo, law enforcement is essentially an upholding of ideas or concepts about justice, truth, social benefits, and so on. So law enforcement is an attempt to make these ideas and concepts a reality. In essence law enforcement embodies values or principles that contain justice and truth, law enforcement is

not only the task of conventionally known law enforcers, but is the duty of everyone. However, in relation to public law, it is the government that is responsible for enforcing traffic violation laws.

Ramdlon Naning explained that what is meant by a road traffic violation is an act or action that is contrary to the provisions of traffic laws and regulations. The violations referred to above are violations as regulated in Article 105 of Law Number 22 of 2009 which reads: 1. Behave in an orderly manner and/or 2. Prevent things that can hinder, endanger the security and safety of traffic and road transportation or that can cause road damage. To understand about traffic violations in more detail, it is necessary to first explain about the violation itself. In the Criminal Code (KUHP) criminal acts are divided into crimes (*misdrijven*) and violations (*overtredingen*). Regarding the crime itself in the Criminal Code it is regulated in Book II, namely about Crime. Meanwhile, violations are regulated in Book III, namely violations. In criminal law there are two views regarding the criteria for the distribution of crimes and violations, namely qualitative and quantitative. According to a qualitative view, it is defined that an act is seen as a crime after the existence of a law that regulates it as a crime. Meanwhile, crime is *recht delicten*, which means something that is seen as an act that is contrary to justice, regardless of whether the act is punishable by a criminal law or not. According to a qualitative view that there is a criminal threat of a lighter offense than a crime.

Even though in general, intentional crimes are required, some of them are determined that in addition to intent, people can also be punished if the mistake is in the form of negligence, such as for example Article 359 of the Indonesian Criminal Code, a person who causes the death of another person because of his negligence can be punished. In general, for crimes in the Criminal Code, it requires that the will of the defendant be directed at actions that are prohibited and punishable by punishment. Apart from that, the prohibited actions may in large part be dangerous to public security, affect people or goods and if they occur cause a lot of harm, so that those who are not careful, who are careless, in short, those who cause the situation due to their negligence must also be subject to punishment.

In the case of an oversight causing the death or death of a person, as stipulated in Article 359 of the Criminal Code, here the mental attitude of the person causing the prohibited situation is not against these prohibitions; he does not want or approve of the occurrence of forbidden things, but his mistake, mistake, oversight in his mind at the time that causes the prohibited thing to arise is that he pays little attention to the prohibition. In the criminal field, there are also articles relating to negligence. Criminal Code Article 359: Whoever because of his mistake (negligence) causes another person to die, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year. Whereas Article 360 (1) Whoever because of his mistake (negligence) causes another person to be seriously injured, shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year. (2) Any person who because of his mistake (negligence) causes another person to be injured in such a way as to cause illness or prevents him from carrying out work, office or search for a certain time, shall be punished by a maximum imprisonment of nine months or a maximum light imprisonment of six months or a maximum fine of four months. thousand five hundred rupiah.

## **RESEARCH METHODS**

In this study using normative legal research methods, which examines the law which is conceptualized as a norm or rule that applies in society and becomes a role model for everyone's behavior. The type of research used is descriptive legal research, which is descriptive in nature and aims to obtain an overview of the scope of the legal situation in a

particular place and currently uses normative legal research methods and this type of research uses descriptive legal research. This data source originates from statutory law consisting of primary, secondary and tertiary law.

## **RESEARCH RESULTS AND DISCUSSION**

### **Understanding Negligence as One of the Driver's Error Categories**

Mistakes in criminal law, many people have theorized. They have discussed the notion of guilt in various ways and placed guilt as one of the elements of a criminal act, but there are also those who place it as an element of criminal responsibility. Regarding this error, especially in relation to sentencing, it is very important, because it has been generally adopted that an adage reads: There is no sentencing, without any guilt. In a foreign language it is called 'Geen Straf zonder schuld' (Dutch) or *actus non facit reum nisi mens sit rea* (Latin) or *An act does not constitute itself guilty unless the mind is guilty* (English). Someone commits an act that is against the law, or commits an act that conforms to the formulation of the criminal law as a criminal act, does not mean that he is immediately punished. He may be punished, depending on the guilt.

In order to convict a person, there must first be two conditions that become one condition, namely an act that is against the law as the cornerstone of a criminal act, and the act committed can be accounted for as a joint of guilt. The decision to impose a sentence must find a criminal act and a proven error from evidence with the judge's belief in an accused being prosecuted before the court. One of the main issues that is very important but very complicated in studying criminal law is about mistakes (*schuld*). This is important, because in determining whether or not there is and the type of error, it will generally determine whether or not the perpetrator can be punished. In terms of being convicted, it also determines the severity of the sentence to be imposed. Many teachings have been written on this subject, both within the field of criminal law, and outside of it, such as the teachings of 'determined will' (determinism) and the teachings of 'free will' (indeterminism).

Solving this problem is made even more difficult by the many different opinions about what the error itself means, and in which sense the error is to be used. The term error comes from the word '*schuld*', which until now has not been officially recognized as a scientific term that has a definite meaning, but has often been used in writings. The use of the term error can be differentiated into, usage in the mathematical sense as in the case of the number 9 divided by 3 the result is 2 is counting with errors, and usage in the juridical sense is as in the case of a person being sentenced for committing a criminal act by mistake. Mistakes in a juridical sense can still be distinguished between usage in the sense of explaining the state of the psyche of a person who commits an act that can be accounted for to him, and usage in the sense of a form of error in the law in the form of intentional and negligent. The definition of wrongdoing can be seen from the standpoint of everyday language, morals, civil law and from the standpoint of criminal law. In whatever sense the error is interpreted, we will always find in it a certain reproach. Thus in everyday language we find the notion of "wrong" in things like:

1. Saying something that is not true, for example:  $5 + 7 = 13$ , or the capital city of Central Java is Jogjakarta. Misunderstanding. Lying and so on.
2. Declare disgrace. For example: whether or not the defendant was wrong (Article 158 of the Criminal Procedure Code), the accused was guilty (Articles 183, 189, 193 of the Criminal Procedure Code), the defendant's guilt (Articles 191). In this case it is not clear whether the *dolus* or *culpa*.
3. Doing an action, but not with a will regarding the continuation of the action or its consequences. For example, someone throwing fruit at a tree, then hit the glass window of

the house. For that he will say: it was my fault. It is also in this sense that we should interpret or have many similarities with the formulations of the Criminal Code as in articles: 188, 191 terr, 193, 195. 201, 203, 334, 359, 360, 426 (2), 427 (2) ). From a moral or societal point of view, it will mean: a person's inner relationship with his behavior and/or the consequences of that behavior. He could have avoided this, but he still did it for which he was criticized from the point of view of decency or propriety in society.

4. Performing a forbidden action/deed in accordance with his will or as a result he wants. For example deliberately stealing, intentionally not wanting to be present as a witness, deliberately killing and so on. In this he is guilty in the sense of *dolus*.

The term *schuld* in Dutch can mean, in a narrow sense, it refers to negligence (*culpa*) and in a broad sense it refers to mistakes. According to Andi Hamza, mistakes in a broad sense include: Deliberately, or Negligence (*culpa*); Can be held accountable. All three are subjective elements of sentencing requirements or if we follow the group that includes the element of error in a broad sense into the notion of crime (*strq/haar feit*) as a subjective element of crime (*strq/baarfeit*). It is added that the absence of excuses is also the fourth part of wrongdoing. Thus, a person has a fault if that person is intentional or negligent (negligent) and can be held accountable for the criminal acts he has committed and for his actions there is no excuse for forgiveness. *Moeljatno* said that intentionality is a different type of mistake than negligence, but the basis is the same, namely: The existence of an intention which is prohibited and punishable by punishment; The ability to be responsible; No excuses.

However, the forms of intentional and negligent are different. In intentional inner attitudes of people against the prohibition. In negligence, not paying attention to the prohibition so that one is not careful in carrying out an objective causal action creates a condition that is prohibited. It is impossible for a person to be sentenced to a crime if he does not commit an act that is prohibited and is subject to punishment. But even though people have committed criminal acts, they cannot always be punished if that person has no fault. A person who cannot be blamed for violating a criminal act may not be subject to punishment, even though many people understand, for example, that the person's temperament or intention is bad, very stingy, does not like to help others or is very careless, does not pay attention to the interests of other people in an effort to obtain material or matter does not care about the fate of others as long as oneself is lucky. In short, he is a bad person, maybe such a person is disliked or ridiculed in society, but to be sentenced to a crime or to be held accountable according to the criminal law is impossible as long as he does not violate the criminal prohibition or as long as he does not commit a criminal act.

In addition to committing criminal acts or actions that are prohibited and punishable by crime, a person can be said to be guilty if he is able to take responsibility. For example, a small child plays with a match on the edge of a neighbor's house, causing the walls of the house to catch fire, causing general danger to both goods and people (Article 187 of the Criminal Code). However, it was clear that the child's actions had caused the walls of the house to catch fire or at least that it was because of it. However, no one will bring the small child before a criminal judge to be held accountable for his actions. Another example, for example a madman who unexpectedly then attacks another person, and beats that person black and blue, in this case even though the madman has committed criminal acts, namely persecution, the madman was not brought before a criminal judge but was sent to a mental hospital.

Another example, for example, is a doctor who was just pointed at with a gun, and was ordered to make a false certificate stating that the person who had pointed the gun had an illness, with the intention of not being drafted into the military. This act was discovered and the doctor was prosecuted before a judge for violating Article 267 of the Criminal Code, but the

doctor could not be sentenced to a crime because he was forced to do so. The doctor's actions are understandable and his mistakes can be forgiven. And of course the person who was holding the gun earlier must be prosecuted for ordering the act to be carried out which is regulated and punishable by criminal law in Article 267 of the Criminal Code. Now the question is whether the error is actually in the criminal law? From the examples above, we can already guess where the answer lies. The child who set fire to the wall of the neighbor's house is not guilty, because he actually does not understand or realize the meaning of what he is doing, because he is too young. It is said that it is not because the growth of the organs or soul tools is not full enough, that the inner function of the soul is also not perfect.

In contrast to the example of the madman earlier, even though he is an adult, his soul is sick, not normal, so what is thought, what is realized when attacking and beating just now, cannot be equated with the cognition of a normal person, because a person whose mental function is abnormal. And because of this abnormal inner function, mad people are seen as irresponsible. For there to be the ability to be responsible, there must be: the ability to discriminate between good and bad actions, according to the law and those that are against the law, and the ability to determine one's will according to one's awareness of the good and bad of the previous action.

The first factor is a factor of reason or intellectual factors, which can discriminate between actions that are permissible and those that are not. The second factor, is the feeling factor or will factor, that is, it can adjust its behavior with awareness of which actions are permissible and which actions are not permissible. Thus, a person who is unable to discriminate between permissible and impermissible actions, and cannot adjust his behavior according to the awareness of the goodness or badness of what he is doing, has no fault and cannot be held accountable. In the Criminal Code, inability to take responsibility is a right that abolishes punishment. As for the doctor's example, he was not guilty, because when he committed such an act he was threatened with a gun, so he was deemed unable to do anything other than what he was doing. The doctor did this because when his mind was under pressure from an external situation, his mental function was not normal.

From the examples that the author has presented above, in fact, neither the child, the madman nor the doctor, in their respective circumstances, cannot be blamed for doing so, because they are deemed to have been unable to do anything other than what they have done. And if a person who under certain circumstances cannot be expected to do other things, then also cannot be required to do other than what has been done, then it is only natural that that person cannot be blamed and therefore also cannot be held responsible for his actions. Thus, a person who can be said to have made a mistake, if at the time of committing a criminal act, seen from the point of view of society, he can be reproached for his actions, that is, why did he commit an act that is detrimental to society, even though he is able to know the bad meaning of the act, so that he can even should avoid doing so. And thus, the act was done intentionally, so that he was reproached for the act. Here the action occurs on purpose.

Apart from that, a person can also be reproached for committing a criminal act, even though he did not commit the act intentionally, but the act occurred because he was negligent or negligent of the obligations which, in this case, the community deemed he should or should have carried out. Here reproach is given because he did not carry out the obligations that should or should have been carried out by him so that because of this the community was harmed. Here the action occurs because of negligence. According to Simons: error is the existence of a certain psychic condition in a person who commits a criminal act and there is a relationship between this condition and the act committed in such a way that the person can be reproached for committing the said act. From Simons' formulation of the error mentioned above, it turns

out that for an error to occur, two things must be considered apart from committing a criminal act, namely: There is a certain psychic (inner) condition and there is a certain relationship between the inner state and the act committed, causing the reproach earlier.

The mental state of the person who committed the act which in theory constitutes or is referred to as the capacity to be responsible, is an important basis for the existence of guilt, because after all, the mental state (psyche) of the accused must be such that it can be said to be in normal health. It is only towards people whose mental condition is normal that we can hope that they will regulate their behavior according to the pattern that is considered good in society. Because if the state of his soul is normal, of course his function will be normal too. On the other hand, if the state of their souls is not normal, their function is also not good, so that the standards that apply in society are not suitable for them, so there is no point in holding them accountable. They must be cared for or educated in an appropriate manner. That they cannot be held accountable has been stated in Article 44 of the Criminal Code which R. Soesilo formulated as follows:

1. Whoever performs an act, for which he cannot be held accountable because of an imperfect mind or because he has a change of mind, should not be punished.
2. If it is obvious that the act cannot be held accountable to him because of an imperfect mind or because he is sick with a change of mind, then the judge may order him to be placed in an insane asylum for a maximum of one year for examination.

S.R. Sianturi said that in order to say that there was an error in the perpetrator, several things related to the behavior must be achieved and determined in advance, namely: Ability to be responsible (toerekeningsvatbaarheid); The psychological relationship (psychologische betrekking) between the perpetrator, his behavior and the resulting consequences (including behavior that is not against the law in everyday life and *Dokis* or *culpa*). Noyon suggests that generally the characteristics of mistakes related to positive law are:

1. That the perpetrator knows or must be able to know the nature of his behavior and the circumstances that coincide with that behavior. (as long as the conditions are related).
2. That the perpetrator knows or should suspect that his behavior is against the law (onrechtmatig).
3. That his behavior was not due to an abnormal mental condition (vide Article: 44 of the Criminal Code).
4. That the behavior was carried out, not due to the influence of an emergency/forced situation.

Thus, there is an error in the perpetrator, if the four characteristics mentioned above are present in him. But it is also said that the error in its full sense does not always have to be an element of a criminal act. The mistake is part of the will of the perpetrator, while the nature of breaking the law (*wederrechtelijkheid*) is an outside part of it. That is, an error is a behavior that is contrary to the law that should be avoided, namely the disturbance of the law and order that should be avoided. Meanwhile, unlawful behavior is behavior that is against the law, for which behavior is reprehensible. Speaking of reproach, apart from the behaviors that the perpetrator should be able to avoid, so that he can be reproached, he must also know or be able to predict the consequences of his behavior.

Roeslan Saleh said: The element of error is not included in the definition of a criminal act anymore, and must be an element of "Accountability in criminal law", then stated: "a person who commits a criminal act will be punished, if he has a mistake Someone has a mistake, if at the time committing a criminal act, from the point of view of society, he can be reproached for this, because he is considered capable of doing something else, if he really does not want to do

so. Viewed from the point of view of society, this shows a normative view of wrongdoing. As is known, regarding this error, people used to have a psychologisch view. For example, the views of the constructors of *W* vs. but then this view was abandoned by people and people then took a normative view. Whether or not there was a mistake was not determined how the actual state of the mind of the defendant was, but depended on how the legal judgment regarding his inner state was, whether it was judged that there was or was not a mistake.

S. R. Sianturi concluded that mistakes have the following elements: Ability to be responsible; Intentional or negligent, (as a form of error, and also as an assessment of the inner relationship with the perpetrator's actions); No excuses. Wirjono Prodjodikoro, in his book *Principles of Criminal Law in Indonesia*, said that this error was of two kinds, namely the first: intentional (*opzet*) and second: inadvertent (*culpa*). Regarding what intention means, there is no explanation at all in the Criminal Code. It is different with the Swiss KHUP where Article 18 expressly stipulates: Whoever commits an act knowing and willing it, then he commits the act intentionally. According to the explanatory memory "deliberately" (*opzet*) means conscious will aimed at committing a certain crime. Deliberately (*opzet*) is the same as *wilens* and *wetens* (willed and known). Regarding what is meant and known, in theory there are two streams, namely: The theory of will (*wilstheorie*) which is the oldest and at the time when the other theories emerged received strong defense from the professor Von Hippel in Göttingen, Germany. In the Netherlands, among others, adopted by Simons. The theory of knowledge (*voorstellingstheorie*) which was taught around 1910 by Frank, a professor in Tübingen, Germany and received strong support from Von Listiz.

In the Netherlands, its adherents include Van Hamel. According to the theory of intentional will is a will that is directed at the realization of an act as defined in the law. Meanwhile, according to the theory of knowledge, intentionality is the will to act by knowing the elements required according to the formulation of the law. Usually in theory it is taught that in intention (*dolus*) there are three *cosak* namely: Intention as intention; Intentional as certainty, necessity; *Dolus eventualis*. Intentional as intention if the maker wants the consequences of his actions. He will never carry out his actions if the maker knows that the consequences of his actions will not occur. In practice, this intentional form is the easiest to prove, by looking at the facts that occur. Intentional as a certainty or necessity occurs, if the maker believes that the intended effect will not be achieved without the occurrence of other unintended consequences. Or in other words other consequences that are not intended must occur so that the intended effect can be achieved. Meanwhile, *dolus eventualis* or intentionality is a possibility, if the maker continues to do what he wants, even though there is a possibility that other consequences that are not at all desirable will also occur. Now what we need to investigate again is what the meaning or content of forgetfulness (*culpa*) is. As is the case with intention (*dolus*), the meaning of negligence (*culpa*) is not explained in the Criminal Code. Therefore, we must look at theory or science to give understanding.

Wirjono Prodjodikoro gives the meaning of the word *culpa* as a mistake in general, but in legal science it has a technical meaning, namely a type of mistake by the perpetrator of a crime that is not as serious as intentional, namely carelessness so that unintended consequences occur. S. R. Sianturi said: for an error to result in the conviction of the defendant must: Commit a criminal act (in this case it is also related to the nature of against the law). Able to be responsible. On purpose or by mistake. No excuses. Van Hamel said that the negligence contained two conditions, namely: Not making assumptions as required by law and not making precautions as required by law. Simons about negligence said: the content of negligence is the absence of caution besides being able to predict that consequences will arise. Thus, negligence contains two conditions which indicate that inwardly the defendant pays little attention to

matters protected by law or from the point of view of society, that he pays little attention to the prohibitions that apply in society. And someone can be said to be guilty if he commits a crime, in a state of being able to take responsibility for what he has done intentionally or by negligence and there is no excuse for forgiveness.

### **Application of Article 359 of the Criminal Code Against Negligence of Drivers Causing the Death of Others**

Because his mistake caused someone to die or the death of another person, the legislators regulated it in Article 359 of the Criminal Code. Article 359 of the Criminal Code, the formulation in Dutch reads as follows: Ilij aan wiens schuld de dood van een ander te ader te Witjen is, wordt gestraft met gevangeinstrafvan ten hoogste eenjaar ofhechtenis van ten hoogste negen maanden. Which means: Whoever because of his fault causes the death of another person, shall be punished with imprisonment for a maximum of one year or with imprisonment for a maximum of nine months. By Law no. I of 1960 concerning Amendments to the Criminal Code, State Gazette No. I of 1960 the criminal penalties specified in Article 359 of the Criminal Code above were aggravated, so that the formulation of the criminal provisions regulated in Article 359 of the Criminal Code reads as follows: whoever through his fault causes the death of another person shall be punished with a criminal offense imprisonment for a maximum of five years or with imprisonment for a maximum of 1 year.

The President of the Republic of Indonesia at that time had decided to increase the punishment specified in Article 359 of the Criminal Code, which can be seen from the explanatory memory of the draft law on amendments to the Criminal Code, Supplement to State Gazette No. 1921 which among others reads as follows: It has long been felt that there is a need for decisive action. The President of the Republic of Indonesia at that time had decided to increase the punishment specified in Article 359 of the Criminal Code, which can be seen from the explanatory memory regarding the draft law regarding amendments to the Criminal Code, Supplement to State Gazette No. 1921, which among other things reads as follows: It has long been felt that it is necessary to take firm action against the negligence of people who cause death or serious injury, especially for motorized vehicle drivers who due to their negligence or lack of respect for the value of fellow human beings, cause traffic accidents. in the form of collisions, falling of vehicles into ravines or rivers, or overturning of vehicles due to too much load in the form of goods or people or due to breakage or fire due to lack of maintenance or research before driving the vehicle, all of which involve human casualties. It seems that the threat of a one-year prison sentence or the sentence imposed, even if it is the heaviest, is often felt to be not commensurate with the actions he has committed, so the threat must be made more serious.

From the information contained in the explanatory memory regarding the draft law regarding amendments to the Criminal Code, it can be seen that the only reason that prompted the President of the Republic of Indonesia to amend, among other things, the criminal penalties specified in Article 359 of the Indonesian Criminal Code. The criminal law is due to the increasing traffic accidents that occur at that time, even though the behavior due to wrongdoing or oversight caused people to die, can also occur not only due to negligence as mentioned in the explanatory memory, but can also occur at any time in everyday life, even many behaviors that cause the death of other people can actually be classified solely as 'custodia honesta' or as behaviors that are not based on the evil nature of the perpetrators.

The criminal threat is aggravated in the criminal procedure law because if before the criminal threat was aggravated, the person who because of his oversight caused the death of another person cannot be detained, then after the criminal threat has been replaced by a



maximum imprisonment of five years, that person can then be subject to detention. Today the criminal acts regulated in Article 359 of the Criminal Code also fulfill the provisions stipulated in Article 21 paragraph (4) letter a of the Criminal Procedure Code (KUHAP), so that the perpetrators can be subject to detention.

In applying Article 359 of the Criminal Code regarding criminal acts where an oversight caused the death of another person, so that the defendant can be convicted, the defendant's actions must fulfill the following elements: Subjective element: Due to an oversight. Careless or inattentive. The word because of an oversight also means negligence or negligence. A person can be said to be negligent or negligent if that person does not make assumptions as required by law and does not exercise caution as required by law. Moeljatno said that if someone does not make assumptions as required by law, there are two possibilities, namely: Or the defendant thinks that consequences will not occur because of his actions, even though this view later turns out to be incorrect. Or the defendant has absolutely no idea that the prohibited consequences may arise because of his actions. In the first case the error lies in a wrong thought or perspective, which should be avoided. In the second case it lies in not having any thoughts that consequences might arise, which is a dangerous attitude. An example of the first possibility is: hitting a motorcycle quickly through a busy street, believing that he is good at riding a motorcycle, then he will not crash; eyes turned out to be wrong, because he bumped into someone. He should have pushed that thought aside, even if he was smart, precisely because of the heavy traffic and the possibility of crashing. Will not crash; eyes turned out to be wrong, because he bumped into someone. He should have pushed that thought aside, even though he was smart, it was precisely because of the hectic traffic just now and the possibility of crashing.

Here, the existence of that possibility is realized, but it does not apply to him, because of the intelligence he has. It is said that this is a conscious omission (*bewuste culpa*). An example of the second possibility is: riding a motorbike, while he doesn't understand the technique and doesn't have the *rijbewijs* yet. While being chased by the dog then gets confused, and therefore bumps into people. Here there is no thought at all of the possibility of crashing into people, even though this possibility should have been known, so riding a motorbike must be with friends who are good at riding motorbikes. Another example of the second possibility is for example the burning down of a house like what happened recently which has caused the death of three children here the children's mothers did not even think about the possibility of the house burning down causing the death of three children, which is a dangerous nature. It is said that in this case unconscious forgetfulness (*onbewuste culpa*). An example that the researcher can put forward is the case of the criminal act of negligence which caused the death of another person on the highway with the defendant Andhika Nusara Abdie (Decision Number 15/Pid.B/2007/PN.Bitung).

Name : ANDHIKA NUSARA ABDIE  
Place of Birth : Bitung  
Age/Date of Birth : 15 Years  
Male gender  
Nationality : Indonesian  
Address : Jln Penegoro RT. 02RW. III Girian Weru  
Islam  
High School Student Work

### **Indictment**

That he was accused Andika Nusara Abdie on Saturday 28 October 2006 around 23.30 WIB or at least at another time included in October 2006 at the JI intersection. Girian or at least elsewhere within the jurisdiction of the Bitung District Court, due to negligence caused Philipus

Anwardadu Seta to die as follows: Whereas at the time and place as mentioned above the defendant rode a Honda Kirana motorcycle with the police number. DB 5318 LP with a speed of about 60 km/hour, and at that time the defendant saw a red traffic light from the north direction but the defendant did not try to stop but kept going. After arriving at the crossroad suddenly a Toyota Innova car passed from east to west to east, the green traffic light, because the defendant was going fast enough, the defendant did not have time to brake the vehicle he was driving so it hit the right front door of the Toyota Innova with No. .Pol. B 8806 OE, driven by witness Totok Dwi Purwanto, due to the collision, both of them fell and Philipus Anwardadu Seta became unconscious with a head hemorrhage. Then the victim was taken to the Surakarta Kustati Hospital. That at the time of the incident the defendant was riding the motorcycle without being equipped with a standard helmet and the defendant did not have a driver's license, while the victim was not wearing a helmet at all. The driver of the Toyota Innova, Totok, was driving his vehicle at normal speed because the traffic light had just turned green. That the weather conditions at that time were sunny with traffic light conditions still functioning properly. As a result of the actions of the defendant Philipus Anwardadu Seta he experienced bleeding in the head due to a collision that was quite hard to the head which caused the victim to die on 29 October 2006, this was corroborated by Visum et Repertum No. 10/RSK-RM-KM/XV2006 dated 14 November 2006 by Prasaja The defendant's actions were as stipulated and punishable under Article 359 of the Criminal Code

### **Examination of Witnesses**

In order to prove the charges in the trial, the Public Prosecutor has presented evidence and presented three witnesses. Meanwhile, three witnesses, each of whom has been given testimony under oath, which are principally as follows:

1. Witness 1 Suwarno
  - a. That on October 28 2006 at around 23.30 WIB at the JI intersection. Girian saw Honda motorbike riders traveling from north to south at high speed, and saw the Kijang Innova car from east to west. That it was true that suddenly the witness saw the motorbike crash into a Kijang car to the right of the car and the two motorbike riders fell.
  - b. That was true the witness did not know the condition of the motorcyclist only saw the condition of the Kijang car which was dented on the right, then the victim was taken to the hospital using the Kijang car.
  - c. It is true that the conditions at the time of the incident were bright and the traffic lights were functioning properly.
2. Witness-2 Warsinyo
  - a. That was true on 28 October 2006 at around 24.00 WIB when the witness was working at Tasik Madu the witness received a call from the witness' neighbor informing him that the witness' child Philipus Anwardadu had an accident and was being treated at Kustati Hospital.
  - b. That the witness saw that the condition of the witness' child was very critical and the witness waited for him until the witness' child died.
  - c. That the defendant is the witness' neighbor and is friends with the witness' child.
  - d. That it was true that the witness had received compensation from the defendant's family, from the Kijang car driver and from Jasa Raharja. That the witness has sincerely accepted this disaster and has no grudge against the defendant or the defendant's family.
3. Witness-3 Totok Dwi Purwanto
  - a. That on October 28 2006 at around 23.30 WIB at the JI intersection. Surakarta veteran witness driving a Kijang Innova car No.Pol. DB 8806 AF from east to west where the traffic

light from the east is green and the speed of the witness' car is moderate because it has just stopped.

- b. That suddenly, from north to south, the witness' car was hit by a Honda Kirana motorcycle, No.Pol. DB 5318 LP driven by the defendant and his friend at high speed.
- c. That then the victim and the defendant fell down, the victim's head was bleeding and the defendant was scratched.
- d. That the witness then took the defendant and the victim to the Surakarta Kustati Hospital, and in the end the victim died.
- e. That the witness has provided compensation to the victim's family in the amount of Rp. 1.000.000,- (one million rupiah)

### **Examination of the Defendant**

Whereas based on the testimony of the witnesses, the defendant stated that some were true and some were not true and further on all the questions at trial, he has given the following information:

1. That on October 28 2006 at the Jl. Surakarta veteran, the defendant rode a Honda Kirana motorcycle No.Pol. BB 5318 LP rode with the victim Philupus Anwardadu Seta from north to south.
2. That the defendant did not pay attention to the traffic light but continued to ride the motorbike fast.
3. That suddenly from east to west a Kijang Innova car passed by at moderate speed, the defendant tried to brake but the defendant's vehicle still hit the right side of the car causing it to dent and the defendant and the victim fell.
4. That the victim's head hit the road and was bleeding while the defendant suffered scratches.
5. That the victim was then taken by the defendant and the Kijang Innova driver to the Kustati Hospital using the car.
6. That the victim finally died on Sunday, October 29, 2006.
7. Whereas the defendant did not have a driver's license and was wearing a small (non-standard) helmet, while the victim did not use a helmet. That the motorcycle the defendant was driving belonged to the defendant's parents.

### **Public Prosecutor's Claims**

So that the Panel of Judges at the Bitunhg District Court who examined and tried this case, decided: To declare the defendant Andika Nusara Abdie guilty of committing a crime because of his negligence causing another person to die as stipulated in Article 359 of the Criminal Code; Sentenced a sentence against the defendant Andika Nusara Abdie for 6 (six) months with a probationary period of 8 months; State the evidence in the form of; 1 (one) unit of Honda Kirana motorcycle No.Pol. DB 5318 LP and STNK returned to owner Heru Yuwono; Stipulates that the defendant be burdened with court costs of Rp. 1,000.00 (one thousand rupiah).

### **Judge's Consideration**

The crime committed by the defendant Andhika Nusara Abdie has fulfilled the elements contained in Article 359 of the Criminal Code, namely: Elements of Whose Goods, the above actions are based on the statements of witnesses, the statements of the accused as well as the evidence presented before the court were committed by none other than the defendant Andihka Nusara Abdie. The element of negligence caused another person to die. From the facts revealed in court in the form of statements from the witnesses and the statement of the defendant, it was true that the defendant was riding a Honda Kirana motorbike, Police Number DB 5318 LP with the victim because he was not careful and did not obey traffic signs -The traffic

crashed into a Kijang Innova car, Police Number DB 8806 FA so that the defendant and the victim fell and the victim was seriously injured in the head because they were not wearing a helmet and eventually died at the Kustati Hospital.

Considering, that based on the testimony of witnesses supported by the existence of evidence and the confession of the defendant, it turns out that the actions of the defendant have fulfilled the charges of the public prosecutor, so the defendant must be declared legally and convincingly proven to have committed the act as stipulated and threatened by Article 359 of the Criminal Code. Considering that during the trial nothing was found that could free the defendant from prosecution, either for reasons of justification or forgiving reasons, therefore the defendant was sentenced. Considering before handing down their decision, the Panel of Judges considered aggravating and mitigating circumstances for the defendant, namely: Aggravating: The defendant's actions resulted in the death of another person. Mitigating factors: Defendant has never been convicted; The defendant regretted his actions and promised not to repeat his actions again and that there was an amicable settlement between the defendant's family and the victim's family. The accused is still a high school student

### **Verdict Rule**

Finally, the Panel of Judges at the Surakarta District Court issued a decision on Thursday, January 23, 2007 with the following orders:

JUDGE

1. Declare that the defendant Andhika Nusara Abdie has been legally and convincingly proven guilty of committing a crime because his negligence caused the death of another person as stipulated and punishable by crime in Article 359 of the Criminal Code
2. Sentenced a sentence against the defendant with imprisonment for: 6 (six) months.
3. Stipulates that the sentence will not be served unless there is another order from the judge's decision, because the convict is guilty of committing a criminal act or not fulfilling a special condition before the end of the probationary period of 8 (eight) months.
4. Stating that the evidence is in the form of a unit of Honda Kirana motorbike No.Pol. DB 5319 FG and STNK were returned to owner Heru Yuwono.
5. Also burdened the defendant with paying court fees in the amount of IDR 1,000.00 (one thousand rupiah);

A criminal act can be sentenced to a decision must go through the process of proof in court. This proof is basically provisions that contain outlines and guidelines regarding ways that are justified by law to prove the guilt of the accused. Evidence is a provision that regulates evidence that is justified by law that judges may use to prove the guilt of the accused (M Yahya Harahaf, 2000:273). A person cannot be considered guilty before being proven at trial and proven legally and convincingly that he is the one who is guilty of committing a crime. And in this proof one of the processes is to hear the testimony of the defendant. The defendant's statement above can be used as evidence for the judge to sentence the defendant. The criminal act committed by the defendant Andhika Nusara Abdie whose case has been described above is contrary to Article 359 of the Criminal Code, namely: Whoever because of his negligence causes the death of another person, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year. And in the second case the criminal act committed by the defendant Parjiyanto contradicts Article 359 of the Criminal Code, Article 361 of the Criminal Code, namely: Article 359 reads: Whoever because of his negligence causes the death of another person, is threatened with a maximum imprisonment of five years or imprisonment for a maximum of one year. Article 361 of the Criminal Code reads: If the crime described in this chapter is committed in carrying out a position or searching, then the sentence is increased by

one third and the guilty person can be deprived of the right to carry out a search in which the crime was committed and the judge can order the decision to be announced.

In the case above with the defendants Parjiyanto and Andika Nusara Abdie, the evidentiary process begins with presenting evidence from witnesses, in criminal cases witness evidence is the main means of evidence, so that witness statements have the strength of evidence, the witnesses presented must fulfill certain conditions. The final piece of evidence presented at the trial was hearing the testimony of the defendant, the defendants Andhika Nusara Abdie and Parjiyanto were presented at the trial to be questioned about the description of the actions that the defendant committed or the defendant knew or related to what the defendant himself experienced in the criminal incident being examined, in accordance with Article 189 paragraph (1) of the Criminal Procedure Code which reads: "The defendant's statement is what the defendant stated in court about the actions he committed or which he himself knew, or experienced himself". From the sound of the provisions above, it can be concluded that the defendant's statement as evidence is: What the defendant stated or explained in court. What was stated or explained was about the actions that the defendant committed or about what he knew or related to what the defendant himself experienced in the criminal event being investigated.

In order to determine the extent to which the defendant's statement can be considered as legal evidence according to the law, several principles are needed as a basis, namely: the statement is stated in court, so that the defendant's statement can be considered as valid evidence, the statement must be stated in court, both statements in the form of explanations made by the defendant himself or statements in the form of explanations or answers to the defendant's questions put to him by the chairman of the session, member judges, public prosecutor or legal adviser. But the defendant's statement outside the trial can also be used to find evidence at trial as long as it is with valid evidence. About deeds that he did or that he knows himself or experienced himself. In order for the defendant's statement to be considered as evidence, the defendant's statement is a statement or explanation of: Regarding the actions committed by the defendant; About what the defendant himself knows; What happened to the defendant himself? That in proving the testimony of the accused it is not enough to prove he is guilty of committing the act he was accused of but must be accompanied by other evidence, this is regulated in accordance with Article 183 of the Criminal Procedure Code which states that in order to impose a criminal sentence on the defendant, his guilt must be proven by at least two pieces of valid evidence. At first glance we can draw the conclusion that the evidence is the testimony of the accused, not the evidence that is binding and decisive. Even though he has confessed a thousand times as the perpetrator of the crime being charged, that confession is not enough to prove his guilt, it must be supported by other evidence. This is because the evidence provided by the defendant is not considered sufficient to prove the defendant's guilt. This is to prevent the smuggling of people who are really guilty. If the evidence of the defendant's testimony is used as evidence that has binding and decisive power, there will be many legal irregularities in the form of imposing a sentence on a person who is not the perpetrator of the crime. While the real perpetrators take refuge freely behind people who admit other people's mistakes.

The defendant's statement in the above case has independent evidentiary power, that is, the judge is not bound by the strength value contained in the defendant's testimony. The judge is free to assess the truth value contained therein, the judge can accept or get rid of it as a means of evidence by presenting logical and rational reasons. If the judge wants to make evidence for the defendant's testimony, it must be accompanied by argumentative reasons by connecting other pieces of evidence. and in the case above the judge has really put forward logical reasons

to examine and decide on the case above. The defendant's statement must be stated at trial, the defendant's statement outside the courtroom does not have valid evidence. However, it can be used to help find evidence at trial, but on condition that it is supported by valid evidence and information stated outside the trial insofar as it concerns the matter against which he was charged. If the statement outside the trial is not supported by any valid evidence, the statement cannot be used as a tool to help find evidence at trial. However, if the statement outside the trial is supported by one valid piece of evidence, the function and value remains as an auxiliary tool to find evidence at trial. From the statements of the defendants Andhika Nusara Abdhi and Parjiyanto above, the writer concludes that the testimony of the accused plays a role as evidence by the judge in examining and deciding on the crime of oversight which causes the death of another person.

1. That the defendant's testimony is only one valid piece of evidence in court and must be supported by other evidence with the rule of at least 2 pieces of evidence.
2. That the evidence for the defendant's testimony is not evidence that has a binding and decisive nature, but must be supported by other evidence. The defendant's statement alone is not enough to prove his guilt even though he has admitted his actions.
3. The testimony of the accused has independent evidentiary power, namely that the judge can accept or remove it as evidence by presenting reasons. Also the accused was not sworn in.
4. The statement of the accused can be used as a conviction by the judge in deciding or examining the case. Because even if the guilt of the accused has been proven in accordance with the principle of the minimum limit of proof, it must be accompanied by the judge's belief that the accused is indeed guilty of committing the crime.

From the above statement, the actual role of the defendant's testimony can really be used as legal evidence in court. The defendant's statement is only to explain his own condition, not for other people and cannot stand alone unless accompanied by other evidence. The defendant's statement is evidence that has the same value as other evidence, for this reason the testimony of the defendant in court proceedings in a legal manner according to the law is considered as evidence. Examining the accused is not as easy as one might expect because the defendant has the right of denial and can confess the truth, especially when the defendant and the witnesses have made a plan without any wisdom between the parties, the accuracy and thoroughness of the judge in analyzing the case, the decision is made can be fatal and that will certainly harm all parties. Judging from the case above, even though the two suspects have admitted their actions, the judge must examine the case from the statements of the witnesses and the statement of the defendant, it must be the same, there must be a line that is in line, of course. Don't let other people admit their actions because of pressure or threats from other people.

Here the author is of the opinion that the judge actually used the defendant's testimony as one of the pieces of evidence to examine and decide on cases of starvation which resulted in the death of other people on the main roads. The judge must be really wise, thorough and scrupulous in looking at the situation so that the decision does not become fatal and of course harm many parties. In criminal law, those who can be punished are not the caution that can generally be expected to be shown by everyone who can be held accountable for the actions they have committed. However, such caution still needs to be made clear, because not everyone can be expected to act the same way when they are in the same circumstances. It seems too exaggerated if what should be done by a housemaid as referred to above should be judged according to the actions that would be carried out by someone who can be accounted for in general, in the event that they face the same problem. Presumably it would be more appropriate

if in assessing the culpa element as a normative element, the judge must evaluate a person's actual actions with the norms of accuracy and by taking into account all the real circumstances and personal circumstances of the perpetrator himself. Apart from what has been explained above, the Minister of Justice still gives his warning to the 'interpreters of the law', that the legislators, have not intended to use what is called or the knowledge of prominent and knowledgeable people as a criterion, but have intended to use as a measure is just the knowledge that is owned by citizens in general.

Now the question arises, namely when the judge can declare the guilt of a defendant as proven. The defendant's guilt can only be declared as proven if the defendant actually has an error aimed at an unwanted consequence by law, meaning that the defendant must imagine the possibility of the prohibited consequence arising. The first objective element of Article 359 of the Criminal Code is causing. To cause means to cause another person to die. Therefore, the criminal act because it was his fault that caused another person to die or passed away as stipulated in Article 359 of the Criminal Code is a material crime so that the crime is only considered completed when the consequences arise in the form of another person's death. The second objective element of Pasa! 359 of the Criminal Code is the death of another person. The death of this other person is the result of the perpetrator's negligent or careless actions. Thus, there is a causal relationship or causal relationship between the actions of the perpetrator and the result that is caused, namely the death of another person. Thus, in the application of Article 359 of the Criminal Code so that people who because of their oversight caused people to die or die can be prosecuted and sentenced, the perpetrator's actions must fulfill the elements of Article 359 of the Criminal Code, namely: oversight, namely carelessness, lack of attention or negligence, negligence. Someone can be said to be negligent or negligent because they do not make observers or suspects as required by law. To cause, means to cause another person to die or pass away. The death of another person, which is the result of the wrong or negligent actions of the perpetrator. Between the perpetrator's actions and the consequences, namely the death of another person, there is a causal relationship.

Criminal acts because of their mistakes causing people to die which are regulated in Article 359 of the Criminal Code are material crimes, namely crimes that are only considered completed with the emergence of prohibited consequences, namely the death of another person. Even though the death of another person was not intended by the defendant at all, but was only the result of an oversight, carelessness or negligence of the defendant, but if the defendant's actions have fulfilled all the elements contained in this article, then the defendant can be sentenced to imprisonment for life. five years or imprisonment for a maximum of one year. Because it will be felt unfair, especially by the family of the person who died if the perpetrator, with his mistake or carelessness, had caused the death if nothing was done.

## **CONCLUSION**

Mistakes in criminal law are very important because a person cannot be convicted if he has no fault. And someone can be said to be guilty if he commits a crime, in a state of being able to take responsibility for what he has done intentionally or by negligence and there is no excuse for forgiveness. In implementing Article 359 of the Criminal Code so that people who because of their oversight have caused people to die or die can be prosecuted and sentenced, the perpetrator's actions must fulfill the elements of Article 359 of the Criminal Code, namely: Due to an oversight, i.e. careless, inattentive or negligent, negligent. Someone can be said to be negligent or negligent because they do not exercise caution or guesswork as required by law. To cause, means to cause another person to die or pass away. The death of another person, which is the result of the wrong or negligent actions of the perpetrator. Between the

perpetrator's actions and the consequences, namely the death of another person, there is a causal relationship.

#### **BIBLIOGRAPHY**

- Asikin, H. Z dan Amirudin. (2003). Pengantar Metode Penelitian Hukum. Mataran: Raja Grafindo Persada.
- Hamzah, A. (1991). Asas-asas Hukum Pidana. Jakarta: Rineka Cipta.
- Lumintang, P.A.D. (1984). Dasar-dasar Hukum Pidana Indonesia. Bandung: Sinar Baru.
- Naning, Ramdlon. (1987). Menggairakan Kesadaran Hukum Masyarakat dan Didiplin Penegak Hukum dalam Lalu Lintas. Surabaya: Bina Ilmu.
- Poernomo, Bambang. (1987). Asas-asas Hukum Pidana. Jakarta: Ghalia.
- Shant, Dellyana. (2000). Konsep Penegakan Hukum. Yogyakarta: Liberty.
- Soekanto, Soerjono. (2004). Faktor-faktor Yang Mempengaruhi Penegakan Hukum. Jakarta: Raja Grafindo Persada.
- Tapran, H., (2010). Pengetahuan Dasar Berlalu Lintas. Surabaya: PT Jepe Media Utama.
- Tongat. (2008). Dasar-dasar Hukum Pidana Indonesia Dalam Perspektif Pembaharuan. Malang: UMM Press.