Introduction

- Guilt is an element which is closely related to the offender of crime
- There are four meanings of guilt
- Forms of guilt
- Principles related to criminal responsibility

Four Meanings of Guilt

- There are 4 meanings of guilt (according to Utrecht, and other scholars):
  1. Guilt in terms of criminal responsibility: ketercelaan or blameworthiness (verwijtbaarheid) of someone for committing a criminal offence
  2. Guilt as an element of crime; that is guilt as compilation covering dolus (intent) and culpa (negligence)

Guilt as an element of crime

- Dolus (intent)
- Culpa (negligence)
Dolus/ Opzet/ Sengaja/ Intention

- What is dolus/ intention?
  
  **Intention = willen (will) end weten (know)** (MVT- 1886)

- Theories on “intention”:
  
  (a) wils theorie / will theory
  
  “opzet/ intention is exist if both the conduct and the result of crime are all expected by the offender”

  (b) voorstellings-theorie/ the imagine theory
  
  “opzet/ intention is exist if the offender at the beginning of his/her conduct as a clear imagination that the result of crime will be achieved, accordingly he/she will adjust his/her conduct with the result.”

Several terms used in the legislation which reflect Intent

- Dengan sengaja/ deliberately/ intentionally/ with intention: Art 338 KUHP
- Mengetahui bahwa/ know that/ knowingly: Art 220 KUHP
- Tahu tentang/ Know about: Art 164 KUHP
- Dengan maksud/ Purposely: Art 362, 378, 263 KUHP
- Niat/ intend: Art 53 KUHP
- Dengan rencana lebih dahulu/ Premeditation: Art 340, 355 KUHP
  
  - with planning/ premeditation: (a) there is some time to think quietly (b) premeditated before committing a conduct
  
  - there is a considerate time period between intend and the commission of crime

Forms of Dolus

1. Dolus as purpose/goal (opzet als oogmerk) - dolus directus
2. Dolus as awareness/understanding of certainty that something must happen (opzet bij noodzakelijkheidsbewustzijn): secondary consequences in addition to those desired by a perpetrator of an act were foreseen by the perpetrator as a certain result, although the perpetrator did not specifically desire these secondary consequences, he still committed the act with knowledge of them; and

   ICC: dolus indirectus

- There are scholars who identified only three forms of dolus, namely: dolus as purpose, dolus as awareness of certainty, and dolus as awareness of probability (such as PAF Lamintang, Tresna, Moeljatno)

- They are in opinion that dolus eventualis is similar with dolus as awareness of probability

- Dolus eventualis is new development in criminal law, particularly in terms of the forms of intention and the HR of the Netherlands just accepted this particular form after world war II

Dolus eventualis

- In Germany known as *billigend in Kauf nehmen*
- The case where the offender willingly and knowingly accepts a considerable risk that a certain result may ensue.
- The dolus eventualis doctrine is often applied in court practice.
### Culpa

The terms which reflect Culpa
- culpa - schuld - nalatigheid - sembrono
- kelalaian, kealpaan, kesalahan
- Negligence
- Should know, should aware, should understand

### Definition, Types, and Requirement

- The Indonesian Penal Code: no definition of Culpa
- MvT: In one side, culpa is contradict term to intent, in other side, contradict term to accidentally
- For culpa, the will element never exist; knowingly element is generally not exist

#### Types of Culpa:
(a) culpa levis; culpa lata
(b) culpa yg disadari/ conscious (bewuste): culpa yg tidak disadari/unconscious (on bewuste)

- Requirement of the existence of culpa:
  (a) Hazewinkel-Suringa: 1) the lack of prediction; 2) the lack of carefulness
  (b) van Hamel: 1) did not predict as he/she supposed to; 2) was not be careful as he/she supposed to be.
  (c) Simons: generally culpa has two elements: 1) not be careful; 2) the risk can not be predicted.

### Culpa

- To determine whether or not culpa of someone is exist, we should apply (common sense) **general normal people** as a standard (the effort to behave carefully by normal and similar quality with the offender).
- If at the same situation and condition, the common sense (similar standard of normal man/woman) generally do not require someone to commit such conduct, it means that the offender has commit gross negligence (culpa lata).

### Important Principle related to criminal liability

- **Geen straf zonder schuld**
- No criminal sentence without guilt

Despite someone has committed unlawful conduct, without the existence of guilt, he/she will not criminally liable

### To be criminally liable, there are three requirements should be fulfilled

- Criminal responsibility
- Mental relation between the offender and his/her conduct, in the form of dolus or culpa
- There is no ground of permissibility
Criminal Responsibility
(toerekeningsvatbaarheid)

• By using “a-contrario construction” derived from MVT concerning no criminal responsibility, the criminal responsibility can be defined as:
  - the nature of the conduct is voluntary meaning: the offender commits an offence without any force
  - the offender is aware that his/her conduct is unlawful and he/she is aware of the consequences of his conduct
• In practice, every defendant is considered as criminally responsible, unless can be proved that he is insane or mentally ill