

The Role of *Mens Rea* as a Condition for Punishment: A Case Study of Tom Lembong from the Perspective of Indonesian Criminal Law

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Abstract : This study examines the centrality of *mens rea* as a requirement for criminal liability in Indonesian corruption cases, focusing specifically on the case of Tom Lembong. The challenge of proving criminal intent or the mental state of the perpetrator presents a significant issue within Indonesia's criminal justice system, particularly when judicial verdicts contradict the lack of clear evidence regarding the defendant's subjective element. The research aims to analyze the position of *mens rea* in Indonesian criminal law, review the mechanisms for establishing the mental element in corruption cases using a case study approach, and evaluate the legal implications of the absence of proof of *mens rea* for fair criminal responsibility. Employing a systematic literature review, the study synthesizes scholarly articles, court decisions, and relevant policy documents from the last five years, selected through strict criteria and thematic analysis. The findings demonstrate that, in corruption cases, the proof of the *mens rea* element is often overlooked, leading to convictions that do not always reflect the principle of *geen straf zonder schuld* and thus risk undermining substantive justice. This research offers a critical mapping of the evidentiary standard for *mens rea*, highlights the relevance of abolition as a systemic corrective mechanism, and provides innovative recommendations for courts and policymakers to more clearly distinguish between administrative motives and criminal intent, thereby promoting a more adaptive and just legal enforcement.

Keywords : Mens rea, Geen straf zonder schuld, Corruption, Substantive Justice

I. INTRODUCTION

The discussion regarding the concept of *mens rea* or criminal intent in criminal law is a pivotal aspect of fair and effective law enforcement, both globally and within Indonesia. Internationally, *mens rea* is considered a core element in establishing criminal liability, requiring clear evidence of the offender's mental state at the time a crime is committed. In the context of Indonesian criminal law, the recognition of *mens rea* is fundamental and strengthens the principle of *geen straf zonder schuld*, as articulated in the most recent legislation (Law No. 1 of 2023, Article 36). The presence of *mens rea* not only



ensures that sanctions are not imposed on individuals lacking intentionality, but also serves as a moral pillar that affirms criminal liability must be substantive and grounded in justice.

Nevertheless, in practice, the proof of *mens rea* poses tangible gaps between established legal theory and procedural realities in the courtroom—most notably in corruption cases, which tend to be complex and subjective. This gap is clearly reflected in the case of Tom Lembong, Indonesia's former Minister of Trade, who was convicted in the sugar import corruption case despite court findings showing that the *mens rea* element could not be convincingly established. This phenomenon has triggered academic and legal debate regarding how the perpetrator's mental state in corruption crimes can be scientifically and legally justified, demanding a thorough study to bridge the gap between theory and judicial practice.

The relationship between this research and robust theoretical frameworks must be emphasized to ensure scholarly rigor. Roeslan Saleh's Criminal Liability Theory (1983) serves as a principal foundation for analyzing how *mens rea* and *actus reus* are understood as essential elements in Indonesian criminal law enforcement. In line with this, the principle of *geen straf zonder schuld*, now enshrined in the national penal code, further underscores the necessity of proving intent or fault in the pursuit of criminal justice. This study also draws on the classic concepts of *mens rea* and *actus reus* from the common law system, which emphasize that both real acts and mental states are requisite for valid criminal liability. Through the integration of these theoretical perspectives, this research aims to critically and comprehensively depict the role of *mens rea* in the Indonesian legal context, while evaluating its application in real-world cases such as Tom Lembong's.

This research explicitly aims to: firstly, examine the position of *mens rea* as a requirement for criminal liability in the Indonesian legal system using the latest literature; secondly, scrutinize the mechanisms and challenges of proving the *mens rea* element in corruption cases, particularly through the analysis of the Tom Lembong case; and thirdly, evaluate the legal and policy implications arising from an absence of such proof in achieving equitable criminal accountability. The primary research question posed is: what role does *mens rea*—as the subjective element—play in determining criminal liability in Indonesia, and how is its implementation and legal impact evidenced in the facts of the Tom Lembong case?

The scientific contribution of this article lies in its integration of thorough theoretical and empirical analysis, leveraging recent and accredited literature to deliver a fresh perspective on the evidentiary challenges of *mens rea* within Indonesian criminal law. This study provides a critical mapping that guides towards better legal recommendations and a substantive vision of justice in handling corruption offenses. Its novelty is reflected in its focus on a contemporary case and in sharpening theoretical analysis that adapts to statutory developments and the evolving dynamics of Indonesia's criminal justice system. Thus, this research is expected to enrich legal scholarship and serve as a beneficial reference for policymakers and law enforcement professionals.

II. LITERATURE REVIEW

The primary theoretical framework underpinning this research is the concept of *mens rea*, which refers to the criminal intent or mental element necessary to establish

criminal liability. Originating from the common law tradition but widely incorporated into Indonesian law, *mens rea* is fundamental in differentiating criminal acts from mere unlawful acts without culpability. The doctrine asserts that both the action (*actus reus*) and the guilty mind (*mens rea*) must coincide for establishing criminal responsibility. This dualistic view, prominent in Indonesian criminal jurisprudence (Saleh, 1983), is complemented by the principle *geen straf zonder schuld* (no punishment without fault), enshrined in Indonesia's recent Criminal Code reforms (Law No. 1/2023, Article 36), emphasizing the indispensability of the mental element in fair criminal adjudication.

Existing studies reveal significant themes and disputes around the interpretation and application of *mens rea* in Indonesia. A comprehensive review demonstrates that judicial practices often struggle with inconsistent interpretation of intentionality, resulting in pattern deviations and fallacies in establishing *mens rea*, especially within corruption cases (Ramadan, 2025). Further research highlights challenges in applying traditional *mens rea* concepts to complex crimes such as corporate and collective offenses, with systemic biases favoring economic elites and administrative negligence sometimes mistaken for criminal intent (Sari, 2017; Agustinus, 2025). The development of "corporate *mens rea*" and impact-based approaches has been proposed to address these modern complexities, as traditional notions insufficiently capture diffuse organizational culpability (Fitriani, 2020).

The literature also identifies research gaps related to the inadequate standardization and empirical validation of *mens rea* proof within the Indonesian judiciary. Past analyses reveal that the mental element is often neglected in favor of objective evidence of wrongdoing, which risks criminalizing administrative or procedural errors mistakenly deemed corrupt actions (Mallarangeng, 2023; Marsauli, 2025). Moreover, while abolishment mechanisms have been applied as corrective measures, systematic frameworks and clearer interpretative standards remain lacking.

This article positions itself to fill these gaps by integrating doctrinal and empirical literature with case studies, notably the Tom Lembong corruption case. This integrative review advances the theoretical discourse by contextualizing the operationalization of *mens rea* in Indonesian anti-corruption law, offering critique and normative recommendations for judicial practice and legislative refinement. Its contribution lies both in conceptual clarification and in informing justice that harmonizes legal certainty with substantive fairness.

Methodologically, recent scholarship shows a trend towards hybrid approaches that combine doctrinal legal research with systematic and narrative literature reviews, as well as comparative analyses. These multi-faceted approaches allow for a richer understanding of *mens rea* issues, balancing theoretical rigor with contextual adaptability (Wijaya, 2024; Sarah, 2023). The adoption of interdisciplinary frameworks incorporating psychology and criminal policy theory further enhances interpretative nuance, providing better tools for judicial reasoning.

Synthesizing these perspectives, the conceptual foundation of this study emphasizes that proving *mens rea* must be central to criminal prosecution and sentencing, particularly in corruption cases where administrative complexity and bureaucratic discretion often obscure intent. This synthesis underscores the need for clear legal

standards, capacity building for law enforcement and judiciary, and engagement with evolving theoretical insights to promote accountability without compromising justice.

III. RESEARCH METHOD

This research adopts a Systematic Literature Review (SLR) strategy to rigorously identify, evaluate, and synthesize recent scholarly evidence related to the role of *mens rea* as a condition for criminal liability, particularly in corruption cases in Indonesia. SLR was selected because it enables a transparent, structured, and accountable process for reviewing the literature, allowing for precise inclusion of legal sources most relevant to the subject matter.

The data sources used in this study are exclusively secondary, comprising peer-reviewed journals, scholarly articles, books, statutory regulations, court decisions, and openly accessible documents pertinent to *mens rea*, corruption offenses, and criminal liability theory. Literature was gathered using searches in reputable databases, including Google Scholar, SINTA, DOAJ, and national or international academic portals, focusing on recent publications within the last five years.

The literature search protocol followed several systematic steps: (1) keyword identification (*mens rea*, *geen straf zonder schuld*, criminal liability, corruption), (2) structured searches with filters for publication dates (2019–2025), document type, and full-text accessibility, (3) citation management through reference tools, (4) eligibility appraisal based on relevance, methodological integrity, and peer-review status, and (5) cross-verification to avoid duplication and ensure validity. Reference matrices and narrative synthesis were employed to organize and thematically compare selected sources.

Inclusion criteria comprised scholarly documents in Indonesian or English discussing *mens rea* within criminal law, specifically related to corruption or public office cases, published between 2019 and 2025, openly accessible, and clearly peer-reviewed. Exclusion criteria encompassed duplicates, non-academic publications, unverifiable documents, or sources lacking complete access to main content.

The unit of analysis is the scholarly document (journal articles, books, statutory texts, court decisions) meeting the above criteria, aligning with the principles of SLR and integrative legal review oriented toward theoretical synthesis without the use of primary field data.

Data analysis utilized thematic analysis and narrative synthesis. Themes were extracted from the selected literature, mapping patterns, conceptual relationships, and methodological trends regarding *mens rea* and corruption liability. Narrative synthesis allowed for comparison and reconstruction of evidentiary models relevant to both the Tom Lembong case and the broader Indonesian criminal law context. Where necessary, digital citation management tools supported systematic tracking and consistency of sources.

IV. RESEARCH RESULTS

The characteristics of the reviewed literature reveal that, over the past five years, the topic of proving *mens rea* in corruption cases has gained significant attention. More than half of the publications focus on issues surrounding the evidentiary challenges of criminal intent in relation to substantive justice and the integrity of Indonesia's criminal

justice system. The majority of recent studies come from reputable national law journals and SINTA 1/2 indexed sources, predominantly employing normative juridical approaches, with a smaller portion utilizing empirical or comparative methods drawn from case law and judicial decisions. This synthesis is based on publications in both Indonesian and English, which explore *mens rea*, strict liability, abolition mechanisms, and error in persona within corruption cases concerning public officials, including the contextual analysis of Tom Lembong's case.

In terms of methodological trends, most research employs purely normative approaches or combines doctrinal perspectives with case analysis. Several key articles discuss Supreme Court decisions—such as Decision No. 6418 K/Pid.Sus/2025 (RSUD case) and Decision No. 980 K/Pid.Sus/2015—which highlight the necessity to distinctly separate administrative motives from criminal intent in assessing fault among corruption offenders. Many studies gather judicial decisions, legal precedents, and comparative enforcement practices from Indonesia and jurisdictions with established standards for *mens rea* proof.

Four major thematic categories emerge from the literature:

1. The urgency of proving *mens rea* in corruption cases as a crucial differentiator between administrative violations and criminal wrongdoing.
2. Ambiguity surrounding administrative motives and criminal intent, which generates the risk of criminalizing policy execution when it lacks clear evidence of malintent.
3. A growing tendency to apply strict liability in court decisions, leading to convictions even when criminal intent is not firmly proven, illustrated in the Tom Lembong case.
4. The role of abolition and judicial correction mechanisms where failures in proving *mens rea* are addressed by executive intervention to uphold substantive justice.

Analysis of court documents from 2023–2025 indicates that *mens rea* proof rarely becomes the focal point in corruption prosecutions, even in high-profile cases. The reviewed literature shows that the absence of *mens rea* is often disregarded in the pursuit of formal legal enforcement, impacting the moral and social legitimacy of the criminal justice system. Findings also demonstrate that convictions are frequently based solely on evidence of state financial loss, without further investigation into psychological context, awareness, or intentionality of the accused.

Several studies recommend the urgent need for standardized and robust mechanisms for *mens rea* proof, as well as enhanced capacity for judicial actors to distinguish between administrative motives and criminal intent. In cases like Tom Lembong's, trial findings indicate that no personal benefit, intent to enrich oneself, or deliberate planning was established. Executive abolition of the conviction reflects a failure of proportional evidentiary standards and the corrective role of administrative intervention in the national legal system.

Additionally, comparative studies reveal a trend toward reformulating criminal liability concepts to be more humane and proportional, placing greater emphasis on verifying subjective intent in corruption cases going forward. In theory, *mens rea* remains an essential criterion differentiating criminal from non-criminal acts, making proof of

intent, knowledge, and deliberateness the minimum standard for criminal liability within Indonesian law.

V. DISCUSSION

This study reaffirms that the proof of *mens rea* as the subjective element in corruption crimes is pivotal for a just criminal conviction, aligning with the research objectives of analyzing the position of *mens rea*, its evidentiary mechanisms in the Tom Lembong case, and resulting legal implications on Indonesia's justice system. The principal findings highlight that Indonesia's legal practice still struggles to consistently differentiate between administrative motives and criminal intent, leading to tensions with the principle *geen straf zonder schuld* and inconsistencies in court rulings. In Tom Lembong's case, the absence of conclusive proof of *mens rea* underscores the need for reformulating evidentiary standards based on substantive justice rather than mere formal legality.

Interpreting these findings through Roeslan Saleh's theory of criminal liability—emphasizing the necessary separation of *actus reus* and *mens rea*—it is clear that *mens rea* in Indonesian criminal law is not simply about awareness of one's act but entails the integration of intent, motive, and willfulness demonstrable through objective evidence. Judicial practice faces significant challenges in interpreting when administrative motives, such as bureaucratic duties, are mistaken for criminal intent without appropriate evidentiary rigor. The jurisprudence from Supreme Court decisions, notably MA Decision No. 6418 K/Pid.Sus/2025 and earlier cases, confirms the pressing need to clearly demarcate administrative from criminal motives to avoid unjust criminalization of public policy execution.

Comparatively, earlier studies indicate that enforcement often privileges *actus reus* proof, with insufficient attention to *mens rea*, resulting in convictions detached from foundational criminal law principles. Mallarangeng (2023) and others observe a recurrent undervaluation of intent in corruption prosecutions, especially relating to collective and corporate crimes, where applying individual intent standards proves inadequate. This opens the door for biased outcomes influenced by systemic factors favoring economic elites. Contemporary scholarship urges harmonization of doctrinal, empirical, and comparative insights to ensure fairer, more proportional adjudications.

This article contributes theoretically and practically by critically reconstructing *mens rea*'s role, integrating normative, jurisprudential, and literature-based perspectives with focus on Indonesian anti-corruption law. It advocates strengthening evidentiary tools, judicial capacity, and consistent standards in assessing motive and intent among public officials, particularly in cases vulnerable to systemic bias and political interference. Recognition of abolition as a judicial correction mechanism further highlights the need for checks and balances within the criminal justice system to uphold substantive justice.

Limitations include restricted access to comprehensive court rulings and potential selection bias in secondary literature favoring normative over empirical data. Challenges also arise due to the inherent difficulty in objectively proving subjective intent and the scarcity of instruments capable of disentangling psychological nuances in complex bureaucratic and collective offenses.

The study suggests urgently establishing rigid, clear standards for proving *mens rea*, enhancing judicial and prosecutorial education to distinguish administrative from criminal intent, and harmonizing regulations to balance formal legality and substantive justice. Future research should explore interdisciplinary methodologies bridging law and psychology, develop psycholegal instruments, and undertake comparative studies to reinforce *mens rea*'s place within Indonesia's penal framework, especially regarding specialized crimes like corruption.

VI. CONCLUSION

This study synthetically affirms that *mens rea* is a crucial and determinative element in the process of criminal conviction for corruption offenses, as exemplified by the Tom Lembong case. The findings show that the absence of proof regarding criminal intent or the perpetrator's mental state creates a contradiction between court decisions and the principle of substantive justice, while highlighting the urgent need to update evidentiary standards within the Indonesian criminal justice system. Through the synthesis of relevant literature and doctrinal review, it is clear that convicting an individual without establishing *mens rea* is inconsistent with the principle of *geen straf zonder schuld* and has the potential to undermine the legitimacy of a fair and effective judiciary.

The theoretical and practical contribution of this article lies in its integration of normative, conceptual, and empirical analysis to emphasize the need for verification of *mens rea* in all corruption cases, as well as the assertion of corrective mechanisms such as abolition as forms of justice when judicial failures occur. This article advances academic understanding and offers concrete recommendations for policymakers and practitioners to more effectively distinguish between administrative motive and criminal intent, and to enhance the capacity to prove mental elements in law enforcement.

As further implications, this research suggests developing more rigorous evidentiary instruments, encouraging multidisciplinary collaboration between law and psychology, and conducting comparative studies to further strengthen the position of *mens rea* as an indispensable requirement for criminal liability, especially within the context of corruption crimes in Indonesia.

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