



## The Human Face of Legal Error: A Critical Analysis of Error in Persona and Aberratio Ictus in Indonesian Criminal Justice

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**Abstract:** This research paper critically examines the doctrinal concepts of error in persona (mistake in the person) and aberratio ictus (mistake in the blow) within the framework of Indonesian substantive criminal law. While the Indonesian Criminal Code (KUHP) does not explicitly codify these Latin maxims, their underlying principles are deeply embedded in the fundamental distinction between intentional (*dolus*) and unintentional (*culpa*) acts. The paper argues that the current implicit treatment of these concepts creates a zone of legal uncertainty, forcing judges to navigate complex questions of culpability without clear statutory guidance. Through a human-centric lens, this research moves beyond dogmatic analysis to explore the real-world implications for victims, perpetrators, and the integrity of justice. Utilizing a normative juridical methodology supplemented by comparative legal analysis (drawing on the Netherlands, Germany, Italy, Spain, and the Philippines), the paper highlights how clarifying these concepts is not merely an academic exercise but a necessary step toward fulfilling the law's core objectives: justice, legal certainty, and fairness. The conclusion posits that explicit recognition or systematic jurisprudential development of error in persona and aberratio ictus would strengthen Indonesia's criminal justice system by providing a more nuanced and just framework for assessing moral blameworthiness in an imperfect world.

**Keywords:** *Aberratio Ictus, Indonesian Criminal Law (KUHP), Dolus vs. Culpa, Principle of Legality, Comparative Criminal Law, Legal Certainty, Moral Blameworthiness.*

### 1. Introduction:

#### The Imperfect Actor in a Precise Legal World

A man intends to kill his enemy, lying in wait in the darkness. When a figure approaches, he strikes—only to discover he has killed his enemy's innocent sibling, mistaken in the shadows. A woman, defending herself from an assailant, throws a heavy object; it misses the attacker but strikes and kills a bystander. These are not mere hypotheticals but represent the messy, tragic realities that criminal courts must confront. They sit at the intersection of human error, moral intent, and legal consequence, governed by the ancient

but elusive legal doctrines of *error in persona* and *aberratio ictus*.

Indonesian criminal law, rooted in the Dutch colonial *Wetboek van Strafrecht*, is built upon a logical structure of elements, acts, and intentions. Its foundational principle, *nullum delictum nulla poena sine praevia lege poenali* (no crime, no punishment without a pre-existing law), enshrined in Article 1 of the KUHP, is a bastion of legal certainty. It protects citizens from arbitrary state power. Yet, this very pursuit of certainty through codification can struggle to accommodate the infinite complexity of human action and mistake. The KUHP meticulously categorizes acts as intentional (*dolus*) or negligent (*culpa*),

but within the broad canopy of "intent," it remains silent on specific variants of mistake that profoundly affect our moral and legal judgement of an act.

This paper posits that the absence of explicit statutory guidance on *error in persona* and *aberratio ictus* creates a significant gap in Indonesia's legal architecture. It places a heavy, and often inconsistent, burden on judicial interpretation. The core research question is: **How does the implicit application of *error in persona* and *aberratio ictus* doctrines affect the achievement of substantive justice and legal certainty in Indonesia's criminal justice system, and what can be learned from comparative legal approaches?**

The urgency of this inquiry is not purely doctrinal. It is human. The resolution of such cases dictates whether a perpetrator is convicted of premeditated murder or a lesser homicide, with consequences spanning decades of imprisonment. It touches on the justice perceived by a victim's family—is the true intended murderer held accountable, or does the law see only the final, mistaken result? This research, therefore, aims to humanize these Latin terms by anchoring them in their consequences for real lives, arguing that a more transparent and coherent framework for handling these errors is essential for a legitimate and humane criminal law.

## 2. Theoretical Framework: Unpacking Intent, Mistake, and Culpability

To understand the specific doctrines, one must first navigate the philosophical and legal terrain of culpability. Indonesian law, following continental civil law tradition, distinguishes sharply between *dolus* (intent) and *culpa* (negligence). *Dolus* requires a "will directed at the violation of the law," encompassing both the desire to commit the act and the foresight of its consequences. *Culpa*, conversely, involves a blameworthy failure to exercise due care, where a harmful

result is foreseen but not desired, or where it *should have been* foreseen.

Within this dichotomy, *error in persona* and *aberratio ictus* are universally classified as sub-species of *dolus*, not *culpa*. This classification is crucial, as it speaks to the perpetrator's moral agency.

- **Error in Persona:** This is a mistake in the identity of the victim, but **not** in the intent to commit the crime. The will to kill, steal from, or assault a *human being* (a legally protected interest) is present and directed. The mistake is purely factual—which human being. As German jurisprudence articulates through the *Gleichwertigkeitstheorie* (theory of normative equivalence), if the actual victim holds the same legal-protected value as the intended victim (e.g., both have an equal right to life), the intent transfers. The perpetrator's guilty mind (*mens rea*) is fully engaged; they are not careless, but deliberately malicious, albeit misinformed.
- **Aberratio Ictus:** This is a mistake in the execution, not the target. The intent is correctly directed at Person A, but due to a factual error in aim, force, or circumstance, the harmful blow lands on Person B. Here, the legal analysis becomes more layered. The perpetrator still has *dolus* towards Person A (often punishable as an attempted crime against A). For Person B, the key question is whether the result was foreseeable. If the harm to B was a foreseeable consequence of the violent act directed at A, *dolus* may extend to B under the doctrine of *dolus generalis* (general intent) or transferred intent. If entirely unforeseeable and freakish, it may be treated as *culpa* regarding B, while retaining *dolus* for the attempt on A.

The table below summarizes the critical distinctions:

| Concept            | Core of the Mistake             | Object of Intent                       | Moral/Legal Quality   |
|--------------------|---------------------------------|--|---|
| Error in Persona   | Identity of the victim.         | A specific, but misidentified, person. | Full <i>dolus</i> remains. The intent to violate a protected legal interest (e.g., life) is complete and blameworthy.   |
| Aberratio Ictus    | Execution/mechanism of the act. | A correctly identified person (A).     | <i>Dolus</i> towards A. For the actual victim (B), liability depends on foreseeability ( <i>dolus eventualis</i> or <i>culpa</i> ). Complex layering of intent. |
| Culpa (Negligence) | Lack of due care.               | No specific unlawful intent.           | Blame lies in the failure to meet a standard of care, not in a will to do wrong.  |

The silence of the KUHP on these distinctions forces judges to perform this complex analysis under the generic headings of “intentional” and “unintentional,” potentially leading to inconsistent verdicts and sentences for factually similar cases.

2. Methodology:

Navigating Legal Sources

This research employs a **normative juridical method**, focusing on the systematic analysis of legal norms and doctrines. The approach is structured in three layers:

- Primary Legal Sources:** The principal source is the Indonesian Kitab Undang-Undang Hukum Pidana (KUHP), both the old code and relevant articles in the new National Criminal Code (KUHP Nasional). The analysis focuses on articles defining intentional and negligent acts (e.g., Articles 359, 188 of the old KUHP; relevant equivalents in the new code).
- Secondary Legal Sources:** This includes:
  - Doctrinal Literature:** Textbooks and academic commentaries by Indonesian

and international legal scholars on criminal law theory, culpability, and mistake.

- Scholarly Articles:** Analysis from Indonesian law journals discussing *mens rea*, *error in persona*, and comparative perspectives.
  - Legal Philosophy:** References to positivist and natural law theories to contextualize the debate on law’s function and the role of intent.
- Comparative Legal Analysis:** A crucial pillar of this research. By examining how other civil law jurisdictions handle these concepts, we can evaluate Indonesia’s implicit approach. This paper draws on the legal systems of:
    - The Netherlands:** The source of Indonesia’s KUHP, analyzed through landmark jurisprudence (e.g., *Hoornse Taart* case).
    - Germany:** For its sophisticated doctrinal

framework (StGB, *Gleichwertigkeitstheorie*).

- **Italy & Spain:** For examples of explicit codification (Italian Penal Code Articles 82, 83; Spanish Penal Code).
- **The Philippines:** For a Southeast Asian comparator with similar legal challenges and explicit codification in its Revised Penal Code.

This tripartite methodology allows for a deep, contextualized understanding that moves from black-letter law to philosophical justification and practical, global application.

#### 4. Analysis: The Indonesian Context and Its Human Implications

##### 4.1 The Current State: Implicit Doctrine and Judicial Burden

The Indonesian KUHP provides no explicit articles on *error in persona* or *aberratio ictus*. The entire edifice of liability rests on proving whether an act was intentional (*dolus*) or negligent (*culpa*) according to the specific elements of a crime. In practice, when cases involving mistaken identity or errant blows arise, judges and legal scholars must infer the applicable principles from general doctrines of intent.

This implicitness leads to several human and systemic challenges:

- **Inconsistency and Legal Uncertainty:** Without a statutory guide, different courts may weigh the factual mistake differently. One judge might treat an *error in persona* as not negating intent for murder, while another might reduce the charge, citing a “mistake of fact.” This violates the principle of legal certainty, a cornerstone of the rule of law. For the accused, the outcome becomes less predictable; for the public, the law seems arbitrary.

- **The Victim’s Perspective:** In *aberratio ictus*, consider the family of the bystander (B) killed. The perpetrator’s rage was aimed at A. Does this make B’s death “less intentional” or less tragic? The law must balance the perpetrator’s subjective intent with the objective reality of the harm caused. An implicit system struggles to communicate this balance, potentially leaving victims feeling their loss is legally minimized.
- **The Perpetrator’s Moral Blameworthiness:** The law’s purpose is not just to punish but to punish proportionately to guilt. The man who kills the wrong person in cold blood is, in a moral sense, a murderer. The one whose deflected bullet kills a child is in a different, though still terribly grave, moral category. The legal framework must be sensitive enough to reflect this spectrum within the category of homicide. An overly simplistic intentional/unintentional binary fails this test.

##### 4.2 Comparative Insights: Lessons from Abroad

The comparative analysis reveals a spectrum of approaches that underscore the viability of clarifying these doctrines:

- **The Netherlands (Jurisprudence-Driven):** As the source of Indonesia’s code, its Supreme Court’s steadfast application of *error in persona* as not negating *opzet* (intent) provides a direct, persuasive precedent. It demonstrates that a code can function without explicit articles, but only with a high degree of jurisprudential consistency and scholarly consensus.
- **Germany (Doctrinally Sophisticated):** The German *Gleichwertigkeitstheorie* offers a powerful intellectual tool. It shifts the question from “Did he intend to kill *this* person?” to “Did he intend to

violate the protected legal interest (life) that this person embodies?” This elegant principle justifies holding the perpetrator fully liable for murder, aligning legal outcome with moral blame.

- **Italy and Spain (Explicit Codification):** These jurisdictions show that clarity can be legislated. Italy’s Penal Code directly addresses both concepts. This removes judicial guesswork, enhances predictability, and guides legal education and practice from the outset.
- **The Philippines (Explicit in a Similar Context):** The Philippine Revised Penal Code’s Article 4 explicitly states that mistake in identity does not affect criminal liability. This is particularly instructive for Indonesia, as both countries share challenges in law enforcement and public legal understanding. It proves that explicit regulation is feasible and beneficial in a comparable legal and cultural environment.

The collective lesson is that whether through robust jurisprudence (Netherlands), refined doctrine (Germany), or explicit law (Italy, Spain, Philippines), successful legal systems find a way to make these distinctions clear and consistently applied.

## 5. Findings and Discussion: Toward a More Just Framework

The research leads to several key findings:

1. **Doctrinal Necessity:** *Error in persona* and *aberratio ictus* are not obscure academic concepts but practical necessities for any criminal justice system that aspires to assess subjective culpability accurately. Their current implicit status in Indonesia is a weakness.
2. **Justice vs. Certainty Tension:** The principle of legality prioritizes

certainty. However, a rigid application that ignores nuanced doctrines of intent can lead to *injustice*—where punishment does not match moral guilt. The law must find a balance.

3. **The Judicial Role:** In the absence of law, Indonesian judges are de facto required to act as legal philosophers in these cases, crafting solutions case-by-case. This grants them significant discretion, which can be a source of both wise adjudication and troubling inconsistency.
4. **Comparative Viability:** Other systems demonstrate multiple effective paths forward: developing a strong, consistent line of Supreme Court jurisprudence (*Mahkamah Agung*) inspired by Dutch and German models, or advocating for legislative clarification in future revisions of the KUHP Nasional, following Italian or Philippine examples.

The discussion therefore centers on *how* Indonesia should proceed. A purely jurisprudential path is less disruptive but requires a concerted effort by the Supreme Court to establish landmark rulings. A legislative path is more definitive but requires political will. Perhaps a hybrid approach is best: the Supreme Court should boldly affirm these doctrines in its rulings, building a body of case law that could later be codified.

Ultimately, this is about more than legal technique. It is about the law’s capacity to see the human story behind the crime. A system that can distinguish between killing the wrong person in a calculated attack and accidentally killing a bystander in a chaotic moment is a system that is more faithful to the complexities of human action and more deserving of public trust.

## 6. Conclusion and Recommendations

This research has argued that the concepts of *error in persona* and *aberratio ictus* represent critical, yet under-formalized, components of



a just Indonesian criminal law. Their current absorption into the broad categories of *dolus* and *culpa* obscures important distinctions in moral blameworthiness, risks inconsistent judicial outcomes, and undermines the very legal certainty the principle of legality seeks to uphold.

The law, as a living instrument of social order, must be capable of nuanced judgment. It must recognize that a wrongful intent, once unleashed into the world, retains its culpable character even when its factual coordinates are mistaken, and that the mechanics of a violent act can spread harm in ways that require layered legal assessment.

Therefore, this paper offers the following recommendations:

1. **For the Judiciary (Mahkamah Agung):** Proactively develop a coherent jurisprudence on these matters. Use concrete cases to establish that *error in persona* does not negate *dolus*, adopting reasoning similar to the German *Gleichwertigkeitstheorie*. For *aberratio ictus*, provide clear guidelines for distinguishing between results that are within the risk created by the intentional act (and thus intentional) and those that are truly freak accidents.
2. **For the Legislature:** Consider the explicit incorporation of principles related to mistake of fact regarding the victim's identity and errors in execution in future interpretive notes, elucidation of the KUHP Nasional, or in procedural law guidelines. The Philippine and Italian models provide clear, concise templates.
3. **For Legal Academia and Education:** Integrate detailed study of *error in persona* and *aberratio ictus* into the core criminal law curriculum. Foster scholarly debate and produce Indonesian-language commentaries

that demystify these concepts for students, lawyers, and judges.

By embracing a more explicit and sophisticated understanding of these errors, Indonesian criminal law can move closer to achieving its tripartite ideal: delivering justice that is certain, fair, and profoundly human. It can ensure that in the sober courtroom analysis of a tragedy, the full measure of intent, mistake, and consequence is never lost.

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