

The Relevance of Double Effect Doctrine in The Perspective of Criminal Law Causality Doctrine: A Rebuttal to The Concept Of *Conditio Sine Qua Non*

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Abstract

The focus of this study is to integrate ethical considerations into the analysis of causality in criminal law, thus offering fresh insights into intricate cases with moral dimensions. Despite its significance, the practical implications of this research are restricted and necessitate additional empirical validation. This research explores and analyzes how the doctrine of causality, particularly the concept of *Conditio Sine Qua Non*, and the doctrine of double effect interact and influence the determination of responsibility in criminal law. Using the normative-dogmatic research method, this study systematically analyzes applicable legal rules without empirical data, emphasizing the qualitative application of legal and philosophical principles. The research uses a literature review as the primary data collection tool, examining legal philosophy books, academic journals, and professional publications to draw relevant conclusions. The results indicate that *Conditio Sine Qua Non*, which focuses on objective causation, needs to be revised for cases involving complex ethical considerations. In contrast, the double effect doctrine introduces an ethical dimension to causality judgments, justifying actions that produce unintended but unavoidable adverse consequences as a side effect of a good goal. The findings suggest that an integrative approach combining both doctrines may lead to a more balanced and comprehensive understanding of criminal liability.

Keywords: *Conditio Sine Qua Non* Concept; Double Effect Doctrine; Criminal Law; Causality Doctrine

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Introduction

Causality in criminal law is essential (Aires de Sousa, 2022; Ryu, 1957). Causality refers to the relationship between cause and effect, which criminal law uses to analyze acts and their effects on victims or society. It serves as a fundamental principle in determining guilt and the appropriate legal consequences of an act (Brożek & Kucharzyk, 2022; Cupido, 2021). For example, the doctrine of causation plays an essential role in determining which act was the cause of a person's death. This principle assists law enforcement agencies and judges investigate criminal events by determining which acts directly or indirectly led to the death (Anderson, 1938; Leavens, 1988). The principle of causality is used to explain and describe the relationship between the actions of the offender and the consequences, in this case, the death of the victim. Through the doctrine of causality, criminal law can provide proportional and fair accountability for offenders. This assists law enforcement in determining degrees of culpability, formulating charges, and planning defense or prosecution strategies (Jauhani & Pratiwi, 2023; Sofian, 2018; Susanto, 2021).

One of the concepts in the doctrine of causation is the *Conditio Sine Qua Non* (Muhdar & Apriyani, 2020; Sofian, 2018). This is a popular concept in the civil law family of laws and is equivalent to the but-for-test in the common law family of laws. *Conditio Sine*

Qua Non refers to the conditions that cause an effect, such as damage, death, or loss. On the other hand, the but-for test starts by asking whether an effect such as damage, loss, or death would have occurred without the tort. If the answer is negative, there is a causal link between the act and the outcome; if the answer is positive, there is no causal link (Sofian, 2018). The *Conditio Sine Qua Non*-concept outlines that a person who commits an unlawful act is liable if the act is an absolute condition that causes harm (Hiariej, 2016). This means that the act is considered to cause an adverse change if all the conditions must exist for the effect to occur have been met. As an illustration, we can look at the case of *Rex v Sounder* in 1578. In this case, a man, B, planned to kill his wife because he wanted to marry another woman. B was advised by A to poison his wife with an apple. Although A was not present, B did as he was told. Unfortunately, his wife gave the apple to her son, who died after eating it. The court acquitted A because A's advice was to kill B's wife, not his child. This case emphasizes that even when a suggestion to commit murder is made, the suggestion must have a causal connection with the outcome.

This research aims to analyze the relevance of the doctrine of double effect in the context of the doctrine of *Conditio Sine Qua Non*-causality in law. The main objective is to gain a deeper understanding of how these two concepts interact and impact the formation and application of criminal law. Furthermore, this research aims to show how the double effect doctrine can provide a more comprehensive interpretation in determining causal relationships in criminal cases. In principle, the doctrine of *Conditio Sine Qua Non*-causality is often the basis for determining the existence of a causal relationship in a criminal act. However, this concept has limitations, especially in cases involving multiple causes or unexpected consequences. On the other hand, the double effect doctrine, which is rooted in moral philosophy, can provide a deeper and more ethical perspective in assessing the consequences of an act. Thus, this research seeks to link the two concepts in the criminal law context. The hope is to create a more holistic and just view of determining legal responsibility. This research aims to contribute to the theoretical and practical understanding of the relationship between the doctrine of causation and the doctrine of double effect.

Existing research has often focused on applying *Conditio Sine Qua Non* in specific criminal cases without emphasizing the interaction between the doctrine of *Conditio Sine Qua Non* and ethical principles, such as those found in the double effect doctrine. While the concept of *Conditio Sine Qua Non* has been extensively explained in the legal literature, its application in cases involving complex moral considerations still needs to be explored. This represents a significant research gap where an in-depth analysis of how the double effect doctrine affects the determination of fault and liability in criminal law could provide a new perspective. Furthermore, there is a need to explore how ethical approaches can modify or complement traditional interpretations of causality in criminal justice determinations. Therefore, this research identifies the need to integrate existing theories of causality with ethical considerations, which will lead to a fuller understanding and richer nuances in criminal law practice. This research gap provides an opportunity for future research to contribute to academic discourse and the development of legal practice.

This research makes a significant theoretical contribution by integrating the doctrine of causality and the ethical principle of double effect in criminal law, which offers a new perspective in determining criminal responsibility. The deepened understanding of the conditionality of conduct and consequences within an ethical framework challenges traditional limitations and provides insights for a more comprehensive and just interpretation. In practical terms, the results of this research enable legal practitioners to consider ethical factors when formulating charges or defenses, adding a new dimension to criminal justice procedures that often focus solely on strict cause-and-effect relationships without considering unforeseen consequences. It also opens up possibilities for criminal law reform that includes

ethical considerations as mitigating or aggravating factors in sentencing. Furthermore, this research suggests that applying the double effect doctrine in criminal law can reduce the occurrence of disproportionate legal decisions by recognizing the importance of the intention behind the act. As such, this contribution enriches the academic repertoire and can potentially improve the fairness and effectiveness of the criminal justice system. The research problem can be better explained as follows: Initially, comprehending the concept of causality in criminal law, primarily evaluating how this principle determines the causal connection between criminal acts and their outcomes. To examine and contrast the functions and outcomes of the Double Effect Doctrine and the concept of *Conditio Sine Qua Non* in the criminal law context, evaluating their interplay and influence on the determination of legal culpability. Thirdly, this study explores the impact of a perpetrator's intent on the implementation of the causality doctrine in criminal cases, specifically in scenarios where the negative consequences of their actions may not have been entirely foreseeable or intended.

Research Methods

This study's normative-dogmatic legal research method emphasizes the systematic analysis of applicable legal rules to provide legal solutions to the problems identified. This approach is based on deduction from existing positive legal norms (Sopian, 2023), avoids the need for empirical data collection, and favors a juridical-technical framework (Purwati, 2020; Rifa'i, 2023). In this case, the research focuses on extracting the meaning and in-depth understanding of the relationship between the doctrine of *Conditio Sine Qua Non*-causation and the doctrine of double effect. The data collection process was conducted through a literature review, which involved searching and analyzing relevant documents, including books on legal philosophy, academic journals, and expert writings in the field (Sukarmanto, 2023). With this approach, the research aims to provide a comprehensive and in-depth picture of the relationship between the *Conditio Sine Qua Non*-doctrine and the double effect doctrine in a legal context.

Results And Discussion

The Doctrine of Causality in Criminal Law

The doctrine of causality in criminal law is a concept that focuses on the relationship between cause and effect in a criminal offense (Sofian, 2018). This concept is essential in determining the extent to which specific actions can be considered the cause of the consequences (Chazawi, 2002). Causality in the context of criminal law involves essential questions such as who can be considered the 'cause' of the outcome of a criminal offense. The answer to this question is closely related to whether there is a causal relationship between the perpetrator's actions and the crime's outcome (Nizar & Sabardi, 2019). This concept is used to determine which action, out of a series of actions, is considered to be the cause of an undesirable outcome. In the context of criminal law, the focus is on what meaning can be given to the concept of causality to answer the question of who can be held accountable (Sofian, 2018).

Unlike the natural sciences, which consider causality in general terms, the law considers causality in particular terms. The law considers whether A caused the fire and whether A caused the fire on B's property (Sofian, 2015). In this context, the criminal law doctrine of causation provides a lens through which to examine and determine the extent to which individuals should be held responsible for their actions. However, it is also essential to understand that this concept of causality in criminal law is not simple and is often complicated. In some cases, it can be challenging to determine the extent to which an act is a direct cause of a particular effect, which in turn can complicate the process of determining legal responsibility (Kalensang, 2016).

Von Buri is the man who introduced the concept of *Conditio Sine Qua Non* in causality. This concept emphasises that every condition in a sequence that triggers an effect must be treated equally and cannot be removed without changing the end result. This means that in the context of causality, there is no distinction between conditions and causes, opening the door to various tenets in causality. In the concept of *Conditio Sine Qua Non*, various actions such as shooting, beating, wrong diagnosis, and inattention in cleaning the wound are a series of causes that together produce an effect. If one of the causes is removed, the effect will not occur. This teaching does not prioritise which cause has the most influence on the final outcome, so all causes are treated equally. According to this concept, every condition that contributes to the occurrence of an effect should be viewed equally and cannot be eliminated from the process of the effect occurring. If one condition is missing, the process will be disrupted and the effect will not occur. For example, if A plans to kill B by shooting, but A panics and runs away after shooting B, then B is found by C who also plans to kill B, and afterwards B is given the wrong treatment by doctor D, then all these become a series of causes that lead to B's death.

However, the broad scope of von Buri's teaching in finding the cause of an effect has given rise to other theories that try to limit and filter what should be considered in an action. In this context, Jan Remmelink identifies three teachings that emerged after von Buri's teaching: the teaching of individualization or *causa proxima* testing, the teaching of relevance, and the teaching of sufficiency. In contrast, Moeljatno argues that four doctrines emerged after von Buri's: generalization, individualization, objective *nachtragliche prognose*, and relevance doctrines. E. Utrech and Satochid Kartanegara divide the teachings after von Buri into individualizing and generalizing.

Double Effect Doctrine vs Conditio Sine Qua Non Concept

In everyday life, every human action inevitably has consequences. The common assumption is that people are not responsible for unforeseen or unpredictable consequences of their actions. For example, A gives B a plane ticket for a holiday in Bali. Unfortunately, while in Bali, B is involved in an accident and dies. B's death can be said to be a consequence of A's gift. But should A be held responsible for B's death? In a moral context, A should not be held responsible for B's death because B's death was an unintended consequence of A's gift-giving. In some situations, there are consequences of our actions for which we are not morally responsible. But what about predictable consequences? Let us take an example from the case of self-defense. A is a robber who robs B's house. A endangers B and his family, so B shoots A with a gun, and A eventually dies. Is B guilty of A's death? Should B be morally responsible for A's death? A's death is a predictable consequence of B's actions. If we assume that B is innocent and not morally responsible for A's death, then we can say that not all predictable consequences are the responsibility of the perpetrator.

Thomas Aquinas's doctrine of double effect distinguishes between two types of foreseeable consequence: the first is the intended foreseeable consequence, and the second is the foreseeable but unintended foreseeable consequence. Aquinas argued that actions initially intended to have a good end but also unintended bad consequences are ethically acceptable. He argued that such actions can be justified if they meet four conditions. First, the action must be directed towards a good end or following virtue. Second, the unintended bad consequences must be seen as side effects or inevitable consequences of the action. Third, achieving the good goal must outweigh the unintended bad consequences. Fourth, the action must satisfy the principle of proportionality, i.e., the unintended bad consequences must be proportional to or less than the good goal to be achieved.

According to Aquinas, in some situations, we are allowed to perform actions that we know will have bad consequences as long as those bad consequences are not the purpose of

our actions. The example of self-defense given earlier illustrates this. B is not considered guilty of A's death, even though he knows that his act of shooting A could lead to A's death. This is because B's purpose in shooting A was not to kill A but to protect his own family. A's death was an unintended but foreseeable consequence. This does not mean that we are free from responsibility for all unintended but foreseeable consequences. For example, if A does not endanger the lives of B's family members, and B nevertheless decides to shoot A, then B is still morally culpable because B used excessive force. Therefore, we must be careful in our actions and consider all possible consequences, both intended and unintended.

According to Aquinas, the doctrine of double effect can be applied in various contexts, including medical ethics, end-of-life decisions, and even in the context of war. A common example is when a doctor administers painkillers to a patient suffering from a terminal illness, knowing that the drugs may hasten the patient's death. Aquinas would argue that in this situation, the doctor does not intend to cause the patient's death but only to relieve intolerable suffering. The negative consequence of unintended death is an unavoidable side effect. However, the act may be justified because the good intention is to relieve the patient's severe suffering. However, it is essential to note that applying the double effect doctrine is subject to controversy. Some critics argue that the principle has limitations and may not be able to account for all real-world cases. They argue that the wider context, such as the norms and conventions of medical practice or war, should also be considered in determining an action's ethical validity. Therefore, while Aquinas' view of the doctrine of double effect provides a strong theoretical foundation, it cannot be the sole guide for making ethical decisions in different contexts.

The doctrine of double effect and the concept of *Conditio Sine Qua Non* are two concepts that guide our understanding of moral and legal responsibility for the consequences of our actions. Both speak to how and when we should consider the consequences of our actions when deciding whether an action is morally or legally acceptable. The doctrine of double effect, which originated in the moral thought of Thomas Aquinas, holds that in some cases, actions with bad consequences can be ethically justified if the bad consequences are not the purpose of the action but merely an unavoidable side effect of pursuing a good end. This concept has considerable relevance in legal and ethical contexts, mainly when individuals or institutions must make decisions that have foreseeable negative consequences. The doctrine of double effect facilitates the moral and legal evaluation of such actions by providing a framework for assessing whether such adverse consequences are acceptable in the context of a better end.

The concept of *Conditio Sine Qua Non* in law attempts to determine the causal relationship between an act and its outcome. In criminal law, this concept is crucial for determining liability for the adverse outcomes of specific actions. If an act is seen as a condition without which a consequence will not occur, then there is a causal relationship, and it can be determined that the act is responsible for the consequence. The relevance of this concept lies in its ability to provide a legal basis for determining liability for the adverse consequences of specific actions. Although coming from different areas of philosophy and law, the two concepts provide an essential framework for understanding how liability for consequences can be determined. The doctrine of double effect helps us understand how actions with predictable adverse consequences can be justified in some cases, while the concept of *Conditio Sine Qua Non* helps determine the causal relationship between actions and their outcomes.

The concept of *Conditio Sine Qua Non* and the doctrine of double effect, although both address responsibility for consequences, have some fundamental differences that can lead to incompatibility in finding who should be responsible for an outcome. Firstly, *Conditio Sine Qua Non* in criminal law focuses on the causal relationship between an act and its outcome. If

an act is seen as a condition without which a consequence will not occur, then the act is held responsible for that consequence. In this context, emphasis is placed on facts and causation and does not consider the intention or purpose of the act. In contrast, the double effect doctrine considers the intention or purpose of the act. According to this doctrine, actions with bad consequences can be ethically justified if the bad consequences are not the purpose of the action but merely an unavoidable side effect of pursuing a good end. In this context, emphasis is placed on the purpose and intent of the action, not just on the causal relationship between the action and its consequences.

The discrepancy between these two approaches can be seen when specific actions have predictable adverse consequences but are not intended by the perpetrator. For example, a doctor administers painkillers to a patient suffering from a terminal illness, knowing that the drugs may hasten the patient's death. According to the double effect doctrine, the doctor may be ethically justified because the doctor's primary goal is to relieve the patient's suffering, not to hasten the patient's death. On the other hand, based on the concept of *Conditio Sine Qua Non*, the doctor can be held responsible for the patient's death because his actions hastened the patient's death. In other words, these two concepts can lead to different judgments about who should be held responsible for an outcome.

Intention in the Doctrine of Causality

The application of the double effect doctrine in the teaching of causality in criminal law can provide deeper insights and nuances in determining responsibility for the consequences of an act. Firstly, the double effect doctrine introduces the important element of intent or purpose in causal analysis. In criminal law, intent and purpose are often key factors in determining liability and punishment. By considering the intent and purpose of an act, not just the outcome, the double effect doctrine helps to provide a more comprehensive and fair picture of the situation. Secondly, the double effect doctrine offers a framework for navigating complex and difficult ethical situations where essentially good actions have unavoidable bad consequences. In criminal law, individuals often must make difficult decisions under pressure or in non-ideal situations. The double effect doctrine provides a foundation for considering and justifying actions in these contexts by recognizing that bad consequences are acceptable in certain circumstances if they are a by-product of trying to achieve a good goal. Applying the double effect doctrine in teaching causality in criminal law can help maintain a balance between justice and compassion. In some cases, strict application of the causality doctrine may lead to unfair or excessive punishment, especially when the offender did not intend the adverse consequences of the act. By considering the intent and purpose of the act and the context and nature of the consequences, the doctrine of double effect can help achieve greater justice and avoid disproportionate punishment.

In particular, applying the double effect doctrine in the *Conditio Sine Qua Non*-approach can help bridge the gap between theory and practice in determining cause and effect. In real-life situations, well-intentioned actions often result in unintended bad consequences. A strict *Conditio Sine Qua Non*-approach may lead to an unfair understanding of responsibility for such outcomes, as it needs to include essential nuances such as intent and context. Through the doctrine of double effect, we can achieve a fairer and more realistic understanding of responsibility for the consequences of actions. In some cases, a strict application of the *Conditio Sine Qua Non*-concept may result in unfair or disproportionate judgments, especially if the perpetrator did not intend the adverse consequences of the act. Considering the act's intention and purpose and the consequences' context and nature, the doctrine of double effect can help realize a fairer and more proportionate judgment.

The opinion of Moeljatno, a leading figure in Indonesian criminal law, reflects a deep understanding of the complexity of establishing causation in criminal law. His thoughts,

which emphasize the importance of considering 'all matters and circumstances' both before and after the act, are in line with the concept of *Conditio Sine Qua Non*, which holds that if a condition is a necessary condition for a result, then the condition is considered to be the cause of the result. In this context, Moeljatno seeks a more holistic approach that includes factors the traditional approach may overlook. However, Moeljatno also believes that not all conditions that precede an outcome should be considered as causes of that outcome. He argues that only 'important factors' should be considered as causes. In this respect, Moeljatno's thinking resembles elements of the double effect doctrine, which distinguishes between an action's intended and unintended consequences.

Moeljatno also emphasized that the determination of cause and effect should be based on 'reason and logic achieved by objective science,' reflecting the principles of empiricism and rationality also contained in the concept of *Conditio Sine Qua Non*. However, he also considers the context and circumstances of the victim after the effect has occurred, again showing similarities with the double effect doctrine. Furthermore, Moeljatno emphasized that the 'cause' may consist of more than one act or event. This underlines the importance of considering the various factors contributing to an outcome rather than just the most obvious or direct cause. This approach broadens the scope of causal analysis and is consistent with the concept of *Conditio Sine Qua Non* and the doctrine of double effect. Although Moeljatno does not explicitly refer to the double effect doctrine or the concept of *Conditio Sine Qua Non*, his thinking covers many important aspects of both concepts. His thinking shows how combining elements from different theories and approaches can provide a richer and fairer understanding of causation in criminal law.

Conclusion

Based on the analysis results in this study, the double effect doctrine has significant relevance in the context of the *Conditio Sine Qua Non*-causality doctrine. The double effect doctrine, focusing on morality and ethics, provides a richer and more multidimensional interpretive lens for determining the causality of a criminal act. It allows for a broader assessment of the consequences of an act, which may include a variety of unforeseen causes and effects, not just the direct causes identified by the doctrine of causation. However, these two concepts are not mutually exclusive but complementary in criminal law analysis. The doctrine of *Conditio Sine Qua Non*-causation continues to serve as the basis for establishing causal relationships. In contrast, the doctrine of double effect can provide additional nuance in assessing the complexity of criminal cases. The results of this study show that an integrative approach combining these two concepts can provide a fairer and more balanced assessment in determining legal liability. Overall, this research provides new insights into how the double effect doctrine can be applied in the context of the causation doctrine and how combining the two can enrich our understanding of criminal law. Furthermore, it is hoped that these findings will serve as a starting point for further research exploring the relationship between ethics, law, and criminal liability.

This research makes an important contribution to understanding the interaction between the doctrine of causality and the doctrine of double effect in criminal law, which has been unexplored to date. The research has opened a new discourse on applying ethical principles in determining fault and criminal responsibility by exploring these two doctrines. This contribution is important because it offers a different perspective from traditional approaches, which may be too narrow in considering the complexity of causality in criminal cases. However, due to its focus, this research has limitations, which may not cover all relevant variables in complex criminal cases. In addition, as it is based on a literature review, this research may need to fully illustrate the practical application of this doctrine in actual legal proceedings. By limiting its scope to the existing literature, this research may not have

considered recent changes in legal practice or interpretations of the doctrines. Therefore, the results should be considered informative but not definitive and require further validation through empirical research and case studies.

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