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Analysis of the Elements of The Theory of Crime
Analisis De Los Elementos De La Teoria Del Delito

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Abstract

This article aims to analyze the elements of the theory of crime, as its structure and the doctrinal categories that comprise it are sometimes confused or unknown. It is necessary to clarify and detail each of the characteristics, requirements, and approaches to each of them through the analysis of legal doctrine in this regard, in accordance with the regulations provided in the Ecuadorian legal system. It is explained in a way that is understandable for those who are beginning the study and practice of criminal law, hoping it will serve as a guide and a tool for working with specific cases. This research is framed within a qualitative approach, and methods such as legal hermeneutics, analytical-synthetic method, and inductive-deductive method were used. The instruments used in this study include legal doctrine and current regulations. As for the approach used, it is qualitative in nature since it is based on the main characteristics of a studied phenomenon, aiming to understand its components to explain its primary features. One of the main conclusions of the research is the existence of four basic interrelated components of the theory of crime, each derived from the other.
***Keywords**: Elements, Theory of Crime, Criminal Law, Causal System, Finalist System.*

Resumen

El presente artículo tiene como objetivo general, analizar los elementos de la teoría del delito, ya que en ocasiones se confunde o desconoce la estructura de la teoría y cuáles son las categorías dogmáticas que la conforman. Por ello se hace necesario clarificar detallando cada una de las características, requisitos y enfoques que se da a cada uno de ellos mediante el análisis de la dogmática jurídica que al respecto existe, en concordancia con la normativa prevista en el ordenamiento jurídico ecuatoriano. Se explica de tal forma que sea comprensible para quienes se encuentran empezando el estudio y práctica del derecho penal, esperando que sea una guía y herramienta de trabajo utilizada para la adecuación a los casos concretos. En La presente investigación se enmarca en un enfoque cualitativo a su vez se hizo uso de métodos como la hermenéutica jurídica, el método analítico sintético y el método inductivo deductivo con respecto a los instrumentos que se utilizaron se distinguen la doctrina y normativa vigente. En cuanto al enfoque utilizado es de tipo cualitativo, ya que se basa en las características principales de un fenómeno de estudio, intentando comprender los componentes de este, para así explicar cuáles son sus principales rasgos. Se indica que una de las conclusiones principales que arrojó la investigación es la existencia de cuatro componentes básicos de la teoría del delito entrelazados y derivados unos de otros.

***Palabras Clave**: Elementos, Teoría Del Delito, Derecho Penal, Sistema Causalista, Sistema Finalista.*

Introduction

The importance of this research lies in the analysis of the elements of the theory of crime that serve as the basis for the application or non-application of penalties for criminal offenses. The goal is to prevent

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confusion and misunderstanding, especially for those who are entering the field of criminal law. The idea is to provide a basic template in which they can adapt criminal offenses and even form an idea of the various solutions that can be applied to the cases presented.

It is not a popular misconception that, due to the current situation in the country resulting from various causes such as social, political, economic, educational, cultural, and many others, all kinds of infractions, including crimes and misdemeanors, have proliferated. Legal professionals, in their efforts to defend the affected users in the practice of their profession, undertake the difficult mission of assisting them without considering the possible complexities that may arise as the investigation progresses, causing unease about the possible outcome, an effect produced by the lack of clarity in the information obtained.

While much is said about the preparation that candidates for legal professionals should receive in university classrooms so that, upon completing their undergraduate studies, they are fully prepared to take on the challenge of representing clients in their required legal areas, it is worth noting that despite the great efforts of higher education institutions to graduate professionals with a solid understanding of all areas of law, comprehensively covering the field of criminal law is complex. This is because it requires special study. Therefore, there is a need to collaborate with this study material by synthesizing, harmonizing, and grouping the dogmatic categories of the crime into a format that facilitates their application, as will be developed in this article.

So, the focus of this scientific article's study object is to examine the elements that make up the theory of crime given the lack of practical exemplification of the need for its existence. In this sense, the general objective is to analyze the elements of the theory of crime. It also aims to encompass all these elements in a single format to facilitate the application of criminal law.

As Ecuadorian criminal specialist Pablo Encalada Hidalgo (2014) expresses, the theory of crime is a system of filters, a methodological proposal that allows us to determine how criminal law is applied in a specific case. Furthermore, it is essential to emphasize that the elements that make up this legal theory vary depending on the system that analyzes them, with the causal and finalist systems being the most prominent.

Briefly, the theory is presented according to each system to understand the dogmatic categories that appear in each of them. The causal system emerged at the end of the 19th century, adapting the theory of crime to the emergence of experimental sciences of the time, which means it resorts to controlled situations in which the outcome is not known. This system advocates that the existence of a cause leads to a result, that is, a cause-and-effect relationship where the cause must be proven to assign responsibility for the resulting harm to a legally protected interest. It does not analyze the voluntariness in the action or the purpose behind it.

In contrast, the finalist system of action, which emerged in the mid-20th century, analyzes the purpose of a person's conduct, and what "intention" led them to commit an offense, which can be to cause harm or that the harm was unintentional. In the latter case, a problem arises because the purpose appears entirely disconnected from the resulting harm. To try to complete this idea, the social theory of action appears, explaining that in intentional actions, it is devalued for what has been done, whereas in reckless actions and omissions, it is devalued for what should have been done (Barrado, 2018).

In light of this background, it is necessary to ask, what are the elements that must be analyzed? Regardless of the theory adopted by a legal framework, there are basic categories that must be considered in legal practice and applied in a general manner.

Line of Research

Challenges, perspectives, and improvement of legal sciences in Ecuador.

Materials and Methods

This research falls within a qualitative approach using methods such as legal hermeneutics, analytical-synthetic method, and inductive-deductive method. The instruments used include legal doctrine and government sources. As mentioned earlier, the approach employed is qualitative, based on the main characteristics of a studied phenomenon, understanding its components to explain its main features.

According to Fabio Anselmo Sánchez Flores, it is defined as:

Research under the qualitative approach is based on evidence that is more oriented towards the in-depth description of the phenomenon to understand and explain it through the application of methods and techniques derived from its concepts and epistemic foundations. (Flowers, 2019)

The author Andrés Rodríguez in his work titled "Scientific Methods of Inquiry and Knowledge Construction" in the year 2017, states that "*Analysis is a logical procedure that allows mentally breaking down a whole into its parts and qualities, into its multiple relationships, properties, and components. It enables the study of the behavior of each part.*" (Jiménez, 2017, page 186)

The Analytical-Synthetic Method used, allows for the analysis and synthesis of the specific part of the theory of the offense related to the subject that is the object of study, such as the analysis of the elements of the theory of the offense, which serves as a "tool" used by the legal expert to solve, based on that system, the specific problems posed by the application of specific offenses.

Regarding legal hermeneutics, Javier Hernández Manríquez in his work titled "Notions of Hermeneutics and Legal Interpretation" published in 2019, explains that "*Legal hermeneutics, through its interpretive exercise, constitutes a useful tool, located between the moment of the creation and the application of the legal norm.*" (Manriquez, 2019, p. 4).

Legal hermeneutics is used in this research to achieve the proposed objectives, employing it to support the study of rules and mechanisms used in the interpretation of texts, such as the review and analysis of Ecuadorian legal regulations.

As for the inductive-deductive method, it should be noted that Andrés Rodríguez Jiménez explains:

Induction and deduction complement each other: through induction, generalizations are established from what is common in various cases, and then, based on that generalization, several logical conclusions are deduced. Through induction, these conclusions are translated into enriched generalizations, forming a dialectical unity. In this way, the use of the inductive-deductive method has much potential as a method of constructing knowledge at a primary level, related to external regularities of the research object. (Jiménez, 2017, page 12)

The inductive and deductive method allows for the formation of a generalization of premises, where they contribute to the research by enabling the structure of syllogisms to analyze and synthesize the issues from a general perspective.

Results

The theory of crime consists of studying systematically what we should understand as a crime, obtaining the following results:

a) The **conduct**:
It must be voluntary to produce legal effects.
Actions that are prohibited generate action behaviors.
Actions that are ordered generate omission behaviors; The Omission can be:

1. Proper, previously categorized as such.
2. Improper, must meet the following requirements:

- Obligation to act
- Result
- Causal relationship (guard)

When the conduct is not voluntary, it is known as the causes of the absence of an act, and they are as follows:

- Nature Facts
- World of the internal
- States of unconsciousness
- Irresistible physical strength
- Acts of legal entities

b) **TIPICA** must be previously described by criminal types

Contains the following elements:

1. Objective elements of the type, which are:

- An active subject is a person who commits a crime that can be qualified or unqualified.
- A passive subject is the one who receives it, the victim.
- Governing verb on which the criminal offense revolves.
- Object: material and legal
- Normative elements of the type
- Valuative elements of the type
- Other circumstances

2. Subjective elements of the type: Deceit and guilt

Direct fraud. - Knows and voluntarily performs the behavior

Indirect fraud. - Knows the illicit conduct, although he does not want to do it, he does it, knowledge prevails over will.

Eventual fraud. - There is no certainty of the consequences, but the individual accepts and performs the conduct.

Guilt. – Consists of exceeding the permitted legal risk
Requirements:

- Violation of the objective duty of care.
- Typical result.
- Causal relationship between the violation of the objective duty of care and the result.
- It is based on the Principle of Legality because there is criminal liability only when the law expressly provides for it.

3. Negative elements of typicality

TYPE ERROR is the lack of knowledge about one of the objective elements of the type that affects the will, that is, it affects fraud, but guilt persists if the culpable modality is typified, it can be:

Vincible: lessens the penalty because it can be avoided.

Invincible: eliminates the typicality because there would be no possibility of defeating the crime.

c) ANTI-LEGAL is conduct contrary to law
Components:

- Formal: established by law
- Material: caused damage duly proven in law

CAUSES OF JUSTIFICATION. - Despite being a voluntary conduct that generates legal effects, classified as a crime and illegal, it does not receive a sanction because the person acted in a position of one of the following causes:

Self-defense
State of necessity
Legitimate order from competent authority
Law enforcement
Exercise of a lawful activity
Victim consent
d) GUILTY. - A typical and illegal act is an unjust criminal act that deserves criminal reproach.
Requirements:
Culpability: When a person understands the conduct and acts without respecting the law.
As an exception, the causes of non-culpability appear:

- Psychological immaturity < 18 years
- Mental disorder at the time of committing the act
- Ignorance of the illegality of acting – Error of invincible prohibition

Discussion

From previous lines, it is determined that the first dogmatic category to appear from the finalist system is the act. Therefore, if there is no act, there is no relevance in criminal law. However, this element contains not only positive action but also omissive action.

Muñoz Conde states that it is an independent and aprioristic element with respect to the other elements of the crime. It is the basic requirement for the existence of the other elements of the crime, and its absence excludes the evaluation of subsequent elements. Justifiably, some authors consider that it is the conduct, action, or act that contains the elements as typical, unlawful, and blameworthy.

If the act, as a dogmatic category, is a pre-legal concept or the noun that will be modified by the remaining dogmatic categories, the act must be neutral regarding typicality, unlawfulness, and culpability (Claus Roxin, 1997).

The same Ecuadorian criminal legislation in Article 18 states that a criminal offense is a typical, unlawful, and blameworthy conduct whose sanction is provided in the same, alluding that the elements of the offense are derived from human behavior.

From these conceptualizations, there is an important fact to extract, the subject of this research. It is that, in a general, combined, and conclusive way, four dogmatic categories must exist to determine a person's responsibility for a crime: conduct, typicality, unlawfulness, and culpability.

Action or conduct is the externalization of human will as a result of prior thought that materializes in reality. It does not necessarily require the person's freedom, and in fact, if freedom is lacking, it violates the element of culpability (Barrado, 2018).

Typicality: the executed action must be legally punishable; it concerns the typicality of the action

described through criminal offenses.

Then, the criminal relevance of the action must be assessed, and it must be determined whether it fits into a potential crime. The criminal offense must comply with the principle of legality.

The criminal type serves a motivating function by indicating to citizens which actions are legally prohibited, urging them to refrain from such behaviors. Laws formulate types using different techniques of prohibition, leading to different typical structures. The conflicts and the consequent field of conduct prohibition can be carried out by individualizing the conduct either based on the purpose intended by the agent, in which case a fraudulent type is present or by specifying the prohibited action based on it being performed incorrectly in relation to the objective duty of care, resulting in a negligent type. Similarly, the type can refer to the prohibited conduct, thus causing an active type, or it can refer to the required conduct, resulting in an omission type of conduct. (Barrado, 2018, page 5)

Illegality.- For the conduct of a human being to be criminal, it must contravene the law, that is, it must be formally and materially illegal, the formal one is that which violates the law, and the material one is antisocial behavior. Therefore, material illegality without formal illegality has no relevance to the law.

Based on the principle of legality and legal certainty, only typical illegal behaviors have criminal legal sanctions.

The consequences of clearly identifying or differentiating type and illegality are reflected in the theory of error (type error and prohibition error).

d) Culpability. - Acts as blameworthiness of a typical and illegal act, committed by a person in a specific situation, who may have behaved differently.

Conclusions

The elements of the theory of the offense, also referred to as the dogmatic categories of the offense, conclusively are the typical, unlawful, and blameworthy act, which, according to the analysis conducted, cannot exist independently from one another as they act systematically, each one stemming from the other.

The research, based on bibliographical analysis, provides a template for the adaptation of each case presented for resolution, with each of the categories meticulously detailed along with the necessary elements and requirements for their understanding.

Through the methods used in the study, the four elements of a complex understanding of criminal law have been synthesized to provide an effective tool for professionals beginning their journey in the boundless realm of law.

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