ABSTRACT

Criminal responsibility is an valuation after its proven criminal act to determine whether an actor is liable or not for the criminal act conducted. This is on the elements of: 1. The unlawfulness which is not as an element of a crimal act, 2. The fault that is not as the element of a criminal act, 3. The absence of justification, and 4. The absence of ground for exculpation, 5. The ability to take responsibility.

The unlawfulness as the element of the criminal responsibility is evaluated in accordance with the existence of a legal interest to be protected, violated by the actors, thus classified as blameworty acts. While that of fault is evaluated with the purpose of legal norm establishment by legislators meaning that actors ought to be disgraced or not, hence classified as normative. Such purpose can be derived from moral, social, and ethical norms, that have been formed into a legal norm with teleological valuation.

The unlawfulness and faults in the formulation of criminal acts is the main element. This is not as a constitutive element in such formulation, so it is not always stated explicitly in the formulation. When one of the elements of criminal acts is not fulfilled, it will result in not guilty (vrijspraak).

The ground for justification does not depend on the explicit inclusion of elements of the unlawfulness in the formulation of criminal acts. The ground for exculpation does not depend on the inclusion of faults form (intentional and culpabilty) in the formulation. When the judge evaluates the unlawfulness as the element for criminal responsibility, the crime elements are not re-evaluated.

It is the criminal acts conducted by actors, liable or not, that is considered as the ground for criminal responsibility. If criminal acts conducted are not liable, actors will be regardless of all criminal charges (ontslag van alle rechtsvervolging).

Keywords: the unlawfulness, faults, criminal act, and criminal responsibility.