

Criminal Negligence as a Cause of Fires in Magelang Regency: Elements of Article 188 of the Criminal Code

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Abstract

Fires in homes and workplaces often begin with a lapse of care, yet when such a lapse is a crime is rarely explained. The Civil Service Police and Fire Services Office of Magelang Regency recorded 115 fires in 2022, mainly from short circuits, forgotten stoves, cigarette ends and gas leaks. This article asks what elements make a person criminally responsible for causing a fire by negligence under Article 188 of the Criminal Code, and how the new Criminal Code, Law No 1 of 2023, changes the answer. It is normative legal research using statutory, conceptual and case approaches. The materials are the two codes, doctrine and one Jayapura District Court decision, with incident information from the fire services unit, analysed qualitatively. The offence has four elements: a negligent act, a fire, explosion or flood caused by it, and one of three consequences, general danger to property, danger to life, or death, linked to the act by causation. Negligence needs a breach of the duty of care that a reasonable person would have observed and a foreseeable consequence, so a lapse such as forgetting a stove is punishable only if these are shown. Article 311 of Law No 1 of 2023 retains the offence with a five-year maximum. The article recommends prosecution guidance, electrical safety inspection and public information.



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Keywords

Negligence; Fire; Causation; Culpa; Prosecution; Magelang

Introduction

A fire is uncontrolled burning that occurs when fuel, oxygen and a source of heat come together, the three elements usually called the fire triangle. Fires threaten property, health and life. Under Ministry of Manpower Regulation No

PER.04/MEN/1980 fires are classified as A (solid non-metal materials), B (liquid or gas fuel), C (electrical installations) and D (metals).¹ The regulation is still used as a reference for fire extinguishers in workplaces, and no instrument repealing it was found, although its current status should be confirmed in the official database of the Ministry.

According to data of the Civil Service Police Unit and Fire Services Office, 115 fires occurred in Magelang Regency in 2022, caused by short circuits, forgetting to turn off a stove or furnace, discarded cigarette ends, leaking gas hoses and cylinders and other things.² Because the fault behind such fires is unintended, the persons concerned, and many residents, may not see themselves as having committed a crime. The legal problem is wider than public awareness. It is whether and when a lapse in daily life is the negligence that Article 188 of the Criminal Code punishes: who may be liable, what proof of fault is required, what causal link is needed between the lapse and the fire, and what consequence must follow. The question is pressing in 2026, because Law No 1 of 2023 on the Criminal Code has applied since 2 January 2026.

Indonesian criminal law literature explains negligence (*culpa*, *kealpaan*) as one of the two forms of fault beside intent, and explains criminal responsibility through the rule that there is no punishment without fault.³⁴ Studies of fire cited in the manuscript deal with fire vulnerability, fire management and fire-safety management in industry, which are technical and not legal analyses, and no earlier study of the elements of Article 188 in the context of a regency was located. This article fills that gap in two ways: it breaks the offence into its elements and tests each against the typical causes of fire in Magelang, and it compares the old Article 188 with Article 311 of the new code. The research questions are: (1) what are the elements of the offence of causing a fire by negligence; (2) how do these elements apply to the causes of fire found in Magelang Regency; and (3) which code governs the fires studied, and what does the new code change? The purpose is to give police, prosecutors and the public a clear account of when negligence causing a fire is a crime. A regional regulation on fire safety and any sanctions it contains were not analysed, and are noted as a limit in the Conclusion.

¹ Regulation of the Minister of Manpower and Transmigration No PER.04/MEN/1980 on Requirements for the Installation and Maintenance of Portable Fire Extinguishers (Indonesia).

² Satuan Polisi Pamong Praja dan Pemadam Kebakaran Kabupaten Magelang, fire incident data for 2022 (unpublished data supplied to the authors).

³ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002).

⁴ Aryo Fadlian, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis" (2020) 5:2 *Jurnal Hukum POSITUM* 10.

Research Method

This is normative (doctrinal) legal research. It uses a statute approach, a conceptual approach to the doctrine of negligence, and a case approach based on one decision, because only one decision on Article 188 could be verified: Jayapura District Court Decision No 480/Pid.B/2010/PN.Jpr.⁵ The legal materials are primary (the Criminal Code, Law No 1 of 2023 and the decision) and secondary (textbooks and a journal article on criminal law). The factual setting comes from incident information supplied by the Civil Service Police Unit and Fire Services Office of Magelang Regency, obtained in discussions with the fire-fighting unit. It serves only to illustrate typical causes. The article does not report a survey or a structured set of interviews, and the date and identity of the informants were not recorded in the manuscript, so the article makes no empirical claim about what residents know. The materials are analysed qualitatively and deductively: the general rule on negligence is applied to the elements of the offence and then to the typical causes of fire.

Results and Discussion

Setting

Magelang Regency is a highland area surrounded by Mounts Merbabu, Merapi, Andong, Telomoyo, Sumbing and Sindoro and the Menoreh hills, with the Progo and Elo rivers in the centre, and it has an industrial area in Tempuran sub-district. The setting is background only. The causes found, electrical faults, cooking, cigarettes and gas, arise in any built-up area, and the materials do not show that the topography influences fire in the regency.

Negligence in Criminal Law

Negligence can lead to criminal punishment although the person did not intend a violation, because the act was unlawful. Criminal responsibility rests on fault, and fault takes the form of intent or negligence.⁶ Indonesian doctrine describes negligence as a failure to use the care, prudence and foresight that the law requires before acting,⁷ and distinguishes gross negligence (*culpa lata*) from slight negligence (*culpa levis*), and conscious negligence, where the person foresees the possible result but trusts it will not occur, from unconscious negligence, where the

⁵ Putusan Pengadilan Negeri Jayapura No 480/Pid.B/2010/PN.Jpr.

⁶ Fadlian, *supra* note 4.

⁷ Moeljatno, *supra* note 3.

⁸ Adami Chazawi, *Pelajaran Hukum Pidana Bagian I* (Jakarta: Raja Grafindo Persada, 2004).

person fails to foresee what should have been foreseen.⁹ The measure is objective: what a reasonable person in the same position, with the same duty, would have done. Negligence is therefore not simply an accident. It needs (1) a duty of care in the circumstances, (2) a breach of that duty, by acting or by omitting what should have been done, and (3) a result that a careful person could have foreseen and avoided. The Criminal Code punishes negligence causing death in Article 359 and negligence causing serious injury in Article 360, and Law No 1 of 2023 states that a person is responsible for an offence committed with intent or by negligence and that negligent offences must be expressly provided for by statute.¹⁰¹¹

Article 188 of the Criminal Code

The offence of causing a fire by negligence is in Article 188 of the Criminal Code. In substance it provides that a person who by fault (negligence) causes a fire, explosion or flood is punished if general danger to property arises, if danger to the life of another arises, or if the act causes death, with imprisonment of up to five years or confinement of up to one year (the fine alternative is IDR 4,500).¹² The wording here is a paraphrase of the provision. The offence differs from intentional arson in Article 187, which carries far heavier penalties, and it differs from negligent homicide in Article 359 because the death must result from the fire that the person's negligence caused. A person is punishable under Article 188 whether the fire was lit deliberately or not, provided the fire is the product of negligence. Four elements follow, and Table 1 applies each to the causes of fire found in Magelang.

Table 1. Elements of Article 188 of the Criminal Code applied to typical fire causes

Element	Meaning	Application to typical causes in Magelang
Act	A positive act or an omission that a duty of care required	Leaving a stove on, dropping a lit cigarette end, careless wiring or poor storage of gas cylinders
Fault: negligence	Breach of the care a reasonable person would have taken, with a foreseeable result	Established when the lapse departs from ordinary care, for example ignoring a known electrical defect; not established by an unforeseeable failure
Result and causation	A fire, explosion or flood that results from the act	The fire must be traced to the act by investigation of the origin of the fire
Consequence	General danger to property, danger to the life of another, or death	A fire confined to the person's own property without danger to others does not meet the element

Source: analysis by the authors based on Article 188 of the Criminal Code and the doctrine cited.

Fires in Magelang Regency

⁹ PAF Lamintang, *Dasar-Dasar Hukum Pidana di Indonesia* (Bandung: Citra Aditya Bakti, 1984).

¹⁰ Kitab Undang-Undang Hukum Pidana (Indonesian Criminal Code, Wetboek van Strafrecht), arts 359, 360.

¹¹ Law No 1 of 2023 on the Criminal Code (Indonesia), art 36.

¹² Criminal Code, *supra* note 10, art 188.

The fire data point to negligence as the most likely cause. Short circuits arise from poor installation or maintenance of electrical connections; a forgotten stove or furnace is a lapse that may cause loss of property and death, especially in densely populated areas. Whether such a cause is criminal negligence depends on the elements above, not on the label. A short circuit caused by an installation the occupier knew to be defective and left unrepaired shows a breach of a duty of care and a foreseeable danger, and may satisfy Article 188. A short circuit caused by a latent defect that no reasonable person could have discovered does not, because punishing it would be punishing without fault. Forgetting to turn off a stove is a closer case: a single momentary lapse by a person in the home is human error, and the criminal law asks whether it falls below the standard of ordinary care and whether the consequence of general danger or death occurred. Where a fire destroys only the stove owner's own property, the consequence element is not met. The principle of no punishment without fault therefore limits Article 188 to departures from reasonable care that cause danger to others.¹³

The single decision verified shows how a court applies the article. In the Jayapura case a shop owner who sold groceries, alcohol and fireworks was convicted under Article 188 after a fire spread from his shop to other shops and boarding houses; he received a short suspended prison sentence.¹⁴ The evidence of fault in that decision is not examined here, and one decision does not show the practice of the courts. The materials do not show how many of the 115 fires in Magelang in 2022 were investigated by the police, how many were prosecuted, or whether negligence was assessed in any of them. The fire services unit did not supply a breakdown of the 2022 fires by cause, number of casualties or damage, so the proposition that most fires are caused by negligence is a qualitative impression from the unit and not a measured proportion.

Applicable Code and the New Criminal Code

The fires studied occurred in 2022 and fall under the old Criminal Code, because the law in force at the time of the act applies. Law No 1 of 2023 has applied since 2 January 2026 and preserves the offence in Article 311, which punishes a person who by negligence causes a fire, explosion or flood with imprisonment of up to five years or a fine of up to category V (IDR 500 million).¹⁵ The new article keeps the core of the offence, the negligent act and its result, but it replaces the fine of IDR 4,500, and

¹³ Fadlian, *supra* note 4.

¹⁴ Jayapura District Court Decision No 480/Pid.B/2010/PN.Jpr, *supra* note 5.

¹⁵ Law No 1 of 2023, *supra* note 11, art 311.

the text reported in commentary does not set out the three graded consequences, a point to be confirmed against the official text. Where the law changes after the act, Law No 1 of 2023 lets the more favourable provision be applied to the accused, so for a negligent fire after 2 January 2026 the new provision governs and the higher fine should be noted.¹⁶

Comparison with Earlier Research

The doctrine on criminal responsibility cited above treats fault, intent or negligence, as the condition of punishment,¹⁷ and this article applies that general rule to a specific offence. Technical studies in the manuscript's reading list, on fire vulnerability, fire management and fire safety in industry, explain why fires occur but do not ask when a cause becomes a crime. The article differs from them by testing each element of Article 188 against the causes recorded in one regency and by noting the change to Article 311. Its limits are that it relies on a single decision and on incident information that was not broken down by cause.

Conclusion

Causing a fire by negligence under Article 188 of the Criminal Code requires a negligent act or omission, that is a breach of the care a reasonable person would have taken; a fire, explosion or flood caused by that breach; and a consequence of general danger to property, danger to the life of another, or death. Typical causes in Magelang Regency, electrical short circuits and forgotten stoves, are criminal only when these elements are shown; an unforeseeable failure is not, and a fire that harms only the person's own property falls outside the article. The fires of 2022 fall under the old code, while Article 311 of Law No 1 of 2023 governs fires after 2 January 2026 and keeps the five-year maximum.

Three recommendations follow. The government and the fire services unit should run public information on fire prevention and on the criminal liability that follows from negligence. The regency should require electrical safety inspection of buildings, especially crowded residential and commercial areas. Police and prosecutors should be given clear guidance on when negligence is investigated, based on the origin of the fire and the foreseeability of the danger, and the fire services unit should record each fire by cause, casualties and damage so that the cases can be traced.

¹⁶ *Ibid*, art 3.

¹⁷ Fadlian, *supra* note 4.

The study has limits. It is doctrinal and uses one verified court decision; it presents no survey or structured interviews and so makes no finding on public knowledge of the law; it lacks a breakdown of fires by cause and any data on prosecutions; it did not analyse a regional fire regulation; and the comparison of Article 188 with Article 311 should be checked against the official text. Further research should collect decisions on Article 188 and Article 311 and police and prosecution data.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. The legal materials cited are public. The incident information from the fire services unit is held by the authors and may be provided on reasonable request.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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