

## Reconstructing Legal Grounds of Guarantor's Obligations

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### Abstract

The purpose of this study was to rebuild the legal ground for guarantor's position. Although there were theories about the ground for guarantor's position, none of them provided normative criteria. The ground for guarantor's position should be the extent to which the criminal law can order a person to help the others. Such an order of criminal law is referred as "positive obligation" in this study. The wrong in criminal law implies an offense to personal freedom. Thus, the criminal law would include what is referred in this study as the "negative obligation" that requires a person not to offend the others. However, the same logic does not apply to the case of "positive obligation", because the solidarity, which forces citizens to undertake the risks of others, by itself is an infringement to personal freedom. The author argues that there are only two legitimate grounds for guarantor's position. The first ground is the supporting system that saves a person without capacity of autonomy from losing the chance to live. The second ground is the agreement on the transfer of the duty to control risks. These two grounds would not infringe freedom; furthermore, they can ensure the premise of freedom.

**Keywords: criminal offence committed by omission, guarantor's position, obligation of action, criminal wrong, solidarity**

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