

Victims of Robbery with the Forced Defence (Noodweer): A Legal and Victimological Aspects

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Abstract

This study aims to analyze criminal arrangements in the case of victims of violent crimes who then defended forced to exceed the limit due to coercion. This research is normative legal research through a conceptual approach. The results of this study show that victims of violent crimes who commit criminal acts as a defense effort are forced to be free from crime if they meet the requirements based on Articles 48-51 of the Criminal Code. Article 5 Paragraph (1) of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims also explains that victims have the right to protection and a sense of security if there is a gross violation of human rights. However, to get this right, victims still have to go through the legal process.

KEYWORDS

Noodweer, Robbery Crime, Legal Review, Forced Defense



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Introduction

Humans need to meet economic needs for their survival, the increase in the price of necessities followed by high poverty rates then causes an increase in crime rates in the community. The high cost of living makes humans often justify all means that are not in accordance with the norms and laws that apply in society. Based on the school of Combination (Classical and Positivism Science) proposed by Enrico Ferry (1856-1929), according to him the occurrence of a crime by humans is triggered by Bio-Sociological factors or Talent and Environment that can influence a person to commit a crime. Then according to him, it is also related (Inter-relatedness) with social, economic, and political factors.¹

One form of crime that is now rife is the crime of beheading (violent theft) that we can find on television, newspapers, social media, and even the surrounding environment that causes concern and discomfort. Begal is a street crime that is usually committed by two or more people, their actions aim to rob property owned by road users. In carrying out their actions, begal groups often use violence and do not hesitate to injure or eliminate the lives of their victims to get property owned by the victim. The target of the perpetrator is usually someone who drives alone, especially a woman. Their motives for committing these crimes vary from urgent economic factors, the influence of illicit addictive substances and the influence of alcoholic beverages. The crime of begal is included in property crimes contained in Article 365 of the Criminal Code.

In some cases of violent crimes, victims do not just remain silent when their property is confiscated. Victims who feel threatened by their safety do not hesitate to counterattack the begal perpetrator, so that the begal perpetrator suffers injuries due to resistance or self-defense, even to death. Self-defense committed by the victim is included in a criminal act

¹ I.S Susanto, *Criminology* (Yogyakarta: Genta Publishing, 2011).

that meets the elements of a criminal act. However, an act cannot be punished against the koban who in this case is the perpetrator of self-defense resulting in injuries to death. Self-defense acts committed by victims of criminal acts receive legal protection for their actions. Article 49 of the Criminal Code states that a criminal act committed on the basis of self-defense or forced defense cannot be criminalized. Defence must be done by a person whose circumstances are urgent or threatened by the safety of himself or others. Not only self-defense of safety but defense can be made against others as well, if the situation is threatened and goods or objects of a property nature.²

With this provision of forced defense (*noodweer*) it can happen that even if a person has clearly committed the act of taking the life of another person, he is not ultimately convicted. This is because he has committed the act in the context of forced defense (*noodweer*). A person who is compelled to commit an act in self-defense or in defense of another because of an attack on himself or others, against the honor of his own decency or others or against his own or others' property, cannot be punished. Therefore, many times people use this reason for forced defense (*noodweer*) with an expectation that what they do has fulfilled the elements or conditions of forced defense as referred to in Article 49 paragraph (1) of the Criminal Code.

In fact, people are often disappointed because the reasons for the forced defense presented are not accepted by the court. The judge gave consideration that his actions did not meet the elements of forced defense within the meaning of Article 49 paragraph (1) of the Criminal Code. The situation of a person who conducts a forced defense can only be proven based on the results of the examination and verdict by the court, in the examination in court must be based on evidence found at the crime scene (crime scene), then listen to statements from witnesses, so that the judge

² Marsudi Utayo, "Perpetrators of Murder Who Defend Themselves in Defense of Honor And Property," *Legal Institutions* 8 (2013): 148–155.

can consider sentencing the perpetrator of the forced defense, where the perpetrator gets leniency or reasons for criminal removal. Based on the description of the background above, this study was conducted with the aim of revealing what is the benchmark for a criminal act can be categorized as a forced defense and how legal review of victims of violent crimes who commit murder as a forced defense effort.

Based on the background that has been described, the author is interested in discussing the following problem formulation.

1. What is the benchmark for a crime to be categorized as a forced defense?
2. How is the legal review of victims of violent crimes who commit murder as a forced defense?

Methods

This research was conducted using normative legal research methods, and the approach used was a conceptual approach. Sources of legal materials used as primary legal materials, secondary legal materials consisting of books, articles, and documents, as well as the internet related to problems, as well as tertiary legal materials, namely legal materials that support primary legal materials and secondary legal materials. The technique of collecting legal materials is carried out by studying literature books to obtain secondary legal materials which is done by studying and quoting from related books and laws and regulations. After the legal materials are collected, recording and summarizing according to the problem. The results of the data are presented by an informal method in the form of description.

Result and Discussion

1. The benchmark of a criminal act can be categorized as a forced defense

All violations and crimes committed by someone in the Republic of Indonesia are regulated in the Criminal Code (KUHP). This crime is usually caused by social inequality in society and the unequal economy of society and it is even difficult to meet the needs of daily life, as well as shame about their living circumstances (prestige). So, there are many criminal acts committed by humans, seeing that the large number of people in Indonesia is far from prosperous.

The Criminal Code not only regulates the punishment for someone who commits a crime, but the Criminal Code also regulates the reason a person is not threatened with criminal punishment for an act he commits (*schulduitsluitingsgronder*). Article 44 of the Criminal Code specifies that a person can avoid criminal threats, if the person cannot account for his actions. There is a provision in this article that gives a person freedom from criminal bondage for his actions, namely if the criminal act is committed by someone who has physical and mental disabilities. In relation to the formulation of the problem discussed in this journal, one of the things that can result in a person being able to avoid liability for his criminal acts is forced defense.³

Criminal law recognizes the term criminal negation in every level of act. The grounds for criminal abolition are divided into two groups, one that is listed in law and the other that exists outside the law introduced by jurisprudence and doctrine. Forced to defend, contained in 3 understandings, namely there must be an attack or threat of attack, there must be another way to dispel the attack or threat of attack at that time, and

³ Moeljatno, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 1993).

the act of defense must be balanced with the nature of the attack threat attack.⁴

Several cases related to the determination of suspects against victims who defended forced to increase in Indonesia. Criminal events related to forced defense (*noodweer*) in several cases that occurred in the city of Bekasi, namely victims who were beheaded by perpetrators who used violence with sharp weapons that threatened the lives and safety of victims. Immediately the victim made a forced defense (*noodweer*) by stabbing the perpetrator so that the perpetrator died. The Bekasi Kota Metro Resort Police Chief, based on the testimony of criminal law experts, that there was no unlawful act and they committed the act because of the form of forced self-defense as the elements contained in Article 49 paragraph 1 and paragraph 2 of the P Code.⁵

While in other cases, the victim of theft made a forced defense that caused the perpetrator of the theft to die. In this case, the victim of the theft was named as a suspect on the grounds that they did not report to the police the occurrence of the incident. Therefore, the police charged the perpetrators of the persecution with Article 338 of the Subsidair Code Article 170 of the Penal Code. As a result of the determination of the suspect, the community feels confused, whether the victim who defends is forced to deserve to be given criminal sanctions or given appreciation or appreciation⁶

Forced defense (*noodweer*) in the Criminal Code can be divided into 2 (two), namely *noodweer* (forced defense) contained in Article 49 Paragraph (1) of the Criminal Code which reads "Not criminalized, whoever commits an act of forced defense for himself or for others, moral honor or property of himself or others, because there is an attack or threat of a very

⁴ *Ibid.*

⁵ Felix Nathaniel, *Bekasi Begal Killer Gets Honorary Citizen Title*, 2018, <https://tirto.id/pembunuh-begal-bekasi-dapat-gelar-warga-kehormatan-cLtP>.

⁶ Setyo Praise, *Homeowners and security guards face life sentences for molesting thieves to death*, 2021, <https://regional.kompas.com/read/2021/01/05/19302031/pemilik-rumah-dan-satpam-terancam-hukuman-seumur-hidup-akibat-aniaya-maling?page=all>.

close attack at that time that is against the law." While *noodweer-exces* (emergency defense that exceeds the limit) described in Article 49 Paragraph (2) which reads "Exceeded forced defense, which is directly caused by great shock of soul due to the attack or threat of the attack, is not criminalized." The conditions for an act committed by a person can be categorized as a forced act that can avoid criminal bondage, are as follows.

1. The person must first receive or receive an attack, but in this case several attacks are determined to be carried out by a forced defense, the attack has the following conditions.
 - a) The attack is an attack received suddenly without the victim's knowledge and is dangerous to the victim (*ogenblikkelijk of on mid delijk dreigen*);
 - b) The act received is an act that is contrary to the rule of law (*wederrech-telijk aanranding*).⁷
2. For acts that are offensive in nature, a defense must be made, but not all actions can be categorized as *noodweer*, there are provisions that must be obeyed as conditions that determine an act as *noodweer*, namely:
 - a) Acts with the intention of self-defense should be a necessity (*de verdediging moet geboden zijn*);
 - b) The act of self-defense should be a desperate defense (*nood-zakelijk verdediging*);
 - c) The act should be an act that has the purpose of defending oneself or others, and their property.⁸

Forced defense carried out as a result of a severe life threat based on the explanation of Article 49 paragraph 2 of the Criminal Code cannot be criminalized. In conducting a forced defense (*noodweer*) must be carried out on the basis of the defense that needs to be done as an effort to protect

⁷ Suzanalisa Suzanalisa Nova, Reeza Andi, Ruben Achmad, "Accountability in the Implementation of Firing Authority in Places Owned by Members of the National Police," *Legality: Law Journal* 7 No. 1 (2017): 157–158.

⁸ P.A.F Lamintang, *Basics of Indonesian Criminal Law* (Bandung: PT. Citra Aditya Bakti, 1997).

the safety of life against attacks directed at victims. The attacks that fall into the categories that can carry out forced defense are as follows:

- a. The attacks carried out are instantaneous in nature
- b. The attack carried out is a threat to the safety of life, property, and honor
- c. The attacks carried out are unlawful
- d. The attacks were deliberately targeted at the body, fairies, courtesy and property

The instinct to defend oneself in the event of an attack, is basically human nature to be able to maintain his life. Criminal law sees that this nature needs to be institutionalized, so as to obtain clarity and protection when this action is necessary. The Criminal Code regulates several forms of crimes against the body committed intentionally through persecution, including:

- a. Ordinary Persecution (Article 351 of the Criminal Code).
- b. Minor Mistreatment (Article 352 of the Criminal Code).
- c. Severe Persecution (Article 354 of the Criminal Code).
- d. Premeditated persecution (Article 355 of the Criminal Code).
- e. Severe Premeditated Persecution (Article 355 of the Criminal Code).
- f. Persecution in manners and against persons of certain qualities is incriminating. (Article 356 of the Criminal Code)

The conditions mentioned in the Article are vague or multiinterpreted, because they are not clearly stated the limits of an act can be classified as an urgent defense that can be justified by the provisions of legal regulations. In addition to looking at the relevant legal rules, in determining whether an act is a forced defense or not, it is important to use the principle of proportionality / subsistence as a basis. Where the principle of proportionality / subsistence is a principle that sees the harmony between the legal interests of a person protected by the rule of law and the interests of the law violated as a defense, in this principle a person who finds a

defense must not make a defense that causes a great harm to the perpetrator before looking for other ways to avoid the threat of the perpetrator.⁹

Among criminal law scholars there can be said to be a unity of opinion that a defense can only be said to be forced (*noozakelijke*) if it meets two conditions, namely the proportionality condition (balance) and the subsidiarity condition. The term proportionality means that the interests of others sacrificed in forced defense must be balanced with those of the protected. For example, a resident who was protecting some durians in his yard shot dead his neighbor who stole them. This can be said to not meet the requirements of proportionality (balanced) because the interests of the person sacrificed, namely the life of his neighbor who stole, are not balanced with the interests of the protected, namely the beberapa durian fruit on a tree in his yard. It is considered too much to justify the act of taking the life of his neighbor for stealing just a few durians.

The second condition is the condition of subsistence which means that the defense must be carried out in the lightest way (subsider). Exceeding this requirement of subsistence is only likely to be acceptable in the case of a *noodweer excess* defense as stipulated in Article 49 paragraph (2) of the Criminal Code. Hoge Raad considers that, "if an attack against rights occurs immediately, there are still other permissible defence remedies for the person attacked, then the act that has been done is not a necessary defence effort". According to this ruling, if there are still other means that can be allowed to be used by the person attacked, then the act committed, not the attempted defense is forced (necessary). So, if there is another way that is lighter, then that lighter way should be used¹⁰

There is a similarity between the defense of compulsion (*noodweer*) and the defense of compulsory excess (*noodweer exces*), that is, both require an unlawful attack that is equally defended like the body, the honor of

⁹ Satochid Kartanegara, *Criminal Law Part One* (Jakarta: Balai Lektur Siswa, 2005).

¹⁰ P.A.F. Lamintang and C.D. Samosir, *Indonesian Criminal Law* (Bandung: Sinar Baru., 1983).

decency, property, both oneself and others. In addition, there are differences between the two, which are as follows.¹¹

1. In the defense of forced overreach (noodweer exces), the maker overstepped the limit because of the great shock of the soul. Therefore, the act of self-defense beyond that limit remains against the law, only the person is not convicted of a great shock of soul. Furthermore, an overreaching compulsory defense becomes the basis for forgiveness.
2. The forced defense (noodweer) is the basis of justification, because against the law does not exist.

There are two things that are needed in exceeding the defense limit, which are as follows.¹²

1. The person attacked as a result of a great shock of soul defends at first an instant at the moment of attack.
2. People who have the right to defend themselves because they are forced because of the great shock of the soul since all use tools that go beyond limits.

It can be concluded that a person who commits an act of forced defense, his actions can be justified, because it is true that the person committed a criminal act by resisting to cause something unexpected to those who threatened him, but his actions can also be forgiven, because the person who made the defense was forced, defending his life from a threat that came to him to cause the perpetrator to experience a threat that threatened his life or until took his life due to the reflex of the victim he threatened to attack him back. But the act of overreaching forced defense is also excusable. Because an action does come from the shock of his soul that responds very excessively due to fear to threaten the life of the perpetrator can also be forgiven. The act is indeed justified due to the actions of the

¹¹ Andi Hamzah, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008).

¹² Sovia Hasanah, *Meaning of Noodweer Exces in Criminal Law*, 2018, <https://www.hukumonline.com/klinik/a/arti-inoodweer-exces-i-dalam-hukum-pidana-lt5ae67c067d3af>.

forced defender but his actions can also be forgiven or unaccountable because his soul and psychic are beyond his control.¹³

Legal Review of Begal Crime Victims Who Commit Murder as a Forced Defense Effort

A criminal act committed by a person is not merely a criminal act. Committing a criminal act can be based on urgent needs, a person's orders, and protecting himself. In practice, all reasons committed by criminal offenders must get sanctions seeing that there are actions that have legal consequences so that they can be accounted for. Not all criminal offenders can be convicted and sentenced, but it is necessary to look at the reasons for the perpetrators committing these crimes. The exercise of forced defense as a right is very limited, forced defense cannot be done haphazardly. A defense can be accepted as a forced defense if it meets all of its strict requirements. The perpetrator of the defense must be justified in making a forced defense because of such situations and conditions that occur.

Every person who gets legal protection from the state is recognized by the state so that everyone feels protected by law. The legal protection in question is a rule that provides human rights protection to someone who is harmed and includes other communities. In the case of begalan crimes, begal perpetrators who want to rob all the property of their victims and to cover up their actions or facilitate their actions begal perpetrators commit violence against their victims, so that victims suffer injuries and even loss of life. But if things turn around, in this case the victim who feels threatened to commit self-defense so that the act of self-defense results in the perpetrator being injured and even taking the perpetrator's life so that actions based on self-defense from the victim are actually made suspects.

Legal protection for victims and the rights given to victims have been accommodated in the Criminal Procedure Code, but considering the

¹³ I Made Minggu Widyantara Gowinda Prasad, Anak Agung Sagung Laksmi Dewi, "Juridical Review of The Criminal Act of Coercive Force and Forced Defense," *Journal of Legal Construction* 2, no. 3 (2021): 483–488.

increasingly diverse types of criminal acts that have safety effects for victims such as forced defense that is a victim for a person who has enormous power and has the power or authority to act to suppress victims to commit acts that violate norms. Of course, the victim gets enormous psychic pressure. Another case with victims of forced protection who also defend themselves from a threat that threatens the safety of their lives and bodies certainly needs to get proof and justice to be able to explain why the person can make a defense that ends up threatening the perpetrator. This is certainly very necessary protection for criminal acts of coercion and forced defense to obtain their fair rights and ensure their safety.¹⁴

Article 5 Paragraph (1) of Law of the Republic of Indonesia Number 13 of 2006 concerning the Protection of Witnesses and Victims states that if victims of coercive force experience gross human rights violations, victims are entitled to protection of their personal, family, and property security, free from threats related to testimony that will, are or have been given, participate in the process of selecting and determining forms of security protection and support, get medical assistance, psycho-social rehabilitation assistance. However, it should be emphasized that a victim cannot immediately claim his rights without going through the legal process.

Criminal acts can be interpreted as unlawful acts committed by someone where each of these actions has sanctions or causes a punishment to ensnare the perpetrator. Although this unlawful act has clear sanctions, not all violations can be punished due to the reasons for criminal removal, namely justification reasons, forgiving reasons and reasons for abolishing prosecution.¹⁵ The Justifying Reason eliminates or negates and eliminates the unlawful nature of the perpetrator where the act of the perpetrator according to this reason is a justified and proper act. Forgiving Reason erases the guilt of the offender. Where unlawful acts that have been committed by the perpetrator do not receive criminal penalties due to the

¹⁴ Rocky Marbun, *Clever & Tactical Facing Legal Cases* (Jakarta: Visimedia, 2010).

¹⁵ Lamintang, *Basics of Indonesian Criminal Law*.

absence of an element of guilt. In a review of the Abolition of Prosecution, the main question is not justification or forgiveness but the basis of its benefit to the community, because what is considered is the public interest, it is expected that no prosecution will be held.

Forced defense is an action taken in urgent circumstances. Forced defense or we can call it noodweer has been explained and regulated in the Criminal Code in our country. This is regulated in Article 49 paragraphs 1 and 2 where Article 49 paragraph 1 contains that a person who makes a forced defense because of a threat that threatens himself or others cannot be punished while in Article 49 paragraph 2 it is explained that it cannot be punished whoever makes a defense forced to exceed the limit due to an instantaneous attack which causes a shock of life caused and caused by the attack which threatening yourself as well as others.

People can be justified in committing a self-defense attack in this forced defense, although the attack may harm the person who attacked first, which is usually punishable and punishable. The conditions to be used as a reason for criminal removal, namely an attack that is unlawful in nature that threatens oneself or endangers oneself or others where the act is wrong and deliberate, which later the forced defense is justified in carrying out the attack even though it harms others and the existing law which means here the attack includes attacks that against the law too. Then, as an instantaneous moan, a person can be justified in resisting an attack because the attack is instantaneous in nature which makes him unable to ask for help from other people or authorities, even if the resistance is unlawful. The last condition is that the information done is necessary, meaning that it must be balanced with the attack obtained which we call the principle of balance. Where it is hoped that this balance will not cause injustice to victims or perpetrators.

The forced defense carried out by the perpetrator of persecution is categorized as a deliberate act, that the maker deliberately committed an act of persecution that caused the loss of people's lives. So that the perpetrator's

actions are against the law, namely violating Article 354 paragraph 2 Kitab of the Criminal Law. Legal scholars rely on a dualistic theory in understanding the elements of criminal liability. Dualistic theory holds that what is associated with criminal liability is only "guilt" as the embodiment of the "principle of no crime without fault". "Unlawful nature" is not an element of criminal liability.¹⁶

The monistic theory adopted in the Penal Code explains that if all elements of a criminal act have been met, then the crime will be proven and the maker can be convicted. Thus, forced defense carried out by victims of theft is an act that is against the law, considering the actions committed by victims of unlawful acts. Therefore, victims of theft are included in the element of criminal liability, that every criminal act that is against the law and causes consequences, then the person must be held accountable for his actions.¹⁷

In this case the right to prosecute from the Prosecutor remains, not lost, but the defendant is not sentenced by the judge. In other words, the law does not prohibit the Public Prosecutor from submitting a suspected criminal offender to a court hearing in the event of a reason for criminal removal. The judge will determine whether the reason for the criminal removal can be applied to the suspected perpetrator of the crime through his sentence. Meanwhile, in the grounds of abolishing prosecution, the Law prohibits the Public Prosecutor from the beginning from the beginning from the beginning to submit or prosecute suspected perpetrators of criminal acts to a court hearing. In this case, there is no need to prove the guilt of the perpetrator or about the occurrence of the criminal act (the judge does not need to examine the subject matter).

In the event that the judge examines a case with the results of the investigation set forth in the indictment, the judge is expected to clarify the case. If an element of forced defense is found in it, the judge must be able to

¹⁶ Roy Roland Tabaluyan, "An overreaching forced defense under Article 49 of the Penal Code," *Lex Crime Vol. IV/No. 6* (2015).

¹⁷ *Ibid.*

clarify the element with legal and other supporting sciences even with the intuition possessed by the judge himself. The judge's decision to decide a crime on the grounds that there is no element of forced defense (noodweer) against the perpetrators of murder, must indeed be based on very careful consideration, because it concerns and affects the survival of a person, and also his influence in society, where the code of ethics of the judge's code of conduct, is something that is the basis of the judge's behavior in court and outside the court. So it needs to be implemented so that the community feels the purpose of the law such as fairness, order, benefits, and legal certainty.

Conclusion

The regulation of the types of excuse reasons for criminal acts of coercive force and defense must be divided into two, among others, justification reasons eliminate the unlawful nature of the act, even though these acts have fulfilled the formulation of offenses in law. If the act is not against the law, then there can be no punishment. Criminal acts committed by a person in a threatened condition so as to carry out self-defense or forced defense, in accordance with the provisions of article 49 of the Criminal Code, victims of beheading who carry out self-defense against the perpetrator cannot be criminalized, a person who carries out a defense is forced to get a reason for criminal removal that can reduce the sentence, A person who makes a forced defense must fulfill the elements of a forced defense, namely the existence of an act, the existence of an unlawful nature, the ability to be responsible, and the threat of criminal or criminal punishment. The legal protection provided against the criminal act of coercive force and forced defense certainly in a state of emergency the law highly upholds the higher legal interests determined concretely by considering the circumstances that accompany the act, in that context given autonomy as the bearer of its rights and obligations to determine its choice of law.

People who experience crimes are so desperate that they need to make a forced defense in order to know that in a state of emergency the law highly upholds the higher interests of the law which are determined concretely by considering the circumstances that accompany the act. To the government in this case as a regulatory holder, it is mandatory to further improve supervision and provide legal certainty regarding protection for the community to avoid criminal acts that at any time can threaten their lives, property, and physical. For judges as law enforcers, to pay more attention to everyone who conducts forced defense, especially judges must consider in deciding sentences in order to create social justice.

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Laws and Regulations

Article 365 of the Criminal Code

Article 44 of the Criminal Code

Article 49 of the Criminal Code

Article 49 paragraph (1) of the Criminal Code

Article 49 paragraph (2) of the Criminal Code

Article 5 Paragraph (1) of Law of the Republic of Indonesia Number 13 of 2006 concerning the Protection of Witnesses and Victims

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