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Original Article

Criminal Liability for Victims of Robbery Who Engage in Emergency Self-Defense

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Abstract

The purpose of this writing is to examine criminal acts that can be classified under forced defense and to analyze the form of criminal liability for victims of robbery (begal) who defend themselves in emergency situations. This research applies a normative legal approach, utilizing the study and analysis of literature sources in accordance with primary, secondary, and tertiary legal materials, and employing conceptual and legal approach methods. The results of this writing explain that criminal acts can be excluded from punishment if they meet the elements of forced defense as stipulated in Article 49 of the Criminal Code. The victim of the crime of robbery (begal) who defends themselves in an emergency cannot be convicted if the action is carried out proportionally, as a reaction to a real threat to self, honor, or property. The recognition of forced defense as a reason for criminal expungement provides legal protection for victims of crime who are forced to defend themselves. This encourages law enforcement officials to consider aspects of justice, proportionality, and the context of the event in the criminal justice process.

Keywords: Criminal Liability, Emergency, Robbery, Self Defense, Victim.

1. Introduction

Indonesia is a state of law where all actions need to be based on the law (Usman, 2014). This is in article 1 paragraph (3) of the 1945 Constitution. Thus, the actions and activities of individuals are regulated by laws and regulations. In the life of the nation, law is an inseparable part of the nature of the state, as a guide for conducting the life of the nation, and its function is to be a channel for the realisation of the ideals of its society. Law becomes a social system that fulfils the demands, needs and desires of a civilised society. Thus, the implementation of all laws is expected to provide security and order to the community, and ensure that the community complies with the rules that have been established. How important law enforcement is to maintain the harmony of community life is highlighted by Satjipto Raharjo's opinion, which states that the essence of law enforcement is to apply the concepts of social benefit, justice, truth, and others (Marselino, 2019). So, it can be said that the effort to implement these concepts and ideas into reality is the essence of 'law enforcement'.

Despite the existence of laws and rules, there are still certain individuals or groups who provide violations of the rules that have been given by the government, especially in the realm of criminal law. In the context of criminal law, a criminal offence is a punishable act, which is unlawful and related to misconduct, committed by a person with responsibility. Criminal offences, especially those triggered by economic conditions, are a topic that often frightens people. Criminal offences that are often a horrifying topic for society are criminal offences.

Crime motives are triggered by economic conditions, namely crimes that are often experienced in the community.

Society requires great economic needs as a fulfilment of diverse survival in accordance with the advancement of development and progress of the times. Usually, a person uses all efforts without regard to the legal norms that exist in his own community. A crime that is currently often experienced is the crime of robbery (stealing with violence) which can be seen in newspapers, television, social media, causing a sense of discomfort and unfairness in the surrounding environment.

The crime of *begal* has similarities to the act of robbery and deprivation. These criminals often use violence with sharp weapons, motorbikes, or wait to intercept their victims in quiet locations, lacking security facilities and far from crowds. Many of these criminals even resort to killing their victims in order to seize their possessions such as mobile phones, money, jewelry and even motor vehicles. These crimes essentially violate the norms of religion, morals and decency, as well as challenge the law and can cause harm to the life of the community, nation and state. Thus, strict legal action must be taken against the perpetrators of the crime of begging. Indonesian law has regulated it in Article 365 paragraph (1), (2), and (3) of the Criminal Code, with a maximum penalty of 9 years, 12 years, or life imprisonment.

However, victims' responses to such crimes can vary. Some surrender their property, some choose to defend their property regardless of the risks, and many victims fight back against the perpetrators to protect their property, and most importantly, their lives. Victims who feel threatened do not hesitate to defend themselves in an emergency and counterattack the perpetrators of the crime of begging, which can cause injuries, injuries, and even death to the perpetrators of the crime of begging.

In the theory of criminal law, it is called self-defense, namely the rights and obligations submitted to the legislation for all people in the maintenance of safety, both life, property and honour and this is adjusted from the Criminal Code to be the reason for justifying the act of self-defense and self-defense or in Dutch called '*nodweer*' contained in Article 49 of the Criminal Code (Utoyo, 2013). This defense or self-protection is not all people understand the arrangements in criminal law. So, not a few in various *begal* events, the victim of this *begal* is made a suspect because of defense to save personal property and life. Then there is a stigma in society from legal protection and injustice for victims of *begal*.

Evidence of individuals who provide forced defense can only be proven in accordance with the results of the verdict and examination from the court, at the examination in court adjusted from the existing evidence at the crime scene, then adjusted from the testimony of witnesses, then the judge can make a consideration of the sentence on the perpetrator of forced defense, where this perpetrator gets leniency of reasons and punishment for criminal elimination.

In accordance with the description above, the author is interested in elaborating on the concept of criminal liability for victims of robbery who defend themselves by force and criminal acts that can be classified as forced defense.

Based on the literature search that the author has conducted, the title and discussion contained in this paper have elements of renewal, thus there is no element of plagiarism in it. Meanwhile, as an element of comparison to this paper, although basically this paper has a renewal and does not contain elements of plagiarism in it, the following are described several writings that discuss similar issues. A paper by Hadi Putra Permana, Made Sugi Hartono, Ni Ketut Sari Adnyani in 2021 entitled '*Juridical Analysis of the Non-Consideration of Excuses in Cases of Persecution of Begal for Self-Defense (Study of Decision Number 01/Pid.Sus-Anak/2020/Pn.Kpn)*' highlight that the basis for the judge to impose a verdict on a victim of

a robbery who made a forced defense (Permana et al., 2021). Furthermore, research by Revani Engeli Kania Lakoy, in 2020 entitled '*Terms of Proportionality and Subsidiarity in Forced Defense According to Article 49 Paragraph (1) of the Criminal Code*' underscores the regulation of forced defense and Terms of Proportionality and Subsidiarity Terms in Forced Defense (Lakoy, 2020). Based on the title and issues discussed in the two journals, it can be understood that this paper has elements of renewal, namely focusing on what criminal acts can be categorised as types of forced defense and the Rules of Criminal Liability for Victims of Robbery Crimes who Commit Emergency / Forced Self-Defense. Thus, it can be ascertained that this paper does not have elements of plagiarism and there are elements of renewal that are expected to be useful for the development of the field of Legal Education in Indonesia.

2. Methods

Researchers apply a normative legal approach, which conducts studies and analyses on library sources in accordance with secondary, tertiary and primary legal materials (Soekanto & Mamudji, 2013). In the study of the problems applied by this researcher through conceptual and statutory approach methods. Sources of legal materials applied to primary legal materials include the 1945 Constitution, Criminal Code, Criminal Procedure Code, secondary legal materials include literature such as articles, books, internet and documents regarding a legal material problem that supports secondary and primary legal materials. Data is collected through techniques by collecting legal materials such as literature book learning in order to obtain secondary legal materials that are applied through learning and inventory and quotations from laws and books. After collecting legal materials, then record, review and summarise based on the existing problems. Furthermore, the material that has been collected is given a qualitative analysis, which is a discussion given through a combination of library research, discussion and interpretation. Then, the data is given through informal methods.

3. Results and Discussion

3.1. Criminal Acts that Can Be Classified as Involuntary Defense

In Dutch, the term for criminal law is *Strafrecht*, and is often referred to as (KUHP). Soedarto (1986) explains criminal law to be a collection of legal rules that focus on certain actions with criminal consequences if they fulfil certain conditions. All human actions, be it by Indonesian or foreign citizens in Indonesia, must be subject to the rule of law in this country. Given the high number of offences in Indonesia, Moeljatno (2002) explains criminal offences as acts that violate legal regulations with prohibitions that are threatened with special criminal sanctions for violators of these prohibitions. In accordance with Moeljatno's explanation, there are elements of a criminal offence, namely (Surono, 2016):

1. There is an offence

   In accordance with the science of criminal law, an act of a person who is prohibited from criminal rules (committing an act) is called Commision.

2. The existence of unlawful nature

   Against the law can be defined as against a law, more clearly an action that opposes what is in the mind of the law or an action that does not have to be carried out.

3. Ability to be Responsible

   A person or perpetrator who carries out this action can bear for the actions he has taken.

4. Threatened With Criminal or Penalty

The perpetrator's actions are threatened based on the rules of sanctions governing the criminal acts applied by the perpetrator.

According to the explanation, it can be assessed that an individual who has committed a criminal act is considered to have a mistake if there are elements such as: The ability to take responsibility for the perpetrator, where the mental state of the perpetrator must be normal; The mental bond of the perpetrator to his/her actions, in the form of negligence and intentionality; There are no reasons to erase the mistake and there are no excuses. If all the elements are present, then a person who commits a criminal act can be considered guilty and can be punished (Sudaryono, 2024).

All types of offences committed by individuals in Indonesia are regulated in Book II (Criminal Code). This criminal offence is due to the social disparity in society and the unbalanced economy of the community that is even difficult to meet the needs, and the feeling of shame about the conditions of life, so there are many incidents of criminal offences from a person, considering that so many people are far from prosperous (Hutabarat et al., 2022).

In KUHP, there is no further definition of *begal*, in the Criminal Code does not recognise Interpretation and is not guaranteed for legal certainty, but in practice it is said that there is Interpretation to be able to punish the actions of the perpetrator, in finding the rules of the criminal act of *begal* can be carried out by interpreting broadly about the explanation of *begal*, this has the aim of knowing the objective definition of what is included in the category of legal rules, not subjective definitions, for example those intended by those who form the rules when the rules are formed (Sutanto & Borman, 2023). The crime of *begal*, which is interpreted broadly, is included in the crime of property crime in Book II of the Criminal Code, from Article 362 to Article 367 on theft, from Article 362 to Article 367 the crime of *begal* is included in Article 365 of the Criminal Code, which in practice has been implemented Interpretation. Each criminal offence is regulated in the Criminal Code.

However, the Criminal Code also regulates the reasons why criminal offences can be expunged. The reasons for the elimination of punishment are the main rules to be addressed to the judge. Judges have the authority to hear concrete cases to determine the reasons for the abolition of punishment. Judging from the actions of the perpetrators who have been based on the elements of the rules of the Law, but there are reasons that can make the perpetrators of criminal offences or exceptions to the perpetrators of criminal offences to impose criminal sanctions. The reasons for the elimination of punishment are divided into 2, namely the excuse and justification reasons. The reason for forgiveness is the reason for the criminal elimination of the perpetrator relating to himself. While justification is the reason for the elimination of criminal offences regarding unlawful acts, which are related to the perpetrator's actions in a certain matter. The reasons for forgiveness and justification are given to the person because the person has a feeling of regret or free resignation, so that he cannot be punished (Agung et al., 2021).

Criminal acts that are included in the reasons for criminal expungement are in Book I of the Criminal Code regarding General Rules, namely:

1. Forced defense

From Article 49 of the Criminal Code, it can be explained that forced defense is an individual action that provides resistance or violation of the law as a protection of oneself, others, personal property or others and honour. This forced defense is given for necessity and necessity must not exceed the attacks and threats obtained.

2. Excessive forced defense

Not much different from Article 49 of the Criminal Code in Article 49 paragraph (1) of the Criminal Code, forced defense is applied from the perpetrator who provides a defense and

the actions applied are more than the threats obtained, this is because the perpetrator's soul is disturbed, for example in his emotional state.

Based on Article 49 of the Criminal Code, there are elements that need to be fulfilled by individuals who provide forced defense as a mitigation or elimination of punishment, namely: (1). Defense given under duress, (2). Defense given for oneself, honour, others, property and decency, (3). Need to have threat and attack, (4). This attack has the nature of legal resistance. Not only forced defense, but there are reasons for criminal expungement according to the Criminal Code, namely:

1. Duress

Coercion, which can be interpreted as a condition that is beyond a person's ability, is found in Article 48 of the Criminal Code. Coercion is a compulsion to pressure a person, so that he is in a condition that is completely wrong, a condition that makes him have to determine attitudes and actions that in fact violate the rules of the Law which for any normal person would not determine the attitude that the risk of the choice of action is greater.

2. Carrying out the provisions of the law

Carrying out orders under the law even though the action is against the law or is a criminal offence, but carried out based on the orders of the law on the perpetrator cannot be punished, as long as the action is in accordance with the public interest and not in personal interest. This is regulated in Article 50 of the Criminal Code.

3. Lawfully Executing an Order of Office

A person who carries out an order from an office that is legally authorised by law to carry out the order, which is a criminal offence, cannot be punished. Set out in article 51 of the Criminal Code.

4. Immature perpetrators

In Article 45 of the Criminal Code, which is not included in the excuse and justification reasons, so it is not included in the category of reasons for criminal expungement, but cannot be punished, perpetrators who are not 16 years old who commit criminal acts cannot be punished. In the Criminal Code, the age that is considered the age of a child is under or under the age of 16 years, criminal acts carried out by people under the age of 16 cannot be punished.

3.2. Criminal Liability Rules for Victims of Crime of Robbery who Carry out Forced Self-Defense.

In the Criminal Code (KUHP), although there is no specific article that discusses the regulation of self-defense in an emergency, there is a regulation on Criminal Exemption. In this regulation, one of the reasons to remove or cancel the punishment is self-defense in a forced condition. In the science of criminal law, there is a difference between the punishability of an act and the punishability of the perpetrator. Criminal expungement can be related to the act or the perpetrator (individual). There are 2 types of reasons for criminal expungement, namely justification reasons related to unlawfulness, even though the act is in accordance with the formulation of the delict in the law. If an act is not against the law, then criminalisation becomes impossible. This justification reason is regulated in the Criminal Code, among others, in Article 49 paragraph (1) regarding emergency defense and Article 51 paragraph (1) regarding superior orders.

The excuse relates to the person of the perpetrator, which means that the individual cannot be legally reproached for the reason that he or she is neither at fault nor accountable, despite the unlawful nature of the act. In this case, there is a reason for the elimination of the offender's guilt, so that punishment becomes impossible. The excuses regulated by the Criminal Code include Article 44 (not being able to take responsibility for his actions), Article 49 paragraph (2) (forced defense), and Article 51 paragraph (2) regarding good faith in

carrying out unlawful official orders. In Article 48, duress has two possibilities, which can be a justification or an excuse.

In addition to these two reasons, in the theory of criminal law from Moeljatno's explanation, there is one more reason, namely the reason for the elimination of charges. In this context, the problem does not lie in justification or excuse. The government considers that based on considerations of utility or benefits to society, prosecution should not be carried out. The main consideration is the public interest. If the case is prosecuted, then the perpetrator will not be sentenced.

Below are the justification and excuse reasons, based on the order of the articles in the KUHP, namely:

1) Incapable of responsibility
2) Duress
3) Emergency
4) Emergency Defense
5) Executing the Law
6) Performing an Order of Office

Based on the justification and excuse in the Criminal Code rules that have been explained. Then the excuse and justification that has to do with the problem of victims of self-defense is (*Noodweer*).

In the legal regulations, the rules regarding emergency self-defense are in the Criminal Code (Wahyuni, 2017). Article 49 paragraph (1) (KUHP) describes the act of 'emergency defense' for himself or others, morality, honour, or his property or the property of others, because of the threat of attack. According to this article, a person who defends himself in an emergency cannot be criminalised. Regulated in Article 49 of the Criminal Code, namely:

1. No punishment shall be imposed upon any person who commits an act which he is compelled to do in order to defend himself or another person, to defend his honour or property or the property of another person from an unlawful person, and who takes immediate measures to do so;
2. A person who reports the extent of the assistance that is indispensable if the act is carried out with a group because of a sense of urgency at that moment shall not be punished.

In the context of criminal liability, if associated with the elements of guilt proposed by Moeljanto, the picture can be described as follows: First, the act of emergency self-defense carried out by the victim of the crime of *begal* cannot be said to be a mistake because it does not meet the requirements of the perpetrator's responsibility, meaning that the perpetrator must be in a normal state. This is due to the fact that the victim of self-defense was forced to defend himself outside of normal circumstances. Secondly, self-defense by the victim of a robbery in an emergency cannot be considered as a mistake because it does not meet the requirement of a mental bond between the perpetrator and the act, such as negligence or intentionality. This is because the act of self-defense carried out by the victim of robbery was spontaneous, so it is beyond the element of negligence or intentionality. Third, self-defense by the victim of *begal* in an emergency situation cannot be said to be a mistake because there is no excuse or reason to erase the crime. This is due to the fact that the victim of *begal* who defended himself did so in a forced condition, and in accordance with the provisions (KUHP), criminal acts on the basis of self-defense due to emergency conditions bid be used as a basis for excuse.

To impose punishment on a person who commits a criminal offence, one must not only consider the act, but must also consider the motive for the act. Therefore, it is necessary to consider the element of intent of the perpetrator to determine the criminal act committed.

Article 49 paragraph (1) on 'emergency defense' either for oneself or another person, decency, honour, or one's own or another person's property, in a situation where there is a threat of attack. Based on this provision, someone who defends themselves in an emergency cannot be criminalised.

In an emergency self-defense situation, there are 2 main things, namely the existence of a threat and the need to defend against the threat. By referring to the problem of the victim of *begal* who defended himself because of the emergency of the *begal*, the action is in accordance with the elements of emergency defense regulated in the Criminal Code. This is because the victim of *begal* defended himself against *begal* as a response to the attack he experienced, so that the act was carried out after other acts had first occurred against the victim's body, honour and property.

According to criminal law expert Soesilo (1988), in order for someone to be considered in a state of 'emergency defense' and free from punishment, it must comply with 3 conditions, namely;

1. The first condition is that the action taken must be in self-defense. In the case of self-defense in an emergency, it is considered very necessary, so that there is no other way. However, what must be considered is that there must be an element of equality between the moment of defense and the threat. For the defense of interests that do not have much significance, one is not allowed to injure or kill people (Ashworth, 1975).
2. The second condition is that the action must be taken only in respect of the interests set out in the relevant article, namely the body, honour and property of the individual and of others.
3. And the third is that it is necessary that there is an attack against rights and can threaten the defender at that time.
4. If the above conditions are the reasons for removing the next criminal can be proven, then the judge can decide or verdict that releases the defendant from all types of legal charges and not an acquittal. The judge has the duty to test and decide on the matter, and the police only collect materials which are then given to the judge (LaFave & Remington, 1964).

It can be said that to say that individuals can act in self-defense must consider the applicable article (Prasad et al., 2021). In other words, it is necessary to consider the limits of self-defense. These limits involve the following aspects:

1. Self-defense must be done in response to a pressure or threat that forces one to attack. This means that there is an attack or threat of attack that triggers the act of defense.
2. Prior to self-defense, other actions need to be taken to ward off the threat.
3. When engaging in self-defense, it is important to maintain parity with the type of attack faced. This means that if the attacker does not carry out a self-defensive action, then the self-defense response should be in line with the level of threat received, not exceed the attack faced.
4. In situations where morality is threatened, the self-defender may respond with a commensurate action if the aggressor commits an unnatural act. For example, if the aggressor commits an inappropriate act against the self-defender, the self-defender's response should be in line with the aggressor's act, but still in line with proportionality and not exceeding appropriate limits.

The study has implications for the Indonesian legal system in relation to the interpretation and application of Article 49 of the Criminal Code on forced defense. It provides legal protection for citizens defending themselves under certain conditions. The study

promotes balanced justice by considering the context of defensive actions. However, there are limitations to the research. The study relies on legal analysis rather than empirical data, impacting its practical applicability. It also does not fully explore the subjective factors influencing proportionality judgments in defensive actions. The limitations are mostly specific to the Indonesian legal system. Developing practical guidelines for evaluating cases requires comparative legal analysis and detailed case studies.

4. Conclusion

Based on the explanation that has been described, it can be concluded that the situation of self-defense carried out by the victim of the crime of *begal*, the action can be considered valid and not be the basis for punishment, as long as the victim complies with the requirements and restrictions set by law. This self-defense must occur in response to a prior attack that compels the action, and to that extent, the act of self-defense is only carried out to protect the victim's person, property and honour. It is important to note that the act of self-defense must be instantaneous, not intentional, not overreaching, and not with the intent to harm another person.

In the context of criminal liability, a victim of a robbery who uses self-defense against a threat from a robber can be exempted from criminal liability, provided that the act does not meet the elements that establish criminal liability. This means that the victim will not be subject to legal sanctions if the act of self-defense meets the conditions set by the applicable criminal law.

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