
Legal Analysis Related to Emergency Defense Against the Threat of Criminal Acts of Begal (Case Study of Surakarta District Court)

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ABSTRACT

Begal is a serious crime. Today, we encounter this type of crime in several cases and some criminal news. A lot of polemic arose when a case of self-defense from a victim of robbery ended in conviction for murder, although in the end he was acquitted. Self-forced defense is regulated in Article 49 of the Criminal Code which states that a person who defends by force cannot be convicted, in other words when someone is threatened or threatened with his life he will be killed by being mugged even if the defense that occurs in it is not a crime. This research uses a sociological juridical analysis technique, so this research will focus on jurisprudence and legal material in it can be in the form of court decisions and laws which will then be reflected in their application to the wider community. Because in this case, the victims of robbery who defended what happened to him had to serve prison sentences with the offense of murder.

Keywords: Begal, Forced Defense, Criminal Act

INTRODUCTION

Indonesia is a legal state as stated in the 1945 Constitution Article 1 paragraph (3). Where human actions must be based on applicable norms. The legal state applied in Indonesia is a "rule of law" type of state which means that law is a rule that will be implemented by many people and agreed upon by everyone, not "rule of man" which means there is one person and only the other. walking as a "puppet" (Asshiddiqie, 2011).

In Indonesian law, we recognize laws or norms in carrying out and regulating our daily lives and maintaining the stability of all things. There are laws that regulate relations between residents and the state which we know as Criminal Law, and there are also laws that regulate between individuals and individuals which is usually called Civil Law (Sari, 2021).

In its content, criminal law itself covers many things that are closed regarding evil acts or crimes including criminal acts of theft, up to murder. From all types of light, medium and serious crimes. From various forms of fines, imprisonment, imprisonment, to the death penalty, these are listed in the Criminal Code (Moeljatno, 2021).

As the crime of theft develops, its forms also develop, one of which is violent crime. Crime is an act that is disgraceful and related to criminal law, namely part of an act against norms or an offense (Topo Santoso, 2011).

Crimes can be classified based on the motive of the perpetrator, types of crimes, for example economic crimes, sexual crimes, political crimes and personal crimes. Begal is a verb, different from mugging which means the process of plundering or robbery (Limbong, AN S, 2021). Evil first appeared in the time of Prophet Adam AS with the start of the first bloodshed, namely by Qobil against Abil(Kiptiyah, 2019), the murder was based on feelings of hatred and envy that Satan whispered to Qobil. Before Adam was sent down on earth, when the devil was expelled by Allah from heaven, he vowed to mislead the

children and grandchildren of Adam and Eve until the end of the world, and this was one of the devil's own oaths (Al-Hafiz. 2012).

We as humans must always take refuge from the devil's temptations. The devil always directs people into bad, cruel actions, following bad desires, and away from God. The devil always wraps everything that we consider bad into goodness, as well as evil. Through the devil's whispers, humans can lose their minds. Identity and humanity when the devil succeeds in persuading humans (Noerjenah, 2014).

Murder is a crime that appears very often in criminal news, throughout 2022 there were 809 murder cases recorded (POLRI, 2022). This consists of various groups of victims, both women and men, young and old, students and students, from officials and non-officials. And the most phenomenal murder case this year was the Ferdy Sambo murder case.

Murder cases from year to year have more and more variations. There are cases of premeditated murder, serial murder, mutilation murder, aggravated murder, and murder that has no underlying cause. One of the crimes that we often hear about lately is criminal cases involving robbery which can sometimes claim the victim's life.

The word robbery is defined as robbery or robbery accompanied by violence with sharp weapons and using motorized vehicles as a means of transportation, but it is not possible that robbers can also do it by car (Sutami, 2014). Burglary is a criminal act of theft accompanied by violence carried out to seize the victim's valuables or decency, which is carried out at night. The victim who is the object of a robbery crime does not just stand there and surrender his property and decency to the perpetrator, the victim may even put up a useful fight to defend himself because he feels threatened by the robbery. Injuries can even occur as a result of defense carried out by victims who feel their condition is threatened, and murders can even occur due to forced self-defense. Many people's security and peace have been disturbed by the emergence of this robbery, the term robbery only appears in Indonesia. The impact of the robbery case first emerged in 2015, the public was worried about the crime of confiscating motor vehicles which was termed robbery. Criminal acts and even violence are carried out by thieves. Burglary is a process, method or act in the form of robbery and robbery on the highway (PAF Lamintang, 2010).

As a human being who has good survival instincts, victims of criminal acts of robbery must defend themselves by defending what they have, because that is their nature as a human being. Although in the end there will be victims or victims of criminal acts of robbery who will lose their lives or die.

But the interesting thing is if one of the victims of a crime of robbery, who may be in a weaker position than the perpetrator of the crime of robbery, 'wins the duel' and can paralyze and even kill the perpetrator of the crime of robbery himself. What is more interesting is that the victim of the crime of robbery who managed to 'win the duel' with the perpetrator of the crime of robbery had to languish in prison on the offense of murder.

This research wants to examine a study entitled Legal analysis related to emergency defense against the threat of criminal acts of robbery using a case study at the Surakarta District Court with a criminal judge as the resource person. This research also uses juridical-empirical research methods, by conducting research on laws and articles related to forced defense, both in the Criminal Code and other laws.

RESEARCH METHODS

The method used in this research is the Empirical Juridical Method with interview techniques or sociological research which observes behavior from events that occur in society. This type of research is descriptive research which describes in detail and subjectively the forced defense of criminal acts of robbery. The primary data source used is the results of interviews, while the secondary data source is Article 49 of the Criminal Code, books, journals and other literature. The data collection methods used

were literature studies and interviews with qualitative data analysis methods by grouping data obtained from interviews and connecting them with library data (Dimiyati, 2004).

RESULTS AND DISCUSSION

Article 49 of the Criminal Code

Article 49 of the Criminal Code provides two descriptions of forced defense, namely self-defense and self-defenseExtraordinary. In article 49 paragraph (1) which states "Not subject to punishment, anyone who carries out forced acts of defense for himself or for others, the honor of morality or his own or other people's property, because there is an attack or threat of attack that is very close and which is against the law on at that time" which in this context is what is called self-defense.

Then in Paragraph (2) which reads" forcible defense that goes beyond the limits, which is directly caused by great mental shock due to the attack or threat of attack, is not punishable" and can then be called extraordinary self-defense.

In this article, all types of forced defense cannot necessarily be clarified as forced defense. There are several conditions that must exist in order to meet the criteria for forced defense, namely: (Dumgair, 2016)

- 1. The defense must be carried out spontaneously and not have a long time lag (reflex).*
- 2. The attack must be against the law with the characteristics of being aimed at things that are constitutionally protected, such as life, property, honor, both one's own and someone else's.*
- 3. The defense carried out must not exceed the attack given and is considered appropriate to carry out.*

In its application, Article 49 of the Criminal Code can be used as a forgiving article, to provide defense to victims of criminal acts of robbery who have carried out extraordinary self-defense because there was an unlawful act that preceded the act (Tabaluyan, 2015).

The thing that differentiates between the two verses of the article lies in the great shock of the soul. In terms of grammatical meaning, mental shock can be interpreted as a mental condition where you feel unstable and swaying uncertainly. This can be interpreted as feelings of anxiety, fear, excessive anxiety, and various mental shocks that accompany a person (Wardhana, 2016). From this, the forced defense can be implemented and can be forgiven as long as the defense is valid and necessary. But if the attacker has finished his attack, then the defense cannot take place or be carried out in this case.

Then, when it comes to legal responsibility, a person can be said to be responsible for his actions or not, in the case of forced defense, which can be seen from his mental condition. In this extraordinary forced defense, a person who carries out an extraordinary defense carries out actions that exceed the limits and violates the law which must be based on the mental shock that he is experiencing in carrying out the extraordinary forced defense. This mental shock is the reason why a person cannot be punished and sentenced and is the basic reason for forgiveness and the act is forgiven (Tabaluyan, 2015).

In making this determination, law enforcers, both in the police and judiciary, must understand and comprehend the environmental conditions of the perpetrator of the forced defense. Law enforcement officials must also consider (balance) between two very large interests, namely the legal interests that are violated and the legal interests that are violated due to forced defense. Basically, forced defense should not be carried out in the harshest way in the form of taking someone's life, if forced defense can be carried out in a lighter way (Dumgair, 2016).

From this it can be concluded that defense must emphasize the defense or self-defense that a person carries out in the face of threats. The defense limit is exceeded when the person continues to attack the attacker after the actual defense has ended, even though the attacker's attack has ended. In extraordinary self-defense, the limits of self-defense are actually exceeded by a state of mental shock. The foresight of law enforcement officials is absolutely necessary in implementing the provisions of Article 49 of the

Criminal Code, because this provision is legal protection for those who are deemed to have the right to take certain actions in self-defense.

Forced Defense in the Crime of Robbery

If viewed verbally and logically, a person who resorts to forced defense in a criminal act of robbery is an attempt at self-defense and cannot be categorized as an unlawful or criminal act even if it takes the life of his opponent. In fact, this is in accordance with Article 49 of the Criminal Code concerning forced defense.

However, the problem is that there are no detailed and clear limitations in the article regarding how forced defense can be carried out and classified as forced defense. Because basically the forced defense in this article can only be classified in terms of distance and time, but if it takes someone's life, this forced defense can also be carried out because there are no prohibitions or limitations in it (Lamintang, 2022).

In fact, the conditions proposed in these limitations are vague and subject to multiple interpretations, because they are not clearly written as legal provisions, only indicating that the defense must be carried out proportionally. In fact, the principle of proportionality itself focuses on a person's harmony when protecting something that is protected by law with something that is violated by law by committing a violation of the law itself and is a defense. If viewed in this principle, we should not cause greater harm than the person who will cause harm to us (Kertanegara, 1998). According to German Law, this principle is a principle that determines that in solving even difficult problems we must take action that has very small losses (Tamara, 2021).

So what if a defense has to be carried out using a firearm or other weapon? So we will return to the function of firearms or other weapons that have the potential to defend ourselves. These weapons exist among the community legally and illegally because they function to protect the community itself, because we know that almost all of the criminal incidents that occur in our society use sharp weapons and firearms (Di Putra, 2015), so what is a weapon like? can it be said to be illegal or not? It can be defined whether a weapon is illegal or not when a civilian who controls the weapon has violated the laws in force in Indonesia, as stated in Article 2 paragraph (1) of the Law.Emergency Number 12 of 1951 states that someone who does not have the right is prohibited from owning, carrying, controlling, importing and removing firearms along with ammunition and explosives into Indonesia (Di Putra, 2015).

People who are not members of the police or TNI, in this case, are prohibited from owning non-organic firearms. The TNI and Police are given permission to legally own and control non-organic weapons for the purpose of self-defense, but their use is still under the law. Ownership of non-organic firearms by the general public requires a special permit which is quite lengthy and complicated, and ownership is also permitted only for shooting sports, hunting and collecting (Wartono, 2015).

In this case it is clear that possession of weapons that violate the regulations in Indonesia in accordance with applicable law is illegal. However, if we refer to Article 49 of the Criminal Code regarding emergency defense carried out by victims of criminal acts of robbery by using sharp weapons, blunt weapons or firearms, this clause is not regulated. What can be a relief for someone who carries out emergency defense using weapons that are considered illegal is the shock to a person's soul when they feel threatened by something that is a human instinct to survive. This is stated in Article 49 paragraph (2) (Cahyani, 2019).

There is a difference between an attack and a threat of attack, in relation to acts of forced defense. Defense must be carried out in a sudden, uncalculated and unplanned manner. Which means it is carried out spontaneously at that very moment when there is an attack or threat of attack. The threat of attack in Article 49 paragraph (1) means that permits must be developed further, not only when the attack is carried out, but it has already been carried out sufficiently, which means that the attack has not yet materialized and the threat has just occurred. It is not permissible to resort to forced defense unless the threat is to one's body, honor, morals or property. Apart from that, forced defense is not permitted.

Prevention

In an interview I conducted on May 15 2023, Harry Suptanto, SH as Judge of the Surakarta District Court said that in the last 3 years many criminal acts of theft were resolved accompanied by violence, he said that the perpetrators were motorbike gangs, as well as individuals from the silat school who is in the legal area of the Surakarta District Court. The case of theft accompanied by violence can be resolved in the Surakarta District Court. He said the case must be resolved because this is a criminal case and there is a limit to the right to detain it, because until the judge detains the case the case must be resolved. Victims who defend themselves as being forced can in theory be subject to criminal sanctions, that there are already regulations regarding things that constitute a situation of duress, but it must be proven whether there really is a justifying and forgiving reason, or whether the condition of duress must be proven.

The legal action that must be taken if the victim of a criminal case of theft is accompanied by violence depends on the verdict, because the victim's interests have been represented by the Public Prosecutor (JPU), the indictment charges the defendant, here the Prosecutor is tasked with representing the victim and the state. Harry Suptanto, SH as Judge of the Surakarta District Court said, if the victim is not satisfied with the decision issued by the Judge, he can appeal. In Article 49 of the Criminal Code, defenses made under duress cannot be punished, but why are there still victims who do so who are subject to criminal sanctions? Harry Suptanto, SH said that it must be proven, in fact in this case the judge was of the opinion that if it was not included in the defense of coercion, if it could be proven, namely overmacht, the judge had to determine the decision, whether it could be released or the demand was not accepted, and from the testimony of the witnesses the defendant had right of denial, in court the defendant can lie but whether the defendant can be convicted or not is not because he is renegade, but it must be proven by the Criminal Procedure Code and at least 2 pieces of evidence.

Efforts that can be made to overcome and resolve criminal acts of theft accompanied by violence, that the results of cases of forced defense can be resolved by applying Restorative Justice if the consequences of the criminal act are not serious, the aim of Restorative Justice is to return to its original condition or be reconciled, it can at the investigator level, prosecution level, and court level. If there is no resolution using Restorative Justice, it is feared that there will be revenge from both parties. Efforts to overcome the crime of theft accompanied by violence can be done by giving an appeal to the public because it is important to protect and protect fellow citizens and improve easy methods to protect oneself from various things that give rise to crimes of theft accompanied by violence. There is an explanation to the public if a criminal act occurs, the public is encouraged to report it to the authorities, then carry out legal education specifically aimed at the public to be more alert on the roads at night. The most important thing is the approach of local community and religious leaders so that good relations are established between law enforcers and the community so that what has been socialized can be implemented by the community.

CONCLUSION

Article 49 of the Criminal Code in providing limitations on defense is very, very ambiguous and has many interpretations. There are no clear limits on carrying out a forced defense, and it gives the impression that even under forced circumstances, we are allowed to do something that we feel violates the law. This can be justified based on paragraph (2) under the pretext of mental shock.

Therefore, judges and law enforcers in resolving a case must have a very broad view and picture of what they will judge. You must be able to determine whether this is an act of forced defense or whether it has begun to enter the realm of aggravated murder.

The thing that became the focus later in society was the number of cases of forced defense carried out by someone who had experienced the crime of robbery and had to end up behind bars for the offense

of murder and illegal possession of goods, and this caused unrest in society.

An act can be proven if there is an element of forgiveness and an element of justification, then it cannot be punished so that the judge's decision is in accordance with the case study at hand. If it is proven but there are justifiable reasons and forgiving reasons, then the verdict is not acquittal but consolation, and the verdict on criminal charges cannot be accepted.

Efforts to prevent criminal acts are carried out by carrying out outreach to schools, increasing security in the legal area of the Surakarta District Court, improving lighting on dark roads to prevent crime.

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