

## The Element Of Forced Defense In Giving Reasons For Eliminating Crimes For Victims Of "Begal" According To Article 49 KUHP

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### Abstract

*This study was made to find out and analyze the elements that must be met in forced self-defense in accordance with Article 49 of the Criminal Code and the reasons for eliminating criminals for victims who carry out self-defense by force . The type of normative legal research is used in this study so that the approach taken is a statutory approach with primary, secondary and tertiary legal materials as legal material and the case approach is carried out by examining cases related to the legal issues at hand. The document study technique is used as a technique for collecting legal materials, then the legal materials are evaluated, interpreted, argued and discussed descriptively. The results of the study show (1) in accordance with Article 49 of the Criminal Code, the elements that must be fulfilled by someone who makes a forced defense to erase a crime or reduce his sentence are 1). The defense made must be forced. 2). Defending oneself, others, honor, decency and property, 3). There must be an attack or threat and 4). The attack is against the law and (2) the reason for the abolition of the crime consists of reasons for forgiveness and reasons for justification, to be able to apply the reason for the abolition of the criminal as a legal basis against someone who is forced to defend himself as contained in Article 49 of the Criminal Code by fulfilling various elements.*

### Keywords

Article 49 of the Criminal Code; the reason for the abolition of the crime; forced defense.



## I. Introduction

Law in general has a regulatory and coercive nature, as stated in Article 1 paragraph (3) of the 1945 Constitution, namely regulating people's lives by pouring out regulations that have been set by the government, then these regulations can be enforced on anyone who violate the rules that have been set by giving strict sanctions or penalties for anyone who does not obey them. The purpose of the law itself is that the law aims to guarantee legal certainty in society and the law must also be based on justice, namely the principles of justice from the community, in order to avoid the existence of a crime in society.

Crime is a human act that is against the law, which deserves to be punished and done wrong. Crime is a violation of norms (disruption to the rule of law) that has been intentionally or unintentionally committed against an offender, where the imposition of law on the perpetrator is for the sake of maintaining legal order and guaranteeing legal interests. The definition of a criminal act is not found in the laws and regulations in Indonesia. The definition of a crime that has been understood so far is a theoretical creation of criminal law experts who still include the " schuld " error as part of the definition of a criminal act.

The needs of daily life are increasing day by day, sometimes someone commits a crime to get or seize other people's property instantly. This is done by a person to meet the needs of his life. Lately, there have been many criminal acts, one of which is a criminal act of robbery. The crime of robbery is a crime committed by one or more perpetrators by seizing the victim's belongings at night by threatening to use sharp weapons to injure the victim so that they do not dare to fight. In general, the perpetrators plan in advance the crimes they have committed. The target of the perpetrators is usually someone who drives himself, especially a woman. Not infrequently the perpetrators in carrying out their actions when the victim resists, the perpetrator does not hesitate to carry out violence to the murder of the victim in order to eliminate the traces of his crime. The crime of robbery is included in the crime of property as contained in Article 365 book II of the Criminal Code (KUHP).

In fact, not all victims just stay silent to have their property confiscated. Not a few victims also fought to defend themselves or against the perpetrators of the robbery. Victims who feel that their safety is threatened will counterattack against the perpetrators of the robbery, until the perpetrators are injured as a result of the resistance or self-defense, and even die.

The defense made by the victim is an act to protect himself from an emergency threat. Self-defense in an emergency is regulated in Article 49 of the Criminal Code which reads:

"Article 49 paragraph (1): "Whoever commits an act of defense for life, honor or property, either for himself or for others because of the influence of coercive power, will not be punished".

Article 49 paragraph (2): "A forced defense that exceeds the limit, which is directly caused by a great mental shock due to the attack or threat of attack, is not punished".

The defense is forced to exceed the limit, namely the defense that is directly caused by a severe mental shock due to the attack or the threat of the attack, is not punished. In this case, there is an attack that is against the law that can threaten safety or life, so that a person can make a defense in an emergency or other terms say " noodweer " while exceeding the limit on the act of self-defense is called " noodweer access ".

The Criminal Code (KUHP) is known for the existence of a criminal abolition reason, namely the reason that allows a person who commits an act that should have fulfilled the formulation of the offense, but is not punished. One of them is the excuse of forgiveness, which is the reason that erases the wrongdoing of the perpetrator. This means that even though the perpetrator's actions are proven to have violated the law, for reasons of forgiveness, the perpetrators are not punished. So that his actions are still against the law, but because of the disappearance or erasure of errors in the perpetrator, his actions cannot be accounted for.

In connection with the above, there are cases related to murders committed by victims in self-defense, one of which is the case that recently occurred in Central Lombok, West Nusa Tenggara, which was named a suspect. This case began when Amaq Sinta (hereinafter abbreviated as AS) was going to East Lombok to deliver rice to his mother. However, in the middle of the road the US was snatched by two robbers, the perpetrators tried to rob the US, the US did not stay silent and immediately fought back with sharp weapons, so that two other robbers came. Even though the US was alone, the four robbers were successfully overthrown, two of them died from being stabbed with sharp weapons brought by the US. The US was also named a suspect for allegedly committing the murder of two robbers who attacked the US in the village of Change, East Praya. The US is subject to Article 338 of the Criminal Code by eliminating a person's life in conjunction with

Article 351 of the Criminal Code paragraph (3) committing persecution that results in the loss of a person's life.

Related to the state of art in the process of compiling this research, there are several previous studies that discuss self-defense by force, one of which is a study entitled Criminal Liability Against Criminals of Murder for Exceeding the Limits of Self-Defense ( Noodweer access ), written by Dwi Putri Nofrel, Erdianto and Widia Etorita, in which the research focuses on criminal responsibility for the perpetrators of the crime of homicide due to noodweer excess according to Article 49 of the Criminal Code as well as the application of the reasons for eliminating the crime in the judge's decision. This is what distinguishes the writings in this study, where this research focuses on the elements that must be met in a forced defense in accordance with Article 49 of the Criminal Code. This study also discusses the reasons why criminal abolition can provide legal protection for victims who are forced to defend themselves.

## **II. Research Method**

This type of normative legal research is used in this study. The approach used by the author through this research is a statutory approach which is achieved through reviewing laws and regulations relating to legal issues that are currently being experienced and the case approach is carried out by examining related cases. with the legal issues at hand. The literature study method is a method taken to collect legal data and other information consisting of primary, secondary and tertiary legal materials. Data that is systematically arranged by adopting a descriptive method is also used to obtain an accurate and structured explanation.

## **III. Result and Discussion**

### **3.1 Elements that must be fulfilled in forced self-defense in accordance with Article 49 of the Criminal Code**

Indonesia is a legal country that has its own law, namely criminal law. In Dutch criminal law which means Strafrecht, criminal law is generally regulated in the Criminal Code (KUHP). Criminal law is a legal regulation regarding crime. The word "criminal" means something that is "criminalized", that is, by the competent authority delegated to a person as a matter that is uncomfortable for him and also something that is not delegated on a daily basis. Of course, there is a reason for delegating this sentence, and this reason should have something to do with a situation in which the person concerned acted unfavorably. So, the element of "punishment" as a revenge is implied in the word "criminal".

Moeljatno stated that criminal law is part of the overall law applicable in a country, which provides the basics and rules for:

- 1) Determine which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition.
- 2) Determine when and in what cases those who have violated the prohibitions can be imposed or sentenced to the punishment that has been threatened.
- 3) Determine how the imposition of the punishment can be carried out if the person suspected of having violated the prohibition.

This means that all actions or behavior of a person must be guided by the law, if the actions as prohibited by the law are violated, they will be subject to sanctions.

The elements or elements of criminal acts (criminal acts) proposed by Moeljatno are:

1. Behavior or condition = action
2. Things or circumstances that accompany the action
3. Additional aggravating circumstances
4. Elements against objective law
5. Elements against subjective law.

The first element is behavior and consequences, for the existence of a criminal act it is usually necessary to have a second element, namely certain matters or circumstances that accompany the act, which matters by Van Hamel are divided into two groups, namely, regarding the person who commits the act and about the outside. perpetrator self. Furthermore, the third element is additional circumstances that are aggravating the criminal, for example, persecution that causes the death of a person according to Article 351 paragraph (1) of the Criminal Code which is punishable by a maximum imprisonment of two years and eight months. However, if the act causes serious injury, the penalty is increased to five years and if it results in death, it is seven years. The fourth element is the existence of certain actions such as the elements above, it can be seen that this is an act against the law. For example, it can be seen in Article 406, namely regarding destroying or damaging goods, the unlawful nature of the act of the thing that the goods do not belong to him and cannot be permitted to do so. The element against the law refers to the external or objective state that accompanies the act. In addition, the unlawful nature of the act does not lie in the objective state, but in the subjective state, which lies in the heart of the defendant himself. The nature of the unlawful act depends on the mental attitude of the defendant. Although criminal acts are generally an outward condition and consist of outward elements, the formulation also requires an inner element, namely the subjective unlawful element.

In times like today, with the large number of people in Indonesia, it is not matched by the number of jobs so that many people are unemployed. To meet their daily needs, which are increasing day by day, many people commit criminal acts in order to continue to live their lives, one of which is the crime of robbery, which is a crime that is committed either individually or in groups by seizing valuables belonging to other people. and by carrying sharp weapons to injure victims who resist.

The crime of robbery is not discussed in detail in the Criminal Code (KUHP) but usually the crime of robbery is categorized as a crime against property which is stated in book II of the Criminal Code, where robbery is included in theft accompanied by violence contained in Article 365 of the Criminal Code. In general, the construction of law related to robbery is theft. Theft in the Criminal Code contains 6 articles starting from Article 362 to Article 367 of the Criminal Code. Article 362 as the basis for theft is usually defined as taking other people's property either partially or wholly to be owned by themselves or others in a way that is against the law.

Basically, all acts which are criminal acts are regulated in the Criminal Code and will be subject to sanctions according to the category of the act. However, there are some actions that are clearly against the law but are not subject to criminal sanctions because the Criminal Code regulates the reasons for someone who commits a crime can be abolished. The reason for the abolition of the crime is the regulation addressed to the judge. This regulation stipulates various conditions for the perpetrator, who has fulfilled the formulation of the offense as stipulated in the law, which should have been sentenced, but was not sentenced.

Based on the Memoie van Toelichting (MvT) regarding the reason for the abolition of the crime, it is based on 2 (two) reasons, namely the excuse of forgiveness and the reason of justification. The excuse for forgiveness is the reason for eradicating the fault of the maker, while the excuse for justifying is the reason that removes the unlawful nature of the act, so that what was done by the maker then becomes a proper and right act. Reasons for forgiveness and justification are given to someone because a person feels remorse or resigns voluntarily, so that he cannot be prosecuted, automatically the reason for eliminating the crime can be given.

Criminal acts which are included in the reason for the abolition of the crime are contained in Book I of the Criminal Code concerning general rules, namely :

1. Forced defense (Article 49 paragraph (1) of the Criminal Code)

It is interpreted that forced defense is the act of someone who violates the law or protects himself, others, honor, property belonging to himself and others. The defense must be carried out only to the extent of necessity and must not exceed the threat or attack received.

2. The defense was forced to exceed the limit (Article 49 paragraph (2) of the Criminal Code)

Not much different from the forced defense in paragraph (1), the defense is forced to be carried out by the perpetrator who commits an act or the defense that is carried out exceeds the threat received, this is due to the mentality of the perpetrator who is shaken like emotion.

In accordance with the explanation of Article 49 of the Criminal Code, there are elements that must be fulfilled by someone who makes a forced defense to erase a crime or reduce his sentence, namely: first, the defense must be forced, second, the defense must be done for oneself, others, honor, decency, and property, thirdly, there must be an attack or threat, and fourth, the attack is against the law. In addition to the forced defense, there are also reasons for eliminating criminals in the Criminal Code, namely:

1. Forced power

Can be interpreted as a situation where the situation is beyond human capabilities, contained in Article 48 of the Criminal Code. Coercion is a compulsion that suppresses a person in such a way, so that he is in a state that is awry, a situation that forces him to take an attitude and act which in fact violates the law which for every normal person will not take a stance and do something else due to the risk of the choice of action is greater for him.

2. Carry out the provisions of the law

Carrying out an order in accordance with the provisions of the law even though the act is against the law or constitutes a crime, but carried out on the basis of the order of the legislation against the perpetrator cannot be punished, as long as the act is based on public interest not personal interest as contained in Article 50 of the Criminal Code.

3. Execute legitimate job orders

A person who carries out or carries out an order from a legitimate position or authority given the authority from law to carry out an order that is criminal in nature against the recipient of the order cannot be punished as contained in Article 50 of the Criminal Code.

4. The immature perpetrator

In Article 45 of the Criminal Code which does not include excuses and reasons for justification so that it is not included in the reasons for eliminating criminals but cannot be convicted, perpetrators who are not yet 16 years old who commit crimes cannot be sentenced. In the Criminal Code, the age that can be said to be a child is under the age of 16 years, a criminal act committed by a person who is not yet 16 years old cannot be punished.

### 3.2 Reasons for abolishing criminal penalties for victims who carry out self-defense by force

A person who commits a crime cannot always be punished. Committing a crime can be based on an urgent need, someone's orders, and protecting himself. This depends on whether the person in committing the crime had an error or not. Because in order to be able to impose a sentence on someone, it is not enough just to commit a crime, but besides that, there must also be an error or according to Moeljatno, a despicable mental attitude. Whoever makes a mistake, then he is the one responsible, in this case known as the principle of "no crime without error" (geen straf zonder schuld). With regard to the principle of criminal law, namely geen straf zonder schuld, actus non facit reum mens sir rea, it means that if there is no crime, the definition of a crime is separate from what is meant by criminal liability. This is as regulated in Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power and Article 14 number 2 of the International Covenant on Civil and Political Rights (ICCPR). This element of error can be removed for two reasons, namely for reasons of forgiveness and reasons of justification.

In the Criminal Code itself there is no mention of the terms justifying reasons or excuses. The first book only mentions the reasons that abolish the criminal. The reasons for the abolition of the crime consist of excuses and justifications.

1. The reason for forgiveness is related to the heart of the maker, in the sense that this person cannot be blamed (according to the law) in other words he is not guilty or cannot be accounted for, even though his actions are against the law. So here there is a reason that erases the fault of the maker, so that there can be no punishment. The reasons for forgiveness contained in the Criminal Code are :
  - a. Article 44 of the Criminal Code  
Acts committed by irresponsible people
  - b. Article 48 of the Criminal Code  
Acts committed by coercion
  - c. Article 49 paragraph (2) of the Criminal Code  
Actions due to forced defense that go beyond the limit
  - d. Article 51 paragraph (2) of the Criminal Code  
Acts carried out to carry out an unauthorized position order.
2. The justification reason is to eliminate the unlawful nature of the act even though the act has fulfilled the formulation of the offense in the Act. If the act is not against the law then there can be no punishment. The justifications contained in the Criminal Code are:
  - a. Article 48 of the Criminal Code  
Acts committed by coercion
  - b. Article 49 paragraph (1)  
Actions carried out because of forced defense
  - c. Article 50 of the Criminal Code  
Acts to carry out laws and regulations
  - d. Article 51 of the Criminal Code

The act of carrying out a legitimate office order. As for Article 48 (coercive power) there are two possibilities, it can be as a justification reason and it can also be a reason for forgiveness.

From the description above, a person gets a punishment depending on two things, namely (1) there must be an act that is contrary to the law, or in other words, there must be an element of being against the law so there must be an objective element, and (2) against the perpetrator there is an element of error in the act. the form of intentional and or negligence, so that the unlawful act can be accounted for to him so there is a subjective

element. The occurrence of criminal liability because there has been a crime/deed committed by someone.

Criminal liability must be adjusted to the ability of a person who can be held responsible. Not all perpetrators of criminal acts can be punished and sentenced, but it is necessary to look at the reasons for the perpetrators of the crime. Everyone who gets legal protection from the state and is recognized by the state so that everyone feels protected by law. The legal protection in question is a rule that provides protection for human rights to someone who is harmed and includes other communities.

In the case of robbery, the robbers who want to seize all the property belonging to their victims and to cover up their actions or facilitate their actions, the robbers also commit violence against their victims, so that the victim suffers injuries, even worse, resulting in death. However, if the situation reverses, in this case the victim who feels threatened will defend himself so that not infrequently the act of self-defense causes the perpetrator to be injured and even dies, so that it is not uncommon for the victim to act in self-defense to become a suspect.

In the case that occurred in Central Lombok, West Nusa Tenggara, a victim of robbery was named a suspect after killing two of the four criminals and was charged with Article 338 of the Criminal Code in conjunction with Article 351 of the Criminal Code paragraph (3). In fact, the victim defended himself against the attacks carried out by the robbers to defend himself and his property. If seen in a forced defense, there is a sudden attack (from the opposing party) which is against the law, the sudden attack will have a direct harmful impact on the body, co-honor or objects, own property or property of others, and requires self-defense that is mandatory/forced. Thus, a victim of a crime who defends because he is forced cannot be held criminally responsible because his actions are justified by law (Article 49 of the Criminal Code). R. Soesilo also said that self-defense is in an emergency defense or noodweer which means "emergency defense" so that people say that they are in an "emergency defense" not to be punished.

Article 49 of the Criminal Code as a legal basis to provide legal protection for someone who is doing self-defense or forced defense. From Article 49 of the Criminal Code, the criminal act of the perpetrator gets a reason for eliminating the crime so that he is free from all charges, if the perpetrator fulfills the elements of a forced defense, namely: 1). There is an act, 2). The existence of unlawful nature, 3). Ability to be responsible, 4). Threatened with criminal or criminal punishment. Giving the reason for the eradication of the crime cannot be separated from the results of the evidence at the trial which gives or not to the suspect the reason for the abolition of the crime.

#### **IV. Conclusion**

In connection with the elements that must be fulfilled, a person who makes a defense is forced to abolish his sentence or reduce his sentence in accordance with Article 49 paragraph (1) of the Criminal Code concerning forced defence, which is defined as the act of a person who violates the law or protects himself, others, honor, property belonging to oneself or others, and Article 49 paragraph (2) of the Criminal Code regarding the defense being forced to exceed the limit is a defense forced to be carried out by the perpetrator who commits an act or the defense carried out exceeds the threat received, due to the state of the soul of the perpetrator being shaken. So, judging from Article 49 paragraph (1) and paragraph (2) of the Criminal Code, there are four elements that must be met, namely: 1). The defense made must be forced, 2). Defending oneself, others, honor, decency, and property, 3). There must be an attack or threat, and 4). The attack is against the law.

The reason for the eradication of the crime is used as a protection for victims who carry out self-defense by compulsion due to the reasons for eliminating the crime which consists of reasons for forgiveness and reasons for justification. The excuse for forgiveness is the reason for removing the crime from the perpetrator which concerns the perpetrator's personal self, while the justification reason is the reason for eliminating the unlawful nature of the act even though the act has fulfilled the formulation of the offense in the law. To see whether the act committed is self-defense or self-defense is forced to meet the elements contained in Article 49 of the Criminal Code, if these elements have been fulfilled then a victim of a crime cannot be held accountable because the element of guilt can be removed.

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### Undang-undang

UUD Negara Republik Indonesia Tahun 1945

Undang-undang Nomor 1 Tahun 1946 tentang KUHP

Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

Kovenan Internasional tentang Hak Sipil dan Politik