

Legal Protection for Victims of Crime with Forced Defense According to Law Number 1 of 2023 of the Criminal Code

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Law enforcement often shows inconsistencies, where victims of crimes who commit forced defense (Noodweer) can actually become suspects or defendants who cause legal uncertainty and a sense of injustice. This study aims to analyze legal protection and legal justice for victims who are also perpetrators of forced defense crimes. This study specifically highlights Decision Number 1225/ Pid.B /2020/PN- Jkt.Sel , where a wife who stabbed her husband in a situation of threat of physical and verbal violence was sentenced to 4 years in prison for alleged persecution that caused death (Article 351 paragraph (3) of the Criminal Code). The Panel of Judges argued that the defendant's actions could not be categorized as forced self-defense. The research method used is normative juridical law using legislative, conceptual, analytical, and case approaches. The scope of this research is legal protection for victims of criminal acts who commit forced defense (Noodweer) in the perspective of the old Criminal Code (KUHP) and Law Number 1 of 2023 concerning the new Criminal Code (especially Articles 34 and 43). The results of the study show that the defendant's actions were carried out because of force and there was a mental shock constituting a forced defense (noodweer). The conclusion is that there is a reason for the pardon and the defendant should not be subject to criminal charges as specified in Article 49 Paragraph 1 of the Criminal Code.

Keywords: Victims of crime, Criminal Code; Forced Defence, Legal Protection

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1. Introduction

The Republic of Indonesia is a state of law in accordance with Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a state of law, Indonesia must prioritize everything based on law because law is the main foundation in running a state in order to realize the order of a nation [1]. Therefore, law enforcement must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In essence, law is a rule as a system of rules regarding human behavior [2]. Legal *provisions* are made to avoid disputes that arise in society by establishing legal norms, it is clear what actions may or may not be carried out in society, so that order is created in society [3]

Law is a series of regulations regarding human behavior as a member of society, while the purpose of law is to create order, safety, security, and peace in society [4]. Legal norms according to Labibah & Mahardhika, are a collection of norms of human behavior in society that can be demanded for their implementation and violations are definitely dealt with by the government [5]. The consequences of the Indonesian State as a State of Law are that every attitude, policy and behavior of state apparatus and residents must be based on law while preventing the occurrence of arbitrariness and arrogance of power [6].

One of the common problems in all countries related to crime or violence that is often found in both developed and developing countries is difficult to ignore and is always faced [7]. Indonesia is included in the category of countries with a moderate crime rate and crime remains a major problem in Indonesia. Where there is always the possibility of crime problems that occur every day [8]. Protection for society arises Legal Protection for Victims of Crime with Forced Defense According to Law Number 1 of 2023 of the Criminal Code.

because of the existence of legal norms that require everyone to behave in a certain way and if these norms are violated, those who violate will be subject to sanctions or punishment [9]. Punishment in Indonesia applies to everyone without exception and must be carried out by anyone who has violated it [10]. However, there are several reasons for the removal of a criminal conviction, namely justification and excuse. Criminal Code Number 1 of 2023 discusses the defense of necessity, regulated in Article 34, and the defense of excessive necessity is regulated in Article 43.

The application of self-defense law is not always clear-cut and requires careful assessment of the situation. In this case, the proportionality factor becomes crucial. Actions taken in self-defense must be proportionate to the threat faced [11]. This proportionality assessment is subjective and requires an in-depth analysis of the intensity of the threat, possible alternative actions, and the emotional and psychological state of the victim at the time of the incident [12]. Cases in which crime victims ultimately become suspects demonstrate inconsistencies in law enforcement [13]. Although the law establishes clear boundaries for self-defense, its implementation in practice varies depending on the interpretation of law enforcement officials [14].

Inability This consistency can undermine legal certainty and create a sense of injustice for victims who act to protect themselves from threats, such as in the case of Decision Number 1225/ Pid.B /2020/PN- Jkt.Sel. The defendant, a wife, stabbed her husband or victim with a knife. Before stabbing her, the victim asked the defendant to transfer thirty-five thousand rupiah to play online gambling, which the defendant refused. In response, the victim cursed the defendant and verbally abused him. The victim locked the door of the rented house and then pulled the defendant to prevent him from leaving the house. Then the victim took a knife and continued to beat the defendant until he fell. Then, carrying a knife, she threatened to kill the defendant. After the defendant managed to control the knife, the defendant tried to run away. However, just as she reached the living room, the victim grabbed the defendant's hand and tried to take the knife back. Seeing that the defendant would not let go of the knife, the victim hit the defendant's head, but the defendant used his right hand to push the knife until it stabbed the victim's left chest, causing the victim's death. The defendant was found guilty of committing the crime of assault resulting in death as stipulated in Article 351 paragraph (3) of the Criminal Code and was sentenced to 4 years in prison. The panel of judges was of the opinion that the defendant's actions could not be categorized as forced self-defense. This judge's decision is interesting to examine because of the judge's considerations regarding forced defense. This situation raises questions about the applicable law and appropriate protective measures in the context of self-defense for the victim.

2. Literature Review and Problem Statement

Research on the justification of criminal acts in modern criminal law cannot be separated from the development of defense theories and the objectives of punishment. One relevant framework is the Theory of Lesser Evils developed by George P. Fletcher (1978), which posits that an act that formally fulfills the elements of a criminal offense may be justified if it is committed to prevent a greater harm [15]. This theory emphasizes rational judgment and proportionality as the basis for justification, thereby viewing criminal law not merely in a legalistic sense but also as substantive and contextual. In addition, the Theory of Necessary Defense as articulated by Moeljatno (2008) asserts that actions taken to protect legally protected interests from an immediate and unlawful threat may be exempted from criminal liability, provided that the requirements of necessity, proportionality, and the absence of less harmful alternatives are satisfied [16]. With regard to punishment, modern sentencing theory, also known as the combined theory, integrates elements of retribution, deterrence, and rehabilitation, emphasizing substantive justice and the protection of human rights. Consequently, punishment is oriented not only toward the criminal act itself but also toward the offender and the circumstances underlying the act [17].

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However, there is still a lack of research that directly links modern sentencing theory with the legal protection of victims who act in self-defense. Existing studies tend to focus predominantly on offenders as the primary subjects of punishment, resulting in insufficient conceptual attention to victims who engage in defensive actions. Based on this research gap, the research problem of this study is formulated as follows how is legal protection provided to victims of criminal acts who act in self-defense under Law No. 1 of 2023 concerning the Criminal Code (KUHP)?

3. Method

This study employs a normative juridical legal research method, which is chosen due to its capacity to produce systematic, consistent, and stable analyses of prevailing legal norms, particularly in examining the legal protection of victims of criminal acts who act in self-defense. This method is appropriate given that the data analyzed are normative in nature, consisting of statutory regulations, legal doctrines, and court decisions, and therefore do not require empirical data processing.

The approaches applied in this research include the statutory approach, conceptual approach, analytical approach, and case approach. The sources of legal materials comprise primary legal materials and secondary legal materials. Primary legal materials include relevant legislation, particularly Law Number 1 of 2023 concerning the Criminal Code (KUHP), as well as court decisions related to cases of self-defense. Secondary legal materials consist of legal textbooks, scholarly journal articles, and previous research findings relevant to the research topic.

The collection of legal materials is conducted through library research by identifying, inventorying, and classifying legal materials in accordance with the focus of the research problem. The analysis of legal materials is carried out qualitatively using methods of systematic interpretation and grammatical interpretation. Systematic interpretation is employed to understand the provisions on self-defense within their relationship to the criminal law system as a whole, while grammatical interpretation is used to interpret the normative meaning of the relevant statutory provisions.

4. Results and Discussion

Legal Protection for Defendants in Case Decision Number 1225/Pid.B/2020/PN-Jkt.Sel

The issue regarding this forced defense is found in Decision Number 1225/Pid.B/2020/PN-Jkt.Sel. The case in this decision occurred on Sunday, August 16, 2020, at Jl. Bangka VIII C Rt. 013/012 Number 2 G, South Jakarta. Riska Kartika Dewi, the defendant, who is a wife, stabbed her husband, Hendra Supenda, using a knife. Before finally stabbing him, the victim Hendra Supenda asked the defendant to transfer Rp. 35,000 (thirty-five thousand rupiah) to play online gambling, which was then refused by the defendant. In response, the victim Hendra Supenda cursed the defendant and verbally abused him. The victim Hendra Supenda locked the door of the rented house and then pulled the defendant so that he could not run out of the house. Then the victim Hendra Supenda took a knife and continued to hit the defendant until he fell. Then, he put the knife to the defendant's neck while threatening to kill him. After the defendant managed to control the knife, the defendant tried to escape. However, just as they reached the living room, the victim, Hendra Supenda, pulled the defendant's hand and tried to take the knife back. Seeing that the defendant wouldn't let go of the knife, the victim, Hendra Supenda, was about to hit the defendant's head, but the defendant used his right hand to push the knife until it stabbed the victim, Hendra Supenda, in the left chest, causing the victim, Hendra Supenda, to die.

Defendant Riska was found guilty of committing the crime of assault resulting in death as stipulated in Article 351 paragraph (3) of the Criminal Code and was sentenced to 4 years in prison. The panel of judges Legal Protection for Victims of Crime with Forced Defense According to Law Number 1 of 2023 of the Criminal Code.

was of the opinion that Riska's actions could not be categorized as forced self-defense. This judge's decision is interesting to examine because the judge's considerations regarding forced self-defense in Riska's actions are important to examine properly.

Based on the facts presented at trial, the defendant acted under duress or in a state of panic, and his actions could be categorized as self-defense, if applied to the provisions of the law. The defendant's actions can be justified based on *the Theory of Lesser Evils* developed by George P. Fletcher . According to Wahyudi & Yani, this theory states that an action that is legally considered a violation is acceptable if it is carried out to protect a greater or more important interest [18]. In this case, the defendant's actions were spontaneous and aimed at protecting his own safety. If the defendant had chosen not to act, he would have suffered losses in the form of serious physical injury or even loss of life.

According to Hidayat & Kusumah, this is supported by *the Theory of necessary defense* which emphasizes that every individual has the right to take defensive action to protect themselves from real threats. The defendant's actions in this situation must be seen as a legitimate effort to protect their lives from real and immediate danger [19]. The defense of being forced to noodweer excess as stipulated in Article 49 Paragraph 2 of the Criminal Code has been fulfilled even though the defendant's actions are unlawful because they are criminal acts in accordance with Article 351 Paragraph (3) of the Criminal Code. The defendant's actions due to being forced and having mental shock constitute a forced defense that noodweer excess, so there is a reason for forgiveness so that the defendant should not be subject to criminal penalties. The failure to fulfill the element of intent in the crime of murder has automatically been absorbed into the consideration. The defendant must be released and acquitted of legal charges. The imposition of criminal penalties on the defendant is not in line with modern criminal theory or what is known as the combined theory.

Justice for Victims and Perpetrators of Criminal Acts of Forced Defense

Article 184 of the Criminal Procedure Code serves as the primary guideline for determining valid evidence to support a suspect's claim that their actions were committed solely to protect themselves or others from a real threat. This evidentiary process includes a thorough examination of witnesses, evidence, expert testimony, and other relevant evidence. The defense of necessity, as stipulated in Article 49 paragraph (1) of the Criminal Code, provides justification for actions taken in an emergency situation. However, a suspect's confession alone is not sufficient to prove that the action meets the criteria for a defense of necessity. Investigators, advocates, and legal experts play a role in uncovering facts that support or refute this claim, including through an analysis of the proportionality of the suspect's actions to the threat faced.

The defendant's statement that he had no other choice and was only trying to survive points to an important element of the defense of necessity, namely a real and pressing threat that cannot be avoided. Article 49 paragraph (1) of the Criminal Code stipulates that the defense of necessity can be a justification if the action is taken to protect oneself, others, or property from a dangerous threat. However, this must be further proven through other evidence such as witness statements, evidence, or the results of the reconstruction of the incident. In a defense of duress, the defendant's actions must be proportionate to the threat faced. If the investigation proves that the threat from the other party was real and serious, the defendant's actions may be justified. However, if it is found that the defendant acted excessively or that there were alternatives to avoid the conflict, the defense of duress may not be accepted.

5. Conclusion

The conclusion of this research is that legal protection for suspects includes preventive and repressive protection aimed at preventing violations of the law and restoring the suspect's rights if violations have occurred. The provisions of Article 49 paragraph (1) of the Criminal Code provide legal legitimacy for self-defense actions carried out to protect the safety of life from real and direct threats. In its application to the case studied, the defendant's actions can be qualified as *noodweer* carried out in a state of mental shock, thus fulfilling the element of a forgiving reason. The defendant should not be held criminally responsible because his actions are protected by law as a form of legitimate self-defense. However, this study has several limitations. The research uses a normative legal approach and focuses on only one case, which limits the ability to generalize the findings. In addition, this study does not include empirical data from judges, law enforcement officers, or legal practitioners, which could provide a deeper understanding of how self-defense laws are applied in practice. Based on these limitations, future research is recommended to use empirical or mixed methods to examine the application of *noodweer* and *noodweer excess* in a wider range of cases. Further studies may also analyze differences in judicial interpretation, the role of psychological assessments in determining mental shock, and comparisons with self-defense laws in other countries. This future research is expected to improve legal certainty and strengthen the protection of suspects' rights in the criminal justice system.

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