



## The legal status of the victims survive and against the begal to the death based on article 48 and 49 of the book of criminal law in Indonesia

Wawan Fransisco

Faculty of Economics and Social Humanities, University of Bina Insan, Lubuk Kupang Village, Lubuklinggau, South Sumatra, Indonesian

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### Abstract

For the sake of survival and high economic demands to meet the diverse needs of life along with technological advances and the development of a fairly dynamic era, humans often justify all means without seeing the legal norms that apply in society. This can have a negative impact on survival in the community. One form of crime that is now rife is the crime of burglary (violent theft) which we can find on television, print media, online media and social media, causing discomfort and injustice to the surrounding environment. As in the statement, there are cases of emergency self-defense against oneself or others to protect other people's property and defend their rights.

The purpose of this study is to find out Knowing the legal status of the victim survives and fights the perpetrators of the robbery to death in Indonesia, the type of research carried out is normative legal research, which is descriptive in nature by describing the evidence and legal consequences of victims who commit murder of burglars in self-defense, so that they do not test the hypothesis.

Criminal acts committed by someone in a threatened condition so that they carry out self-defense in an emergency, in accordance with the provisions of Article 48 and 49 of the Criminal Code, the victim of a criminal act of robbery who defends himself against the perpetrator of the robbery cannot be punished, because the victim can make an emergency defense so that get a reason for the abolition of a sentence which can reduce the sentence or not be punished. However, to carry out an emergency defense, of course, there are several things that must be fulfilled, namely: a. the existence of an action, b. existence of unlawful nature, c. ability to be responsible, d. be subject to criminal or criminal penalties.

**Keywords:** spoliation, victims of crime, emergency defense, murder, coercion, legal status of victims

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### Introduction

For the sake of survival and high economic demands to meet the diverse survival along with technological advances and the times, humans often justify all means without looking at the legal norms that apply in society. This can have a negative impact on survival in the community. One form of crime that is now rife is the crime of burglary (theft with violence) which we can find on television, newspapers, and social media, causing discomfort and injustice to the surrounding environment.

With the development of the crime of theft, the forms of theft also develop, one example of which is the crime of theft with violence. The crime of theft with violence is the act of stealing something that does not belong to him accompanied by a physical act using considerable physical force or force aimed at a person as the object of theft and causing the person to be powerless <sup>[1]</sup>.

As stated above, there are cases of emergency self-defense against oneself or others to protect other people's property and defend their property rights. Things like this can be exemplified in a case of burglary. The robbery incident occurred in the Bekasi area, West Java, on Wednesday (23/5) night. However, the robber, known as Aric Saipulloh, failed to seize the victim's belongings (MIB). In fact, while in action the perpetrator had a fight with the victim. Unexpectedly, the perpetrator who used the sickle was actually killed by the victim <sup>[2]</sup>.

In this case, the victim who intended to protect her lover was even threatened with a life sentence by the public prosecutor. The perpetrators of the robbery murders were then charged by the prosecutor with Article 340 of the Criminal Code regarding premeditated murder, which is subsidiary to Article 338 of the Criminal Code concerning persecution resulting in death, as well as the Emergency Law related to carrying sharp weapons with a penalty of 3.5 years to 10 years in prison. In the trial related to the case that happened to the victim of the robbery, it was proven that the accused murderer of the robbery violated Article 351 paragraph (3) of the Criminal Code (KUHP) which resulted in death. Then the judge decided to impose a criminal sentence for coaching in the Institution for one year at the Child Welfare Institution (LKSA) <sup>[3]</sup>.

In the Victimology book, according to Arief Gosita, victims of crime are people who suffer physically and spiritually as a result of the actions of others who seek fulfillment of their own or other people's interests that conflict with the human rights interests of the injured party. Where physical has the same meaning as physical

loss, property loss, and resulting in death. Spiritual has the meaning of mental suffering can do self-defense or make an emergency defense (noodweer) <sup>[4]</sup>.

According to Article 338 of the Criminal Code, murder is any act done intentionally to kill another person. In addition, murder is considered a very inhuman act. In the crime of murder, the target is that someone's life cannot be replaced with anything. And the confiscation is very contrary to the 1945 law which reads: "everyone has the right to live and has the right to defend his life and life". If we look into the book of criminal law (KUHP), we can see that the legislators have intended to regulate criminal provisions for crimes directed against the person's life in book II to XIX of the Criminal Code which consists of thirteen articles. namely from article 338 to article 350 <sup>[5]</sup>.

According to the Big Indonesian Dictionary, robbery is a process, method, or act in the form of looting or robbery on the highway [6]. Beheading is a criminal act of theft with violence committed by one or more perpetrators by seizing the victim's belongings that occurred during the day or night using sharp weapons (machetes, machetes, sickles, axes, and badik), firearms (pistols), and homemade firearms), and blunt weapons (wood, iron, and metal materials) so that they can injure the victim <sup>[7]</sup>.

In reality, not all victims were silent when their belongings were confiscated. There were several victims who fought to defend themselves so that their belongings were not confiscated. For the sake of safety, the victim does not hesitate to counterattack against the perpetrators of the robbery so that the perpetrators of the robbery may suffer injuries and even death due to resistance to the victim's self-defense. Thus, acts of legal self-defense must be distinguished from acts of vigilantism.

In the theory of criminal law known as self-defense, namely the rights and obligations given by law to every human being to maintain the safety of life, both life, property, objects and honor and that is justified by the criminal code of law (KUHP) as one of the provisions of the Criminal Code. the reasons for justifying self-defense or self-defense or in Dutch called noodweer are contained in Article 49 of the Criminal Code which reads as follows: <sup>[8]</sup>

Paragraph (1) No penalty shall be imposed, whoever commits an emergency defense act for himself or for another person, moral honor or property for himself or for another person, because there is an attack or threat of attack that is very close at that time which is against the law. Paragraph (2) An emergency defense that exceeds the limit, which is directly caused by a severe mental shock due to the attack or the threat of such attack, shall not be punished.

According to the article mentioned above, people who do self-defense cannot be punished. It also explains the reason for the abolition of the crime, namely because the act of emergency self-defense is not based on an unlawful act. In carrying out an emergency self-defense one must have several conditions according to R. Soesilo in the book "The Book of the Criminal Law and Complete Comments article by article", namely: <sup>[9]</sup> Paragraph (1) The act committed must be carried out in an emergency to defend (defense). Paragraph (2) The defense or defense must be carried out only against the interests referred to in the article, namely the body, honor, and property of oneself or others. Paragraph (3) There must be an attack that violates the right and threatens suddenly or at the same time.

Proof of a person in self-defense can only be proven based on the results of the examination and the decision by the court in an examination in court must be based on the evidence found at the crime scene (TKP), then listen to statements from witnesses, so that the judge can consider the sentencing of the perpetrator. self-defense where the perpetrator gets commutation of sentence or reasons for the abolition of the crime.

Based on the background of the problem above, the following problems can be formulated: Is the legal status of the victim surviving and fighting the perpetrators of the robbery to death in Indonesia?, The purpose of this paper is to find out the legal status of the victim survives and fights the perpetrators of the robbery to death in Indonesia. The first use of this research theoretically is to add legal materials that can be used for the development of legal science. Second, practically it is to support the formation of related laws and regulations the legal status of the victim survives and fights the perpetrators of the robbery to death in Indonesia and provide input or contribution of ideas to policy makers for law enforcement officers, the community and other stakeholders in upholding related justice the legal status of the victim survives and fights the perpetrators of the robbery to death in Indonesia.

## Research Methodology

This paper uses a normative legal writing method because it examines legislation, literature, and journals and papers related to the material being studied, which consists of the type of data obtained in this study is secondary data, namely data obtained from library research and documentation, which is the result of research and processing of others, which is already available in the form of literature or documentation.

## Result and Discussion

### Crime Victim

Crime is a behavior or action that can harm and harm other people. Evil comes from the word evil which means very bad, very bad, very ugly, which is seen from the habits of others. "In the view of social science, crime is defined as a social phenomenon born in the context of structural injustice or the embodiment of the diversity of human behavior which is a reaction to the conditions of a person's socioeconomic class or social group <sup>[10]</sup>. Victimology provides a deeper understanding of victims of crime as a result of human actions that cause mental,

physical and social suffering. The aim is not to flatter the victims, but simply to shed light on the real role of the victims and their relationship to the victims. This explanation is important in order to undertake activities in preventing various forms of victimization, maintaining social justice and improving the welfare of those who are directly or indirectly involved in a victimization. In particular, in the field of information and guidance not to become victims of structural or non-structural crimes <sup>[11]</sup>.

The definition of crime according to R. Soesilo in his book entitled "The Book of the Law. Criminal and Complete Commentaries Article by Article" (1985, Politeia Publisher) distinguishes the definition of crime into two points of view, namely the juridical point of view from the sociological point of view. First, from a juridical point of view, according to R. Soesilo, the notion of crime is an act of behavior that is contrary to the law. Second, from a sociological point of view, the definition of crime is an act or behavior that in addition to harming the sufferer, is also very detrimental to society, namely in the form of loss of balance, peace and order <sup>[12]</sup>.

### **Spoliation**

In the big Indonesian dictionary, *begal* is defined as robber/piracy, while robbery is defined as robbing or robbing on the street <sup>[13]</sup>. So, robbery is an act that is categorized as an act that violates the law, the crime of robbery or robbing or stealing on the street and accompanied by acts of violence committed by someone to the victim whose property is confiscated, such as motorbikes and other property.

*Begal* means a person or several people who commit a robbery against a person, by expropriating with violence and or threats of violence. *Begal* is a language that grows and develops in society, if we look in the book of criminal law (KUHP) as *lex ganarale*, we will not find a definition of the crime of burglary.

The explanation of robbery in the Big Indonesian Dictionary is defined as a robber/piracy while robbery is defined as robbing or robbing on the road [14]. So, robbery is an act that is categorized as an act that violates the law, the crime of robbery or robbing or stealing on the street and accompanied by acts of violence committed by someone to the victim whose property is confiscated, such as motorbikes and other property.

The Criminal Code itself is categorized as a crime against property, which is stated in the third book of the Criminal Code where robbery is included in theft accompanied by violence contained in Article 365 of the Criminal Code.

The crime of robbery in the big Indonesian dictionary is defined as robbers/pirates while robbery is defined as robbing or robbing on the road, there is a difference in the crime of robbery, robbery and mugging, the crime of robbery is usually carried out by tailing the victim and intercepting the victim on the road and seizing the victim's property on the road, if the victim resists, the perpetrators of the crime of robbery do not hesitate to take violent actions so that the victim is injured and even dies. In contrast to robbery, robbery (*hirabah*) or grand theft is different from theft, because the theft is taking (wealth) secretly, while in robbery the taking of property is done openly. However, it is true that in robbery there is also an element of stealth [15].

### **The Crime of Murder**

The crime of murder is a material crime or material delict, which is a crime that can only be considered as having been completed by the perpetrator with the emergence of prohibited or unwanted consequences by law. Thus, people cannot talk about the occurrence of a crime of murder, if the result in the form of the death of another person has not yet arisen. Therefore, the occurrence of murder is the loss of another person's life, so that it cannot be said to be a murder if the result of the death of another person has not been realized. If the goal of killing other people's lives is not realized, then it can only be called attempted murder [16]. Meanwhile, according to Hermein Hadiati (Hermein Hadiati, 1984: 22) [17], mentions the elements of the crime of murder as follows:

1. The existence of an action that causes the death of a person, this relationship exists in the realm of reality;
2. There is an intentional approach to the execution of that person's death, this relationship is in the inner realm;
3. Deliberately taking the person's life is carried out immediately after the intention (to kill);
4. Other people, the element that shows that taking a person's life is a positive act even with a small act.

The crime of murder is divided into several types, including, according to Sudrajat Bassar (1984: 12) [18]., that: The crime of murder is divided into 7 types, namely:

1. Ordinary murder (Article 338 of the Criminal Code); "Whoever deliberately takes the life of another, is threatened with murder with a maximum imprisonment of fifteen years".
2. Qualified murder (*gequalificeerd*) (Article 339 of the Criminal Code); "A murder that is followed, accompanied, or preceded by a criminal act, which is carried out with the intention of preparing or facilitating its implementation, or to release oneself or other participants and is criminal in the event of being caught red-handed, or to ensure control of the goods obtained by him against the law, be punished with imprisonment for life or for a certain period of time, not more than twenty years".
3. Premeditated murder (Article 340 of the Criminal Code); "Whoever deliberately and with premeditated plans to take another person's life, is threatened with premeditated murder with a death penalty or imprisonment for life or for a certain period of time, a maximum of twenty years".

4. Child murder (Article 341 of the Criminal Code); "A mother who is afraid that she will be caught giving birth to a child at the time the child is born or shortly thereafter, intentionally snatches her child away, is threatened with killing her own child, with a maximum imprisonment of seven years."
5. Murder at the request of the victim (Article 344 of the Criminal Code); "Whoever takes another person's life at the request of the person himself, which is clearly stated with sincerity, is threatened with a maximum imprisonment of twelve years."
6. Suicide (Article 345 of the Criminal Code); "Whoever intentionally encourages another person to commit suicide, assists him in that act or provides him with the means to do so, is threatened with a maximum imprisonment of four years if that person commits suicide."
7. Abort the pregnancy (Article 346 of the Criminal Code); "A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is threatened with a maximum imprisonment of four years".

### **Overmacht**

The concept of overmacht or what is often referred to as coercive power is a common concept in Indonesian criminal law. This can be seen in the Criminal Code (KUHP), which has included this in it. In Article 48 of the Criminal Code, it is stated that:

"Whoever commits an act under the influence of coercion will not be punished."

In Article 48 of the Criminal Code, it is regulated regarding coercive power which refers to the concept of coercion in the Criminal Law. *Memorie van Toelichting* states that coercion is a force, encouragement, or coercion that cannot be resisted or resisted. If you look at the formulation of Article 48 of the Criminal Code, it can be understood that coercive power is one of the reasons for the abolition of crimes. However, coercion does not necessarily become the reason for the abolition of the crime. This is because there are limitations that must be met so that a coercive power can be considered as a reason for eliminating a crime. The coercive power that can be accepted as the reason for the abolition of a crime is the coercive power that comes from a greater power, namely power which in general cannot be resisted. In connection with the greater power, the forced power is divided into 3 (three) parts, namely: <sup>[19]</sup>

#### **1. Absolute compulsion**

In this situation, the perpetrator of a crime cannot do anything other than the action that is forced on him. That is, the perpetrator of the crime did something that could not be avoided. According to Andi Hamzah, absolute coercive power or what can also be referred to as *vis absoluta* is not real coercive power. This of course makes sense because with absolute coercion, the person actually does not commit a crime. Therefore, if there is an element of absolute coercion in a criminal act, then Article 48 of the Criminal Code does not need to be applied. An example is a person who commits a crime, but he is a "tool".

#### **2. Relative Coercion**

In relative coercion, it can be understood that a person gets an influence that is not absolute, but even though that person can take other actions, he cannot be expected to take other actions in the face of similar circumstances. That is, the person still has the opportunity to choose what action to take even though his choice is quite a lot influenced by the coercion. Therefore, there appears to be a difference with absolute coercion. In absolute coercion, everything is done by the coercive person, while in relative coercion, the act is still carried out by the coerced person based on the choices he or she makes.

#### **3. Emergencies**

An emergency is often referred to as a *Noodtoestand*. The state of emergency developed based on the decision of the Hoge Raad on October 15, 1923, which was called an optical arrest. Based on the decision, Hoge Raad divides an emergency into 3 (three) possibilities, namely a conflict between 2 (two) legal interests, a conflict between legal interests and legal obligations, and a conflict between 2 (two) legal obligations. Basically, when talking about an emergency, it can be understood that in an emergency, a criminal act committed by a person occurs based on a choice he made himself.

### **Noodweer**

as described in the article coercion and forced defense as the reason for the abolition of the crime, *noodweer* or forced defense in criminal law book ("KUHP") is divided into 2 (two), namely *noodweer* (forced defense) and *noodweer-exces* (emergency defense that exceeds the limit) contained in article 49 of the Criminal Code which reads:

1. *1 Is not punished, whoever commits an act of forced defense for himself or for another person, moral honor or property for himself or for another person, because there is an attack or threat of attack that is very close at that time which is against the law.*
2. *2 Involuntary defences that exceed the limit, which are directly caused by severe mental shock due to the attack or the threat of attack, are not penalized.*

**Then according to Andi Hamzah, as quoted in the article coercion and forced defense as the reason for the abolition of the crime, the elements of a forced defense (*noodweer*) are <sup>[20]</sup>**

1. 1 The defense is mandatory.
2. 2 Being defended is oneself, others, the honor of decency, or one's own or other's property.
3. 3 There was no flash attack or imminent threat of attack at that moment.
4. 4 The attack was against the law.

R. Sugandhi, SH, related to Article 49 of the Criminal Code, says that in order for this action to truly be classified as an "emergency defense" and cannot be punished, the action must meet three kinds of conditions as follows: <sup>[21]</sup>

1. The actions taken must really be forced to defend (defense) themselves. The defense or defense must be so necessary that it may be said that there is no better way;
2. The defense or defense that must be carried out is only against the interests of oneself or others, decency, and property belonging to oneself or that of others;
3. There has to be an attack against rights and a sudden (at the same time) threat. To be said to be "against rights", the attacker who carried out the attack had to be against the rights of others or did not have the right to do so, for example a thief who would take other people's goods, or a thief who was caught taking other people's goods and then attacked the owner of the goods with sharp weapon. In these circumstances, we may fight to defend ourselves and the stolen goods because the thief has attacked against the right.

### **Noodweer Exces**

Noodweer Exces it was an emergency defense that went beyond the limits. This is regulated in Article 49 paragraph (2) of the Criminal Code. According to R. Soesilo (p. 66), as with emergency defense, Noodweer Exces must have a sudden attack or threat at that time. Here the limits of the need for the defense are exceeded. For example, people defend by shooting a gun, whereas actually defending by hitting wood is enough. Exceeding these limits is permitted by law, provided that it is caused by the feeling of extreme shock that arises from the attack. Feelings of intense shock, such as irritation or anger, are commonly called dark eyes [22].

### **Victim's Legal Status**

#### **Similarities and Differences Between Noodweer and Noodweer Exces:**

Still sourced from the article Forced Power and Forced Defense as Reasons for Criminal Abolition According to Andi Hamzah (pp. 159-160), there are similarities between forced defense (noodweer) and forced defense that exceeds the limit (noodweer exces), both of which require unlawful attacks. , who are defended are also the same, namely the body, honor, decency, and property, both for oneself and for others.

#### **The differences:** <sup>[23]</sup>

1. In the noodweer exces defense, the maker goes beyond the bounds because of the great shock of the soul. Therefore, the act of defending oneself beyond the limit is still against the law, only the person is not punished because of a great mental shock. Furthermore, the forced defense that goes beyond the limits becomes the basis for forgiveness.
2. The forced defense (noodweer) is the basis for justification, because against the law there is no such thing.

So to answer your question, Noodweer Exces is an emergency defense that goes beyond the limits as stipulated in Article 49 paragraph (2) of the Criminal Code. Noodweer Exces and noodweer are actually both forced defenses, but what distinguishes them is in noodweer exces, forced defenses are carried out by going beyond the limit where the maker exceeds the limit due to great mental shock.

Refer to explanation clinic online law, a person cannot be punished for carrying out an emergency defense act to defend himself or another person or his property from attacks or threats that are against the law. This is regulated in Article 49 of the Criminal Code which reads as follows: <sup>[24]</sup>

1. Not being punished, whoever commits an act of forced defense for himself or for another person, moral honor or property for himself or for another person, because there is an attack or threat of attack that is very close at that time which is against the law.
2. A forced defense that exceeds the limit, which is directly caused by severe mental shock due to the attack or the threat of attack, is not punished.

Article 49 of the Criminal Code regulates the act of "emergency defense" or "noodweer" for oneself or for others, decency, honor or property for oneself or for others, because there is an attack or threat of a very close attack. According to this article, a person who makes an emergency defense cannot be punished. This article stipulates the reason for the abolition of the crime, namely the justification reason because the act of emergency defense is not an act against the law.

#### **According to R. Soesilo, the conditions for an emergency defense in the book "The Book of the Criminal Code and Complete Commentaries Article by Article" (pp. 65-66), namely**

1. 1 The act that must be done must be done to defend (defense). The defense must be absolutely necessary, so to speak there is no other way. There must be a certain balance between the defense and the attack. In defense of meaningless interests, for example, one may not kill or injure another person.

2. 2 The defense or defense must be carried out only against the interests referred to in that article, namely the body, honor and property of oneself or others.
3. 3 There must be attacks that are against the right and threaten suddenly or at a moment's notice.

Soesilo gave an example of an "emergency defense" (Article 49 paragraph [1] of the Criminal Code) where a thief takes other people's belongings, then the thief attacks the person who has the goods with a dagger. Here the person may fight to defend himself and his stolen property, for the thief has attacked against the right. Furthermore, the attack must be sudden or threatening at that moment. However, if the thief and the goods have been caught, then people should not defend by beating the thief, because at that time there was no attack at all from the thief, either against the goods or the person.

**Then, Soesilo also gave an example of "emergency defense that exceeds the limit" or noodweer-exces (Article 49 paragraph [2] of the Criminal Code) as follows:**

*For example, a police agent who sees his wife being raped by someone, then pulls out the gun he was carrying and fired several times at that person, it can be said that he is going beyond the limits of an emergency defense, because usually by not having to shoot several times, that person has stopped what he was doing and fled. self. If it can be stated to the judge that it is permissible to exceed these limits due to extreme anger, then the police agent cannot be punished for his actions.*

So, based on the description above, it can be concluded that the Criminal Code regulates the actions taken by a person to defend himself or his goods from attacks that violate rights. An emergency defense in the context of self-defense cannot be said to violate the presumption of innocence or be said to be vigilante. If the owner of the house that caused the thief to die can prove in court that his actions were carried out in the context of an emergency defense, then he cannot be punished. For this reason, the judge will issue a decision that releases the defendant from all lawsuits (ontslag van alle rechtsvervolging) <sup>[25]</sup>.

### Conclusion

Based on the description above, it can be concluded that the Criminal Code regulates the actions taken by a person to defend himself or his goods from attacks that violate rights. An emergency defense in the context of self-defense and coercion cannot be said to violate the presumption of innocence or be said to be vigilante. If the owner of the house that caused the thief to die can prove in court that his actions were carried out in the context of an emergency defense, then he cannot be punished. For this reason, the judge will issue a decision that releases the defendant from all lawsuits.

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