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Defense Exceed the Limits (*Noodweer Exces*) in Victim Repositioning Principle

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Abstract: The victim who is in the position of being the perpetrator of defense exceed the limit due to the act of murder committed against the perpetrator of *begal* in criminal law regulated in Article 49 Paragraph (2), which is known as *Noodweer Exces*. This study aims to identify situations where defense exceed the limit in the context of the victim's role reversal in the case of the crime of robbery. The study applied normative legal research as the method. The approach involves analyzing and describing legal materials such as relevant literature, journals, and regulations, focusing on interrelated primary and secondary legal sources. The main difference with previous study is the emphasis on statutory analysis and case approach, as well as the application of the theory of criminal elimination, the theory of negative proof, and the principle of *culpa in causa* as supporting theoretical foundations. The findings show that, in principle, criminal regulations in Indonesia protect from a legal perspective against acts of defense carried out by individuals, in this case involved as victims of a criminal offense. Therefore, acts of defense exceed the limits are considered not criminalizable because defense is a right owned by everyone to fight against actions contrary to legal provisions. A person is considered in forced defense if they meet the conditions stipulated in Article 49 Paragraph (2) of the criminal law. These conditions include the act of defense that exceeds the established limits, the direct effect of severe mental or mental shock due to the attack that occurred at that time, and the act of defense in response to the attack or threat of attack. However, the granting abolition of punishment also depends on the results of the trial evidence in this case, which determines whether the perpetrator entitled to obtain it or not.

Keywords : Legal Consequences; Victim; Noodweer

INTRODUCTION

Problems concerning law enforcement in Indonesia are always interesting to discuss. Also, it always makes people or legal experts argue and have different opinions about law enforcement.[1] Since Indonesia is a state of law, this is regulated in the provisions of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).[2] As a state of law, Indonesia has a series of legal regulations that are useful for protecting the

[1] Made Fajar Ari Wibawa Putra and A.A.A.Ngurah Tini Rusmini Gorda, "Effectiveness of KPAI's Role in Legal Protection of Children as Victims of Bullying Crime," *Justisi* 10, no. 2 (2024): 257–72. DOI: https://doi.org/10.33506/js.v10i2.2837.

[2] Ni Gusti Agung Ayu Mas Tri Wulandari et al., "Death Penalty Imposition for Rape against Minors," *Social Science Journal* 13, no. 2 (2023). https://doi.org/resmilitaris.net

interests of society, and it has a judicial entity that enforces justice. Law is considered a forum that regulates all matters related to protecting human rights.[3] One of the legal instruments used to fulfill human rights and uphold justice is the provision of criminal law.

Furthermore, criminal law in Indonesia is divided into two main parts. The first is material criminal law, which refers to the core or substance of criminal law itself. In this case, the provisions are conceptual and applicable permanently. The second is formal criminal law (criminal procedure law), which refers to the concrete and fundamental aspects of implementing criminal law. In the formal context, criminal law can be observed in its implementation or the trial process.[4] Material criminal law, also known as substantive criminal law, refers to the acts prohibited in this case, and there is a threat of punishment for anyone who violates it. The primary source of material criminal law in Indonesia is the criminal law called *Kitab Undang-Undang Hukum Pidana* (KUHP). The Criminal Code is the rule of law that determines what is substantially related to criminal offenses, the elements of a criminal offense, and the sanctions given to the perpetrators.

Under the current criminal provisions, a reason can be used as a basis by the judge to impose a verdict on the defendant who is charged before the court for the criminal act committed[5]. One of the reasons for the abolition of punishment is regulated in the criminal provisions. The grounds for criminal nullification refer to the circumstances in which a perpetrator of a criminal offense is not subject to punishment despite having fulfilled the elements of the offense that should be punished following the law.[6] This regulation stipulates that a perpetrator who should be punished is not subject to criminal punishment under the applicable provisions in certain situations. Judges have the authority in specific cases to decide whether special conditions or circumstances on the perpetrator qualify for the abolition of criminal punishment.[7]

The provision of CHAPTER III of the Criminal Code regulates the reasons for the abolition of punishment. The act of defense exceed the limit (noodweer excess) is one of the reasons for the abolition of punishment regulated in Article 49 Paragraph (2) of the Criminal

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[3] Ilham Gumelar and Gunawan Nachrawi, "Perlindungan Hukum Bagi Anggota Tni Berdasarkan Undang-Undang Hak Asasi Manusia (Studi Kasus Gerakan Separatis Organisasi Papua Merdeka)," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 2 (2022): 4146–66. DOI: https://doi.org/10.58258/jisip.v6i2.3110

[4] Porlen Hatorangan Sihotang, "Penyelesaian Tindak Pidana Ringan Menurut Peraturan Kapolri Dalam Mewujudkan Restorative Justice (Studi Di Polresta Deli Serdang)," *Iuris Studia: Jurnal Kajian Hukum* 1, no. 6 (2020): 107–20. DOI: https://doi.org/10.55357/is.v1i2.37

[5] Muhammad Zaki, Tofik Y Chandra, and Hedwig Adianto Mau, "The Problem of Corruption Law Enforcement That Causes State Losses Since The Constitutional Court of The Republic of Indonesia Number 25/PUU-XIV/2016 Decision," *Policy, Law, Notary and Regulatory Issues (POLRI)* 1, no. 3 (2022): 17–34. DOI: https://doi.org/10.55047/polri.v1i3.204.

[6] Ratna Kumala Sari, "Perbandingan Kebijakan Formulasi Alasan Pengahapusan Pidana Dan Konrtibusinya Terhadap Pembaharuan Hukum Pidana Nasional," *Justicia Sains: Jurnal Ilmu Hukum* 6, no. 2 (2022): 355–71. DOI: https://doi.org/10.24967/jcs.v6i2.1519

[7] I Gede Windu Merta Sanjaya Sanjaya, I Nyoman Gede Sugiartha, and I Made Minggu Widyantara, "Pembelaan Terpaksa Melampaui Batas (Noodweer Exces) Dalam Tindak Pidana Pembunuhan Begal Sebagai Upaya Perlindungan Diri," *Jurnal Konstruksi Hukum* 3, no. 2 (2022): 2746–5055. DOI: https://doi.org/10.22225/jkh.3.2.4847.406-413

Code. The provision explains that "defense exceeds the limit, which is caused by intense mental shock due to an attack or threat of attack at that time, is not punishable." Acts of forced defense can be compared to lawful vigilantism.[8] It occurs because the state cannot fulfill its obligation to protect the safety and security of its people in the event of an imminent threat or attack. Involuntary defense is an instinct or human nature to preserve life and honor as a human being. Therefore, it is essential to legally regulate the act of defense to provide clarity and protection when the situation requires this kind of action, namely, when the victim of a crime threatens the safety of his life at that time.

An example illustrating an act of defense is a recent burglary case in Central Lombok, West Nusa Tenggara (NTB). In this case, known as *begal* (robbery). There are two perpetrators were killed when the victim tackled them. The victim is Murtede a.k.a. Amaq Sinta, a local man 34-year-old. Initially, the victim was on his way to deliver food to his mother in East Lombok. However, when he arrived at the scene of the incident, the victim was confronted by the perpetrators, who were armed with sharp weapons. The victim tried to call for help from the residents while resisting the perpetrators with a small knife he was carrying. However, no help came from the residents, and in a state of urgency, the victim took action in defense, which resulted in the death of two of the perpetrators while the other two managed to escape. After the incident, the victim, who acted in defense to protect himself, was named as a suspect by the police at Central Lombok Police Station.[9]

Then, the defense exceeded by the victim turned to be the perpetrator necessitates an attack that is unlawful and safety-threatening.[10] Thus, a person may go beyond the limit in defense. In such a compelling situation, even though the actions taken by the victim or the attacked party may harm the attacker, these actions are considered lawful as they aim to protect themselves from a severe threat that may harm them. Removing the anti-legal element in the act eliminates the criminal consequences for the perpetrator.[11] In other words, the basis for such unlawful cancellation is found in Article 49 Paragraph (2) of the Criminal Code, which refers to acts of defense exceed the limit.

However, in reality, even though it has been regulated concerning the act of defense, the victim who is doing defense is still made a suspect by the police. So, there is a blurring of norms in Article 49 Paragraph (2) of the Criminal Code. Namely, in one of the elements of the article, it is explained that "great mental shock" then which actions can be categorized by the state of great shock. The limitation of mental shock in the act of defense exceed the limit

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[8] Fergio Rizkya Refim and Salman Daffa Nur Azizi, "Dasar Hukum Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Melampaui Batas (Noodweeer Excess)," *Jurnal Fundamental Justice* 4, no. 117 (2023): 141–56. DOI: https://doi.org/10.30812/fundamental.v4i1.3277

[9] Maria Flora, "4 Fakta Korban Begal Jadi Tersangka Di Lombok NTT," Liputan 6, 2022. Diakses dari 4 Fakta Korban Begal Jadi Tersangka di Lombok NTT - News Liputan6.com (2024, Maret 23)

[10] Anak Agung Gede Agung., Anak Agung Sagung Laksmi Dewi., and I Made Minggu Widyantara, "Perlindungan Hukum Terhadap Pelaku Pembunuhan Begal Atas Dasar Pembelaan Terpaksa," *Jurnal Interpretasi Hukum* 2, no. 1 (2021): 1–7. DOI: https://doi.org/10.22225/juinhum.2.1.3075

[11] Isabella Merlin Anjani and Ade Adhari, "Tinjauan Yuridis Pembelaan Terpaksa (Noodweer Excess) Sebagai Dasar Penghapusan Pidana Analisis Kasus Pelaku Begal Di NTB Yang Terbunuh Oleh Korban Begal AS," *Unes Law Review* 5, no. 4 (2023): 3471–85, https://doi.org/10.31933/unesrev.v5i4.685. DOI: https://doi.org/10.31933/unesrev.v5i4

is unclear, thus creating a blurring of norms. In this context, the act of defense taken by the victim, who is the perpetrator of the criminal act of robbery, has resulted in the death or loss of life of the two perpetrators of the robbery. Based on this, there is a need for a more explicit rule to avoid varying interpretations. Based on the explanation described above, the study writing is essential to examine and understand the legal consequences of the act of defense exceed the limit in the principle of repositioning the victim.

The previous study showed that when a person commits a *noodweer excess* against the perpetrator of a robbery, where the perpetrator accidentally kills the robber, his actions can be justified if judged to have exceeded the limits of reasonable defense. For example, if the way to protect oneself is too excessive, such as by killing the robber, whereas more proportional actions, such as stopping the attack by hitting, are sufficient to paralyze the robber, then the act of killing cannot be justified. In addition, another study found that Article 49 paragraph (2) of the Criminal Code regulates defense exceed the limit. Thus, based on this Article, if a person defends himself/herself against an attack due to mental shock, then the act of overreaching is still considered unlawful. Although the person is acquitted, the excuse applies.

The novelty of this study focuses on the discussion of defense, exceeding the principle of repositioning victims of the crime of robbery, which is a relevant and urgent issue in today's society. This study is analyzed with two main approaches, namely the statutory approach and the case approach, as well as using the principle of *culpa in causa* in order to be able to analyze the legal consequences for a victim who is positioned to become a perpetrator of murder due to the act of forced defense that is carried out against the perpetrator of robbery. In other words, whether or not a victim of a crime can be held accountable for his actions that commit defense causing the loss of a person's life for the defense effort in this case based on the provisions of Article 49 Paragraph (2) of the Criminal Code regarding the reasons for criminal elimination. Based on it, this study can contribute to Indonesia's academic literature and legal practitioners. It can also be the basis for recommending improvements in regulatory policy, especially concerning forced overreaching in defense from a crime.

METHOD

The type of study is normative juridical research. The study principally examines the law as a series of norms or rules that regulate behaviour in society and serve as guidelines for individuals.[12] The method used in normative research is library research, where legal materials such as literature, journals, and laws and regulations are analyzed to describe relevant legal concepts. In this context, law can be interpreted as text in legislation or as a set of principles and norms that regulate human action.[13] Legal materials in this study were collected using literature study techniques, namely analyzing appropriate rules reading

[12] H. Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi.* (Bandung: Alfabeta, 2020).

[13] David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78. DOI: https://doi.org/10.31604/jips.v8i8.2021.2463-2478

materials to make it easier to describe, analyze, and conclude. Next, to answer the problems in this study, an analysis process is carried out through the stages of description, evaluation, and argumentation. Legal materials are concluded through deductive methods, namely conclusions drawn from general to specific information to obtain clarity on a truth. As a result, a clear and precise picture is obtained.[14]

DISCUSSION

Defense Exceed the Limits (Noodweer Exces) in Victim Repositioning Principle

In Indonesia, the Criminal Code provides for *noodweer exces*, where individuals are forced to overextend themselves due to exigent circumstances. Similarly, the Dutch legal system also addresses *noodweer excess*, distinguishing between extraordinary limited defense and *noodweer excess*. Both legal frameworks emphasize the concept of defense against an unlawful attack on life, property, or honor.[15] However, there are nuances, such as the requirement of a prior offense in the Indonesian Criminal Code, whereas the Dutch system focuses on an instant response to a threat.[16] In Indonesia, the Criminal Code provides for *Noodweer exces* in Article 49, allowing out-of-bounds defense under certain conditions[17]. Then, the new Indonesian Criminal Code recognizes corporations as criminal subjects, unlike the old law, which followed the principle of *Societas delinquere non potest*[18].

Noodweer excess in Dutch law is similar in principle to Indonesian law. Both divide forced defense into two categories: *noodweer* (forced defense) and *noodweer excesses* (emergency defense exceed the limit). In Dutch law, noodweer excess is defined as an act committed by an individual when they are experiencing intense mental shock due to an imminent and unlawful attack or threat of attack. In such a situation, the individual is not considered a criminal offender as their actions attempt to protect themselves from a grave and unavoidable threat.[19]

In Dutch law, *noodweer excess* is not considered as an excuse for committing a criminal offense, but as an excuse. It is different from Indonesian law, which previously

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[14] I Gede Agus Kurniawan, "Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme," *Jurnal Usm Law Review* 5, no. 1 (2022): 282. DOI: https://doi.org/10.26623/julr.v5i1.4941.

[15] Zulham Wahyudani, Oyo S Mukhlas, and Atang Abdul Hakim, "Aspek Pidana Dalam Hukum Keluarga Dan Penyelesaiannya Pada Lembaga Hukum Di Indonesia," *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 8, no. 1 (2023): 75–90. DOI: https://doi.org/10.32505/legalite.v8i1.6197.

[16] Alfitra Alfitra et al., "Decency Norms in Law Enforcement to Online Prostitution in Indonesia: An Islamic Law Perspective," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 194–214. DOI: https://doi.org/10.29240/jhi.v8i1.7044.

[17] Muhammad Fatahillah Akbar, "The Urgency of Law Reforms on Economic Crimes in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2175487. DOI: https://doi.org/10.1080/23311886.2023.2175487.

[18] Henry Kristian Siburian et al., "Comparative Analysis of Corruption Criminal Regulations Between the New Criminal Law and the Corruption Act," *Awang Long Law Review* 5, no. 2 (2023): 535–44. DOI: https://doi.org/10.56301/awl.v5i2.753.

[19] Fergio Rizkya Refin and Salman Daffa'Nur Azizi, "Dasar Hukum Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Melampaui Batas (Noodweer Exces)," *Jurnal Fundamental Justice* 4, no. 2 (2023): 141–56. DOI: https://doi.org/10.30812/fundamental.v4i2.3277.

categorized noodweer exces as a justification, but now categorizes it as an excuse. The difference affects the way Dutch law handles cases involving *noodweer excess*.

Furthermore, *noodweer excess* cannot be used as an excuse to stop an investigation. While it must be proven through an evidentiary process before the court, which is the authority of the judge to assess and decide whether or not the element of forced defense exceeds the limits of the defendant's actions[20]. *Noodweer excess* is also regulated in Article 49 of the Criminal Code, which is similar to the existing rules in Indonesian law. This article explains that a criminal offense committed in a state of *noodweer exces* is not punishable if the act is committed to protecting oneself or others from an imminent and unlawful attack. However, the difference between Dutch and Indonesian law lies in how Dutch law handles *noodweer exce*s in the criminal justice process. In Dutch law, *noodweer exces* is considered an excuse, so it cannot be used to stop the investigation.

In contrast, in Indonesian law, *noodweer excess* was previously considered an excuse, but is now considered an excuse[21]. *Noodweer excess* in Dutch law is similar in principle to Indonesian law. Both divide forced defense into two categories and regulate *noodweer excess* in Article 49 of the Criminal Code. However, the difference between Dutch and Indonesian law lies in how Dutch law handles *noodweer excuses* in the criminal justice process. Dutch law considers noodweer *excess* as excuses and cannot be used as a reason to stop an investigation, while Indonesian law previously considered *noodweer excess* as justification but now considers them excuses.

The victim has a significant role in the occurrence of a crime because the actions taken by the victim can turn him into a criminal offender, which is referred to as "victim repositioning." Mendelshon suggests that the victim's involvement in the occurrence of crime can be classified into six categories based on the degree of guilt, including first, the victim is completely innocent; second, a person becomes a victim due to his negligence; third, the victim is as guilty as the perpetrator; fourth, the victim is more guilty than the perpetrator; fifth, the victim is the only guilty person; and finally, the victim plays a pretend or imaginary role. This classification provides a variety of perspectives on the relationship between victims and crime and recognizes that the role of the victim may vary in the context of the crime.[22]

Victims can position themselves as perpetrators of crime, one of which is when they carry out forced defense excess due to the crime of begging. *Noodweer excess* occurs when a person feels feelings of anxiety or fear that interfere with their mental or inner well-being. As a result, the individual tends to respond excessively by committing acts of defense excess. One of the essential conditions to justify an act of defense excess is the existence of a causal

[20] Tengku Mabar Ali, "Kepastian Hukum Penghentian Penyidikan Oleh Pelaku Tindak Pidana Pembunuhan Yang Didasari Pada Tindakan Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Excees)," *Jurnal Ilmiah METADATA* 5, no. 2 (2023): 176–82. DOI: https://doi.org/10.47652/metadata.v5i2.377.

[21] Ali; Anjani and Adhari, "Tinjauan Yuridis Pembelaan Terpaksa (Noodweer Excess) Sebagai Dasar Penghapusan Pidana Analisis Kasus Pelaku Begal Di NTB Yang Terbunuh Oleh Korban Begal AS."

[22] Mohammad Nurul Huda, "Korban Dalam Perspektif Viktimologi," *VOICE JUSTISIA : Jurnal Hukum Dan Keadilan* 6, no. 1 (2022): 63–69. https://journal.uim.ac.id/index.php/justisia/article/view/1526

link between the attack of the aggressor and the significant psychological impact on the victim. The legal basis for defense excess can be found in Article 49, paragraph (2) of the Criminal Code. This article provides a legal basis for individuals to commit acts of excessive defense due to experiencing severe psychological shock as a caused of the attack they experienced.[23]

Concerning the act of defense under the criminal provisions, Van Hattum argues that "an offender cannot be punished because there is no fault or "*schuld*" in the act committed by the offender regarding the act of noodweer exces which becomes inappropriate to be questioned."[24] In this case, the primary consideration to determine whether or not a person deserves to be punished is the element of fault or "*schuld*," but this must also be considered concerning appropriate values. In addition, the individual's state of mind and psyche must be investigated in depth to understand whether the act of defense was based on intent, negligence, or accident.

In situations when the victim murders as an act of *noodweer excess*, it is often due to the perpetrator's inability to think clearly due to mental inner shock caused by threats or attacks from the perpetrator. In this context, it is difficult for a person to make a rational decision about whether or not they should act in defense, as the attack significantly impairs their mental or emotional state. As such, in such circumstances, a person cannot be considered to have acted in defense by force, as their inability to think is due to severe mental or emotional disorder. It then highlights the complexity of assessing overreaching acts of defense. It emphasizes the importance of considering a person's mental or emotional state in a legal context.

However, if we cite the opinion of Van Bemmelen, who argues concerning the act of forced defense the limits, explaining that "forced defense that exceeds the necessary limits or "*noodweer exces*" is an act which cannot be punished and still has an unlawful nature because there is no element of guilt or "*schuld*" in his actions, which means that the perpetrator cannot be questioned."[25] Based on this opinion, forced defense over the limit can indeed be considered a violation of the law. However, another factor becomes the focus of the assessment, namely the element of fault or "*schuld*." This element becomes the primary consideration in determining whether a person has committed a forced defense against the limit. Article 49, paragraph (2) of the Criminal Code provides a legal basis stating that an overreaching act of forced defense can be exempted from punishment if relevant excuses exist. It means that even if an individual has committed an overreaching act if there are reasons that justify or excuse the act, the individual may not be subject to punishment.

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[23] Asraf Naufal, "Analisis Hukum Pembelaan Terpaksa Secara Berlebihan Pada Kasus Penembakan Laskar Front Pembela Islam Oleh Anggota Kepolisian," *UMPurwokerto Law Review* 4, no. 1 (2023): 54–61. DOI: https://doi.org/10.30595/umplr.v4i1.14245

[24] Niwang Pambayun et al., "Pembelaan Terpaksa (Noodweer) Bukan Sebagai Dasar Penghentian Penyidikan," *RechtJIva* 1, no. 1 (2024): 149–66. DOI: https://doi.org/10.24014/je.v5i1.22332.Ronald

[25] Irwandi Samudra and Fachri Wahyudi, "Pandangan Hukum Pidana Terhadap Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces)," *Jurnal Wasatiyah* 4, no. 2 (2023): 1–18. DOI: https://doi.org/www.staimaarifjambi.ac.id

Concerning the meaning of mental disorder contained in the provisions of the Article, in this case, the victim is the perpetrator of the murder of the perpetrator of robbery based on the forced defense of the limit. Then, the victim commits an act of murder as a form of defense the limit due to an attack or threat of attack by the perpetrator of robbery and causes mental disturbance to the victim. So, legal judgment can recognize that the act of murder is unlawful but can be forgiven or justified. In this case, severe mental impairment can be a forgiving reason that allows for the elimination of the crime against the victim. It means that even though the act of murder is unlawful, the victim is not convicted due to a strong excuse. Thus, in some cases, although the act of murder may still be considered unlawful, the particular circumstances of the victim may influence the legal decision not to impose a criminal penalty.[26]

Moreover, it is based on the theory of criminal abolition proposed by George P. Fletcher, namely the "theory of necessary defense." According to Fletcher, there is also the "theory of necessary defense" in the "theory of self defense".[27] Based on this, it can be said that the elimination of punishment can be given to someone, in this case, the victim who is the perpetrator of the murder for the effort of defense the limits that led to the killing of the perpetrator of the robbery, the criminal act committed by the victim is erased because of the defense carried out for the attack received from a crime.

Based on this opinion, the defense exceeds the limit on the repositioning of the victim; it still refers to the principle of "*culpa in causa*", namely, it is said that if his provocation commits the act, then it is the application of this principle in the context of forced defense, D. Schaffmeister, N. Keijzer, and E.Ph. Sutorius suggest that in addition to defending, there are still other options such as escape, following the principle of subsidiarity. This view highlights that defense is not the only option in a confrontation situation.[28] Applying the principle of subsidiarity is based on the idea that in cases of a defense exceeding the limit, the "forced defense" element in Article 49 paragraph (2) of the Criminal Code becomes key. According to these experts, if a person provokes an attack from another person and then defends himself, the act of defense is not a defense that exceeds the limit. It emphasizes that in assessing a situation of forced defense, it is important to consider whether the individual has any other options other than committing an act of defense exceed the limit.

Additionally, the defense actions taken by the victim cannot be fully justified immediately but must see how the action is carried out, then quoting Berg & Felson's

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[26] Rifrinda Nur Affiani and Suyatna, "Pertimbangan Hakim Dalam Menentukan Kematian Korban Dalam Tindak Pidana Pembunuhan (Studi Kasus Putusan Nomor: 26/Pid.B/2014/Pn.Atb)," *Indonesian Journal of Law and Justice* 1, no. 3 (2024): 8. DOI: https://doi.org/10.47134/ijlj.v1i3.2070

[27] Nanang Tomi Sitorus, "Perdamaian Sebagai Upaya Penghapusan Proses Pidana (Studi Kasus Putusan Mahkamah Agung Nomor 1600 K/Pid/2009)," *Doktrina: Journal of Law* 3, no. 2 (2020): 128–39. DOI: https://doi.org/10.31289/doktrina.v3i2.4025

[28] Landi Malasai, "Asas Culva In Causa (Penyebab Kesalahan) Sebagai Pengecualian Terhadap Pembelaan Terpaksa Menurut Pasal 49 Ayat (1) KUHP," *Lex Crimen* 08, no. 8 (2019): 78–82, https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/26797.

opinion regarding "researchers tend to categorize individuals as either victim or offender according to their final role in the dispute, when in many instances the offender is not the only or first person to engage in violence. The actor who was initially the offender in a dispute may have become the victim as it escalated, thereby contributing to the victim–offender overlap."[29] In Berg & Felson's opinion, there is a tendency for researchers to classify individuals as victims or perpetrators depending on their most recent role in a crime. However, in many situations, the perpetrator is not the only or the first to commit the crime. For example, a person who is initially a perpetrator in a crime may turn into a victim when the circumstances of the crime change, leading to an overlap between victim and perpetrator. It implies that any defense of a crime must consider the act's context and how it was originally committed in the case of forced defense.

The provision of reasons for the abolition of punishment in the act of defense excess must go through the stages of examination in advance whether the actions taken by the victim against the perpetrator of robbery are an effort of defense or not.[30] Criminal abolition cannot be carried out without evidence obtained at trial. This evidentiary process determines whether the perpetrator has reasons that justify the abolition of punishment or not.[31] In this case, the prosecutor as a public prosecutor has an important role in providing charges against the suspect at trial. However, in carrying out their duties, prosecutors must also pay attention to the suspect's rights, which are regulated in articles 50 to 68 of Law Number 8 of 1981 on Criminal Procedure (KUHAP). Those rights cover various aspects, such as the right to be treated fairly, the right to defense, the right to obtain evidence, and the right to present a defense. By taking into account the rights of suspects as set out in these provisions, prosecutors are expected to carry out their duties fairly and ensure that the trial process runs following the principles of justice. It is important to ensure that court decisions are based on legally obtained facts and evidence and that individual rights are protected throughout the legal process.[32]

In judicial processes involving forced defense excess the limit, the role of the judge becomes very important. The judge is responsible for examining all the evidence presented by the defendant in the criminal case. This evidence becomes the main basis for the judge in making legal decisions, where the evidence's trustworthiness and validity greatly affect the

[29] Mark T. Berg and Christopher J. Schreck, "The Meaning of the Victim-Offender Overlap for Criminological Theory and Crime Prevention Policy," *Annual Review of Criminology* 5 (2021): 277–97. DOI: https://doi.org/10.1146/annurev-criminol-030920-120724

[30] I Gusti Ayu Devi Laksmi C.D.M., Ni Putu Rai Yuliartini, and Dewa Gede Sudika Mangku, "Penjatuhan Sanksi Terhadap Pelaku Tindak Pidana Pembunuhan (Studi Kasus Di Pengadilan Negeri Singaraja Dalam Perkara No. 124/PID.B/2019/PN. SGR)," *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha* 3, no. 1 (2020): 48–58. https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/28834

[31] Reyvita Salsabila, "Dasar Pertimbangan Hakim Dalam Menjatuhkan Sanksi Pidana Terkait Pembelaan Terpaksa Dalam Perkara Penganiayaan Yang Menyebabkan Kematian," *Bandung Conference Series: Law Studies* 3, no. 1 (2023).449–53. DOI: https://doi.org/10.29313/bcsls.v3i1.5010

[32] Nopiana Mozin, "Perlindungan Hukum Terhadap Hak-Hak Terdakwa Dalam Penyelesaian Perkara Pidana Di Gorontalo," *Multidisciplinary Indonesian Center Jurnal (MICJO)* 1, no. 1 (2024): 555–65: https://doi.org/ttps://e-jurnal.jurnalcenter.com/index.php/micjo

punishment level to be imposed.[33] In the context of criminal procedure law in Indonesia, KUHAP applies a *negatief wettelijke* system, which stipulates that judges may not convict a person unless there are at least two valid and strong pieces of evidence. This provision is regulated in Article 183 of KUHAP, which emphasizes that the judge must be convinced that a criminal offense has occurred and that the defendant is the perpetrator.

In cases where a defense exceeds the limit, the judge must ensure that all the criteria for classifying the act as a defense are met. These criteria include: firstly, that the defense exceeds the limit was triggered by intense emotional trauma or significant psychological distress as a result of the attack that occurred at the time and that the act of defense was taken in response to the attack or threat of attack. Whether a conviction can be expunged also depends on the outcome of the evidence presented at trial, which determines whether or not the suspect has grounds to expunge the conviction. However, if the judge doubts an aspect of a particular case, the advantage should be given to the accused. In this context, if the judge has doubts about the expungement of the crime about the victim's defense exceeds the limit against the perpetrator of the robbery that resulted in the death of the perpetrator of the robbery, the judge will likely choose to give the advantage to the defendant based on the principle of "*dubio pro reo*." Since the judge has the authority to apply this principle in his decision, it is based on Article 3 paragraphs (1) and (2) of Law Number 48 of 2009 on Judicial Power, which provides judges freedom to determine and impose decisions in the criminal justice process.

In short, it is said that defense exceeds the limit in the principle of repositioning the victim of the crime of robbery. The victim who is in the position of being the perpetrator cannot be convicted by paying attention to his actions following the conditions in the provisions of Article 49 Paragraph (2) of the Criminal Code, and the act of defense is not due to acts of provocation that caused him to be attacked. Also, the act of forced defense exceeds the limit is justified in the theory of criminal elimination, and the actions taken must be proven at trial using the theory of negative evidence by the Judge, whether or not the reason for criminal elimination in the act of forced defense exceeds the limit.

CONCLUSION

In conclusion, defense exceed the limit in the principle of repositioning the victim cannot be punished. It is based on the criminal exception stipulated in Article 49 Paragraph (2) of the Criminal Code by considering some criteria. The criteria for defense exceed include situations where the defense exceeds reasonable limits, as well as situations where the defense is triggered by strong emotional shock or significant psychological pressure due to the attack that occurred at that time or in response to an attack or threat of attack experienced by the victim who then turned into the perpetrator (victim repositioning). According to the theory of negative evidence (*negatief wettelijke),* judges provide reasons for criminal elimination

[33] Saiful Bahri, "Problema Dan Solusi Peradilan Pidana Yang Berkeadilan Dalam Perkara Pembelaan Terpaksa," *Jurnal Wawasan Yuridika* 5, no. 1 (2021): 131. DOI: https://doi.org/10.25072/jwy.v5i1.415

with confidence based on valid evidence obtained through the process of evidence at trial by considering whether the reasons for criminal abolition are applicable or not.

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