

Legal Protection for Murder Victims as Perpetrators of Forced Defense From The Perspective of Victimology

Kartina Pakpahan¹, Sonya Airini Batubara², Jonson David Sibarani³

Corresponding author: kartinapakpahan@unprimdn.ac.id

^{1,2,3} Universitas Prima Indonesia, Medan

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Corresponding author:

-Kartina Pakpahan-

Abstract

Article 1 paragraph (3) and Article 27 paragraph (1) of the 1945 Constitution stipulate that all citizens have equal standing before the law. Furthermore, Article 28 D paragraph (1) states that everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law. These provisions stipulate that all orders in national, social and state life are based on applicable laws and regulations. Therefore, all actions should be carried out according to the law, both by society and law enforcement. Psychologically, everyone does not want to lose their lives and property. In criminal acts, some victims react with resistance and some do not. But among the many crimes, it turns out that there are victims who react with resistance to the point of paralyzing the perpetrator of the crime, even to the point of causing the perpetrator to lose his life. As a result, the victim's self-defense efforts give rise to a case, namely being named a suspect for the crime. Therefore, this study aims to determine how legal protection is for victims of robbery as perpetrators of forced defense from a victimology perspective. This research was conducted using an empirical legal method, using progressive legal theory and legal justice theory. So that through this research, it was found that there was a change in understanding of investigators and investigators at the Indonesian Police that based on legal theory, there is an exception to the determination of a suspect or it can be said as a reason for the elimination of a criminal offense, namely justification and forgiveness as a duty and as self-defense for a crime.

I. Introduction

Robbery cases in North Sumatra Province show high numbers. According to data from the Central Statistics Agency, although the trend is decreasing:¹

¹Central Statistics Agency of North Sumatra Province, "Number of Reported Crime/Violation Incidents by Type of Crime/Violation 2019-2021" <https://sumut.bps.go.id/indicator/34/493/1/besarnya-cepatan-kejahatan-pelanggaran-yang-dilaporkan-menurut-jen-kejahatan-pelanggaran.html>, 2022.

Year:	2019	2020	2021
Amount:	716	681	532

Table 1. Number of cases of Theft with Violence or robbery in North Sumatra Province.

Meanwhile, data at the Medan Police Headquarters collected from the results of interviews in this study also showed a trend in the number of robbery crimes that were quite high. This can be seen from the table presented by the Medan City Police Criminal Investigation Unit (Satreskrim Polrestabes) below:

Year:	2018	2019	2020	2021	2022
Amount:	244	240	231	145	128
Revealed	164	170	168	91	94

Table 2. Number of cases of Theft with Violence or robbery in Medan City.

Of the many cases of robbery, especially mugging, it turns out that there are also victims who fight back and actually paralyze the mugger, even to the point of causing the mugger to lose his life. As a result, the self-defense effort actually caused a case for the victim who killed the mugger. Then the mugging victim was named a suspect in a murder case.

Examples of cases that were exposed nationally include Raju in Pekanbaru on September 10, 2015, Muhamad Irfan Bahri in Bekasi on May 23, 2018, a teenager with the initials ZA in Malang Regency in early September 2019, Dedi Irwanto in Sunggal District, Deliserdang on December 21, 2021, and most recently Murtede alias Amaq Sinta in West Nusa Tenggara (NTB). The interesting thing is, of the five cases of forced defense, the end of the process was different. Some were tried in court, some were stopped by the investigators themselves by issuing a Letter of Order to Terminate Investigation (SP-3), and some were still hanging with a process that was not yet clear how it would end. In fact, acts of forced defense have been regulated in Article 49 of the Criminal Code as a form of excuse so that someone who does it should not be punished. So the author took the title of this research: Legal Protection for Victims of Robbery as Perpetrators of Forced Defense in the Perspective of Victimology.

2. Research Method

This Research using normative legal research methods which emphasize document studies or library research.² The normative legal

² Peter Mahmud Marzuki, 2016, Legal Research, Revised Edition, 12th Printing, Prenadamedia Group, Jakarta, p. 55.

approach is carried out by reviewing and studying library materials in the form of laws and regulations relating to the problem being researched.³ Therefore, this study focuses more on the use of secondary data. The secondary data referred to is a source of research data obtained indirectly through a literature study. The data comes from research results in the form of journal articles, books, or archives that are not published or that have been generally published.⁴

3. Results and Discussion

Legal Protection for Victims of Mugging

Article 365 of the Criminal Code regulates theft with violence. The provisions on 'Violence' have also been regulated in CHAPTER IX on 'The Meaning of Several Terms in the Criminal Code', specifically Article 89 of the Criminal Code. Mugging is a crime of theft with violence, where the violent act takes place at the same time as the theft. Where the purpose of the violence is carried out with the intention of preparing, facilitating or expediting the crime of theft in order to control the stolen goods, the act occurs on a public road.

The incidents experienced by Raju in Pekanbaru on September 10, 2015, Muhamad Irfan Bahri in Bekasi on May 23, 2018, a teenager with the initials ZA in Malang Regency in early September 2019, Dedi Irwanto in Sunggal District, Deliserdang on December 21, 2021, and most recently Murtede alias Amaq Sinta in West Nusa Tenggara (NTB). Overall, they were each robbed on the streets, but there was no access to help from the surrounding area. The perpetrators of the robbery were more than one person, so the victim was outnumbered and outnumbered. Then the victim experienced violence by the perpetrator.

The Criminal Act of Assault (351 of the Criminal Code) or murder (338 of the Criminal Code) in the context of this study discussed are only unlawful acts as a result of the Criminal Act of Mugging experienced by the victim. In Indonesia, there are a number of cases that have occurred where the victim has abused or even killed the perpetrator of the mugging. In general, in the eyes of the public, the act of resistance to the perpetrator of the mugging is not to be blamed. Because the murderer of the mugging is actually the victim who defended himself from the actions of the perpetrator of the mugging. However, if viewed from a legal perspective, cases like this are not easy to resolve. This is proven by the variety of final results of cases that have occurred in Indonesia.

³ Amiruddin and Zainal Asikin, 2010, Introduction to Legal Research Methods, Rajawali Pers, Jakarta, p. 118.

⁴ Bahder Johan Nasution, 2008, Legal Science Research Methods, Mandar Maju, Bandung, p. 87

The crime of robbery is certainly and properly and appropriately punished according to the law. However, regarding the victim's actions in killing the robber, can it be charged with Article 351 paragraph 3 of the Criminal Code or 338 of the Criminal Code? In reality, the resistance made by the victim has taken the life of the robber. If the law is made rigid, it is certain that the victim who killed the robber can be blamed for violating Article 351 paragraph 3 of the Criminal Code or 338 of the Criminal Code.

The victim's self-defense that caused the robber to die, falls into the category of a criminal act that meets the elements, whether Article 351 paragraph 3 of the Criminal Code, or 338 of the Criminal Code as mentioned above. However, if viewed from Article 49 of the Criminal Code, there are forgiving reasons that should actually eliminate the criminal act committed by the victim.⁵ Article 49 of the Criminal Code, paragraph (1): No one shall be punished if he commits an act of forced self-defense for himself or for another person, his moral honor or his or another person's property, because there is an attack or threat of attack that is very close at that time which is against the law. In Dutch, Article 49 paragraph (1) is referred to as *Noodweer* or Forced Defense or Emergency Defense. Then it is stated in paragraph (2) that forced defense that exceeds the limit, which is directly caused by great mental shock due to the attack or threat of attack, is not punished. In Dutch, Article 49 paragraph (2) is referred to as *Noodweer exes* or Forced Defense Beyond Limits.

The article stipulates that an act cannot be punished against a victim of a crime, in this case as a self-defense perpetrator that results in injuries or death for the perpetrator of the crime. So that the act of self-defense carried out by the victim against the perpetrator of the crime receives legal protection for his actions.⁶

In legal theory there are reasons for the abolition of criminal penalties, namely justification reasons and excusing reasons.⁷ Justifying Reasons are usually given because of their profession. For example, a police officer is forced to paralyze a robber, or an executioner is justified in taking the life of a death row convict. For the reason of forgiveness, the victim should be freed from the

⁵ Budi Suhariyanto, "The Position of Peace as a Way to Eliminate Criminal Punishment in Order to Realize Justice in Criminal Law Reform", *Jurnal Rechtsvinding*, volume 6, number 1, April 2017.

⁶ Marsudi Utoyo, "Murderers Who Defend Themselves in Defending Honor and Property", *Jurnal Pranata Hukum*, Vol 8, No 2, 2013.

⁷ Adia Nugraha, "Imposition of Conditional Sentences on Perpetrators of Criminal Acts of Assault", *Fiat Justisia*, Volume 10 No 1, January-March 2016.

clutches of the crime because he is truly a victim. He did not want to die so he fought back. However, as a result of his resistance, the victim harmed the perpetrator.⁸

Not all law enforcers agree with the application of Article 49 of the Criminal Code which eliminates the crime of murder committed by the victim against the perpetrator of the robbery. For example, in the two recent cases, namely that experienced by Murtede alias Amaq Sinta in West Nusa Tenggara (NTB) on April 9, 2022 and the robbery of Dedi Irwanto in Sunggal District, Deli Serdang Regency, North Sumatra Province on December 22, 2021. Although the mode is similar, the events are very similar, but the legal process for these two cases is different. Murtede alias Amaq Sinta immediately received legal certainty. Based on the order of the Head of Criminal Investigation Unit of the National Police Headquarters, Amaq's case was stopped (SP3) at the investigation level only one week after the incident, to be precise on April 16, 2022.⁹ Meanwhile, the case experienced by Dedi Irwanto in Sunggal District, Deli Serdang on December 21, 2021 (in this case the author is an advocate who became Legal Advisor for Dedi Irwanto in defending his legal interests), until this research was written in January 2023, has not yet ended perfectly. Although he was not detained and his motorbike was returned by investigators from Subdit III Jahtanras, Ditreskrimum Polda Sumut on September 12, 2022, the case process has not yet ended with SP-3.

Until this research was conducted, there was no further process in the Dedi Irwanto case at Subdit III Jahtanras, Ditreskrimum, Polda Sumut even though the case had been going on for more than a year. Since the incident occurred in December 2021 until January 2023, the Investigation Termination Order (SP3) has not been issued. This is different from the Murtede case in NTB, where within one week, the investigation was immediately officially stopped.

Head of the Criminal Investigation Unit, Medan City Police, Commissioner Teuku Fathir Mustafa SIK MH in an interview with researchers in his office, Monday, December 12, 2022 at around 21.15 WIB until finished said, whether someone commits an act of forced defense or not, from the investigation side, it must first be factualized, even starting from the crime scene investigation to the end. "A thorough investigation process must be carried out. Why? When we declare a forced defense, the elements contained in the forced defense must

⁸ Achmad Sulchan, Afrida Adzfar TR, "Review of Implementation of Criminal Juridical Crime Against Theft With Violence", Jurnal Pembaharuan Hukum, Volume 5 Nomor 2, 2018.

⁹<https://www.kompas.com/tren/read/2022/04/17/170000465/nasib-amaq-sinta-korban-begal-yang-jadi-tersangka-berakhir-bebas?page=all>

be perfect. There must be a separate study for that. It's just that, during my tenure here for several months, there have been no cases of forced defense that can be used as examples," he said.

In relation to R. Soesilo's explanation, in order for someone to be able to say that he is in a forced defense/emergency defense, and cannot be punished, three types of conditions must be met as follows:¹⁰

1. The act that is done must be forced to defend (defend).
2. The defense or defence must be carried out only against the interests mentioned in the article, namely the body, honour and property of oneself or others.
3. There must be an attack that is against the right and threatens to happen suddenly or at that time.

What is mentioned in paragraph 2 of Article 49 is what is commonly called 'noodweer excess', which means emergency defense that goes beyond the limits. As with emergency defense, here too there must be an attack that is carried out suddenly or threatened at that time. Here the limit of the need for defense is exceeded. For example, someone defends themselves by shooting a gun, whereas in fact defense with a wooden bat is sufficient. These excesses are permitted by law as long as they are caused by feelings of great shock that arise because of the attack; feelings of great shock, for example, irritation or extreme anger, which is commonly called dark-eyed.

The application of Article 49 of the Criminal Code as a reason for forgiveness that eliminates an unlawful act, Police Commissioner Teuku Fathir Mustafa SIK MH said, if the elements are indeed fulfilled, of course it can be enforced. "If the elements are indeed fulfilled, whoever the law enforcer is must implement it. But there should be no multiple interpretations regarding these elements. We must view the case objectively with the guidelines of Article 49," he concluded.

In the Perspective of Victimology

From the perspective of victimology, legal theories and victim classification, when associated with murder due to forced defense carried out against muggers, then the victims here consist of two criteria. First, mugger victims. Second, murder victims. So the perpetrators are on two sides. First, mugger perpetrators. Second, murder perpetrators.

¹⁰R. Soesilo, Criminal Code (KUHP), and its Complete Commentaries Article by Article, Politeia, Bogor, 1995, pp. 64-66.

Related to Steven Schafer's theory above, which divides several types of victims related to responsibility, then in the case of forced defense there are two types of victims and two types of perpetrators. Victims of muggings, also known as victims of violent theft, or victims of robbery, are classified as Unrelated Victims. Where in this type there is no relationship between the victim and the perpetrator, and the victim is the target of the perpetrator in his crime. So here the responsibility lies entirely with the criminal or perpetrator. Examples of cases in this study who were victims were Raju in Pekanbaru on September 10, 2015, Muhamad Irfan Bahri in Bekasi on May 23, 2018, a teenager with the initials ZA in Malang Regency in early September 2019, Dedi Irwanto in Sunggal District, Deliserdang on December 21, 2021, and most recently Murtede alias Amaq Sinta in West Nusa Tenggara (NTB).

Next, the second type is the victim of murder in the event of forced defense is categorized as Provocative Victims. Namely those who do something to the perpetrator that results in them becoming victims. The victim of murder in this case is the main perpetrator. According to Steven Schafer, in this type, the responsibility lies on both parties, namely the victim and the perpetrator. However, it should be noted, in the type of victim as Provocative Victims, namely the perpetrator of the robbery who became the target of abuse even in the examples of cases above to the point of losing his life, became a victim because of forced defense as regulated in Article 49 of the Criminal Code paragraph 1 and paragraph 2.

Prevention of Criminalization of Forced Defense Perpetrators

Determining suspect status to victims who abuse or kill muggers is a form of criminalization. Especially if investigators rush to determine the status. As in the case of Murtede alias Amaq Sinta in West Nusa Tenggara (NTB) and Dedi Irwanto in Sunggal District, Deliserdang Regency, North Sumatra Province.

Reflecting on the two cases that shocked the virtual world in 2022, police investigators must be careful in determining the status of suspects, especially if they detain perpetrators of forced defense. Because in any case, perpetrators of forced defense are victims of crime. This opinion is in line with the response of the Criminal Law Expert from the University of North Sumatra (USU), Dr. Mahmud Mulyadi SH MHum who said that what Dedi Irwanto did was forced defense or noodweer. Because there is a fact that Dedi was a victim of a mugging, so he fought back which resulted in a perpetrator being killed.¹¹

¹¹Medan Pos Online, "Robber Killed by Stabbing Victim, Criminal Law Expert Says It Was Self-Defense", 2021, <https://medanposonline.com/Hukum/pelaku-begal-tewas-ditikam-korbannya-pakar-Hukum-pidana-buat-besar-pembelaan-diri/>, [12/26/2021]

If the handling must continue to process, including the determination of someone suspected of committing forced defense against a mugger to be made a suspect, investigators should not shackle freedom by imprisoning them. If investigators have difficulty proving that the act is forced defense, it is better for the court to decide with evidence before a trial open to the public, so as to avoid objective assessments from law enforcement.

Efforts to Settle Compulsory Defense Cases

1) Termination of Case

Murtede alias Amaq Sinta has received justice and legal certainty, so that the law really benefits him. Unlike Dedi Irwanto, the victim of the robbery that caused the perpetrator to be killed when interviewed by the author, he admitted that he had received justice. Where since the case was processed, he was not detained as he had previously feared so that he had fled to Riau.

However, regarding legal certainty, Dedi Irwanto has not received it. Because until now the suspect status is still attached to him. Although the investigator has submitted an SP2HP stating that the case is in the administrative process towards termination of the case, he has not received an SP3. So Dedi Irwanto has not received full legal benefits for him. It is undeniable that the feeling of anxiety that his case will be processed again at any time still haunts him. Based on the Theory of Progressive Law and Police Discretion, the National Police investigator can stop a case on humanitarian grounds without conflicting with existing laws. So that in the case where a perpetrator of forced defense has been named a suspect, as stated in Article 49 of the Criminal Code, it is appropriate and proper according to the law for the case to be stopped.

2) Restore Good Name Through Social Media

Nowadays, social media allows its users to represent themselves and interact, collaborate, share, communicate with other users and even form social bonds virtually. Even though it is in cyberspace, its effects greatly affect the real world. Including when cases of forced defense went viral such as those experienced by Raju in Pekanbaru on September 10, 2015, Muhamad Irfan Bahri in Bekasi on May 23, 2018, a teenager with the initials ZA in Malang Regency in early September 2019, Dedi Irwanto in Sunggal District, Deli Serdang on December 21, 2021, and most recently Murtede alias Amaq Sinta in West Nusa Tenggara (NTB).

Overall, the above cases became public consumption. The determination of suspect status to the perpetrators of forced defense against the perpetrators of the robbery became the topic of discussion almost throughout the nation. The reaction of the community in cyberspace greatly influenced the real world. So

that the police became very careful in processing these cases. Based on that situation, the author believes that restoring the good name of those who have been accused in the case of forced defense against the perpetrators of robbery is very necessary. In addition to clearing the name of the perpetrators of forced defense, the action of spreading information on social media will also save the Polri institution from negative narratives in its law enforcement.

After conducting this research, the author believes that the National Police leadership needs to create a regulation, for example by issuing a Circular Letter from the Chief of Police regarding special handling in cases of robbery in which there is forced resistance from the robbery victim, so that implementation in the field can run well in accordance with just law. The issuance of the Chief of Police Circular or similar regulations is certainly expected so that the handling of similar cases does not differ in the field. As happened with the case of Dedi and Amaq Sinta, the cases are very similar, both in motive, time, number of perpetrators, and tools used, even the incidents were only about 1 month apart, but the process and outcome of the case are very different. There also needs to be a joint agreement between the Chief of Police and the Head of the Attorney General's Office, so that cases like this become one perception in the handling process among law enforcers.

4. Conclusion

Legal protection for mugging victims is regulated in Article 49 of the Criminal Code. Viewed from the aspect of victimology, mugging perpetrators who become victims of abuse and even die, are the result of their own actions which are categorized as Provocative Victims. Namely those who do something to the perpetrators that result in them becoming victims. The victim of murder in this case is the main perpetrator of the crime, namely the mugger. Meanwhile, mugging victims who defend themselves become perpetrators of forced defense which, as regulated in Article 49 of the Criminal Code, is appropriate and proper according to the law not to be punished. So that the regulations must be able to protect the perpetrator of abuse or even murder who is also a mugging victim. This is also based on the legal theory, namely the elimination of criminal penalties for reasons of forgiveness for self-protection against crime.

Prevention of criminalization, especially for mugging victims, that mugging victims sometimes become suspects because they resist. If someone commits assault, from a legal perspective it means that it is a criminal act regulated in Article 335 paragraph 3 or 338 of the Criminal Code. However, because of the legal exceptions as regulated in Article 49 of the Criminal Code,

mugging victims who use forced defense, are worthy and proper according to the law not to be punished. So that a mugging victim is not punished in a case of forced defense, an investigator should not determine the status of a suspect, let alone detain him for his actions in assaulting or even taking the life of the mugging perpetrator. However, if the investigator has not been able to provide clear facts about the case with alleged forced defense against mugging, then it is better not to detain him, and to submit the process of evidence clearly to the court. So that the judge can determine that the act is a forgiving reason, namely a reason that eliminates the unlawful nature of the act and falls into the category of forced defense as regulated in Article 49 of the Criminal Code, so that what the defendant did then becomes a proper and correct act, or a forgiving reason, namely a reason that eliminates the defendant's mistake to simply reduce the sentence.

Efforts to resolve the case and restore the good name of the perpetrator of the murder of a robber who in this case is a victim who made a forced defense, are regulated in positive law that there are exceptions to the punishment if the circumstances are related to Article 49 of the Criminal Code. However, the forced defense must be proven how the circumstances of the forced defense occurred. If an act of forced defense against a robber meets the elements as regulated in Article 49 of the Criminal Code, then the police investigator is appropriate and proper to issue a Letter of Order to Terminate Investigation (SP3). The legal basis for granting the SP3 status is Article 109 of the Criminal Procedure Code, on the grounds that it was stopped by law. The termination can also be based on the existence of police discretion on the basis of Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, namely for the public interest, officials of the Indonesian National Police in carrying out their duties and authorities can act according to their own judgment but can only be done in circumstances that are very necessary by paying attention to applicable laws and regulations and the Code of Ethics of the Indonesian National Police Profession. Then if it turns out that the police investigator has already determined the suspect status of a perpetrator of forced defense against a mugger, then it is appropriate that his good name be restored. One way is through social media.

Suggestions

From a legal perspective, there are reasons for criminal abolition, namely justification and forgiveness. In the case where someone fights against a mugger which then causes a victim for the mugger, then the act is appropriate and worthy of being categorized as forced defense. Then the act can be protected by Article

49 of the Criminal Code, where the act cannot be punished, or the punishment can be removed because of the reason of forgiveness. Because the mugger becomes a victim of abuse or murder, it happens because of the consequences of his own actions. While the mugger victim tries to defend himself.

If a case of a victim's resistance to a mugger occurs later on which results in the loss of the mugger's life, the author suggests that police investigators not rush to determine the suspect status until they detain him. However, police investigators are expected to be able to prove the facts regarding the fulfillment of the elements of Article 49 of the Criminal Code. If they want to process it, please do so in court with the available evidence. There needs to be socialization to law enforcers, especially the police, so that they have the same understanding regarding the application of Article 49 of the Criminal Code to perpetrators of forced defense against muggers. The appointment of an investigator in the police must first be given special education, so that there are no mistakes in carrying out an investigation and inquiry process in determining a suspect.

In the case where a victim resists a mugger, and the act meets the requirements as an act of forced defense, while the investigator has already determined the status of a suspect, then with the police's discretionary authority, the investigator should immediately stop the case and issue an SP3. In order to restore his good name, the issuance of the SP3 can be published through newspapers and social media.

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