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Crime Victim Becomes a Suspect due to Self-Defense

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Abstract

Self-defense is a right owned by everyone to protect themselves from the threat of crime. This right is protected by law, including in criminal law as contained in the Criminal Code (KUHP), self-defense is regulated in Article 49. This article states that a person is not convicted if he commits an act in defense, because there is an attack or threat of attack at that time that is against the law, against himself or another person; against the honor of decency (eerbaarheid) or property of himself or another person but the reality in the application of Article 49 of the KHUP is different in the case of self-defense which causes "other criminal acts." The purpose of this study is to find out how the Criminal Code regulation on self-defense from the threat of crime and the application of the Criminal Code on self-defense from the threat of crime in terms of justice. The formulation of this research problem is: 1. How does the Criminal Code regulate self-defense from the threat of crime? 2. How is the application of the Criminal Code on self-defense from the threat of crime in terms of justice? This research method uses a qualitative method which focuses on in-depth observations with a literature study approach, formative juridical, cases and comparisons of legal applications in other countries which are analyzed based on the theory of Legal Application and the theory of Justice. The conclusion of this research is that Article 49 of the Criminal Code actually provides protection against acts of self-defense from the threat of criminal acts but in reality a person can be legally charged if he does not fulfill the elements of self-defense against attacks on him so that it can be a justification for the act of self-defense. It is suggested that the police, prosecutors and judges can carefully and precisely apply Article 49 of the Criminal Code and it is necessary that the article needs to be revised and added not only to people who experience directly the threat of crime but people who know the crime can defend and help the crime that occurred without being threatened with unlawful acts and being punished.

Keywords: *Crime, Self-defense, Criminal*

Introduction

In December 2023, the Indonesian public was shocked by an incident in which a crime victim became a suspect because of self-defense, resulting in the death of the perpetrator of the crime, as experienced by Muhyani (58), a farmer in Serang, Banten. The Criminal Investigation Unit of Serang City Police named Muhyani as a suspect in the persecution case that killed Waldi, a cattle thief. Muhyani was detained at the Serang Class IIB Detention Center on Thursday, December 7, 2023 and charged with Article 351 Paragraph (3) of the Criminal Code on December 16, 2023, the Prosecutor's Office decided to discontinue the murder case committed by a man with the initials M against a goat thief in Serang, Banten and was finally released.[2]

Coordinating Minister for Political, Legal and Security Affairs Mahfud MD believes that a person who commits a criminal act in self-defense cannot be convicted. Mahfud said this in

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[2] https://www.bbc.com/indonesia/articles/ce5jvzj0127o

response to the naming of Muhyani (58), a farmer in Serang, Banten, as a suspect after allegedly torturing Waldi, a cattle thief, to death. "In law, a person who commits a criminal act because of self-defense, so a situation of necessity, then (a) forgiving situation arises, cannot be punished," Mahfud said when met at Teuku Umur, Menteng, Central Jakarta, Thursday (14/12/2023).[3]

In another case, Mahfud helped free a theft victim named Mohamad Irfan Bahri whokilled his thief. After the incident of fighting a begal with a machete on the Summarecon bridge, Bekasi City in 2018, Irfan was named a suspect by the police. "He was attacked by two people who took his motorcycle. Then he fought back, one person was killed by him, the other ran away. Suddenly, Irfan was named a suspect that afternoon," Mahfud explained. Hearing about the incident, Mahfud reported the incident to President Joko Widodo. After explaining the legal side,the Head of State then agreed to release Irfan.[4]

There are several cases that are similar but differ in the application of the law so that the victim of the crime defends himself and the perpetrator of the crime dies and is sentenced in court, among others:

1. A similar case also occurred in 2019 in Malang Regency, East Java, involving a student with the initials ZA, 17 years old. Unlike the case in Bekasi, where the victim killed him because he was threatened with a police award, ZA became a child in conflict with the law.The court found ZA guilty of maltreatment that led to death. He was sentenced to one yearof coaching. The case began when ZA and his close friend V were visited by Misnan and his gang. Misnan wanted to rob ZA and threatened to rape V. ZA then took a knife, and stabbed Misnan to death.
2. Victim D who killed a begal in North Sumatra Furthermore, the case of determining the victim of a begal as a suspect has also occurred in North Sumatra, involving D (21). Reporting from Kompas.com (14/4/2022), the chronology began with the discovery of thebody of the initials RZ (20) on Jalan Sei Berasekata, Sunggal District, Deli Serdang Regency, Tuesday (21/12/2021). When the body was found, there were wounds caused by sharp weapons. Then, after an investigation, the Sunggal Police stated that the victim was a perpetrator of begal and a resident of Jalan Flamboyan Raya. The police revealed that RZ and his four friends had tried to snatch D's motorbike when the victim was receiving a call and stopped at the scene. At that time, D resisted by pulling RZ's hand and thrusting the folding knife he was carrying into RZ's body until he died. Meanwhile, RZ's three friends ran away. On the other hand, RZ's family did not accept RZ's death and reported the case to Sunggal Police. The police then investigated the report and found that D took RZ's cellphone and gave it to his brother before going to Riau. However, D eventually surrendered and was named as a suspect and charged with Article 351 paragraph 3 of the Criminal Code. For this case, Medan Police named D as a suspect but did not detain him. Instead, the suspect was only subject to mandatory reporting because he had been cooperative. "We are not detaining the suspect. The suspect is cooperative, so mandatory reporting," said Kombes Pol Riko Sunarko as the Medan Police Chief.
3. ZA became a suspect after killing an extortionist The chronology of the ZA (17) case began when a body was found in a sugarcane plantation in Gondanglegi Village, Gondanglegi District, Malang Regency, East Java in early September 2019. The body found at that time was Misnan (35). Based on the results of the police investigation, ZA was arrested and named

[3] https://www.kompas.com/tren/read/2023/12/16/153000865/4-kasus-bela-diri-jadi-tersangka-terbaru-pemilik- kambing-tusuk-maling?page=all
[4] Ibid

as the perpetrator of Misnan's murder. ZA claimed to have mistreated Misnan because he tried to blackmail him and tried to snatch his motorcycle and cell phone. Not only that, it was also said that Misnan had tried to rape his girlfriend, VN, who was with him at the time. During the incident, Misnan was accompanied by his friend, Ali Wava. At that time, ZA claimed to have resisted Misnan by using a knife, which hit Misnan's body and killed him. Police later charged ZA with premeditated murder, while ZA attributed his actions to self-defense. ZA was convicted in the persecution case that led to the death of his victim by a judge at the Kepanjen District Court (PN), East Java. "Stating that the child is legally proven to have committed maltreatment that caused death," said the single judge, Nuny Defiary, in his verdict in a hearing held in open session on Thursday (23/01/2020). "Sentencing the child to guidance in the Darul Aitam LKSA institution for one year," he continued.

4. Raju kills begal perpetrator in Pekanbaru The last case of determining the victim of begal as a suspect was the case of Raju, a victim of begal in Pekanbaru, Riau, quoted from the Tribune. The incident occurred at the Sultan Syarif Qasim Airport gate on Jalan Bandara Sultan Syarif Qasim, Pekanbaru, Riau, on Thursday (10/9/2015). At that time, Bukit Raya Police managed to secure Raju Andrian (20). He was also named as the perpetrator of the stabbing of Roby (21), the perpetrator of the begal. Raju admitted that he stabbed Roby with the perpetrator's knife in self-defense. In addition, he admitted that he also did not know that the person he stabbed had died. The incident began when Raju and his girlfriend on Thursday (10/9/2015) night were traveling together at the Sultan Syarif Qasim Airport gate on Sultan Syarif Qasim Airport Road. The perpetrator Roby and his friend came and immediately accused Raju and his girlfriend of being perverted at the location. The perpetrator also threatened to take him to the police station on charges of sexual misconduct. Raju, who was frightened at the time, then gave Rp 200,000 to make peace. However, after receiving the money, the two perpetrators intended to take the motorcycle belonging to Raju's girlfriend and tried to seize the motorcycle key. The perpetrators and the victim then got into a fight and Roby pulled out a knife and held it to Raju's neck. Fortunately, Raju managed to grab the knife from the perpetrator's hand and he thrust it into the victim's chest. The perpetrator was then taken by his colleague to the hospital, but his life was not saved. Bukit Raya Police Chief, Kompol K Bochi, said his office named Raju as a suspect for taking the life of another person.[5]

The new Criminal Code is contained in Law No. 1 of 2023 on the Criminal Code. Article 42 states: "Every person who commits a criminal offense shall not be punished because: a. forced by forces that cannot be restrained; or, b. forced by threats, pressure, or forces that cannot be avoided."

In the old Criminal Code, the explanation of this matter is also in Article 48 which reads: "Whoever commits an act under the influence of coercion shall not be punished."

Then, the concept of forced defense *(noodweer)* and forced defense that exceeds the limit (noodweer-exces) in the latest Criminal Code is contained in Article 34 (in the old Criminal Codethis is contained in Article 49): "Every person who is compelled to commit a prohibited act shall not be punished, if the act is committed in defense against an unlawful instantaneous attack or threat of attack against himself or another person, honor in the sense of decency, or property of himself or another person."

[5] https://www.kompas.com/tren/read/2023/12/16/153000865/4-kasus-bela-diri-jadi-tersangka-terbaru-pemilik- kambing-tusuk-maling?page=all

And, Article 43 of the latest Criminal Code reads: "Every person who makes an excessiveforced defense that is directly caused by intense mental shock due to an attack or threat of an instant unlawful attack, shall not be punished."

Research Objectives

1. To find out the regulation of the Criminal Code on self-defense from the threat of crime.
2. To find out the extent of the application of the Criminal Code on self-defense from thethreat of crime from the perspective of justice.

Problem Formulation

1. How does the Criminal Code regulate self-defense from the threat of crime?
2. How is the application of the Criminal Code on self-defense from the threat of crime from the perspective of justice?

Methodology

This research method uses a qualitative method which focuses on in-depth observations with a literature study approach, formative juridical, cases and comparisons of the application of law in other countries which are analyzed based on the theory of Legal Application and the theory of Justice.

Qualitative research method is a research method that focuses on in-depth observation. Literature study, formative juridical, case and comparative approaches to the application of law inother countries are approaches used in qualitative research to collect data. The theory of the Application of Law and the theory of Justice are used as the theoretical basis for analyzing the datacollected.

The literature study approach is carried out by collecting data from various literature sources, such as books, journals, articles and other documents. The data collected from the literature study is used to provide an overview of the phenomenon under study, while the use of a formative juridical approach is carried out by analyzing laws and regulations related to the phenomenon under study. The analysis of laws and regulations aims to understand the applicablelegal provisions and how they are applied in practice.

The case approach is carried out by analyzing cases related to the phenomenon under study.Case analysis aims to understand how the law is applied in practice in certain cases while the comparative approach to the application of law in other countries is carried out by analyzing the application of law in other countries that have similarities with the phenomenon under study. The analysis of the application of law in other countries aims to provide comparison and input for theapplication of law in Indonesia.

Legal Theory

Definition of Legal Theory According to Experts

Specifically, legal theory itself does not have a standardized definition. However, several expertshave expressed their opinions on the discipline of legal theory, as follows.

1. Hans Kelsen. According to Hans Kelsen, legal theory is the science of the applicable law and not just about the law that should be. What is meant by legal theory according to him is pure legal theory, which can also be referred to as positive legal theory. Pure legal theory

or positive legal theory is meant because it only explains the law and seeks to clean the object of explanation from everything that has nothing to do with the law. As a theory, Hans Kelsen also explains what is meant by law and how the law exists.

2. Friedman. According to Friedman, legal theory is a science in which the essence of law is studied, which has a link between legal philosophy on the one hand and political theory on the other. The existing discipline of legal theory does not get a place to become an independent science, therefore the discipline of legal theory must get a place in the discipline of law that has an independent nature.
3. Ian Mc Leod. Ian Mc Leod also expressed his opinion regarding the definition of legal theory. According to him, legal theory is something that leads to systematic theoretical analysis of various basic characteristics of law, legal rules and legal institutions in general.
4. John Finch. The definition of legal theory is also presented by John Finch who defines it as a study that includes the essential characteristics of laws and customs that have a general nature that exists in a legal system in order to analyze the various basic elements that make it a law and distinguish it from other regulations.
5. Jan Gijssels and Mark van Hoecke. Jan Gijssels and Mark van Hoecke define legal theory as a science that has the nature of explaining and explaining the law. Legal theory itself can be interpreted as a material discipline that in its development is influenced and has a great relationship with general legal teachings. Jan Gijssels and Mark van Hoecke also view that legal theory is a continuation of general legal teaching which has independent disciplinary objects, including legal dogmatics on one side and legal philosophy on the other. In its development, legal theory is also recognized as a third discipline in addition toits function to complement legal philosophy and legal dogmatics, each of which has its own area and value. Legal theory is also seen as a normative science that has free values that make it different from other disciplines.
6. Bruggink. Bruggink in his study defines legal theory as all statements that are interrelated with each other with the conceptual system that exists in legal rules and legal decisions. The system is used in part and most importantly is positivized. Bruggink's definition of legal theory itself has a double meaning, namely the definition of theory as a product and also a process.
7. B. Arief Sidharta. Arief Sidharta argues that legal science theory or rechtstheorie can generally be defined as a science or legal discipline which, when viewed through an interdisciplinary and external perspective, can be critically used to analyze various aspects of legal phenomena, both individually and as a whole, both in its theoretical concepts and in its practice, which has the aim of gaining a better understanding and being able to provide as clear an explanation as possible in relation to the legal material presented and the juridical activities that exist in the reality of society.

Definition of Legal Theory

Legal theory was first introduced in 1926 which then developed in the 1930s, this is discussed in the book Legal Theory by Abintoro Prakoso which also discusses important things about legal theory that you should know.

Based on the understanding and opinions of the experts above, the discipline of legal theorycan be formulated into three, as follows.

a. Legal theory has the same meaning as legal philosophy.
b. Legal theory has a different meaning from legal philosophy.
c. Legal theory is a synonym for legal science.

From the explanation above, Lili Rasjidi and Ira Thania Rasjidi made an effort to distinguish between legal theory and legal philosophy. The definition of legal theory according tothem is a science that studies the main understanding and existing systems of law.

The main definition can be in the form of legal subjects, legal acts, and other things thathave general and technical definitions. This basic understanding is very important in order to understand the legal system in general and also the positive legal system. Furthermore, they alsoexplain about legal theory which reflects the objects and methods of various forms of legal science.

Legal theory itself is divided into two major views that are contradictory in nature but arein one reality. The explanation of the two views is as follows: First, a view supported by three arguments stating that law as a system that has principles can be predicted from precise knowledgeof the current condition of the system, the behavior of the system is then determined by the varioussmallest parts that exist in the system and legal theory can explain the problem as it is without having a connection with people or observers. This illustrates a view of legal theory that is deterministic, reductionist, and realistic.

Second, a view that states that law is not a fixed regular system but as something that has to do with irregularity, unpredictability, and law is strongly influenced by the perception of a person or observer in interpreting the meaning of the law. This view itself is widely expressed bypeople who have a sociological and post-modernist flow, which generally views that everything undergoes changes at all times, both in small and large sizes, as well as evolutionary or revolutionary.

In line with the growth of existing jurisprudence, there are three main aspects of legal theory highlighted by legal researchers, consisting of:

a. Natural Law is the idea that there are irreplaceable laws that exist and govern us, and that institutions should strive to match these natural laws.
b. Analytical jurisprudence asks questions such as what is meant by law, what are the criteria for legal validity, what is the relationship between law and morality, and other similar questions found by legal philosophers.
c. Normative jurisprudence is about what the law should be. It is also steeped in moral and political philosophy, and includes questions of whether individuals should obey the law, what violations of the law are punishable by, the proper use and limits of regulations, and how judges find solutions and resolve cases.

Uses of Legal Theory

Legal theory, which is a separate discipline that exists between dogmatics and legal philosophy, has an interdisciplinary and external perspective that critically analyzes various aspects of legal phenomena, both independently and in relation to the whole.

Legal theory also aims to explain various events in the field of law and tries to provide an assessment in it. Legal theory itself is a form of continuation of efforts in studying positive law. Where legal theory is used positive law as a study material using philosophical analysis as a means of assistance in explaining the law.

This includes both in its theoretical concepts and also in relation to its overall, both in its theoretical concepts and practical application, legal theory aims to gain a better understanding andprovide as clear an explanation as possible of the law in societal reality.

Theory of the Application of Law

Theories of legal application refer to the foundations and principles that guide the way lawis applied in a society or legal system. Some important theories in this context include:

a. Legal Positivism Theory: Emphasizes that law is a set of rules established by a ruler or political authority. The application of law is based on established rules, and compliance with the law is key in maintaining social order.
b. Legal Realism Theory: Focuses on the social and economic factors that influence the application of law. Legal realism emphasizes the importance of understanding the social context in understanding legal decisions.
c. Legal Constructivism Theory: Considers the law as a result of social construction, and the application of law is influenced by the norms and values of society. Interpretation of the lawcan vary depending on the interpretation and understanding of society.
d. Critical Theory of Law: Approaches law as an instrument of power that can be used to maintain social inequality. It emphasizes the need for critical analysis of legal structures to uncover inequalities and justice.

Justice Theory

Theories of justice address the basic principles that should be followed in ensuring that legal decisions are fair and equitable to all individuals. Some commonly applied theories of justice involve:

a. Utilitarianism Theory: Justice is measured by the overall benefit produced. An action or decision is considered fair if it produces the greatest benefit for the most people.
b. Deontological Theory: Justice is measured against absolute moral and ethical principles. Actions are considered just if they conform to standardized moral norms.
c. Distributive Justice Theory: Emphasizes the fair distribution of resources and benefits withinsociety. The goal is to create less inequality and provide basic rights to all individuals.
d. Restorative Justice Theory: Emphasizes restoring relationships damaged by crime. Justice is measured by the extent to which punitive measures can restore victims and change offenderbehavior.
e. Retributive Justice Theory: The application of punishment in proportion to the crimecommitted. The aim is to provide appropriate retribution and create a balance that is lost dueto unlawful acts.

Defending From Threats

Defending oneself from threats is the right of every person protected by law. However, there are some things that need to be considered so that the act of self-defense can be legally justified. Here are some things to consider in defending yourself from threats:

a. The attack must be unlawful. This means that the attack is not justified by the law, for example an attack carried out with violence, threats or intimidation.
b. The attack must be directed against the body, honor, or property. Self-defense cannot be exercised if the attack is directed against other interests, such as personal interests or public interests.
c. The defense must be made with the aim of stopping the attack. This means that the defense must be made to protect oneself or others from an attack.
d. Defense must be done in a proportionate manner. This means that the means of defense mustbe proportional to the attack faced.
e. Defense must be done without any malicious intent. This means that the defense should be done to protect oneself or others, not to harm or kill the attacker.

f. If any of these are not met, then the act of self-defense may be considered unlawful and punishable.

Elements of Self-Defense

The elements of self-defense from the threat of crime are as follows:

a. There are unlawful attacks or threats of attacks. An unlawful attack or threat of attack is an attack or threat of attack that is not justified by law, such as an attack carried out with violence, threats, or intimidation.
b. The attack or threat of attack is directed against the body, honor, or property. Self-defense cannot be carried out if the attack or threat of attack is directed against other interests, such as personal interests or public interests.
c. Defenses are made with the aim of stopping an attack or threat of attack. This means that thedefense must be made to protect oneself or others from an attack or threat of attack.
d. Defense is done in a proportionate manner. This means that the means of defense must be proportional to the attack or threat of attack faced.
e. Defense is done without any malicious intent. This means that the defense must be done to protect oneself or others, not to harm or kill the aggressor.

If one of these elements is not met, then the act of self-defense can be considered an unlawful actand can be punished.

If you are forced to defend yourself from the threat of a crime, then you must consider the elements so that your actions are legally justified. The elements of a criminal threat are as follows:

1. There is a threat to commit a criminal offense. A threat to commit a criminal offense is a statement or act that creates fear or apprehension in a person that he or she will be harmed or threatened with harm. A threat to commit a criminal offense is a statement or act that creates fear or apprehension in a person that he or she will be harmed or threatened with harm. Threats to commit a criminal offense can be in the form of:

a. Threatening statements, e.g. "I'll kill you if you don't give me my money!"
b. Acts that involve threats, such as brandishing a sharp weapon at someone.
c. The threat is directed at a person
2. The threat is directed at a person. The threat of a crime must be directed at a person, either directly or indirectly.

3. Threats are made with the intention of forcing someone to do something or not to do something. Criminal threats are made to force someone to do something they do not want to do or to prevent someone from doing something they do want to do.

If one of these elements is not met, then the act cannot be considered a threat of crime.

The Criminal Code (KUHP) regulates self-defense against the threat of crime in Article 49. The article reads as follows:

(1) Not punishable shall be the person who is compelled to commit an act in defense by an unlawful attack or threatened attack, against himself or another, against his honor (eerbaarheid) or against his own or another's property.

Article 49 of the Criminal Code stipulates that a person cannot be convicted if he/she defends himself/herself against an unlawful attack or threat of attack. The self-defense must be done to protect oneself or others from the attack or threat of attack faced.

Self-defense justified by the Criminal Code must meet the following elements:

a. There is an unlawful attack or threat of attack.
b. An attack or threat of attack directed against body, honor, or property.
c. A defense is carried out with the aim of stopping an attack or threat of attack.
d. Defense is done in a proportional manner.
e. The defense was made without any malicious intent.

If one of these elements is not met, then the act of defense cannot be legally justified.

Expertt Opinion

1. Van Hamel: self-defense can be justified if the threatened attack or assault is unlawful or wederrechtelijk in nature, the threatened attack or assault is ongoing and/or still ongoing, the assault is a direct danger and the assault is dangerous to one's own body, honor or property or the property of others. In addition, the defense must also be appropriate and necessary, so that the defense can be justified.[6]
2. The defense must be balanced against the attack or threat. The attack must not exceed the limits of what is necessary and required. This is related to subsidiarity. This means that there must be a balance between the interests being defended and the means used on the one hand and the interests being sacrificed. Therefore, it must be one-sided. Not all tools can be used, only those that are appropriate and reasonable.[7]
3. Pompe, "if the threat with a gun, by shooting his hand is enough then do not shoot him dead. The defense must be absolutely necessary. If protection is sufficient by running away then defense is not necessary".
4. Hazewinkel Suringa stated that it was possible to run away if the attack came from a madman.
5. Schaffmeister's method of defense is based on the principle of merit.
6. Roeslan Saleh, "in talking about criminal responsibility, it cannot be separated from one or two aspects that must be seen with philosophical views. One of them is justice, so that the discussion of criminal responsibility will provide clearer contours. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy".[8]
7. Chaerul Huda stated that criminal responsibility is "the responsibility of the person for the criminal offense he committed. Strictly speaking, what the person is responsible for is the criminal offense he committed".
8. Barda nawawi arief "states that for the existence of criminal liability it must be clear in advance who can be held accountable, and this must be ascertained in advance who is declared as the perpetrator for a particular criminal offense".
9. Andi Zainal Abidin "states that both civil law and common law countries, generally formulate criminal liability negatively. This means, in Indonesian criminal law as well as other civil law systems, the Act formulates the circumstances that can cause the maker not to be held accountable". Therefore, what is determined are the conditions that can cause the maker not to be convicted (strafuitsluitingsgrondeng), partly to eliminate guilt, whereas in judicial practice in common law countries, various general reasons for defense (general defense) or general reasons for the excusing of liability are accepted.[9]

[6] P.A.F. Lamintang and Franciscus Theojunior Laminating, Basics of Criminal Law in Indonesia, (Jakarta: PT SinarGrafika, 2014), page 472.
[7] Andi Hamzah, Indonesian Piana Law, Sinar Grafika, Jakarta, 2017, p.155
[8] Septa Candra, Criminal Law Reform; The Concept of Criminal Liability in the Future National Criminal Law,Journal of Cita Hukum, Vol.I No.1 June 2013, Page 40.
[9] Ibid, Page 41

Criminal Self-Defense from the Standpoint of Legal Application Theory

Self-defense is an excuse in Indonesian criminal law. This means that acts committed in self-defense cannot be punished. However, to be categorized as self-defense, certain elements must be met, such as the existence of an unlawful attack or threat of attack, the existence of reasonablefear, and proportional defense actions.

Judges have the authority to determine whether an act meets the elements of self-defense or not. Judges must interpret the law carefully and objectively in order to provide justice for the parties involved.

The judge must also consider whether the defense actions taken by the victim or others defending the victim were proportional or not. If the defense was excessive, the judge may reducethe sentence or even acquit the defendant from all charges.

Law enforcement is the process of ensuring that the law is obeyed and followed by society.In the context of self-defense, law enforcement is carried out by law enforcement officials, such as police, prosecutors, and judges.

Law enforcement in self-defense cases must be conducted fairly and objectively. Law enforcement officers must protect the rights of victims and others who defend victims.

Self-defense can be examined from the theory of justice in the following aspects:

1. Distributive justice is justice that relates to the distribution of resources and opportunities in society. In the context of self-defense, distributive justice can be realized by ensuring that everyone has the right to defend themselves from unlawful attacks or threats of attacks.
2. Retributive justice is justice that relates to the punishment given to the perpetrator of a crime. In the context of self-defense, retributive justice can be realized by ensuring that the punishment given to the offender is not more severe than the harm suffered by the victim.
3. Restorative justice is justice that focuses on restoring the relationship between victims and offenders. In the context of self-defense, restorative justice can be realized by providing opportunities for victims and offenders to dialogue and find solutions that are acceptable to both parties.

Self-defense against crime is a human right that is protected by law. Indonesian criminal law provides justification for a person who commits self-defense. However, to be categorized as self-defense, the act must meet certain elements.

The application of law and theories of justice can serve as guidelines for law enforcement officials in handling self-defense cases. Fair and objective application of the law and the correct application of the theory of justice can realize justice for victims, perpetrators, and society as a whole.

Overseas Comparison

1. Singapore. In certain instances, the Penal Code grants the right of private defense of person and property. In general, nothing that is done in the exercise of one's right of private defense is considered an offense. This right is not applicable in the following situations:

There is no right of private defense in circumstances where there is sufficient time to seek protection from the public authorities. [section 98]

The right of private defense does not allow for the infliction of greater injury than is required for the purpose of defense. [section 98]

If done, or intended to be done, by a public servant operating in good faith under the authority of his office, there is no right of private defense against conduct that does not rationally induce the apprehension of death or grievous hurt, even if such action is not precisely justified by law. [section 106A]

If done, or attempted to be done, by the direction of a public servant acting in good faith under the authority of his office, even if that direction is not strictly justifiable by law, there is no right of private defense against an act that does not reasonably cause the apprehension of death or grievous hurt. [section 106A].[10]

The right of private defense can be used to defend your property, such as your car or house, against any act, or attempt to commit an offense, that falls under the category of theft, robbery, mischief, or criminal trespass under section 97(b) of the Penal Code. The right of private property defense arises under section 104(1) of the Penal Code when you reasonably fear that your property or the property of another person is at risk as a result of theft, robbery, damage, or criminal trespass.[11]

United States. Self-defense is available as a defence to crimes committed by the use of force. The basic principles of self-defense are set out in Palmer v R, [1971] AC 814; approved in R v McInnes, 55 Cr App R 551: "It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but only do, what is reasonably necessary."

The common law approach as expressed in Palmer v R is also relevant to the application of section 3 Criminal Law Act 1967: "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

2. United Kingdom. Common law (self-defense) The common law defence of self-defense applies where the defendant uses necessary, reasonable and proportionate force to defend themselves or another from imminent attack. It is a complete defense to all non-sexual offenses involving the unlawful use of force (anything from battery to murder). Because the defence results in a complete acquittal, the courts have interpreted the defence in a restrictive way so as to avoid acquitting too easily. For example, the courts will not usually acquit the defendant just because he thought the force used was reasonable - whether or not the force used was reasonable will be objectively assessed by the jury and not simply according to what the defendant thought at the time.

A defendant is entitled to use reasonable force to protect himself, others for whom he is responsible and his property It must be reasonable. - Beckford v The Queen [1988] AC130.[12]

Force is reasonable if a reasonable person would think it necessary to use force and would have used the same level of force as the defendant. This test is fundamentally objective: the defendant may not decide for himself what is reasonable based on his own values. However, the hypothetical reasonable person is imbued with the defendant's factual beliefs about the circumstances.[13] This is the case even if the defendant's beliefs about the circumstances are mistaken.[14]

[10] https://irblaw.com.sg/learning-centre/right-of-private-defence-in-singapore/ , Right of Private Defense inSingapore
[11] Ibid
[12] Beckford v The Queen [1988] AC 130
[13] R v Shaw' [2002] 1 Cr App 10
[14] Criminal Justice and Immigration Act 2008

3. South Korea. Self-defense in South Korea is defined under Criminal Act Article 21. It is considered an act to prevent impending and unjust infringement of one's or another person's legal interests. However, it's essential to note that self-defense in Korea is typically about neutralizing the threat, not counterattacking. A preventative act is about stopping a threat before it escalates, within reasonable limits. This means that you may not cause excessive injury to your attacker to prevent bodily harm.

Unlike many other countries, a weapon cannot be used to prevent an unarmed attacker. A preventative act must be: Intended to stop a threat before it escalates. Proportionate to thelevel of threat, ensuring it does not exceed necessary bounds (i.e., you may not cause moreinjury to an attacker than he/she intends to do to you).[15]

Self-defense is only justified under specific conditions that emphasize immediacy (response time) and proportionality (amount of force). Self-defense is justified in the faceof an immediate and unjust threat. Self-defense must be immediate; it cannot be done forrevenge or to prevent a suspected future attack. Certain actions invalidate the claim of self-defense, especially those initiating conflict (e.g., throwing the first punch).

You may not claim self-defense if you do the following acts: Initiating a fight or provokingan attack voids the right to claim self-defense. Use excessive force or use preemptive strikes, even in response to verbal threats. Defense must not be more aggressive than the assault. Excessive force, particularly using a weapon or causing significant harm, is not justified.

Conclusions

1. Article 49 of the Criminal Code stipulates that a person cannot be convicted if he/she defends himself/herself against an unlawful attack or threat of attack. The self-defense must be carried out to protect oneself or others from the attack or threat of attack faced. Self-defense justified by the Criminal Code must fulfill the following elements:

a. There is an unlawful attack or threat of attack.
b. An attack or threat of attack directed against body, honor, or property.
c. A defense is carried out with the aim of stopping an attack or threat of attack.
d. Defense is done in a proportional manner.
e. The defense was made without any malicious intent.

If one of these elements is not met, then the act of defense cannot be legally justified. This article in the Penal Code also applies in other countries where self-defense againstcrime must be measurable, logical and not punishable and all depends on the judgment ofthe judge or jury.

2. The police as the frontline in the implementation or application of the Criminal Code on self-defense from the threat of crime must be objective and must side with the victim of crime, so the Prosecutor's Office and Judges must be fair in deciding the case and not to punish the innocent and release the guilty as happened in this case.

Advice

1. Article 49 of the Criminal Code can be expanded with other parties who see a crime can provide assistance to victims and take measurable actions against the perpetrators of crime

[15] Self-Defense Laws in South Korea: A Simple Guide https://www.fleetdeliverykorea.com/post/understanding-self-defense-laws-in-south-korea

because community participation is needed as a supporter of security and resistance to criminals.

2. Law enforcers, the police must see it more carefully, objectively in processing cases of crime victims who fight back in self-defense as well as the prosecutors and judges so that crime victims are even convicted for defending themselves.

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