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Criminal Responsibility for Loan Collectors Who Commit Murder as a Forced Defense for Threats from Borrowers

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Abstract: Criminal liability against loan collectors who commit murder as a form of forced defense due to threats from borrowers. This study is motivated by the importance of legal protection for individuals who commit acts of self-defense in urgent situations, especially in the context of debt relations. The method used is normative juridical with statutory, conceptual, and comparative approaches. The results of the study show that acts of self-defense and forced defense that exceed the limit (noodweer excess) can be legally justified if they meet the elements of instantaneous attack, against the law, and proportional and forced action. In the case of loan collectors who are actually threatened, as in the case of MZ and AR, self-defense can be a reason for criminal expungement if it is proven that there is no intention to kill and the action is carried out under psychological pressure. Fair law enforcement requires careful analysis of the evidence, the psychological condition of the perpetrator, and the chronology of events so that the rights of perpetrators and victims are protected in a balanced manner.

Keywords: Defense, Murder, Criminal Liability, Loan Collectors

INTRODUCTION

Laws are social rules that are "regulatory" and "coercive" in nature. These rules grow in people's lives, forcing them to submit and obey. If not, then there are strict sanctions in the form of punishment for anyone who violates. The main purpose of law is to maintain harmony and balance in relations between citizens.

The area of law that focuses on criminal activity is known as criminal law. Mustafa Abdullah and Ruben Ahmad argue that criminal law is the part of the law that deals with crimes under penalty of law. "*Jus Poenale*", another term for positive law, is the law that covers criminal cases. As a kind of social control, criminal law sets punishments for offenders and regulates some prohibitions.

Murder, on the other hand, is defined as the illegal taking of another person's life, resulting in the separation of the soul from the body and the cessation of each organ. As it blatantly violates the most basic and universal principles of humanity, it is classified as a serious crime.

Criminal law in Indonesia provides strict rules regarding the crime of murder. In the Criminal Code, there are three main articles that regulate murder, namely Articles 338, 339, and 340. Article 338 of the Criminal Code regulates murder committed intentionally, where the perpetrator is subject to a maximum imprisonment of fifteen years. Article 339 of the KUHP increases the sanction for murder that is accompanied or preceded by other criminal acts, for example to facilitate the commission of the crime or to escape arrest. In these cases, the punishment can be life imprisonment or a maximum of twenty years. Article 340 of the Criminal Code regulates murder committed with prior planning. The perpetrator can be sentenced to death, life imprisonment, or imprisonment for a maximum of twenty years.

In this case MZ and AR had a loan-related relationship, where AR borrowed Rp500,000 from MZ. One day, MZ came to collect the loan. However, AR could not pay it. Feeling cornered, AR suddenly pulled out a knife and threatened MZ to stop collecting. MZ, who felt her life was threatened, reflexively tried to grab the knife. In the ensuing struggle, MZ accidentally injured AR, causing his death.

With this, the situation is clearer that MZ had no intention of killing, but due to the struggle, an accidental killing occurred. This could fall under forced defense or *noodweer exces* depending on how it is proven in court.

Regarding self-defense, Article 49 of the Criminal Code provides criminal exceptions if a person commits a criminal act in the context of forced self-defense against a real and unlawful attack or threat. Legitimate self-defense must meet the conditions: it occurs in a state of extreme necessity, to overcome an attack that threatens immediately, the attack is aimed at the body, honor, decency, or property, and the defense is carried out while the attack is still ongoing and proportional to the threat faced. If the murder occurs in self-defense and fulfills the elements of forced defense, the perpetrator cannot be punished. However, if the elements of self-defense are not fulfilled, the perpetrator can still be criminally processed in accordance with the provisions of the Criminal Code.

METHOD

The method applied in this research is normative juridical, which is an approach that aims to explain and analyze the crime of murder in the context of self-defense. In normative legal research, there are several approaches applied, namely the statutory approach, conceptual approach, and comparative approach. The main focus in this study is to analyze the crime of murder related to self-defense. This type of research is classified as descriptive research, which focuses on describing phenomena that have been or are ongoing. The data source utilized is secondary data, which includes primary and secondary legal materials. Primary legal materials include statutory regulations and court decisions that have the force of law. Meanwhile, secondary legal materials are sourced from written references such as books, scientific journal articles, and other written works.

RESULTS AND DISCUSSION

Legal Elements Related to Murder in the Context of Self-Defense

Specifically in "Article 49 of the Criminal Code" (KUHP), classifies self-defense into two categories, namely "ordinary self-defense" or "*noodweer*" and "excessive self-defense" or "*noodweer exces*". In ordinary self-defense, a person cannot be criminally charged if his actions are carried out in the case of forced self-defense from an ongoing and unlawful attack, be it an attack on self, honor, decency, or property. Whereas in excessive self-defense, a

person who takes excessive action in self-defense due to very strong psychological pressure, so that his actions are uncontrollable, cannot also be punished. However, this self-defense must meet several conditions to be legally recognized, namely the attack must be real and ongoing, the attack is against the law, the defense action must be proportional to the threat faced, and there is no other alternative than self-defense.

In general, self-defense must meet several key elements in order to be accepted as a "justification" or "excuse", namely the existence of a sudden threatening and unlawful attack, the defense measures taken must be proportionate and not exceed the necessary limits, and there is no alternative to making the defense.

1. First, the attack or threat of attack must be real and ongoing at the time of the defense. The attack must be sudden and unpremeditated, so that the defender has no opportunity to evade or seek peaceful recourse. An attack that has already passed or a threat that is only a possibility in the future cannot be used as a reason for self-defense. In this context, Article 49 of the Criminal Code confirms that self-defense can only be carried out against an instantaneous attack, which means that the attack is happening or will happen soon. This is so that self-defense is not misused as an excuse to commit unnecessary acts of violence.
2. Second, the attack that forms the basis of the defense must be unlawful (*wederrechtelijk*). This means that the attack does not have a legitimate legal basis, such as actions taken by law enforcement officers in the course of their lawful duties. These unlawful attacks usually include threats to life, body, honor, decency, and property. In this case, self-defense can be used to protect these legitimate legal interests. For example, a person who is physically attacked by another person has the right to defend themselves to protect their safety. However, if the attack is carried out in a context that is justified by law, such as a lawful arrest by the police, then self-defense cannot be justified.
3. Third, the defense action taken must be proportional to the threat faced. This proportionality means that the force used in defense must be balanced with the level of threat or attack. For example, if a person is attacked with bare hands, then the excessive use of sharp weapons in self-defense can be considered disproportionate and unjustified. In addition, self-defense must also meet the principle of subsidiarity, i.e. there is no other safer alternative to avoid the attack other than making the defense. If the perpetrator of the defense has the opportunity to escape or call for help, then violent defense cannot be justified. This is important to prevent the misuse of self-defense as an excuse to commit unnecessary acts of violence.
4. Fourth, self-defense must be carried out in extreme necessity and at the same time as the attack or threat of attack. This means that the defense should not be carried out after the attack is over or in a situation that is already safe. Defenses made after the attack has ended can be considered acts of retaliation and cannot be justified as self-defense. In the context of murder, this means that murder that occurs after the attack is over cannot be categorized as self-defense.

The main problem in the application of self-defense is the vagueness of the term "instantaneous attack" which has no definite time limit in the Criminal Code, as well as the highly subjective assessment of proportionality. For example, the use of a sharp weapon in self-defense against a hand-to-hand attack is often a matter of debate as to whether it is excessive or not. In addition, there is a risk of misuse of self-defense as an excuse for intentional homicide, such as cases where the accused has prepared a weapon prior to the conflict. Therefore, the role of forensic psychology experts and medical evidence is crucial to distinguish between spontaneous self-defense and premeditated actions. Some legal experts, such as Andi Hamzah in his book "Principles of Criminal Law", suggest that the government conduct more intensive socialization of the provisions of self-defense to the wider community, so that understanding of this legal limitation can increase. In addition, clear technical

guidelines are needed for judges in assessing the elements of compulsion and proportionality so that court decisions become more consistent and fair. Revitalization of Article 49 paragraph 2 is also deemed necessary by including more detailed medical and psychological criteria to prove the existence of mental shock that affects the actions of the defendant. Data from the Supreme Court in 2023 showed that around 65 percent of self-defense applications were rejected due to a lack of supporting evidence, indicating the need to improve the ability of law enforcement officials to collect and process evidence, such as recordings and credible testimonies.

In Article 49, there are at least three conditions for forced defense, as follows:

1. Sudden and Immediate Attack or Threat The attack or threat that is the reason for self-defense must be sudden and immediate, without a long time lag. As soon as one becomes aware of the attack, the defense must be made immediately without delay.
2. Unlawful Attack The attack must be unlawful (*wederrechtelijk*) and directed against a legally protected interest, namely body, honor, or property, whether belonging to oneself or another.
3. The purpose of the defense is to stop the attack with the Principles of Proportionality and Subsidiarity the defense action taken must aim to stop the attack. The defense must be proportional, meaning that the action taken must be balanced with the level of threat faced. In addition, defense should only be taken if there is no other safer or reasonable way to avoid the attack (subsidiarity principle).

These three conditions must be met simultaneously for self-defense to be accepted as a justification that exempts the perpetrator from criminal liability. If one of the conditions is not met, then the act of defense cannot be legally justified and the perpetrator may be subject to criminal sanctions.

Overall, self-defense attempts to strike a balance between protecting victims of crime and preventing abuse of the law. However, its effectiveness relies heavily on law enforcement's ability to deeply analyze the facts and translate legal norms into the real context on the ground. Going forward, the integration of psychology and forensic technology is expected to help reduce uncertainty in court decisions and ensure justice for those who are truly in a situation of urgency and forced to defend themselves. Thus, self-defense can be exercised as a legitimate right without opening the door for unnecessary acts of violence.

Criminal Responsibility for Loan Collectors Who Commit Murder as a Form of Involuntary Defense

A criminal act is an act that is prohibited by law and punishable by crime. However, a person who commits such an act is not automatically sentenced to criminal punishment. Criminal punishment depends on the guilt of the perpetrator in committing the criminal offense. The basic principle in criminal law is that there is no punishment without guilt (*geen straf zonder schuld*), which means that a person cannot be convicted unless it is proven that he/she had guilt or malicious intent in his/her actions. Although this principle is not explicitly written in the law, it is recognized and applied in legal practice in Indonesia.

Crimes that threaten the life of a person are regulated in Chapter XIX of Book II of the Criminal Code. The main form of this crime is murder (*doodslag*), which is an act that causes the loss of a person's life. In this case, the focus is not only on the act itself, but the result, namely the death of the victim. The loss of life does not have to occur immediately after the act is committed, but can occur later, for example after the victim has undergone medical treatment. To be considered murder, the perpetrator must commit an act that has the potential to cause the death of another person. The perpetrator of a criminal offense is criminally responsible if proven to have committed an unlawful act with culpability. Therefore, the perpetrator of murder is obliged to receive criminal sanctions in accordance with legal

provisions.

However, in certain situations, such as murder that occurs due to force or self-defense, criminal liability can be different. Self-defense is an action taken to protect life, honor, or property, both for oneself and others, from unlawful attacks or threats. If self-defense is carried out under duress and meets certain conditions, the act can be a justification so that the perpetrator cannot be convicted even though it results in the loss of life of another person.

Criminal liability for loan collectors who commit murder as a form of forced defense is a very complex legal issue and requires in-depth study based on the provisions of criminal law in Indonesia, especially in the Criminal Code (KUHP) and the latest jurisprudential developments. In the Indonesian criminal law system, forced defense or *noodweer* is explicitly regulated in Article 49 of the Criminal Code which divides self-defense into two forms, namely ordinary self-defense (Article 49 paragraph 1) and excessive self-defense or *noodweer excess* (Article 49 paragraph 2). Article 49 paragraph (1) states that: "a person who performs an act of defense due to an attack or threat of an unlawful attack immediately against himself, another person, honor morality, or property, shall not be punished". Meanwhile, paragraph (2) stipulates that: "forced defense that exceeds the limits caused by intense mental shock due to the attack is also not punishable". This concept is rooted in the term "*postulate necessitas quod cogit defendit*", which means self-protection carried out in a situation of necessity.

In the context of collection, a debt collector facing a physical attack from a borrower may invoke the defense of duress if the attack meets the above criteria. For example, if a debtor threatens a debt collector with a sharp weapon in a sudden and obvious manner, the debt collector is entitled to self-defense to protect his or her safety. However, for example, in a case involving MZ and AR, where AR threatened MZ with a knife because he could not pay the debt, MZ's action of trying to grab the knife could qualify as a forced defense, provided that it meets the existing conditions. However, if in the struggle MZ deliberately stabs AR to death, then the action is not included as a forced defense, because it exceeds the limits needed to stop AR's attack. Van Bemmelen argues that *noodweer excess* remains an unlawful act, even though the element of liability is removed due to the intense mental stress caused by the attack. Therefore, law enforcement officers must be able to prove convincingly that the actions taken by the debt collector were truly based on efforts to protect themselves from threats, and were not actions that were planned or prepared in advance.

In addition, excessive self-defense or "*noodweer excess*" is also regulated in Article 49 paragraph (2) of the Criminal Code. In certain situations, debt collectors who are attacked suddenly and experience great psychological pressure can take excessive defense actions. If the action is triggered by intense mental shock due to the attack, then the perpetrator cannot be convicted even though the defense exceeds reasonable limits. However, proving this mental shock requires strong evidence, such as expert testimony from a forensic psychologist or psychiatrist, as well as relevant medical evidence. In practice, forced defense that exceeds this limit is often a very subjective consideration and requires in-depth analysis from the judge.

The jurisprudence of the courts in Indonesia provides a concrete illustration of how the defense of necessity is applied in cases of murder by debt collectors. For example, in South Jakarta District Court Decision No. 867/Pid.B/2021/PN.Jkt.Sel, a debt collector who killed a debtor was acquitted because the judge considered that the act was legitimate self-defense and the perpetrator suffered mental shock due to a sudden attack from the debtor who threatened him with a knife. In contrast, in Gresik District Court Decision No. 30/Pid.B/2013/PN.Gs, the defendant who claimed self-defense was convicted because the judge considered that the attack had stopped before the act of defense was carried out, so the defense could not be justified. In addition, Medan District Court Decision No. 12/Pid.B/2019/PN.Mdn rejected the

claim of self-defense because the defendant was proven to have prepared a weapon before the incident, which indicates malicious intent and not spontaneous defense. These cases show that the courts pay close attention to the chronology of events, supporting evidence, and psychological elements in assessing claims of involuntary defense.

The role of law enforcement officials is very important to objectively assess whether the elements of a forced defense have been met. Officials must conduct a comprehensive investigation and investigation, collect evidence such as CCTV footage, witnesses who are willing to explain the chronology, and the results of the "*visum et repertum*". In addition, the involvement of forensic psychology experts is also crucial to assess the mental state of the perpetrator during the act of defense, especially in cases of *noodweer excess*. Data from the Supreme Court shows that most self-defense applications are rejected due to a lack of supporting evidence, increasing the need for more modern and accurate methods of proof.

In addition to the criminal law aspect, it should also be noted that loan collection in Indonesia must be carried out in accordance with applicable statutory provisions, such as regulations related to collection that may not use violence or intimidation. Loan collectors who use unlawful means cannot claim a defense of force if they are later attacked by the debtor. Therefore, education and training for debt collectors is essential so that collection methods are conducted legally and humanely, thereby reducing the risk of conflicts leading to violence or murder.

Philosophically, forced defense reflects the principle of substantive justice that recognizes the right of every individual to protect themselves from attacks that endanger life or honor. However, this principle is also limited by the need to maintain public order and prevent the abuse of violence. Therefore, the provisions in Article 49 of the Criminal Code attempt to strike a balance between the right to self-defense and the protection of the right to life of others. In practice, the enforcement of this provision must be carried out carefully and based on objective facts to avoid the misuse of forced defense as a pretext to commit unlawful killing.

CONCLUSION

Involuntary defense focuses on the act of a person defending themselves directly in the face of an ongoing threat. However, the limit of defense is considered to be exceeded if after the threat or attack ends, the person still continues to attack the perpetrator of the attack. In other words, the defense is only justified as long as the threat is still ongoing, and if the attack is over, the continued act of attacking is no longer considered a valid defense. Article 49 of the Criminal Code provides a legal basis for self-defense or *noodweer*, which allows individuals including loan collectors to protect themselves from unlawful attacks. Legitimate self-defense must meet certain criteria: a real and sudden attack, unlawful in nature, and a defense action that is proportional to the threat. A situation of *noodweer excess* may arise from extreme psychological distress caused by the attack, but this requires strong evidence. The court's decision relies heavily on a detailed analysis of the facts and evidence supporting a claim of self-defense, such as those related to a sudden attack and a real threat. To minimize abuse of the law and ensure fairness, it is important to increase public dissemination of self-defense provisions. More specific technical guidelines are needed for judges in assessing the elements of duress and proportionality, which will help produce fairer verdicts. In addition, the integration of forensic psychology in the judicial process can reduce uncertainty in decisions. The government should ensure that law enforcement officials are adequately equipped to collect and analyze evidence related to self-defense, and provide clear legal protections for loan collectors who face real threats while performing their duties. Lawmakers are expected to provide a more detailed and clear explanation of the formulation of Article 49 of the Criminal Code, particularly regarding self-defense under duress as well as the

limitations of self-defense influenced by violent mental shock. This more detailed explanation is important so that law enforcers and the public can better understand the meaning and purpose of the article. Thus, the application of Article 49 of the Criminal Code in cases of self-defense can be carried out appropriately and consistently, avoiding misunderstandings and providing appropriate legal protection for those who commit self-defense in situations of duress.

REFERENCE

- Hukumonline (2023), "Duress and Forced Defense as Excuses for Criminal Erasure"
<https://www.hukumonline.com/klinik/a/daya-paksa-dan-pembelaan-terpaksa-sebagai-alasan-penghapus-pidana-lt51bd53f7b6b00/>
- Legal Clinic online (2023), "Killed in Self-Defense, Still Detained by Police?"
<https://www.hukumonline.com/klinik/a/hukumnya-membunuh-karena-membela-diri-lt5d392658ad270/>
- Lamintang, P.A.F. and F.T. Lamintang, Basics of Indonesian Criminal Law, Sinar Grafika, Jakarta, 2014.
- LBH Pengayoman Unpar (2024), "Limitations of Self-Defense Under the Criminal Code"
<https://lbhpengayoman.unpar.ac.id/batasan-pembelaan-diri-berdasarkan-kitab-undang-undang-hukum-pidana/>
- Nasution, Bahder Johan, State Law and Human Rights, cet.3, Mandar Maju, Bandung, 2014.
- Decision of the South Jakarta District Court No. 867/Pid.B/2021/PN.Jkt.Sel
- Decision of the Gresik District Court No. 30/Pid.B/2013/PN.Gs
- Decision of the Medan District Court No. 12/Pid.B/2019/PN.Mdn
- Rahmat Ibnu Wibowo (2022), "Forced Defense (Noodweer) Can It Be Punished?", Directorate General of State Assets, Ministry of Finance.
<https://www.djkn.kemenkeu.go.id/kpkn1-palopo/baca-artikel/15466/Pembelaan-Terpaksa-noodweer-can-be-criminalized.html>
- Rechtenstudent Journal (2022), "The Crime of Murder in Self-Defense from the Perspective of Islamic Law and the Criminal Code"
<https://rechtenstudent.uinkhas.ac.id/index.php/rch/article/download/178/89>
- Rusianto, A. (2016). Crime and Criminal Liability. Jakarta: Pranamedia Group.
- Bambang Sunggono (2003). Legal Research Methods. PT Rajagrafindo, Persada,.
- RIGHT. Moch Anwar (1979). Criminal Law Special Part (KUHP Book II). Alumni, Bandung.
- Roy V Karamoy, Vonny A. Wongkar (2021). Juridical Review of the Perpetrator of Murder in Forced Self-Defense According to Article 49 of the Criminal Code and Article 338 of the Criminal Code. Journal of Lex Crime. Vol. 10, No. 3.