

Police Action Shoots Dead Robber based on Legal Legitimacy

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Abstract. *The purpose of this research is to know and analyze legal legitimacy of the police shooting dead the robbers. In this writing, the author uses a normative legal method with a research specification in the form of descriptive analysis. The dilemma in responding to the phenomenon of shooting dead muggers by the Police is a concern for all parties. In general, mugging is clearly a crime and must be punished. The Police must consider what actions will be taken in terms of using this force based on the level of danger of the threat posed by the mugger. Therefore, professionalism and a comprehensive understanding of the basis for an action taken by the police are very much needed so that there is no legal inequality, let alone human rights violations. The act of shooting dead street criminals must be viewed broadly. Although this action can reduce the crime rate in an area, shooting dead muggers is contrary to human rights (HAM) and can lead to extrajudicial killings.*

Keywords: *Extrajudicial; Phenomenon; Violations.*

1. Introduction

The crime of mugging is one form of crime that has become a serious concern in the criminal justice system. The crime of mugging is characterized by the use of violence or the threat of violence to seize valuables from victims. The phenomenon of mugging has caused deep concern in society, because this incident often causes significant material losses, psychological trauma, and even takes the lives of victims.¹

Robbery is an act carried out by a person or a group of people. The victim who becomes the victim can be injured or even killed on the spot. The perpetrators of robbery do not hesitate to finish off their victims with sharp weapons to seize the victim's belongings. Robbery is usually carried out by two people or even in groups, regardless of day or night, regardless of quiet or crowded. Robbers can carry out their actions at any time. This action is carried out by working together between perpetrators. They are not afraid of the community. The rampant criminal acts such as robbery that have occurred so far, are considered by a handful of people

¹DI Pradana, (2021), Analysis of the Effectiveness of Criminal Law Policy in Dealing with Robbery Crimes at the City Resort Police. *Journal of Law and Criminology*, 5 (2), p 103

as something normal, so that violence is often used as a tool by a person or group of people for certain reasons and purposes by ignoring the law which is the basis of the action (principle guiding).²It is very concerning that most of the forms of violence on the highway have not yet been fully revealed through the legal process in accordance with the laws and regulations in force in Indonesia.

The crime of mugging is not regulated in positive law, because the term is used by the community for criminals who intercept victims on the road and rob them of their property. In positive law, the crime of mugging falls under the corridor of theft as regulated in Book II of the Criminal Code, namely theft with violence Article 365 of the Criminal Code and/or Article 368 of the Criminal Code concerning extortion with threats of violence or violence.³

One of the surprising efforts made by the police who shot dead a mugger on July 3, 2023. "A mugger named Bima Bastian alias Jarot was shot dead by members of the Medan Police on Monday, July 3, 2023. The Mayor of Medan, North Sumatra, Bobby Nasution appreciated the firm steps taken by the police". In Bangkalan, Madura Island, East Java, the police shot dead two specialist muggers on Friday, May 25, 2018. The shooting was forced because the person concerned tried to resist when he was about to be arrested, even trying to slash the police officers using a machete. In Karawang, on Monday, April 9, 2018 in the early hours of the morning, two muggers were shot dead by the Karawang Police Criminal Investigation Unit because they resisted using a samurai sword when arrested. The two perpetrators had previously mugged Enok Suhaeni, a teacher at SMP Negeri 2 Bungursari Purwakarta, on March 27, 2018, until the victim died from falling off his motorbike.

The dilemma in responding to the phenomenon of police shooting dead muggers has become a concern for all parties. In general, mugging is clearly a crime and must be punished. There is a radical question to investigate the root of the problem: who is actually at fault if muggers appear in the midst of society? If the root of the problem has been found, then what is the right solution to overcome mugging? Is the solution of shooting muggers dead on the spot the most appropriate solution?

The police must consider what action to take in terms of the use of force based on the level of danger of the threat posed by the perpetrators of the robbery. Therefore, professionalism and a comprehensive understanding of the basis of an action taken by the police are very necessary so that there is no legal inequality, let alone human rights violations. The police, apart from being law enforcement

²Widodo, Karina Luana Pramesti, and Hana Faridah. (2020), Analysis of Motorcycle Robbery Cases in Kendari City (Case Study Number.308/Pid.B/2021/PN Kdi). *Journal of Legal Panorama*. 6 (2), p 127

³Rani Hendriana, et al. (2016), Combating Robbery Crimes at Banyumas Police (in the Perspective of Criminology and Victimology). *Jurnal Idea Hukum*, 2 (1), March, p 51

officers, are also the spearhead of the integrated criminal justice system, for this reason the police play an important role in this regard.

In connection with this topic, to research it further and include it in writing a legal work with purpose of writing for knowing and analyzing the legal legitimacy of the police's shooting dead of muggers.

2. Research Methods

The normative legal research method uses an approach by studying legislation, theories and concepts related to the problems to be studied. Determining the sample is a process of selecting a representative part of the entire population. This study does not use samples as research materials but uses literature studies as data sources. The use of secondary data as raw data is used as well as the addition of expert opinions as additional data so that it is processed as a research result.

3. Results and Discussion

3.1. Terminology of Begal

In the big dictionary of Indonesian, begal is defined as a robber/pirate while membegal is defined as robbing or robbing on the street. While mugging is an activity carried out by muggers (criminals). Mugging is one of the criminal acts related to legal protection of goods and property that should be a special concern of law enforcement officers, not only how to overcome and deal with the crime of mugging. But what is equally important is how the process of becoming a victim of a mugging crime occurs, and what is the role of the victim in facilitating the occurrence of the crime.

Begal is a verb, the synonym of the word begal is the word robber, while the word begalan is a process, method, act that means robbery or robbery. In terminology, the word begal can be interpreted as a criminal act such as robbery or robbery carried out by someone accompanied by violence using sharp weapons and using motor vehicles, even usually to the point of killing the victim and the victim who is targeted is usually a motorcyclist. So Begal is an act of robbery, robbing by force using motor vehicles and sharp weapons.⁴

Meanwhile, according to the England and West of Theft Act, a person is said to have committed a mugging when they commit theft or robbery by force, in order to make the victim afraid. According to Louise E. Porter, mugging can be aimed at obtaining commercial goods (usually more planned and in large quantities) and can also be for personal goods. According to Porter, muggers whose goal is for personal goods tend to be more cruel or hostile. Muhammad Mustofa said that the term mugger has long been heard in the world of crime. In fact, mugging has occurred since the imperial era in China or the kingdom era in Indonesia. The word

⁴Hamzah, (2016), The Threat of the Death Penalty for Perpetrators of Robbery as a Solution to Reduce the Crime Rate of Robbery in Makassar City, Jurnal al-Daulah, 5 (1), January-June, p 4

mugger is often found in Javanese literature. Mugging is a robbery carried out in a quiet place. Waiting for people who carry property in that quiet place.⁵

3.2. Legal Legitimacy of Police Shooting Dead Robbers

In carrying out its duties and authorities, the Police often encounter various obstacles, especially tasks that require Police officers to go directly into the field to secure a situation and condition that certainly cannot be predicted with certainty. The cases in the field are very diverse, as are the responses given by the perpetrators of crimes or suspects that must be faced by the Police. For this reason, the Police are certainly required to always be alert, ready, and vigilant against the possibilities that may occur. To protect themselves and of course the community from criminal acts committed by criminals, the Police are given the authority to take action based on their own will and beliefs, this authority is called the Police's discretionary authority.

An example of a case that requires the police to go directly into the field is when there are complaints and concerns about the rampant muggings that threaten the peace and security of the community. In securing the crime of mugging, many responses were found from the perpetrators or suspects of this mugging, ranging from ignoring the police's appeals, resisting, running away, and not infrequently causing casualties because the perpetrators used sharp weapons. An example of a case of resistance by mugging perpetrators to the police which caused injuries and possible casualties because the perpetrators were carrying sharp weapons occurred in Cimahi, when the Cimahi Police Sabhara Precision Patrol team received information from residents who saw 2 suspicious people carrying sharp weapons, the police immediately went to the location and secured the two suspects and asked them to get off their motorbikes but the suspects refused and a chase ensued between the suspects of the mugging crime and the police. And when arrested, the perpetrators attacked the officers using machetes so that one of the police officers suffered injuries to the hand. After being secured and investigated, it turned out that the two perpetrators had previously carried out motorcycle robbery in different places.

Looking at the case presented above, it can be seen that the perpetrator of the robbery did not heed the police's appeal, ran away, and even fought back using a sharp weapon in the form of a machete which caused the victim from the police to suffer injuries, in addition to the fact that the perpetrator did not only commit the crime of robbery once. In the law regulated by the police have the authority to protect themselves and the community in urgent situations so as not to increase victims or even to the point of loss of life, the police on their own initiative can immediately act, this action on their own initiative is called discretionary authority.

One of the authorities that members of the Indonesian National Police have is the authority to shoot with firearms or what we more often know as the authority to

⁵Ibid, p 6

shoot on sight.⁶The use of this authority by members of the Police is often used to arrest criminals who resist, flee or are thought to endanger others. The act of shooting on sight by police officers is a repressive police task, namely to take action.⁷The repressive task of the Police is a police task that is of a nature to take action against lawbreakers in accordance with the provisions of applicable law both in the Criminal Procedure Code and other laws and regulations. The authority to carry out repressive tasks in this case shooting on sight by the Police is called active Police discretion, and generally this task is given authority to the police unit of the investigation.⁸

Police officers can take firm action in the form of shooting on sight when the suspect endangers the lives of the police officers or the general public around them. The procedure for firm police action against perpetrators of theft with violence that can be justified by law, so an officer understands the principles of law enforcement legality, necessity, and proportionality.

The use of force stages in Article 5 paragraph 1 of the Regulation of the Chief of Police Number 1 of 2009 concerning the Use of Force in Police Actions is only justified when such force is the only option available to members of the Police and such force is reasonable and reasonable to indicate an immediate threat, serious injury or death. The actions of the suspect that can be included as examples of actions that can immediately cause serious injury or death include:

- 1) Opening fire at someone or in a crowded place, intentionally crashing a car into someone, stabbing someone with a knife;
- 2) Committing an act that endangers honor or even intentionally pushing someone into the path of a passing bus.

Before firing, the police must also fire warning shots into the air or onto the ground with great caution in order to demoralize the perpetrator and to give a warning before firing at the perpetrator. The exception is in very urgent circumstances where the delay is expected to result in death or serious injury to officers or others around them, a warning is not necessary.

The body parts that are allowed or targeted in shooting on sight are if in a non-urgent situation, according to what is stated in Perkap No.8 of 2009, must be shot in the leg or hand (which is only paralyzing). However, if there is very urgent or forced resistance, then the police, based on the principle of general obligation, must shoot dead the perpetrator whose body is usually targeted in the head or chest.

⁶Nova RA, Achmad R & Suzanalisa S, (2017), Accountability in the Implementation of Shoot-on-Sight Authority Held by Police Members. *Legality: Journal of Law*, 7 (1), p 149.

⁷Knutsson J, (2004), Police Use of Firearms a Constant? The Swedish and Norwegian Experience. *Policing in Central and Eastern Europe: Dilemmas of Contemporary Criminal Justice*

⁸Sutanto, Sulisty H & Sugiarto T, (2005), *Investigation Management*. First printing. Jakarta: Pencil. p 324.

Several factors that led to the shooting of the robbers include:

1) Field condition factors

Conditions in the field affect the police to shoot to death the perpetrators of crimes, in compelling or urgent circumstances it is very necessary for the police to use their authority which requires the police to take firm action because there are reasons that must be considered in order to prevent the occurrence of danger that threatens the life and body of the perpetrators of crimes. The response of the perpetrators also affects the conditions in the field, basically the response of the perpetrators is something that is very natural to find when the authorities take action but when the perpetrators do not heed the warnings given by the police and put up dangerous resistance until the perpetrators glance at themselves then it becomes a factor for the police to shoot.

2) Factors that cause criminal acts

The perpetrator is one of the factors why the police carry out shootings where the perpetrator is a recidivist (a person who commits repeated crimes) the perpetrator's status is a consideration for the Police to take action because the Police have special records of the perpetrator's track record. The number of perpetrators also affects because not infrequently the perpetrator is only one person but a group (gang) therefore if it is felt that the number of perpetrators is not comparable to the Police apparatus and will cause danger then the police can consider the authority they have in order to prevent anything unexpected.

3) Case classification factors

The classification of criminal cases is distinguished based on the severity of the case. From the severity of the case, there is usually more resistance in cases with a severe classification, therefore the police are more alert in handling cases with a severe case classification, the level of resistance carried out by the perpetrator also tends to be more severe and dangerous so that in cases like this the police are allowed to open fire on the perpetrators of the crime.

4) Factor Number of Victims in the Crime Case

The emergence of victims from the crime cases that occur is also one of the factors that are considered. This is because the more victims there are, the greater the threat of danger from the crime case. To protect the police and the general public, the police consider the authority to shoot to avoid increasing new victims.⁹

In the regulation on the Use of Force in Police Actions as stated in the Regulation of the Chief of Police Number 1 of 2009, it is explained that there are several police actions, namely aggressive, active, and passive actions. Passive actions are actions by a group of people or someone who does not attempt to attack, but their actions can disrupt the safety and order of the community, and do not fulfill what the

⁹Umi Kalsum Siregar & Sukiati, (2024), Shooting Dead Against Criminals Reviewed from Islamic Criminal Law (Study of Shooting Dead Robbers in Medan City), *Gorontalo Law Review*, 7 (2), October, p 334

police have ordered to stop the behavior. Active actions can be briefly said to be the actions of a group of people or someone in order to escape or free themselves from police officers without any attempt to attack. While aggressive actions are actions by a group of people or someone in order to attack police officers, moral honor, society or property.

Police Chief Regulation Number 1 of 2009, in Article 5 paragraph (1), contains provisions regarding the use of force in police actions which also explains that the use of force includes six stages, namely: 1) force that has a preventive effect, 2) verbal commands, 3) soft hand-to-hand control, 4) hard hand-to-hand control, 5) control using blunt weapons, chemical substances (chili spray, tear gas, or other tools according to Police standards), 6) control with firearms or other tools capable of stopping the behavior or actions of suspects or crimes that cause death or serious injury to the public or members of the Police.

At this 6th stage, it is the final action or choice taken by the police by calculating that what the suspect did has a very dangerous impact on the community, the victim, and also the police officers. If these 6 stages have been attempted, then the police officers use firearms. The meaning of the "stage" described above does not mean that it must be carried out in sequence. Because in Article 5 paragraph (2) of Police Regulation Number 1 of 2009 concerning the use of force in Police Actions, it reads: "Police members must choose the stage of use of force as referred to in paragraph (1), according to the level of danger of the threat from the perpetrator of the crime or suspect..."¹⁰

It is said that it does not have to be in order here, it can be concluded from the use of the sentence "choose". The word choose here concerns which stage needs to be used when facing conditions that require the use of force. If it turns out that the conditions in the field found at that time are very dangerous to the safety of the lives of the community and the police, for example the suspect is carrying a firearm in the form of a rifle or a sharp weapon in the form of a dagger, then the 6th stage can be directly chosen for use. Another analogy as an example of the use of the 6th stage of force is when there is a motorcycle gang carrying machetes and the police also consider the speed of the suspect's motorcycle, so that the machete plus the speed of the motorcycle could possibly kill police officers or members of the public, in this case the police are allowed to directly use the 6th stage.¹¹

This is related to the existence of forced defense, in the Criminal Code (KUHP) Article 49 paragraph (1) explains that forced defense is related to the principle of self-defense. In forced defense there is an act that violates the legal interests of

¹⁰RB Sampow, (2019), *The Authority of Police Apparatus in Carrying Out Actions Using Force in Handling Anarchy According to the Chief of Police Regulation No. 1/X/2010*. *Lex et Societatis*, 7 (7). p 56

¹¹Dirk F. Regina Caecilia, (2015), *Shooting Actions by Police Officers Against Suspects Based on Law No. 2 of 2002 in the Perspective of Human Rights*. *Lex Administratum*, 3 (6), August, p 84

others, but the act is justified by law because it meets the requirements determined by law, namely: the act is carried out because there is an attack or threat of attack that is immediate, the attack or threat of attack is unlawful, the attack is directed at oneself or others, moral honor, and property belonging to oneself or others, the defense must be carried out by paying attention to the principle of subsidiarity (only forced action may be taken if there is no other lighter way to stop it) and the principle of proportionality (defense actions must be balanced with the attack or threat faced). Considerations because implementing the provisions of the law, implementing the provisions in question are laws in the material sense, namely every regulation formed by the legislator that applies and is generally binding. A person who commits an act which, if it is a discretionary act (self-judgment) is considered to violate the law in order to implement the law, then the act can be justified and does not violate human rights.

Also contained in Article 48 of the Criminal Code which states that anyone who commits an act due to coercive force (*overmacht*) cannot be punished. In the case of shooting dead on the spot during the arrest process by the police, there is an emergency coercive force because the police shoot dead on the spot to avoid casualties from both the police and the community.

In terms of the effectiveness of the method of eradicating muggers, will the action of shooting muggers to death be effective in overcoming the problem of mugger crime on the streets? The action of shooting to death street criminals must be seen broadly. Although this action can reduce the crime rate in an area, shooting to death muggers is contrary to human rights (HAM) and can lead to extrajudicial killings.

To overcome the problem of mugging, the National Police should also conduct in-depth and comprehensive research on the increase in mugging crimes. With comprehensive research, the National Police can find the core of the problem that causes the increase in crime rates and can get the right steps to protect the community. However, on the other hand, public support is actually positive in responding to the Police's actions in taking a discretionary policy in the form of shooting dead the perpetrators of mugging.

The spirit of law enforcement is still prioritized, implemented by the Police and related apparatuses in order to truly create security for the lives of the community. Efforts to shoot dead muggers can be permitted in the right ways and do not harm existing legal regulations. This is an evaluation material for the Police to prepare competent and qualified Human Resources for the great responsibility of taking discretionary action to shoot dead muggers in order to create a sense of security for the community by also having adequate legal reasoning for quick legal considerations before taking repressive action to shoot dead muggers in threatening conditions.

4. Conclusion

The use of force stages in Article 5 paragraph 1 of the Regulation of the Chief of Police Number 1 of 2009 concerning the Use of Force in Police Actions is only justified when such force is the only option available to members of the Police and such force is reasonable and reasonable to indicate an immediate threat, serious injury or death. Further explained in the Regulation of the Chief of Police No. 1 of 2009 which can be stated briefly where the use of force by the police has the aim of inhibiting, preventing, to stopping suspects or perpetrators of crimes who are carrying out acts that are contrary to laws and regulations or can be assumed as a deterrent for suspects or perpetrators of crimes to escape, run away, or even act something that can have a dangerous impact on members of the Police or the general public.

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