

The Juridical Review Considerations of Judges in Giving Noodweer Decisions on Crimes of Persecution that Cause the Loss of Other People's Lives

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Abstract. *This study aims to find out the basic considerations of the Judge's obstacles and the Judge's Solution in imposing a Noodweer decision in a case of the crime of persecution that caused the loss of another person's life. This study used a qualitative approach with descriptive analysis specifications. The data was obtained using a literature study and processing of Verdict Documents at the Kandangan District Court. The data was then analyzed qualitatively. From this study, it can be concluded that the judge's considerations in imposing a verdict on the crime of persecution that causes the loss of a person's life against the defense actor is forced, in this case the judge assesses whether the considerations based on the law are fair, are there benefits or provide legal certainty, because one of the goals of law is to create justice. In this consideration, the judge also looks at whether in a case each perpetrator is legally and convincingly proven guilty of committing the crime of premeditated murder.*

Keywords: Defense; Forced; Judgment.

1. Introduction

Indonesia is a country that upholds the law. Law is the highest power to regulate society and can be used as a coercive tool for someone who has violated the law. Law is a series of regulations regarding human behavior as a member of society, while the purpose of law is to maintain order, safety, security and peace in society.

Legal provisions are made to avoid disputes that arise in society, with the formation of legal norms it is clear what actions may or may not be carried out in society, so as to create order in society.¹

According to Wirjono Prodjodikoro, the criminal act of persecution, initially the Draft Criminal Code (RKUHP) during the Dutch government defined

¹Sudikno Mertokusumo, Knowing Law as an Introduction, Liberty, Yogyakarta, 2005, p. 1

persecution as an act that deliberately caused pain to the body and disrupted the health of other people, this was later deemed inappropriate. so that thus the formulation is updated to become persecution, which is more clear that doing something with the aim (oogmark) is to cause pain² The law does not specifically regulate what is meant by abuse (mishandeling). According to jurisprudence, persecution is defined as deliberately causing discomfort, pain or injury.³

Forced defense (noodweer) a person is required to defend as proportionally as possible or in balance between the interests being defended and the attacks received, but in defense that goes beyond the limits (noodweer excesses) it is often done by going beyond the limits of defense where a person defends himself excessively, where the loss suffered by the perpetrator as a result of the victim's defense is greater than the loss suffered by the victim as a result of the attack by the perpetrator. So that in forced defense (noodweer excess), the principle of proportionality and the principle of subsidiarity applied to forced defense (noodweer) are violated.⁴

The decision of the Hoge Raad dated 2 February 1965 interprets assault as a direct attack on life, morals and property, but acts that can cause harm to these things. 9 In Pompe's opinion, threats with a firearm shooting into his hand are considered as a necessary defense, another case if shot dead. This study aims to find out, examine and analyze the influence of the Judicial Power Act on the judge's considerations in making decisions regarding Noodweer in cases of criminal acts of persecution that caused the loss of other people's lives.

2. Research Methods

Using this research approach is a normative juridical approach or doctrinal legal research, namely a legal research that uses secondary data sources. This is done by emphasizing and adhering to juridical aspects. Normative legal research is library research, namely research on secondary data. Secondary data has a scope that includes letters, books, to official documents issued by the government or judicial institutions.⁵ This normative approach will focus on juridical issues regarding the judge's considerations in relation to Noodweer in deciding cases of abuse that caused the loss of another person's life. The research specification used is Analytical Descriptive. Data collection was obtained from library research supported by field research. Library research (library research), namely collecting data by conducting a review of library materials or secondary

²Wahyu Widodo, 2015, *Criminology & Criminal Law*, Univ PGRI Semarang Press, Semarang, p. 97.

³Ibid., p. 99.

⁴Andi Sofyan & Nur Azisa, 2016, *Criminal Law*, Press Pen Library, Makassar, p. 148

⁵Soerjono Soekanto, 2015, *Introduction to Legal Research*, University of Indonesia (UIPress), Jakarta, p. 52.

data which includes primary legal materials, secondary legal materials.⁶Data analysis used in this research is qualitative data analysis.

3. Results and Discussion

In this case, based on the legal facts at trial, the victim was no longer a threat of attack, but objectively it had been manifested in the form of an attack in the form of choking the defendant, however, the victim's actions were driven away by hitting the back of the victim's head with the handle of an ax, then a struggle ensued between the victim and the defendant were going to take the wood that was holding the defendant, but the attempt failed because the defendant kicked the victim's genitals, but after the defendant was able to avoid the threat the victim continued to chase the defendant from behind and punched the defendant in the back of the head using his fist until finally a struggle ensued. the victim fell to the ground;

Whereas based on these facts, it can be concluded that the resistance that was carried out by the defendant against the victim was an attempt by the defendant to defend his own legal interests, both for the body and for material interests; that the defense made by the accused since the attack took place until the danger of attack ended when there was no more physical attack; For this reason, the Panel is of the opinion that based on the considerations above, the defense of the defendant has legal grounds. The principle of subsidiarity, namely that a defense must use the effort with the lightest consequences against the attacker, in defending its legal interests. It is said that the mildest effort is if it is enough to protect the legal interests that are being attacked. Van Hammel argues that, if there are various other attempts that can be made as forced defense and those efforts are better, then the person receiving the attack is not allowed to use the efforts of the attacker. Related to this opinion, Simons also emphasized that whoever is able to avoid an attack by running away, then he has no right to make a defense.⁷

4. Conclusion

Based on the results of the research and discussion conducted by the authors above, the conclusions are drawnThe judge's considerations in imposing a verdict on the crime of persecution that causes the loss of a person's life against the perpetrator of forced defense (Noodwee) Juridical considerations areIn this case, the judge assesses whether the considerations based on the law are fair, have benefits or provide legal certainty, because one of the goals of law is to create justice. In this consideration, the judge also looks at whether in a case each perpetrator is legally and convincingly proven guilty of committing the crime of

⁶Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview*, eighth printing, Jakarta. Sinar Graphics, 2004, p. 24.

⁷Sudarto. *Loc. Cit.*, p. 194.

premeditated murder. The philosophical consideration is that in this case the judge focuses on truth and justice. Considering that when viewed from the side of justice, the judge also saw from the mitigating and aggravating aspects of the defendant such as being polite in court, admitting his mistakes and not being complicated when giving statements.

5. References

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