

Victim of Robberies Becomes Suspect: Indonesian Criminal Law and Human Rights Perspective

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Submitted: 13-05-2023; Reviewed: 06-01-2024; Revised: 06-01-2024; Accepted: 09-01-2024

DOI: <https://doi.org/10.18196/ijclc.v4i3.16876>

Abstract

A young man from East Nusa Tenggara had to experience the crime of being a victim of a robbery, but unfortunately, he was named a suspect for killing the robber to defend himself. In the Indonesian legal basis, citizens have the right to defend themselves, protect and feel safe from the threat of fear, but what happened to the youth is contrary to this legal basis. The purpose of this research is to analyze the reasons why victims of robbery are named suspects with the aim of defending themselves from the perspective of Indonesian criminal law and human rights. The author also relates the decision to the existing laws and regulations, is the decision relevant to the law or not? This research adopts the normative legal research method. The results of this research are to provide new information regarding the right action and how to defend oneself according to the law if experiencing a similar criminal event. The findings of the research show that victims of robbery can take evasion actions by seeking self-protection from the authorities or by running away for their own safety, and according to the law, murder is a criminal act so that the victim can be made a suspect but there are other considerations.

Keywords: Legislation; Personal Protection; Robbery

I. Introduction

Criminal law is a component of the whole legal system in a country that establishes the basis of a rule to determine what actions should not be done, which are prohibited, and is accompanied by threats or sanctions in the form of specific criminals for those who violate the prohibition.¹ Criminal law recognizes the concept of criminal elimination at all levels of action. The legal basis for criminal abolition is divided into two categories: those listed in the law and those introduced by jurisprudence and doctrine. Forced to make a defense, contained into 3 understandings, that is, there must be an attack or threat of attack, there must be another way to dispel the attack or threat of attack at that time, and the act of defense must be balanced with the nature of the attack threat attack.²

Some cases related to the determination of suspects against victims who have made a defense are forced to increase in Indonesia. As a result of the determination of the suspect, the public feels confused whether the victim who made a defense was forced to deserve to be given a criminal sanction or given appreciation or appreciation. Criminal events related to forced defense (*noodweer*) occurred in Nusa Tenggara Barat (NTB), namely victims who were thwarted by perpetrators who used violence with sharp weapons to threaten the lives and safety of victims. Immediately the victim made a forced defense (*noodweer*) by stabbing the perpetrator so that both perpetrators died. Thus, the police ensnared the initials (US) with Article 338 of the Criminal Code for the disappearance of a person's life and Article 351 paragraph (3) of the Criminal Code for acts of persecution that resulted in the loss of one's life.³ Of course,

¹ Moeljatno. (2015). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, pg 2.

² *Ibid.*, pg. 158.

³ CNN Indonesia. (2022). Available on <https://www.cnnindonesia.com/nasional/20220415045314-12-785093/pakar-sebut-korban-begal-jadi-tersangka-di-ntb-tak-bisa-dipidana>, Accessed on 14 May 2022 at 12:23 WIB.

this becomes a very big problem and becomes a concern for the community if the same case occurs, it will benefit and provide opportunities for criminals to be more productive in committing crimes.

Article 49 of the Criminal Code of the Indonesian Criminal Code of Defense must exist in all criminal laws and appropriate with criminal law itself. The phrase *noodweer*, used by the Dutch, is not included in the law's formulation. Article 49, paragraph 1 of the Penal Code states: "Whoever is compelled to commit an act, which is compelled to be done to defend himself or himself, defend his own honor or property or the property of others, rather than an attack against rights and immediately at the right time, should not be punished."⁴

Forced defense (*noodweer*) and forced defense that exceeds limits (*noodweer excès*) are similar and both require illegal attacks on anything that must be protected (such as one's body, one's honor, one's decency, one's property, or one's own or another's person). There is also a distinction between the two, which is as follows:⁵

1. In the case of overly aggressive defense (*noodweer excesses*), a person goes too far because of the tremendous shock to the psyche. As a result, carrying out self-defense beyond this limit is considered illegal. Additionally, extreme backlash creates the foundation for forgiveness.
2. *Noodweer* Is the complainant's premise since there is no such thing as a violation of the law.

Based on this, the problem that will be discussed is whether surviving to save one's own life against the perpetrator of robbery is an unlawful act? and why in this case was the robbery victim made a suspect?

II. Method

This research was conducted through a conceptual approach, which is based on normative legal research methodology. Primary legal sources include the Constitution of the Republic of Indonesia 1945 (UUD 1945), the Criminal Code (UU Number 1 of 1946), and the Criminal Procedure Law (UU Number 8 of 1981). Secondary legal sources include libraries containing books, articles and documents related to existing issues. Tertiary legal sources include supporting legal materials, primary legal materials, and secondary legal materials. In addition, findings and data are analyzed descriptively to describe, show, or summarize data points constructively so that patterns emerge that fulfill every condition of the data.

III. Results and Discussions

3.1. Understanding Robberies (*Begal*)

The crime of robbery (robbery) is one of the problems that is currently occurring in people's lives recently, such as what happened in West Nusa Tenggara. This crime is a crime against property which provides economic value for the perpetrator. Robbery is a crime that often occurs and is very disturbing to the public and causes significant losses to the victims.

In the Qur'an there are several verses that discuss the person who made the damage on the face of the earth or the crime of disobedience, including in Surah Al-Mâidah Verse 33:

"Surely the vengeance against those who fought Allah and his Apostle and made damage to the Earth, only they were killed or crucified, or cut off their hands and feet back, or banished from the country (his place of residence). This is an insult to them in the World and in the Afterlife, they get great torment, except for those who repent (among them) before you can master (arrest) them, then know that Allah (SWT) is all-merciful".⁶

In Indonesia there are many criminal acts that are often committed among perpetrators with economic motives. In the Criminal Code there is no further explanation of *begal* (robberies), and the Criminal Code does not recognize the existence of Interpretation to guaranteed legal certainty but in practice is known for the interpretation to be able to ensnare of the perpetrator with seeking understanding and regulation of criminal acts by means of interpretation with expanding understanding. Interpretation

⁴ Nanang T. Sitorus, Fitria R. Siregar, and Wenggedes Frensh. (2021). Penetapan Tersangka Terhadap Korban Tindak Pidana Pencurian yang Melakukan Pembelaan Terpaksa (*Noodweer*) Dalam Hukum Pidana Indonesia. *Riau Law Journal*, Vol. 5 No. 2, pg. 228-229.

⁵ Hukum Pidana. (2018). Available on <https://www.hukumonline.com/klinik/detail/ulasan/Lt5ae67c067d3af/arti-inoodweer-exces-i-dalam-hukum-pidana>, Accessed on 14 May 2022 at 12:10 WIB.

⁶ Department of Religion. (2009). *Qur'an and Its Translation*. Jakarta: Pustaka Al-Kautsar, pg. 113.

aims to know the objective understanding of what is included in the rule of law not the subjective understanding as intended by the shaper of the rule at the time the regulation was made.

Criminal acts are regulated in the Criminal Code (KUHP). The criminal act carried out by the interpretation expands the understanding, including in the criminal act of property crimes contained in Book II of the Criminal Code, ranging from article 362 to article 367 concerning theft, from article 362 to article 367 of the criminal act included in article 365 of the Criminal Code where in practice interpretation has been carried out expanding understanding.⁷ Robbery can be considered theft with violence and has been regulated in Article 365 of the Criminal Code whose original formulation is as follows: ⁸

1. Sentenced to imprisonment, theft preceded, accompanied, or followed by force or threats of violence against persons committed with the intention of preparing or facilitating the theft, or allowing himself or other participants in the crime to escape if known at the time, or ensuring mastery of the stolen object.
2. Sentenced to imprisonment for twelve years with the provisions:
 - a. If the crime is committed at night in a residence or in a closed yard that above it there is an exact residence, or on a public road or on a train, or a moving tram.
 - b. If the crime was committed by two more people or together.
 - c. If to get access to the crime scene, the guilty person has carried out demolition or climbing or has worn false keys, a false order, or a false uniform. If the crime has resulted in severe injuries to the body.
 - d. Sentenced to imprisonment for fifteen years, if the crime has resulted in the death of a person; and
 - e. Sentenced to death, life in prison, or 20 years' probation if the crime was committed by two or more individuals and resulted in serious bodily damage or death of a person, and if one of the conditions listed in items 1 or 3 also applied.

3.2. The Crime of Robberies (*Begal*) In the Perspective of Indonesian Law

There are two factors that can cause a crime. The first is the intention of the perpetrator and the second is the opportunity. Intention is a factor that comes from within the perpetrator. The occurrence of crime is due to factors that come from the victim itself, namely the presence of negligence factors, lack of vigilance, and lack of supervision when driving at night. Opportunity is a factor that comes from within the victim. This is because of an act or behavior of the victim to encourage the perpetrator who initially has no intention, instead becomes intending to commit a crime, for example caused by environment, economy, education level, and family.⁹

Robbery that occurs not only disturbs public order but also often causes casualties and the majority are carried out by juvenile. Juvenile delinquency is a phase experienced by most children towards young adulthood, so that behavioral experts consider it a normal process. The process of searching for their identity, adolescents collide with ideas and values to find their identity. Adolescents who are exposed to aggressive and deviant behavior have an addiction to imitating them. In the case of juvenile robbery, the behavior gets its inspiration from cases of robbery that are difficult to solve by the authorities even if caught, robbers get only light punishments.¹⁰

People who have violated the rules of course there will be punished. Punishment is an unpleasant feeling (miserable) imposed by a judge with a verdict on people who have violated the Criminal Law Act. However, there are several reasons that can eliminate criminal threats. The reasons divided into reason of justification, forgiveness, and abolition of prosecution, death of the accused, expiration, settlement outside

⁷ Anak A. G Agung, Anak A. S. L. Dewi, dan I Made M. Widyantara. (2021). Perlindungan Hukum Terhadap Pelaku Pembunuhan Begal Atas Dasar Pembelaan Terpaksa. *Journal of Legal Interpretation*, Vol. 2 No. 1, pg. 3-4.

⁸ P. A. F Lamintang, Theo Lamintang. (2009). *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*. Jakarta: Sinar Grafika, pg. 55.

⁹ Natasya V. Leuwol, Lulu J. Uktolseja. (2019). Begal-Perilaku Menyimpang Masyarakat Yang Dilakukan Oleh Remaja. *Akrab Juara Journal*, Vol. 4 No. 3, pg. 76.

¹⁰ Afifah Khairunnisa. (2017). Aksi Pembegalan Meresahkan Masyarakat. Available at <https://lk2fhui.law.ui.ac.id/aksi-pembegalan-yang-meresahkan-masyarakat/>.

the court, coercive power, forced defense, carrying out statutory orders, carrying out legal office orders, and carrying out invalid office orders in good faith.¹¹

The punishments or criminal threats regulated in Article 10 of the Criminal Code consist of two types, namely the main punishment and the additional punishment. The main punishment consists of death penalty, imprisonment, confinement, fine, criminal closure. The additional punishment consists of revocation of certain rights, confiscation of certain goods, and announcement of judge's decision. Based on the Criminal Code, the crime of robbery includes "The Crime of Theft Chapter XXII Specifically regulated in Article 365 of the Criminal Code". According to the theft law, there are 5 types, namely:

1. Ordinary theft is governed by Article 365 of the Criminal Code.
2. Theft by weight is governed by Article 363 of the Criminal Code.
3. Theft with violence is governed by Article 365 of the Criminal Code.
4. Theft within the family is governed by Article 367 of the Criminal Code; and
5. Crimes against a person's body and life, such as molestation and murder, are governed by Article 367 of the Criminal Code.¹²

There is no specific understanding of the criminal act of robbery or robbery in the Criminal Code (KUHP) but the construction of law robbery can be concluded related to theft. This act can be dealt with according to the rules stated in article 365 paragraph (1) "Is punishable by a maximum imprisonment of nine years, theft which is preceded, accompanied, or followed by violence or threats of violence against a person with the intention of preparing or facilitating the theft, or in the case of being caught red-handed, to enable the escape of oneself or another participant, or to keep possession of the property. the stolen."¹³ In this case can be concluded the criminal threat that can be imposed on the perpetrators of theft is in the form of imprisonment and fines.

3.3. Countermeasures And Efforts to Eradicate of Robberies (*Begal*)

Criminal policy or crime prevention is an important component of social defense and efforts to attain social welfare. As a result, the ultimate or primary purpose of criminal policy is to safeguard society to attain social welfare. One of the ways the Indonesian National Police (POLRI) may provide safety to the public regarding robbery is through its tasks and functions.

One of the functions and duties of the POLRI is to provide protection for the community from robbery. This is in accordance with the provisions regarding the main duties of the Indonesian National Police as regulated in Article 13 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (Police Law) which includes (1) maintaining public safety and security; (2) enforce the law; and (3) provide protection, guidance, and community services. Article 14 of the Police Law regulates his remaining responsibilities and authority of the POLRI to maximize preventive efforts. These efforts are also known as "community development" or "indirect prevention" efforts, namely guidance that aims to transform people into law-abiding citizens.¹⁴

In describing the various negative aspects of community development, Sudarto emphasized that efforts to "ask for help" from criminal law as a means of dealing with criminal acts should or should be considered at the end. Criminal law has a subsidiary function, meaning that it is only used if other efforts are thought to be less satisfactory or less appropriate. However, if criminal law is used, it must be in accordance with the of criminal policy, especially to the purpose of "public protection" (as planning for social defense).¹⁵

¹¹ Rusmiati, Syahrizal, Mohd din. (2017). Konsep pencurian dalam Kitab Undang-Undang Hukum Pidana dan Hukum Pidana Islam. *Syah kuala law journal*, Vol. 1, No. 1, pg. 347.

¹² Theresa Yolanda Sirait, 2021, *Kasus Pembegalan/Pencurian Motor (Pro Bono)*, <https://moeldoko81.org/2021/09/07/kasus-pembegalan-pencurian-motor-pro-bono/>.

¹³ Moeljanto. (2009). *Kitab Undang-Undang Hukum Pidana*. Jakarta: Bumi Aksara, pg. 129.

¹⁴ Zainudin Hasan, Rissa Afni Martinouva. (2020). Penanggulangan Kejahatan Begal dalam Perspektif Kriminologi. *Jurnal Hukum Malahayati*, Vol.1, No. 1, pg. 113.

¹⁵ Hartono, Syafrudin kalo, m. Hamdani, Mahmud Mulyadi. (2021). Peranan Kepolisian dalam penanggulangan tindak pidana kejahatan pencurian dengan kekerasan (Begal) di Wilayah Hukum Polsek Percut Sei Tuan. *Jurnal Kajian Hukum*, Vol. 2, No. 2, pg. 353.

Burglary is a crime that not only confiscates property but also takes a person's life. The perpetrators certainly do not hesitate to commit violence to obtain or maintain the stolen property. The following are measures to combat the robberies: ¹⁶

1. Preventive Efforts

This effort is used to reduce or eliminate the risk of crime. Preventing crime is better than punishing because it is not only cheaper, but also easier and more likely to produce good results or achieve goals. For example, strengthening patrols at crime-prone points and in areas where robberies often occur, as well as conducting outreach to schools.

2. Repressive Efforts

This effort is used as a form of action against the perpetrator's actions through an investigation process to collect evidence and determine whether the perpetrator is released or questioned further so that efforts can be made to arrest or detain him. It can be concluded that this effort is more oriented towards providing punishment to the perpetrator in accordance with criminal law regulations.¹⁷

3.4. The Decision Given to Victims of Robberies (*Begal*) In the Perspective of Indonesian Law

Robberies often occur in Indonesia and targeting the victim's valuables such as gold, jewelry, cash, cellphones, and other valuables. The robbery that occurred really disturbed public security and made people anxious, causing people to feel worried about carrying out their daily activities while they were outside the home. Anxiety caused by criminal acts certainly disrupts efficiency and effectiveness in carrying out activities outside the home. Especially for people or communities who work as traders, motorcycle taxis or other jobs that can threaten their own lives.

In several cases of robbery, the perpetrator who had obtained the victim's belongings did not kill or injure the victim, although there were also robberies which were accompanied by beatings, coercion and even caused the victim to die. Most victims also did not put up any resistance, although there were also those who resisted and even caused the perpetrator to die as happened in Lombok City, West Nusa Tenggara. The robbery occurred when the victim was walking home and was confronted by several young men who threatened the victim with sharp weapons. Due to this act, the victim defended himself by taking force and seizing the robber's sharp weapon which resulted in the perpetrator died. The incident was then reported by the local community. The victim's resistance caused the victim being named a suspect by the Indonesian National Police.

According to the POLRI investigation, robbery victims simply defended themselves to ensure their safety so that robbery victims are compelled to murder the robbers. In criminal law, there are several circumstances that can exclude victims and eliminate charges for murder committed by the victim as a form of self-defense against the perpetrator of the robbery. These situations are called forgiving reasons and justifying reasons.

Forgiving reasons are reasons that eliminate the perpetrator's guilt, even though his actions still violate the law. Forgiveness is felt from the perspective of the person/offender (subjective). For example, the perpetrator cannot be held responsible for his actions if he is crazy. The justification is the argument that makes a criminal act legal. Thus, justification is seen through the lens of action (objective). From the case that occurred in Lombok, it is known that the victim was forced to kill the two young men who carried out the robbery to protect himself from the robbery, so it could be declared as unintentional murder.

Robbery is also known as theft with violence which is regulated in Article 365 of the Criminal Code (KUHP) as follows :

- 1) Theft that is preceded, accompanied, or followed by violence or threats of violence against a person in preparation for or assisting the theft, or if caught in the act, to help himself or another participant escape or retain possession of the stolen property, is punishable by up to nine years in prison.
- 2) Threatened with up to 12 years in prison:
 - a. If the act is committed at night in a house or yard, on a public road, or on a moving train or tram.
 - b. When two or more people work together to commit a theft.
 - c. If committed by breaking into or climbing into the scene of a crime, using a fake key, a fake warrant, or fake official clothing.

¹⁶ Moh ihsan, Muliadi. (2020). Tinjauan Kriminologi terhadap anak sebagai pelaku begal sepeda motor yang menggunakan senjata tajam. *Maleo Law Journal*, Vol. 4, No. 1, pg. 22.

¹⁷ *Ibid.*

- d. If the action seriously hurts someone.
- 3) If the act results in death, the perpetrator can be imprisoned for a maximum of 15 years.
- 4) Punishable by the death penalty, life imprisonment, or a certain term not exceeding 20 years, if the act results in serious injury or death and is committed by 2 (two) or more people in association, accompanied by one of the things described in no. 1 and 3."¹⁸

Robbery is also regulated in Article 388 which is included in the category of crimes against life, as follows:

"Anyone who intentionally takes the life of another person is threatened with murder with a maximum imprisonment of fifteen years."¹⁹

Robbery is a type of theft that endangers the safety of the perpetrator and the victim. According to Article 49 of the Criminal Code, a robbery victim who defends himself and accidentally kills the perpetrator of the robbery is entitled to parole, as regulated as follows.

- 1) Whoever is forced to act in defense, because there is an unlawful attack or threat of attack, against himself or another person; against the honor of morality (eerbaarheid) or one's own property or that of others, shall not be punished.
- 2) Forcible defense that goes beyond the limits, which is directly caused by great mental shock due to the attack or threat of attack, is not punishable.

This article is the basis for the elimination of this criminal act. Emergency defense measures are not unlawful acts, so the perpetrators of these acts should be immune from punishment under Article 49. A court decision that makes a robbery victim a suspect may violate the Constitution of Republic of Indonesia 1945 (UUD 1945) as a constitution in force which is also the highest law in Indonesia, above other laws, including laws and statutory regulations. This is considered contradictory because it is not in accordance with Article 28G paragraph 1 of the Constitution which reads:

"Everyone has the right to protect themselves, their family, honor, dignity and the property they control, and has the right to feel safe and protected from the threat of fear of doing or not doing something which is a human right."²⁰

Based on Article 49 of the Criminal Code and Article 28G of the Constitution, the robbery victim can be acquitted of all charges of murder as the perpetrator because the victim's actions which caused the robbery perpetrator to die were a forced defense so the victim should be free from legal action. There are similarities between forced defense (noodweer) and forced defense that exceeds limits (noodweer exces), namely that both require an attack that is against the law, and what is being defended is also the same, namely the body, moral honor, and property, both oneself and others.

The difference is the forced defense that exceeds limits (noodweer excesses), someone goes exceeds the limits because of great mental shock. Therefore, the act of self-defense that exceeds the limits is still against the law, only the person is not punished because of the severe mental shock. It can be concluded that forced defense that exceeds limits is a reason for pardon meanwhile forced defense to be the basis for justification, because nothing is against the law.²¹ The case was acquitted also because the public knew the details of the case and heard the news regarding the decision issued. The public protested and criticized the decision issued. People feel that there are no longer any regulations that can protect them from potential dangers. Therefore, the public protested and criticized so that regulations and courts should provide more protection to robbery victims. In this way, the human rights of the victims will remain maintained and fulfilled because they have been protected by existing regulations.

IV. Conclusions

¹⁸ Indonesian Criminal Code. (2022). Available on <https://www.hukumonline.com/pusatdata/detail/lt4c7b7fd88a8c3/wetboek-van-strafrecht-wvs/document/lt4c7b80e19969e>, Accessed on 14 May 2022 at 13:37 WIB.

¹⁹ *Ibid.* Accessed on 14 May 2022 at 13:41 WIB.

²⁰ 1945 Constitution. (2016). Available on <https://www.dpr.go.id/jdih/uu1945>. Accessed on 14 May 2022 at 14:46 WIB.

²¹ Hukum Pidana. (2018). Available on <https://www.hukumonline.com/klinik/detail/ulasan/lt5ae67c067d3af/arti-inoodweer-exces-i-dalam-hukum-pidana>. Accessed on 14 May 2022 at 14:52 WIB.

Robbery is a crime caused by economic conditions, the social environment of the perpetrator, the setting of the place, and various other reasons that influence the occurrence of robbery. Robbery often occurs where the robbery victim makes a forced defense or forced defense that exceeds limits and even causes the perpetrator of the robbery to die. Forced defense is regulated in Article 49 paragraph 1 and paragraph 2 of the Criminal Code (KUHP) with the aim of providing firmness to someone who carries out forced defense, but this defense results in the death of the perpetrator. In this case, The Indonesian National Police (POLRI) decided not to impose punishment on the victim, because the victim's actions were an act of self-protection for the sake of the victim's safety. Then the POLRI closed the case, and the victim was deemed innocent and released the victim.

Recommendations based on research results show that robbery is very vulnerable and often occurs when opportunities arise. To avoid robbery, someone must pay attention to the time when leaving the house, leave the house only for important purposes, don't go through quiet roads which could create opportunities for robbery, don't leave the house alone at certain times, stay with someone to help us monitor and reduce the chance of robbery. The POLRI must also be more assertive and alert in eradicating robbery, because only the POLRI is a state institution tasked with securing and protecting the public from crime.

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