DETERMINATION OF SUSPECTS AGAINST VICTIMS OF CRIMINAL ACTS OF THEFT WHO COMMIT FORCED DEFENSE (NOODWEER) IN INDONESIAN CRIMINAL LAW

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ABSTRACT
The abolition of crime is divided into two parts, namely those listed in the law and the other being outside the law, introducing jurisprudence and doctrine. The elimination of the crime, namely the forced defense (noodweer) has become a hot topic in the criminal law enforcement process in Indonesia. A forced defense (noodweer) is only carried out when a person feels that he or she is in danger or under threat. However, in some cases, many misunderstood the noodweer defense, so this raises pros and cons. The type of research carried out in this research is normative or doctrinal juridical research aimed only at written regulations and other legal materials. For this reason, this study will discuss the position of forced defense against victims of theft crime who are suspects and the ability to be responsible for victims of theft crimes who are designated as suspects in forced defense.

Keywords: Crime of theft, Forced Defense, Indonesian Criminal Law

INTRODUCTION
Criminal law is part of the overall law that applies in a country which holds the principles and rules to determine actions which should not be done, which is prohibited, accompanied by threats or sanctions in the form of certain penalties for ready to violate the prohibition Criminal law recognizes the term criminal abolition at every level of action. Base criminal abolition is divided into two groups, namely those listed in the law and others exist outside of the laws introduced by jurisprudence and doctrine. Being forced to defend is embodied in 3 meanings, namely there must be attack or threat of attack, there must be another way to dispel the attack or threat attack at that time, and the act of defense must be balanced with the nature of the attack threat of attack.

Several cases related to the determination of suspects against victims who defending was forced to increase in Indonesia. As a result of the determination of the suspect, the community feels confused, whether the victims who defend themselves are forced to deserve it given a criminal sanction or given an appreciation or reward. Criminal incidents related to forced defense (noodweer) in several cases occurred in the city of Bekasi, namely the victim who was kidnapped by the perpetrator who used violence with a sharp weapon that threatens the life and safety of the victim. Immediately the victim made a forced defense (noodweer) by stabbing the perpetrator so that the perpetrator died. Other criminal incidents also occurred at the residence of PT. Bridgestone in the Cendana Complex, Dolok Batu Nanggar District, Simalungun Regency, North Sumatra Province. The occupants of the house make a forced defense (noodweer) assisted by the security unit (Satpam) which causes the perpetrators of theft die.

LITERATURE REVIEW
The forced defense of the Indonesian Criminal Code is different from the Dutch WvS, because The Indonesian Criminal Code follows the European class in the past, namely in 1898. It expands the meaning of attack not just that instant like the Dutch WvS (oogenblikke lijke) but expanded with a very imminent threat of attack at the time (onmiddelijke

dreigende). The reason, because of the situation and conditions of Indonesia (Netherlands East Indies at that time) was different from the Netherlands.

According to Lemaire in Andi Hamzah's book, this meaning is less meaningful, only just emphasize, because according to the Dutch writer. Article 41 WvS (Article 49 of the Criminal Code). also means the threat of an instant attack. Following are the elements of a forced defense, namely:

1. The defense is forced.
2. What is being defended is oneself, other people's honor, decency or one's own property or someone else.
3. There was a flash attack or a very imminent threat at that time.
4. The attack was against the law.

Defense must be balanced with attack or threat. Attacks are not allowed beyond the limits of necessity and necessity. The balance between attack and threat as well necessity and necessity is called the principle of subsidiarity (subsidiaryiteit), that between interests which is defended and the way that is achieved on the one hand and the interests that are sacrificed.

METHODS

This research uses normative legal research methods. Normative legal research is literature based research, the focus of which is to analyze primary and secondary legal materials. This research uses the method of collecting data by means of library research (Library Research), namely by examining secondary data in the form of primary legal materials such as laws and regulations, scientific books, journals, papers, articles, etc. The nature of this research is descriptive analytical research. This research conducts analysis only up to the level of description, namely analyzing and presenting facts systematically

The approach method used in this research is the statute approach. Approach to Laws and Regulations, namely a research approach to legal products. The data obtained in this study were analyzed based on qualitative methods, by explaining and describing the relationship between various categories or laws and regulations, then analyzed descriptively qualitatively, so as to reveal the expected results and conclusions on the problem.so that it is easier to understand and conclude

RESULTS AND DISCUSSION

The defense case had to go over the line which caused a victim to act Criminal theft is given criminal sanctions, that the actions committed by that personis an overreaching action. The act has violated the law orstatutory regulations as contained in Article 49 paragraph 2 Criminal Code. Forced defenses made are called noodweer excesses or defences forced to go beyond the limit. According to R. Soesilo,15 noodweer excesses are the same as emergency defense.

Noodweer excesses must be a sudden or threatening attack at that moment. Here the limits of the defense requirements are exceeded. For example people defend by shooting a gun, while actually defending by hitting enough wood. Exceeding these limits by law is permissible, as long as it is was caused by the feeling of intense shaking brought on by the attack. Feeling when shaken violently, for example, irritated or very angry, it is usually said to have dark eyes.

Discussion

The limits of a defense have been exceeded, namely if after the defense that was actually done, people still attacked the assailant, though the attack from the assailant himself had actually ended. The act of hitting the aggressor, although the act can no longer be called a defense, in accordance with criminal provisions, does not make the perpetrators punishable. Noodweer and Noodweer Exes have Similarities and Differences, namely Similarities between forced defense (noodweer) and forced defense that goes too far (noodweer excesses), namely both require an attack that is against the law, what is defended is also the same, namely the body, the honor of decency, and property, both oneself nor anyone else. The difference between the two, namely:

1. In noodweer excesses, the maker oversteps limit because of the great mental shock. Hence, an act of self-defence exceeding the limit is still against the law, only the person is not punished for it great shock. Furthermore, the defense is forced to go beyond the limits be a basis for forgiveness.
2. Forced defense (noodweer) is the basic justification, because it is against the law there isn't any.

Criminal law theories regarding criminal liability according to civil law always associated with errors or commonly referred to as known error principles on the principle of no crime without fault. The current Criminal Code that adheres to error as an element of a crime, then in discussing error as an element Criminal acts will simultaneously discuss criminal responsibility, which is called criminal responsibility monistic theory.

This view is known that a person can be punished if he has committed crime and the absence of a basis for forgiveness as a reason for criminal abolition. Draft the absence of a basis for forgiveness is one of the elements of criminal responsibility (mensrea). This element is inherent in the inner attitude of the maker. The definition of responsibility in criminal law is called criminal liability or responsibility is forwarded objective reproach that there is a criminal act that is Subjectively, criminal offenders fulfill the requirements to be subject to punishment. If people have committing a criminal act, it is not certain that he can be sentenced because it still needs to be seen whether it can be blamed for the actions that have been done so that people can be accounted for in criminal law. People who have done criminal act without any guilt, then that person cannot be punished without, in accordance with the unwritten legal principle, the principle of "geen straf zonder schuld" which means there is no crime if there is no mistake.

The definition of the term schuld comes from The Dutch term, by Satochid Kartanegara, is interpreted in several meanings, namely: "Schuld in the sense of "social ethics" From this point of view schuld means: the relationship between one's soul, that is do the deed with the result of his deed, or the relationship of the soul is in such a way, to the deed or the result of the act he committed it, based on the soul of the perpetrator, can be blamed on him. Schuld viewed from the perspective of "criminal law" (in strafrechterlijke zin). Schuld in a sense
This criminal law is a form of intentional schuld (dolus or culpa).

The forced defense made by the perpetrator of the abuse is categorized as an act that is intentional, that the maker deliberately committed an act of persecution that causing loss of human life. So the action of the perpetrator is an act unlawfully violating Article 354 paragraph 2 of the Criminal Code. The jurists were based on a dualistic theory in understanding the elements criminal liability.

The dualistic theory holds that what relates to criminal responsibility is simply "mistake" as a manifestation of the "no-criminal principle". without fault". “Unlawful nature” is not an element of liability criminal. The monistic theory adopted in the Criminal Code explains that

if all If the elements of a crime have been fulfilled, then the crime will be proven and the maker cansentenced. 30 Thus, the defense is forced by the victim of the crime of theft is an action that is against the law, considering the actions taken victims of unlawful acts. Therefore, victims of criminal acts of theft are included into the element of criminal responsibility, that every criminal act against law and cause consequences, then the person must be held accountable his deeds.

In cases that occur, there are no excuses or justifications for eliminate the penalty for the maker. The maker has fulfilled the elements criminal liability. In this case, the actions taken by the victim The crime of theft is not an act of forced defense (noodweer). doer with deliberately committed the crime of maltreatment against the victim who caused it loss of life. Based on the existing theory (theory explained), then the perpetrator can be charged Article 354 paragraph 2 of the Criminal Code is punishable by imprisonment for ten years.

CONCLUSION

Forced defense by victims of criminal acts of theft is an action which is against the law, considering the actions taken by the victim of the act against the law. Therefore, the victim of the crime of theft is included in the elements criminal responsibility, that every criminal act is against the law as well result, then the person must be held accountable for his actions. In cases that occur, there are no excuses or justifications for eliminate the penalty for the maker. The maker has fulfilled the elements criminal liability, so that the maker is named a suspect in the case murder that takes the lives of others.

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