Jurnal Legalitas
Volume 16 Issue 1, 2023
P-ISSN: 1979-5955, E-ISSN: 2746-6094

THE POLITICS OF CRIMINAL LAW IN SELF-DEFENSE IN INDONESIA: REGULATORY AND ENFORCEMENT DISCOURSES

Cecep Ibnu Ahmadi[1*], Dian Ekawaty Ismail[2], Andika W. Machmud[3]

[1] *Indonesian National Police, Indonesia. E-mail: cecepagmadi@gmail.com*
[2] *Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: dian.ekawaty23@gmail.com*
[3] *Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: Andikaaofficial@gmail.com*

Abstract: *This article is a study of the legal politics of regulating self-defense actions in Indonesia as well as describing the practice of law enforcement against acts of self-defense. This article will be analyzed normatively using a statutory approach and case approach. The results of the analysis show that tha act of self-defense regulated in the Criminal Code as the basis of criminal law in Indonesia shows the principles of the rule of law, as well as being a form of protection for citizens in defending their lives, especially in situations of threats and crimes.Factually, there are actions from law enforcement not continuing the law enforcement process of self-defense actions as felt by Irfan and Rofiqi in Tangerang and by Amaq Shinta in lombok. However, there are still differences in the settlement and handling of cases rleated to acts of self-defense as experienced by ZL in Malang. This Actually shows that there is injustice because there is process that influences criminal policy so that it has an impact on not fulfilling a sense of justice for every citizen as one of the guarantees in a legal state like Indonesia.*

Keywords: *Politic Of Criminal Law; Self-Defense; Law Enforcement.*

1. Introduction

Every citizen in Indonesia has the right to live and maintain his life in the territory of the Unitary State of the Republic of Indonesia (NKRI) without any actions that can interfere with or even deprive him of his human rights as a human being in general. These actions can be intimidation or threats of violence, attempted criminal acts, criminal acts, or even things that contain other criminal elements. To be able to defend these human rights, everyone is not only entitled to protection from the state, but also has the right to seek or protect himself.

The necessity to defend oneself from attacks and threats that can interfere with a person's human rights is basically clearly stated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) as a written constitution in Indonesia. The issue of a person's human rights is specifically regulated in Chapter XA on human rights (HAM).

Article 1945, Article 28A explains that everyone has the right to maintain his life and life which is then also in the provisions of Article 28G which outlines that every individual citizen has the right to personal protection, and his family environment and has the right to security and is protected from various threats of fear to carry out or not to carry out something that is classified as a human right. Through these

two formulations of the article, the state has the responsibility to protect its citizens and citizens have the right to pursue various actions and ways of maintaining their lives and livelihoods.

The guarantee of the right to maintain life within the framework of human rights for every citizen in the 1945 Constitution is in line with the practice of state administration which must contain several important things, namely "the anatomy of power (political power) subject to the law, guarantees and protection of human rights, the judiciary which free and independent, as well as accountability to the people (public accountability) as the main joints of the principle of popular sovereignty."[1]

The constitutional mandate given by the 1945 Constitution and then implemented by the government does not always work according to what is intended. The constitutional right of everyone to obtain a safe life becomes the opposite when there are actions that threaten a person's life until the existence of acts of violence as a form of criminality is a threat in everyone's position in living their lives.

Actions that qualify as acts of criminality become acts that can interfere with the position and position of any citizen, including interfering with his life. One of the criminal acts that has increased today is street crime, including acts of legalization. This type of crime is hierarchically high because in addition to concerning crimes against property, it is also a crime against the physical. In this classification of crimes, which "include crimes against property with the use of force are theft with violence using firearms (senpi) and theft with violence using sharp weapons (sajam)."[2]

The crime of begal or burglary is a crime committed by forcibly seizing someone else's property with the intention of wanting to own the goods. These crimes include the crime of theft or violent seizure of a motor vehicle which is currently more popularly referred to as a burglary or begal crime. "The seizure of motorcycles by injuring the victim and even not averse to killing is of course a scourge of unsettling crime in society."[3]

In general, legalization actions can be qualified into two types, namely acts of theft through violence regulated in Article 365 of the Criminal Code and acts of theft through threats as mentioned in Article 368 of the Criminal Code.

> **Chapter 365 Verse (1)**
> Shall be punished with imprisonment for not more than nine years of theft preceded, accompanied or followed by violence or threats of violence, against persons with intent to prepare for theft, or in the case of being caught, to allow escape by themselves or other participants, or to remain in possession of the stolen goods.
> **Chapter 268 verse (1)**
> Whoever with the intent to benefit himself or others unlawfully, compels a person by force or threat of violence to give away something, which is wholly

[1] Dahlan Thaib, (*et.al*), *Constitutional Theory and Law*, Jakarta: PT RajaGrafindo Persada, 2017, pp. 1-2.

[2] Central Statistics Agency, Crime Statistics 2021, Jakarta: Central Statistics Agency, 2021, p. 23.

[3] Asha Febu Nur Permatasari, (*et.al*), "The Process of Investigating Motor Vehicle Begal Crimes (Case Study at the Banyuwangi Police Station)", S.L.R. Vol.2, No.1, p. 195.

or partly the property of that person or another, or in order to make a debt or write off a receivable, shall be threatened with extortion with imprisonment for not more than nine months.

Constructively, when referring to the two formulations of the article, then the act of legalization is actually a criminal act that is not only materially detrimental but can also have an impact on the impairment of the right to life of the victim of legalization when the act is accompanied by violence against the body and even has an impact on the death of the victim of the act of legalization. Therefore, "in Article 285 paragraph (3) it is stated that the act of legalizing acts that result in death is threatened with imprisonment for a maximum of fifteen years."[4]

The formulation of this article is a reflection of the state's guarantee of the right to maintain life for every citizen. In reality, the act of legalization is not always accompanied by the victim's willingness to give up his belongings. However, there is also resistance from victims of legalization in order to defend themselves from criminal acts that will occur or have occurred to the victim. This act of self-defense becomes a direct form of the right of citizens to maintain their lives and lives, especially in situations where criminality occurs.

It becomes more discourse when the act of defending oneself as a framework protects one's life becomes another act of crime that not only harms the victim who resists but also has a direct impact on the perpetrator of the retaliation. In a state of urgency, the victim will psychologically surrender or actually fight against the perpetrator. This is what then results in the loss of one's life when the victim's fight against the begal perpetrator not only has a deterrent effect but also the death of the begal perpetrator.

This kind of self-defense action is often carried out until it becomes a public discussion in Indonesia. Moreover, with the current development of social media, self-defense actions carried out against begal perpetrators have gone *viral* when the public tends to always side with victims who commit self-defense and are then determined to be suspects by law enforcement officials. This discourse is even more problematic when victims who later turn into suspects through the policies of state officials actually change their legal status, one of which is due to the massive public insistence on these acts of self-defense.

Although this criminal act is one of the criminal acts that can result in losses ranging from material losses to the loss of life of the victim, not all victims of legalization hand over the goods / objects they have to the perpetrator. Not infrequently, victims of legalization actually fight back in order to defend themselves from threats or acts of violence directed at them. In fact, this effort to defend themselves actually has bad consequences for the perpetrators, for example, not completing the crime, getting persecution from the community, to the loss of the life of the perpetrator because of the efforts to defend themselves by the victim.

One of the cases that shocked the public related to this act of self-defense was a case involving teenagers named Irfan and Rofiki. Both were targets and victims of

[4] Criminal sanctions for such acts are increasingly severe in the form of the threat of death or imprisonment for life or for a certain period of not more than twenty years, if the act results in serious injury or death and is carried out by two or more persons in alliance, accompanied by one of the things described in Article 285 paragraphs (1) and (3). The formulation of this norm is the substance of Article 285 paragraph (4).

the burglary carried out by four perpetrators of the burglary. However, "resistance was carried out as a form of self-defense by Irfan which resulted in one begal perpetrator named Aric Saipulloh dying and one begal perpetrator named Indra Yuliyanto being seriously injured."[5]

Against the act of self-defense that resulted in the loss of someone's life, it was then followed up by the Bekasi Metro resort Police by designating the two as suspects. Along the way, the two young men from Madura were actually released and given awards. The change in the status of the suspect was apparently motivated by the legal policy taken after the input submitted to the President. In this case, Mohammad Mahfud MD and Yenti Garnasih as two legal experts faced President Jokowi. Both reported a case of burglary in Bekasi on the basis that the victim who defended himself was forced to kill the perpetrator but was instead made a suspect by the police. "The decision to determine this was considered wrong because in criminal law there are justification reasons for self-defense."[6]

Most recently, this act of self-defense came to the fore again when the Central Lombok Police designated Amaq Shinta as a suspect and was later detained for resisting the begal perpetrators to the point of impacting the loss of life of the begal perpetrators with the initials P and perpetrators with the initials OWP. The police's action by assigning suspects to detaining Amaq Shinta then received a response from the public with demonstrations that went *viral* on social media and received a response from the Chief of Police as the highest leader of the police institution in Indonesia.

After getting more attention from the Chief of Police, the handling of this case was then taken over by the West Nusa Tenggara Regional Police. The release of the NTB Regional Police through the Chief of Police, who directly presided over the title of this special case, stated that there was no element of unlawful acts, either formal or material, in the case of the death of two begals at the hands of Amaq Sinta. Through the release, "the restraining efforts made against Amaq Shinta then changed with the non-fulfillment of the elements of the criminal act imposed on the person concerned."[7]

Of the two self-defense cases, they clearly have similarities where in addition to being categorized as an act of self-defense of the existence of a crime that will harm and have an impact on the victims of criminal acts, it is also clearly illustrated the legal policies taken by state officials in resolving both cases.

Basically, acts of self-defense are accommodated in criminal law in Indonesia. referring to the Criminal Code, the regulation of this kind of action is regulated in Article 48, Article 49 paragraph (1), and Article 49 paragraph (2). However, when referring to these two cases, the legal policy taken in resolving the legal disputes of the two cases is something interesting. The legal policy in question can generally be

---

[5] Nanda Perdana Putra, *The Story of Santri Madura Hajar Begal Bercelurit in Bekasi To Death*, https://www.liputan6.com/news/read/3544584/kisah-santri-madura-hajar-begal-bercelurit-di-bekasi-hingga-tewas, retrieved August 10, 2022.

[6] The Merdeka Team, *There is Jokowi &Mahfud MD Behind the Release of Youth as Suspects in the Begal Murder*, https://www.merdeka.com/peristiwa/ada-jokowi-mahfud-md-di-balik-bebasnya-pemuda-jadi-tersangka-bunuh-begal.html, retrieved August 10, 2022.

[7] Detikcom Team, *Stopped in the Case of Begal Victims Becoming Suspects because of Forced Defense*, https://news.detik.com/berita/d-6036403/disetop-kasus-korban-begal-jadi-tersangka-karena-pembelaan-terpaksa, accessed August 10, 2022.

qualified as a legal politics, especially criminal law politics. With such a construct, it becomes necessary to examine more deeply related to the politics of criminal law on the regulation and enforcement of self-protection measures in Indonesia.

Based on the legal issues described above, the subject matter of this study is how is the legal politics of regulating self-defense actions in Indonesia and how is the practice of law enforcement against self-defense actions?

2. Method

This research will analyze both problem formulations normatively. "Normative legal research methods or literature research methods are methods or methods used in legal research carried out by researching existing library materials."[8] Normative legal research is carried out by examining central materials as secondary data. The secondary data used includes laws and regulations, jurisprudence, books, journals, research results, and other literary elements that are closely related to the problems in this study. In addition, the author uses a statutory approach and a case approach in finding answers to the problems studied by the author.

3. Analysis or Discussion

3.1. Polithic Law Regulation of Self-Defense Measures in Indonesia

The interaction between a policy taken by the government cannot be separated from legal considerations. In this case, both politics and law always interact and crystallize one way or the other. Therefore, according to Bagir Manan, "there is no country without legal politics. Such is the importance of legal politics in a country, placing legal politics on various types of meaning."[9]

Legal politics as a legal policy, taken or pursued by the state through the state or officials who are authorized to determine which laws need to be replaced or which ones need to be changed or which laws must be maintained or laws regarding what needs to be regulated or implemented so that with that policy the administration of the state and government can run well and orderly so that the goals of the state can gradually be planned and realized.

The meaning of legal politics described above contains one of the important elements, namely the existence of a goal of the implementation of legal politics that is expected to be realized. In such a position, according to Sunaryati Hartono, "the Indonesian nation yearns for a just and prosperous society equally achieved in a reasonable and humane way, so as to achieve harmony, harmony and tranquility throughout Indonesia."[10]

The development of legal politics is inseparable from the various wisdoms generated from other fields. Internally, Bagir Manan stipulates that there are at least three main scopes of legal politics. The three main scopes are:

1. "The politics of legal formation which is the wisdom concerned with the creation, renewal and development of law which includes the formation of

[8] Soerjono Soekanto and Sri Mamudji, *Normative Law Research a Brief Goal*, 11th Printing, Jakarta: PT Raja Grafindo Persada, 2009, pp. 13-14.

[9] Bagir Manan, *Op.cit*, p. 179.

[10] Sunaryati Hartono, *Legal Politics Towards a National Legal System*, Bandung: Alumni, 1991, p. 3.

legislation, the formation of jurisprudence laws, and other unwritten regulations;
2. Politics regarding the content of law which is defined as wisdom to the principles and principles of law that must meet philosophical, juridical and sociological elements; reflects wisdom in the economic, socio-cultural, political, and Hankam fields; reflect the specific legal goals and functions to be achieved; and reflects the will of the ideals of nation and state;
3. The politics of law application and enforcement which is the discretion concerned with wisdom in the judicial field and ways of legal settlement outside the judicial process and wisdom in the field of legal services."[11]

In particular, legal politics has an important role in the process of forming legislation. This is due to two things, namely: "*First,* as a reason why it is necessary to establish a law. *Second,* to determine what to translate into a legal sentence and become the formulation of an article. These two things are important because the existence of laws and regulations and the formulation of articles are a bridge between the politics of the law in the implementation stage of laws and regulations."[12] This is because "between the implementation of laws and regulations there must be consistency and a close correlation with what is established as politics."[13]

The political position of law in a country is then further translated in more specific sections of the law, one of which is criminal law. In this regard, in criminal law, the term criminal politics is known or also known as criminal policy. An act of crime that occurs needs to be addressed, prevented, or even controlled through existing criminal law tools.

Criminal politics is interpreted as a rational effort by society in tackling crime. Therefore, criminal politics as a form of "policy or effort to combat crime is essentially an integral part of efforts to protect society and efforts to achieve community welfare."[14] Furthermore, "a criminal policy has the ultimate goal of protecting society to achieve various main goals such as happiness of the community /resident (*happiness of the critizens*), a healthy and refreshing cultural life (*a wholesome and cultural living), social welfare* or to achieve balance (*equality).*"[15]

In Sudarto's view, "if criminal law is to be used, it should be seen as a relationship between the entirety of criminal politics or social *defence planning,* which should also be an integral part of social development planning."[16] Criminal politics is the regulation or national arrangement of efforts to control crime by society. Based on this conception of thinking, crime prevention is carried out in two ways, namely:

1. "An integral approach between penal and non-penal policies.

---

[11] Bagir Manan, *List of Legal Politics Material Courses*, Bandung: Padjadjaran University Postgraduate Program, 2001, p. 7.

[12] Abdul Latif and Hasbi Ali, *Legal Politics*, Jakarta: Sinar Grafika, 2010, hlm. 19.

[13] *Ibid.*

[14] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Criminal (Development of the Drafting of the New Criminal Code Concept)*, Jakarta: Kencana Prenaa Media Group, 2011, p. 4.

[15] Muladi Dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana,* PT Alumni, Bandung, 2010, hlm. 158.

[16] *Ibid*, p.157.

Rational steps in controlling or tackling crime (criminal politics), not only using penal means (criminal law), but can also be by using non-penal means;

2. Policy approach and value approach in the use of criminal law."[17]

Two core issues on criminal policy by means of penal are the issue of determination

a) What acts should be categorized as criminal acts,
b) What sanctions should be imposed on the offender/violator.

Based on the construction of the above thinking, criminal politics as part of legal politics in general is important not only in the criminal law enforcement process, but also aims to maintain and protect the community in a balanced manner in accordance with the actions taken and conditions experienced. Therefore, the issue of self-defense that is the focus of the problem in this study has a close relationship in the law enforcement process while protecting the community as victims of criminal acts who commit self-defense.

Self-defense or noodweer is "derived from the word 'nood' it means emergency, while the word 'weer' means defense, until literally the word noodweer can be interpreted as a defense carried out in an emergency."[18] The definition of self-defense is actually illustrated by the arrangements in the Criminal Code which includes several articles, including Article 48, Article 49 paragraph (1), and Article 49 paragraph (2) of the Criminal Code There are differences in terms between the three formulations of the article. Article 48 is better known as coercion or *Overmaacht*, Article 49 paragraph (1) is referred to as self-defense or Noodweer, while Article 49 paragraph (2) is known as overreaching self-defense or referred to as *Noodweer excesses.*

According to Eddy O.S Hiariej, "forced defense is the reason for the justification that abolishes the unlawful element of his actions."[19] *Necessitas excusat aut extenuate delictum in capitalibus, quod non operator idem in civilibus*. That is, the defense is forced to acquit a person of punishment but this is not the case in a civil case. Therefore, the act of self-defense in forced circumstances is always related to criminal law. In this regard, the essence of the forced defense is that the perpetrator commits actions to avoid greater crimes or avoid threatening dangers.

Specifically, acts of self-defense in forced circumstances on the basis of criminal law in Indonesia are clearly regulated through Article 49 paragraph (1) of the Criminal Code. The substance of Article 49 subsection (1) states that: "*No person shall be punished, whoever commits an act of compulsory defence for himself or for another, the honor of decency or property of himself or others, because there is an attack or threat of attack very close at the time which is against the law.*" Meanwhile, Article 49 paragraph (2) of the Penal Code provides for extraordinary self-defense which states that: *"An overreaching forced defence, which is directly caused by a violent shaking of the soul due to the attack or threat of the attack, is not punished."*

Referring to the historical substance of the arrangement, self-defense in this forced state has nothing in common with the Wetbook Van Straftrecht (WvS) as the

[17] *Ibid*, p. 158-160.

[18] P.A.F Lamintang, *Basics of Indonesian Criminal Law*, Bandung: PT Citra Aditya Bakti, 1997, p. 464.

[19] Eddy O.S Hiariej, *Pinsip-Prinsi Criminal Law*, *Revised Edition*, Yogyakarta: Cahaya Atma Pustaka, 2015. P. 272.

basis of Dutch criminal law which is also the main reference of the criminal law regulation in the Criminal Code in Indonesia. Self-defense in the Criminal Code in Indonesia tends to follow the WvS for Europeans first. This has an impact on the meaning of this action expanding the notion of attack not only as in the Dutch WvS but expanded with the *threat of attack* very close at the time. The logical reason "for the arrangement to be different is none other than because the situation and conditions of Indonesia are different in position from the Netherlands at that time so that it also affects the regulation of self-defense within the framework of criminal law in both countries."[20]

Legal constructions that clearly provide space for the regulation of self-defense actions in forced circumstances in the Indonesian Criminal Code confirm that the position of self-defense is a form of legal protection provided by the state through the policy of forming laws and regulations. Thus, legal politics, especially criminal politics in the Criminal Code that accommodates acts of self-defense, essentially aims to provide protection for all citizens from crimes that will interfere with and take away their rights, including the right to life. In this case, self-defense in a forced state becomes a concrete action in defending the right to life from any threats and acts of crime.

Legal protection itself is "interpreted as all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of victims of crime as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance."[21] Furthermore, legal protection is "carried out by providing protection to the human rights of those harmed by others and such protection is given to the people so that they can enjoy all the rights granted by law."[22]

Legal protection can be defined as protection by law or protection using legal institutions and means. There are several ways of legal protection, including the following:

1. "By *giving regulation*, which aims to:
   a) Providing rights and obligations;
   b) Guaranteeing the rights of legal subjects
2. Enforcing by *the law through*:
   a) State administrative law that serves to prevent (preventive) the occurrence of violations of consumer rights, with licensing and supervision.
   b) Criminal law that serves to overcome (*repressive*) any violation of laws and regulations, by imposing legal sanctions in the form of criminal sanctions and penalties;
   c) Civil law that serves to recover rights (*curative*, *recovery*), by paying compensation or compensation."[23]

[20] Andi Hamzah, *Principles of Criminal Law*, Jakarta: PT Rineka Cipta, 2004. P. 158.
[21] Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press, 1984, p. 133
[22] Satjipto Rahardjo, *Law*, Bandung: Citra Aditya, 2000, p. 53
[23] Wahyu Sasongko, *Basic Provisions of Consumer Protection Law*, Lampung: University of Lampung, 2007, p. 31

Against the explanation above, the regulatory action against self-defense in the Criminal Code as a form of criminal politics shows the existence of a form and way of legal protection by clearly regulating it in the Criminal Code as the basis for criminal law in Indonesia. This arrangement is necessarily intended to guarantee and provide rights and obligations for every citizen acting as a subject of law.

3.2. Law Enforcement Against Self-Defense Actions in Indonesia

There are several issues related to forced self-defense. The issue is:[24] *first,* the act in question must be a defense. That is, there must first be things that force the defendant to do his deeds. *Second,* regarding what kind of interests should be attacked so that a defense is allowed. Related to this, there are 3 things, each of which belongs to both one's own and the property of others, namely: self or body of people, honor and decency, and people's property. *Third,* the attack must be unlawful.

Referring to Article 49 paragraph (1), if certain legal interests of a person are subjected to unlawful attacks from others, then basically one can be justified in making a defense against the attack, even "if in a way that is detrimental to the legal interests of the attacker, which in ordinary circumstances is a prohibited act in which the perpetrator has been threatened with a punishment."[25]

The act of defence as provided for in Article 49 subsection (1) may be satisfied if it meets certain requirements. The requirements in the forced defense are: *first,* there is an instantaneous seranagan; *second,* the attack was unlawful; *third,* defense is a necessity; *Fourth*, the way of defense is appropriate. The occurrence of forced self-defense as stipulated in the Criminal Code is one part that cannot be separated from the guarantees mentioned in the 1945 Constitution. It can be said that "the act is a constitutional act. Therefore, the act of forced defense as stipulated in article 49 paragraph (1) cannot be categorized as a criminal act and cannot be entangled with applicable criminal sanctions."[26]

Substantively, in Article 49 subsection (1) the core elements of the forced defense are: "the defence is forced, the defence is oneself, another person, the honor of decency, or one's own property or another, there is an attack or the threat of a very close attack at the time, as well as themoaning is against the law."[27]

In relation to forced defense actions that cannot be punished, then the act must meet the following three conditions:

1. "The deeds done must be forced to defend (defend). The defense must be very necessary, it may be said that there is no other way. In addition, there must be a balance between the defense carried out and the attack;
2. The defence or defence shall be made only against the interests referred to in the article as *the body, honor and property of oneself or another*;
3. There has to be an attack that goes against the right and threatens with a snuff or on that ktika as well. Against a right means that the attacker is carrying out the attack against the rights of others or has no right to it."[28]

---

[24] Moeljatno, *Principles of Criminal Law*, Jakarta: PT Rineka Cipta, 2015. pp. 157-159.
[25] P.A.F Lamintang, *Op..cit*. Hlm. 465.
[26] Eddy O.S Hiariej, *Op.cit*. p. 272.
[27] *Ibid*.
[28] R. Soesilo, *The Criminal Code and its Commentaries Complete Article by Article*, Bogor: Politeia, 2913. pp. 64-65.

Meanwhile, according to Van Hamel quoted by Lamintang, as to why a person who commits a *noodweer* cannot be punished, there are several opinions, namely:

1. "The opinion of the framers of the law which considers that a noodweer is a right, until a person who commits the *noodweer* becomes unpunishable because what he has done is not unlawful;
2. The opinion of the Bindings who views *noodweer* as a lawful defense or a *legitimate defense,* which emphasizes the validity of the defense is not on the injustice that occurs but on the injustice that will be suffered by a person;
3. The criminal act that the person has committed in a *noodweer* has lost its nature as an act worthy of punishment and not of an unlawful nature;
4. The opinion in Memorie Van Toelichting that *noodweer* is an external cause that makes something unaccountable to the perpetrator;
5. The opinion in the Memorie Van Antwoord which says that a *noodweer* is a right, wherein it has been said that it is never necessary to succumb to indifference or something lawful it is never necessary to relent from something unlawful or something lawful it is never necessary to relent of something unlawful."[29]

Referring to the description of the diata, then every act of self-defense does not necessarily qualify as an act of self-defense, but must meet the elements of the article and the conditions described in the article. Therefore, although self-defense in forced circumstances is part of a person's right to defend his life from threats and crimes, such actions must be in accordance with existing provisions.

Qualifications for self-defense actions can be known when they have entered into law enforcement proceedings. The law enforcement process is the most important part of the regulation of a legal norm. Through the law enforcement process, the norms regulated in the laws and regulations will strengthen the legal position in accordance with the conditions.

Law enforcement or also known as law enforcement which in Black's Law Dictionary is defined as the detection and law of violations of the law. This action is not limited to the enforcement of criminal law alone, but also applies to the enforcement of various laws related to non-criminal matters. It further explained "that law enforcement related to certain institutions such as the police, is tasked with carrying out and enforcing criminal law."[30]

The use of legal remedies, including criminal law as an effort to overcome social problems, is included in the field of law enforcement policies. "Law enforcement is important because justice seekers or *justitiabellen* really expect the judiciary to provide justice, legal certainty and expediency."[31] In addition, because the goal is to achieve the welfare of society in general, the law enforcement policy is "included in the field of social policy, namely all rational efforts to achieve community welfare."[32]

---

[29] P.A.F Lamintang, *Op.cit.* Hlm. 467.

[30] Bryan A.Garner, *Black's Law Dictionary,* United States of America: West Group, 1999, hlm. 891.

[31] Fence M Wantu et al., "Renewal of the Criminal Justice System Through the Constante Justitie Principle That Guarantees Justitiabelen's Satisfaction," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 3 (2022).

[32]Muladi And Barda Nawawi Arief, *Op.cit*, 2010, p. 149.

Law enforcement (especially criminal law) when viewed from the policy process, law enforcement is essentially policy enforcement through several stages, namely:

1. "The formulation stage, which is the stage of enforcement *of the law in abstracto* by the law-making body. This stage can also be called the legislative stage;
2. The application stage, which is the stage of application of criminal law by law enforcement officials ranging from the police to the judiciary. This second stage is also called judicial policy;
3. The execution stage, which is the stage of concrete implementation of criminal law by criminal implementing officials. This stage can be referred to as the executive or administrative policy stage."[33]

Specifically at the stage, law enforcement actions such as the police and prosecutors by arresting, investigating, detaining and prosecuting criminals with the aim of protecting the law against the community as well as fulfilling the rights of victims' interests to get justice. The process illustrates that the state through certain institutions plays an important role in decision-making against violators of criminal law. Historically, "the state has taken over the conflict that occurred between the criminal law reviewer and the person who violated his rights (the victim of the crime), the person whose interests are protected by the criminal law, into a conflict between the violator and the state or the public interest."[34]

Furthermore, in this second stage, the law enforcement process opens up space for various interests that will affect the law enforcement process carried out by law enforcement officials, in this case the police and prosecutors. The process of influencing law enforcement is not a form of absolute intervention in the law but as part of the consideration of the interests of the people. For example, in the legal process of a contemporary criminal act, *restorative justice* can be carried out, where legal proceedings that are temporarily taking place both in the police and in the prosecutor's office can be stopped with the concept.

This kind of process certainly cannot be carried out when the law enforcement process has entered the realm of the court or a criminal case has been heard. Meanwhile, the process of influencing law enforcement in practice also raises pro-kotra in the wider community. The legal issues in this study are also the same when self-defense actions that are not continued to the next stage are not experienced by all parties who have the same case.

As the author explained in the background section that the process affects law enforcement, both because of the opinions of legal experts and policymakers and because the self-defense case has become a national issue in Indonesia, in fact not all self-defense actions have the same end as the case involving Irfan and Rofiqi in Tangerang or the case that happened to Amaq Santhi in Lombok.

The response to self-defense actions in practice is not always the same as that of law enforcement officials. One of the self-defense cases that is different from the case involving Irfan, Rofikin and Amaq Shanti is the self-defense case that happened

[33]Teguh Prasetyo, *Criminalization in Criminal Law*, Bandung: Nusa Media, 2010, p. 111.
[34] *Ibid,* hlm. 112.

to a student with the initials ZL who was actually convicted by the court of being proven to have committed abuse, in which he committed an act of self-defense.

ZL was a 17 (seventeen) year old student convicted of molestation that caused his victim to die, although ZL has testified he did so in self-defense. "The chronology of the incident began on Sunday evening, September 8, 2019. ZL rode with his lover on a motorcycle and passed around a deserted sugarcane field. Then ZL was confronted by a number of begals who would seize valuables and motorcycles."[35]

The act of beheading experienced by ZL not only asked for valuables, the begal also intended to rape ZL's lover. Not accepting and pressed by the condition, ZL took a knife in the seat of his motorcycle and there was a fistfight that left a begal named Misnan dead. "In the legal process, ZL was convicted of violating Article 351 paragraph (3) of the Criminal Code on persecution, and sentenced to one year of coaching at the Darul Aitam Children's Social Welfare Institute (LKSA)."[36]

From this case, it is clear that there are differences in the law enforcement process and the handling of self-defense cases. Although it is postulated that ZL carries sharp weapons that are different from Irfan and Amaq Santhi who fought back using sharp weapons owned by begal perpetrators, but basically ZL, who is still underage, actually needs to be investigated for the settlement of his case. With a relatively young age and still have a long future, the differentiation of treatment in ZL cases will certainly have an impact on ZL's psychology.

The distinction of the resolution of the case reflects the injustice felt by ZL as a party to self-defense. In fact, the choice of the principles of the state of law in Indonesia in addition to guaranteeing legal certainty must also provide legal justice. However, when referring to the differences in the settlement and handling of self-defense cases, it actually creates injustice in law enforcement.

The principle of justice is very important in the legal journey in Indonesia, especially for law enforcement. This is because law enforcement that is not contaminated from the interests of the public is one of the pillars of demands for reform, and justice is the goal of law enforcement. Therefore, the most important purpose of law enforcement is to ensure justice without neglecting the aspects of expediency and legal certainty for the community.

Gustav Radbruch explained that justice, expediency, and legal certainty are the pillars of law enforcement. All three are necessary to arrive at an adequate implementation of the law. Specifically for the purpose of justice, namely "emphasizing and determining the content of the law, because the content of the law is indeed in accordance with the objectives to be achieved."[37]

There are many components that can affect the law enforcement process. The influence of law enforcement is not only limited to laws and regulations (legal substance) but also the actions of law enforcement and community culture which also have an important role in the establishment of the law. With this, "the law

---

[35] Putri Salsabila Mutiara Anandiza, Batasan Pembelaan Diri Berdasarkan Kitab Undang-Undang Hukum Pidana, http://lbhpengayoman.unpar.ac.id/batasan-pembelaan-diri-berdasarkan-kitab-undang-undang-hukum-pidana/, diakses tanggal 15 Agustus 2022.

[36] *Ibid.*

[37] Yohanes Suhardin, "Fenomena Mengabaikan Keadilan Dalam penegakan Hukum", *Mimbar Hukum,* Vol. 21, No.2, Juni 2009, hlm. 345.

enforcement process becomes the hope of the community until a sense of public trust in the institution and work of law enforcement arises."[38]

4. Conclusion

Self-defense actions regulated in the Criminal Code as the basis of criminal law in Indonesia show the principle of the state of law, as well as being a form of protection for citizens in maintaining their lives, especially in situations of threats and crimes. Factually, there are actions from law enforcement not to continue the law enforcement process of self-defense actions as felt by Irfan and Rofiqi in Tangerang and by Amaq Shinta in Lombok. However, there are still differences in the settlement and handling of cases related to self-defense actions as experienced by ZL in Malang. This actually shows that there is injustice because there is a process that affects criminal policies so that it has an impact on not fulfilling the sense of justice for every citizen as one of the guarantees in a legal state like Indonesia.

References

Arief, Barda Nawawi. 2011. *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru).* Jakarta: Kencana Prenaa Media Grup.

Asha Feby Nur Permatasari, (*et.al*), "Proses Penyidikan Tindak Pidana Begal Kendaraan Bermotor (Studi Kasus DI Polres Banyuwangi)", S.L.R. Vol.2, No.1.

Badan Pusat Statistik. 2021. *Statistik Kriminal 2021.* Jakarta: Badan Pusat Statistik.

Danatur Nuryanto, "Penegakan Hukum Oleh Hakim Dalam Putusannya Antara kepastian dan Keadilan Hukum", *Jurnal Hukum Khaira Ummah*, Vol. 13. No. 1, Maret 2018

Fence M Wantu et al., "Renewal of the Criminal Justice System Through the Constante Justitie Principle That Guarantees Justitiabelen's Satisfaction," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 3 (2022).

Garner, Bryan A. 1999. *Black's Law Dictionary,* United States of America: West Group.

Hamzah, A. 2004. *Asas-asas Hukum Pidana.* Jakarta: PT Rineka Cipta.

Hiariej, E O.S. 2015. *Pinsip-Prinsip Hukum Pidana, Edisi Revisi.* Yogyakarta: Cahaya Atma Pustaka.

Lamintang, P.A.F. 1997. *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: PT Citra Aditya Bakti.

Latif, Abdul dan Hasbi Ali. 2010. *Politik Hukum.* Jakarta: Sinar Grafika.

Manan, B. 2001. *Daftar Course Material Politik Hukum.* Bandung: Program Pascasarjana Universitas Padjadjaran.

Moeljatno. (2015). *Asas-Asas Hukum Pidana.* Jakarta: PT Rineka Cipta.

[38] Danatur Nuryanto, "Law Enforcement By Judges In Their Rulings Between Certainty and Legal Justice", *Khaira Ummah Law Journal*, Vol. 13. No. 1, March 2018, p. 72.

Muladi Dan Barda Nawawi Arief. 2010. *Teori-Teori dan Kebijakan Pidana.* PT Alumni: Bandung.

Nanda Perdana Putra, *Kisah Santri Madura Hajar Begal Bercelurit di Bekasi Hingga Tewas,* https://www.liputan6.com/news/read/3544584/kisah-santri-madura-hajar-begal-bercelurit-di-bekasi-hingga-tewas, diakses tanggal 10 Agustus 2022.

Prasetyo, Teguh. 2010. *Kriminalisasi Dalam Hukum Pidana.* Bandung: Nusa Media.

Putri Salsabila Mutiara Anandiza, Batasan Pembelaan Diri Berdasarkan Kitab Undang-Undang Hukum Pidana, http://lbhpengayoman.unpar.ac.id/batasan-pembelaan-diri-berdasarkan-kitab-undang-undang-hukum-pidana/, diakses tanggal 15 Agustus 2022

Rahardjo, Satjipto. 2000. *Ilmu Hukum*. Bandung: Citra Aditya.

Sasongko, Wahyu. 2007. *Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen*. Lampung: Universitas Lampung.

Soerjono Soekanto. 1984. *Pengantar Penelitian Hukum*. Jakarta: UI Press.

____, dan Mamudji, S. 2009. *Penelitian Hukum Normatif Suatu Tujuan Singkat,* Cetakan ke-11. Jakarta: PT Raja Grafindo Persada.

Soesilo, R. 2013. *Kitab Undang-Undang Hukum Pidana Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.

Thaib, Dahlan (*et.al*). 2017. *Teori Dan Hukum Konstitusi.* Jakarta: PT RajaGrafindo Persada.

Tim Detikcom, *Disetop Kasus Korban Begal Jadi Tersangka karena Pembelaan Terpaksa*, https://news.detik.com/berita/d-6036403/disetop-kasus-korban-begal-jadi-tersangka-karena-pembelaan-terpaksa, diakses tanggal 10 Agustus 2022.

Tim Merdeka, *Ada Jokowi &Mahfud MD di Balik Bebasnya Pemuda Jadi Tersangka Bunuh Begal,* https://www.merdeka.com/peristiwa/ada-jokowi-mahfud-md-di-balik-bebasnya-pemuda-jadi-tersangka-bunuh-begal.html, diakses tanggal 10 agustus 2022.

Yohanes Suhardin, "Fenomena Mengabaikan Keadilan Dalam penegakan Hukum", *Mimbar Hukum,* Vol. 21, No.2, Juni 2009