



The Disparity in Judge's Decisions in Forced Defense Cases

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Abstract: This study aims to analyze the chronology of cases of forced defense decisions. Normative research methods using statutory research approaches and case approaches and analytical techniques used to process legal materials are legal hermeneutics. The results of this study indicate that the decisions 794/Pid.B/2014/PN.Llg and No.257/Pid.B/2015/PN.Sky has fulfilled the elements of the noodweer requirement, namely that defense is coercive, what is being defended is oneself), there was a very imminent threat of an imminent attack at that time, and that attack was against the law. has also fulfilled the element of the principle of subsidiarity which is the benchmark for forced defense. The disparity of decision No. 794/Pid.B/2014/PN.Log and the decision No. 257/Pid.B/2015/PN.

Keywords: *Noodweer, Disparity, Subsidiarity*

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1. Introduction

Indonesia is the highest agreement of the state's formers, even though it experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so, the recognition of the regions under the auspices of the State of Indonesia is still recognized.¹ An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.² Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.³ Therefore, in legal politics, legal discovery and new law-making that is under the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.⁴

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.⁵ At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution.⁶ Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.⁷ The state is firmly obliged to try to fulfill the rights of every citizen.⁸

One of the rights that cannot be limited and revoked by other human beings is human rights, human rights are also a gift from God Almighty.⁹ The meaning of Human Rights is also strengthened in Law Number 39 of 1999 concerning Human Rights (Human

¹ Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-121., 110

² Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55-71., 69

³ Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

⁴ Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review*. 1, No. 1 (2019): 68-93., 73

⁵ Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

⁶ Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1-29., 3

⁷ Jufryanto Puluholawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

⁸ Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365-77., 375

⁹ Muladi, *Hak Asasi Manusia* (Bandung: Reflika Aditama, 2005).

Rights) in article 1 number 1 namely Human Rights are a set of rights that are closely bound to the nature and existence of humans as creatures of God Almighty and are a gift from God that must be respected, supported and protected by the state, law, government and everyone, for the honor and protection of man himself.

Human rights are something that addresses all human problems in life that must get legal guarantees. Because human rights can only be called effective if these human rights can be protected by law. While the law itself is a collection of rules regarding human behavior as a society. Every member of society has interests (HAM) and in fulfilling these interests every human being will definitely be connected to one another, this relationship is regulated by law, the existence of human rights (HAM) will have no meaning if it is not followed up by law governing the relationship between these rights,¹⁰

The law exists in the midst of society to create balance, if a person or group of people violates the law, then there will be an imbalance. Violation of legal regulations can be in the form of violations of criminal law that qualify as crimes.¹¹

In our daily lives and even in society, to make ends meet there are often crimes and violations committed by certain people and people who threaten some members of society, which in legal science is known as a crime.¹²

One form of crime that arises in social life today is murder. It all started with the criminal act of persecution and then the perpetrator used a sharp weapon to injure his victim so he would not get resistance. However, in the smooth running of this action, not all victims just kept silent or did not put up a fight, sometimes in several incidents the victim resisted in self-defense or against the perpetrators of the crime. Victims who feel that their own safety is threatened do not hesitate to counterattack the perpetrators, sometimes in several incidents the perpetrators suffer injuries as a result of this resistance and even result in death.¹³

In the case on Saturday 30 August 2014 and on Thursday 04 August 2016 at 17.00 WITA located in the Mabbalennae Neighborhood Kel.Solo Kec.Bola Kab.Wajo, the victim in the case of maltreatment resulting in death defended against the threats she faced. Victims defend the rights attached to them, but in defending these rights the victim commits criminal acts, one of which is the crime of murder. Murder is a form of crime against humans described in the second book of the Criminal Code. Homicide is the process of taking another person's life. Article 338 of the Criminal Code states,

¹⁰ Lusiana Tijow, "Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Perkawinan Yang Sah," *Jurnal Legalitas* 3, no. 2 (2010).

¹¹ Maidin Gultom, "Tindak Pidana Terhadap Hak Asasi Manusia," *Jurnal Hukum Pro Justitia*, 2006.

¹² Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," 2021, <http://ejournal.ung.ac.id/index.php/jalrev/>.

¹³ Anak Agung Gede Agung, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Perlindungan Hukum Terhadap Pelaku Pembunuhan Begal Atas Dasar Pembelaan Terpaksa," *Jurnal Interpretasi Hukum* 2, no. 1 (2021): 1-7, <https://doi.org/10.22225/juinhum.2.1.3075.1-7>.

"Whoever deliberately takes the life of another person, is threatened with murder with a maximum imprisonment of fifteen years.¹⁴

However, in this case the abolition of punishment can be applied because in certain circumstances, for example due to self-defense. The actions committed can be prosecuted because it is clear that the crime of murder was committed and the charge can be accepted. However, it is possible that in the final outcome of the judge's decision, the defendant is acquitted of all charges (onstlagen van alle rechtsvervolging). The reason for the abolition of criminal prosecution is that regulations are primarily aimed at judges. These regulations stipulate several conditions for perpetrators, who have fulfilled the crime formula set out in the law that should be punished, but not convicted. The judge in this case places authority within himself as the determinant of whether there has been a special situation for the offender, as formulated in the reasons for the abolition of criminal prosecution.¹⁵ Things that can be the reasons for the abolition of the first sentence, there are reasons for justification, forgiveness and reasons for the abolition of prosecution. An excuse that eliminates the oversight of an action which, although it violates the rules, must still be carried out to ensure greater interests. The justification reasons are:¹⁶

1. There are laws and regulations
2. Execution of valid service orders
3. Forced condition
4. The defense was made under forced circumstances (Noodweer)

Forced defense is included in one of the reasons that can be justified and the provisions have also been regulated in Article 49 paragraphs (1) and (2) of the Criminal Code. So with this Noodweer can be one of the legal defenses before the law and can be a form of consideration by the judge in giving his decision.¹⁷

In decision number 794/Pid.B/2014/PN.Llg as a result of threats threatening the defendant, there was an exchange of blows between the two of them which resulted in the perpetrator of the crime dying as a result of the attack given by the victim. Even though there was an exchange of punches, in the verdict the defendant or victim was declared free from criminal charges because he made a forced defense.

Unlike the previous decision, decision number 257/PID.B/2015/PN.Skg was found guilty and proven guilty of committing the crime of maltreatment which resulted in

¹⁴ Putusan nomor 794/Pid.B/2014/PN.Llg

¹⁵ Fitria Lubis dan Syawal Amry Siregar, Analisis Penghapusan Pidana Terhadap Perbuatan Menghilangkan Nyawa Orang Lain Karena Alasan Adanya Daya Paksa (*Overmacht*), Jurnal Retenrum, 1 No. 02, (2020), 13

¹⁶ Saiful Bahri, Problema dan Solusi Peradilan Pidana yang Berkeadilan dalam Perkara Pembelaan Terpaksa, Jurnal Wawasan yuridika, 5, No. 1, (2021), 133

¹⁷ Anak Agung Gede Agung, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara.

death even though the two defendants in this case were the same person who defended against assault and threats that came to him.

2. Method

The research method used in this paper is normative research using a statutory research approach and a case approach. The analytical technique used to process legal material is legal hermeneutics. Legal hermeneutics is also known as a way of materializing the legal material itself as a form of effort to obtain clarity from something that is being discussed.

3. Chronology of decision Number 794/Pid.B/2014/PN.Llg and decision number 257/PID.B/2015/PN.Skg

3.1 Chronology of the decision case Number 794/Pid.B/2014/PN.Llg

In decision Number 759/Pid.B/2014/PN.Llg, the accused Iskandar alias Kandar Bin Aroeif was brought to the general trial with a chronology¹⁸

1. on Saturday 30 August 2014 at around 10.30 WIB or at least another day in August 2014 at the Bukit Sulap Market, Jalan Jendral Sudirman kel. Satellite Market kec. North Lubuklinggau II, Lubuklinggau city or at least in other places that are still included in the jurisdiction of the Lubuklinggau District Court which has the right to examine and adjudicate, intentionally killing other people.
2. Starting on 30 August 2014 the victim Agus Bin H. Nasir came twice on a red Mio motorbike and parked the motorbike near the stall where the defendant Iskandar was selling, on his first arrival, the victim Agus came and parked the red Mio motorcycle, at that time the victim Agus only looked at the suspect Iskandar and witness Alex who were at the stall where the suspect Iskandar was selling, then the victim Agus headed towards the building behind the crime scene, then the victim Agus returned to the motorbike parked and then left the place the.
3. That it didn't take long for the victim Agus to return for the second time, where the second time the victim arrived carrying a black sling bag (list of wanted evidence) placed in front of the victim Agus's stomach, then the victim Agus approached the defendant Iskandar who was with the witness Alex at the stall the suspect Iskandar, then the victim Agus said to the defendant Iskandar "Come here first, ado lokak" and took the defendant Iskandar to the building behind the Bukit Sulap market, where the distance between the victim Agus and the defendant Iskandar at that time was about three meters
4. Then the victim Agus and the defendant Iskandar walked towards the building behind the Bukit Sulap Market with the victim Agus' position in front and the defendant Iskandar behind, when they arrived behind the Bukit Sulap Market

¹⁸ Putusan nomor 794/Pid.B/2014/PN/Llg

building the defendant Iskandar said to the victim Agus "Lokak apo Agus?", and arrived - suddenly the victim Agus took out the first knife and then attacked the defendant Iskandar to the head but the defendant Iskandar was able to block it with both hands of the defendant. the body and struck the defendant Iskandar in the stomach, so the defendant was pressed and then the defendant tried to save himself by running away from the victim Agus.

5. Seeing the defendant Iskandar trying to run away the victim Agus again tried to chase the defendant Iskandar and again stabbed the defendant Iskandar in the shoulder of the defendant for two stabs with the two knives in the hands of the victim Agus, received a second attack the defendant Iskandar resisted (by pulling out the knife that stuck in his body) the shoulder of the defendant Iskandar then attacked the victim Agus with the knife 4 (four'; times or at least more than 2 (two) times towards the head, right neck and left neck then the defendant Iskandar threw away the knife (Search List of Evidence) that was used towards the victim agus then the defendant Iskandar ran to save himself screaming for help.
6. Whereas witness Poniran and witness Legimin knew about the incident when they heard the words "Well, you are hollow". When the witness Poniran was looking for the source of the sound, the witness Poniran saw the defendant Iskandar running covered in blood, while the victim Agus was standing holding a knife in his right hand and saw the defendant Iskandar and the victim Agus who were covered in blood, the witnesses ran in fear & towards the back of the Bukit Sulap market and the distance between witness Suni, witness Legiman and witness Poniran from the defendant Iskandar was approximately 5 (five) meters and from the victim Agus 30 (thirty) meters.
7. That when the witness Alex was eating at the place where the defendant Iskandar was selling fish, or about five minutes after Agus and Kandar headed to the building behind the Bukit Magic Market, witness Alex saw the victim Agus come out of the building behind the Bukit Magic Market, covered in blood and holding a knife. a knife with a wooden handle measuring approximately 20 (twenty) centimeters using the right hand, then the victim Agus went to the witness Suryadi who was selling at his place covered in blood, and the witness Suryadi, at that time saw the victim Agus carrying a black sling bag placed in front stomach and carrying a knife. When the victim Agus went to witness Suryadi, the victim Agus informed him that the perpetrator who had stabbed him was named Kandar, and asked witness Suryadi to take him to the hospital. Then the witness Suryadi looked for a vehicle to transport the victim Agus, along with the witness Darwilis, and asked the witness Darwilis to help take AGUS to the hospital. When the witness Suryadi and witness Darwilis came to where witness Suryadi was selling or where the victim Agus was waiting, witness Suryadi and witness Darwilis saw the victim Agus lying on the floor where witness Suryadi was selling, then witness Suryadi and witness Darwilis lifted the victim Agus's body to the vehicle, then took Dr. to the hospital. Sobirin. witness Suryadi and witness Darwilis saw the victim Agus lying on the floor where witness Suryadi was selling, then witness Suryadi and

witness Darwilis lifted the victim Agus's body to the vehicle, then took him to Dr. Hospital. Sobirin. witness Suryadi and witness Darwilis saw the victim Agus lying on the floor where witness Suryadi was selling, then witness Suryadi and witness Darwilis lifted the victim Agus's body to the vehicle, then took him to Dr. Hospital. Sobirin.

Based on Visum Et Revertum issued by Dr. Hospital. Sobirin Musi Rawas district Number: 17/VER-MYT/ IGD/ RS.Dr.SOBIRIN / VIII / 2014, dated 30 August 2014. made and signed bearing in mind the oath of office by Dina Fikry who concluded from the results of her examination as follows: Explains : Whereas the victim Agus Bin H. Nasir :¹⁹

- 1) The patient came and was examined in a state of death.
- 2) There was an open wound with flat edges on the head area, five centimeters wide, deep to the bone.
- 3) There was a blister on the left cheek area with a size of three centimeters, one centimeter wide.
- 4) There is an open wound with flat edges on the lower right neck with a length of three centimeters, a width of two centimeters deep to the cavity.
- 5) There was an open wound with flat edges on the left neck with a length of four centimeters, a width of three centimeters deep to the cavity.
- 6) There is an open wound with flat edges on the upper right neck with a length of two centimeters, one centimeter wide, deep to the cavity.
- 7) There was an open wound with flat edges on the thumb of the right hand with a length of three centimeters and one centimeter wide.
- 8) There was an open wound with flat edges on the thumb of the left hand with a length of two centimeters, one centimeter wide.
- 9) The cause of death could not be determined because no post-mortem was performed.

In this case the public prosecutor demanded Article 351 paragraph (3) of the Criminal Code regarding maltreatment resulting in death with a more complete decision as follows:²⁰

1. Declare that the Defendant Iskandar Als Kandar Bin Aroeif mentioned above, has not been proven legally and convincingly guilty of committing a crime as charged in the Primary and Subsidair indictments;

¹⁹ Putusan Nomor 794/Pid.B/2014/PN.Llg

²⁰ Putusan Nomor 794/Pid.B/2014/PN.Llg

2. Freeing the Defendant therefore from all the charges of the Public Prosecutor;
3. Ordering the Defendant to be released from detention as soon as this decision is pronounced;
4. Restore the rights of the Defendant in terms of ability, position, dignity and status;
5. Establish evidence in the form of:
 - a. 1 (one) sheet of white T-shirt with bloodstains in torn condition;
 - b. 1 (one) pair of short Levis jeans with bloodstains; returned to the accused;
 - c. 1 (one) white shirt;
 - d. 1 (one) black jacket with bloodstains on it; Returned to the victim's family;
 - e. 1 (one) sheet of blue checkered sarong; Returned to witness SURYADI;
 - f. (one) knife-type stabbing or piercing weapon with a wooden handle and knife sheath
6. Burden case costs to the state.

3.2 Chronology of the decision case Number 257/Pid.B/2015/PN.Skg

1. That it was true that on Thursday 04 August 2016 at 17.00 WITA in the Mabbalennae Environment, Kel. Solo Sub-district, Bola District, Wajo District, there was an argument and a fight between the defendant Cening Bin Kemme and the victim Burhanuddin Alias Bure which resulted in the victim Burhanuddin Alias Bure dying
2. That the incident started when the defendant was together with the witness Angga Renaldi Bin Muh. Bakri, Witnesses Baheri Bin Husen and Sister Ira While sitting at the patrol post for more than 30 minutes, then the victim came from the east on a motorcycle, and about 1 meter past the patrol post the victim stopped, then got off his motorcycle with took his dagger which was covered by his jacket, then approached the defendant and said "I want to bunuko", then the defendant answered "I think we have reconciled", after that the victim immediately stabbed the defendant but the defendant avoided it, and only hit him in the arm left bleeding
3. Whereas at that time the witnesses themselves saw the defendant arguing and fighting with the victim, and out of fear some of these witnesses immediately went home, and some ran screaming until they were about 100 meters from the scene of the incident to ask for help, so did not know what happened next, only after the incident saw police officers already at that place using a car who then saw the victim being lifted into the police car, after that the defendant also took a police car together and was taken to the Bola Health Center, then the defendant was then taken to the Bola Polsek office

4. That in the end the victim died after arriving at the Bola Health Center in less than 10 (ten) minutes, because while still at the scene the victim was already dying
5. Whereas according to the confession of the defendant after successfully avoiding being stabbed by the victim it turned out that the victim did not stop his actions but returned to stabbing the defendant, so the defendant tackled him so that it hit the edge of his right hand, and after that the defendant immediately jumped over and embraced the victim, but the victim grabbed the back of the defendant's neck and stabbed the defendant in the head, however the defendant also continued to resist so that he was slightly hit in the head, after that the defendant punched the victim in the forehead, then the defendant pushed the victim until he fell together on the road, but after the defendant fell he could not get up again so to defend himself the defendant trying to pick up a rock where as soon as the defendant saw a river rock the defendant immediately punched the victim in the head several times until finally the victim could not do anything anymore
6. That according to the defendant then he walked to the side of the road to sit down, but not long after Andi Ling came and took him to the car and immediately lifted the victim to be taken to the Football Hospital/Puskesmas to receive treatment where the defendant received stitches to his wound as a result of being stabbed by the victim, after that the defendant was immediately taken by the Bola Police for safekeeping, while the defendant did not know about the condition of the victim
7. That from the Bola Police office, approximately 2 hours later, the defendant was taken to the Wajo Police Station to undergo legal proceedings in accordance with the actions he had committed
8. Whereas prior to this incident, according to the defendant's confession, the victim had also scolded the defendant's parents-in-law about 7 years ago, then the victim was detained at the Takkalalla Police Station, but did not reach court because the defendant was in charge of the settlement, so the defendant considered that after that time there are no more problems, and the defendant and the victim themselves have never had any problems apart from that case

If we relate this to the main requirements of forced defense, the author considers that what the defendant did fulfills the elements of noodweer requirements, namely coercive defense, self-defense, other people, moral honor, own or other people's property, there is an attack an instant and the attack was against the law.

As Visum Et Refertum from UPTD Solo Health Center Kec.Bola Kab.Wajo Number: 800/698/Pusk.Solo dated 12 August 2016 signed by Andi Isna Fitriani Head of UPTD Health Center Solo Kec.Bola, with the results of the examination, and suffered injuries as follows :²¹

- 1) A laceration on the upper forehead with a length of three centimeters with irregular margins.
- 2) A torn wound on the right side of the forehead with a length of six centimeters and a width of two centimeters with irregular edges.

²¹ Putusan Nomor 257/Pid.B/2015/PN.Skg

- 3) A torn wound on the front of the forehead with a length of two point five centimeters with irregular margins.
- 4) Torn wound on the front of the forehead with one centimeter long irregular margins.
- 5) A torn wound on the left side of the forehead with a length of nine point five centimeters, one centimeter wide, one centimeter deep with irregular edges.
- 6) Torn wound on the back of the head with a length of two point five centimeters, one centimeter deep, to within one centimeter irregular margins.
- 7) Torn wound on the crown with a length of two point five centimeters, irregular margins.
- 8) Two-centimeter long laceration on the top of the head, irregular margins.
- 9) The swelling on the back of the head on the left is about seven centimeters in diameter.
- 10) The swelling on the upper left side of the head is about four centimeters in diameter. From the results of the examination it can be concluded that the injuries mentioned above were caused by touching a blunt object and the cause of the patient's death was Severe Head Trauma.

In this case the public prosecutor demanded Article 351 paragraph (3) of the Criminal Code regarding maltreatment resulting in death with a more complete decision as follows:²²

1. Declare that the Defendant Cening Bin Kemme mentioned above has been legally and convincingly proven guilty of committing the crime of "torture resulting in death" as stated in the primary indictment;
2. Sentenced punishment against the Defendant therefore with imprisonment for 6 (six) years;
3. Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed;
4. Stipulates that the Defendant remains in custody;
5. Establish evidence in the form of:
 - a. 1 (one) river stone, the size of an adult's fist
 - b. 1 (one) diamond ring;
 - c. 1 (one) piece of green T-shirt in a state of bloodstained victim;
 - d. 1 (one) piece of bloodstained green shorts belonging to the victim;
 - e. 1 (one) blade of sharp weapon in the form of a dagger complete with scabbard, length of iron 17.2 (seventeen point two) cm and a middle width of iron 2.5 (two point five) cm. ;
 - f. 1 (one) black leather jacket belonging to the victim;

To be damaged so that it can no longer be used
6. Burdened the Defendant to pay court fees in the amount of IDR 2,000 (two thousand rupiah)

The two decisions described by the previous author are two decisions that have the same charges, namely being charged with Article 351 paragraph (3) concerning

²² Putusan Nomor 257/Pid.B/2015/PN.Skg

maltreatment resulting in death, but of the two cases only one case was found guilty and the other was a forced defense or free cut.

Article 49 of the Criminal Code regarding forced defense is an article that is one of the basic considerations for judges in deciding the two cases described previously. Article 49 reads:

- 1) Not criminalized, whoever commits an act of self-defence is forced for himself or for others, moral honor or own property or other people, because there was an attack or threat of attack that was very close at that time.
- 2) Forced defense that exceeds the limit, which is directly caused by severe mental shock due to the attack or threat of attack, is not punished

Regarding the provisions of the defense, the Criminal Code is forced to provide conditions:

- 1) The act committed must be forced to defend (defend). The defense must be very necessary, it can be said that there is no other way. There must be a certain balance between the defense and the attack. To defend meaningless interests, for example, one may not kill or injure another person;
- 2) Such defense or defense must be carried out only against the interests mentioned in that article, namely one's own or another person's body, honor and property;
- 3) There must be an attack against rights and threats suddenly or at that moment.

If you have seen or just heard from the statements of the two defendants, both of them admitted that the act was committed under compulsion due to an attack or threat that came, according to the authors of these two cases, the points in Article 49 paragraph 1 have been fulfilled. meets the conditions, namely coercive defense, self, person or other person defended, moral honor, own property or another person, there is an instant attack and the attack is against the law.

However, in determining whether an incident is the scope of acts of self-defense, law enforcement officials need to review the chronology of events one by one by paying attention to the elements of self-defense that have been determined by law for those events. The balance between legal interests that are protected from attacks and legal interests is violated by the defense or the balance between how the defense is carried out and how the attacks are received. If there are other means of protection to prevent attacks or threats, then the defense may not be carried out by choosing the most severe method at the expense of one's life.²³

²³ Wenly Dumgair, "Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Axces) Sebagai Alasan Penghapus Pidana," *Lex Crimen* 5, no. 5 (2016): 61-68.

Regarding balance in defense, this is also in line with the example of forced defense described by R. Soesilo who stated that if an attack that comes only uses our bare hands, then we fight it with our bare hands as well.²⁴

3.4 Disparity in Decision Number 794/Pid.B/2014/PN.Llg and Decision Number 257/Pid.B/2015/PN.Skg In Cases of Forced Defense

In decision number 794/Pid.B/2014/PN.Llg the judge gave a decision that the defendant had been legally proven before the judge coupled with the facts revealed in the trial that the attack carried out by the defendant was an attack to defend existing rights against him, so that the judge decided that the defendant was free from all charges against him.

Whereas in decision number 257/Pid.B/2015/PN.Skg the judge gave a decision that the defendant had been legally proven to have committed an abuse which resulted in death. The two cases in this decision submitted the same pledoi, that is, the two defendants defended themselves against the threat of attack that came to them. In deciding cases, the justice system in Indonesia provides limitations in the form of legal principles in carrying out justice to realize justice.²⁵

In decision number 794/Pid.B/2014/PN.Llg the basis for the judge's opinion was that what the defendant had done was a form of forced defense, namely the existence of evidence of assault which had marks on both shoulders of the defendant, during that incident the defendant had run away but still continues to be pursued by the victim and carry out attacks on him. The judge considered that because the attacks that came against the defendant continued even though the defendant had tried to stop the attack, that was what forced the defendant to counterattack to paralyze the threats against him. It was this backlash that caused the death of the victim in this verdict.

According to the author, this is not different from what was done by the defendant in decision number 257/Pid.B/2015/PN.Skg the defendant had tried to run away from the attacks that came successively against him, the victim in this case even stabbed the defendant several times. The defendant also did this by hitting the victim with a rock because in this case the defendant was trying to kill the victim, at the time of the incident the defendant was already in a state of collapse and could not get up again, so the only way to paralyze the attacks that came against him was by hitting the victim on the head.

Judges in deciding defense cases should not only judge from one aspect, the authors see that in these two decisions they did not consider 2 important principles regarding criminal abolition, namely:

²⁴ Dean Praditya Kermite, Jeany Anita Kermite, and Fony Tawas, "Kajian Terhadap Pembelaan Terpaksa (Noodweer) Dalam Tindak Pidana Kesusilaan Berdasarkan Pasal 49 Ayat (1) Kitab Undang-Undang Hukum Pidana," *Lex Privatum* IX, no. 4 (2021): 139.

²⁵ Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments," 2021, <http://ejurnal.ung.ac.id/index.php/jalrev/JALREV3Issue022021>.

1. Subsidiarity Principle. Violating a person's legal interests to protect the legal interests of another person is not permissible, if the calculation can be done very detrimentally.
2. The principle of proportionality. Violating a person's legal interests to protect the legal interests of others is prohibited if the legal interests being protected are disproportionate to the violation. So there must be a balance between the interests that are protected and the interests that are violated.²⁶

According to the author, referring to these two principles, what was done by the judge in decision number 257/Pid.B/2015/PN/Skg did not meet the criteria for the principle of subsidiarity and the principle of proportionality, because one party in this case was greatly harmed.

The author realizes that in judicial practice, it is very difficult for a judge to accommodate these three principles in one decision. In dealing with such matters, the judge should be able to choose one of the three principles to decide on a case and it is impossible for these three principles to be included in one decision at once (the casuistry priority principle). If likened to a line, the judge in examining and deciding a case is (moves) between the two dividing points in that line, namely the point of justice and the point of legal certainty, while the point of benefit itself is between the two as. This condition shows that in fact the practice of law in this country has not given satisfaction to the people or those who are the object of the law itself which is indeed very much in contradiction with the ideal purpose of law. If it is associated with the Antinomy theory, these are two different things but complement each other. As a result of contemplating values, legal norms in their implementation are always found to have unavoidable clashes between the principles of justice and the principle of legal certainty. According to Immanuel Kant quoted by van Apeldoorn.²⁷

In addition to fairness in deciding cases, balance in forced defense cases is also very important. And in these two decisions the author also sees that there has been a balance between the attacks that came and also the defense that was made, the victims in the first and second decisions were both carrying sharp weapons while the defendants in these two decisions were empty-handed. When the defendant was in a state of urgency and the victim tried to stab him with a rock that was committed by the defendant in the second decision, this was the right thing to do if he wanted to defend his rights.

So with this the author argues that defense is forced to emphasize the defense or self-defense that is carried out by someone at the same time when a threat comes to him. Meanwhile, regarding forced defense that exceeds the limit, when the actual defense has finished, the person still attacks the attacker, even though the attacker's attack has ended.

The author is of the opinion that these two cases are forced defense cases, so with this the two defendants in this case should be acquitted or regardless of all criminal threats

²⁶ Wenly Dumgair, *Loc Cit.*

²⁷ L.j. Van Apeldoorn, *Pengantar Ilmu Hukum* (Bandung: PT. Pradnya Paramita, (2001), 13.

against them. The consideration of using two important principles in the abolition of punishment must be applied in its entirety to all forced defense cases so that things like this no longer occur in forced defense cases which result in not achieving the principle of justice in law. Because this rule is a legal protection for those who are deemed entitled to carry out certain actions as a form of forced defense.

If in the context of self-protection, honor and actions or defenses that are carried out under compulsion or an unavoidable attack, then the defense made by the defendant becomes the reason for the judge to acquit the defendant.

4. Conclusion

Based on the chronology of the case in decision number 794/Pid.B/2014/PN.Llg and decision number 257/Pid.B/2015/PN.Skg the elements of the defense must have been fulfilled so that according to the author the defendants in these two cases should be acquitted of all demands. Because the Defendant actually made a defense under forced circumstances because of the attack that came suddenly. The existence of a balance in the defense should be one of the strongest aspects in deciding the two defendants are free from all charges. The disparity in the judge's decision in decision number 794/Pid.B/2014/PN.Llg and decision number 257/Pid.B/2015/PN.Skg occurred due to the absence of a thorough implementation of 2 (two) important principles in the abolition of crimes which caused two same case regarding forced defence,

Reference

Book

Muladi. Human rights. Bandung: Reflection Aditama, 2005.

Journal

Anak Agung Gede Agung, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara. "Legal Protection Against Perpetrators of Begal Murder on the Basis of Forced Defense." *Journal of Legal Interpretation* 2, no. 1 (2021): 1-7. <https://doi.org/10.22225/juinhum.2.1.3075.1-7>.

Ahmad and Novendri M. Ngilu Faculty, "The Pulse of the Fifth Amendment to the 1945 Constitution Through the Involvement of the Constitutional Court as the Principle of the Guardian of the Constitution of the Constitution." *Constitutional Journal*. 16, No. 4 (2019): 785-808., 791

Dungair, Wenly. "Compelled Defense (Noodweer) And Forced Defense That Exceeds The Limit (Noodweer Axces) As Grounds For Offenses." *Lex Crimen* 5, no. 5 (2016): 61-68.

Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

- Ekawaty Ismail, Dian, and Mohamad Taufiq Zulfikar Sarson. "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," 2021. <http://ejournal.ung.ac.id/index.php/jalrev/>.
- Fitria Lubis and Syawal Amry Siregar, Analysis of Penal Elimination Against Acts of Eliminating the Lives of Others Due to Forced Force, 1 No. 02, (2020), 13
- Gultom, Maidin. "Crimes Against Human Rights." Pro Justitia Law Journal, 2006.
- Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Leato Leato Underwater Site Legal Protection / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" Journal of Legal Reform 24. No. 2 (2020): 189-208., 197
- Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigenous People Through Legal Assistance Organizations." Jambura Law Review. 3, No. 02 (2021): 365-77., 375
- Kermite, Dean Praditya, Jeany Anita Kermite, and Fonny Tawas. "A Study of Forced Defense (Noodweer) in Acts of Morality Based on Article 49 Paragraph (1) of the Criminal Code." Lex Private IX, no. 4 (2021): 139.
- Mohamad Hidayat Muhtar, "Legal Political Model for Corruption Eradication in Indonesia in the Context of Harmonizing Law Enforcement Institutions." Jambura Law Review. 1, No. 1 (2019): 68-93., 73
- Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China's Policy towards Uighurs and Its Implications by International Law Aspects." Jambura Law Review. 3, No. 01 (2021): 55-71., 69
- Novendri M. Nggilu, "Juridical Review of Criminal Sanction Arrangements in Gorontalo Province Regional Regulations," Lambung Mangkurat Law Journal. 5, No. 2 (2020): 109-121., 110
- Ramdan Kasim, "Dehumanization in the Excessive Application of Criminal Law (Overspanning van Het Strafrecht)," Jambura Law Review. 2, No. 1 (2020): 1-29., 3
- Saiful Bahri, Problems and Equitable Criminal Justice Solutions in Forced Defense Cases, Journal of Juridical Insights, 5, No. 1, (2021), 133
- Tijow, Lusiana. "Protection of Human Rights Against the Right to Life of Children in the Womb Outside of Legal Marriage." Journal of Legality 3, no. 2 (2010).
- Yutye Imran, Suwitno. "The Urgency of Regulation of the Ultra Qui Judiccate Principle in Criminal Judgments," 2021. <http://ejournal.ung.ac.id/index.php/jalrev/Jalrev3Issue022021>.