
Criminal Liability Against Crime Defense Forced (Noodweer)

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Submitted: 10/02/22 Revised: 16/03/22 Accepted: 30/03/22

ABSTRACT

This paper aims to examine the elements of criminal responsibility for criminal acts committed on the basis of forced defense (Noodweer). This type of research is a normative juridical research. The approach used is the Legislative approach. The source of this research data comes from library data. Meanwhile, the types of data that will be used in this research include primary data and secondary data. Data collection and processing, firstly, literature study by collecting data by reading, understanding and quoting, summarizing, and making notes and analyzing legislation. Second, the processing of data obtained from both field studies and literature studies is then processed in the following way by means of data selection, data classification and data systematization. data analysis, the data obtained, analyzed by qualitative data, namely describing the facts based on the results of the study. The findings of this study are criminal liability in positive law in Indonesia (written law) referring to article 49 of the Criminal Code which states that a person who commits an act in an effort to protect himself from threats that can endanger the safety of life, property and safety both personally and others cannot be punished. Criminal liability for criminal acts committed on the basis of forced defense (Noodweer) is the reason for eliminating the nature of breaking the law, (Wederrechtelijkheid or Onrechtmatigheid), then the reason for eliminating the nature of criminal acts (Struitsluitings-Grond) is also said to be a reason to justify or justify actions which are generally criminal acts. Criminal (Rechtvaardigings-Grond) is called Fait Justificatif . So it can't be held accountable.

Keywords: Forced Defense; Criminal Liability; Crime.

INTRODUCTION

The formation of the Law actually started from human consciousness which saw how important the Law was to regulate human life so that humans could live regularly without interfering with each other between one human and another, because as Thomas Hobbes said " humans are wolves for other humans ".(1) In addition, humans create law on the basis of their views of life which hold the view that law must create justice, certainty and benefit for human life as implied in the objectives of the law which are the background for the formation of the law itself.(2)

The development of criminal problems and criminal acts experienced by humans in everyday life is increasing. Murder, robbery and even rape are not uncommon, thus increasing the human need for laws that limit behavior and regulate human life so that they can respect each other. This conflict or difference in interests then has the potential to cause chaos in society. So that every event or disorder that occurs in society requires serious legal attention, as well as accountability from the subject of the law itself.

Speaking of accountability, of course, each individual must be responsible for every event that is carried out or experienced and of course humans also have their own ways to implement the sense of responsibility that exists in their respective thoughts. In everyday life, humans or individuals as proposed by Aristotle are social beings who may experience criminal acts/criminal acts (Strafbaar Feit), either directly or indirectly. So that's why the

law is needed as a conflict resolution tool, so that the community can live in peace without any other human disturbances.

In English criminal liability is referred to as Responsibility, or Criminal Liability y. (3) The concept of criminal responsibility is actually not only related to legal matters but also concerns the general moral values or decency adopted by a society or groups in society, this is done so that criminal accountability is achieved by fulfilling justice .(4) Criminal liability is a form of determining whether a suspect or defendant can be held accountable for a criminal act that has occurred. In other words, criminal liability is a form that determines whether a person can be convicted or released from the bondage of the law.

According to Roeslan Saleh, criminal liability can be interpreted as the continuation of objective reproaches that exist in criminal acts and subjectively fulfill the requirements to be punished for their actions. As for what is meant by objective censure, it is an act committed by a person is a prohibited act, the prohibited act referred to here is an act that is contrary to or prohibited by law, both formal law and material law. While what is meant by subjective reproach refers to the perpetrator of the crime, or it can be said that subjective reproach is a person who commits an act that is prohibited or contrary to the law.(5)

If someone makes a mistake that results in elements of a criminal act in social life, either intentionally or unintentionally, the subject of the law who does it will still get criminal sanctions for his mistake. Because the essence of criminal liability is the error caused by the subject of the law itself.

Mistakes are the basis for accountability. Error is the mental state of the perpetrator and the inner relationship between the perpetrator and his actions. Knowing the mental state of a person who commits an action is commonly referred to as the ability to be responsible, while the inner connection between the perpetrator and his actions is intentional, negligence, and forgiving reasons.

In criminal law, the most fundamental principle is known, namely the principle of "no crime without fault" known as "Keine strafe ohne schuld" or "Geen straf zonder schuld" or "Nulla poena sine culpa" . From this principle, it can be understood that mistakes are one of the elements of criminal responsibility from the subject of criminal law. This means that someone who is recognized as a subject of law must have an error in order to be convicted. Thus, to determine errors in criminal law subjects must meet several elements, including: 1) the existence of the ability to be responsible for the perpetrators; 2) the act is intentional; 3) there is no reason to erase mistakes or there is no excuse for forgiveness. These three elements are a unit that cannot be separated from one another, where one element depends on another element.(6)

Dolus delict (Doleus delicten) is an act that is prohibited and threatened with a crime that is done intentionally. The formulation of the law uses the phrase "*Opzettelijk*" but is also known as an act committed because of "*Dolus*" or "*Opzet*", such as article 338 of the Criminal Code which states that there is an element of intent (intentionally committing murder). Meanwhile, Culpa Delict (Culpose delicten) is an act that is prohibited and threatened with a criminal act committed by negligence, or "*Nalatigheid*" or "*Onachtzaamheid*". Formulations of laws that use Schuld 's sentence, such as for example 359 of the Criminal Code which contains elements due to mistakes or negligence that cause other people to lose their lives (die).

Take for example the theft case (article 362 of the Criminal Code) involving a housewife, in this case, a woman who was originally a victim of the theft was robbed of her house. The robber threatened to kill the owner of the

house, but responsively the owner of the house fought back which resulted in the death of the perpetrator. Because of this case, the woman who was originally a victim in the theft case (article 338 of the Criminal Code) was found guilty and was eventually named a suspect by the court based on the case. Cases like this occur on the basis of a forced defense (Noodweer/article 49 of the Criminal Code) solely, because based on this case the safety of body, property, personal decency, and other people is threatened.

Noodweer exces, is an act of forced defense that goes beyond a person's limits because of a great mental shock. Regarding Noodweer excesses, there is a decision relating to forced defense in which the perpetrator makes a forced defense by committing acts of persecution that lead to the death of a person. Based on the description of the background, the following problems can be formulated: (1) What is Criminal Accountability in Indonesian Criminal Law? ; (2) How is the criminal liability for criminal acts committed on the basis of forced defense (Noodweer)?

METHODS

This type of research is a normative juridical research.(7) The approach used, the Legislative Approach (Statute approach) and the conceptual approach (Conceptual approach). Sources and Types of Data, The source of this research data comes from library data. Analysis of the data, the data obtained, analyzed by qualitative data followed by drawing conclusions.

RESULTS

Elements of Criminal Liability in Indonesian Criminal Law

Criminal liability is to impose punishment on the maker for an act that violates a prohibition or creates a prohibited condition. Criminal liability therefore involves the process of transferring the existing punishment in a criminal act to the maker. Accountability for someone in criminal law is to continue the punishment that is objectively in the criminal act subjectively to the maker. Criminal liability is determined based on the error of the maker and not only the fulfillment of all elements of the criminal act. Thus the error is placed as a determining factor for criminal liability and is not only seen as a mental element in a criminal act(8). A person is declared to have an error which is a matter of criminal liability.(9)

To be able to impose a crime on the perpetrator for committing a criminal act, the legal rules regarding criminal liability serve as a determinant of the conditions that exist in a person so that it is legal if sentenced to punishment. Criminal liability which concerns the issue of the maker of a criminal act, the rules regarding criminal liability are regulations regarding how to treat those who violate obligations. So the actions that are prohibited by the community are accountable to the maker, meaning that an objective punishment against the punishment is then passed on to the defendant. Liability without the fault of the violator cannot be accounted for. So people who cannot be accounted for and sentenced to criminal if they do not commit a criminal act. But even though he commits a criminal act, he does not always get a criminal.

Van Hammel, said that criminal responsibility is a state of moral and psychic maturity that brings three kinds of abilities to: a). understand the meaning and consequences of his own actions; b). realize that his actions are not

justified or prohibited by the community, and; c). determine the ability to act. (9) Furthermore, the basis for the existence of a crime is the principle of legality, while the basis for a criminal conviction is the principle of error. This implies that the maker or perpetrator of a criminal act can only be punished if he has made a mistake in committing the crime. When someone is said to have made a mistake is a matter of criminal liability.

According to Simons, as the basis for criminal responsibility, there is an error in the soul of the perpetrator in relation to the behavior that can be criminalized and based on that mentality the perpetrator can be reproached because of his behavior. To be able to say that there was an error on the part of the perpetrator, it must be achieved and determined in advance several things concerning the perpetrator, namely: (10) 1) Ability to take responsibility; 2) The psychological relationship between the perpetrator and the consequences (including behavior that does not conflict with the law in everyday life); 3) Dolus and Culpa, guilt is a subjective element of a criminal act. This is a consequence of his opinion linking Strafbaar Feith to error.

Elements of criminal acts in the science of Criminal Law are also called elements of offenses (elements of offenses). The element of the offense is part of the offense. In prosecuting a crime, all elements of the offense that are proven must be proven to the perpetrator of the offense. Therefore, if one of the elements or elements of the offense is not fulfilled, then the person who made the offense cannot be blamed for the alleged offense, so that the maker of the offense must be released from all legal charges (Onslaag van rechts are vervolging). Elements of offenses are generally divided into two parts, namely: (a) objective elements, or commonly called Actus Reu , and (b) subjective elements, or commonly called Mens Rea (10).

The elements of the objective offense are elements that have to do with the circumstances, namely in the circumstances in which the actions of the perpetrator must be carried out. Objective elements and criminal acts include: a) unlawful nature, b) the quality of the perpetrator, for example the situation as a Civil Servant (PNS) as regulated in article 415 of the Criminal Code, and c) causality, the relationship between an action as the cause and reality as a result. The objective offense element is an element related to the act (Act, Daad) of the offender, namely : First , the form of the act (active, passive), or visible consequences. An offense can be manifested by active behavior or passive behavior, according to the description of the offense that requires it. For example, in the ordinary theft offense (Article 362 of the Criminal Code) the form of the act is taking the property of another person partially or completely. Another example is not fulfilling a summons in court as a witness, expert, interpreter (Article 224 of the Criminal Code). So the form of the act in question is active or passive, including the type of commission offense, or the type of omission offense, or the Delictum Commissionis Per Ommissionem Comissa, or the offense of not complying with the prohibition followed by not taking action.

Second, the act must be against the law . The action required to fulfill the objective offense element is that in carrying out the act there must be an element against the law (Weedderectelijkheids, Unlaw full Act, Onrechtma-Tigedaad). An act that violates the law is an act that is prohibited to be obeyed, or ordered not to be carried out as stated in the Criminal Code. Criminal Law distinguishes against the law into two main meanings, namely: (a) Against the law in a formal sense. Zainal Abidin explained that, it is said to be formal because the criminal law prohibits or orders the act accompanied by the threat of sanctions to anyone who violates or ignores it. The meaning of an act against formal law is the constitutive elements, which are in every formulation of the offense in the written criminal rules, even though in reality it is not explicitly written as being against the law. (11) Thus,

if it is not stated, it means that the element against the law is accepted as a Kenmerk element (accepted secretly, implicitly). Against formal law is more concerned with legal certainty (Rechtszekerheids) which is derived from the principle of legality (Principle of Legality, Legaliteit Benginseil). (b) Against the Law in a material sense. It is called material, because even if an act is in accordance with the description in the law, it is still necessary to examine the public's assessment of whether the act is despicable and deserves to be punished by the maker or not, or it is deemed to be of a nature that lacks reproach so that the perpetrator does not need to be subject to criminal sanctions. , but it is sufficient to be subject to sanctions in other legal rules, or other social rules. The meaning of an act against material law is an element related to the principle of culpability (determination of offenses made by the offender), or the value of legal justice in society, and the level of propriety and fairness.

Third, in doing the deed there is no justification. An act has been qualified as an offense has occurred, if the act does not contain a justification basis, as part of the objective offense element (Actus Reus). What is meant by the justification basis is the basis that eliminates the unlawful nature of the actions that have been carried out by the offender. This means that if the act contains a justification basis, it means that one of the objective elements of the offense (elements of offense) is not fulfilled, which results in the perpetrator (maker) of the offense not being subject to a crime. In the Criminal Code there are several basic types of justification, namely: 1) . Relative forced power (Vis compulsiva) ; 2) . Forced defense ; 3) . Carry out statutory orders ; and 4) . Carry out the orders of the competent authority.

Furthermore, the objective offense elements are elements that are attached to the perpetrator or related to the perpetrator's self, and are included in the in it is everything that is contained in his heart. Subjective elements of criminal acts include: a) Intentional or unintentional (dolus or culpa) ; b) The purpose of an attempt to commit a criminal act (article 53 paragraph 1 of the Criminal Code); c) Various purposes (oogmerk) such as the crime of theft ; d) Planning in advance for example article 340 of the Criminal Code.

Common Law Criminal Law is called Mens Rea, which is part of the mental attitude (mental attitude), part of the intention (thought) which is also part of criminal responsibility, so Mens Rea is related to the error of the offense maker (dader), because it is related to an evil mental attitude (Criminal Intent). Mens rea is also related to the principle of Geen Straf Zoonder Schuld (no crime without fault). In the Anglo Saxon line of criminal law, the principle of an act does not a person quality unless his mind is quality (one act does not make the person guilty, unless the mind is wrong).

The subjective offense element or the Mens Rea element of the offense or part of criminal liability according to Zainal Abidin consists of: the ability to be responsible (Toerekeningsvatbaarheids), The Criminal Code does not regulate the ability to be responsible, but what is regulated is just the opposite, namely the inability to take responsibility as regulated in Article 44 of the Criminal Code. (11) According to Satochid Kartanegara For the ability to be responsible for someone, three conditions are needed, namely: a) The condition of the person's soul is such that he can understand or know the value of his actions, so that he can also understand the consequences of his actions; b) The condition of the person's soul is such that he can determine his will for the act he has committed; c) The person must be aware, be aware, that the act he has committed is an act that is prohibited or cannot be justified, both from the point of view of law, society, or the point of decency.(12)

A simple measure used is to prioritize two will factors. Intellect can distinguish between what can be done and what cannot be done. The will can be adjusted to the realization or awareness of what one can and cannot do. Examples include Epilepsy, Hysteria, and Psychastemia(13). Judges are advised not to be influenced by the results of psychiatric examinations. Psychiatric opinion is still used as evidence (expert testimony), in accordance with the provisions of Article 184 paragraph 1 of the Criminal Procedure Code.

- 1) Errors in a broad sense, which consist of: a) Dolus which is divided into three types, namely: 1. Deliberately as an intention or intention (Oomgerk); 2. Deliberately aware of certainty or necessity (Zekerheidsbewustzijn); 3 . Deliberately aware of the possibility (Dolus Eventualis, Mogelijk-Bewustzijn) ; b) Culpa, which is divided into two types, namely; 1. Culpa lata realized; 2. The unconscious culpa lata.
- 2) There is no basis for forgiveness

The basis for forgiveness is an important part of criminal liability, therefore it must be considered in determining the perpetrator (the maker of the offense). Because the basis of forgiveness is the basis that eliminates the guilt of the offender, so that the offense is not criminalized. The basis for forgiveness in the Criminal Code is regulated in book I Chapter III. The basis for forgiveness is that the elements of the offense have indeed been proven but the element of guilt is not with the maker, so the defendant is released from all legal demands. Including the basis for forgiveness are: a) absolute compulsion (Vis Absolute); Article 48 of the Criminal Code; b) The forced defense that exceeds the limit, article 49 paragraph (2) of the Criminal Code; c) Unauthorized position orders; Article 51 paragraph (2) of the Criminal Code; d) Acts committed by a person who is mentally disabled in growth, or is impaired due to illness; Article 44 of the Criminal Code.

DISCUSSION

Criminal Liability Against Criminal Acts Committed on the Basis of Forced Defense

1. Forms of Criminal Liability and Criminal Elimination

a. Criminal Liability

In a positive criminal law system, criminal liability is closely related to mistakes and acts against the law, so that a person gets a crime depending on two things, namely the objective element, namely there must be an element against the law and a subjective element. omission.

Self-defense in a state of compulsion is a reason for eliminating the nature of breaking the law, (Wederrechtelijkheid or Onrechtmatigheid), so the reason for eliminating the nature of a criminal act (Strafuitsluitings-Grond) is also said to be a reason to justify or justify actions which are generally criminal acts (Rechtvaardigings-Grond) called Fait Justificatief. So it cannot be held accountable.

b. Criminal Abolition Against Self-Defense

As explained in above, that a criminal act is committed if in carrying out a form of forced defense even though it can harm others, but the forced defense can eliminate the nature of violating the law, then the act can be said to be a form of justification which is one of the reasons for the abolition of the criminal. Thus, the accused was acquitted of the charges.

2. Application of Reasons for Criminal Abolition

a. Judges' Authority in Making Legal Decisions

The judge's decision is the climax of a case that is being examined and tried by a judge. Guidelines for the provision of punishment (strafftoemeting-leidraad) will facilitate the judge in determining the sentence, after it is proven that the accused has committed the act he is accused of. The list contains subjective matters concerning matters outside the maker. By paying attention to these points, it is hoped that the punishment will be more proportional and it will be better understood why the sentence was imposed. The freedom of judges to make decisions in the criminal justice process is contained in Article 3 paragraphs (1) and (2) of Law Number 48 of 2009 concerning the principle of administering judicial power.

b. Judge's Authority in Making Decisions

When we discuss court decisions, we cannot be separated from the judge's decision in adjudicating a case and the considerations used by him in making a decision in the case being tried. To understand the basic understanding of judges' considerations, we can refer to the definition put forward by Wiryono Kusumo, considerations or what are often called considerations are the basis for judges' decisions or judges' arguments in deciding a case. If the legal argument is not true and inappropriate (proper), then people can judge that the decision is not true and unfair. Meanwhile, according to Sudikno Mertokusumo, the judge's decision simply includes the orders and heads of decisions, considerations, and orders. From that scope, what is seen as the basis for the decision is consideration. Strong reasons under consideration as the basis for the decision make the judge's decision objective and authoritative. (13)

So that it can be said that the basis for consideration is the argument that becomes the basis / material for compiling the considerations of the panel of judges before the panel of judges makes a legal analysis which is then used to pass a decision on the defendant, the basis for consideration of the judge itself has an important position in a decision made by the judge because the better and more precise the considerations used by the judge in a decision, the more likely the judge who makes the decision will have a sense of justice.

In addition, related to justice itself, the position of a judge who has the task of adjudicating and deciding cases must be truly trustworthy, fair and impartial in adjudicating cases, the responsibility of judges for their decisions, and the freedom of judges in hearing and deciding cases are factors. which should also be considered

CONCLUSION

Criminal liability in positive law in Indonesia (written law) refers to article 49 of the Criminal Code which states that a person who commits an act in an effort to protect himself from threats that can endanger the safety of life, property and the safety of both himself and others cannot be punished. Because the act committed in the context of self-defense in a state of compulsion can be a reason for the abolition of the crime even though all the elements of the crime have been fulfilled. However, for the perpetrators who cannot be held criminally responsible because it is a justification and forgiving reason.

How is criminal liability for criminal acts committed on the basis of forced defense (Noodweer) is the reason for eliminating the nature of breaking the law, (Wederrechtelijkheid or Onrechtmatigheid), then the reason for eliminating the nature of a criminal act (Strfuitsluitings-Grond) is also said to be the reason for justifying or

justifying actions which are generally criminal acts (Rechtvaardigings-Grond) called *Fait Justificatif*. So it cannot be held accountable.

ACKNOWLEDGEMENT

In the future, it is recommended to legislators to provide further explanation of the formulation of the article in detail so that it is more easily understood by law enforcers and the public. So the meaning of Article 49 of the Criminal Code regarding self-defense in a state of necessity and the limitations on self-defense that are influenced by severe mental shock as contained in Article 49 of the Criminal Code are easier to apply in cases of self-defense.

Judges in making decisions must uphold the principle of legal certainty, but there is a principle of justice that cannot be ruled out. Judges can also use other auxiliary sciences to make it easier to find out the subjective elements of the perpetrator's self that do not look like the state of the soul or mind. Science that can be used is like psychology, this can be very useful for judges in terms of determining whether a person is experiencing severe mental shock or not in the defense that is being carried out.

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