

**CONSIDERATION OF THE JUDGE DECISION, CASE
NUMBER:373/PID.B/2020/PN.PDG
CONCERNING FORCED DEFENSE VIEWED FROM THE
ASPECT OF JUSTICE**

Dionisius Pani Gadi, Irawan Soerodjo

dionisiustata@gmail.com

Universitas Dr.Soetomo Surabaya

Abstract (size 12)

Perpetrators of Persecution Causing Death Are A Criminal Act As Stipulated In The Statutory Regulations. In writing, the author conducts research regarding a decision, namely Decision Number 373/Pid.B/2020/PN.Pdg where this decision has caused the death of the victim which was carried out by a security guard at Teluk Bayur Padang Port. This act was triggered by an attack that was previously carried out by the victim against the witness and the defendant, resulting in a forced defense that exceeded the limit or noodweer excess due to severe mental turmoil as stipulated in Article 49 paragraph (2) of the Criminal Code. The formulation of the problems discussed in this thesis are: 1) How is the judge, s consideration of the criminal act of persecution resulting in death due to forced defense that exceeds the limit (Noodweer Exces) based on Decision No. 373/Pid.B/2020/PN.Pdg? 2) How is the application of Article 49 paragraph (2) of the Criminal Code as an Excuse in criminal liability in Decision No.373/Pid.B/2020/PN.Pdg The research method used by the author is a normative juridical method. From the results of this study, the authors draw conclusions 1) The Basis for Considerations of Judges in Deciding Cases for the Crime of Persecution which causes death is not in accordance with the Laws and Regulations in Decision Number: 373/Pid.B/2020/PN Pdg based on 2 (two) types of considerations, namely juridical considerations and non-juridical considerations. Juridical considerations are judges; considerations based on the factors revealed in the trial and by law have been determined as matters that must be included in the trial. Non- juridical considerations are circumstances related to the defendant himself such as the defendant background in committing a crime, the impact of the defendants actions, and the defendant's condition. In imposing criminal sanctions in cases of maltreatment that causes death not in accordance with statutory regulations, judges should pay more attention to and consider the applicable statutory provisions by taking into account the condition of the accused and applying Article 49 paragraph (2) of the Criminal Code in that case. 2) The application of Article 49 paragraph (2) of the Criminal Code as a reason for forgiveness in criminal liability in decision Number 373/Pid.B/2020/PN.Pdg can be said to not exist, even though the defendant committed the crime because he felt his life was threatened which resulted in the defendant' s condition was messed up so he committed the crime.

Keywords: Reasons For Forgiveness, Noodweer Excess, Persecution Causing Death



Introduction

Every action must be in accordance with the rule of law without exception. As it is known that the law is a series of rules regarding the behavior of people as members of society, and the purpose of the law is to establish safety, happiness and order in society. To re-create balance in society, sanctions are imposed, namely administrative sanctions in the field of Constitutional Law, civil sanctions in the field of Civil Law, and criminal sanctions in the field of Criminal Law¹

Thus, in practice the implementation of applicable criminal law must also refers to the basic principles of existing criminal law, one of which is the principle of legality which is contained in Article 1 paragraph (1) of the Book of Laws Criminal (hereinafter referred to as the Criminal Code) “An act cannot be punished unless based on the strength of existing criminal law provisions”. According to The Criminal Code criminal acts can be subject to criminal sanctions if the act found to be against the law, it is impossible if someone is not found Unlawful elements in it can be punished. In the first book Chapter III of the Criminal Code regulates matters that abolish, reduce or aggravate punishment or also called starfuitingsgronden: grounds if impunity.

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¹ Jimly Asshiddiqie. 2006. Indonesian Constitution and Constitutionalism. Jakarta: Secretariat General and Registrar Office of the Constitutional Court of the Republic of Indonesia. Matter. 69.



Article 49 of the Criminal Code reads: “(1) Not convicted, whoever commits an act of defense is forced to oneself or for others, the honor of decency or one's own property or other people, because there is an attack or threat of attack that is very close at that time against the law; (2) forced defense that goes beyond limits, which is directly caused by great mental shock from the attack or the threat of it, no punished.”

According to Van Hamel, the meaning of Article 49 paragraph (1) is self-defense may be justified if the threat of attack is unlawful or of a criminal nature *wedderechtelijk*, the threats of such attacks are and/or are still being takes place, the attack received is harmful to body, honor or things that belong to themselves or to someone else. Sein was the defense that was made must also be appropriate and necessary, so that the defense can be justified. However several elements must be met in order to be considered a forced defense or not may be penalized. self is a right, so people who use this right is not punishable.

One of the cases that has occurred is related to not considering it Article 49 of the Criminal Code is the Padang District Court Decision with Case Number: 373/Pid.B/2020/PN. Rev. This decision seats the Defendant Effendi Putra and witness Eko Sulistyono (separate file) they are security at Teluk Bayur Port which on duty on Tuesday, 31 January 2019 at 19.00 iWIB until Wednesday, January 1, 2020 at 07.00 WIB. On Wednesday, January 1 2020 at 03.00 WIB The defendant and witness Eko patrolled the public jetty using bicycles motorbikes and they arrived at the public concrete dock. Then the Defendant came down and waiting at the guard post, while the witness Eko walked and patrolled alone. Then witness Eko saw Adek Firdaus's remains walking towards the pier, then witness Eko reprimanded the victim, and the victim argued that the victim only wanted to fish, then the witness Eko said that no fishing activities were allowed on the spot said and ordered the victim to get out of the wharf area, but the victim turned around and walked towards the exit of the harbour.

Then the witness Eko met the Defendant and asked if the Defendant saw the victim but the Defendant said he did not see the victim. After that witness Eko walking towards the PT mess. CSK, then the Defendant saw a flashlight as a sign from witness Eko, then when the Defendant arrived at the scene, the Defendant saw witness Eko



fought with the victim, then the defendant saw the victim take out a knife and suddenly the defendant ordered the witness Eko to step back, then the defendant pushed him away

the victim so that he leaned against the wall of the mess and twisted the victim's hand up to the knife held by the victim fell to the ground. At the moment the knife fell from the victim's hand, the defendant took the knife that had fallen on the ground, and it turned out that the victim took a machete out of his jacket and was about to swing the machete the knife towards the defendant, then the defendant spontaneously stabbed the knife in the leg (thigh) of the victim which caused the victim to fall face down, then the victim was able to rebel and the defendant also spontaneously stabbed the victim in the chest with a knife causing the victim to bleed profusely.

In this decision, the Panel of Judges did not accept pleadoos from the Counsel Law because according to the Panel of Judges this case cannot be subject to Article 49 of the Criminal Code namely the noodweer excess article. Instead, the Panel of Judges dropped Article 351 paragraph (3) of the Criminal Code namely persecution resulting in death without considering the circumstances inner heart of the defendant and did not consider Article 49 of the Criminal Code. Based on legal facts in Decision Number: 373/Pid.B/2020.PN. Pdg should the accused was acquitted of criminal punishment in accordance with the provisions contained in the Article 49 of the Criminal Code regarding self-defense (noodweer excesses) instead of Article 351 paragraph (3) Criminal Code regarding persecution resulting in death. Because according to the author, it was the urgent situation experienced by the Defendant that caused the Defendant commit a crime of noodweer excesses. This is also included in the turmoil of the soul what happened to the Defendant instantly because the Defendant felt threatened by the victim's actions.

Sub Title

1. Case Position



Starting on Wednesday 01 January 2020, the defendant and witness Eko Sulistiyono as Security in the public concrete jetty area of Teluk Bayur Padang Port conducts patrols from 19.00 WIB until 07.00 WIB by riding a bicycle together the motorbike driven by the defendant, after carrying out a rally at 19.30 WIB the defendant and witness Eko Sulistiyono started to patrol from wharf VII to public concrete pier, then at around 21.00 WIB they delivered the journal to every guard post.²

After carrying out all their duties the defendant and witness Eko Sulistiyono returned to the office, then at around 03.00 WIB the defendant and witness Eko Sulistiyono rode with them The motorcycle driven by the defendant returned to patrol from Pier VII when they reached the public jetty, when they arrived at the public jetty, the defendant got off his bicycle motorcycle and sat waiting at the PT CSK guard post, while witness Eko Sulistiyono was on patrol alone by walking towards the bulk cement pier (pier VII) then sitting inside guardhouse. About an hour later the witness Eko Sulistiyono saw the victim Adek Firdaus walking from the direction of the concrete pier towards the bulk cement pier, because he saw someone entered the wharf area, the witness Eko Sulistiyono came out of the guard post and approached the victim, then the witness Eko Sulistiyono reprimanded the victim and asked what he needed and the victim answered that he was going fishing, knowing that witness Eko Sulistiyono ordered the victim to leave the pier area because no activities were allowed fishing at that place, but the victim turned around and walked towards the exit port, the witness Eko Sulistiyono followed the victim from behind and when he passed the defendant who was sitting in the guard post of PT CSK.

The witness Eko Sulstiyono told the defendant that there was a person named Adek Firdaus trespassed into the port area and the witness asked the defendant what there saw the victim passing by at that place but the defendant said he did not see him, then the witness Eko Sulstiyono returned to look for the whereabouts of the

² Efendi Putra Bin Syafril, Number 373/Pid.B/2020/PN.Pdg, Supreme Court, October 20, 2020.



victim and saw the victim heading into the PT CSK mess area, the witness Eko Sulistiyono followed the victim to the PT CSK mess, when he arrived at the PT CSK mess, the witness found the victim going to the second floor of the mess said, the witness Eko Sulistiyono asked the defendant for help by means of notify by means of a signal directing the flashlight to the defendant, then the witness Eko Sulistiyono ordered the victim to get down and the victim got down while grumbling and issued harsh words to the witness Eko Sulistiyono. After the victim got down and was near the witness Eko Sulistiyono, the witness pulled the sleeve of the jacket that the victim was wearing but the victim resisted against witness Eko Sulistiyono by punching witness Eko, then witness Eko Sulistiyono retaliated by hitting the victim with the letter T stick he was holding, then the victim fended off the stick so that it slipped from the witness Eko Sulistiyono's hand, Then a fight broke out between witness Eko Sulistiyono and the victim, witness Eko Sulistiyono hit the victim's chest and arms with his hand.

When the fight was going on, the previous defendant already got the code a request for help from the witness Eko Sulistiyono, walking to the PT CSK mess, when the defendant near the scene of the fight between the witness Eko Sulistiyono and the victim, the defendant saw the victim holding a knife in his right hand, then the defendant ordered the witness Eko Sulistiyono to step back and approach the victim and then the defendant Grab bed the victim's right hand holding the knife and twisted it backward the victim's back so that the knife which the victim was holding fell to the ground and then the defendant pushed the victim's body so that it leaned against the wall of the PT CSK mess.

After the knife fell, the defendant bent down to pick up the knife When the defendant was already holding the knife the defendant looked at the victim and it turned out that the victim opened his jacket and took out a machete from under his jacket he was using it, the victim was about to swing the machete at the defendant, so the defendant intending to precede, before the victim thrust the machete into the defendant the defendant first thrust the knife held in his right hand into the left thigh the victim once and then the defendant stabbed the knife again in the chest victim



once and in the other direction from the victim's body several times until finally the victim fell to the ground in an open state. In the position of the case above, there are elements crime is torture that causes death. But in positive law too

get to know the term reasons for criminal abolition. The reasons for the abolition of punishment are those reasons allows people who commit acts that meet the formulation of an offense, no convicted. The reason for someone's irresponsibility lies outside the person it is regulated in the Criminal Code Articles 48 to 51, covering:

- a. Power to force (overmacht) in article 48.
- b. The defense is forced on article 49.
- c. Implement the law article 50.
- d. Carry out position orders article 51.45

According to the authors, the case experienced by the defendant was not intentional in committing a crime imposed by the panel of judges in article 351 paragraph 3, as the author sees a reflex action carried out by the defendant in defend yourself. Article 49 of the Criminal Code paragraph 2 also explains conditions severe mental turn oil due to an attack or threat of attack at the time defend your self.

2. Charges and Charges

The defendant in this case was brought to trial by the Public Prosecutor the indictment as follows:

- a. From the external and internal examination, it was concluded that the cause of death of the victim was heavy bleeding on the left chest due to a stab wound between the fourth sternum penetrating left lung and penetrate the heart sac to the left heart muscle and there blood in the heart sac caused by sharp trauma, then the defendant's act as subject to punishment under Article 338 in conjunction with Article 55 paragraph 1 of the Criminal Code. According to the author of the indictment filed by the public prosecutor on the actions of the defendant with article 338 of the Criminal Code is not quite right. Because in Article 338 of the Criminal Code it is an act that the defendant must fulfill the element of intent in committing a crime murder, and here the author sees from



the actions that the defendant did not included in the element of intent because the defendant's actions were a reflex response the defendant at the time of self-defense and was caused by a state of panic due to the attack from the victim immediately.

- b. From the external and internal examination, it was concluded that the cause of death of the victim was heavy bleeding in the left chest due to a stab wound between the fourth breastbone that penetrated left lung and penetrate the heart sac to the left heart muscle and there is blood in the heart sac (heart failure) caused by sharp trauma. Then dethe accused as stipulated and subject to criminal sanctions according to Article 170 paragraph (2) 3 of the Criminal Code.

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3. Analysis of Decisions and Considerations of Judges
 - a. Free Verdict

The guilt charged against the defendant is absolutely not proven. All tools evidence presented at trial in the form of witness statements, expert statements, letters and the instructions as well as the testimony of the



accused, could not prove the guilt of the accused charged by the Public Prosecutor. In fact the judge considered that the evidence of the guilt of the accused did not fulfill minimum limit of proof. For example, the evidence presented at trial consists of only one witness (*unus testis nulus testis*). The acquittal decision can also be based on such an appropriate assessment with the evidentiary system adopted in Article 183 of the Criminal Procedure Code.

b. Release Verdict

The decision of the court/judge that rendered the decision is released from all charges, if the actions of the accused/perpetrator (as an objective element) are not criminal acts/actions

crime (even though the act has been proven to have been committed by the defendant). thus the verdict This release concerns actions as an objective element of a criminal act in review from a proof standpoint. Thus the decision to release from all lawsuits occurred if the judge is of the opinion:

1. In this case, what has been charged against the defendant is indeed sufficiently proven legally both in terms of evidence according to law and in terms of limits the minimum proof as regulated in article 183 of the Criminal Procedure Code is like that on.
2. However, the proven act is not a crime. Strictly speaking the alleged and proven acts are not included in the scope criminal law, perhaps perhaps only in the form of quasi criminal acts, as it were investigators and public prosecutors see it as a criminal act. However may fall within the scope of civil law or administrative law.

From the description above, it can be concluded as follows that:

- a. The court/judge in making his decision not to convict or imposing a sentence on the perpetrator is by sounding an acquittal or judgment free from all lawsuits, as stipulated in the Criminal Procedure Code.



- b. However, based on the considerations to make an acquittal or an acquittal decision of all the lawsuits, regardless of the reasons that can abolish punishment as stipulated in the Criminal Code.
- c. Thus the sound of the decision regulated in the Criminal Procedure Code is criminal law formal, not in sync with the reason for the elimination of crimes stipulated in the Criminal Code as material criminal law.

Author analysis

The defendant was charged with committing a crime in the indictment of the subsidiary charge and alternative charges. First, in the primary indictment the public prosecutor uses Article 340 of the Indonesian Criminal Code, namely the alleged premeditated murder whose elements are as follows: a. Elements of Who; b. Elements on purpose taking other people's lives. Second, the subsidiary indictment as regulated in Article 338 The Criminal Code, the elements of which are: a. Whose element; b. Elements deliberately take the lives of others. Third, the first indictment is more subsidiary, as regulated in Article 351 Paragraph (3) of the Criminal Code, the elements of which are: a.

Whoever's element; b. The element of persecution that causes death. At the Padang District Court case number 373/PID.B/2020/PN.PDG with consideration that the element of "intention/intention to kill another person" must be evidenced by several punctures and other initial actions. No proven elements "intention/deliberation to kill other people", then the indictment regarding murder (Article 338 of the Criminal Code) is not proven. Further details in the defendant's primary indictment was charged with Article 340 of the Criminal Code with the consideration that the element "intentionally and with plan beforehand to kill other people's lives" In the judge's consideration stating the crime charged against the defendant in the primary and subsidiary charges with charges of murder and premeditated murder not proven legally and convincingly, and acquitted the defendant from the charge.



In the end the judge stated that the defendant had been legally and convincingly proven guilty of committing the crime of "persecution resulting in the death of a person" (Article 351 paragraph (3) of the Criminal Code).

In the case above, legal analysis can be carried out as follows:

In the criminal act of murder, the element of "intentional" is a goal so that people others die. "intentional" as an element that is expressly stated in the formulation of the act Crime is a core offense (bestdeel delict), so it will determine the type of action crime, whether as a crime of murder or whether as a crime of persecution which resulted in death. The intent of the legislators in formulating criminal acts in the form of the element of "intentional" in the formulation of the crime of persecution is very different.

In the crime of persecution, what is intentional or purposeful is feeling hurt the victim. The death of others is the result of the persecution, not the goal or the intention of the maker. Deliberation, and causality in factual circumstances play a rol in distinguishing legal norms that are violated, namely the difference between criminal acts murder, criminal act of premeditated murder and criminal act persecution resulting in death.

The purpose of forming legal norms is in Article 338 of the Criminal Code, 340 of the Criminal Code and Article 351 paragraph (3) of the Criminal Code is different, so it is necessary to study the relationship between elements one and other elements in a formulation of a crime. By examining the relationship thus it will be known the differences in legal norms referred to by the former Constitution. In the end, the criminal responsibility of the maker can be determined. Thus, the legal considerations of the district court have been appropriate considering the legal interests to be protected and the purpose for which they are formed legal norms in law.

Thus, there is compatibility between the legal considerations as above with the decision handed down by the PN judge mentioned above. So thus, the judge has been consistent as well as in legal considerations make a decision so that it can be said that the decision above is synchronous.



Conclusion

1. From the research and descriptions in the previous chapters, regarding the examples of cases that have been it was decided by the Padang District Court, especially in terms of applying the reasons for erasing crime as mentioned above, according to the authors of the PN itself as an institution courts in the judicial environment are not always able to produce decisions that can used as a guideline (jurisprudence) for the court as a legal consideration in issue decisions to resolve disputes between parties litigation, also produce statements that justify decisions with purpose for how the judges arrived at their conclusion.
2. If one pays attention to the PN's decision above, it can be seen that the PN in its decision did not pay attention to the doctrine, especially the doctrine regarding the reasons for the abolition of punishment. According to doctrine, the reasons for the abolition of the penalty are divided into two, namely first, the reasons for the abolition of the penalty which eliminates/removes the unlawful nature of the act as an excuse justification. As justification reasons, the verdict reads that the accused was acquitted. This decision applies to all people (defendant) who took part in committing the act the crime. Second, the reasons for the elimination of crimes that eliminate/remove the offender's guilt as an excuse. On the contrary, namely as a reason forgiving then The verdict stated that the defendant was acquitted of all lawsuits. This verdict only applies to the person doing it himself.

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