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Legal Implications of Stopping the Investigation Because the Forced Defense (Noodweer) and Emergency Defense Exceed the Limits (Noodweer Excesses)

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Abstract

This article examines the legal implications of stopping an investigation because the forced defense (noodweer) and emergency defense exceed the limits (noodweer excesses) of the legal framework in Indonesia. This is because there are three cases with different handling. This type of research is normative juridical research with a statutory approach and a case approach. The results of the study indicate that the legal implications of stopping the investigation on grounds of forced defense (noodweer) and emergency defense beyond the limit (noodweer excesses) are the non-realization of the value of legal certainty and the principle of legality which is the basis of criminal law, including material criminal law (criminal law book/KUHP) and criminal law formal (criminal procedure law/KUHAP).

Keywords: *Legal Implication; Stopping The Investigation; Noodweer; Noodweer Excesses*

Introduction

Criminal procedural law aims so that suspects or defendants can understand their rights and obligations and can improve the attitude of law enforcement implementers by their respective functions and authorities when carrying out their duties (Samosir, C. D., 2018) Duties and functions in criminal procedural law through tools Its completeness is to seek and find facts according to the truth, conduct appropriate legal prosecutions, apply the law fairly, and implement decisions fairly (Poernomo, B., 1988).

Thus, to determine a person as a suspect, the defendant to the convict in a criminal act must comply with the criminal procedure law. The determination of the suspect goes through a process of investigation and investigation. The investigation is a series of actions of investigators to seek and find an event that is suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method regulated in the Criminal Procedure Code. While the investigation is a series of actions of investigators in terms of and according to the method regulated in the Criminal Procedure Code to seek and collect evidence with which evidence makes clear about the crime that occurred and to find the suspect.

Law enforcement officials have an important role in the context of criminal law enforcement. This means that if law enforcement officers are not professional, then law enforcement will be haphazard (Winarno, N. B., 2011). A good rule of law without a good and professional legal apparatus certainly has an impact on law enforcement, and vice versa, a good law enforcement officer with a bad law has a bad impact on law enforcement.

The purpose of the investigation and investigation process itself is to find out what events occurred to find the suspect suspected of committing the crime (Sanjaya, W., 2018). Investigative action by investigators by collecting evidence according to the method determined by the Criminal Procedure Code begins based on a report or complaint submitted by the reporter or complaint to the investigator. The series of actions of investigators in the process of investigating an event that is reasonably suspected to be a criminal act and then it turns out that sufficient evidence can be found, then the investigative action can be continued by determining the suspect as the perpetrator of the crime.

The police in their duties as investigators and investigators are an important part of the Indonesian criminal justice system which has extraordinary discretionary power (Safrina, A., Susilowati, V. M. H., & Ulfah, M., 2017). The police conduct investigations and are subject to their discretion in considering what steps the investigator will take in a short time when faced with a criminal act for the first time (Ramlah, 2021). They are the ones who guard the "justice" gate and decide which reports or complaints (of criminal acts) will be passed for further investigation and if they are deemed complete the files will be forwarded to the Prosecutor (P-19 and P-21) or terminated (P-14).

The basis of the police in stopping the investigation is regulated in Article 109 paragraph (2) of the Criminal Procedure Code which states that:

> If the investigator stops the investigation because there is not enough evidence or the incident does not constitute a criminal act or the investigation is terminated for the sake of law, the investigator shall notify the public prosecutor, the suspect, or his family.

As stipulated in Article 109 (2) of the Criminal Procedure Code and then a further paragraph in Article 76 (1) of Perkap No. 14 of 2012 the reasons for stopping the investigation have been regulated. Because Indonesia is a state of law and under the principles of law known as legality, these actions must be written *(lex scripta)*, clear and definite *(lex certa)*, and must be strictly binding/not multiple interpretations *(lex stricta).* However, in this case, the reasons for the investigation that have been regulated in Article 109 paragraph (2) of the Criminal Procedure Code have been expanded.

The case of an emergency defense that went beyond *(noodweer exces)* was carried out by Muhamad Irfan Bahri, resulting in the death of the perpetrator of the theft with violence ("beheading") (Merdeka.com, 2018). Muhamad Irfan Bahri was initially named a suspect, but the next day he was released and received an award. From this case, it can be observed that an investigative investigation can be carried out by the Police for the reasons specified in Article 109 paragraph (2) of the Criminal Procedure Code, in this case, an emergency defense exceeding the limit *(noodweer excesses)*. Whereas the reason for the emergency defense exceeding the limit is not stated in Article 109 paragraph (2) of the Criminal Procedure Code. Therefore, the author sees a vague norm in these provisions.

In addition to emergency defense beyond the limit *(noodweer excess)* the law regulates emergency defense *(noodweer). Noodweer* is regulated in Article 49 paragraph (1) of the Criminal Code and emergency defense that exceeds the limit *(noodweer excess)* is regulated in Article 49 paragraph (2) of the Criminal Code. This provision is different in terms of the abolition of the criminal, if the emergency defense *(noodweer)* is the justification, then the emergency defense goes beyond the limits of forgiving reasons because this type of defense has a great mental shock factor (Setiawan, P. J., 2020). This article examines the legal implications of stopping an investigation because the forced defense

(noodweer) and emergency defense exceed the limits *(noodweer excesses)* of the legal framework in Indonesia.

Methods

This research is a type of normative legal research. Normative research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced (Wibowo, A. M, Sukarmi, S. & Hamidah, S., 2019). Analysis of legal materials is a method of examining problem areas to find the relationship between one element and other related elements so that the composition and interrelation of their meanings can be known (Hadikusuma, H., 2003). After the legal materials are grouped, then an analysis is carried out using qualitative descriptive analysis techniques (Seojono & Abdurrahman, 2003). The writing of this paper includes normative legal research, namely legal research conducted by examining legal materials (library studies) or secondary data. According to Soerjono Soekanto and Sri Mamudji, normative legal research includes research on legal principles, research on legal systematics, research on levels of vertical and horizontal synchronization, legal comparisons, and legal history (Soekanto, S. & Mamudji, S., 1995).

Research Result and Discussion

The robbery case that occurred on Wednesday, May 23, 2018, at night, when the victim was taking selfies on the Summarecon Bekasi flyover suddenly came two motorbike riders who rode up to the victim, then immediately pointed a sickle that the perpetrator brought to the two victims. . After that, the perpetrator broke the first victim's cellphone and got it. When slapping the second victim who turned out to be good at martial arts, the perpetrator slashed his sickle at the second victim, but the victim was repelled by the victim and the perpetrator was kicked to the ground, so the situation turned around because the victim took the sickle and then immediately slashed the perpetrator with his right hand.

In the end, the perpetrator gave up and returned the victim's cellphone and then fled, but one of the perpetrators who fought the victim who was good at self-defense was bleeding and the perpetrator died. Then after the investigation process was carried out, the victim of the robber who killed the robber who was initially a suspect was later released and instead received an award for his courage to fight the robber.

The Bekasi Metro Police Chief Kombes Pol Indarto explained that there were two different cases in this one incident. First, Aric and Indra's attempts to rob them (now they have been arrested and made suspects). Information from a team of academic experts is needed to recommend whether MIB's actions violate the law or not. They need to make sure that MIB's slashing of Aric is a "forced defense" or not. If it includes a forced defense, the police will immediately release him by Article 49 of the Criminal Code. The imposition of status as a suspect is motivated by MIB actions that kill people according to Article 338 of the Criminal Code which states that if it results in death, it is threatened with a maximum imprisonment of seven years. Until now MIB has been languishing in the Mapolresta Bekasi City prison while waiting for the results of the Police consultation with the expert team (Liputan6, 2018).

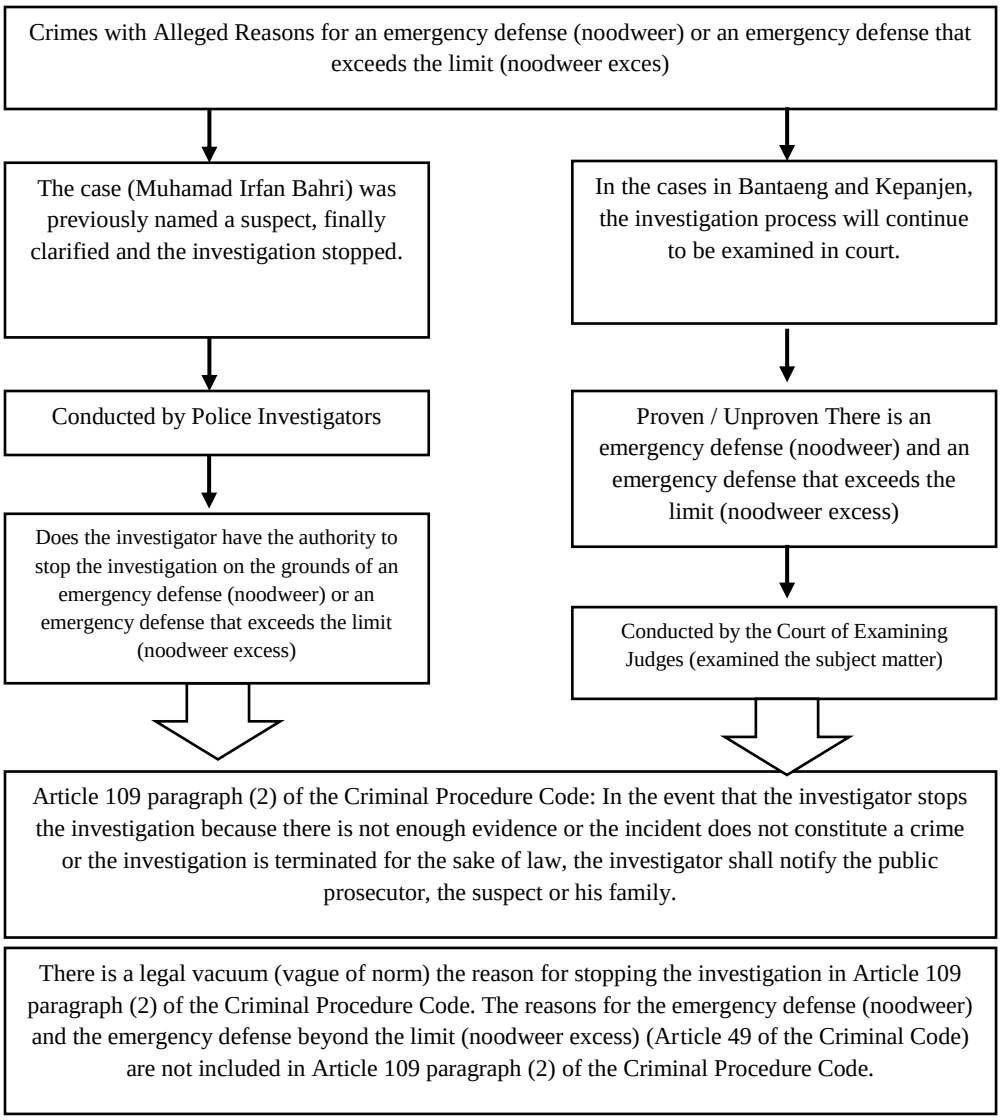

Figure 1. Legal Problems (Legal Problems) Termination of Investigation Based on Reasons for emergency defense (noodweer) and emergency defense beyond the limit (noodweer exces)

George P. Fletcher in Rethinking Criminal Law suggests that there are three theories related to the reasons for eliminating criminals. First, the theory of pointless punishment is translated as a theory of unnecessary punishment. This theory is based on the utilitarian theory of excuse or the theory of the use of forgiving reasons as part of the utilitarian theory of punishment. According to this theory, there is no point in imposing a sentence on a mad person or a mentally ill person. Fletcher said, "if punishment is pointless in a particular class of cases, inflicts pain without a. commensurate benefit and therefore should not be permitted (Hiariej, E.O.S, 2016)."

There is no point in punishing people who do not realize what they have done. Perpetrators who are insane or mentally ill or disabled in growth are not able to realize their actions and cannot prevent the occurrence of prohibited acts so that the imposition of a crime on such a person will not provide the slightest benefit, it will hurt the sense of justice of the community. Second, the theory of lessers evils or translated as a theory of the ranking of lesser crimes. This theory is a theory of justification, therefore this theory is the reason for the abolition of crimes that come from outside the perpetrator or *uitwendig* (Hiariej, EOS, 2016). Here the perpetrator must choose one of two acts that both deviate from the rules. The chosen action is of course an act with a lighter crime rating.

There are two reasons an act can be justified according to the theory of lessers evils, firstly, even though the act violates the rules, the act must be done to secure the greater interest. Strictly speaking, the level of danger that must be avoided is greater than just a deviation from a rule. Second, actions that violate these rules are only the only way that can be done quickly and easily to avoid danger or threats that will arise. This theory considers the point of view of the "more or less" or "profit-and-loss" rating of the impact of a criminal act committed. If the act is carried out to prioritize a larger interest or a better or more profitable interest, then the act that violates the rules can be justified (Hamdan, H.M., 2012).

Third, the theory of necessary defense. In the theory of necessary defense, there is also a theory of self-defense or a theory of self-defense. Whether this theory is a justification theory or a forgiving reasoning theory, there seems to be no agreement among criminal law experts. Sometimes, the theory of necessary defense can eliminate the unlawful nature of the act. In such a context, then of course the theory of necessity is included in the theory of justification. On the other hand, if the theory of necessary can eliminate the irreproachability of the perpetrator, then the theory of necessary is classified in the theory of forgiving reason.

In the theory of necessity, according to Fletcher, four things have always been a fundamental debate. The first relates to the level of use of force that is permitted in certain situations. That is, the power used must be proportional to the attack. Second, the obligation to avoid. In this case, if you can avoid the attack, then such a path must be taken. Third, the right of third parties to intervene. This means that third parties can block or stop an attack. Fourth, allow the fight to free themselves from the attack (Fletcher, G. P., 2000). Necessitas facit licitium quod aka non est licitum. That is, circumstances are forced to allow what was previously prohibited by law (Hiariej, E. O. S., 2016).

The theory of the reason for the abolition of the crime put forward by George P. Fletcher is used by the author to provide an analysis of whether or not a forced defense *(noodweer)* and emergency defense exceed the limit *(noodweer exces)* as a reason for stopping an investigation, the legal implications of stopping an investigation on the grounds of a forced defense *(noodweer).* and emergency defenses *(noodweer exces),* and reconstruction of reasons for stopping investigations based on forced pleas *(noodweer)* and emergency defenses beyond limits *(noodweer exces)* in the future.

In several descriptions in the previous discussion, the investigator's attribution authority related to the termination of an investigation by issuing SP3 is for reasons determined by law. Covering insufficient evidence, the incident does not constitute a crime; and by law (suspect dies, expires, the complaint is revoked (specifically for complaints), and nebis in idem). Therefore, based on the theory of authority, in principle, because it involves the subject matter of a criminal case, which determines the existence of a criminal element as well as the reason for the forced defense *(noodweer)* and emergency defense beyond the limit *(noodweer excess)* it is not within the scope of the investigator's authority, but the panel of judges who examines the case. the.

According to Gustav Radbruch, justice, legal certainty, and expediency are three terms that are often used, but their essence is not necessarily understood or their meaning agreed upon. According to him, at first glance justice and legal certainty seem contradictory, but that may not be the case. The word justice can be an analogous term, so that the terms procedural justice, legalist justice, commutative justice, distributive justice, vindictive justice, creative justice, substantive justice, and so on are presented.

Procedural justice, as termed by Nonet and Selznick to refer to one of the indicators of the type of autonomous law, for example, turns out after closer scrutiny leads to legal certainty for the sake of upholding the rule of law. So, in this context, justice, and legal certainty are not opposites, but instead go hand in hand (Sidharta, 2010). Gustav Radbruch's view is generally interpreted that legal certainty does not always have to be given priority for its fulfillment in every positive legal system, as if legal certainty must exist first, then justice and benefit. Gustav Radbruch then argues that the three legal objectives are equal (Sidharta, 2010).

According to him, a good law is when the law contains the values of justice, legal certainty, and usefulness. That is, even though the three are basic legal values, each value has different demands from one another so that all three have the potential to conflict with each other and cause tension between the three values.

Therefore, the law as the bearer of the value of justice, according to Radbruch, can be a measure of whether or not the legal system is fair. Therefore, the value of justice is also the basis of the law as law. Thus, justice has both a normative and constitutive nature for law. In this case, justice becomes the moral foundation of the law and at the same time the benchmark for a positive legal system. Therefore, to justice, positive law stems from. While constitutive, because justice must be an absolute element for the law. That is, law without justice is a rule that does not deserve to be law.

In realizing the legal objectives, Gustav Radbruch stated that it is necessary to use the priority principle of the three basic values which are the objectives of the law. This is because, in reality, legal justice often clashes with the benefits and legal certainty and vice versa. Among the three basic values of the purpose of the law, in the event of a conflict, someone must be sacrificed. For this reason, the principle of priority used by Gustav Radbruch must be implemented in the first order, Legal Justice, secondly Legal Benefits, and thirdly Legal Certainty. With the order of priority as stated above, the legal system can avoid internal conflicts.

Historically, according to Gustav Radbruch, the goal of certainty was at the top of the list among other goals. However, after seeing the fact that with his theory Germany under Nazi rule legalized inhumane practices during World War II by making laws that legalized the practices of war atrocities at that time, Radbruch finally corrected the above theory by placing the goal of justice above other legal goals. Justice is indeed the first and foremost goal of the law because this is by the nature or ontology of the law itself. That the law was made to create order through fair regulations, namely the regulation of conflicting interests in a balanced manner so that everyone gets as much as possible what is his share. It can be said throughout history that legal philosophy has always given a special place to justice as a legal goal (Fanani, A. Z., 2011).

According to Satjipto Rahardjo, legal certainty has four meanings. First, that the law is positive, meaning that it is legislation *(Gsetzliches Recht)*. Second, that the law is based on facts *(Tatsachen),* not a formulation of an assessment that will later be made by the judge, such as "goodwill", "politeness". Third, that the fact must be formulated clearly to avoid mistakes in meaning, as well as being easy to implement. Fourth, positive law should not be changed frequently (Rahardjo, S., 2006). From these four meanings, it can be seen that the law must be formulated in a clear way to avoid mistakes in meaning, at the same time the law is also easy to implement.

For this reason, legal certainty must be understood as a condition, where the law is applied with clear certainty to clear subjects and objects. The law provides certainty to every citizen who undergoes legal processes and sanctions when they violate or violate the law. In addition, legal certainty must also be accompanied by a legal process that applies equally to anyone who violates the law. This meaning is relevant in understanding the provisions of Article 28D paragraph (1) of the 1945 Constitution (Yuliandri, 2015).

Likewise, in the implementation of criminal justice, the regulation of criminal procedural law must not give rise to multiple interpretations of the regulation of investigative actions in the concrete law enforcement process so that there must be clear certainty as a characteristic of procedural law which must be in writing *(lex scripta)*, contains clear provisions and certainly *(lex certa)*, and must be interpreted strictly *(lex stricta).* Especially regarding the problem of this research regarding the vagus norm in Article 109 paragraph (2) of the Criminal Procedure Code.

The blurring was because apart from the reasons specified in the article, it turned out that there was a reason Article 49 of the Criminal Code was used as the basis for stopping the investigation. Therefore, the construction of a termination of an investigation based on the grounds of an emergency defense *(noodweer)* or an emergency defense exceeding the limit *(noodweer excess)* in the existing laws and regulations *(ius constitutum)* cannot be carried out. However, because in practice there is legal disloyalty, the future construction needs to be changed in such a way as to provide legal certainty, the authority to determine whether there is an emergency defense *(noodweer)* or an emergency defense beyond the limit *(noodweer excess)* is under the authority of the police investigator or within the jurisdiction of the panel of judges. case examiner.

Conclusion

The legal implication of stopping the investigation on grounds of forced defense *(noodweer)* and emergency defense beyond the limit *(noodweer excess)* is the non-realization of the value of legal certainty and the principle of legality which forms the basis of criminal law, including material criminal law (criminal law book/KUHP) and criminal law formal (criminal procedure law/KUHAP). Thus, resulting in different implementations in handling criminal cases from one another. In case I, the determination of the termination of the investigation was based on the reasons for the forced defense *(noodweer)* and the emergency defense beyond the limit *(noodweer excesses).* While case II and case III determine the existence of a forced defense *(noodweer)* and emergency defense that exceeds the limit *(noodweer excess)* or is not examined, tried, and decided by the panel of judges who examines the subject matter of the case.

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