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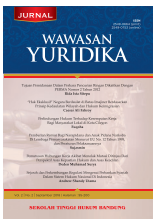

Restorative Justice Approach towards Termination Investigation of *Begal* Victims Based on Noodweer Action and Noodweer Exes

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Abstract
In cases of involuntary manslaughters in self-defense by a victim of violent armed robberies (*begal*), investigators have often been reluctant to implement Article 49 of the Indonesian Criminal *Code* as a legal ground to terminate criminal investigations. The study aimed to analyze the termination of investigations based on *noodweer* and *noodweerexces* through a restorative justice approach. The study was descriptive and qualitative, employing a descriptive method. Data were collected from relevant literature and were analyzed quantitatively. The results showed that in the cases of involuntary manslaughter in self-defense by victims of violent armed robbery, the investigators had the authority to terminate the investigation and implement a restorative justice approach instead. It was applicable when the victims' self-defense was void of *mens rea*, compelled by force, or done in defense of his or another person's physical or sexual integrity or property against an immediate, unlawful attack. The restorative justice approach may involve the victims and/or their families, the perpetrators' families, religious leaders, community leaders, traditional leaders, youth leaders, and other relevant stakeholders and is aimed solely for the sake of justice, legal usefulness, and legal certainty.

Keywords:
Begal; Investigation; Restorative Justice.

A. INTRODUCTION

There have been widespread phenomena of "no viral no justice" and the hashtag "*percuma lapor polisi*" #PercumaLaporPolisi (reporting to the police is useless) on various social media platforms. They are directly aimed at the National Police of the Republic of Indonesia (hereafter, Polri or the police) and clearly show a growing public dissatisfaction towards Polri's performance. The general public seemed to believe it should take public outcries to get the police to start seriously handling criminal cases, especially those that attract public attention transparently and fairly. It starkly contrasted with the intended Polri's transformation towards a predictive, responsible, transparent, and fair Polri. Moreover, since responsible and transparent justice is inseparable from a predictive policing approach, all

members of Polri are expected to do their jobs quickly, precisely, responsively, humanely, transparently, responsibly, and fairly. Responding to this, Chief of Polri (hereafter Kapolri), General Listyo Sigit Prabowo, at the Itwasum Polri 2021 Analysis and Evaluation Coordination Meeting, admitted that there had been a growing albeit misleading belief among the public, as evident in the social media, that it should take public outcries (virality) in social media to get the police to solve a criminal case of public concern seriously and objectively.

It was reported on Kompas.com that the police did not seriously handle several criminal case reports until they went viral on social media. These, for example, include the sexual harassment of a female employee of the Indonesia Broadcasting Commission, the rape of 3 children in North Luwu, and the suicide victim in East Java whom her boyfriend fatally told to do abortions twice. It was also reported that a police member in the Pulogadung district police unprofessionally refused to take a criminal case report.[1] Moreover, there have also been cases of involuntary manslaughter in defense by victims of violent armed robbery (known locally as *begal* to refer to the crime as well as the perpetrator(s), hereafter *begal*) in which the victims (hereafter a *begal* victim or *begal* victims) were criminally charged with an involuntary manslaughter charge. Such cases (hereafter, *begal* victim cases) have inevitably outraged the public. Among such cases were a *begal* victim in Medan who was criminally charged for fatally attacking the *begal* and a juvenile in Malang who, in his self-defense, killed an attacking *begal*.[2] Another example was a man named Amaq Sinta from Central Lombok who defended himself and his motorcycle when a *begal* was trying to seize his motorcycle. Amaq, in his self-defense, managed to overcome and kill the *begal* but ended up as a suspect in an involuntary manslaughter case.[3] The case was handled by the Central Police of West Nusa Tenggara District Police based on Police Report Number: LP/B/137/IV/2022/SPKT/Polres Tengah Polda NTB. Thankfully, not all *begal* victim cases jeopardized the victims' lives. In a recent incident, two brave juveniles trained in martial arts managed to thwart a *begal*

[1] Rahel Narda Chaterine, "Soal Fenomena 'No Viral No Justice', Polri Pastikan yang Ditangani Bukan Hanya Kasus Viral," *nasional.kompas.com*, 20 Desember 2021, https://nasional.kompas.com/read/2021/12/20/17502061/soal-fenomena-no-viral-no-justice-polri-pastikan-yang-ditangani-bukan-hanya, accessed 25 July 2022.

[2] Nurhadi, "Sederet Kasus Korban Begal Jadi Tersangka," *nasional.tempo.co*, 15 April 2022, https://nasional.tempo.co/read/1582411/sederet-kasus-korban-;al-jadi-tersangka, accessed 27 July 2022.

[3] Rita Ayuningtyas, "7 Fakta Kasus Korban Begal Jadi Tersangka di NTB yang Akhirnya Dihentikan Polisi," *liputan6.com*, 17 April 2022, https://www.liputan6.com/news/read/4940694/7-fakta-kasus-korban-begal-jadi-tersangka-di-ntb-yang-akhirnya-dihentikan-polisi, accessed 27 July 2022.

attempt by two *begals* and fatally wound one of the *begals* in Bekasi.[4] They did not become suspects on a manslaughter charge because the police stated they were acting in self-defense.

Begal is a violent, fear-arousing crime. It is done by forcibly depriving and robbing the victims of their rights and is usually accompanied by armed violence using weapons or firearms. In many cases, the *begals* murdered their victims to seize whatever the victim had easily.[5] Constitutionally speaking, this is a grave violation of Article 28G paragraph (1) of the 1945 constitution. The article guarantees that everyone is entitled to the protection of his/her own person, family, honor, dignity, and property under his/her control, as well as be entitled to feel secure and be entitled to protection against the threat of fear to do or not to do something being his/her fundamental right. The defense of these rights is constitutionally protected so that the doers cannot be wrongfully punished even though their actions may involve an unlawful act under normal circumstances. This is because, in criminal law theory, such actions may constitute justifications and excuses that can serve as the grounds for excluding criminal responsibility. Examples of such justification and excuses are, as stated in the Indonesian Criminal Code (KUHP) Article 49, paragraph (1) and (2), self-defense (hereafter, *noodweer*) and excessive self-defense (hereafter, *noodweerexces*).

However, in the *begal* victim cases, investigators have often designated the *begal* victims as suspects. They failed to consider Article 49 of KUHP regarding lawful justifications and excuses that can serve as grounds for criminal responsibility exclusion. Investigators often relied instead on Article 109 paragraph (2) of the Indonesian Criminal Code Procedure (KUHAP), which states that investigators may terminate an investigation because of "…the absence of sufficient proof or the event does not constitute a criminal act….". Moreover, an investigation may also be terminated for the sake of the law, as stated in paragraph (2) of the Article. It is applicable in cases of prohibition of double jeopardy (*ne bis in idem*, paragraph 76 of KUHP), the death of suspects or the accused (Article 77 of KUHP), or the lapse of right to prosecute due to statute of limitations (Article 78 of KUHP).

[4] Mohammad Rifan Aditya, "Remaja Korban Begal di Flyover Summarecon Tak Lagi Jadi Tersangka, Kapolresta Beri Penghargaan," *style.tribunnews.com*, 31 Mei 2018, https://style.tribunnews.com/2018/05/31/remaja-korban-begal-di-flyover-summarecon-tak-lagi-jadi-tersangka-kapolresta-beri-penghargaan, accessed 2 August 2022.

[5] Agustini Andriani and Ari Bakti Windi Aji, "Pertanggungjawaban Pidana Bagi Korban Kejahatan Begal yang Melakukan Pembelaan Diri Secara Darurat," *Ta'zir: Jurnal Hukum Pidana* 6, No. 1 (2022): 1-13, p. 2-3.

Such failure on the part of investigators to apply the related Articles of KUHP clearly showed that they did not take into consideration the *mens rea* principle (*actus non facit reum nisi mens sit rea*) [6], the principle of the simple, fast, low-cost criminal justice system, and relevant legal theories. With reference to relevant legal theories, one prominent example of this is the progressive law approach, proposed by Satjipto Rahardjo, which is aimed at protecting the people and leading toward pro-people and pro-justice legal ideals and laws.[7] In line with this, according to Hans Kelsen, the essence of justice is the alignment to the norms that live and develop in a society.[8] Given this, the police's failure to terminate the criminal investigation of the *begal* victim cases, as evident in the cases mentioned above, will have a harmful impact on the reputation of Polri.

A previous study on the topic was conducted by Laha Regina Patricia, who concluded that in *begal* victim cases, it is crucial to demonstrate during a criminal proceeding, using legal evidence materials as regulated in Article 184 of KUHAP, that there was indeed a *noodweer*.[9] The current study differs from Patricia's study in that the study focused on the cessation of investigation of *begal* victim cases based not on Article 49 paragraphs (1) and (2) of KUHP but instead on Article 30 of Kapolri's regulation Number 6 of 2019 concerning Criminal Investigation Incorporating the Principle of *Mens Rea*, and the Theory of Justice, Legal Usefulness, and Legal Certainty. In addition, the study also focused on the cessation of investigation of the *begal* victim cases based on a restorative justice approach. The approach would involve relevant local community elements. It is in line with the *contante justitie* principle, namely the principle of a quick, simple, and low-cost trial.[10] Based on stated problems, the study aimed to analyse the cessation of investigation of *begal* victim cases based on *noodweer* and *noodweerexces* and a restorative justice approach on the grounds of *noodweer* and *noodweerexces.*

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6 Barda Nawawi Arief, *Hukum Pidana* (Jakarta: RajaGrafindo Persada, 2014), p. 36.

7 Satjipto Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), p. 1-6.

8 Hans Kelsen in H. Salim HS. and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi dan Tesis* (Jakarta: RajaGrafindo Persada, 2015), p. 30.

9 Lahe Regina Patricia, "Pembuktian Noodweer (Pembelaan Terpaksa) dalam Tindak Pidana Pembunuhan Menurut Pasal 49 Ayat (1) Kitab Undang-Undang Hukum Pidana," *Lex Privatum* 5, No. 3 (2017): 45-52, p. 45.

10 Budi Rau, "Kajian Hukum Efektivitas Penerapan (Asas Constante Justitie) Asas Peradilan Cepat, Sederhana, dan Biaya Ringan," *Lex Crimen* VI, No. 6 (2017): 140-145,p. 144.

B. RESEARCH METHODS

The study was a descriptive and normative juridical research using relevant secondary data in the forms of primary legal materials, including laws and regulations such as the 1945 Constitution, Indonesian Penal Code (KUHP), Indonesian Code of Criminal Procedure (KUHAP), Kapolri Regulation Number 8 of 2021 concerning The Handling of Crimes based on Restorative Justice Approach. In addition, the study used secondary legal materials, namely books, journals, research results, Articles, websites, and other relevant sources such as law theories, law principles, and expert opinions. The data were collected through literature study techniques by reviewing and analyzing relevant literature and were analyzed qualitatively.

C. RESULTS AND DISCUSSION

1. Termination of Begal Victim Cases on the Grounds of Noodweer and Noodweerexces

In criminal law, convicting someone takes more than just an unlawful act. It has to be proven categorically that they were criminally liable for the commission of the unlawful acts. Someone can not be criminally incriminated for a commission of an act that is (1) not unlawful or (2) unlawful but for which they are not criminally liable.[11]

In criminal law theory, there are two main teachings, namely dualism, and monoism. In dualism teaching, an act should cumulatively meet the criminal elements (offense), culpability, and liability to qualify as a criminal offense. On the other hand, the monoism teaching only requires the criminal elements (offense) and liability to qualify an act as a crime without regard for culpability. Based on the dualism teaching, Moeljatno stated that to claim someone guilty of a crime, three elements of a criminal offense must be cumulatively met, namely commission of an unlawful act, liability, and culpability, be it intentional or unintentional and without any justifications and excuses that can serve as legal grounds for excluding criminal responsibility.[12] The cumulative fulfillment of the elements serves as a legal ground for convicting someone of a crime. The failure to meet the elements cumulatively however will result in an offense being dismissed.

According to Moeljatno, some criminal responsibility may be excluded by means of lawful justifications (*rechtvaardinginsgronden*) and excuses (*schulduitsluiingsgroden*)

[11] Sofjan Sastrawidjaja, *Hukum Pidana I* (Bandung: Armico, 1990), p. 223.
[12] Moeljatno in Agus Surono, *Pertanggungjawaban Pidana Rumah Sakit* (Jakarta: UAI Press-Universitas Al Azhar, 2016), p. 20.

or (verontschuldingsgroden). Lawful justification is a legal ground that removes the unlawful element from a criminal offense rendering it lawful and, as a result, not subject to prosecution. An excuse is a legal ground that removes the culpability element of a criminal offense on the part of the doer excusing him from conviction despite the action still being a criminal offense. Moreover, according to Muljatno, an offense may also be excluded through prosecution discontinuation grounds. It does not relate to the nature of the offense (justification) or the doer of the offense (excuse) but more to the policy decision of a state based on public utility considerations. When an offense is excluded from criminal prosecution, the doer is excused from a criminal conviction.[13]

Some justifications that may exclude criminal responsibility among others are *noodweer* and *noodweerexces*, as regulated in Article 49 of KUHP. It is stated in the Article:

(1) Any person who commits an offense where this is necessary in the defense of his or another person's physical or sexual integrity or property against an immediate, unlawful attack shall not be criminally liable.
(2) Any person who exceeds the bounds of necessary defense, if the excess force is the direct result of a violent emotion caused by the attack, shall not be criminally liable.

To decide whether there was a *noodweer* or *noodweerexces*, based on Article 49 paragraph (1) of KUHP, the following three conditions must be met:

First, the action was committed because of an immediate, unlawful attack that requires self-defense (*noodzakelijkheid verdediging*) on the part of the persons attacked. The notion of urgency (*Nooszakilijk*) means that there were no other ways of averting the attack. Otherwise, it was not urgent. The critical point to note here is that there should be a proportionality between self-defense and the attack or between the right being protected and the rights being assaulted, as outlined in the principle of subsidiarity and proportionality. This means that the harm caused by the act of self-defense must not be grossly disproportionate to the interest it sought to protect. It should be within the limits of needs and necessity.[14]

The principles of subsidiarity and proportionality are principles that can be used to determine whether there is self-defense or excessive self-defense. The principle of subsidiarity requires that whenever it is possible to avoid non-lethal means of self-defense, the persons

[13] Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Bina Aksara, 1995), p. 137.
[14] Sofjan Sastrawidjaja, *op.cit.,* p. 135-137.

being attacked must not inflict greater bodily harm to the attacker. The principle, in essence, states that counterattack or self-defense should be done as a last resort since there are no other ways to avert the attack or imminent attack. This means that if there is a possibility of using other means to avert the attack or impending attack, the disproportionate attack in self-defense does not qualify as self-defense. Other means here mean a common or even easier way. The principle of proportionality requires that the act of self-defense must not be grossly disproportionate to the interest it sought to protect.

Second. His or another person's physical or sexual integrity or property. Regarding the term self *(liff)*, E. Utrecht explained that *liff* includes life and the human body's integrity (body, *lichaam*). *Liff*, translated as self, consists of the soul (life) and the human body. An attack on life is an attack to take life (murder), while an attack on the body is an attack with the aim of inflicting physical injury. Integrity (*eerbaarheid*), according to E. Utrech, is bodily integrity in terms of human sexuality. A woman fighting against a perpetrator trying to rape her is fighting for her integrity, as defined in Article 49, paragraph (1) of KUHP.[15] Moreover, property means tangible property.

Third. An immediate, unlawful attack. The conditions for *noodweer* or *noodweerexces* include (i) an immediate, unlawful attack; (ii) A forced defense against the attack is required to repel it and is aimed at defending his or another person's physical or sexual integrity or property.

Thus, the practices of *noodweer* and *noodweerexces* against *begal* victims, as emphasized in Article 49 paragraphs (1) and (2) of KUHP, can not be criminalized if the act is committed: (i) only for an essential defense by taking into account the principle of subsidiarity and proportionality; (ii) to defend or protect his or another person's physical or sexual integrity or property, (iii) to repel an immediate, unlawful attack even though the actions of the begal victims are against the law.

If the above-mentioned elements are attributed to the self-defense done by the *begal* victims, clearly, the self-defense does not qualify as a deliberate or voluntary intent on the part of the victims (KUHP does not clearly state the definition of deliberate intent). In the criminal code of Switzerland, Article 18, it is stated firmly that "whoever commits an action knowingly and intentionally, he/she is committing it deliberately." In line with this, in the *Memorie van Toelicting Swb*, it is stated that "punishment is generally

[15] E. Utrecht, *Rangkaian Sari Kuliah Hukum Pidana I*, Cetakan 2, (Surabaya: Pustaka Tinta Mas, 1960), p. 369

to be imposed on whoever commits prohibited actions knowingly and intentionally." In the theory of intention, a deliberate intention is an intention geared towards its physical realization as formulated in the wet *(de op verwerkelijking der wettelinke omschrrijving gerichte wil).* Another meaning of deliberate intention is the intention to do something with a knowledge of the required elements as defined in the formulation of "*wet wil tot handelen bj voorstelling van de tot de wettelijke omschrejving behoorende bestandelen".*[16]

Based on their elements, there are some similarities between *noodweer* and *noodweerexces*, namely:

a. the self-defense was a direct response against an unlawful attack;
b. the self-defense is aimed to protect his or another person's physical or sexual integrity or property.

In addition to the similarities, there are also some differences between *noodweer* and *noodweerexces*:

a. An action in the sense of *noodweer* is a self-defense against the perpetrator of a crime is done because there is no other alternative to counter the attack other than to fight against it. On the other hand, an action in the sense of *noodweerexces* involves excessive self-defense by the doer because they experience a tremendous mental shock or mental pressure *(hevige gemoeds beweging),* thus rendering the defense as something required (*geboden*) and necessary (*noodzakelijke*);
b. an unlawful act in the sense of *noodweer* serves as an excuse that excuses the perpetrator from criminal liability. Action in the sense of *noodweerexces* is not unlawful and therefore serves as justification for excluding criminal liability.[17]

When the above-mentioned elements are applied to *begal* victim cases, the victims' (now the suspects) self-defense and excessive self-defense do not involve a deliberate intention to commit the suspected crime. They merely serve as a defense and protection of rights and are void of willfulness or willingness and evil intent on the part of the *begal* victims. They do not involve a *mens rea* nor the objective on the part of the victims to commit an unlawful act, which inflicts pain or bodily harm or even kills the *begals*.[18]

In consideration of the elements mentioned above, police investigators who run a leading role in the investigation of *begal* victim cases

[16] Moeljatno, *op.cit,* p. 171-172.
[17] Rendy Marselino, "Pembelaan Terpaksa yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2)," *Jurist-Diction* 3, No. 2 (2020): 633-648, https://doi.org/10.20473/jd.v3i2.18208, p. 633.
[18] Revani Engeli Kania Lakoy, "Syarat Proporsionalitas dan Subsidaritas Dalam Pembelaan Terpaksa Menurut Pasal 49 ayat (1) Kitab Undang-Undang Hukum Pidana," *Lex Crimen* IX, No. 2 (2020): 45-52, p. 46.

should comprehensively consider all the factual elements of the cases and relate them to the elements of *noodweer* and *noodweerexces* as regulated in the Article 49 paragraphs (1) and (2) of KUHP. The presence of *Noodweer* and *noodweerexces* in *begal victim cases*, where the begals were killed, serves as a legal ground to exclude criminal liability from the begal victims. In considering a termination of the begal victim *cases*, police investigators should not rely only on Article 109 of KUHAP, which allows termination of investigation based on reasons of lack of evidence, not being a criminal conduct, and for the sake of the law (double jeopardy, death of the perpetrators of the crime, and statute of limitations). The investigators also have to consider Article 49, paragraphs (1) and (2), as the grounds for terminating the investigation of *begal* victim cases when the elements of *noodweer* and *noodweerexces* are met. It is true when they are void of *mens rea* or evil intent and intended to defend their or other persons' physical or sexual integrity or property against an immediate, unlawful attack shall not be criminally liable.

Termination of the investigation of *begal* victim cases serves as a form of legal certainty as stated in Article 49 of the KUHP. Legal certainty, according to Radbruch, is to be interpreted as "a condition whereby the law function as binding rules."[19] Legal certainty is defined as clarity of norms, enabling them to serve as guidelines for the people who are the subject of these norms.[20] Law functions to create legal certainty, which ensures order in society. Legal certainty is a defining characteristic of the law. This is true, especially for the written law. Moreover, legal certainty also creates justice, and all norms that constitute justice should function as binding rules.[21] In reality, however, the gap among norms creates legal uncertainty, and as a result, the norms fail to provide justice and legal usefulness. Such a gap occurs in the *begal* victim cases where the victims were designated as suspects of assault or manslaughter, even though their case sufficiently meets all the elements of Article 49 of KUHP. Ideally, this should normatively justify or guarantee the termination of the investigation of the cases.

[19] Gustav Radbruch in Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Yogyakarta: Kanisius, 1984), p. 162.

[20] Tata Wijayanta, "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* 14, No. 2 (2014): 216-226, https://doi.org/10.20884/1.jdh.2014.14.2.291.

[21] Agatha Jumiati and Ellectrananda Anugerah Ash-Shidiqqi, "Asas Kepastian Hukum Pelaksanaan Hukuman Mati di Indonesia," *Ius Civile (Refleksi Penegakan Hukum dan Keadilan* 6, No. 2 (2022): 26-36, p. 28.

In their law enforcement function, investigators should rely on more than just written law. Law enforcement should also respect the three core values of law, as Gustav Radbruch stated: legal certainty, legal usefulness, and justice. In reality, it is hard, if not impossible, to seek a balance between the core values. Often, legal certainty prevails over justice. The question that arises is whether to prioritize justice over legal certainty.[22] Every law enforcement effort should not only focus on upholding legal certainty but also on the other two core values of the law. In addition, it should incorporate the progressive law doctrine of Satjipto Rahardjo, which is aimed at protecting society and towards law ideals as well as pro-society and pro-justice law. Moreover, legal enforcement efforts should also create legal usefulness, which is not merely about benefits but more on the positive contribution of the law to society through the protection of the rights of society.

The three core values of the law are also emphasized in Article 30, paragraph (2) of Kapolri Regulation Number 6 of 2019 concerning the Investigation of Criminal Acts. Investigators should terminate the investigation of the *begal* victim cases because criminal law should be used as a last resort. It should not be implemented when it is not strongly supported by society and is predictively unenforceable, as suggested comprehensively by Muladi and Barda Nawawi.[23] This is to avoid unrest and dissatisfaction among the public towards Polri, which will negatively affect the image of Polri in the public's eyes. In the *begal* victim cases, legal usefulness should be realised through the protection of the victims and the society at large and the punishment of the perpetrators who have wreaked havoc on society.

2. Restorative Justice Approach Efforts in Stopping Investigation of Begal Victim Cases on the Grounds of *Noodweer* and *Noodweerexces*

All human rights must be protected, fulfilled, and enforced by the state. The Constitution of the Republic of Indonesia protects human rights. Some Articles of the second amended 1945 Constitution guarantees such protection. These, for example, are Article 28A which states, "Every person shall be entitled to live and be entitled to defend his/her life and living."; Article 28G paragraph (1), which states that "Every person shall be entitled to self-protection, protection of family, honor, dignity, and property under

[22] Gustav Radbruch in Faissal Malik, "Tinjauan Terhadap Teori Positivisme Hukum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, No. 1 (2021): 188-196, https://www.kompas.com/tren/read/2020/01/18/213315465/selain-kakek-samirin-ini-4-, p. 192.

[23] Muladi and Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung: Alumni, 1992), p. 102.

his/her control, as well as be entitled to feel secure and be entitled to protection against the threat of fear to do or omit to do something being his/her fundamental right."; and Article 28H paragraph (4) states that "every person shall be entitled to personal property and such property right shall not be taken over arbitrarily by whomsoever." John Locke, the famous English philosopher, stated that "natures endow all individuals with inherent rights to life, freedom, and property which are their own, that cannot be transferred or revoked by the state.[24] Moreover, John Locke mentions the three most important things: life, liberty, and property.[25]

Theoretically and constitutionally, the 1945 Constitution recognizes and protects the rights to life, freedom, honor, and own property or others. As a result, no one can threaten, intimidate, or unlawfully seize other peoples' rights. However, efforts to secure the rights may not always be ideally protected. In some cases, it may even result in the owners of the rights being criminally charged. This is true, for example, in the *begal* victim cases. The victims are often named as suspects on charges of assault or manslaughter for assaulting or even killing the *begal* when the victims' were only trying to defend themselves and their properties against the *begals*. The *begal* victims should never be named as suspects in the *begal* victim cases as long as their acts of self-defense fulfill the elements of Article 49 paragraph (1) of KUHP. The designation of *begal* victims as suspects would generate a sense of injustice and trigger unrest and refusal by the public, which may result in horizontal and vertical conflicts between the people and the law enforcement officers.

To prevent potential conflicts, the police can implement a restorative justice approach in the *begal* victim cases. There is already a legal instrument for implementing restorative justice, namely Kapolri Regulation Number 8 of 2001, concerning The Handling of Crimes based on the Restorative Justice Approach. According to Muladi, restorative justice is an approach model that emerged in the 1970s to settle criminal cases.[26] One of the advantages of implementing restorative justice is that it focuses on justice for victims and recovery for all parties involved.[27]

[24] John Locke in Bahder Johan Nasution, *Negara Hukum dan Hak Asasi Manusia*, Cetakan 3, (Bandung: Mandar Maju, 2014), p. 195.
[25] *Ibid*.
[26] Muladi in Josefhin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *Jurnal Legislasi Indonesia* 15, No. 4 (2018): 309-319, p. 312-313.
[27] *Ibid*., p. 313.

Restorative justice is an ideal model of justice for law enforcement in Indonesia.[28] The existence of the restorative justice process as an alternative to solving criminal cases is primarily determined by the legal culture of the society, both of the society and law enforcement officials.[29] Thus, its implementation should actively involve the community to maximize its participation in resolving crimes with a restorative justice approach.

In the preamble of Kapolri Regulation number 8 of 2001, it is stated that it is deemed necessary by the public that criminal investigation prioritizes a restorative justice approach, which emphasizes restoration and balanced protection and interests of both the victims and the perpetrators of crime and the avoidance of criminal punishment. In Article 3, paragraph 3, it is stated that "restorative justice is a method of crime settlement involving the perpetrators, victims, family of the perpetrators, family of the victims, public figures, religious figures, and other relevant stakeholders in which they sit together and seek a just and peaceful settlement and emphasizes a restoration to the pre-crime condition". In addition to Kapolri Regulation on Restorative Justice, investigators should also closely consider Article 30 paragraph (2) of Kapolri Regulation Number 6 of 2019 concerning Investigation of Criminal Acts, which stipulates that "Termination of an investigation is implemented to create legal certainty, a sense of justice, and legal usefulness."

Kapolri Regulation on Restorative Justice witnessed a total of 11.811 criminal cases in 2021 settled properly, quickly, and efficiently.[30] Bagir Manan in Bambang Hartono explained that restorative justice contains shared principles among victims, perpetrators, and societal groups to settle a criminal offense.[31] However, in the *begal* victim cases, the perpetrators would not be included because their actions involve the deliberate intention to violently rob the victims of their belongings or properties using armed violence and threats, which in many cases left the victims seriously wounded or even dead.

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[28] M. Alvi Syahrin, "Penerapan Prinsip Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu," *Majalah Hukum Nasional* 48, No. 1 (2018): 97-114, https://doi.org/10.33331/mhn.v48i1.114, p. 108.

[29] Irvan Maulana and Mario Agusta, "Konsep dan Implementasi Restorative Justice di Indonesia," *Datin Law Jurnal* 2, No. 2 (2021): 46-70, https://ejournal.unisi.ac.id/index.php/das-sollen/Article/view/1319, p. 57.

[30] MBS 1, "Peluncuran Buku : Jalan Presisi Kapolri Jenderal Listyo Sigit," *jurnalpolri.com*, 28 Maret 2022, https://jurnalpolri.com/peluncuran-buku-jalan-presisi-kapolri-jenderal-listyo-sigit-2/, accessed 28 August 2022.

[31] Bambang Hartono, "Analisis Keadilan Restoratif (Restorative Justice) Dalam Konteks Ultimum Remedium sebagai Penyelesaian Permasalahan Tindak Pidana Anak," *Pranata Hukum* 10, No. 2 (2015): 86-98, p. 88.

Termination of the investigation by applying restorative justice to *begal* victims, who had no *mens rea* in the commission of their *noodweer* and *noodweerexces*, is in line with the primary duties of the police as regulated in Law Number 2 of 2002 on Polri's Main Duties especially Article 13, namely maintaining security and public order, upholding the law, and providing protection, supervision, and services to the society. Furthermore, when doing their duties of assisting society in resolving disputes among members of the society, which may disrupt public order, and enforcing criminal justice, the police can perform examinations and investigations whenever necessary. They can be done on the conditions that they: (1) are not unlawful, (2) are in line with their legal duties, (iii) are proper, logical, and under his authority, (iv) are carefully considered on account of urgent situations, and (v) respect human rights.

Therefore, to respond to public complaints of injustice and criminal cases of public concern, the termination of investigation of the *begal* victim cases can be implemented through a restorative justice process. It, however, has to have been proceeded by an investigation, coercive measures, case dossier compilation, designation of suspects, and special crime reenactment involving some related parties such as the victims, the victims' families, local apparatus of the neighborhood unit (RT), community unit (RW), and village, religious leaders, community leaders, youth leaders, experts, community police officers (Babinkamtibmas), community non-commissioned officers of the Indonesian Armed Forces (Babinsa), head of sub precinct or precinct police (Kapolsek/Kapolres), and Commander of a Military Sub-District Command or Military Region Command (Danramil/ Danrem) as well as investigators who are investigating the case. In addition, the perpetrators' families may also be invited to join. Thus, the restorative justice approach is an accelerated form of the principles of a simple, fast, and low-cost justice system that fulfills a sense of justice, benefit, and legal certainty.

The police, as law enforcement officials of the state, are expected to respond to this by implementing a restorative justice mechanism. Exemplary Implementation and enforcement of the law should guarantee a balance of the law's three reciprocal core values: legal certainty, justice, and legal usefulness.[32] The reciprocality is in line with what Gustav Radbruch stated, as quoted in Lewwods (2000), that the law is a complexity of rules on how to

[32] Raju Moh Hazmi, "Konstruksi Keadilan, Kepastian, dan Kemanfaatan Hukum dalam Putusan Mahkamah Agung Nomor 46P/HUM/2018," *Res Judicata* 4, No. 1 (2021): 23-45, p. 28.

live together towards legal certainty, justice, and legal usefulness. Upholding the three core values of the law would serve as a power to solve legal problems. Therefore, the law benefits everyone and provides justice to everyone equally. More importantly, the law should be binding rules to all members of society to safeguard their legal certainty.[33]

Termination of investigation of *begal* victim cases through a restorative justice approach will eventually provide a sense of justice to society in general and the victims and their families in particular. Therefore, the police should not hesitate to do so. The success of law enforcement should not be measured merely on the ability to successfully bring the suspects to the criminal proceeding and get their punishment. Ideally, it should be measured by the attainment of justice values of the society since justice is to be realized at the level of the society, not on an individual level. It is in line with Hans Kelsen's doctrine that justice is happiness not to be found in an individual and must be found in society.[34] Thus, justice is social happiness.[35]

D. CONCLUSION

Noodweer or *Noodweerexces* are among the excuses and justifications that can serve as the grounds for excluding criminal responsibility. It means if they are to be found in a suspected criminal activity, the perpetrators should not be held criminally liable as long as it meets the elements of Article 49, paragraphs (1) and (2) of KUHP. It is true if it is void of *mens rea*, done in a mental state of compulsion and essential in terms of subsidiarity and proportionality, against an immediate, unlawful attack on his or another person's physical or sexual integrity or property. Thus, the termination of investigation of the *begal* victim cases is conducted through a restorative justice approach that emphasizes protection and restoration to the pre-crime condition of the victims' interests through the involvement of the victims/families, perpetrators' families, religious leaders, community leaders, traditional leaders, youth leaders, and stakeholders for the sake of justice, legal usefulness, and legal certainty for victims in particular and society in general.

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[33] Raju Moh Hazmi, *op.cit.*, p. 28.
[34] Michael H Ducey in *ibid*.
[35] Hans Kelsen in *ibid*

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