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Restorative Justice Against The Crimes of Murder Based on Noodweer and Noodweer Exces

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ABSTRACT

The presence of restorative justice as a new solution in resolving cases is one of the main keys in the process of resolving a criminal case that is fast, simple, and inexpensive. Based on article 49 of the Crime Code regarding the elimination of crimes against the perpetrators of the Noodweer and Noodweer Exces murders, Restorative Justice as a case settlement solution is expected to be applied in the Noodweer and Noodweer Exces cases in order to create an agreement on the settlement of a criminal case and obtain a fair and equitable outcome between the victim and the perpetrator. The type of research carried out is normative research or document study, which is based on legal materials and literature as well as secondary data such as laws and regulations, court decisions, legal theory, and can be in the form of the opinions of scholars. The purpose of making this research is for the study process and also to facilitate the trial in similar cases. The conclusion of this study is that restorative justice can be carried out in cases of forced defense and forced defense.

KEYWORDS
Criminality Policy, Law, Noodweer, Noodweer exces, Restorative justice.

1 INTRODUCTION

Indonesia is a country based on permanent legal force. Since the beginning of independence day on August 17, 1945, Indonesia has been based on a legal basis, namely the 1945 Constitution (UUD 1945). The Indonesian government system adheres to a state system based on law (Rechtsstaat), not on mere power (Machtsstaaat). Indonesia applies law as an ideology to create order, justice, security, and welfare for Indonesian citizens. The accepted consequence is that the law is binding on every action taken by its citizens.

One of the legal experts L.J van Apeldoorn in one of his books entitled "*inleding tot destudie van het Nederlandsche Recht*" states that "the purpose of a law is to regulate people's lives fairly and peacefully by creating a balance between protected interests. As a result, everyone gets their respective rights as they should". [1]

Criminal law system is a part of a legal entity that applied in one state, which set the groundnorm for:

1. Determine what actions should not be taken, prohibited, accompanied by a threat or a sanction in the form of certain criminal acts for anyone who violates these rules.
2. Determining when or in any case to people who have violated the law can be imposed or sentenced to criminal sanctions in accordance with what has been threatened by the law.
3. Determine how the crime will be carried out if someone is suspected of having violated the law.[2]

We often encounter the term crime in daily basis. According to Simon, a criminal act itself is an act of violating the law that has been carried out intentionally by someone who can be held accountable for his actions and which by law has been declared an act that can be punished.[3] Many criminal acts are experienced by society

[1] Sri Warjiyati, *Memahami Dasar Ilmu Hukum, Konsep Dasar Ilmu Hukum* (Prenadamedia Group, 2018).
[2] Christovel J et al., "Upaya Dalam Penegakan Hukum Kepemilikan Senjata Api Secara Ilegal Dalam Masyarakat," *Lex Crimen* X (2021): 66.
[3] Lukman Hakim, *Asas-Asas Hukum Pidana* (Yogyakarta: Deepublish, 2020).

from time to time, we need to know why it can happen, how can we reduce or even eradicate it. The guidance system in correctional institutions as a deterrent effect for perpetrators is less effective because it is less able to improve the behavior of criminals.

Previously, in the settlement of criminal cases in Indonesia, the term restorative justice was not known, every crime must be resolved based on the applicable rules, anyone cannot exercise discretion or waiver of cases, both legal officers, and parties related to criminal cases. This problem has various impacts, one of which is the full and limited number of correctional institutions and the total of criminal cases in the court sector. On the other hand, law as a punishment often did not creating a sense of justice, both for the victim neither for the perpetrator.

In resolving criminal cases, the law in Indonesia already has a legal basis as a reference that regulates how to implement and apply material law in court practice. These rules are contained in the Criminal Procedure Code which is a guide in the settlement of criminal cases. However, in practice, the formal law is often used as a repressive tool against the perpetrators of criminal acts.

Some cases are often considered far from a justice itself, either for suspects, victims, and also the community. This raises the question, how is the effectiveness of the law in dealing with cases in Indonesia, can cases be resolved based on the agreement of the parties. Based on the question above, an alternative solution to the problem arises, with the presence of restorative justice in the resolution of criminal cases, the parties can determine for themselves how to resolve a case.

Restorative justice is a response to criminals to recover losses and facilitate peace between the parties. Restorative justice is also an alternative for solving criminal problems by emphasizing the recovery of problems/conflicts and restoring balance in society. The rights and dignity of the perpetrators of murder, both noodweer and noodweer exces, must really be realized in a life where a just, safe, orderly and prosperous life is created. [4]

The main point in the current problem is that there is so limited public knowledge about restorative justice itself, how to run it, how to do it, in order to get the results of criminal cases that take a short time, are cheap, and easy, and are fair for all. parties, especially in cases of murder, Noodweer (forced defense) and forced defense that exceeds the limit (forced defense that exceeds the limit).

2 Method

[4] Muhammad Galih Prakoso et al., "Pemidanaan Anak Di Bawah Umur Yang Melakukan Tindak Pidana Pencurian Dalam Perspektif Restorative Justice" (UNiversitas Islam Negeri Syarif Hidayatullah, 2020).

The methodology used in this research is normative legal research, namely research conducted on legal principles, legal rules in terms of values (norms), concrete legal regulations and legal systems. The methodology used in this research is normative legal research, namely research conducted on legal principles, legal rules in terms of values (norms), concrete legal regulations and legal systems.

3 RESULT AND DISCUSSION

A. Restorative Justice Method Approach

Restorative justice is fundamentally guided by restorative values, which favor collaborative and consensus-based procedures over the adjudicative and adversarial forms that often characterize conventional criminal justice procedures.6 When the people who caused the injury are invited to honestly admit their guilt, listen carefully. respecting those they have offended, and respecting their duty to make it right again, important steps are taken to restore dignity and meet the needs of all parties. [5]

The basic rationale of the concept of restorative justice practice comes from the idea of maintaining peace practices that have been used by the Maori ethnic group (one tribe in New Zealand, indigenous people) if a conflict arises, restorative justice will be used to dealing with the parties, weather the perpetrators, the victims, and or the stakeholders. [6]

Basically, restorative justice prioritizes meetings between parties involved in the crime and after the crime has been committed. Achmad Ali quoted Howard Zher, an expert on restorative justice in the United States as saying that "Restorative justice is a process that must involve several parties who have an interest in a specific violation and jointly identify losses and fulfill obligations and needs and also place changes into rights that are legally binding. must be accepted." [7]

According to Agustinus Pohan, restorative justice is a concept of justice that is very different from what we know today in the retributive Indonesian Criminal Law

[5] Yusrizal, Romi Asmara, and Hadi Iskandar, "Penerapan Restorative Justice Terhadap Anak Yang Berhadapan Dengan Hukum," *Jurnal Hukum Samudra Keadilan* 16, no. 2 (2021): 323, https://doi.org/10.33059/jhsk.v16i2.4691.

[6] Ahmad Faizal Azhar, "Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 138.

[7] Ach. Faisol Triwijaya, Yaris Adhial Fajrin, and Chintya Meilany Nurrahma, "Dual Mediation : Penyelesaian Perkara Lingkungan Hidup Yang Melibatkan Korporasi Sebagai Pelaku Melalui Pendekatan Restorative Justice," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 2 (2020): 401, https://doi.org/10.24843/jmhu.2020.v09.i02.p14.

System, restorative justice is an approach to make transfers and institutionalizations compatible with justice. Restorative justice is built on the basis of positive community traditional values and sanctions that are implemented respecting human rights. The principles of restorative justice are to make the perpetrator responsible for repairing the damage caused by what he has done, to give the perpetrator an opportunity to prove his capacity and quality as well as to overcome his guilt in a constructive way, involving the victim, parents and relatives, create a forum for cooperation on crime-related issues to address them. [8]

The justice we know so far in this country is the system of criminal justice in the form of retributive justice. While the system that has been expected so far is a restorative justice system, namely a system where all parties involved in the action solve problems together to find solutions and how to deal with the consequences arising from these actions. Restorative justice is the process of resolving a criminal case that emphasizes the improvement of all parties, both the victim, the perpetrator, the related party, and the community. The most important thing in the settlement process through the restorative justice method is the role and participation of all relevant parties in resolving the case, so that there is a guarantee that the crime will no longer disturb the harmony created in society. [9]

Restorative justice is a form of harmonization within a society, not focusing on punishment. The four main elements in restorative justice are:

1. Restorative justice are a type of justice which is included on the legal concept of a crime process or a crime justice system that has been universally recognized and has been trusted to be used in various criminal cases in several developed countries.
2. Restorative justice sees a crime not as a crime against the state/public, but as a crime against the victim. Can be in the form of individuals or several people / groups.
3. Retorative justice can take the form of direct or indirect dialogue in the form of mediation, reconciliation, or court.
4. Restorative justice is not only in the form of reconciliation which has a transitional nature as in the explanation.[10]

[8] Salvataro Edwikara, "Tinjauan Hukum Pidana Islam Terhadap Konsep Restorative Justice Dalam Surat Edaran No.SE/8/VII/2018 Kepala Kepolisian Negara Republik Indonesia / Undang-Undang No.11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (Universitas Islam Negeri Walisongo, 2020).

[9] S Salle, *Sistem Hukum Dan Penegakkan Hukum Cetakan Pertama* (Makassar: Social Politic Genius, 2020).

[10] Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): 173, https://doi.org/10.31602/al-adl.v10i2.1362.

The restorative justice approach is more focused on the interests of the parties, both the victims and the perpetrators. In addition, the justice system through the restorative justice method helps the perpetrators to avoid repeated crimes in the future. Restorative justice does not only focus on existing legal provisions or merely imposing criminal charges, but focuses on the fulfillment of justice for the parties involved, both the victims, the perpetrators, and the community. In this process, the victim is also involved in the process of resolving the case, the perpetrator is also encouraged to take responsibility for his actions by correcting the mistakes he has made.

There are several principles in restorative justice, including:

1. Victim support and healing is priority
2. Offenders takes responsibility for what they have done
3. There's some dialogue to achive understanding
4. There's an attempt to put right
5. Offenders look at how to avoid future offending
6. The community help to reintegrate both victim and offender.[11]

Although the concept of restorative justice is understood as a concept of problem solving in the law of crime system, the concept of restorative justice itself is very relevant and even becomes the basic concept that underlies the community policing program. [12] Community Policing is a national police program based on the principles of restorative justice with a method based on the principles of equality, partnership, reconciliation, and participation.

B. Noodweer and Noodweer Exces Regulations in Criminal Law Code, Article 49

Article 49 provisions:

"It is not criminalized whoever commits an act of forced defense for himself or for another person, moral honor or property for himself or for another person, because there is an attack or threat of attack that is very close at that time which is against the law. Forced defense that exceeds the limit that is directly caused by severe mental shock due to the attack or threat of attack, is not criminalized."

[11] Suhairi et al., *Kondlik Sosial Di Lampung Tengah* (Yogyakarta: Pustaka Pranala, 2020).

[12] I Putu Mahayuda and Putu Ardana, "Penyelesaian Masalah Di Desa Dengan Pendekatan Restorative Justice Oleh Bhayangkara Pembina Keamanan Dan Ketertiban Masyarakat Di Wilayah Hukum Kepolisian Resor Buleleng," *Kertha Widya* 8, no. 2 (2020): 1–30.

From the above provisions, it can be concluded that if the perpetrator of a criminal act commits a crime of murder in the background by the existence of coercive power (overmacht), then the act he commits cannot be punished. Overmacht is one of the reasons a person is not convicted of an unlawful act that he committed based on article 48 of the Criminal Code which states that "anyone who commits an act due to the influence of coercion will not be punished."

Noodweer and noodweer exces is still maintained to this day as one of the reasons for the elimination of the crime, as stated in article 49 of the Criminal Code, Noodweer can be used as a justification, but it is not also a reason that justifies a legal action, but regarding the power of coercion (overmacht) due to a violation or a criminal act that was committed before the act occurred.

The word "attack" in Article 49 paragraph (1) of the Criminal Code does not always have to be interpreted as an act of violence, what is meant by the word "attack" in Article 49 paragraph (1) of the Criminal Code? it is actually an act that harms the legal interests of another person over his body (including life), honor and his assets in the form of objects. Noodweer itself is actually a word that has been used by people to refer to "the necessary defense against attacks that are immediate and against the law", as a basis for justification, noodweer is not something new in criminal law, because of the defense It has long been known to people, namely in the days of personal revenge long ago, in the form of acts of defensive warfare which in the history of the development of criminal law have been maintained by people to this day.

However, not all unlawful acts can be accepted by law as a justification for a crime to be abolished. There are elements that must be met so that the action can be justified in the eyes of the law, the act must meet the requirements stated in Criminal Law Code, article 49, if the conditions are not met, then the perpetrator of the crime of murder can still be convicted.

A person can be said to have committed Noodweer and Noodweer Exces if he fulfills the following conditions;

1. There must be an attack (annranding), but not all attacks can be done by Noodweer, but only against attacks that meet the following conditions:
2. The attack must come threateningly suddenly (ogenblikkelijk of on mil delik dreigen);
3. The attack must be against the law (wedderech-telijk aanranding)
4. Self-defense is necessary against the attack, but not every self-defense can be a Noodweer, but the self-defense must meet the following conditions;

5. The defense must be a requirement (de verdediging Moet geboden zijkn);
6. The defense must be a forced defense (nood-sake liuk verdidiging); or
7. The defense must be a defense of oneself or another person, honor, or object. [13]

It can be seen that if the above conditions are met, a person is considered entitled by law to defend immoral honors, property, both himself and others as a form of defense of rights against injustice, so that a person is forgiven by law because of coercion in the case of a crime he committed.

Noodweer's own words are not included in the Act. The word Noodweer is known in Memorie van Toelichting (M.v.t) regarding the formation of Criminal Law Code, article 49 itself which says, among other things:
There is no noodweer without :
1. attacks that are against the law;
2. direct harm to body, honor or property, to oneself or to another;
3. the need to perform the action in question.

In terms of language, the meaning of the word "nood" means "emergency", while the word "weer" means "defense". Therefore, Noodweer can be interpreted as a defense that is carried out because of an emergency condition, there is coercion to act due to being in a state of emergency. which is dangerous. [14]

According to the criminal provisions of the Criminal Law Code of Article 49, if a person is attacked against the law from another person, then that person is justified in taking an act of defense both for himself and for others against the attacker. Even if in a way that is wrong in the eyes of the law, which if in a non-emergency situation, the action is a prohibited act in which the perpetrator is threatened with criminal punishment.

So, if someone else is threatened with being shot with a gun or stabbed with a knife, then if he fights, this can be justified by law, for example by hitting the attacker so that the attacker falls and drops the rifle or knife he is holding, even though in a way that can injure the assailant, even that person can fight to kill the assailant if the attacker's actions threaten his life.

Furthermore, Schaffmeister said whether the forced defense was appropriate

[13] Hilda Syahfitri, "Kajian Hukum Pidana Terhadap Pembelaan Terpaksa Yang Melampaui Batas / Noodweer Exces" (Universitas Muhammadiyah Sumatra Utara, 2021).
[14] Ridho Akbar, "Studi Komparatif Terhadap Peniadaan Pidana Dalam Tindak Pidana Pembunuhan Yang Dilakukan Karena Membela Diri (Noodweer Exces) Perspektif Kitab Undang-Undang Hukum Pidana Dan Hukum Pidana Islam" (UIN Raden Fatah, 2019).

based on three principles, namely;

1. The principle of Subsidary, violating the legal interests of a person to protect the legal interests of others is not allowed. If the protection can be done without or with less harm. As long as people were able to escape, there was no need to defend themselves.
2. The principle of proportionality, violating one's legal interests to protect the interests of others is prohibited, if the protected legal interests are not balanced with the violation. For example, a person with rheumatism who is in a wheelchair may not shoot children who steal apples in his garden.
3. The principle of culpa in causa, which means that whoever in an emergency situation can be blamed on him is still responsible for someone because of his own actions so that he is attacked by others against the law cannot defend himself as a forced defense. [15]

The formulation of Criminal Law Code of Article 49 has acknowledged that even though the criminal act of assault has not been carried out, but the act has threatened directly, then self-defense can be carried out against the attack. Therefore, Van Bammelen wrote as follows: "It is more appropriate if the Hoge Raad rejects the reason for the forced defense (noodweer) based on the consideration that the principle of subsidarity and the principle of proportionality have been exceeded". The principle of subsidiarity means that there is no better way. While the principle of proportionality means that there must be a balance between the legal interests that are protected and the interests of others who are sacrificed. [16]

There was a similarities between both noodweer and noodweer exces, both of that act require an unlawful attack. The things that defended were also the same thing, namely body, honor, morals and property, both from themselves or others. The difference is in noodweer exces, the maker of "overreaching", because of a great mental shock, therefore, the act of self-defend beyond the limit is still against the law, the person cant be punished if they have a great mental shock. Furthermore, noodweer excess becomes the basis for forgiveness on law point of view. While the noodweer is a justification, because there is no such things that against the law[17].

[15] Reza Lesmana, "Penerapan Asas Ultimum Remedium Pada Pelaku Tindak Pidana Pelanggaran Baku Mutu Limbah," *Khazanah Multidisiplin* 1 (2020): 28.
[16] O S Utara, "Pembelaan Terpaksa Dalam Pertanggungjawaban Pidana Pembunuhan Perspektif Hukum Islam Dan Hukum Positif (Analisis Putusan Nomor: 1002/Pid. B/2008/PN …," *Repository.Uinjkt.Ac.Id*, 2021.
[17] Rendy Marselino, "Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2)," *Jurist-Diction* 3, no. 2 (2020): 633, https://doi.org/10.20473/jd.v3i2.18208.

C. Murder in The Criminal Code

The crime of murder in terminology is a case of killing, the act of killing. Meanwhile, in terms of the Criminal Code, murder is the intentional killing of another person. Murder in other languages is a crime against life (misdrijven tegen bet leven) which means an attack on the life of another person. The legal interest that is protected and which is the object of this crime is human life (leven). From this definition, the crime of murder is considered a material offense if the offense has been completed by the perpetrator with consequences that are prohibited or unwanted by law. [18]

Intentional killing of another person today in the Criminal Code is referred to as an act of murder. The crime of murder or misdrijven tegen het leven (crime against life) is a form of attack on the life of another person. In order to eliminate or take a person's life, the perpetrator of the crime of murder must fulfill the elements of carrying out a series of actions that result in the death of another person.

From the understanding that has been explained, the criminal act of murder can be said to be a material offense if the criminal act has been completed by the perpetrator with the result that something unwanted or prohibited by law occurs. Based on positive criminal law, the classification of the crime of murder itself is a form of error, the act can be intentional (dolus) or unintentional (culpa). Dolus is a form of action or deed that can occur with a prior plan or without prior planning. The most important thing about an act of dolus is that there is an "intention" which is indeed indicated by the action that was carried out until the completion of the killing act.

Misdrijven tegen het leven in the Criminal Code is classified based on 2 bases, namely as follows:

1. On the basis of an element of error
   On the basis of an element of error, *misdrijven tegen het leven* can be further divided into 2 groups, which is as follows:
   a. *Misdrijven tegen het leven* accompanied by a deliberate act (*dolus misdrijven*).
   b. *Misdrijven tegen het leven* carried out accompanied by negligence (*culpose misdrijven*).
2. On the basis of the object (life)
   While on the basis of the object. *Misdrijven tegen het leven* accompanied by an element of intent can be divided into 3 types, namely:
   a. Misridjven tegen let leven are generally contained in the following articles:
      1) Criminal Law Code of Article 338 concerning Murder.
      2) Criminal Law Code of Article 339 concerning Murder with Weight Loss.
      3) Criminal Law Code of Article 340 concerning Premeditated Murder.
      4) Criminal Law Code of Article 344 concerning Euthanasia.

[18] Khozanah Ilma Terok, Zaini Munawir, and Angreini Atmei Lubis, "Peran Kepolisian Dalam Pencegahan Tindak Pidana Pembunuhan Disertai Pemerkosaan," *JUNCTO: Jurnal Ilmiah Hukum* 3, no. 1 (2020): 36.

5) Criminal Law Code of Article 345 concerning Persuading People to Suicide.

b. *Misdrijven tegen het leven* for babies at birth or after birth, is regulated in the following article:
   1) Criminal Law Code of Article 341 concerning *Kinderdoodslag* (Ordinary Infant Murder by Mothers).
   2) Criminal Law Code of Article 342 concerning Premeditated Infant Murder by the Mother.
   3) Criminal Law Code of Article 343 concerning the Murder of Infants by other people who participate in committing.

c. *Misdrijven tegen het leven* against a fetus or a baby still conceived by the mother, is regulated in the following article:
   1) Criminal Law Code of Article 346 concerning Mothers who abort their pregnancy.
   2) Criminal Law Code of Article 347 concerning carrying out an abortion without containing consent.
   3) Criminal Law Code of Article 348 concerning carrying out an abortion with the consent containing.
   4) Criminal Law Code of Article 349 concerning Doctors and/or Midwives performing Abortion.

The crime regulated in Article 338 of the Criminal Code is Doodslag in zijn Grondvorm (criminal act in its principal form), which is a criminal act that has been regulated and formulated in full along with all its elements. The formulation of Article 338 of the Criminal Code reads as follows:

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

From the formulation of the article above, it can be determined the following elements:

1. Objective element, namely the act that takes the life and the object is the life of another person.
   The first objective element of the act of murder is "eliminate", this element is also covered by intentionality, meaning that the perpetrator must intend, intentionally, to do it with the act of eliminating it, and he must also know that his action is aimed at killing another person's life. With regard to "another person's life" he means another's life of the killer. It doesn't matter who the murder is against, even though the murder was committed by the parents themselves, it can be included in the category of murder as referred on Article 338 of the Criminal Code.
2. Subjective elements, namely elements intentionally.
   "Deliberately" (doodslag) means that the act must be intentional and the intention must arise immediately, because intentionally (opzet/dolus) as referred to in article 338 is a deliberate act that has been formed without any prior planning, while what is meant by Deliberately in Article 340 is an intentional act to take the life of another

person in the form of pre-planned (Met Voorbedachte rade).

The act of taking another person's life must meet the requirements, including the existence of an act, the existence of a death, and the existence of a causal relationship (casual verband) between the act and the result (the death of another person). Between the subjective element intentionally and the form of the act of eliminating, there are conditions that must be proven, namely the implementation of the act of taking another person's life, there must not be long the emergence of the will (intention) to eliminate the other person's life. [19]

Therefore, if there is a long grace period since the emergence or formation of the will to kill with its implementation, within a sufficiently long period of time it can explain various things, for example if the will will be realized in execution or, in what way the will will be realized and so on. then the murder has been a masked murder as regulated in Article 340, and is no longer an ordinary murder.

D. Legal Basis For The Application of Restorative Justice in The Case of The Murder of Noodweer and Noodweer Access

According to restorative justice, the crime is not a violation sanctioned by the state, but an act that must be corrected through compensation or other and its main nature is to stay away from imprisonment. [20] The focus of restorative justice itself is to repair damage or losses that arise as a result of criminal acts, so that these actions must be supported by the concept of restitution, namely efforts to recover losses suffered by the victim. [21]

All existing punishment theories are basically aimed at achieving justice. So that the achievement model can be divided into two; namely the retributive justice model and the restorative justice model. The retributive justice model upholds justice based on the philosophy of retaliation, while the restorative justice model rests on the philosophy of recovery. In the case of sentencing in the Criminal Code, the philosophy of justice adopted is the first model. [22] Thus, in convicting cases of criminal acts of murder, the Criminal Code emphasizes the principle of retributive justice.

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[19] Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2019).
[20] Bambang Waluyo, *Penegakkan Hukum Di Indonesia* (Jakarta: Sinar Grafika, 2022).
[21] Dewi Setyowati, "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta Research Law Journal* 15, no. 1 (2020): 121–41, https://doi.org/10.15294/pandecta.v15i1.24689.
[22] Rosa Deva et al., "Penerapan Restorative Justice Terhadap Penganiayaan Anak Disabilitas Yang Dilakukan Oleh Anak Sebagai Pelaku Di Lingkungan Sekolah Menengah" (Universitas Muhammadiyah Sumatra Utara, 2021).

The adoption of the retributive justice principle can be seen in the case settlement process, from investigation to prosecution. The settlement of the crime of murder in Indonesia only involves the suspect/defendant, investigators, public prosecutors, judges, and legal advisors. The position of the victim or the family of the victim of a crime has no place in formal law. The state takes over the murder case on behalf of the victim/victim's family and the community. In this case, the state element is represented by investigators, prosecutors, and judges. On the other hand, the defendant is a party dealing with the state, which in its implementation is accompanied by legal counsel.

In Article 1 Paragraph (1) concerning the termination of prosecution based on restorative justice on the Regulation of the Prosecutor's Office of the Republic Indonesia Number 15 of 2020, it is stated that; "restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation." The principle of termination of prosecution based on restorative justice is also regulated in Article 2 of the same regulation as follows:

1. Justice;
2. Public interest;
3. Proportionality;
4. Criminal as a last resort; and
5. Fast, simple and low cost.

When carrying out the process of resolving cases through restorative justice, there are several things that must be considered and considered, as regulated in Article 4 Paragraphs (1) and (2) of the same Regulation, which are as follows:

1. Termination of prosecution based on Restorative Justice shall take into account;
   a) The interests of the victims and other legal interests are protected;
   b) Avoidance of negative stigma;
   c) Avoidance of retaliation;
   d) Community response and harmony; and
   e) Propriety, decency, and public order.
2. Termination of prosecution based on restorative justice as referred to in paragraph (1) is carried out taking into account;
   a) Subjects, objects, categories, and threats of crime
   b) The background of the occurrence / commitment of the crime;
   c) The degree of disgrace;
   d) Losses or consequences arising from criminal acts;
   e) Costs and benefits of handling cases;
   f) Restoration back to its original state; and

g) There is peace between the victim and the suspect.

There are a number of cases that are exempt from the termination of prosecution based on restorative justice as regulated in Article 5 paragraph (8) of the same regulation, namely as follows:

1. Crimes against state security, the dignity of the president and vice president, friendly countries, heads of friendly countries and their representatives, public order and morality;
2. Criminal acts that are punishable by a minimum criminal threat;
3. Narcotics crime;
4. Environmental crime; and
5. A crime committed by a corporation.

Based on the article above, it can be concluded that the absence of misdrijven tegen het leven is mentioned in cases that cannot be resolved through restorative justice, indicating that misdrijven tegen het leven based on overmacht can be resolved through restorative justice.

4 CONCLUSION

From the description that has been explained before, it can be concluded that The crime of murder because of an overmacht so that noodweer and noodweer access occur, in fact, if there is no termination of prosecution through restorative justice, it cannot be punished under Article 49 in the Criminal Code, because basically, the perpetrators of the crime of murdering noodweer and noodweer exces commits the crime of murder because of the coercive power that makes him commit the crime of murder. With the presence of restorative justice that upholds the principle of criminality as a last resort, fast, simple, and low cost, as well as paying attention to the avoidance of retaliation and negative stigma, it can be the basis for doing restorative justice in the crime of killing noodweer and noodweer access.

The crime of killing noodweers and noodweer accesses can be resolved through restorative justice based on article 5 Paragraph (8) of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, because these actions are not included in the cases that are excluded in the article.

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6 DECLARATION OF CONFLICTING INTERESTS

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8 REFERENCES

Akbar, Ridho. "Studi Komparatif Terhadap Peniadaan Pidana Dalam Tindak Pidana Pembunuhan Yang Dilakukan Karena Membela Diri (Noodweer Exces) Perspektif Kitab Undang-Undang Hukum Pidana Dan Hukum Pidana Islam." UIN Raden Fatah, 2019.

Arief, Hanafi, and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia." *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): 173. https://doi.org/10.31602/al-adl.v10i2.1362.

Deva, Rosa, Fakultas Hukum, Universitas Muhammadiyah, and Sumatera Utara. "Penerapan Restorative Justice Terhadap Penganiayaan Anak Disabilitas Yang Dilakukan Oleh Anak Sebagai Pelaku Di Lingkungan Sekolah Menengah." Universitas Muhammadiyah Sumatra Utara, 2021.

Edwikara, Salvataro. "Tinjauan Hukum Pidana Islam Terhadap Konsep Restorative Justice Dalam Surat Edaran No.SE/8/VII/2018 Kepala Kepolisian Negara Republik Indonesia / Undang-Undang No.11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak." Universitas Islam Negeri Walisongo, 2020.

Faizal Azhar, Ahmad. "Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia." *Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 138.

Hakim, Lukman. *Asas-Asas Hukum Pidana*. Yogyakarta: Deepublish, 2020.

Hamzah, Andi. *Hukum Pidana Indonesia*. Jakarta: Sinar Grafika, 2019.

J, Christovel, J Aling, Roy Lembong, and Herry Tuwaidan. "Upaya Dalam Penegakan Hukum Kepemilikan Senjata Api Secara Ilegal Dalam Masyarakat." *Lex Crimen* X (2021): 66.

"Lecturer at the Faculty of Law, Singaperbangsa Karawang State University.," n.d.

Lesmana, Reza. "Penerapan Asas Ultimum Remedium Pada Pelaku Tindak Pidana Pelanggaran Baku Mutu Limbah." *Khazanah Multidisiplin* 1 (2020): 28.

Mahayuda, I Putu, and Putu Ardana. "Penyelesaian Masalah Di Desa Dengan Pendekatan Restorative Justice Oleh Bhayangkara Pembina Keamanan Dan Ketertiban Masyarakat Di Wilayah Hukum Kepolisian Resor

Buleleng." *Kertha Widya* 8, no. 2 (2020): 1–30.

Marselino, Rendy. "Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2)." *Jurist-Diction* 3, no. 2 (2020): 633. https://doi.org/10.20473/jd.v3i2.18208.

Prakoso, Muhammad Galih, Program Studi, Hukum Pidana, Fakultas Syariah, D A N Hukum, Universitas Islam Negeri, and Syarif Hidayatullah. "Pemidanaan Anak Di Bawah Umur Yang Melakukan Tindak Pidana Pencurian Dalam Perspektif Restorative Justice." UNiversitas Islam Negeri Syarif Hidayatullah, 2020.

Salle, S. *Sistem Hukum Dan Penegakkan Hukum Cetakan Pertama*. Makassar: Social Politic Genius, 2020.

Setyowati, Dewi. "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan." *Pandecta Research Law Journal* 15, no. 1 (2020): 121–41. https://doi.org/10.15294/pandecta.v15i1.24689.

Suhairi, Mahrus As'ad, Khoirurijal, and Abdul Mujib. *Kondlik Sosial Di Lampung Tengah*. Yogyakarta: Pustaka Pranala, 2020.

Syahfitri, Hilda. "Kajian Hukum Pidana Terhadap Pembelaan Terpaksa Yang Melampaui Batas / Noodweer Exces." Universitas Muhammadiyah Sumatra Utara, 2021.

Terok, Khozanah Ilma, Zaini Munawir, and Angreini Atmei Lubis. "Peran Kepolisian Dalam Pencegahan Tindak Pidana Pembunuhan Disertai Pemerkosaan." *JUNCTO: Jurnal Ilmiah Hukum* 3, no. 1 (2020): 36.

Triwijaya, Ach. Faisol, Yaris Adhial Fajrin, and Chintya Meilany Nurrahma. "Dual Mediation : Penyelesaian Perkara Lingkungan Hidup Yang Melibatkan Korporasi Sebagai Pelaku Melalui Pendekatan Restorative Justice." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 2 (2020): 401. https://doi.org/10.24843/jmhu.2020.v09.i02.p14.

Utara, O S. "Pembelaan Terpaksa Dalam Pertanggungjawaban Pidana Pembunuhan Perspektif Hukum Islam Dan Hukum Positif (Analisis Putusan Nomor: 1002/Pid. B/2008/PN …." *Repository.Uinjkt.Ac.Id*, 2021.

Waluyo, Bambang. *Penegakkan Hukum Di Indonesia*. Jakarta: Sinar Grafika, 2022.

Warjiyati, Sri. *Memahami Dasar Ilmu Hukum, Konsep Dasar Ilmu Hukum*. Prenadamedia Group, 2018.

Yusrizal, Romi Asmara, and Hadi Iskandar. "Penerapan Restorative Justice Terhadap Anak Yang Berhadapan Dengan Hukum." *Jurnal Hukum Samudra Keadilan* 16, no. 2 (2021): 323. https://doi.org/10.33059/jhsk.v16i2.4691.