

## Criminal Acts of Murder Committed in Forced Circumstances (Overmacht)

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**ABSTRACT:** *The main objective of this research is to find out what is Forced Circumstances (Overmacht) and why Forced Circumstances (Overmacht) can free perpetrators from criminal responsibility. Departing from here, in conducting research, the author uses normative research methods with a statutory approach (Statue Approach), namely legal research that focuses on examining documents, namely implementing various secondary data such as legal references, statutory regulations, court decisions, and legal theory, and can also be in the form of opinions expressed by legal scholars in processing research. The results of research conducted by the author show that First, Overmacht occurs because the killer does it by first attacking, making his soul vibrate, then defending himself so as not to become a real victim. This was done in self-defence because he had a choice, either he died, or his opponent died. Second, the criminal act of murder under force majeure (overmacht) cannot be held criminally responsible for the perpetrator because, from the start, it is known that it was an act of self-defence (overmacht), and then the investigation must be stopped. If the trial stage continues, the Judge must use his conscience in determining the Judge, and there must be substantial evidence, such as CCTV footage or eyewitnesses from the incident. It can also be based on the actual situation. Criminal liability itself is for a crime, and its purpose is to determine whether a suspect or defendant should be held accountable for a crime that has occurred.*

Tujuan utama penelitian ini adalah untuk mengetahui apa itu Keadaan Terpaksa (*Overmacht*) serta mengapa Keadaan Terpaksa (*Overmacht*) dapat membebaskan pelaku dari tanggung jawab pidana. Berangkat dari hal tersebut, dalam melakukan penelitian, penulis menggunakan metode penelitian normatif dengan pendekatan perundang-undangan (*Statue Approach*) yaitu penelitian hukum yang menitikberatkan pada pemeriksaan dokumen yaitu mengimplementasikan berbagai data sekunder seperti acuan hukum, peraturan perundang-undangan, putusan pengadilan, dan hukum. teori, dan bisa juga berupa pendapat yang

dikemukakan oleh sarjana hukum dalam mengolah penelitian. Hasil penelitian yang dilakukan penulis menunjukkan bahwa Pertama, *Overmacht* terjadi karena si pembunuh melakukannya dengan terlebih dahulu menyerang, membuat jiwanya bergetar, kemudian mempertahankan diri agar tidak menjadi korban yang sebenarnya. Ini dilakukan untuk membela diri karena dia punya pilihan, mati, atau lawannya mati. Kedua, tindak pidana pembunuhan dalam keadaan kahar (*overmacht*) tidak dapat dimintakan pertanggungjawaban pidana terhadap pelakunya karena sejak semula diketahui bahwa itu merupakan perbuatan membela diri (*overmacht*), maka penyidikan harus dihentikan. Jika tahap persidangan dilanjutkan, Hakim harus menggunakan hati nuraninya dalam menentukan Hakim, dan harus ada bukti yang kuat, seperti rekaman CCTV atau saksi mata dari kejadian tersebut. Itu juga bisa didasarkan pada situasi aktual. Pertanggungjawaban pidana itu sendiri adalah untuk suatu tindak pidana, dan tujuannya adalah untuk menentukan apakah seorang tersangka atau terdakwa harus dimintai pertanggungjawaban atas suatu tindak pidana yang telah terjadi.

**Keywords:** *Criminal of Murder, Forced Circumstances (Overmacht), Self Defense.*

## I. INTRODUCTION

As people's lives experience renewal that continues to develop occasionally, it shows that societal dynamics are also constantly changing. This change does not only have a positive impact, but on the other hand, it also brings various negative impacts that can arise due to people who are unable or even reluctant to adapt to multiple changes due to the times, especially in the field of Law. Community non-compliance with this Law strongly encourages people to take various acts of deviance that can conflict with legal regulations in everyday life, for example, with the emergence of many actions classified as criminal acts.

It is known that various criminal acts that occur are one of the problems that are being faced by society from time to time without any solid solution to eradicate them. This crime can happen to someone who does not use his mind and is accompanied by his lust in carrying out an act so that, in the end, an action that exceeds the limit occurs. Criminal acts that are rife in society are of various types, one of which is the crime of murder. Provisions for murder are regulated in the Criminal Code Book (KUHP) II of Crimes in Chapter XIX with the title crime against life, which is stated in Articles 338 to Article 350.

One of the provisions mentioned by the Criminal Code (KUHP), namely Article 338, has formulated the elements of ordinary murder: anyone who intentionally destroys other people's lives. From these elements, it can be seen that every criminal murder must be accompanied by an intentional (intentional) carried out immediately after the choice appears to commit it without further thought. A crime that causes death is clearly an act against the Law because it has intentionally or unintentionally taken other people's lives. Actions that cause other people to lose their lives are severe types of unlawful acts, so appropriate criminal sanctions are needed against the perpetrators by the provisions of the Law.

Basically, in the criminal act of murder, it must be based on an element of intent, but in practice, it does not have to be based on an element of intent or the will of the perpetrator. (Prodjodikoro, 1986). This can be seen in several criminal acts of murder as a result of force majeure (overmacht) experienced by the perpetrators. In this situation, unlawful acts carried out under coercive circumstances are included in criminal acts for which the punishment of the perpetrators can be abolished or released from criminal responsibility.

Provisions for the reasons for eliminating criminal responsibility in criminal acts due to force majeure (Overmacht) are regulated in Article 48 of the Criminal Code (KUHP), which states as follows, "Whoever commits an act because an unavoidable power forces him, then he should not be punished". From this, it can be understood that the function of this article is as a basis for eliminating criminal responsibility as a result of the forced defence of a perpetrator of the murder, where this serves as an excuse to eliminate the nature of a violation of the Law. This can also be said to justify all actions generally classified as criminal acts, namely, to eliminate the heart of the criminal act.

Some provisions can become the basis for abolishing punishment based on coercive circumstances, namely Article 49 of the Criminal Code. In this article, there are two provisions, which in Article 49 Paragraph (1) serve as justification reasons used to eliminate the unlawful nature of a crime. Justification has an objective nature attached to his actions or other things beyond the perpetrator's mind, and Article 49 paragraph (2) acts as an excuse to eliminate the perpetrator's guilt of the crime. Furthermore, the reason for forgiving is subjective and inherent in the perpetrator, especially regarding the inner attitude before or when he is about to act.

In essence, the point contained in Article 49 of the Criminal Code is to formulate that coercive defence attacks that are contrary to the Law must arise suddenly and threaten directly but must be carried out with limited criteria; namely must be commensurate with the cause and aimed at to the body, decency of a person or object. In addition, someone murders because circumstances force him to choose between two choices: who dies or his opponent who dies. As a result, even though the act is still declared wrong, the criminal sentence can be reduced or even eliminated if the elements of the coercive circumstances can be proven in the judicial process.

The provisions above explain how the Law protects the perpetrators of murder who are forced to do so because they are in a self-defence situation. Even though there is a guarantee of legal protection for someone who protects himself, there are still people who are still subject to lawsuits, become accused, and even become convicts for acts of self-defence due to this violent situation. This can occur, among other things, due to a lack of further information in the Law regarding force majeure (overmacht), so law enforcement officials tend to ignore the existence of provisions governing this force majeure and prefer to give punishment to the perpetrators.

Based on the explanation of the background, the problems that will be discussed in this paper can be conveyed, namely as follows: What is meant by killing in a forced circumstance (Overmacht)? Why killing due to forced circumstance (Overmacht) can release the perpetrator from criminal responsibility?

## II. METHOD

The research method functions as a systematic series of stages in discovering the truth of scientific work to be regarded as quality scientific work. The research method has several conditions forming factors, namely the steps of the activities carried out, the materials and tools used in collecting data, processing and analyzing to obtain answers to the problems raised (Habsy, 2017). Therefore, in this research, the research method used is a normative research method by applying a statutory approach which is then analyzed using descriptive analysis techniques. This is because the object under study is mostly in the form of legal rules, which are the main focus of research, especially on laws related to (overmacht), as the author makes the topic of this research.

## III. RESULT AND DISCUSSION

### Killing in Forced Circumstances (Overmacht)

Murder is an act committed by a person against another person to eliminate the target person's life through intentional acts to expedite the process. Murder is an act that is very barbaric and heinous and has taken away the human rights of the victims. In various incidents of murder, multiple motives can be based on this, depending on the situation behind it. The existence of this diversity of motives also contributes to triggering the killing by someone to achieve the goal he wants, not only acting as fulfilling needs in survival but also as a place to satisfy his desires or emotions alone (Walgito, 2005).

Every time a murder occurs, there must be a motive which is the reason for the act being committed. This motive can come from hurt, jealousy, revenge, debts and so on, meaning that in committing the crime of murder, the perpetrator is based on his heart's desire, and there is intentionality and is not in a condition that forces him to commit murder. However, in several cases, there was a criminal act of murder resulting from a defence against himself due to being in a coercive situation. The point is a crime of murder that was triggered when the killer was previously the victim of a crime or other crime, which resulted in his soul being shaken violently, where a person was in a situation between life and death. Hence, he had to choose himself or his opponent to die. The killer carries out this act of murder to defend himself against a crime that threatens to protect him.

Forced circumstances in criminal Law are often known as Overmacht. Article 48 of the Criminal Code is the legal basis for force majeure, where this article states that "Whoever commits an act under coercion by an unavoidable power cannot be punished". In Dutch, the formula is "niet strafbaar is bij die een feit begat waartoe bij door overmacht is gedrongen" which mean "Does not go unpunished by anyone who acts under the influence of a coercive situation".

In this discussion, the most fundamental question is what "Forced Circumstances (Overmacht)" means. The Criminal Code has no more detailed explanation regarding this matter. In a book published by the Attorney General's Office in 1985 titled "Legal Terms

in Practice", forced circumstances (overmacht) are defined as a condition or event that cannot be avoided that occurs beyond a person's expectations or power. Furthermore, the books of the Criminal Code, both those compiled by R. Soesilo (1994 version) and R. Sugandhi (2013 version), explain that the word "forced circumstances" in the formulation of Article 48 of the Criminal Code is defined as physical and mental coercion and physical and spiritual coercion that is impossible to resist or avoid.

Legislators have mentioned that three main events lead to forced circumstances (Overmacht). First, there is an event of physical coercion; Second, there is psychological coercion; and Third, there is an event of coercive circumstances or what is often called Noodtoestand. Noodtoestand can arise if one legal obligation conflicts with another legal obligation, a conflict between legal obligations and legal interests, or a conflict between legal interests. In general, both Overmacht and Noodtoestand are coercive states. The difference is that Overmacht is a state of coercion caused by human force. At the same time, Noodtoestand is a state of compulsion that arises not because of human behaviour but because of the environment.

Suppose you look closely at Article 48 of the Criminal Code (KUHP) expression. In that case, it can be understood that forced circumstances (overmacht) are one reason for abolishing a sentence. However, this provision does not automatically become a reason for eliminating crime. This is because several reasons or causes must be met before coercion can be considered a reason to remove criminal responsibility. The reason for force majeure (overmacht) that can be accepted as a justification for abolishing a sentence is the existence of coercive power from a greater power, namely a power which generally cannot be resisted.

Quoted from the explanation of the Criminal Code written by R. Soesilo, the word "forced" must be interpreted as coercion against one's body and soul, spiritually and physically. In connection with this great power, according to Mr J. E. Jonkers, the power that causes forced circumstances divides it into three (three) parts, these are (R. Soesilo: 1995):

1. Absolute coercion

In this case, the perpetrator cannot do anything other than the actions he is forced to do. That is, the perpetrator did something unavoidable. According to Andi Hamzah, absolute coercion, often called vis absoluta, is not real coercion. Of course, this makes sense, as it is understood that under absolute duress, the person is not actually committing the crime. Therefore, Article 48 of the Criminal Code does not need to be applied if the crime contains elements of absolute coercion. For example, there is someone who is thrown by someone stronger at something that belongs to someone else until there is damage. The second person or the one who threw the ball must be punished for this incident.

2. Relative force

In relative coercion, it can be understood that the influence obtained by a person is not absolute. Still, even if that person can take other actions, he cannot be expected

to take other actions when faced with the same situation. That is, the person still has the opportunity to choose what action to take next, even though coercion heavily influences his choice. For example, a woman was held at gunpoint by a man and then asked to set fire to the house if she did not want the gun to be fired at her. Under these conditions, if the woman refuses the order, she will be shot dead, but when she complies with the order, she will not be punished even if she actually committed the crime; this is because there was a compulsion in the incident.

Related to the difference between absolute and relative power is that in absolute terms, in all actions, the person who is forcing himself is doing whatever he wants. In contrast, in relative power, it is the person who is under the influence of coercion which is acting even though the force is significant under coercion. Not all coercive powers can free someone from punishment, which can liberate only if there is coercion from great power, so it can be seen as something that cannot be avoided.

Related to the example above, which states that a woman who is threatened with a firearm to burn down someone's house, if the threat is only in the form of a threat of beating, then she cannot say she is in a coercive state. This is because he can fight or avoid the blow, so if the woman continues to burn the house, she will still be punished. So, determining coercion must be reviewed from many angles; for example, is the person being forced weaker than the person who is forcing it, is there no other way, is it true that coercion is balanced if it is obeyed, and so on? So to determine all of that, the Judge must examine and decide this matter.

### 3. Emergency Circumstances

Emergencies are often referred to as Noodtostand. The State of emergency developed from the decision of the Hoge Raad on October 15, 1923, which was called optical arrest. Based on this decision, the Hoge Raad classified an emergency into 3 (three) possibilities, namely a conflict between 2 (two) legal interests, a conflict between legal interests and legal obligations, and a conflict between 2 (two) legal obligations. Basically, when talking about emergencies, it can be understood that in an emergency, a person's criminal behaviour occurs based on choices made by himself. The difference with relative power is that in an emergency, the person who is in a coercive situation is the one who determines for himself what criminal act he will commit, whereas, in relative power, the person does not choose because it has already been determined by the person who is forcing it. An example of an emergency situation is, for example:

- a. The act of destroying other people's property by breaking the glass of a luxury home by firefighters to help people trapped in the house due to fire.
- b. Two passengers on a boat that broke in the sea then floated, holding on to a plank that was only strong for one person. To help himself, one of the people pushed the other person, let him drown, and eventually died. In this condition,

the person who pushed the drowning person could not be punished because he was forced to save his own life.

From the existence of a power that causes a coercive situation, as explained above, people who experience it directly will take action to defend themselves. Self-defence is often referred to as forced defence (noodweer), which is a right and obligation granted by Law to every person in order to maintain the safety of his life, both for the safety of his life, property and honour.

The next question is what kind of self-defence can justify an act that is also considered a crime. According to Van Hamel, if the attack or threat of attack is against the Law or has a prohibited nature and is punishable by Law (wederrechtelijk), the attack or threat of attack is in progress; the attack received constitutes an immediate threat of harm, and the attack is directed against oneself or another person's body, honour or property of oneself or another person. In addition, the defence made must also be appropriate and necessary so that the defence can be justified.

Compulsory defence has been regulated in the Criminal Code, more precisely in Article 49. In Article 49, paragraph 1, forced defence is referred to as noodweer, which means emergency defence reads as follows, "Whoever is forced to take action for defence, because there was an attack or threat of attack at that time which was against the law, against oneself or another person, against the honour of morality (eerbaarheid) or one's property or that of another person, shall not be punished".

The actions referred to by the article must be limited to a reasonable and balanced defence, meaning that before carrying out a defence, there must first be compelling matters (threats of attack) against the perpetrator. Concerning when an attack for self-defence is carried out, it must be carried out immediately; that is, when attacking self-defence, there must not be a long time gap. Furthermore, the form of the attack must be suddenly or immediately threatened at that time, meaning that the attack just happened and then a defence was immediately carried out.

Furthermore, in addition to the provisions of Noodweer, as described in Article 49, paragraph 1 of the Criminal Code, there is also the term Noodweer Exces which means forced defence that exceeds the limit. This provision can also be used as an excuse for a criminal offence against someone charged with committing a crime, as stipulated in Article 49, paragraph 2, which reads, "Forced defence that exceeds the limit, which is directly caused by great mental shock due to the attack or the threat of attack, will not be punished ". In connection with a criminal act committed by a person who fulfils all the elements determined as a crime, a forced defence that exceeds the limit can also be used as a reason for abolishing a crime. As with forced defence, forced defence that exceeds the limit here also must have an attack that is suddenly carried out or threatened at that moment which can be proven.

Discussion regarding criminal acts of murder committed under forced circumstances to carry out self-defence is still a topic of legal discussion which has yet to reach a final agreement. This is because the killer took action initially so that he would not become a real victim who chose to die or the perpetrator died, but on the other hand, murder is a



crime with a very heavy penalty. A person can carry out self-defence while still paying attention to the limitations to avoid this action. The existence of this limit needs to be considered by everyone because even if we are really in an emergency/threatening condition and defend ourselves that has exceeded the tolerance limit, the perpetrator can prosecute as a victim for actions that exceed these limits.

However, in legal regulations, the act of killing as a result of self-defence is basically an unlawful act that should not have been committed. However, in a murder committed in self-defence, the evidence must justify the incident to determine whether it is confirmed as a crime or just self-defence. For example, there is a recording showing that A entered B's house to commit a robbery, then A pointed at B, the house owner, or when C was on the street suddenly, D stopped and held C at gunpoint. In such conditions, a person who receives the threat when he gets the opportunity will respond to seize the perpetrator's weapon, which is then used to injure the perpetrator.

Please note that during self-defence, a person is not free to do anything, let alone to cause murder. So, if there is an act that is considered to exceed reasonable limits, such as murder, it will still be declared a crime. However, some reasons make the murder not punishable if the reasons and evidence put forward are proven legally. There are three legal requirements/rules that determine murder due to self-defence which can prevent the perpetrator from being punished:

1. Self-defence under coercive circumstances

The legal status of the victim of the murder of the suspect can be seen from how the case is being processed and whether the investigation by the authorities yields results or not. If someone is forced to defend himself because there is no other way, then it can be said that the action is still classified as self-defence.

2. Defence against oneself, property or other people

The regulations regarding killing in self-defence also regulate how to defend oneself, property or other people when they are in a state of threat and have no choice but to harm the perpetrator. Therefore, the defence made must contain elements of physical interests, honour, and property of oneself and others.

3. Human rights violations are accompanied by sudden threats

Under the Law on killing in self-defence, a person suddenly attacked and whose life is in danger has the right to act in self-defence even though the perpetrator may be injured. For example, a reflex action is when someone wants to hurt us, but on the contrary, even if the victim hurts the perpetrator, this action is still a form of self-defence.

### Exemption from Criminal Liability of the Perpetrators of Murder in Forced Circumstances (Overmacht)

Criminal liability is closely related to legal terms. The Law itself can be defined into several perspectives, namely, the Law in the perspective of objective meaning (*Ius Poenale*) and the Law in the perspective of subjective meaning (*Ius Poeniendi*). First, the



perspective of objective meaning (*Ius Poenale*) is interpreted as several regulations that contain prohibitions or requirements. This perspective divides the Law into the material and formal criminal Law. Material Criminal Law is a regulation regarding all actions or actions that can be punished, determines who can be punished and what punishment is appropriate to be given to people who have committed actions that are. Meanwhile, Formal criminal Law is a number of regulations regarding various ways in which the State can exercise its rights and powers in criminal Law through criminal procedural Law based on the provisions of the Criminal Procedure Code (KUHAP).

*Second*, Law in the perspective of subjective meaning (*Ius Poeniendi*) are regulation governing the rights of the State to punish someone who has committed an act that is prohibited by Law. The rights possessed by the State to impose such punishment can be stated as follows:

1. The right to threaten an act through punishment.
2. The right to impose penalties for people who break the rules
3. The right to carry out punishment against that person was carried out by the State law apparatus.

The relationship between *Ius Poenale* and *Ius Poeniendi* can be seen that *Ius Poenale* is the right of the State to give punishment based on the provisions of *Ius Poenale* so that the right to punish only appears after the *Ius Poenale* determines various actions that can be punished. Based on this provision, it is clear that the State cannot use its rights arbitrarily because the provisions in *Ius Poenale* have limited it.

This Law is intended to guarantee the protection of human rights in a country based on the source of the rule of Law that exists in that country. These foundations are noble ideals contained in view of life, awareness and noble legal or moral ideals by covering the psychological atmosphere for the Indonesian people, as stated in the Pancasila and the 1945 Constitution.

Law enforcement in solving problems of criminal acts in Indonesia has been controlled by formal Law as the applicable Law. This Law has been included in the Criminal Code Law (KUHP), which acts as a guideline for various settlements of criminal problems. However, this formal Law is often used by law enforcers as an action that is often used to take action against other forms of violations in society.

Indonesia, which lives as the rule of Law, indeed obliges individuals and legal entities to be responsible for any unlawful acts they commit, namely when they violate the provisions in the Criminal Code and other laws and regulations. The discussion regarding criminal responsibility cannot be separated from the discussion regarding criminal acts/offences. A person is not likely to be held criminally responsible if he does not commit a criminal act. Elements of criminal acts and aspects of intention play a core role in criminal Law. The elements of criminal Law are followed by illegal factors, namely, against the Law. Meanwhile, the elements in criminal liability consist of an ability to be responsible for mistakes (intentional and negligent).

Criminal liability is a form of responsibility for a criminal act that has been committed, meaning that the person concerned can be given legal sanctions for his actions. Punishments/sanctions can be carried out if there are already provisions in the Law against the act in a particular applicable legal system, as stipulated in the principle of legality so that the imposition of such punishment becomes justified in the legal system. This principle states that a person who commits a crime can be punished if his actions are bound/regulated by Law. To determine the capacity to carry out responsibilities, at least the following two conditions must be met, those are:

1. Intellectual ability is the ability to distinguish what is permissible and what is not acceptable, between good and bad or lawful and unlawful.
2. The ability to determine one's own will based on one's beliefs about the quality of one's actions (emotional factors), namely being able to desire to adjust one's own actions to one's beliefs, represents what is permissible and what is not permissible.

As we know, responsibility can be carried out when it fulfils the conditions needed for criminal responsibility, where the guilty party must be able to be responsible and must have the ability and power to do so because it is impossible for someone to be responsible. While he is unable to carry out that responsibility.

Concerning the release of criminal responsibility caused by forced circumstances (Overmacht). In this case, a person makes a forced defence to cause a crime to occur because it is a form of self-defence. In carrying out this self-defence, a person is still based on his normal psychology, so it can be said that he committed the act in a conscious and healthy mental state, but a very great mental shock certainly drives that person due to the sudden attack in his body. So he is in forced circumstances (Overmacht).

Furthermore, regarding the self-defence phrase, there are two problems, self-defence (Noodweer) and extraordinary self-defence (Noodweer Excess), as stated in Article 49 of the Criminal Code. The difference between these two self-defences is that an extraordinary mental shock has a very large mental impact. Based on the grammar, extraordinary mental shock is defined as a person's mental or soul State that is uncertain, in the sense of causing shock, causing anxiety, fear, insecurity and feelings of anxiety that are very high, causing disturbance to a person's mental state or mind. This is what causes actions that go beyond the limits of self-defence requirements. It can be said to have exceeded the limits of self-defence if the actual attack by the perpetrator has ended, but the victim still attacks the perpetrator continuously, even after the actual/supposed self-defence has been completed.

The principle adhered to by Article 49 of the Criminal Code is to protect or defend larger legal interests at the expense of smaller legal interests. The criteria that can be used to determine coercion are actions that are reasonable so that the risks that must be faced must be balanced or greater than the actions taken. It is no coincidence that the benefits sacrificed outweigh the benefits saved; in this case, the perpetrator must still be punished.

The foresight of law enforcers in applying the rules of Article 49 of the Criminal Code is essential because this rule protects those deemed entitled to carry out certain actions as a form of forced defence. When determining whether an event is included or not within the scope of acts of self-defence, law enforcement officials need to review it carefully based on a case-by-case chronology by focusing on the provisions of self-defence based on the Law.

In Indonesia, incidents of self-defence in forced circumstances often occur. In solving this problem, coercive circumstances are often used as a form of waiver of criminal responsibility by the perpetrators, but on the other hand, it has become a problem for law enforcers and for the community itself because most consider self-defence as just an excuse, so that the perpetrators of the crime The criminal must still be held accountable for his actions.

As has been discussed in the previous discussion, several things regulate the reasons for the elimination of criminal liability because there are justifiable reasons. However, let's look at the practice in the field of the judicial process carried out by law enforcers to assess whether a defendant who has committed a crime has reasons to eliminate criminal responsibility. It is the Judge who has a role in determining it so that, in the end, it must go through the court process.

Seeing this phenomenon, it seems that there is a gap between material Law and formal Law which is implemented, where when a person defends himself due to forced circumstances, in the end, in most cases, the perpetrators are still punished, even though, at that time, the actions he committed were protected and justified by Law. Act as stated in Article 49 of the Criminal Code. As a result, if law enforcers continue to proceed with the judicial process, the case will certainly become complicated, so victims' human rights will be disrupted due to prolonged detention. In fact, the Law has given investigators the authority to stop the investigation if the case is handled and is deemed to no longer guarantee the continuation of law enforcement at the next stage, especially in killings under coercive circumstances.

Article 109, paragraph 2 of the Criminal Procedure Code states (KUHP) that investigators can stop investigations by issuing SP3 (Warranty to Stop Investigation). Termination, according to Law, the investigator must notify the public prosecutor, the suspect, or his family. Based on the existing provisions, the investigator has several requirements to stop the investigation because of insufficient evidence, it is not a crime and is legally terminated. Judging from the conditions stipulated in this article, it is clear that there is a clause "not constituting a crime". When it comes to Noodweer and Noodweer Excess, as mentioned in Article 49 of the Criminal Code, it can be said that it is not a crime.

If so, law enforcement officials must stop the investigation and prosecution if at least two pieces of evidence are not found during the investigation process based on Article 184 paragraph (1) of the Criminal Procedure Code, the Police or the Public Prosecutor must stop the criminal case because it is useless if the process continues until trial. The excuses may be based on the fact that there was insufficient evidence in a case or that there was no evidence of a crime. Therefore, if there are indications that this is self-

defence from the start, then it cannot be legally punished, so it will be useless to continue the judicial process.

However, when investigators continue to proceed to the trial stage, the Judge is the only one with the authority to handle the case. This is because the Judge has a role in balancing the enforcement of the principles of formal and material truth with evidence as the foundation. The Judge is seen as a central figure in the law enforcement process which seems fair and unfair, good or bad, smooth or not smooth, all of which come from judges. Proof, in this case, is vital because it aims to determine a person's fate by proving the accused's arguments. Thus, it can be seen that the Judge has the right to try the accused in court.

In accordance with the provisions in Article 49, paragraph 1 of the Criminal Code, which reads, "Not criminalized, whoever commits an act of self-defence is forced for himself or others, the honour of decency or his own or other people's property because there was an attack or threat of attack that was very close at that time which was against the law.". Based on this provision, for a person to be released from criminal responsibility, there must be an unlawful attack first. The point is when there is an attack on someone who comes suddenly, that person counterattacks to protect himself. In the following, the author can convey some more detailed limitations and conditions regarding self-defence:

1. The act must be really forced because there is no other way but to do that action  
It should be understood that there must be a balance (comparable) between self-defence and threatening attacks, it is not permissible to overdo it. For example, when A, who is a robber, enters B's house while A is in action, B finds out, and at that moment, A fight occurs until B finally hits A until falls helplessly. Up to this point, the conditions for self-defence have been met, but when B continues to beat A when he is helpless, then this will eliminate the elements of self-defence and can already be declared a crime as well.
2. Acts of self-defence can only be carried out to defend life or body, decency honour and property  
The purpose of this decency honour refers not to the realm of humiliation or persecution but rather refers to the decency honour of women. For example, a woman walks into a reasonably quiet place, and then a man suddenly ambushes her to rape her. While under the man's coercion, he saw a rock or wood, and then he grabbed it and immediately hit the man until he fell helplessly. This action can be considered self-defence in defending the honour of decency so that he can be released from criminal responsibility. However, when the woman was first able to run away and then intercepted the man who was also chasing her, then just hit her with a rock or wood, this could be declared as persecution so that the woman could be punished.
3. There is an attack that comes in an instant at once

The perpetrator must have carried out this attack, and the victim is not allowed to attack first before there is an actual attack from the perpetrator because if the victim attacks first because he feels intimidated by an attack but only as a prejudice, then that is already a form of persecution.

#### 4. The attack must be strictly against the Law

The actions here must be valid against the Law so that they conflict with the rights of other people, which can cause harm to the party concerned.

Furthermore, the provisions in Article 49 paragraph 1 of the Criminal Code also has similarities with Article 49 paragraph 2 of the Criminal Code, where both of them provide provisions regarding self-defence where the elements are also the same in the form of life or body, honour of decency and property belonging to oneself or another person. Other. Meanwhile, the difference is that it is forced to go beyond the limits in defence. In this case, the maker goes overboard or beyond the limitations due to severe mental turmoil or disturbed emotions. At the time of the attack, his emotions, such as anger, sadness and fear, mixed to make his soul agitated.

If, in the judicial process, the Judge finds it difficult to give a decision on the act of overmacht, the Judge can use jurisprudence. The jurisprudence that can be used as a guideline or legal basis in making decisions. One example of jurisprudence that the author put forward is in decision Number 103/Pid.B/2021/PN Gdt issued by the Gedong Tataan District Court, Lampung. In this case, the Public Prosecution stated that the defendant NURYADIN Bin M. TAKIUDIN (Alm), was proven guilty of committing the crime of murder against the victim BRANHAR Bin BASMAN, as stipulated in Article 338 of the Criminal Code and was accompanied by a threat of imprisonment for 12 (twelve) years minus the prison term. However, the Panel of Judges believes that the elements of murder, namely "intentionally taking the lives of other people" as demanded by the Public Prosecutor, are not clearly proven, so the defendant is acquitted of criminal responsibility. This is by the statement from the defendant's legal counsel that the basis for the murder was that the defendant had no deliberate intention to kill the victim, but what the defendant did was as a form of self-defence that exceeded the limit (Noodweer Excess) as stipulated. in Article 49 paragraph 2 of the Criminal Code.

Self-defence that exceeds the limit, especially to the point where it causes loss of life, is basically an act against the Law, it's just that the maker cannot be criminally punished due to great inner turmoil. This is because, in these conditions, a person must choose himself to die or his opponent to die. Dead. In forced defence, it can be used as a justification because there is no unlawful nature, while in force protection, which exceeds the limit, it can only be used as an excuse.

This is because a coercive situation arises due to pressure from the outside. So, if someone commits murder under coercive circumstances and the charges at trial cannot be proven, thus the defendant can be released from all directions. However, if the evidence presented is insufficient to prove that the murder was intentional, then by taking into account the provisions of Article 48 of the Criminal Code, the perpetrators can

be sentenced according to the provisions of the Criminal Code for crimes against other people's lives, specifically Article 338 of the Criminal Code.

#### IV. CONCLUSION

Murder under forced circumstances (overmacht) eliminates the criminal nature of a crime. This is caused when the killer is in a situation between another life and death, which results in his soul being shaken so severely that he has to choose himself who dies or his opponent who dies. The killer commits this act of murder to defend himself against a crime threatening to support him. This action has been protected by the provisions contained in Article 48 and Article 49 of the Criminal Code. In overmacht, the abolition of responsibility is divided into two types, namely justification reasons that cause the loss of lawlessness and excuses stating that the act of murder was indeed carried out because of an extraordinary encouragement from outside factors so that one was forced to commit a criminal act.

Criminal liability cannot be imposed on the perpetrators of overmacht. This is the result if, from the beginning of the investigation, it has been indicated that it is not a crime but a form of self-defence. However, if the investigator feels unsure, he can continue his investigation through the judiciary so that the Judge has the authority to decide and also if during the trial the Judge also feels unsure about giving a decision, the Judge can use jurisprudence to serve as a guideline or basis for deciding the case. One example of jurisprudence related to this issue is in decision Number 103/Pid.B/2021/PN Gdt issued by the Gedong Tataan District Court, Lampung, where the panel of judges acquitted the defendant because it was proven that the actions he had committed were a form of self-defence. Which exceeds the limit (Noodweer Excess) as stipulated in Article 49, paragraph 2 of the Criminal Code.

The rules and an explanation regarding the provisions for force majeure (Overmacht) and self-defence (Noodweer) must be further clarified so that anyone, whether law enforcement or the public, can understand these provisions before taking action. Law enforcers, especially investigators at the Police, must have broad insight into the provisions of force majeure (Overmacht) and self-defence (Noodweer) so that cases of this kind can be resolved without going to court so that the rights of suspects are not disrupted due to the lengthy process of this criminal process. Acts of self-defence can only be carried out to defend life or body, moral honour and property.

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