



LAW ENFORCEMENT AGAINST MOTORCYCLE MURDER ACTIONS RESULTING IN LOSS OF LIVES IN THE LEGAL SYSTEM IN INDONESIA

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Abstract

This study examines the phenomenon of vigilante action that often occurs in Indonesian society, especially in the context of Begal perpetrators who have resulted in loss of life. The main focus of this study is to understand the application of criminal law to perpetrators of vigilante action, by exploring the relevant legal provisions in the Criminal Code (KUHP) and their implications in resolving cases. This study is descriptive analytical and uses a normative legal method with a literature study approach, involving primary, secondary, and tertiary legal materials.

The results of the study show that, although the Criminal Code does not explicitly regulate vigilantism, articles such as Article 170 on violence, Article 351 on assault, and Article 354 on serious assault, can be applied to prosecute perpetrators. The cases raised in this study show that vigilantism is often motivated by public disappointment with the police response which is considered slow and ineffective. This causes a strong reaction from the public which leads to persecution or even murder of perpetrators of crimes caught by the masses.

The study recommends the need for more effective and responsive law enforcement by law enforcement officers and increased legal education for the community to reduce vigilante actions. Increasing public trust in law enforcement agencies is also very important to prevent the community from taking legal action into their own hands.

I. INTRODUCTION

In a criminal act, it only refers to the prohibition and threat of the act with a criminal threat. Whether the person who commits the act is then sentenced to a criminal penalty depends on whether the person is at fault in the act.

(Moeljatno2008) A person cannot be held criminally responsible without first committing a crime. It is considered unfair if suddenly someone has to be responsible for an action, while he himself did not commit the action. (Roeslan, 1983)

Sudarto said that it is not enough to punish someone if the person has committed an act that is against the law or is against the law. So even though the act meets the formulation of a crime in the law and is not justified, it does not yet meet the requirements for sentencing. For sentencing, there still needs to be a requirement for sentencing, namely that the person is guilty or has made a mistake. The person must be held

accountable for his actions or if viewed from the perspective of his actions, his actions can only be accounted for to the person. ((Sudarto, 1988)

Punishment can only be imposed on people who have been proven guilty and the decision is determined by the judge through a process of proof first. Before the process of proof provides clarity on the status of the person accused of committing a violation, the principle of the presumption of innocence still applies. This also applies to perpetrators who have been proven to be caught red-handed committing a crime. (Topo, 2003)

One form of crime that often occurs in a society is vigilantism (Eigenrichting) which is increasingly developing in society. Violent law enforcement (Eigenrichting) is an act of arbitrary action by an individual or group of people by committing violence against people suspected of committing a crime without going through the

legal process. For example, people who find someone committing a crime of mugging, pickpocketing, or robbery, then the community takes action by beating, ganging up, even burning alive the person who committed the crime, this action is vigilantism, people tend to do it without thinking long about such treatment and do not think about what the consequences are of such actions.

These acts have become a habit in the life of society, because society assumes that the actions they take are right and can have a deterrent effect on people who commit crimes, but in reality this is not the case, the act of taking the law into one's own hands has actually violated the law. The rapid development of society as a result and process of implementing development in all areas of social, political, economic, security, and cultural life has also brought negative impacts in the form of increasing the quality and quantity of various types of crimes that are very detrimental and disturbing to society. ((Soekanto, 1996)

With the development of the era in the present without paying attention to the existence of laws that regulate, then the act of taking the law into one's own hands will cause many problems that occur in society. The cause of taking the law into one's own hands raises the assumption from the community that legal institutions (Police, Prosecutors, Judges) have failed to overcome problems and are considered slow in carrying out their duties as well as the dissatisfaction of the community in law enforcement that does not run as it should.

Social phenomena related to vigilante actions (Eigenrichting) regarding cases of violent motorcycle robbery or commonly called begal, such as the example of a case that occurred in Pondok Aren Tangerang. A begal committed a violent motorcycle robbery, using a sharp weapon, then carried out his action in the early hours of the morning to Wahyu who was the victim of the robbery and Sri, Wahyu's friend who was being carried by him on a motorcycle.

The perpetrator did it together with his friends, they did the action because they wanted to rob or take the victim's motorbike, but the action failed because Sri, the victim of the robbery, fought back against the slashing with a sharp weapon carried out by the robber, then the victim shouted for help to residents around the scene of the crime, and residents who heard it immediately chased the perpetrator until he was finally caught. The community who caught and saw the incident did not think twice, they took the law into their

own hands against the perpetrator, beat him black and blue, carried out acts of violence, mobbing and abuse, then not only that, the community also carried out very sadistic and extremely cruel actions, the perpetrator was burned alive to death. (Zulfan, 2023)

Legislation, especially the Criminal Code (hereinafter referred to as the Criminal Code) has not specifically regulated the act of taking the law into one's own hands, but that does not mean that the Criminal Code cannot be applied at all if an act of taking the law into one's own hands occurs. There are articles that regulate the act of taking the law into one's own hands, namely Article 170 concerning Violence, Article 351 concerning Abuse

Taking the law into one's own hands is not the right way to enforce the law, but rather a violation of human rights (HAM) and has made a negative contribution to law enforcement in Indonesia. The public or the masses forget that perpetrators of crimes are also human beings who have human rights. Criminals have the right to receive legal protection in court and should not experience suffering from the public or the masses. Because after all, they are also human beings who have the same rights in the eyes of the law. Article 4 of the Republic of Indonesia Law Number 39 of 1999 concerning Human Rights states that: "the right to life, the right not to be tortured, the right to freedom of the person, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and human rights that cannot be reduced under any circumstances and by anyone"

II. RESEARCH METHODS

This research is descriptive analytical, which aims to describe and analyze general symptoms related to vigilante actions resulting in death. In terms of type, this is a normative legal research that uses secondary data through literature studies, including primary, secondary, and tertiary legal materials. The focus of the research is on legal regulations, criminal liability, and the basis for judges' considerations in decisions. This research emphasizes the importance of collecting accurate and relevant data to maintain the objectivity and accuracy of the study results.

III. RESULTS AND DISCUSSION

A. Criminalization of Acts of Taking the Law into One's Own Hand (Eigenrichting) in Criminal Law in Indonesia

The definition of vigilante action according to Sudikno Mertokusumo is an action to exercise rights according to one's own will which is arbitrary, without the consent of other interested parties, so that it will cause losses. 8 Acts of vigilantism (eigenrichting) today, are viewed by the majority of Indonesian society as bad or reprehensible acts, but in the Criminal Code currently in force in Indonesia, which originates from the *Wetboek van Strafrecht* (WvS) of the Dutch East Indies era, acts of vigilantism (eigenrichting) are not stated/are not specifically regulated therein. 9 Indonesia itself adheres to the principle of legality contained in Article 1 paragraph (1) of the Criminal Code, which states: "an act cannot be punished, except based on the strength of existing criminal law provisions".

The case of vigilante action (eigenrichting) is a form of public reaction due to violations of norms that apply in society. Public reaction, viewed from a sociological perspective, can be divided into two aspects, namely positive and negative aspects. 10 In essence, the act or deed of vigilante action (eigenrichting) is the implementation of sanctions/groups. It's just that the sanctions carried out by individuals or groups are difficult to measure the severity, because the masses can sometimes act wildly and uncontrollably. 11 In the Criminal Code (KUHP), there are no articles that specifically regulate vigilante actions (eigenrichting).

However, there are several articles related to the act of taking the law into one's own hands (eigenrichting), namely: Article 351 of the Criminal Code concerning Abuse with the threat of imprisonment or a fine, which reads: Abuse is punished with a maximum imprisonment of two years and eight months or a maximum fine of Rp. 4,500, -. If the act results in serious injury, the guilty party is threatened with a maximum imprisonment of five years, If the act results in death, the guilty party is threatened with a maximum imprisonment of seven years, With abuse it is equated with intentionally damaging a person's health, Attempting to commit this crime cannot be punished.

In addition, Article 170 of the Criminal Code regulates violence with joint force against a person or body and is punishable by imprisonment, Article 406 of the Criminal Code

regulates destroying, damaging, making unusable or removing something belonging to another person and is punishable by imprisonment or a fine, Article 338 of the Criminal Code regulates crimes against life or taking the life of another person and Article 354 of the Criminal Code regulates serious assault.

There are several similar cases related to vigilantism (eigenrichting), one of which is the case that occurred on Monday, August 9, 2018, namely the case of the village head of Probolinggo provoking his residents to burn a motorbike thief alive (DetikNews 2018). The example of the case above includes criminal acts that are carried out intentionally. Even though in Indonesia the practice of vigilantism has been prohibited and there have been strict actions. However, in reality there are still people who carry out such brutal actions. The method of punishment by the community is often considered reasonable by some people, but it is still an inhumane act and not the right way.

In response to this, to meet the needs of life, people usually always want everything instantly and want everything with less than maximum effort. High demands cause someone to commit crimes such as mugging. Mugging has been regulated in the Criminal Code on Mugging in Article 362 of the Criminal Code (Indonesia 2011). As if there is a mugging in the community, what they usually do is direct punishment by arresting the perpetrators of the mugging to be beaten together. This is not in accordance with the handling that has been explained in the Criminal Procedure Code, so the appropriate handling according to the Criminal Procedure Code (KUHP) as stated in Article 16 paragraph (1) and Article 21 paragraph (1) (Indonesia nd).

This issue also focuses on murder committed by the perpetrator of vigilante action (eigenrichting) against the victim. The provisions contained in the Criminal Code regulate one of them regarding the crime of murder. This is stated in Article 338 to Article 350 of the Criminal Code (Amanda 2017).

The Criminal Code has not specifically regulated vigilantism, but if vigilantism occurs, the provisions of the Criminal Code such as Article 338 of the Criminal Code and Article 351 of the Criminal Code are used to threaten the perpetrators of vigilantism (Parwata nd).

The Criminal Code basically only contains broad formulations. So, some of these provisions can be used by law enforcement officers as a basis for reference to carry out legal proceedings against parties involved in carrying out vigilantism.

The results of the analysis related to the factors causing *eigenrichting* because this includes preventive efforts which are social control measures carried out to prevent or as a preventive effort. So, in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 concerning the Adjustment of the Limits of Minor Criminal Acts and the Amount of Fines in the Criminal Code, where in this case the suspect's loss is only below 2.5 million so that the losses and costs are considered unbalanced or not comparable (Madari 2014).

But in fact, there are many cases of minor robbery that occur and this is special because the suspect's loss is only under 2.5 million, but in this case the perpetrator of the robbery which is also included in the crime of minor robbery received *eigenrichting* treatment resulting in death carried out by a cornfield owner. In addition, the perpetrator does not meet the requirements for the elimination of the crime formulated in Chapter III of the First Book (KUHP) consisting of Articles 44, 48, 49, 50, and 51. This is because there was no threatening attack from the victim against the perpetrator.

It is said so because the perpetrator of this *eigenrichting* when faced with a victim who was caught red-handed stealing corn, automatically swung a sharp weapon towards the victim because the perpetrator had bad thoughts and was worried if the victim preceded to attack. So in this case, especially for the perpetrator of *eigenrichting*, the failure to fulfill the requirements for the elimination of criminal acts will have an impact on the invalidity of justification in a criminal act. (Novirahmaw, 2010)

Theories regarding the causes of vigilante actions carried out by the masses or individuals against perpetrators of criminal acts are as follows (Wijaya 2018): first, following suit, namely in general it can be said that the relationship between the victim and the perpetrator of the crime is not only studied from the aspect of the victim's suffering but also how the victim often contributes to the

occurrence of the crime in question. (Danielli, 2016)

In this case, the perpetrator took the law into his own hands against the victim, influenced by the factor of following suit, which is often done by some people to give direct punishment when they encounter a crime. Second, emotions towards the perpetrator of the crime. Third, public distrust of the role of law enforcement officers. In this case, the perpetrator of *eigenrichting* did not think long in committing an unlawful act. This is because the perpetrator felt a sense of satisfaction. The act was carried out because the perpetrator did not fully trust the role of law enforcement officers because according to him the process of handling the case was usually slow and not optimal. (Amanda, 2017)

B. Criminal Sanctions for Acts of Taking the Law into One's Own Hand in the Indonesian Legal System

Taking the law into one's own hands is an unlawful act that has become a new phenomenon in society. This emerged along with the development of a society that feels it has power and uses the power it has (Fitriati 2012: 9). The context of taking the law into one's own hands in criminal law as formulated in the Criminal Code basically does not contain provisions that expressly regulate taking the law into one's own hands, because the form of prohibited or required acts is accompanied by the threat of punishment, in the Criminal Code only contains formulations in outline. Based on the principle of legality, in essence criminal law requires that every prohibited or required act must first be stated expressly in a statutory regulation (*nullum delictum nulla poena sine previa lege peonali*).

However, if we look at the formulation of the articles contained in the Criminal Code, basically there are several provisions that although indirectly regulate vigilante actions as prohibited acts, but in casuistic terms several provisions can be used by law enforcement officers as a basis for reference to carry out legal proceedings against parties involved in carrying out vigilante actions (Abby, 2016: 97). Based on the actions (formal) and consequences of actions (material) arising from vigilante actions against people suspected of being perpetrators of criminal acts who then become victims, there are provisions in the Criminal Code that can be

imposed on perpetrators of vigilante actions, including the following:

1. Committing a violation of criminal law as referred to in Article 170 of the Criminal Code, which states that:
 - a. Anyone who openly and with joint force uses violence against people or property, is threatened with a maximum prison sentence of five years and six months.
 - b. The guilty party is threatened with: First, a maximum imprisonment of seven years if the person intentionally destroys goods or if the violence used results in injuries; second, a maximum imprisonment of nine years if the violence results in serious injuries; third, a maximum imprisonment of twelve years if the violence results in death.
2. Committing a criminal violation as referred to in Article 351 of the Criminal Code, which states:
 - a. Abuse is punishable by a maximum prison sentence of two years and eight months or a maximum fine of four thousand five hundred rupiah;
 - b. If the act results in serious injury, the perpetrator is subject to a maximum prison sentence of five years;
 - c. If it results in death, the perpetrator is subject to a maximum prison sentence of seven years;
 - d. With abuse is equated with intentionally damaging health;
 - e. Attempt to commit this crime is not punishable
3. Committing a criminal violation as referred to in Article 352 of the Criminal Code which states that:
 - a. Except for those mentioned in Article 353 and Article 356, then abuse that does not cause illness or obstacles to carrying out official work or search, is threatened as light abuse threatened with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiah. The penalty can be increased by one third for a person who commits the crime against a person who works for him or is his subordinate;
 - b. Attempt to commit this act is not a crime;
4. Committing a criminal violation as referred to in Article 354 of the Criminal Code which states that:
 - a. Anyone who intentionally seriously injures another person is threatened with

committing serious assault with a maximum prison sentence of eight years;

- b. If the act results in death, the guilty party is threatened with a maximum prison sentence of ten years.

In the crime of vigilantism, the alleged victim who is judged by a person or society certainly suffers a very great loss. This act of vigilantism can be caused by a misunderstanding between the parties as happened in Tlogoboyo Village, Bonang District - Demak, and there are also those caused by the disruption of community welfare due to another crime. As happened in Wilalung Village, Gajah District - Demak. Police law enforcement officers, namely investigators, must really consider the interests of the parties to the case. Investigators who handle cases of vigilantism are required to not only pay attention to the interests of the perpetrators, but must also see the interests of the victim as the most disadvantaged party must be considered. In general, efforts to protect victims of crime have been regulated in Article 28D, 28G, 28 I, and Article 28 J of the 1945 Constitution of the Republic of Indonesia, amendment (II).

The text of these articles is as stated in the following description: Article 28 D paragraph (1), reads: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law." Article 28 G paragraph (1), reads: "Everyone has the right to protection of themselves, their family, honor, dignity and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."

Article 28 I paragraph (1) reads: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances." Article 28 I paragraph (2) reads: "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment."

Based on the provisions stipulated in the articles above, it is emphasized that everyone has the same rights and position before the law. Thus, whenever there is a violation of the

law, both the perpetrator and the victim must receive the same rights in accordance with the applicable legal provisions, as a manifestation of a sense of justice. Therefore, in 2016 a law was formed that regulates the protection of victims of crime through Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Protection of Witnesses and Victims. (Irkham, 2017)

Law Number 13 of 2006 concerning Protection of Witnesses and Victims, states that Protection² is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims that must be implemented by LPSK or other institutions in accordance with this Law. Meanwhile, the protection of victims referred to here is an effort to fulfill rights and provide assistance to provide a sense of security to victims of vigilante actions carried out by the Demak Police Resort. The Law on Protection of Witnesses and Victims divides the procedures for providing protection and assistance differently. The protection referred to is the rights provided in accordance with Article 5, while the provision of assistance is regulated in Article 6, Law Number 31 of 2014.

IV. CONCLUSIONS AND RECOMMENDATIONS

Acts of taking the law into one's own hands (eigenrichting) from a positive legal perspective are acts that violate the law. In criminal law as formulated in the Criminal Code, there are basically no provisions that explicitly regulate acts of taking the law into one's own hands (eigenrichting). However, if we look at the formulation of the articles contained in the Criminal Code, such as Article 170 on violence, Article 351 on ordinary assault and 352 on minor assault, and Article 354 on serious assault, which although indirectly regulate acts of taking the law into one's own hands as prohibited acts, in a case-by-case manner, several of these provisions can be used by law enforcement officers as a basis for carrying out legal proceedings against parties involved in carrying out acts of taking the law into one's own hands (eigenrichting).

The government and law enforcement agencies should immediately take steps to restore public trust by building moral strength, starting with law enforcers who are always firm in handling cases that occur in society and socializing the essence of the need for the law to be obeyed by society, accompanied by taking firm

action against any member or group of society who takes the law into their own hands (eigenrichting) in resolving the legal problems they face.

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