

## THE ACT OF KILLING A MUGGER IN SELF-DEFENSE: A PERSPECTIVE FROM ISLAMIC CRIMINAL LAW AND THE INDONESIAN PENAL CODE

Riziq Rabbani Iwanka Sirait<sup>1)</sup>\*, Aripin Marpaung<sup>2)</sup>

<sup>1,2</sup>Universitas Islam Negeri Sumatera Utara, Medan-Indonesia

\*Correspondence Author: [riziqrabbani26@gmail.com](mailto:riziqrabbani26@gmail.com)

### ABSTRAK

*This study aims to explore the legal perspective on killing a robber in self-defense according to Islamic Criminal Law (Fiqh Jinayah) and Indonesian Positive Law. The method used is library research. The findings indicate that many people still lack a clear understanding of the legal provisions regarding killing a robber in self-defense. Meanwhile, cases of robbery targeting personal belongings such as motorcycles, bicycles, and other valuables continue to occur frequently in various regions. This lack of understanding leads to uncertainty when facing such threats, even in situations where the victim may lose their life. In Islamic Criminal Law, self-defense resulting in the death of an attacker can be justified if certain conditions are met, such as a real threat to life or honor. In Indonesian Positive Law, self-defense is regulated in the Criminal Code (KUHP), which provides legal protection to victims who defend themselves proportionally. This study emphasizes the importance of legal education for the public so that individuals understand their rights and limitations when acting in self-defense against criminal acts like robbery.*

**Keywords:** Acts of Murder, Thieves, Self-Defense, Criminal Law Review

### ABSTRAK

Penelitian ini bertujuan untuk mengeksplorasi hukum membunuh begal dalam konteks pembelaan diri menurut perspektif Hukum Pidana Islam (Fiqh Jinayah) dan Hukum Positif di Indonesia. Metode yang digunakan adalah penelitian kepustakaan (library research). Hasil penelitian menunjukkan bahwa masih banyak masyarakat yang belum memahami secara jelas ketentuan hukum terkait tindakan membunuh begal saat membela diri. Padahal, kasus pembegalan yang menyerang kepemilikan pribadi, seperti sepeda motor, sepeda, dan barang-barang berharga, masih sering terjadi di berbagai daerah. Kurangnya pemahaman ini menyebabkan ketidakpastian dalam bertindak saat menghadapi pembegalan, bahkan dalam situasi di mana korban dapat kehilangan nyawa. Dalam Hukum Pidana Islam, pembelaan diri yang berujung pada kematian penyerang dapat dibenarkan apabila memenuhi syarat-syarat tertentu, seperti adanya ancaman nyata terhadap nyawa atau kehormatan. Sementara itu, dalam Hukum Positif Indonesia, tindakan pembelaan diri diatur dalam Kitab Undang-Undang Hukum Pidana (KUHP) yang memberikan perlindungan hukum bagi korban yang melakukan pembelaan secara proporsional. Penelitian ini menekankan pentingnya edukasi hukum kepada masyarakat agar memahami hak dan batasan dalam melakukan pembelaan diri terhadap tindakan kriminal seperti pembegalan.

**Kata Kunci:** Tindakan Membunuh, Begal, Bela Diri, Tinjauan Hukum Pidana

## Introduction

Begal is a crime phenomenon that is very troubling to the community (Gunawan et al., 2021) Especially in begal victims because begal victims not only experience loss of property but often also get physical and psychological injuries. The perpetrators also caused deep trauma to the victims and the community. Historically, beheading has occurred in almost every location in Indonesia, both urban and rural. In contrast to theft, it is carried out in public or directly with the victim. In this case, it is comparable to robbery, which is more often carried out in groups and carried out in the open; However, it is more often associated with illegal activities that occur on the streets (Mitchell & Mackay, 2011; Obidimma & Obunadike, 2023).

*Hirabah* is a phrase used in Islam to interpret, which encompasses all actions. Other names used include *qita'u at-tariq*, *sariqah al-kubra*, and others. It is referred to as *qat'u at-Tariq* because it means preventing people from using public roads that are being used, hindering security, whether this is done by causing bodily injury or property damage or simply by scaring or stealing goods. The act of confiscating another person's property by force or violence is known as *jarimah sariqah al-Kubra*. The two connotations mentioned above are included in the definition of *hirabah* itself, so here the author analogizes the act of begal with the *jarimah* of *Hirabah* because there is a similarity, namely the intention to take another person's property illegally and followed by violence. Al-Quran Surah Al-Maidah verse 33

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

Translation: "The reward for those who fight against Allah and His Messenger and cause havoc on the earth is simply to be killed, crucified, crossed off their hands and feet, or exiled from their dwellings. That is a disgrace to them in this world, and in the hereafter they will have a severe punishment. (QS. Al-Maidah:33)

In Al-Maidah verse 33 it is explained that there are four sanctions for the perpetrators of *hirabah*, namely;(Saebani, 2018) *First*, if the perpetrator robs, kills, and robs someone's property, he is punished by killing and crucifying. *Second*, if he only robs and kills, he will be punished by killing. *Third*, if he robs and robs only property, he will be punished by cutting off his hands and feet crosswise (right hand and left foot). *Fourth*, if a person robs by scaring his victim, he is punished by being exiled from his country or region as a form of insult.

Acts of treason and taking people's property and taking other people's lives, they are included in the category of criminal crimes. Criminal Code 365, Indonesia's positive law, regulates criminal punishment in crimes such as beheading. Criminal Code 365 states that a

person faces a maximum sentence of fifteen years in prison if they take someone else's property and then follow it up with violence, killing the victim (Kementarian Hukum dan HAM, 2018)

### **Research Methods**

The normative sociology research methodology was used in this study (Achmad, 2010) Meanwhile, the approach used is descriptive and comparative (Naser & Ali, 2016; Siedlecki, 2020). This method focuses on analyzing the norms or laws that apply in society to understand the social phenomenon being studied. In this study, the approach used is descriptive and comparative. The descriptive approach aims to describe clearly and in detail the phenomena that occur, while the comparative approach aims to compare various things that are relevant to the research topic. The analogy approach is also used by the author as a strategy to clarify ideas and make complex concepts easier for readers to understand.

In this case, data analysis was carried out using a comparative method, in which the author compared various opinions on the same topic, namely bengali murder in the context of self-defense. By comparing the existing views, the author can identify similarities and differences in the views of Islamic law and positive Indonesian law on this issue. This comparison process aims to find common ground between the two legal systems and assess whether there are any inconsistencies that need to be corrected. Thus, this research not only focuses on the discussion of the law but also provides a more comprehensive understanding of how the law can be applied in certain situations, especially related to self-defense against criminal acts

### **Discussion**

#### **Killing Begal for Self-Defense**

The word "murder" has a prefix and an that includes the words pe and an which mean to kill, erase (cross-out) writing, extinguish fires, and destroy vegetation. The Great Dictionary of the Indonesian Language (KBBI) defines murder as the act of murder, act, or murder, while "killing" refers to causing death or taking a life (Editorial Team, 2011).

According to the Indonesian Criminal Code, murder and crimes against the soul are often divided into two groups: the first group is based on the elements of the offense, and the second group is based on the object (Mentari, 2020) Based on the elements of guilt, the crime of murder is divided into 2 (two) types, namely:

- (1) Intentional crime against life (*dolus misdrijven*). Articles 338 to 350 of the Second Book of the Criminal Code, Chapter XIX, cover regulations relating to this offense.
- (2) Unintentional crime against life (*culpose misdrijven*). Article 359 of the Second Book of the Criminal Code, Chapter XXI, regulates this offense.

Crimes against life are classified into three types based on the object or victim (protected legal interests). These are as follows: (1) Crimes against human life in general, which are regulated by Articles 338, 339, 340, 344, and 345 of the Criminal Code. (2) Articles 341, 342, and 343 of the Criminal Code regulate crimes against the life of a newborn or immediately after birth. (3) Articles 346, 347, 348, and 349 of the Criminal Code contain criminal acts against the life of a baby who is still in the womb or in the form of a fetus.

Basically, the crime of robbery is part of theft, but it has its own characteristics, namely it is carried out in public places such as the street and openly accompanied by violence or threats of violence. In Indonesia's positive law, the act of committing crimes is regulated in Article 365 of the Criminal Code (KUHP), which regulates theft by force.

Theft involving violence or threats of violence against individuals with intent to steal is regulated in this article. The maximum penalty for this type of theft is nine years in prison. Article 365 paragraph (2), threatens to imprison a person for up to nine years if they commit theft preceded, accompanied, or followed by violence or threats of violence, or if they are caught allowing themselves or other participants to escape, or if they continue to possess stolen goods.

According to Suharto's argument in his book Material Criminal Law, Article 365 of the Criminal Code is described as "theft by the use of force" because it involves violence or threats of violence from one or more parties that cause serious injury or death (Eddy.O.S.Hieriej, 2016) The phrase "Noodwer" refers to self-defense in criminal law. Noodwer of the Criminal Code is separated into two categories: Noodwer and Noodwer exces, or forced defense that exceeds the limit, as stated in paragraph 49: Article 49 paragraph (1) of the Criminal Code states:

*"Whoever is forced to do an act for the defense, because there is an attack or threat of attack at that time that is against the law, against himself or others; against the honor of morality (eerbaarheid) or one's own property or that of others, shall not be punished".*

While Article 49 paragraph (2) of the Criminal Code reads:

*"Forced defense that goes beyond the limit, which is directly caused by a severe mental shock due to the attack or threat of attack, is not punishable" (Wahyuni, 2024)*

This article is not used to justify illegal behavior, but rather as a justification for forgiveness. This is due to the fact that a person who is forced to commit a crime can be forgiven for a violation of the law that preceded the offense.

When someone else threatens to stab someone in the body with a knife, for example, it is acceptable for the victim to fight off the attacker. One way to do this is to remove the attacker's arm so that the attacker can no longer control the knife by using an iron rod or a piece of wood.

Even if the attacker's hand is injured and injured during the beating attempt, if his actions threaten to kill him, the attacker must be killed.

According to R. Soesilo in the book *"The Criminal Code and Complete Commentaries Article by Article,"* there are 3 conditions for emergency defense, namely:

1. Actions must be forced in order to be maintained. One could argue that there is no other option, so the defense must be really important. In this case, attack and defense need to be balanced in some way. For example, one should not kill or harm someone to protect a trivial interest.
2. The defense may only be used against the interests listed in the article, which include one's own or another's body, honor, and property.
3. There must be a sudden or simultaneous threatening right-wing attack.

Forcible defenses beyond the limits caused by severe mental shock from an attack or threat of attack are not prohibited. Killing someone to stop a crime, for instance, is considered great self-defense. Article 49 paragraph (2) of the Criminal Code states that a defense that is forced to overreact due to severe emotional shock caused by threats or attacks will not be held accountable. However, it does not necessarily mean that all martial arts are acceptable. Various conditions must be met in order to be free from criminal danger, including:

- a. There is no temporal vulnerability due to sudden and immediate (continuous or still occurring) threats and attacks on human rights. In other words, one immediately prepares a defense when he realizes that an attack is imminent.
- b. The perpetrator's attack is illegal, targets the victim's body, robs them of their property and honor, and creates intense mental and emotional tension.
- c. In accordance with the concepts of subsidiarity and proportionality, defenders should seek to prevent attacks deemed necessary. The amount of defense must be balanced by the arrival of attacks and additional self-defense measures.

The self-defense provisions of the Criminal Code are meant to be a justification for forgiveness, not an excuse for illegal behavior. Therefore, as long as it meets some of the conditions listed above, killing in self-defense is legally acceptable. However, the authorities must go even deeper.

### **Islamic Criminal Law Perspective on Killing Begal in Self-Defense**

Killing or taking the life of another person is a very serious sin. Judging from the fiqh, murder is called *al jinayah*, *'ala a nafs al insaniyyah*. According to the interpretation of fiqh

experts, murder is defined as an individual act that causes a person's life to disappear (Audah, 2007).

Wahbah Zuhaili, explained that the act of eliminating one's life is eliminating another person's soul (Zuhaili, 2021) From this explanation, it can be concluded that the disappearance of life is an individual action over other individuals that has the effect of disappearance of the soul or death, which is carried out in a planned or unplanned manner.

Homicides are usually separated into two categories: illegal crimes and legal crimes. Prohibited murder, such as when someone kills someone for no reason or with planning, and permissible murder, such as when an executioner performs his duties by cutting off his arm as a form of punishment, defending himself from robbers, killing apostates who refuse to repent, or killing enemies in battle. (Mentari, 2020)

According to the opinion of Jumhur Ulama, prohibited killings are divided into three types, namely:

#### 1. Intentional Murder (*Al Qatl Amd*)

When murder is committed with intentional intent, the perpetrator wants the victim to die as a result of his actions. This is known as intentional killing. The instrument used to kill serves as evidence of intentional killing. In this case, it is usually a lethal instrument, such as a gun, knife, and so on. Alternatively, murder can be defined as an act in which a person uses a weapon deemed suitable for killing to take the life of another. Therefore, the killer wants the victim to die before anything else happens. In Islamic law, the sanction for the perpetrator of the planned murder is *qishash*, which is the imposition of punishment equivalent to the actions taken by the perpetrator against the victim, as a form of commensurate justice. Elements in the crime of intentional murder include:

- a. The victim was a human being who was still alive at the time of the incident,
- b. The victim's death is a direct result of the perpetrator's actions, and
- c. There is an element of intentionality or intention from the perpetrator to take the victim's life. (Hartanti, 2011)

#### 2. Semi-Intentional Murder (*Qatl Syibh Al-Amd*)

Hanabilah defines intentional murder as committing a deliberate crime with a weapon that is usually not lethal but still results in the death of the victim. In other words, even if the crime was committed intentionally, the perpetrator did not intend to kill the victim. The act of a person intentionally wanting to commit adultery against another person but not intending to kill them, culminating in that person's death, is another definition of semi-intentional murder. The instrument used provided evidence that there was no intent to kill. If the tool used in the act of

violence is not a generally lethal tool, such as pebbles, wooden branches, or rulers, then the crime is categorized as murder that resembles intentional killing. The elements of this type of murder include:

- a. The actions of the perpetrator that caused the death,
- b. There is an element of intentionality in carrying out these actions, and
- c. The death that occurred was a direct result of the perpetrator's actions.

For example, it is considered a semi-intentional murder when a teacher hits a student with a ruler and the student suddenly dies.

### 3. Accidental Murder (*Qatl Al-Khata'*)

There is absolutely no element of intentionality to commit a prohibited act in this murder; On the contrary, the crime of murder is the result of the carelessness or lack of caution of the perpetrator. It can also mean that someone killed by doing something that had nothing to do with intention. Accidental murder occurs, for example, when someone cuts down a tree and the tree then falls on the person who sees it, killing them on impact. The following are the components of incorrect death:

- a. There were actions from the perpetrator that resulted in the death of the victim,
- b. The action occurred as a result of the negligence or carelessness of the perpetrator, and
- c. There is a causal relationship between the perpetrator's negligence and the victim's death.

Regarding the nature of murder, only intentional murder is punishable by qishash. In addition to the Qur'an, Nash bases this punishment of qishash on the hadith of the prophet and the deeds of the companions. Diyat is the punishment for the following two murders. Similarly, intentional murder received by the victim's relatives will be punished by diyat.

In Islamic criminal law, the criminal act that is closest to the act of begal is known as jarimah hirabah. The term hirabah comes from the word *harb* which means to attack and seize property. According to the Encyclopedia of Islamic Law, *hirabah* refers to the actions of a group of people who create chaos in the territory of the Islamic state through murder, confiscation of property, rape, and other forms of disturbance that are carried out openly and contrary to applicable law, human values, and religious teachings (Dahlan, 1997). The act of *hirabah* is classified as *jinayah jarimah*, which is an act that is prohibited by sharia and threatened with the sanction of *had* or *ta'zir* (Nur, 2020) Linguistically, *hirabah* is a form of mashdar from the words *harâba – yuhâribu – muhârabatan – harâbatan*. In contrast to theft which is carried out secretly, hirabah or robbery is carried out openly and is usually accompanied by violence (Nurul Irfan, 2013). Abdul Qadir Audah emphasized that the main difference between theft and robbery lies in the way in which it is carried out, theft is hidden, while robbery is carried out openly and often involves physical violence (Nurul Irfan, 2013). According to the Shafî'iyah madhhab, *jarimah*

*hirabah* is defined as an act of going out to seize property, kill, or intimidate others with the power of a weapon, and is carried out in a place far from the possibility of getting help (Audah, 2007). Meanwhile, some other scholars do not require the use of certain swords or weapons, but emphasize the existence of an element of power or domination. Therefore, even if the perpetrator does not carry a sword, if he has the power to control others either with his bare hands, small arms, or heavy weapons, then his actions are still included in the category of *jarimah hirabah*.

The conditions related to *Jarimah Hirabah's deeds* include several things, namely:

1. Jarimah hirabah occurs openly, meaning that the perpetrator approaches the victim in public to forcibly take his belongings.
2. The ability to defeat a group of individuals exists. Imam Malik, a Hambal, Abu Yusuf, put his strength in weaponry, even if he only carried a stick. Imam Shafi'i emphasized more violence, stating that even a simple blow can be considered hirabah.
3. If the perpetrator takes property in carrying out his activities, it must be the victim's legitimate property.

One of the types of hudud that is prohibited by syara' and carries severe punishment is jarimah hirabah. The punishments for those who perform jarimah hirabah are described in the Qur'an and include exile, crucifixion, execution, and cutting off hands and feet by crossing them. According to Surah Al-Maidah verse 33, the following punishment is imposed on those who perform Jarimah Hirabah:

1. The punishment is to cut off the hands and legs crosswise if the perpetrator only takes property and does not kill the victim.
2. The punishment was exile from his home, now known as a prison, if the perpetrator simply threatened without stealing anything or killing someone.
3. The death penalty is a punishment if the perpetrator only kills without stealing anything.
4. The punishment is to be killed and crucified if the perpetrator obtains his property and then kills the victim.

In addition to the Qur'an, there is also a hadith of the Prophet narrated by Abu Hurairah that states:

Anas ibn Malik (*may Allah be pleased with him*) said,  
عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ قَالَ قَدِمَ أَنَسٌ مِنْ عَدْلٍ أَوْ عَرَبِيَّةٍ فَاجْتَوَوْا الْمَدِينَةَ فَأَمَرَهُمْ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِلِقَاحٍ وَأَنْ يَشْرَبُوا مِنْ  
أَبْوَالِهَا وَأَلْبَانِهَا فَانْطَلَقُوا فَلَمَّا صَحُوا قَتَلُوا رَاعِي النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَاسْتَأْفُوا النَّعَمَ فَجَاءَ الْخَبْرُ فِي أَوَّلِ النَّهَارِ فَبَعَثَ  
فِي آثَارِهِمْ فَلَمَّا ارْتَفَعَ النَّهَارُ جِيءَ بِهِمْ فَأَمَرَ فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمِرَتْ أَعْيُنُهُمْ وَالْقَوْمُ فِي الْحَرَّةِ يَسْتَسْقُونَ فَلَا يُسْقَوْنَ

Meaning: "Some people from 'Ukl or 'Urainah came to Medina, but they could not endure the extreme weather of Medina until they fell ill. The Prophet (peace and blessings of Allaah be upon him) then ordered them to go to the camels and drink their urine and milk. So they went to the camel's pen, and when they were healed, they killed the camel

herder of the Prophet (peace and blessings of Allaah be upon him) and took his camels with him. Then the news reached the Prophet (peace and blessings of Allaah be upon him) before noon. So he sent a company to follow in their footsteps, when the sun was up, his messenger came with them. He then ordered that they be punished, and their hands and feet were cut off, their eyes were gouged out, and they were thrown into the hot sand. They asked for a drink but were not given (Suryadilaga, 2014).

Self-defense (*daf'ul al sail*) consists of the words "daf'u" and "al-sail." The Arabic word daf'u, which means to defend something, can also mean to defend oneself. Every Muslim has an obligation to protect his property from the dominant forces of crime and illegal attacks, even his own property. (Audah, 2007) Q.S Al-Baqarah (2) : 194

لَشَهْرٍ الْحَرَامِ بِالشَّهْرِ الْحَرَامِ وَالْحُرْمَتِ قِصَاصٌ فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

Meaning: "The month is haram with the haram month, and on something that deserves respect, the law of qishas applies. Therefore whoever attacks you, attack him according to his attack on you. Fear Allah and know that Allah is with the righteous."

This verse is the main basis of Daf'u Al sail (Self-Defense) where in the verse it is explained "whoever attacks you, then attack him according to his attack on you", then it can be concluded that self-defense is allowed in Islam by attacking someone in a balanced manner according to what he did to the victim.

The requirements for the defense in *fiqh jnayat* are as follows

#### 1. Attack or unlawful action

An act that befalls a person must be classified as an unlawful act. If it is not included in the unlawful act, it cannot be called a forced defense. For example, a parent who hits his child as a lesson or an executioner whose duty it is to execute people cannot be called an attack (Audah, 2007).

#### 2. The attack must happen instantly

The attack carried out must occur immediately The defense cannot be said to be a defense if the attack has not occurred. However, if there is an attack that is uncertain but has become a threat, we must see if the situation can still be taken care of without a defense or if there must be a defense. However, the defense carried out must be balanced with what the attacker is doing (Nur, 2020)

#### 3. There is no other way to avoid such attacks

If there is still another way to avoid the attack, then that is the way it should be done. For example, if someone wants to steal a bag and the owner of the bag can resist the attack by shouting for help and does not need to defend himself by pulling out a sharp weapon (Jinayat, 1991)

#### 4. Medium power can be used to dodge attacks

If the dodge goes beyond what is necessary, it is an attack rather than a defense. Therefore, it is not allowed to use harsher resistance techniques; Instead, the victim of the attack should use as little force as possible for as long as possible. self-defense (daf'u al-sail). Daf "u Al sail is a sentence that means to protect something, and we can interpret it as defending ourselves.

In Islam, the formation of a law aims to benefit mankind in this world and in the hereafter. These goals are Maqasidu As-shariah, namely: (1) Hifdzu Din (safeguarding religion), (2) Hifdzu nafs (safeguarding the soul), (3) hifdzu aql (safeguarding the mind), (4) hifdzu maal (safeguarding property), (5) hifdzu nasab (safeguarding offspring) where if one of these goals is threatened, there must be a defense to protect it.

Scholars believe that if we are robbed and intimidated by beheadmen, we can start the struggle in the most straightforward way and with the least risk. However, we are allowed to kill if there is no other way to stop it and threaten lives.

This is as mentioned by Shaykh Ibn Taymiyyah in the following book Majmu Al-Fataawa;

اجمع المسلمون على جواز مقاتلة قطاع الطريق وقد ثبت عن النبي صلى هلا عليه وسلم انه فالقطاع اذا طلبوا مال المعصوم لم يجب عليه ان يعطيم شيئا باتفاق. قال من قتل دون ماله فهو شهيد النعمة بل يدفعهم بالسهل فالسهل فان لم يندفعوا ال بالقتال فله ان يقاتلهم فان قتل كان شهيدا فان قتل واحدا منهم كان دمه هدرا وكذلك اذا طلبوا دمه كان له ان يدفعهم ولو بالقتل اجماعا

*It means: "Muslims agree on the ability to fight against thieves and robbers. There is a hadith from the Prophet (peace be upon him) that he said, 'Whoever is killed for defending his property, then he is a martyr.' If the begal wants to seize the victim's property, then the victim is not obliged to hand it over. This is the agreement of the priests. Even the victim can fight it in the easiest way possible. If the begals do not want to stop except by fighting them, then the victim can fight him. If the victim is killed, then he is a martyr. If the victim kills the begals, then the victim should not be prosecuted. Likewise, if the begals want to kill, then according to the agreement of the scholars, the victim can fight him even if the murder occurs".*

Based on this explanation, scholars argue that self-defense is a principle that is recognized in all situations, because each individual has an obligation to protect himself and others from all forms of threats that endanger life (Audah, 2007). Therefore, if in the process of self-defense there is death or murder and there is no other alternative to avoid an attack, then the action is considered valid (*asbab al-ibahah*) and is not subject to sanctions, because it is seen as a justification reason. However, this act of defense must meet certain conditions as stipulated in Islamic Criminal Law. The goal is for both the perpetrators of the attack and the defending party to have awareness and caution of the value of human life. If one of the conditions of the defense is not met, then the act can be categorized as semi-intentional murder, because although there are

elements of intentionality and negligence, the loss of life is not the main goal. In such cases, the legal liability given is lighter than the punishment *of qishash*.

### **Comparison between Islamic Criminal Law and Indonesian Positive Law**

In Islamic criminal law, a Muslim has an obligation to protect and defend his property and his honor. This is in line with the words of Allah in Surah Al-Baqarah verse 194, which states: "Whoever attacks you, then attack him according to his attack on you." This verse is the basis for allowing acts of self-defense in Islam, provided that they are carried out proportionately and in a balanced manner according to the form of attack received. If the attack cannot be stopped except by an action that results in the death of the perpetrator, then killing in self-defense is permissible. In such a case, if the perpetrator of the beheading dies as a result of resistance, then the victim cannot be subject to criminal charges, because his actions are solely done to defend himself, his property, and his honor.

Meanwhile, in Indonesia's positive law, the provisions regarding self-defense are regulated in Article 49 paragraphs (1) and (2) of the Criminal Code (KUHP). In the article, it is explained that a person who commits an act of self-defense against an unlawful attack, whether against himself, others, his honor, or property, can be legally justified. These actions are still legal, even if they result in harm or even cause the death of the attacker. Thus, this article becomes the basis for forgiveness for perpetrators who are forced to kill in order to defend themselves from attacks that endanger lives. However, the defense is not necessarily absolutely justified. Certain conditions are required for the action to be considered legal according to the law. The assessment of whether or not the element of self-defense is fulfilled is the authority of the judge and law enforcement officials.

### **Conclusion**

The act of killing begal on the basis of self-defense can be legally justified, but only if it is done under conditions that are truly forced. In the context of Indonesia's positive law, self-defense in a forced state is regulated in Article 49 of the Criminal Code (KUHP). In the perspective of Islamic criminal law, similar principles apply. Defending property and self-honor is an obligation, and any individual who is under attack is allowed to give resistance. If the resistance leads to the death of the perpetrator, then the defending party cannot be punished, let alone imprisoned, as long as his actions are based on the intention to defend his rights and dignity. Thus, both in positive Indonesian law and in Islamic criminal law, self-defense in

emergency conditions that result in the death of the perpetrator of the attack is legally justified, as long as the conditions are met.

## References

- Achmad, M. F. dan Y. (2010). *Dualisme Penelitian Hukum*. 1–17.
- Audah, A. Q. (2007a). *Al-Tasyri' Al Jina'i Al-Islam* (Jilid II). Beirut : Mua'sasal al-Risalah., 1996.
- Audah, A. Q. (2007b). *Ensiklopedi Hukum Pidana Islam* (Cetakan 1). Jakarta PT. Rehal Publika 2007.
- Eddy.O.S.Hieriej. (2016). *Hukum Acara Pidana*.
- Gunawan, H. A., Wahid, A., & Faisol. (2021). Tinjauan Kriminologis Terhadap Kejahatan Begal (Studi Kasus di Wilayah Hukum Kepolisian Daerah Jawa Timur). *DINAMIKA*, 27(14). <https://doi.org/10.21608/pshj.2022.250026>
- Jinayat, M. (1991). *Hukum Pidana Islam*. 168.
- Kementerian Hukum dan HAM. (2018). Kitab Hukum Pidana Indonesia. *Hukum Pidana*, 5(2), 1689–1699.
- Mentari, B. M. R. (2020). Saksi Pidana Pembunuhan dalam Kitab Undang-Undang Hukum Pidana dengan Hukum Islam. *Al-Ishlah: Jurnal Ilmiah Hukum*, 23(1), 1–38. <https://doi.org/10.56087/aijih.v23i1.33>
- Mitchell, B., & Mackay, R. D. (2011). Investigating involuntary manslaughter: An empirical study of 127 cases. *Oxford Journal of Legal Studies*, 31(1), 165–191.
- Naser, N., & Ali, A. (2016). A descriptive-comparative study of performance characteristics in futsal players of different levels. *Journal of Sports Sciences*, 34(18), 1707–1715.
- Nur, M. (2020). Pengantar dan Asas-asas Hukum Pidana Islam. In *PeNA*.
- Nurul Irfan. (2013). *Fiqih Jinayah* (Issue 112).
- Obidimma, E. O. C., & Obunadike, N. C. (2023). A Critical Appraisal of The Inadequacy of The Provisions of The Criminal Code on Involuntary Manslaughter. *Unizik Law Journal*, 19(1).
- Saebani, M. H. dan B. A. (2018). Hukum Pidana Islam (Aktualisasi Nilai-Nilai Hukum Pidana Islam Dalam Pembaharuan Hukum Pidana Indonesia). In *PT Nusantara Persada Utama* (Issue februari).
- Siedlecki, S. L. (2020). Understanding descriptive research designs and methods. *Clinical Nurse Specialist*, 34(1), 8–12.
- Suryadilaga, M. A. (2014). *Study of Hadith Recital In The Media: Study Of Kitab Al-Bukhari Tvri Nasional Jakarta*.
- Tim Redaksi. (2011). Kamus Besar Bahasa Indonesia. Jakarta: Gramedia Pustaka Utama. *Wacana*, Vol. 11 No. 2 (Oktober 2009): 335–363, 11(2), 335–338.
- Wahyuni, W. (2024). *Batasan Pembelaan Diri*.
- Zuhaili, P. D. W. A. (2021). *Fiqih Islam Wa Adillatuhu*. 112, 12.