



## Juridical Analysis of the Crime of Murder Due to Overmacht in the Perspective of Criminal Law

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### ABSTRACT

*In social life, humans are always faced with various legal norms that are obeyed and obeyed, because the legal norms contain a rule that becomes a reference or life guide for each individual. One of the objectives of legal norms is to establish safety and order in society. These legal norms are sometimes born in the form of orders to be carried out and sometimes born in the form of prohibitions to be avoided or not done. One of the legal norms born in the form of prohibition is the crime of murder which is regulated in criminal law. Law enforcement in Indonesia, guidance and direction, need to be done so that the law is able to meet the needs in accordance with the level of progress of Indonesian society. Law enforcement is the responsibility of all levels of society and especially those who have an interest in the law because everyone is considered to know and at least feel what is called the law...*

**Keywords:** Legal Norms; Criminal Act of Murder; Law Enforcement.

### ABSTRAK

*Dalam kehidupan bermasyarakat, manusia selalu berhadapan dengan beraneka norma hukum yang ditaati dan dipatuhi, karena dalam norma hukum tersebut memuat suatu aturan yang menjadi acuan atau pegangan hidup bagi setiap individu. Salah satu tujuan dari norma hukum adalah mengadakan keselamatan dan tata tertib di dalam masyarakat. Norma-norma hukum tersebut adakalanya lahir dalam perintah supaya dilakukan dan adakalanya lahir dalam bentuk larangan supaya dihindari atau tidak dilakukan. Salah satu dari norma hukum yang lahir dalam wujud larangan adalah tindak pidana pembunuhan yang diatur dalam hukum pidana. Penegakan hukum di Indonesia, pembinaan dan pengarahannya, perlu dilakukan supaya hukum mampu memenuhi kebutuhan sesuai dengan tingkat kemajuan masyarakat Indonesia. Penegakan hukum merupakan tanggung jawab dari semua lapisan masyarakat dan khususnya yang mempunyai kepentingan terhadap hukum karena setiap orang dianggap mengetahui dan setidaknya merasakan apa yang disebut dengan hukum.*

**Kata Kunci:** Norma Hukum; Tindak Pidana Pembunuhan; Penegakan Hukum.

## 1. INTRODUCTION

Cases of murder committed due to coercion (*overmacht*) have become a significant legal phenomenon, attracting public attention and sparking debate in the realm of criminal law (de Jong et al., 2015). In Indonesia, various cases involving coercion as a factor in homicide often create legal dilemmas for both law enforcement officials and the general public (Kramer & Stoicescu, 2021; Baker & Nasrudin, 2024). For instance, in certain situations, individuals are forced to take another person's life due to threats endangering themselves or their families. This reality highlights that not all acts of homicide are committed with intent (*dolus*); some occur under circumstances beyond the perpetrator's control. In the Indonesian criminal justice system, such situations pose challenges for judges in determining whether the defendant should be held criminally liable or exempted from punishment (Butt & Nathaniel, 2024).

Legally, coercion (*overmacht*) is recognized as one of the grounds for the elimination of criminal liability, as stipulated in Article 48 of the Indonesian Criminal Code (KUHP), which states that a person cannot be punished if they commit a crime under coercive circumstances. This concept aligns with criminal law doctrine, which asserts that criminal responsibility must consider intent and an individual's free will when committing an act (Simester, 2021). Various theories of criminal law, such as the theory of culpability (*schuldlehre*), also emphasize that a person cannot be held accountable if their actions were beyond their control (Pihlajamäki, 2021; Lernestedt & Matravers, 2022). In judicial practice, the application of *overmacht* remains a subject of debate, particularly in cases of murder committed under extreme physical or psychological pressure (Ohoiwutun, 2023; Priandy et al., 2022). Therefore, a juridical analysis of homicide due to coercion is crucial to understanding the extent to which Indonesian criminal law provides legal protection for individuals in such circumstances.

This study aims to analyze the concept of *overmacht* in Indonesian criminal law and how this ground for exemption from punishment is applied in homicide cases. The study will examine the legal foundations governing coercion as either a justificatory or excusatory defense and compare its application in various legal systems worldwide. Additionally, this research will explore how judges consider coercion in their rulings on homicide cases and to what extent criminal law provides protection for individuals who commit crimes under *overmacht*. By understanding the legal aspects and judicial practices related to this issue, this research hopes to provide recommendations for a more just and substantive legal application.

Based on the social and literature review, the hypothesis of this study is that the application of *overmacht* as a defense in homicide cases remains inconsistent in the Indonesian criminal justice system. Although Article 48 of the KUHP provides

a legal basis for coercion as a ground for exoneration, in practice, judges do not always interpret and apply it uniformly in court rulings. This inconsistency can lead to legal uncertainty for individuals who commit homicide under coercion. Therefore, further research is needed to establish clearer and more measurable criteria for the application of this defense to prevent disparities in criminal verdicts.

## 2. RESEARCH METHOD

This study employs the library research method to obtain secondary data that supports the juridical analysis of homicide due to coercion (*overmacht*). This method involves searching, collecting, and analyzing various legal sources, including legislation, academic books, scientific journals, and online articles that discuss relevant legal aspects. The data obtained from these sources are systematically examined using a normative analysis approach to understand the application of the *overmacht* concept in Indonesia's criminal law system (Soekanto & Mamudji, 2003).

The data processing technique in this study follows three main stages: (1) reading and interpreting legal texts and related literature to comprehend the theoretical and normative foundations of *overmacht* in criminal law; (2) comparing various legal expert opinions, court rulings, and applicable regulations to identify gaps in law enforcement; and (3) structuring the analysis into a coherent discussion based on the research problem formulation (Marzuki, 2017).

The study adopts a juridical-normative approach, which aims to examine the legal aspects of *overmacht* in homicide cases based on the prevailing positive law in Indonesia. Additionally, a comparative approach is utilized by analyzing the concept and application of *overmacht* in different legal systems as a means of evaluating Indonesia's legal framework (Peter Mahmud, 2015).

To ensure data validity and accuracy, this study relies on primary legal sources, such as the Indonesian Criminal Code (KUHP) and relevant legislation, as well as secondary legal sources, including academic literature and previous research on coercion in criminal law. Through this method, the research aims to contribute to the academic discourse on criminal law reform that is more adaptive to social realities and the pursuit of substantive justice..

## 3. RESULT AND ANALYSIS

### **Overmacht Criteria in the Crime of Taking the Life of Another Person**

The concept of coercion, known as *force majeure* in English and *Overmacht* in Dutch, refers to a situation where an individual is unable to perform or avoid certain actions due to circumstances beyond their control. These circumstances may include natural disasters such as earthquakes, floods, and landslides. In the

legal context, Prof. Dr. R. Wirjono Prodjodikoro, S.H., defines *Overmacht* as a condition that prevents the fulfillment of a right or obligation within a legal relationship (Muskibah et al., 2023).

In Indonesian criminal law, *Overmacht* is regulated under Article 48 of the Criminal Code (Kitab Undang-Undang Hukum Pidana—KUHP), which states: “Whoever commits an act due to coercive force shall not be punished.” The article establishes *Overmacht* as a basis for exemption from criminal liability. However, the law itself does not explicitly define the term *Overmacht*, leaving its interpretation to legal scholars. The term is derived from the Dutch language and refers to an unavoidable event or force beyond human control (Hintjens, 2022). Some legal experts interpret *Overmacht* as superior force or irresistible coercion, while others define it as an unavoidable external force that eliminates an individual’s ability to resist (Yanuarko & Setiasih, 2022).

According to the *Memorie van Toelichting* (MvT), which provides explanatory notes on the formulation of Article 48 of the KUHP, *Overmacht* is characterized as an external force that makes an act non-attributable to the perpetrator. This external force may come from environmental factors or coercion by another person. In such cases, an individual is forced to commit a crime under threat of imminent harm, where resisting the coercion would require extraordinary heroism or reckless behavior that could result in fatal consequences (Ward, 2023).

In the context of criminal law, *Overmacht* serves as a justification or excuse for an individual’s actions under coercion. It illustrates situations where a person is forced to commit a criminal offense due to an unavoidable threat. For instance, if an individual is threatened at gunpoint and is compelled to kill another person, the law may recognize this as *Overmacht*, thereby exempting the perpetrator from punishment (Arrosyiid & Febriansyah, 2023). The rationale behind this provision is that the individual’s actions were not the result of free will but rather a response to an imminent and unavoidable threat.

Article 48 of the KUHP outlines three key elements of *Overmacht*: (1) the commission of an act, (2) coercion by an irresistible force, and (3) exemption from punishment. The provision acknowledges that certain situations deprive individuals of their ability to exercise free will, making it unjust to impose criminal liability upon them (Brink, 2021).

The concept of *Overmacht* has evolved in Indonesia’s criminal legal framework. In the 2008 Draft of the Criminal Code (Rancangan Kitab Undang-Undang Hukum Pidana—RKUHP), *Overmacht* is addressed under Article 43, which states: “A person shall not be punished if they commit a criminal act due to: (1) being forced by an irresistible power, or (2) being coerced by an unavoidable threat, pressure, or force.”

This provision expands upon the traditional interpretation of *Overmacht* by explicitly recognizing coercion not only from external forces but also from psychological threats and pressures that are impossible to resist. The inclusion of

this article in the RKUHP reflects an effort to modernize Indonesian criminal law by aligning it with contemporary understandings of coercion and duress in criminal liability (Anshori, 2023).

The principle of *Overmacht* in Indonesian criminal law acknowledges that not all criminal acts are committed with criminal intent (*mens rea*). In cases where individuals are forced into committing offenses under extreme duress, the law provides a basis for exemption to ensure justice and fairness in legal proceedings. However, challenges remain in judicial practice, as courts must carefully assess whether a claim of *Overmacht* is genuine and applicable to a specific case. To achieve consistency in legal interpretation, further refinement and judicial guidance on the application of *Overmacht* are necessary (Handayani et al., 2023).

### **Legal Consequences and Criminal Responsibility in Cases of *Overmacht***

Legal consequences arise as a result of a legal relationship, in which rights and obligations are determined by law. When these obligations are violated, the offender may be prosecuted in a court of law (Khan et al., 2022). In criminal law, responsibility is assessed normatively by examining the perpetrator's actions, their intent, and the relationship between the two. An individual can be held accountable if they had the ability to act differently but still chose to commit a criminal offense. The key principle in criminal responsibility is that the perpetrator should have avoided engaging in unlawful conduct, yet proceeded despite the potential consequences (Crofts, 2022).

From a legal and moral perspective, criminal responsibility is closely tied to the perpetrator's state of mind and their understanding of the consequences of their actions. Society's moral judgment plays a role in evaluating whether an individual deserves condemnation. This assessment is based on how an average person in similar circumstances would react to the situation. Criminal responsibility is an essential element of a crime, alongside the existence of unlawful conduct (*actus reus*) and intent (*mens rea*). The Indonesian Code of Criminal Procedure (KUHAP) emphasizes this aspect in various provisions, such as Article 158 regarding the defendant's mistake, Article 183 on proving guilt, and Article 191 concerning the defendant's liability (Salop, 2024).

The Indonesian Criminal Code (KUHP) provides general provisions applicable to all individuals within its jurisdiction. However, due to its broad nature, the law does not explicitly regulate every possible situation, including cases where homicide occurs due to coercion (*Overmacht*). Article 48 of the KUHP stipulates that an individual who commits a crime under coercion cannot be punished. However, the term "act" in this provision is not limited to a specific offense but applies to all crimes under the KUHP, including homicide. In Article 338 of the KUHP, murder is defined as an intentional act of taking another person's life, which carries a maximum sentence of fifteen years in prison (Kautsar & Kadir, 2021).

The concept of intentional killing in this provision refers to acts where the perpetrator consciously desires or anticipates the death of another person as a direct consequence of their actions. In cases where homicide is committed due to *Overmacht*, the element of unlawfulness is removed. As a result, even if the elements of murder under Article 338 are fulfilled, the absence of criminal intent

due to coercion means that the perpetrator cannot be held liable under Article 48 of the KUHP (Arrosyiid & Febriansyah, 2023).

Criminal law does not provide an exact definition of the nature and degree of coercion or the level of harm that must be present for *Overmacht* to be considered a valid defense. The determination of whether coercion justifies criminal conduct must be based on objective criteria. Judges are responsible for examining whether extraordinary factors existed that forced an individual to act in an abnormal manner (Obasogie, 2021).

In evaluating *Overmacht* claims, judges must assess whether a reasonable person, when placed in the same situation as the defendant, would have acted similarly. This objective test ensures that only genuine cases of coercion qualify for exemption from criminal liability. Additionally, judges must consider the subjective characteristics of the defendant, including their level of caution and whether they have a tendency to act recklessly in ways that endanger others. These factors are essential in determining whether the claim of *Overmacht* is valid and whether the defendant should be absolved of criminal responsibility.

Thus, in cases where homicide is committed under extreme coercion, the justification for criminal liability is removed. However, the burden remains on the courts to ensure that such defenses are not misused and that each case is evaluated based on objective and subjective criteria to maintain fairness and justice in the legal system.

### **Judicial Perspectives on *Overmacht* in Criminal Cases**

Judges often have differing views in determining appropriate sentencing for defendants, particularly in cases where *Overmacht* (*force majeure*) is invoked as a defense. The variation in judicial decisions regarding the applicability of *Overmacht* can be attributed to the specific behavior and response of the accused at the time of the incident. Ultimately, it is the judge's discretion to determine whether a justification or excuse exists in a given case.

For instance, in Decision No. 06/Pid.B/2016/PN.Byl, the court sentenced the defendant to eight months in prison, rejecting *Overmacht* as a valid defense. The court argued that the defendant was in a state of full criminal responsibility when committing the act. The case involved the defendant reacting violently to verbal insults and physical assault by the victim, leading to a fatal stabbing. However, the judges determined that the defendant's response was not entirely involuntary and that he could have chosen an alternative course of action (Jacobi & Mascia, 2023).

Conversely, in Decision No. 1002/Pid.B/2008/PN.Smg, the court acquitted the defendant despite the fact that their actions resulted in a fatality. The panel of judges found that the defendant acted in self-defense against a large group of armed attackers who posed a direct threat to him, his uncle, and his mother. The court ruled that the defendant's actions fell under both *Overmacht* (coercion) and *noodweer* (self-defense), recognizing that failure to act could have resulted in the defendant's death. This decision aligns with legal principles stating that homicide

may not always constitute an unlawful act when it is committed under coercion or in defense of one's life.

The application of *Overmacht* can also be seen in Decision No. 533/Pid.B.2014/PN.Kis, where the panel of judges reduced the prison sentence from the prosecutor's demand of eight months to a conditional sentence of three months. The judges considered the minimal damage caused by the defendants—approximately 30 cm of boundary wall—and ruled that the severity of the crime did not warrant the full sentence requested by the prosecution. The panel emphasized that the circumstances in this case aligned with the provisions of *Overmacht* under Article 48 of the Indonesian Criminal Code (KUHP), which states that an act committed under coercion is not punishable (Situmeang & Aishah, 2024).

However, in contrast, Decision No. 4072/Pid.B.2011/PN.Sby involved a drug-related offense where multiple defendants were charged under Article 112(1) in conjunction with Article 132(1) of Law No. 35 of 2009 on Narcotics. While Defendants I, II, and IV were convicted for drug-related crimes, Defendant III was acquitted due to the coercion he faced from the other defendants. The court recognized that Defendant III's drug use occurred under *Overmacht*, as he was forcibly pressured by the other defendants to participate in substance abuse. This aligns with Article 48 of the KUHP, which states that an individual cannot be punished if their actions were entirely the result of coercion.

The distinction between justified and unjustified *Overmacht* claims highlights the crucial role of judges in evaluating facts, legal principles, and admissible evidence. Since the KUHP does not specify the degree of coercion or imminent threat required to invoke *Overmacht*, judicial discretion is essential in determining criminal liability. Judges must carefully assess whether extraordinary factors compelled the accused to act involuntarily and whether a reasonable person in the same circumstances would have reacted similarly.

Furthermore, judicial decisions must adhere to fundamental legal principles outlined in Article 50(1) in conjunction with Article 52(2) of Law No. 48 of 2009 on Judicial Power, which mandates that court rulings must be based on clear legal reasoning, legal grounds, and recognized sources of law. Additionally, Article 197(1) of the KUHP (Criminal Procedure Code) stipulates that court decisions must include several essential elements, such as:

1. The phrase "For Justice Based on the Almighty God", signifying that rulings are made with moral and legal accountability;
2. The full identity of the defendant, including name, birthplace, and personal details;
3. A summary of the prosecution's charges;
4. A concise judicial review of evidence, facts, and legal arguments presented in court;
5. The specific penal provisions applied in the case;

6. Any aggravating or mitigating circumstances;
7. The court's final ruling on the defendant's guilt or innocence.

These elements ensure that judicial decisions are made transparently and in accordance with the principles of substantive justice. Judges serve as the final bastion of justice, and their rulings must benefit society, contribute to legal scholarship, and set a precedent for future cases. Their decisions should be independent, free from external influence, and guided by legal expertise, integrity, and moral responsibility.

Thus, *Overmacht* remains a complex legal doctrine requiring careful judicial interpretation. While it provides a valid defense in cases of genuine coercion, judges must meticulously examine each case to prevent its misuse as an excuse for criminal acts. The judiciary must balance legal certainty with substantive justice, ensuring that only individuals who truly had no alternative but to commit an offense are granted exemption from punishment.

#### 4. CONCLUSION

Based on the analysis conducted, it can be concluded that the primary criterion for determining an act as *overmacht* (force majeure) is the balance between the risk faced and the action taken. If the sacrificed interest is greater than the interest being protected, then the act cannot be categorized as *overmacht*, and the perpetrator must still be held legally accountable. In the context of Indonesian criminal law, the legal consequences for individuals acting under coercion are regulated in Article 48 of the Indonesian Criminal Code (KUHP), which states that anyone who commits an act due to coercive force cannot be punished. This concept refers to the *Memorie van Toelichting*, which explains that coercion constitutes a force, pressure, or compulsion that cannot be resisted or avoided. However, in judicial practice, judges do not automatically acquit defendants solely based on claims of *overmacht*. In deciding a case, the panel of judges must carefully consider both juridical and non-juridical aspects, ensuring the use of accurate legal foundations, verifiable facts, and legitimate evidence. Therefore, the application of *overmacht* in a case must meet specific boundaries and criteria to prevent its misuse as a justification for exemption from criminal liability..

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