Examining Victim Precipitation in Determining a Suspect (A Case Study of Marital Rape That Ended in Death)

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Abstract: Marital rape is part of the form of rape in domestic violence. Its limited characteristics in the family sphere and cultural construction make marital rape sometimes escapes the attention of victims and also the community. In Indonesia, marital rape is still considered as abnormally and impossible incident, it is considered as impossible act for a husband to rape his own wife or vice versa. In several cases had occurred in Indonesia, marital rape become a trigger for physical violence that led to murder (homicide). For example in the two cases of homicide has occurred in Serang City in 2021 and Cilegon 2019. In these two cases, marital rape occurred which led to murder or loss of life. This paper will examine women who are victims of marital rape who are designated as murder suspects, a case study in Serang City. This study uses a normative legal research method with a statutory approach and cases approach. The results of this study indicate that the determination of woman victims of marital rape as murder suspects in the perspective of victimology does not consider the perspective of the victim’s role in the occurrence of a crime. There are two criminal acts happening simultaneously; marital rape and murder. First, the husband as the perpetrator of marital rape against his wife who later becomes a victim of murder due to self defense (the second case). Therefore, in the theory of victim precipitation, the victim plays a role in creating the crime itself. The roles of perpetrators of marital rape is active participation which then resulted in his death. The things that attend in this situation must and need to be considered by law enforcement officials, from the first thing when conducting an investigation. This will affect the next law enforcement process. Therefore, victim precipitation must be considered by investigators in reviewing the...
chronology of the case before determining the suspect in order to fulfill the rights and protection of the actual victims.

**Keywords**: Marital Rape; Victim; Victim Precipitation

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**INTRODUCTION**

In 2021 ago, to be precise in August, a resident of Serang City, Banten province were shocked by the case of the murder of their husband by his own wife. According to the wife, she strangled her husband for forcing him to have sex. The wife refused, considering that she had just returned from the Middle East for 8 years, worried that the intercourse was illegal, the wife wanted to ask the kyai first. But the husband was not pleased, angry and slammed his wife. His wife tried to escape by strangling her husband, then ran to another room and locked the door.¹

The next day, his wife (initials HI) was taken to the police station and named a suspect in the murder of her own husband, 55-year-old Asni. The case is still being handled by the Serang City Resort Police (Serang City Police), it was transferred to the Prosecutor’s Office but the Prosecutor asked for information from criminal experts and psychiatrists. So far, the case has not been transferred to court.

From this incident, it can be seen that there were two criminal events that occurred. The first is marital rape or also known as domestic sexual violence perpetrated by a husband against his wife. In this case, the husband forces his wife to have sex to the point of using violence, namely dragging and banging against the wall. This act can be included in the category of domestic violence, namely Article 8 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), namely forcing sexual relations carried out on people who live within the scope of the household. Everyone who commits sexual violence is sentenced to a maximum of 12 (twelve) years or a fine.

Second, is murder or loss of life. Namely, the wife strangled her husband because he wanted to escape from his husband’s drag. But the strangulation that was carried out turned out to be the life of her husband. The loss of the husband’s life can be subject to Article 44 paragraph (1) and (3) of the PKDRT Law in conjunction with Article 351 paragraph (3) of the Criminal Code.

Looking at the chronology above, there are several parts that are important to study when viewed from criminal law and victimology. The aspect of self-defense carried out by IR can be viewed from the perspective of criminal law, although the self-defense carried out may be excessive because it causes the loss of Asni’s life.

Viewed from the perspective of victimology, it can be seen from the aspect of victim participation that manifests a crime that is itself a victim, namely a husband who forces his wife to have sex with violence and then becomes a victim of murder. This

¹ Bahtiar Rifa’i, “Fakta-Fakta Kasus Istri Bunuh Suami Gegara Dipaksa Hubungan Badan,” DetikNews, last modified 2021, accessed January 9, 2022, https://news.detik.com/berita-jawa-barat/d-5706939/fakta-fakta-kasus-istri-bunuh-suami-gegara-dipaksa-hubungan-badan.
condition is known as *victim precipitation*. Wolfgang stated that it is a condition where the victim is related to the realization of victimization. In some cases, the victim is the first person to attack in a fight. Or it can be said that the victim is the party who started the physical violence.²

This series of event, must not ignored, it must be part of the investigator’s consideration in determining the law enforcement process applied in a criminal case. Not only the visible effect, but the causes are also an important part in determining a crime.

Determination of the article imposed on an event is not only seen from the consequences, but there are other conditions that accompany the criminal event that are important to pay attention to. This Includes the role of the victim in the occurrence of a crime. This is also related to the law enforcement process which should provide conflict resolution for all parties and provide a balance for victims’ recovery, not only in the form of punishment.

This paper will discuss how the existence of *victim precipitation* is considered by investigators in determining the suspect of a crime? (a case study of *marital rape* that resulted in death). This becomes important to achieve the research objectives, in the context of knowing the existence of *victim precipitation* is considered by investigators in determining the status of suspects in this case and other cases in the investigation stage.

**METHOD**

This paper uses normative juridical research using a case approach, a conceptual approach and a statutory approach. The results of the study were explained by analytical descriptive using secondary data sources. The technique of collecting legal materials is carried out by means of a literature study on primary legal materials, namely the Criminal Code, Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Literature related to secondary legal materials is also used as a reference, such as journals, research results, cases regarding *marital rape*, domestic violence and *victim precipitation*. Then it was analyzed descriptively and prescriptively into a research result regarding the existence of *victim precipitation* considered by investigators in determining the suspect of a crime.

**ANALYSIS AND DISCUSSION**

The Urgence of *Victim Precipitation* in the Investigation Stage

As contained in Article 1 number 2 of the Criminal Procedure Code (KUHAP), it is stated that an investigation is a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence that is the evidence sheds light on the crime that took place and in order to find the suspect.

This understanding explains that the investigation process is carried out by investigators, in accordance with the provisions of the legislation. This is done to find and collect evidence, then from that evidence it can be known clearly about the crime that occurred or in other words about the criminal event. From these criminal events, it can also be seen that a criminal act will then be determined as a suspect.

The determination of the status of the suspect is given to the perpetrators of crime.

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² Marvin E. Wolfgang, *Victim Precipitated Criminal Homicide*, ed. Israel Drapkin and Emilio Viano (London: Lexington Books DC Health and Company, 1975), 79.
To find and determine the perpetrator, usually begins with finding the victim or reporting the victim. Victims are people who are harmed by the actions of the perpetrator of the crime. The definition of victim is given by law as well as by experts. All refer to people who are harmed as a result of a crime. Losses experienced can be in the form of physical, psychological and economic losses.

There are at least three aspects that must be considered from the crime that occurred, namely the crime, the perpetrator, and also the victim, as well as in the determination of suspects. At least these 3 aspects are factors that must be considered. So that in its application it does not make the aggrieved party lose more as a result of an unbalanced law enforcement process.

In determining the suspect, two pieces of evidence that are considered, the fulfillment of unspecified elements of crime that has been considered by investigators. Various other factors were not considered, only for the fulfillment of two sufficient initial evidences to fulfill the elements of the crime committed. The victim factor is only as evidence of a criminal act that occurred and a witness of the actions committed by the perpetrator. This evidence is important in determining the suspect. As stated in Article 1 point 2, namely collecting what with the evidence it becomes clear a criminal act and the suspect can be found.

In some criminal cases, sometimes there are two criminal events simultaneously. However, what is usually determined by the suspect is the perpetrator of the second or last criminal event. The first criminal incident is not considered a factor to be considered in determining the suspect. In the investigation, two pieces of evidence as a sufficient start are the main things that must be achieved, which can be obtained from the perpetrator and the act committed.

In some cases, investigators determine the suspect from the last or recent crime. For example, the case of a robber who died at the hands of the victim was defending himself. So that the victim of the robbery is designated as a suspect for taking the life of the robber. The case that occurred in Medan on December 31, 2021 is also a pro and contra, considering that the victim of this robbery was trying to defend himself from the crime committed by the robber. Investigators determine the victim of robbery as the perpetrator of the persecution that resulted in the death of people, namely Article 351 paragraph (3) of the Criminal Code.

In 2019, a similar case occurred in Malang. ZA defends himself from a gang of thugs who want all the valuables. Then ZA offered her a cell phone, but the thug didn’t want to and threatened to rape his girlfriend. ZA did not accept it, he took a knife on his motobike and fought with the robbers, resulting in one of the robbers being stabbed to death by a knife (the robber name: Misban). ZA was named a murder suspect. Malang Police stated that the determination of the suspect was carried out against the perpetrators, for later whether they are found guilty or not, it will depend on the judge. In the trial, the Public Prosecutor charged the defendant with Articles 338 of the Criminal Code and 340 of the Criminal Code.

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3 “Korban Rampok Di Medan Jadi Tersangka, Begal Ditikam 3 Kali Usai Jatuh,” CNN Indonesia, last modified 2022, accessed February 11, 2022, https://www.cnnindonesia.com/nasional/20220101050417-12-741293/korban-rampok-di-medan-jadi-tersangka-begal-ditikam-3-kali-usai-jatuh.
namely murder and premeditated murder. The judge decided that ZA committed a crime of abuse that resulted in death, namely Article 351 of the Criminal Code, and was sentenced to one year of coaching to be carried out at the Darul Aitam Child Welfare Institution (KSA) in Wajak District, Malang Regency. This verdict is in accordance with the demands of the public prosecutor but is different from the indictment of the article imposed.4

Observing the various cases, it is seen that the role of the victim in the occurrence of a crime is very visible. There was an exchange of positions between the victim and the perpetrator and there were two criminal acts that occurred. It’s just that when determining the suspect, investigators always look at the last act, as if what must be seen is the victim of the last crime, regardless of whether the victim was the perpetrator of the previous act or not. Such conditions are not considered, the important thing is that the elements of the crime are fulfilled, then a suspect is determined.

Of the cases that occur, it must be considered the circumstances that accompany event. The act of the perpetrator to rob someone is an act against the law, someone who is thwarted against the robber is an attempt to defend himself. In criminal law, it is known as the reason for the abolition of punishment which can be categorized into two, namely the justification reason and the excuse for forgiveness. This is regulated in articles 44 to 51 of the Criminal Code.

The Criminal Code stipulates that if a person commits a criminal act and has a reason for eliminating the crime, both justifying reasons and excuses, then the criminal act committed cannot be punished. One of the reasons that abolish punishment, if you look at the examples of cases above is forced defense (noodweer), as regulated in article 49 of the Criminal Code.

The two cases above are included in the category of forced defense (noodweer), because the elements are met, balanced and proportional. Self-defense carried out for honor and property. Although it probably shouldn’t have resulted in death, but there were things that caused shock and panic that eventually resulted in death for the other party, but it is still included in self-defense and is not criminalized. The two decisions in the case above show that the self-defense that was carried out was included in the reason for the abolition of the sentence, namely the justification reason, so that the sentence was not imposed.

The role of the victim, the crime, and the accompanying circumstances other than the perpetrator, should be considered by investigators in determining the suspect. This is related to the next law enforcement process. If it is understood that there are reasons for the abolition of punishment, for example, the role of the victim in a crime, then the determination of the suspect against the perpetrator who is actually the victim must be reconsidered.

Victim precipitation is important for investigators to pay attention to in determining suspects. Considering that the Police are the main and first gate in the law enforcement process, it is important for them to take into account the role of the victim in the crime. This is because the role of the victim, whether as a perpetrator or as a victim, can significantly influence the outcome of the investigation and the determination of the suspect.

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4 Daryono, “Akhir Kasus ZA, Pelajar Yang Bunuh Begal Di Malang: Hakim Beri Vonis Pembinaan, Ahli Hukum Keberatan,” Tribunnews.Com, last modified 2020, accessed February 11, 2022, https://www.tribunnews.com/regional/2020/01/24/akhir-kasus-za-pelajar-yang-bunuh-begal-di-malang-hakim-beri-vonis-pembinaan-ahli-hukum-keberatan.
enforcement process. Therefore, attention to victims must be given from the early stages of the law enforcement process, so that the law enforcement process carried out does not run in vain. Or it doesn’t even have a beneficial effect on justice seekers, on the contrary, it actually provides a protracted process and does not have a significant effect on justice seekers.

Cases such as the example, should be a reflection, it is time for investigation to become an important part in determining the direction of the next law enforcement process. The law enforcement process in essence is to resolve conflicts that occur, therefore it does not only have to be formally fulfilled, but other things must also be seen that affect the resolution of the conflict.

The reason for the abolition of the crime is applied before the law enforcement process continues. Such as the reason for the criminal eraser to carry out a position order (Article 51 of the Criminal Code). The police who shot the alleged crime did not become a suspect in the persecution because it was considered to be carrying out an order. Likewise, crazy people who commit criminal acts are not processed by justice because they are considered unable to be held accountable. This is included in the reason for the abolition of the crime. There was no court process for the two events above. Likewise with the forced defense as regulated in Article 49 of the Criminal Code, with the complexity of the element of forced defense, so far it is the judges in the trial who must then evaluate and include them in the consideration of their decisions.

In practice, the defense must always be proven in court, so the judge will issue a decision that releases the defendant from all charges. The trial process, which must then examine and decide on this matter, is not in the investigation stage. Such conditions do not provide protection to people who carry out forced defense, because they will become suspects first and will be detained. Such a judicial process requires the judge to determine the release of the perpetrator. This is contrary to the principle of fast, simple and low cost justice.\(^5\) It was known from the start that there was a justification in the form of a forced defense but the law enforcement process was still being carried out. The judicial process so far has been running for a very long time so that it has generated a significant reaction from the community and also depriving the victims of their rights.\(^6\)

In a study conducted by Saiful Bahri, he proposed a mechanism for the issuance of a Case Termination Order (SP3). The law provides a special space to stop the investigation as regulated in Article 109 paragraph (2) of the Criminal Procedure Code. Therefore, if there is an indication from the start that this is a forced defense, then it cannot be punished according to the law and to uphold the principles of fast, simple and low-cost justice. The hope is that the judicial process in defense is forced to only use the SP3 flow, so that the justice system in the future will be better so that there is no accumulation of cases and to uphold justice.\(^7\)

Consideration of Victim Precipitation in Determining Suspects in Marital Rape that Ended in Death

\(^5\) Saiful Bahri, “Problema Dan Solusi Peradilan Pidana Yang Berkeadilan Dalam Perkara Pembelaan Terpaksa,” *Jurnal : Wawasan Yuridika* 5, no. 1 (2021): 131–148, https://ejournal.sthb.ac.id/index.php/jwy/article/view/415.

\(^6\) Ibid, 134.

\(^7\) Ibid, 145-146
Such as the case of the murder of a wife by her husband for refusing to have sex or Marital Rape that occurred in Serang City, is one example of a criminal incident involving two criminal events; marital rape by a husband against his wife and abuse resulting in the death of a wife against her husband, in a series of events that cannot be separated. The first incident become the cause of the second incident, the role of the victim in the second incident was very influential in triggering the perpetrator, or in other words the victim died because he forced his wife to have sex. Although sufficient preliminary evidence has been met, of course, the determination of the suspect against the wife (because her husband has dead) does not necessarily have to be determined. In cases like this, the urgency victim precipitation becomes the main priority in the investigation stage. If the perpetrators of the two cases above are not convicted on the grounds of self-defense, then from the beginning investigators can use victim precipitation as a consideration. It is not enough only based on sufficient preliminary evidence from the perpetrator but also the role of the victim in the occurrence of the crime. It is time for investigators to pay attention to the role of the victim in the occurrence of a crime, which then affects the determination of the suspect from the event.

Seeing the meaning of victim precipitation, it can be seen that victims have a role or contribute to victimization. Sometimes the victim is the first to cause damage or loss. This of course has an impact on the division of responsibility between the perpetrator and the victim. In the example of the marital rape above, the wife kills her husband because the husband commits violence first, namely forcing a husband and wife relationship accompanied by violence in the form of beatings and encouragement, then the wife defends herself by strangling the victim, but the husband’s death occurs, which in the end the wife becomes the perpetrator. murder in the second criminal incident, namely the loss of the husband’s life. Previously the wife was a victim of forced sexual intercourse (marital rape) by her husband.

Linguistically, marital rape can be interpreted as marital rape committed by the person to whom the victim is married, i.e. rape committed by someone against the victim he has married. The construction of marital rape is the coercion of sexual relations between people who are bound in marriage. The perpetrator is not limited to the husband, it can also be done by the wife. In this case, the perpetrator is the husband, while the victim is the wife. Marital rape is carried out by the husband against the wife, then the wife resists the attack which results in the husband being killed.

This is where the role of the investigator in determining the suspect must consider the role of the victim in the occurrence of a crime or in other words the role of the perpetrator who became the victim in the last criminal incident.

Wolfgang stated that the use of the term victim precipitation to describe a type of murder (or other act of violence), where the

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8 Angkasa, Rena Yulia, and Ogiandhafiz Juanda, “Urgensi Victim Precipitation Dipertimbangkan Oleh Hakim Dalam Penjatuhan Putusan Pemidanaan,”

9 Riskyanti Juniver Siburian, “Menggeser Paradigma Kontra Terhadap Kriminalisasi Pemerkosaan Dalam Rumah Tangga,” Lambung Mangkurat Law Journal 5, no. 1 (2020): 65, https://lamlj.ulm.ac.id/web/index.php/abc/article/view/118.
victim has an active role (initial attack or previous threatening gesture) in victimizing himself or herself.  

Amir argues, many murders occur between individuals who have a higher social interaction with each other or with one another, even though the role of the murder victim is more involved in the interaction between the two parties. In certain cases as the victim’s role, the victim causes his own death as a result of his threatening actions.  

It is time to victim precipitation considered in the investigation, especially for the determination of the suspect. This relates to the concept of criminal responsibility which is divided between the perpetrator (in the first act) and the victim (in the second act). Errors that occur can occur in both so that responsibility can be shared between them. According to Mendelsohn, the degree of guilt of the victim varies. There are victims who are as wrong as the perpetrators, and even victims who exceed the perpetrators of their mistakes so that the perpetrators cannot be held accountable.  

Determination of suspects by investigators is the first stage in the law enforcement process. This stage is the initial stage of a criminal justice system process. This stage is also important because it is related to one’s fate, both perpetrators and victims of crime. The stage of determining the suspect is also important for the next process. If in the process of determining the suspect it is appropriate both formally and materially, the next stage will provide more justice.  

In other words, it was not at the initial stage that the suspect was determined and then released in court, but from the beginning it was known that this act had a reason for eliminating the crime or that there was a role for the perpetrator who became a victim who was included in the category of victim precipitation. So, that the perpetrators of the last or second criminal act have a reason for eliminating the crime, namely doing self-defense (noodweer).  

Self-defense is a reason for eliminating a crime which is included in the category of justification, but not in the sense of justifying the perpetrator’s actions—which can still be forgiven considering the offense that preceded the act, which is at the same time a provocation—but rather an act that has the right to be done. Noodweer is an effort to defend rights; right to defend oneself against injustice. Actions carried out in the context of noodweer, even though they meet the formulation and elements of a criminal act, in themselves cannot be considered an act that deserves to be punished, not an act that is against the law, but is recognized and accepted by law.  

Noodweer is only accepted when it comes to self-defense in order to defend one’s own life, honor or property. Honor in this case is decency. Another thing is related to instant attacks which are against the law. Assault can be understood as an ongoing real attack on the body, dignity or property, including actions that pose an immediate threat to the body,
dignity or property. The attack was not desired by the victim or in other words, the person who experienced this real attack did not agree on the action directed at him. Another condition is instantaneous or instantaneous. This action is carried out immediately against an ongoing attack, does not enter the noodweer if the attack has ended.

Article 49 paragraph (1) Criminal Code states: “Whoever is forced to act in defense, because there is an attack or threat of attack at that time which is against the law, against himself or others; against the honor of decency (eerbaarheid) or own property or that of others, shall not be punished”. The content of the article is a justification, although on the condition that the self-defense must be carried out immediately and in a balanced manner. This means that at that time, suddenly only to defend oneself from unlawful acts.

In the context of this case, the wife committed the act of strangling her husband because she defended herself from the actions of her husband who forced her to have sexual intercourse and pushed herself against the wall. There are two acts committed by the husband, namely forcing sexual intercourse and physical violence of the husband against his wife (KDRT). Due to the attack, the wife defended herself by pushing her husband’s body while strangling him, then left the room and went into another room without knowing that her husband was dying and eventually died.

The act committed by the wife meets the category of forced defense as regulated in Article 49 of the Criminal Code.

1. Whoever commits an act which he is compelled to do in order to defend himself or another person to defend his own honor or property or property of another person from a person who violates the rights and arranges it immediately at that time shall not be punished;
2. Reporting the limit of urgent help if the act with a group is done out of a sense of shock immediately at that time should not be punished.

The formulation of criminal rules as regulated in Article 49 paragraph (1) of the Criminal Code, implies that if certain legal interests of a person are attacked against the law from other people, then basically the person can be justified to carry out a defense against the attack. Even in a way that is detrimental to the legal interest of the attack, which in the ordinary circumstances of the way is, a prohibited act in which the perpetrator is threatened with some punishment.\textsuperscript{15}

\textit{Noodweer exces} or self-defense that exceeds the limit is also the reason that someone who is accused of committing a crime cannot be sentenced to a crime, as regulated in Article 49 paragraph (2) of the Criminal Code, which reads: “A forced defense that exceeds the limit, which is directly caused by severe mental shock due to the attack or the threat of attack, is not punishable.”\textsuperscript{16}

If a person’s actions fulfill all the elements of a criminal act, but he cannot be sentenced because of \textit{noodweer excesses} as formulated in Article 49 paragraph (2) of the Criminal Code, he must meet three conditions, as follows:\textsuperscript{17}

a. A forced defense that exceeds the limit;

\textsuperscript{12} \textit{Ibid}, 240-241
\textsuperscript{15} Rendy Marselino, “Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2),” \textit{Jurist-Diction} 3, no. 2 (2020): 644, https://e-journal.unair.ac.id/JD/article/view/18208.
\textsuperscript{16} \textit{Ibid}, 644
\textsuperscript{17} \textit{Ibid}, 644.
b. The defense is directly caused by a great shock of the soul or very hot-tempered;
c. The defense is because there is an attack or threat of attack.

From the contents of the article, it can be distinguished between *noodweer* and *noodweer excess*. *Noodweer* is a defense against attacks that are against the law, acts that attack the honor, property of oneself or others. While *noodweer excesses* are related to the inner state of the person who made a forced defense who experienced shock a very great mental shock. Both *noodweer* and *noodweer exces*, both are reasons for the abolition of a crime if it is carried out by fulfilling the conditions of a forced defense, namely the attack is against the law and comes suddenly and the defense is carried out immediately and in a balanced manner.

In this case, it can be seen that the wife’s actions were an act of self-defense against the husband’s unwanted attack. The interests that are defended are interests that deserve to be protected in accordance with the element of self-defense, namely the honor of decency. The husband insists on having sex but the wife wants to ask the validity of their relationship considering that they have been separated for 8 years. The husband’s act of forcing sex is regulated in the PKDRT Law Article 5 letter c which regulates sexual violence in the household, also referring to Article 8 letter a of the UUPKDR, namely forcing sexual intercourse against people who live within the scope of the household, then the wife of course included in the provisions of this article. Self-defense is carried out immediately and immediately, meaning that when the husband forces and invites to have sex, the wife refuses and pushes the husband by strangling the husband’s neck. Actions are carried out in a balanced manner without using other tools or taking other equipment, purely with bare hands. This balanced or proportional condition is also fulfilled.

If you see a husband who has died, then of course it can immediately be determined that the wife’s actions are criminal acts, which can be subject to the article on persecution that causes death or domestic violence that causes death or murder. However, even though it fulfills the elements of a criminal act and there is sufficient initial evidence, it should not be denied that there are justifications that can abolish the sentence or eliminate the sentence, so that in the investigation stage, this condition should be considered in determining the suspect. The defense was forced to become the reason for not stipulating the wife as the perpetrator of violence that resulted in the death of her husband.

So far, in determining the suspect, two pieces of evidence and the perpetrator’s internal motive have been considered, in other words, the fulfillment of the elements of an unsich that has been considered by investigators. Various other factors that arise, are not taken into consideration. Including the *victim precipitation* is not a consideration in determining the suspect, only for the fulfillment of two sufficient initial evidences in order to fulfill the elements of the criminal act committed.

Parameters of evidence required, first there are at least two pieces of evidence. Second, the role of the perpetrator in committing a crime. This is related to Article 55 of the Criminal Code. Who does, who participates, orders to do and other roles, investigators normatively consider the fulfillment of the elements of the article being applied. The
reasons for eliminating the sentence were not taken into consideration, considering that investigators considered it to be within the jurisdiction of the judge in making a decision. This can also be proven in court later. It also includes matters relating to the severity or severity of the crime, which is not considered by investigators. It is up to the judge to make a decision.\(^\text{18}\)

As for the motives of the criminal acts committed, it can be seen from the motives of the perpetrators, the motives related to the perpetrators, the driving factors that exist in the perpetrators and the causes that are criminogenic factors. However, the motives arising from the victim’s side are not considered by investigators, even criminal acts committed as a response to previous criminal acts, it still does not get the investigator’s attention.

In the cases described in this paper, both cases of robbery and marital rape, the motives of the perpetrator (the first victim) are strongly influenced by the actions of the victim (the perpetrator of the first act). For example, in the case of marital rape, the victim factor can be a trigger for other criminal acts. In reality, the wife defends herself against her husband’s actions from sexual violence and physical violence which then results in the husband’s death. Acts that result in death which is then considered a crime, but the actual criminal act that triggers the crime is not a factor considered by investigators in determining the suspect.

In uncovering a criminal act, what must also be considered is cause and effect or causality, when a person’s death is found and the death is related to the actions of another person, then the death event can be linked to criminal law. The act of taking another person’s life or causing death is murder. Murder is a crime which is defined as the occurrence of death during the course of the crime. It is still debated whether the element of *mens rea* (intention to kill) is needed in the formulation of the crime of murder, because it is a complicated matter to enter the area of *mens rea*.\(^\text{19}\)

Two important elements in the crime of murder are the elements of *mens rea* (evil intent) and the element of *actus reus* (deeds). The consequences of these actions lead to death. Thus, there is a relationship between one’s actions and their consequences. The absence of relationship results in breaking the chain between the action and its consequences. A person can be found guilty of murder if has a relevant mental condition that meets the *mens rea* element and fulfills the act of causing the death.\(^\text{20}\)

The teaching of causality is very relevant in all situations that aim to end life, because there are many potential causes that lead to death. But not infrequently the teaching of causality becomes something that is difficult to use in many murder cases. This section describes how the debate that occurs in the use of the doctrine of causality in holding perpetrators accountable.\(^\text{21}\)

Another murder case that has also caused a long discussion is when the victim makes a significant contribution to the death of the person concerned as a result of an act of murder. In terms of the relationship between

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\(^\text{18}\) Interview with Kombes Dadang Herli, (Serang, 7 Februari 2022).

\(^\text{19}\) Ahmad Sofian, *Teachings of Causality in Criminal Law* (Jakarta: Kencana Prenada Media Group, 2018), 229-231.

\(^\text{20}\) *Ibid*, 240

\(^\text{21}\) *Ibid*, 240
actions as causes and the loss of other people’s lives as consequences, there is a very important main issue, namely when or under what conditions must exist for a death to be determined as a result of an act. To talk about this problem is to talk about the doctrine of causality.22

Doctrinally, causality is in the area of action, not in the area of fault. The teaching of causality is absolutely necessary for material offenses, especially for murder cases. It is impossible to state that someone has committed a crime of murder without looking at the causal relationship between the act and the consequences of the act. Causality is not only to see the causal relationship between actions and effects, but also to see the relationship between motives in certain situations and the resulting consequences. Motives can be qualified as things that encourage someone or things that trigger someone to do certain actions. Besides that, the teaching of causality also wants to see a logical relationship between a certain action and its consequences.23

The teaching of causality wants to see the cause that causes the effect. The death of the husband in the case of marital rape and domestic violence can be seen from Von Bury, which states that every condition is a cause, because if there are no conditions, the consequences will be different too. Each condition, both positive and negative, for the occurrence of an effect is a cause, and has the same value. If the condition is omitted, it will not be possible for a concrete result to occur, as in fact according to time, place and circumstances.24

An action can be said to have a certain effect, as long as that effect cannot be thought of apart from the first action. Therefore, an action must be a conditio sine quanon for the existence of certain effects. All conditions (cause) must be equal.25

The teaching of causality when applied in the case of the death of a husband by a wife with an event preceded by the marital rape against his wife, then the wife defends herself, resulting in the death of the husband, can certainly be seen for several reasons that occurred. If the husband does not force intercourse, then the wife will not strangle her husband as a form of defense. If the wife does not refuse her husband to have sex, then the husband will not do physical violence by hitting and pushing against the wall. If the husband does not push against the wall, the wife will also not strangle her husband to escape the husband’s attack. If the wife does not strangle her husband, then the husband will not die either. The series of causes and the series of events that later resulted in the death of the husband.

The teaching of causality can see all these events, both with generalization theory and individualization theory. Every cause is a condition but there are conditions that cause an effect. Regardless of who adheres to the doctrine of causality, the marital rape which was a preliminary act that triggered the husband’s death, should be considered by investigators in determining the suspect.

Wayne stated that victim precipitation is still needed in studies to fully understand the behavior of victims and perpetrators of crime.

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22 Ibid, 256.
23 Ibid, 279.
24 Erdianto Effendi, Indonesian Criminal Law An Introduction (Bandung: Refika Aditama, 2011), 205.
25 Ibid, 205.
As long as it is not used to blame the victim who did not cause the crime, because victim precipitation will play an important role in understanding crime. Wayne reminded that perhaps the most dangerous thing in terms of victim precipitation and victim blame will arise when law enforcement efforts are made in terms of understanding the roles of victims and perpetrators. Whether it is tracing the criminal responsibility of the perpetrator or the negligence of blaming the victim, this reality is a form of examination that is permissible under the law. This can be termed as part of a defense like provocation, full defense like self-defense.

The most important thing can be said that paying attention to the actions of the victims is to be fair in order to be able to give arguments to the public as well as to the arguments used in legal matters. In the event that there is an action from the victim, but the perpetrator does not act in this case or the crime does not occur.

Victim precipitation must receive full attention by law enforcement officers, whether it is the police, prosecutors and judges when handling a case where the role of the victim is as guilty as the perpetrator. How can someone be said to be a suspect if it is related to the role of the victim in a crime.

Then the victim precipitation must have started to become a consideration in determining the suspect at the investigation stage. The case of marital rape which resulted in the death of the perpetrator and the victim became a suspect is one of the cases that requires an in-depth analysis related to the role of the victim in the occurrence of the death and also aspects of victimology. The presence of an expert on victimization in the case may be necessary so that law enforcement is not only oriented towards the perpetrator but also pays attention to the victim aspect.

CONCLUSION

In cases of marital rape that resulted in the death of the husband, victim precipitation is important for investigators to consider in determining the suspect. This can be seen from the fulfillment of self-defense efforts carried out by the wife, namely against immediate and balanced attacks to defend honor. Self-defense is one of the reasons for the abolition of a crime that can negate punishment. So it is very possible not to process law enforcement because in the end the judge will give a verdict regardless of the demands. Termination of the case from the investigation level is something that can cut down the judicial process. The role of the husband who contributes to the occurrence of crime is also one of the causes of his death. It must be seen as one of the causes that cause consequences. So that it can be seen as a condition that accompanies events that occur. Both of these things must be considered by the investigators in determining the suspects in the cases, not only by looking at the two sufficient preliminary evidences and the fulfillment of the elements of a criminal act as well as the role of the victim in the occurrence of the crime.

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26 Wayne Petherick, “Victim Precipitation: Why We Need to Expand Upon the Theory,” Forensic Research & Criminology International Journal 5, no. 2 (2017): 262–264.
27 Ibid, 263
28 Ari Prakoso, “Victim Precipitation Dalam Tindak Pidana Penghinaan Dan Pencemaran Nama Baik Di Media Sosial (Studi Kasus Terhadap Putusan Perkara Nomor 310/PID.SUS/2017/PN.IDM),” Jurnal Idea Hukum 5, no. 2 (2019): 1544–1561, http://jih.fh.unsoed.ac.id/index.php/jih/article/view/1544-1561.
BIBLIOGRAPHY

Books

Effendi, Erdianto. *Indonesian Criminal Law An Introduction*. Bandung: Refika Aditama, 2011.

Remmelink, Jan. *Hukum Pidana*. Jakarta: PT. Gramedia Pustaka Utama, 2003.

Sofian, Ahmad. *Teachings of Causality in Criminal Law*. Jakarta: Kencana Prenada Media Group, 2018.

Wolfgang, Marvin E. *Victim Precipitated Criminal Homicide*. Edited by Israel Drapkin and Emilio Viano. London: Lexington Books DC Health and Company, 1975.

Yulia, Rena. *Viktimologi; Perlindungan Hukum Terhadap Korban Kejahatan*. Yogyakarta: Graha Ilmu, 2021.

Journal

Angkasa, Rena Yulia, and Ogiandhafiz Juanda. “Urgensi Victim Precipation Dipertimbangkan Oleh Hakim Dalam Penjatuhan Putusan Pemidanaan.” *Jurnal :Wawasan Yuridika* 5, no. 1 (2021): 3. https://ejournal.sthb.ac.id/index.php/jwy/article/view/431.

Bahri, Saiful. “Problema Dan Solusi Peradilan Pidana Yang Berkeadilan Dalam Perkara Pembelaan Terpaksa.” *Jurnal :Wawasan Yuridika* 5, no. 1 (2021): 131–148. https://ejournal.sthb.ac.id/index.php/jwy/article/view/415.

Forsyth, Craig J., and Rhonda D. Evans. “Homicide as a Sociological Transaction: The Use of Victim Precipation at a Criminal Trial.” *Free Inquiry in Creative Sociology* 28, no. 2 (2000): 18–26. https://ojs.library.okstate.edu/osu/index.php/FICS/article/view/7027.

Marselino, Rendy. “Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2).” *Jurist-Diction* 3, no. 2 (2020): 644. https://e-journal.unair.ac.id/JD/article/view/18208.

Petherick, Wayne. “Victim Precipitation: Why We Need to Expand Upon the Theory.” *Forensic Research & Criminology International Journal* 5, no. 2 (2017): 262–264.

Prakoso, Ari. “Victim Precipitation Dalam Tindak Pidana Penghinaan Dan Pencemaran Nama Baik Di Media Sosial (Studi Kasus Terhadap Putusan Perkara Nomor 310/PID.SUS/2017/PN.IDM).” *Jurnal Idea Hukum* 5, no. 2 (2019): 1544–1561. http://jih fh.unsoed.ac.id/index.php/jih/article/view/1544-1561.

Siburian, Riskyanti Juniver. “Menggeser Paradigma Kontra Terhadap Kriminalisasi Pemerkosaan Dalam Rumah Tangga.” *Lambung Mangkurat Law Journal* 5, no. 1 (2020): 65. https://lamjal.ultm.ac.id/web/index.php/abc/article/view/118.

Internet

Daryono. “Akhir Kasus ZA, Pelajar Yang Bunuh Begal Di Malang: Hakim Beri Vonis Pembinaan, Ahli Hukum Keberatan.” *Tribunnews.Com*. Last modified 2020. Accessed February 11, 2022. https://www.tribunnews.com/regional/2020/01/24/akhir-kasus-za-pelajar-yang-bunuh-begal-di-malang-hakim-beri-vonis-pembinaan-ahli-hukum-keberatan.

Rifa‘i, Bahtiar. “Fakta-Fakta Kasus Istri Bunuh Suami Gegara Dipaksa Hubungan Badan.” *DetikNews*. Last modified 2021. Accessed January 9, 2022. https://news.detik.com/berita-jawa-barat/d-5706939/fakta-fakta-kasus-istri-bunuh-suami-gegara-dipaksa-hubungan-badan.

“Korban Rampok Di Medan Jadi Tersangka,
Begal Ditikam 3 Kali Usai Jatuh.”
*CNN Indonesia.* Last modified 2022. Accessed February 11, 2022.  
https://www.cnnindonesia.com/nasional/20220101050417-12-741293/korban-rampok-di-medan-jadi-tersangka-begal-ditikam-3-kali-usai-jatuh.

**Interview**

Interview with Kombes Dadang Herli, (Serang, 7 February 2022)