

## **LEGAL PROTECTION FOR MEMBERS OF THE MARTIAL ARTS PENCAK SILAT**

**Hanin Alya' Labibah<sup>1</sup>; Arum Ayu Lestari<sup>2</sup>**

<sup>1</sup>Universitas Bojonegoro, Bojonegoro; <sup>2</sup>Universitas Nahdlatul Ulama Blitar, Blitar

Email: [haninalya8@gmail.com](mailto:haninalya8@gmail.com)

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**ABSTRACT:** Pencak silat is an art both with bare hands and weapons used to defend yourself, one of the agendas of which is fighting, namely mechanical fighting one-on-one or more so that it is inevitable that there will be things that cause injuries caused by punches or kicks. The purpose of this study is to find out the legal certainty regarding injuries that occur during martial arts training, become a polemic of how the law views it and how it is protected, the existence of conflicting regulations and theories are things that must be considered so that there are no harmful regulations for one of the parties. This paper uses normative legal research with conceptual approach methods and statutory approaches. The result of this study is that injuries due to violence are criminal acts that have been regulated in the Criminal Code. However, on the grounds that the criminal removal of the criminal act is not a criminal act.

**Keywords:** *criminal act; martial arts; violence.*

### **INTRODUCTION**

Community is a group of people who live together in an area accompanied by the norms that regulate it, with the aim that order and security can be realized properly. The existence of a violation of norms is one of the causes of an irregular social order, creating a feeling of insecurity that can affect the quality of life for the worse, one of which is when there is a violation of legal norms such as murder, persecution, rape and so on.

The limitations of members of the police apparatus are that it is not possible to guard each individual for 24 (twenty four hours), while crime can happen to them regardless of time and place, then human instincts will do everything possible to protect themselves from things that can harm them. that is, in self-defense. Self-defense is not only perfunctory, but there are techniques so that what we do is appropriate and on target, people often call it self-defense. Martial arts is a learning or training technique so that when we are faced with people who will harm us, we can deal with them well. Self-defense is also an alternative to ensure the safety of the individual itself. Martial arts is an art either with bare hands or weapons used to defend himself. Indonesia has a traditional martial art known as pencak silat. Pencak is defined as a movement that is used for self-defense in the form of a dance accompanied by customary

regulations as guidelines. While silat can be interpreted as fighting done with art.<sup>1</sup> In Indonesia, pencak silat is divided into many streams, usually in different regions with different names, for example, Madiun is famous for the IKS.PI (Ikatan Kera Sakti Putera Indonesia) and SH (Setia Hati Terate) silat styles. etc.

Martial arts training and pain become an inseparable unit. This is because in silat activities using physical members, such as kicks, punches, parries. In silat, it is also known as fighting, which is a one-on-one mechanical fight, with the aim that when facing external dangers, one's mentality is well-formed, not easily down. Therefore, pain, injury, injuries are also unavoidable. Then it will be a problem when the side effects of the Practice causing pain and so on are brought into the realm of law, and it is stated that the elements meet the elements of the persecution clause. R. Soesilo is of the opinion that according to court jurisprudence, what is meant by persecution is intentionally causing bad feelings (suffering), causing pain, causing injury.<sup>2</sup>

A case that occurred in one district, where Doni and Ali were members of a Silat college. Once when Ali asked his college for permission to vacuum, the college allowed him, but during the vacuum period, Doni and his friends saw Ali taking pictures in other college uniforms, this suddenly caused a feeling of disapproval. Then by the head of the branch, Ali was summoned and given two options, pay an administrative fine or fight. Ali chose to fight, as usual before the fight was carried out breathing first so that the body became harder. Ali did his usual thing, took a breath then held it then another friend would kick him. By that time, Ali's friends were lined up in a long line behind him, slightly to the left of Ali's body. Doni got the first turn to kick Ali, on cue from his coach Doni then kicked Ali. Ali suddenly felt pain, his friends immediately offered to help him, but were refused and Ali chose to go straight with his friend, named Eki, Ali's friend at another college. Then by Eki, Ali was taken to the hospital and Eki reported the incident to the police. So the next morning Doni was arrested and processed in court. The judge found Doni guilty of violating Article 351 paragraph 1 of the Criminal Code and sentenced to 5 months in prison. Based on this, how does the law view this matter, will everyone who practice martial arts and get injured, the person who causes the injury will be prosecuted? Then how about the legal protection?

## **PROBLEM**

Based on the title and explanation that has been described above, the legal issues formulated are as follows:

1. Is being injured during self-defense training a criminal act?
2. What is the legal protection for martial arts members?

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<sup>1</sup>Muhyi M., & Purbojati, 2014, *Penguatan olahraga pencak silat sebagai warisan budaya nusantara*, Budaya Nusantara Vol 1, No.2, 2014, p. 141.147.

<sup>2</sup>R.Soesilo, 1995, *KUHP Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politeia, 1995, p. 245.

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## RESEARCH METHODS

According to Soerjono Soekanto, research is a scientific activity based on an analysis and construction that is carried out systematically, methodologically and consistently with the aim of revealing the truth as a manifestation of human desires to know what they are facing.<sup>3</sup> This writing uses normative law research methods, based on library materials or secondary data.<sup>4</sup> According to Peter Mahmud Marzuki, Normative Legal Research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced.”<sup>5</sup>

## DISCUSSIONS

### **Injured in Martial Arts is a Criminal Acts**

The rules related to human behavior are a legal understanding, where the law does not directly apply to one rule, but there are several rules that have a unity so that later they can be used as a system.<sup>6</sup> Related to martial arts is also regulated in law, because law as a system regulates human life. In article 1 number 4 of Law Number 3 of 2005 concerning the National Sports System (hereinafter referred to as the SKN Law), sports are all systematic activities to encourage, foster, and develop physical, spiritual, and social potential. Article 80 of Law Number 36 Year 2009 concerning Health (hereinafter referred to as the Health Law), sport is a health effort aimed at improving the health and physical fitness of the community. Regarding sports, it is also regulated in other laws and regulations, not only those 2 (two) regulations.

One of the sports branches is self-defense, where self-defense in society is familiar, self-defense as a way of self-defense which is done by fighting which consists of parrying and attacking (including punches and kicks). Martial arts are included in sports, on the grounds that if someone fights it will require muscle strength, speed, balance, power, endurance, flexibility and even movement skills. In Indonesia, there are many kinds of martial arts, such as pencak silat, karate, boxing, judo, taekwondo and more. Pencak silat is a martial art that is closely related to Indonesian culture. Donal F. Draeger, a pencak silat researcher, stated that we can see martial arts. Of various weapons artifacts that can be found in the classical period, namely Hindu-Buddhist and can be found in the sculptures of reliefs at the temples of Borobudur and Prambanan.<sup>7</sup>

In martial arts there will be physical contact that occurs during a match, from this physical contact it will cause an injury, physical disability, and can even cause death. Given the risk in self-defense, it is necessary to have a statutory regulation that regulates it, because in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of

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<sup>3</sup>Soerjono Soekanto, 1986, Pengantar Penelitian Hukum, Jakarta: UI Press, 1986, p.3.

<sup>4</sup>Soejarno Soekanto & Sri Mamudji, 2003, Penelitian Hukum Normatif : Suatu Tinjauan Singkat, Jakarta : PT. Raja Grafindo Persada, 2003, p.13.

<sup>5</sup>Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Kencana Prenada, (2010), p.35

<sup>6</sup>Jimly Asshiddiqie, 2012, Teori Hans Kelsen tentang Hukum, Jakarta: Konstitusi Press, 2012, p.13.

<sup>7</sup>Joko Pamungkas, 2012, Panduan Lengkap Beladiri Dengan Tenaga Dalam Memanfaatkan Tenaga Dalam Untuk Menjadi Petarung Handal, Yogyakarta : Araska, 2012, p.46.

the Republic of Indonesia) article 1 number 3, that the Indonesian state is a state of law, so if there is a problem, it must be in accordance with applicable law in Indonesia. However, in reality there is no statutory regulation that regulates martial arts, usually in a martial arts there are rules and everything is different depending on the martial arts. Thus it can be concluded that the applicable rules are special rules in the martial arts.

In a hierarchy of laws and regulations in Indonesia, namely Law Number 12 of 2011 concerning the Establishment of Legislation in Article 7, namely: the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly, Government Laws/Regulations Substitute for Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regional Regulations. In this way, the rules related to martial arts do not have clarity in the law. Basically, criminal law recognizes the existence of general criminal law and special criminal law, which means that the principle of *lex specialis derogate lex generalis* will apply, when a special criminal law contains something that deviates from the provisions of general criminal law.<sup>8</sup> the special criminal law is outside the general criminal law. There are several principles that need to be considered related to the principle of *lex specialis derogate lex generalis*, namely:<sup>9</sup>

- a. The provisions contained in the rule of law remain in effect, except in cases where it is specifically regulated in a special rule.
- b. The position of the provisions of the *lex specialis* must be equal to the provisions of the *lex generalis*, namely the law with the law.
- c. Being in the same legal environment regarding the provisions of the *lex specialist* with the *lex generalis*.

A rule made by an organization in self-defense is not included in special criminal law. So that what applies related to martial arts is the Criminal Code (hereinafter referred to as the Criminal Code). In the Criminal Code, it has been regulated regarding duel fights, but there is no specific definition of duel fights. According to R. Soesilo, a duel fight is a fight with two people on a regular basis, where there is a challenge first, and the time and place and even the weapons used have been prepared.

The Criminal Code, in addition to regulating fights, also regulates mistakes that cause people to die and are related to mistakes that cause people to be injured. Death here can be caused due to inadvertence or negligence of the defendant (*delik culpa*).<sup>10</sup> Martial arts will allow the occurrence of an injury and even death, as related to this is regulated in the legislation. There is a reason that justifies martial arts as a sport, this is a deviation from the rule of law. Basically, deviations from the rule of law can be in the form of exceptions or deviations, which can be in the form of justifying reasons and excuses, both of which can be said to be abolished criminals or the absence of a criminal liability.

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<sup>8</sup>Mahrus Ali, 2011, *Hukum Pidana Korupsi di Indonesia*, Yogyakarta : UII Pres Yogyakarta, 2011, p.2.

<sup>9</sup>Bagir Manan, 2004, *Hukum Positif Indonesia (Suatu Kajian Teoritik)*, Yogyakarta : FH UI Pres, 2004, p.56 dikutip langsung dari 27. Mukhlis, 2015, "Keberadaan UUPA Sebagai *Lex Specialis*", *Jurnal Hukum Tata Negara Nanggroe* 4, No.3 2015, p. 27-28.

<sup>10</sup> *Op.Cit.* p.151.

Basically, criminal law is a rule or legal provision that regulates an act that can be punished and the rules related to the crime,<sup>11</sup> There is a concept related to legal obligations, namely the concept of legal responsibility. It should be noted that the concept of responsibility is not only related to law, but also to moral values or decency in general, so that justice will be realized. In criminal law it is necessary to have a principle of criminal law, if a person commits a violation or his act is categorized as a crime, one of the familiar principles is the principle of legality, which means that a person cannot be punished if there is no mistake, with so a person can be held accountable if there is an error in the act he did. There are several elements of criminal liability, namely:

1. There is a crime
2. There is an element of error, it can be intentional or negligent. Deliberation can be done intentionally as an intention, intentionally as a necessity and intentionally as a possibility
3. There is no excuse for forgiveness

Basically, martial arts is a branch of sport that has an aggressive nature, which can result in violence or injury or injury to each other, which violence is a criminal act, as regulated in the Criminal Code. However, with a sporting reason, a martial sport can be justified, because the violence can be justified if there is a compelling situation that requires the fighter to defend himself from his opponent. Thus, the case described above is not appropriate, because in this case there is no reason for self-defense against Doni or there is no legal protection, even though what is in effect is a regulation of the organization.

### **The legal protection of martial arts members by using the excuse for eliminating criminal acts**

It is undeniable that in each training session and match, there will be injuries or injuries caused by punches, kicks from the opponent, this if identified under Article 351 of the Criminal Code, these elements have met the criteria for abuse. This is where the legal protection comes into play, legal protection is a rule that provides protection for human rights to someone who has been harmed.<sup>12</sup> It will be a problem when there are things that are not balanced, as in the case described above. The presence of a martial arts member who was imprisoned was convicted of kicking which caused injury in the form of pain. Doni did this on cue from his coach.

The martial arts martial arts have received permission from the state whose main tasks are left to the Ministry of Law and Human Rights to assess whether or not the martial arts organization exists and has members. The need for legal protection, especially for each individual who is under the auspices of pencak silat it is very necessary so that in carrying out their activities they are not overshadowed by the law that will ensnare them.

The law recognizes any things that can lighten or intensify a sentence, which is known as the reason for the abolition of the crime. The reasons for the abolition of a crime are reasons that

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<sup>11</sup>Teguh Prasetyo, 2013, *Hukum Pidana*, Jakarta: PT. RajaGrafindo Persaja cetakan keempat, 2013, p.4.

<sup>12</sup>Anak Agung Gede Agung, *et.al*, 2021, "Perlindungan Hukum Terhadap Pelaku Pembunuhan Begal Atas Dasar Pembelaan Terpaksa," *Jurnal Interpretasi Hukum* 2, No.1, 2021, p.5.

allow a person to not be sentenced even though his actions have fulfilled the elements of a criminal act and this is an authority given by law to judges.<sup>13</sup> The reasons for the abolition of the crime (*strafuitsluitingsgronden*) are the reasons that allow someone who has committed an act that has actually fulfilled the formulation of the offense, but is not punished.<sup>14</sup> The basis or reasons for the abolition of a criminal offense are generally divided into two types, namely:<sup>15</sup>

- a. Reason Justification (*rechtsvaardigingsgrond-faits justificatifs*)
- b. Reasons for Forgiveness (*schulduitsluitingsgrond-faits d'exuice*)

The W.v.S Criminal Code, which went to *Wetboek van Strafrecht* in the Netherlands, also recognizes the division of the reasons for the abolition of the crime based on the historical M.v.T which was later referred to as *Memorie Van Toeichting*, regarding the reasons for the abolition of the crime, explaining that there are 2 (two) reasons that a person cannot be held responsible for a criminal act or a criminal act because it cannot be accounted for by someone who lies within the person (the excuse for forgiveness) and the reason for the person cannot be accounted for is outside the person (the excuse)<sup>16</sup>. There are 3 (three) very important principles in the teaching of the reasons for the abolition of criminal acts, namely:<sup>17</sup>

1. The Principle of Subsidiarity;  
There is a conflict between legal interests and legal interests, legal interests and legal obligations, legal obligations and legal obligations.
2. The principle of proportionality;  
There is a balance between legal interests being defended or legal obligations being carried out.
3. The principle of "culpa in causa".  
Criminal liability for people who from the beginning took the risk that he would commit a criminal act.

### **Forgiving Reason**

If a person who has not been convicted of an act that fits the formulation of the offense is due to things that result in the absence of an unlawful nature of the act, then these things are said to be justifying reasons. certain things are seen as justified actions, not wrong actions. The reason for forgiveness is regulated in Chapter III Book I of the Criminal Code, which is regulated in the following articles:

1. Article 44 of the Criminal Code, whoever commits an act that cannot be insured against him because his soul is disabled in growth or is disturbed due to illness, will not be punished.
2. Article 48 of the Criminal Code, Whoever commits an act due to the influence of coercion, will not be punished.

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<sup>13</sup>M. Hamdan, 2012, *Alasan Penghapus Pidana (Teori dan Studi Kasus)*, Bandung: Refika Aditama, 2012, p.27.

<sup>14</sup>Sofjan Sastra Widjaja, 1990, *Hukum Pidana I*, Bandung: CV. ARMICO, 1990, p.223.

<sup>15</sup>*Ibid.*

<sup>16</sup>Nanang Tomi Sitorus, 2020, "Perdamaian sebagai Upaya Penghapusan Proses Pidana (Studi Kasus Putusan Mahkamah Agung Nomor 1600 K/Pid/2009)," *Doktrina : Journal of Law* 3, No. 2, 2020, p. 130.

<sup>17</sup>J.E. Sahetapy dan Agustinus Pohan, 2007, *Hukum Pidana*, Bandung: PT. Citra aditya Bakti, 2007, p. 57.

3. Article 49 paragraph (2), forced defense that exceeds the limit, which is directly caused by a great mental shock due to the attack or the threat of attack, is not punished.
4. Article 51 paragraph (2), An order for an office without authority does not result in the abolition of the crime, unless the one who is ordered thinks in good faith that the order is given with authority and its implementation is included in the work environment.

### **Justifying Reason**

The reasons for justification are regulated in CHAPTER III Book I of the Criminal Code, which are regulated in the following articles:

1. Article 48 of the Criminal Code, Whoever commits an act due to the influence of coercion will not be punished. Forced power (*overmacht*) is divided into 3 (three) namely absolute forced power and relative forced power and emergency (*noodtstand*).
2. Article 49 paragraph (1) of the Criminal Code, Not being punished, whoever commits an act of forced defense for himself or for another person, honor, decency or property for himself or for another person, because there is an attack or threat of attack that is very close and against the law on at that time.
3. Article 50 of the Criminal Code, People who commit acts to implement the provisions of the law, may not be punished.
4. Article 51 paragraph (1) of the Criminal Code, a person who commits an act to carry out a position order given by the competent authority, may not be punished.

In addition to the reasons for justification and forgiveness which are known in the Criminal Code, the abolition of crimes is also known outside the Criminal Code. The following are the basics of eliminating crimes outside the Criminal Code :<sup>18</sup>

1. The right to supervise and educate from parents, guardians, and teachers.
2. Position rights of doctors, medicine interpreters, midwives and natural investigators.
3. Permission from the person whose interests are violated to the person who violates it
4. Representing other people's business.

An action can be subject to sanctions because the act is an action that has fulfilled the nature of being against the law. The nature of being against the law is not only based on a provision in the legislation, but is also based on the principles of justice or legal principles that are not written and are general in nature.<sup>19</sup> The Supreme Court in giving the meaning of the element "unlawfully in Article 2 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 pays attention to the doctrine and jurisprudence of the Supreme Court which is of the opinion that the element "unlawfully" in a criminal act includes acts against the law. in the formal sense and the meaning material.<sup>20</sup> The purpose of expanding the element of

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<sup>18</sup>Angelica Maureen Taroreh, *et.al*, 2020, "Izin Pihak Korban Sebagai Dasar Peniadaan Pidana Di Luar KUHP," *Lex Crimen IX*, No.3, 2020, p. 61.

<sup>19</sup>*Ibid*, p. 64

<sup>20</sup>38. Wildan Mustahqul Amri, "Perbuatan Melawan Hukum Materiil berfungsi Positif dan Berfungsi Negatif dalam Tindak Pidana Korupsi," *Jurnal Kajian Hukum* 6, No.2 (2021): 38. <https://mail.e-journal.janabadra.ac.id/index.php/KH/article/view/1691/1159>.

"against the law" which is not only in a formal sense but also includes acts against the law materially is to facilitate the agenda of evidence in court.

One of the bases for abolishing the crime is that even though these acts are in accordance with the law, the perpetrator cannot be punished even though the legal act is included in the element of persecution, for example, such as sports, boxing matches, martial arts and so on. The abolition can be done because of the permission of the victim, as in the case of an injury during martial arts training, those who participate in the martial arts are considered to have allowed themselves to be mistreated. Because actions like kicking, hitting them are done seriously. Unlike the case when fighting on the street, those who fight on the street can be subject to Articles in Book II Chapter XX concerning persecution, namely Articles 351 and 358 of the Criminal Code.

Violence cannot be separated from any martial sport. Maybe the choice of violent diction was too frontal, but in fact in one district in East Java, an injury during a martial arts practice was subject to an article of persecution. This provides a stigma and justification that martial arts is synonymous with violence. It's just that maybe Doni's unlucky fate is being experienced by Doni. Even though the government itself has also justified accidents that were experienced or unavoidable in sports. If it is not permitted, it is impossible for martial arts to exist in Indonesia. This is also reinforced by the teachings of *Volenti NonFit Injuria*, which is a defense in a lawsuit, where a person involved in an event has accepted and knows the risks that may occur, which are inherent in the event, so he cannot sue, or ask for compensation for injury or loss. suffered as a result of the incident. This doctrine is based on the fact that if a person already knows and understands the risks inherent in activities and he is voluntarily willing to take the risk, then the person who injures him cannot be punished.

## **CONCLUSION**

One of the sports branches is self-defense, self-defense as a way of self-defense which is done by fighting which consists of both defense and attack. Martial arts are included in sports, on the grounds that if someone fights, it will require muscle strength, speed, balance, power, endurance, flexibility and even movement skills. So that self-defense is a branch of sport that has an aggressive nature, which can result in violence or injury or injury to each other, in which violence is a criminal act, as regulated in the Criminal Code. However, with a sporting reason, a martial sport can be justified, because the violence can be justified if there is a compelling situation that requires the fighter to defend himself from his opponent. If in legal doctrine it is known as *Volenti NonFit Injuria*, namely a defense in a lawsuit, where a person involved in an event has accepted and knows the risks that may occur, which are inherent in the event, so that he cannot sue, or ask for compensation for injury or damage. losses suffered as a result of the incident.



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