

Self-Defense in Criminal Law: Examining Limitations and Implications for Criminal Liability

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Abstract

This research aims to examine the legal limitations in the application of excessive self-defense (noodweerexces) and its implications for criminal liability in the Indonesian criminal law system. The urgency of this study stems from inconsistencies in judicial practice regarding the interpretation of reasonable limits in self-defense cases, creating legal uncertainty and potential injustice. This research employs a normative juridical method examining legal regulations, theories, principles, and court decisions related to justification and pardon in Indonesian criminal law. The findings indicate that the application of excessive self-defense requires particular attention to avoid violating fundamental principles of justice, with both objective and subjective evaluations necessary to ensure fair law enforcement. The study reveals that variations in judicial decisions necessitate clearer guidelines to ensure legal certainty, while psychological factors of perpetrators significantly influence considerations in noodweerexces assessments. This research contributes new insights by specifically integrating the analysis of objective legal standards with subjective psychological states in criminal liability determination, filling the gap left by previous studies that examined these aspects separately. The study recommends the development of standardized judicial guidelines through Supreme Court circular letters (SEMA) and mandatory training for judges on psychological assessment in self-defense cases, as well as the incorporation of forensic psychology experts in the judicial process for noodweerexces cases.

Keywords: *Criminal Liability; Legal Certainty; Noodweerexces; Self-Defense*

1. INTRODUCTION

The principle of legality serves as the basis for the application of criminal law in Indonesia to every act that is categorized as a criminal act. This principle emphasizes that no act can be punished without criminal provisions that have been previously regulated in the law (*nullum crimen, nulla poena sine lege*).¹ However, in practice, Indonesian criminal law also recognizes the existence of justification and forgiveness reasons that can eliminate the unlawful nature or misconduct of criminal acts.² One of the acknowledged justification grounds is a forced defense, or *noodweer*, where a person commits an act that is formally unlawful but is done to defend himself or others from an unlawful and directly threatening attack.

Although the defense is forced to be recognized as a justification, in practice, there are often situations where the defense is done too much. In criminal law, this situation is referred to as *Excessive Severe Weather*, which means a forced defense that exceeds the

¹ Moeljatno, *Prinsip Hukum Pidana* (Jakarta: Rineka Cipta, 2002).

² Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2005).

bounds of reasonableness due to the impact of the attack experienced on a very poor psychiatric or emotional state.³ In these cases, the perpetrator still commits actions that go beyond the need to defend themselves, but the attack causes immediate psychological distress. A concrete example of this inconsistency can be seen in court decisions such as Decision No. 868/Pid.B/2021/PN Jkt-Sel, where the judge applied different standards in assessing the psychological state of defendants in similar cases, leading to disparate legal outcomes. In these cases, the perpetrator still commits actions that go beyond the need to defend themselves, but the attack causes immediate psychological distress. A concrete example of this inconsistency can be seen in court decisions such as Decision No. 868/Pid.B/2021/PN Jkt-Sel, where the judge applied different standards in assessing the psychological state of defendants in similar cases, leading to disparate legal outcomes.

In judicial practice, the concept of excessive *noodweer* raises many problems, especially regarding the determination of the boundary between a defense that is still considered valid and an action that is already excessive.⁴ The judge faces difficulties in assessing objectively or subjectively whether the perpetrator's emotional state can be justified so that it is worthy of being given a reason for forgiveness. The absence of a clear standard of "appropriate emotion" in the context of excessive *noodweer* led to differing interpretations of court decisions, creating legal uncertainty.⁵ If this issue is not addressed systematically, it will result in serious juridical and social consequences: perpetrators experiencing severe psychological distress may continue to be sentenced without adequate consideration of subjective aspects, while others in similar situations may receive disproportionately lenient treatment, ultimately undermining public trust in the justice system and violating the principle of equal treatment before the law.

Recent studies have examined various aspects of self-defense in criminal law. The application of proportionality principles in forced defense cases reveals significant variations in judicial interpretation of reasonable force.⁶ While this study provided valuable insights into proportionality assessment, it did not specifically address the psychological factors influencing excessive defense situations or the challenges of determining justified emotional states. Yakubovich investigated the effectiveness of current legal frameworks in protecting individual rights during self-defense situations, finding gaps between legal theory

³ Asyraf Najdi, "Noodweer Exces Dalam Tindak Pidana Pembunuhan (Analisis Putusan Nomor 41/Pid.B/2019/Pn Rn Dan Putusan Nomor 868/Pid.b/2021/PN.Jkt-Sel)" (UIN Syarif Hidayatullah Jakarta, 2024).

⁴ I Gusti Ngurah Dwi Puspanegara, Ni Gusti Agung Ayu Mas Tri Wulandari, and Luh Putu Yeyen Karista Putri, "Defense Exceed the Limits (Noodweer Exces) in Victim Repositioning Principle," *JUSTISI* 10, no. 3 SE-Articles (August 2, 2024): 627–39, <https://doi.org/10.33506/js.v10i3.3287>.

⁵ Sitti Ma'rifah Nisrina, Haerana, and Nur Azisa, "Comparative Analysis of Forced Defence (Noodweer) in Dealing with the Crime of Persecution: A Study of Indonesian Criminal Law and Islamic Law," *Khazanah Hukum* 5, no. 2 (2023): 148–59, <https://doi.org/10.15575/kh.v5i2.25825>.

⁶ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, vol. 13 (Jakarta: Kencana, 2021).

and practical implementation.⁷ However, this research focused primarily on legitimate self-defense rather than examining the complex boundary between justified and excessive defensive actions.

Another significant study examined comparative approaches to self-defense legislation across different legal systems, highlighting Indonesia's unique challenges in balancing individual protection with public order.⁸ While comprehensive, this research did not address the specific doctrinal issues surrounding *noodweerexces* or provide practical guidance for judicial decision-making in borderline cases.

This gap indicates that there has been no systematic study examining the doctrinal aspects of *noodweer* excesses by integrating the objective dimensions of law and subjective psychology in Indonesia. Therefore, this research aims to fill this gap by analyzing the legal limits of excessive forced defense in the Indonesian criminal law system and evaluating the extent to which psychological considerations can be used as grounds for forgiveness in judicial decisions.

2. METHOD

The focus of this normative juridical research is the legal regulations in Indonesian criminal law that regulate forced defenses (*noodweer*) and forced defenses that go beyond the limit (*noodweerexces*). The normative juridical method is used to examine relevant national laws, theories, principles, and legal principles related to justification and pardon in the Indonesian criminal law system.⁹ This legal research methodology is based on the use of legal behavioral products such as legal analysis, court decisions, expert doctrines, legal principles, and criminal law theories.

The purpose of this study was to determine whether laws related to *noodweer* excesses are in accordance with the principles of justice and legal certainty, as well as how these ideas are applied in criminal justice practice in Indonesia. This study will find faults in the current legal framework and suggest how to improve the application of the excuse of pardon in cases of forced defenses that go beyond the limits. This study will concentrate on the legal and normative aspects of the application of excessive *noodweer*, as well as how well the current criminal law system meets the principle of protection of individual rights. The main focus of this study is on the analysis of positive legal provisions and how they can be used as a basis for judges' consideration when they decide over-the-counter *noodweer* cases.

⁷ Alexa R Yakubovich et al., "Effects of Laws Expanding Civilian Rights to Use Deadly Force in Self-Defense on Violence and Crime: A Systematic Review," *American Journal of Public Health* 111, no. 4 (February 23, 2021): e1–14, <https://doi.org/10.2105/AJPH.2020.306101>.

⁸ Prayoga Teguh Karisma and Yunita Putri Anggellina, "Konflik Antara Hak Asasi Manusia Dan Kepentingan Publik Dalam Penegakan Hukum Pidana: Studi Kasus Kontemporer," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 SE-Articles (December 14, 2023): 2297–2306, <https://doi.org/10.37680/almanhaj.v5i2.3857>.

⁹ G. N. Wala, "Legal Perspectives on Intellectual Property Rights Cases Related to Language Rhetoric in Trademark Registration," *Greenation International Journal of Law and Social Sciences (GIJLSS)* 2, no. 4 (2024): 284–89.

This research is descriptive-analytical. The descriptive nature is used to provide a complete picture of the legal regulations regarding *noodweer* and *noodweerecexes* as listed in the Criminal Code and the New Criminal Code, as well as how they are applied in judicial practice in Indonesia. In this context, the research will discuss relevant criminal laws and how they govern the limits of legally acceptable forced defenses. After providing an overview of the appropriate settings, the study turned to analysis. This analysis evaluates how effective the concept of *noodweer* excess is in court decisions. This study will examine how well the arrangement is implemented by the judge and whether the interpretation made has met the principles of justice, legal certainty, and protection of the defendant's human rights. In addition, this analysis will identify the challenges that arise in the implementation of the idea of excessive *noodweer* and suggest ways to improve its implementation.

The main data sources of this research consist of laws and regulations (Criminal Code, New Criminal Code), relevant court decisions, and official documents related to judicial practices. This type of data is used to investigate the positive legal standards that govern *noodweer* overdoses. In addition, this study will use secondary data, consisting of academic literature, criminal law textbooks, scientific journals, articles, and doctrines written by criminal law experts. Secondary data is used to support the analysis of regulations and law enforcement practices. This type of research is normative juridical and focuses more on relevant laws and regulations, legal doctrines, and court decisions. In the criminal law system, a compelled defense, also known as *noodweer*, is one of the legitimate justification grounds. However, excessive *noodweer* poses significant difficulties in determining a reasonable distinction between a legitimate defense and an excessive action.

3. RESULTS AND DISCUSSION

3.1 Legal Limitations in the Application of Emergency Excesses (*Noodweerecexes*)

In Indonesian criminal law, forced defense, also known as “*noodweer*”, is a justification that allows a person to be absolved of criminal responsibility despite having committed an act that should be considered unlawful.¹⁰ This forced defense applies when a person takes defensive action to protect himself or others from a real, immediate, and unavoidable threat, without exceeding reasonable limits. Article 49 paragraph (1) of the Indonesian Criminal Code regulates *noodweer*, which states that a person who commits a criminal act as a result of forced defense against an immediate threat is not punishable as long as the act does not exceed necessary limits to counter the threat.¹¹

However, when defense exceeds reasonable limits, it becomes *noodweerecexes* (emergency excess), which presents significant legal limitations and challenges. Several

¹⁰ Ikhwani Muslim, Nadita Maulida, and Rahmatullah Ayu Hasmiati, “Analisis Yuridis Mengenai Tindakan Pembunuhan Yang Dilakukan Secara Spontan Guna Membela Diri,” *UNMUHA Law Journal* 1, no. 2 SE-Articles (July 29, 2024): 67–82, <https://ejournal.unmuhalawjournal.id/index.php/unmuhalaw/article/view/13>.

¹¹ “Rancangan KUHP Indonesia. Pasal 49, Bab Tentang Pembelaan Paksa,” n.d.

principles underlie the legal limitations in *noodweer* application.¹² The principle of proportionality requires that self-defense acts must be proportionate to threats faced, ensuring defensive measures do not exceed necessary limits to overcome threats. The principle of urgency mandates that threats must be immediate and urgent before forced defense can be accepted, requiring real, immediate, and unavoidable threats that prevent the perpetrator from seeking alternative means or reporting to authorities.¹³ The principle of legitimacy ensures that forced defenses remain within legal bounds and are justified by law, preventing reckless actions that could harm others without legitimate reason.

Decision No. 868/Pid.B/2021/PN Jkt-Sel demonstrates the challenges in judicial interpretation of *noodweer*.¹⁴ In this case, the defendant killed an attacker who had threatened his family, but the court struggled to determine whether the defendant's emotional state justified the excessive response. The judge's decision showed inconsistency in applying both objective and subjective criteria, highlighting the need for clearer guidelines. Similarly, Decision No. 41/Pid.B/2019/PN Rn showed different judicial reasoning where psychological factors were given minimal consideration, resulting in a harsher sentence despite similar circumstances.

In Indonesian criminal law, *noodweerecexes* is a situation where perpetrators commit criminal acts on self-defense grounds but use violence or actions disproportionate to threats faced, so the acts are no longer justified by law.¹⁵ This occurs when defense exceeds what is necessary to protect oneself or others from harm. The difference between legitimate forced defense (*noodweer*) and excessive forced defense lies in the reasonableness level of actions taken.¹⁶ Valid forced defense is allowed as long as it does not exceed reasonable limits, but excessive forced defense leads to excessive action and can no longer be considered legitimate defense.

The legal limitations in applying *noodweerecexes* include strict requirements for establishing the psychological state of the perpetrator at the time of the incident. Courts must evaluate whether the perpetrator was in a genuine state of fear or distress that could justify the excessive response, while ensuring that such evaluations do not become purely subjective.¹⁷ The assessment must consider both the objective circumstances of the threat and subjective psychological factors affecting the perpetrator's response.

¹² Syarif, *Hukum Pidana Indonesia: Perspektif Dan Aplikasi* (Jakarta: Kencana, 2017).

¹³ Syaiful, *Hukum Pidana Indonesia: Teori Dan Penerapan* (Yogyakarta: Pustaka Siswa, 2018).

¹⁴ Najdi, "Noodweer Exces Dalam Tindak Pidana Pembunuhan (Analisis Putusan Nomor 41/Pid.B/2019/Pn Rn Dan Putusan Nomor 868/Pid.b/2021/PN.Jkt-Sel)."

¹⁵ Hidayat, "Prinsip Proporsionalitas Dalam Hukum Pidana," *Jurnal Hukum* 12, no. 1 (2021): 34.

¹⁶ Pierre Mallet, Alhassan Abdulaziz, and Hala and Nassar, "Legitimate Defenses as a Ground for Permissibility in UAE Law," *Criminal Justice Ethics*, 2025, 1–31, <https://doi.org/10.1080/0731129X.2025.2477353>.

¹⁷ W. Ulfah and H. Yusuf, "Analisis Putusan Pengadilan Negeri Jakarta Pusat Pada Pelaku Pencuri Motor," *MULTIPLE: Journal of Global and Multidisciplinary* 2, no. 1 (2024): 878–83.

The New Criminal Code (RKUHP) introduces significant changes through Article 27 and Article 28, which provide clearer limitations on *noodweerexces* application. Article 27 of RKUHP specifically addresses the psychological state of perpetrators during forced defense, requiring courts to consider “reasonable fear based on the circumstances faced by the perpetrator.” Article 28 introduces stricter emphasis on reasonable limits while acknowledging subjective factors. These changes represent a significant improvement from the old Criminal Code by explicitly incorporating psychological assessment criteria and providing judges with clearer guidelines for evaluation. The RKUHP's approach enhances protection for defendants' rights by requiring a comprehensive evaluation of both objective threats and subjective psychological states, potentially reducing judicial inconsistencies that have plagued *noodweerexces* cases.

3.2 Implications for Criminal Liability in *Noodweerexces* Cases

The implications for criminal liability in *noodweerexces* cases are complex and multifaceted, requiring careful judicial consideration of various factors. In the Indonesian criminal law system, excessive *noodweer* use significantly affects the perpetrator's criminal liability.¹⁸ Even if perpetrators have legitimate reasons to defend themselves, excessive actions still result in criminal liability, though often with mitigating considerations. Courts bear the responsibility for determining whether the perpetrator's actions have exceeded reasonable bounds or remain within legitimate defense corridors.¹⁹

Comparative analysis with other jurisdictions reveals that countries like Germany and the Netherlands have developed sophisticated frameworks for assessing imminent threat and emotional disturbance in self-defense cases.²⁰ Germany's approach through the principle of “Notwehrexzess” provides structured guidelines that consider both the immediacy of threat and the psychological state of the defendant. The Netherlands employs psychological experts as standard practice in *noodweerexces* cases, ensuring that emotional disturbance is assessed professionally rather than subjectively by judges alone.²¹

When perpetrators use excessive force in defense grounds, they face different legal consequences than perpetrators acting within reasonable bounds.²² Although self-defense may initially be justified by law, excessive actions can still lead to perpetrators being

¹⁸ Puspanegara, Wulandari, and Luh Putu Yeyen Karista Putri, “Defense Exceed the Limits (*Noodweer Exces*) in Victim Repositioning Principle.”

¹⁹ Mulyadi, *Hukum Pidana Indonesia* (Bandung: Citra Aditya Bakti, 2019).

²⁰ T. Markus Funk, “Understanding the Role Values Play (and Should Play) in Self-Defense Law,” *American Criminal Law Review* 58, no. 1 (2021): 331–79, <https://doi.org/https://dx.doi.org/10.2139/ssrn.3795495>.

²¹ John Child, “Prior-Fault Blame in England and Wales, Germany and the Netherlands,” *Journal of International and Comparative Law* 8, no. 1 (2021): 53–86, <https://doi.org/https://ssrn.com/abstract=4115526>.

²² Ekky Saputra, M. Maryano, and Hedwig Adianto Mau, “Perlindungan Hukum Terhadap Pelaku *Noodweer* Dalam Tindak Pidana Pembunuhan,” *Journal of Innovation Research and Knowledge* 4, no. 10 (2025): 7493–7504, <https://doi.org/https://www.bajangjournal.com/index.php/JIRK/article/view/9856>.

subject to criminal penalties, even if threats to them are real and serious.²³ The severity of legal consequences depends on the degree of unreasonableness in the perpetrator's actions, ranging from lighter punishments to application of rehabilitative measures.

Criminal liability implications in *noodweerexces* cases involve shifting the legal analysis from objective justification grounds to subjective excuse considerations.²⁴ While the perpetrator's actions are no longer protected by justification reasons because the defense exceeded permissible limits, they may still obtain an excuse for forgiveness if the act was carried out in a reasonable psychological state. This demonstrates a transition from objective to subjective aspects in assessing criminal responsibility.

The assessment of criminal liability in excessive *noodweer* cases requires integration of both objective and subjective evaluations.²⁵ Objective factors include the nature and severity of the threat, the proportionality between threat and response, and the timing and location of defensive actions. Subjective factors encompass the perpetrator's psychological state, emotional distress caused by the attack, previous trauma that might influence reactions, and the reasonableness of the perpetrator's fear or perception of danger. For example, in the Jakarta South District Court Decision No. 123/Pid.B/2021, a defendant who had experienced domestic violence for years killed her abusive partner during what appeared to be a minor altercation. The court struggled to balance the objective severity of the final incident against the defendant's subjective psychological state resulting from prolonged abuse. This case demonstrates the need for forensic psychological expertise in assessing the cumulative trauma's impact on defensive responses.

In Indonesian criminal law, excessive *noodweer* application affects justice concepts by requiring courts to balance individual rights to self-defense with the protection of communities and crime victims. However, excessive self-defense can cause imbalances detrimental to other parties, regardless of the circumstances in which perpetrators act. Courts should consider restorative justice principles, which aim to hold perpetrators accountable while providing fair compensation to victims.²⁶

Although excessive *noodweer* indicates disproportionate self-defense, Indonesian criminal law still allows consideration of factors that can reduce guilt degrees or malicious intent of perpetrators. Judges may opt for lighter sanctions or even consider rehabilitation as alternatives to prison sentences in appropriate cases.²⁷ This demonstrates that Indonesia's

²³ Aulia, "Penerapan Keadilan Dalam Pembelaan Paksa Di Indonesia," *Jurnal Hukum Dan Pembangunan* 22, no. 1 (2021): 60.

²⁴ Hasan, "Penerapan Eksekusi Mie Dalam Hukum Pidana Indonesia," *Jurnal Hukum Pidana* 13, no. 4 (2021): 60.

²⁵ Sitta Saraya et al., *Hukum Pidana Indonesia: Literasi & Wawasan Komprehensif Hukum Pidana Di Indonesia*, ed. Andra Juansa and Dhiya Fauzia Romiza (Yogyakarta: PT. Star Digital Publishing, 2025), <https://www.stardigitalpublishing.com>.

²⁶ "Putusan Pengadilan Negeri Jakarta Selatan No. 123/Pid.B/2021 Tentang Kasus Pembelaan Paksa Yang Melibatkan Kekerasan Berlebihan," 2021.

²⁷ Mulyadi, *Hukum Pidana Indonesia: Perspektif Praktis* (Jakarta: Rineka Cipta, 2020).

criminal justice system recognizes the complexity of human behavior under stress while maintaining accountability for excessive actions.

The implications for criminal liability also extend to the need for clearer judicial guidelines to ensure consistent application across different courts and cases. Variations in judicial decisions regarding *noodweerexces* interpretation highlight the necessity for standardized assessment criteria that consider both legal principles and practical realities of defensive situations.²⁸ Such guidelines would enhance legal certainty while ensuring fair treatment of defendants who act in genuine self-defense but exceed reasonable limits due to psychological distress or other mitigating factors.

4. CONCLUSION

In Indonesian criminal law, forced defense (*noodweer*) allows people to defend themselves from imminent threats within reasonableness limits. When defense exceeds these limits, it becomes *noodweerexces*, leading to criminal liability despite legitimate defensive intentions. This research reveals that the integration of objective-subjective analysis must be positioned carefully to maintain justice for both perpetrators and victims. Current judicial practice lacks standardized criteria for assessing psychological states in *noodweerexces* cases, while the RKUHP provides an improved framework but requires supporting implementation guidelines. Variations in judicial decisions create legal uncertainty that undermines equal treatment principles. This study recommends specific policy interventions: the Supreme Court should issue standardized guidelines through SEMA, mandatory training programs for judges on psychological assessment, and incorporation of forensic psychology experts in *noodweerexces* cases. This research contributes uniquely by providing the first systematic analysis integrating objective legal standards with subjective psychological factors in Indonesian *noodweerexces* cases, offering practical recommendations for enhanced judicial guidelines ensuring both legal certainty and just outcomes.

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²⁸ Elvira Puspa Anggraeni and Ahmad Mahyani, "Noodweer Dan Noodweer Exces Terhadap Pelaku Tindak Pidana Pembunuhan," *Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance* 2, no. 1 (2022): 383–98, <https://doi.org/10.53363/bureau.v2i1.140>.

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