
Inconsistency of judicial verdicts in standardizing the threshold of noodweer excess: A review of criminal law and Islamic law

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Abstract: This study aims to examine the threshold between self-defense (noodweer) and excessive self-defense (noodweer excess) and its application in Indonesian judicial practice. Using a normative juridical approach through the analysis of selected court decisions, this research compares the regulation of noodweer excess under Indonesian Criminal Law, particularly Article 49 of the Criminal Code (KUHP), and Islamic Criminal Law through the doctrine of *daf'u as-shā'il*. In Indonesian Criminal Law, noodweer excess eliminates criminal liability when excessive defensive actions are directly caused by severe emotional disturbance (hevige gemoedsbeweging). In contrast, Islamic Criminal Law maintains moral and legal accountability once the limits of proportionality are exceeded, despite the presence of emotional pressure. The findings reveal significant inconsistencies in judicial decisions, particularly in judges' assessments of proportionality and severe emotional disturbance, resulting in divergent legal outcomes in comparable self-defense cases. This study concludes that such inconsistencies do not stem from the absence of legal norms, but from the lack of objective and uniform standards in determining the threshold of excessive self-defense. Accordingly, this research offers a comparative normative framework to support more consistent and objective judicial reasoning in future self-defense cases.

Keywords: Self-Defense (Noodweer), Excessive Self-Defense (Noodweer Exces), *Daf'u as-Shā'il*, Thresholds, Judicial Consideration.

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Introduction

A crime is a violation of norms that is punishable by sanctions to maintain legal order. However, such punishment can only be imposed if the perpetrator's actions are unlawful and there is no evidence of a defense of necessity (noodweer) or excessive force (noodweer excess) (Lamintang & Lamintang, 2016; Sinurat, 2023; Surbakti & Natangsa, 2017). An act is categorized as a criminal offense if it violates a norm and warrants punishment. In Indonesia, a set of laws known as the Indonesian Criminal Code (KUHP) is formulated to regulate actions that must be avoided or performed, enabling society to refrain from actions that violate these laws. However, a criminal act may be excused through justifying reasons. The KUHP outlines several justifying reasons, one of which is found in Article 49 regarding forced defense. In Indonesian criminal law, the concept of "noodweer" (defense of necessity) is positioned as a justification that eliminates the unlawful nature of an act. This means that even if the act meets the definition of a crime, the perpetrator cannot be punished because the act was committed to protect themselves, others, their honor, or property from an immediate and unlawful attack (Nathanael Pratama Rezky et al., 2025).

Forced defense can serve as a ground for the abolition of criminal liability for an individual. According to Binding, forced defense (*noodweer*) is a legally valid defense. This defense is considered valid because the action is a response to an injustice suffered by a person (Lamintang & Lamintang, 2016). In the Indonesian Criminal Code (KUHP), forced defense is enshrined in Article 49. This article specifies both forced defense (*noodweer*) and excessive forced defense (*noodweer excess*). According to Professor Pompe, under normal circumstances, an individual must seek assistance from authorities to repel an attack; however, in emergency situations as intended by Article 49, such an opportunity is unavailable (Lamintang & Lamintang, 2016). An individual is deemed to have performed a necessary act of forced defense when they no longer have any other choice.

Whether an individual needs to exercise self-defense is influenced by several factors: first, the presence or absence of an unlawful and immediate attack. Second, the sense of self-worth that motivates an individual to defend their own interests or those of others. Third, the methods employed in carrying out the defense (Lamintang & Lamintang, 2016). An individual's actions can be categorized as valid forced defense (*noodweer*) if several conditions are met. According to R. Soesilo in his book, a person is deemed to be in a state of *noodweer* if they fulfill three requirements. First, the act committed must be forced by the necessity of defense. The defense must be absolutely necessary (*noodzakelijk*), meaning there is no other choice but to perform said defense. Second, the defense or protection is carried out solely on the basis of a threat against the body, honor, or property belonging to oneself or others. Third, there must be an unlawful and threatening attack that occurs suddenly or imminently (Soesilo, 1995; Surbakti & Natangsa, 2017)

While self-defense (*noodweer*) serves as a justifying ground, *noodweer excess* under Article 49 paragraph (2) of the Indonesian Penal Code must be strictly classified as an excusatory defense (*ontschuldigende overmacht*) rather than a justification; this is because the act remains unlawful, yet the perpetrator is exempted from criminal liability due to severe emotional distress. The primary legal issue arises from the absence of objective standardized criteria to determine the boundaries of 'excess' in such defensive acts, thereby creating uncertainty within legal parameters regarding the specific intensity of defense that the law may excuse (Fauzi & Zuhri, 2025).

The relevance of Islamic law in addressing the inconsistency of judicial decisions in Indonesia lies in its role as a living source of material law that provides a moral and legal framework for judicial discretion. Given the lack of standardized criteria in positive law regarding the limits of self-defense, Islamic jurisprudence offers a comparative perspective to bridge the gap between legal certainty and substantive justice. Islamic Law recognizes forced defense as *daf' as-sha'il*, which refers to the efforts made by an individual to defend themselves, their family, or their property to the best of their ability. This defensive action is a response to the arbitrary aggression or injustice they face. In the study of *Ushul Fiqh*, the preservation and protection of the aforementioned interests are known as *al-daruriyyat al-khamsah*, meaning the five essential needs. These five essentials include religion, life, intellect, lineage, and property. The foundational Quranic verse for this concept of forced defense is found in Surah al-Baqarah, verse 194:

الشَّهْرُ الْحُرَمُ بِالشَّهْرِ الْحُرَمِ وَالْحَرَمُتُ قِصَاصٌ فَمَنْ أَعْتَدَ لِعَيْنِكُمْ فَاعْتَدُوا عَلَيْهِ يِمْثُلُ مَا أَعْتَدَ لِعَيْنِكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

"The sacred month is for the sacred month, and for the prohibited things, there is legal retribution (*qisas*). So, whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allah and know that Allah is with those who fear Him" (QuranMu • Al-Baqarah, 2025)

There is also a prophetic hadith that explains the concept of forced defense. From Sa'id bin Zaid, I heard the Messenger of Allah say:

عن سعيد بن زيد رضي الله عنه قال: سمعت رسول الله - صلى الله عليه وسلم - يقول: «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ». أخرجه أبو داود والترمذني

"Whoever is killed defending his wealth is a martyr; whoever is killed defending his religion is a martyr; whoever is killed defending his life is a martyr; and whoever is killed defending his family is a martyr." (Narrated by Abu Dawud and At-Tirmidhi) (Editor, 2023).

Jurists (Fuqaha) agree that forced defense is a legitimate means to protect life, honor, and property. However, they differ in opinion regarding its legal status specifically, whether forced defense is a right or an obligation. The legal consequences derived from these two positions also differ. If it is ruled as a right, an individual may choose to exercise or waive that right, and they incur no sin regardless of their choice. Conversely, if it is ruled as an obligation, there is no other course of action but to perform the defense; thus, failure to do so would result in a sin.

The author summarizes several scientific works as a literature review regarding forced defense (*noodweer*). A thesis by Adhiwan Aji Ramadhan compares forced defense between positive law and Islamic criminal law in general terms (Ramadhan, 2023). The researcher suggests the need for general defense provisions and police precision in handling cases. Dita Fitriani's thesis compares sanctions for perpetrators of excessive forced defense (*noodweer excess*) resulting in death from the perspectives of positive law and Islamic criminal law. Positive law exempts the perpetrator from criminal sanctions (as an exculpatory excuse), whereas Islamic criminal law still imposes *diyat* (blood money) for offenses against life. The researcher suggests that the public should understand the limits of defense and that law enforcement should be more meticulous in applying Article 49 paragraph (2) of the Criminal Code (KUHP). The author concludes that both theses focus on general comparisons and the comparison of sanctions (Fitriani, 2022).

Furthermore, the author found that the issue of forced defense as a ground for the abolition of criminal liability is comprehensively examined in two master's theses. Sitti Ma'rifah Nisrina's thesis normatively compares *noodweer* between Islamic Law (*daf'u as-sail*) and Indonesian Criminal Law (Article 49 KUHP), concluding that both recognize the right to self-defense based on the instinct of self-preservation; however, Islamic Law prohibits it if it leads to death (Nisrina, 2023). Complementing these findings, Yermia Okta Satriawan's thesis utilizes a legal-empirical approach through the Amaq Sinta case study to highlight the complexities of implementing Article 49 of the KUHP. Satriawan focuses on the challenges of legal protection for suspects and the difficulty of proving the proportionality of self-defense actions in the field. Both works emphasize that the enforcement of *noodweer* depends not only on the statutory text but also requires profound interpretation to ensure substantive justice in urgent situations (Satriawan, 2025).

An article by Fauzi and Zuhri highlights a crucial difference in *noodweer excess*, where the KUHP abolishes criminal liability due to intense internal agitation (an exculpatory excuse), while Islamic Law maintains accountability through *qisas* or *diyat* sanctions (Fauzi & Zuhri, 2025). This is supported by an empirical study by Sitti Ma'rifah Nisrina, Haerana, and Nur Azisa, which highlights the practical challenges of legal protection and the difficulty of proving proportionality in *noodweer* actions at the investigation level (The Amaq Sinta Case). The author finds that there has been no in-depth research regarding the appropriateness of the 'threshold' application of forced defense by the panel of judges. The author deems it necessary to conduct research on whether judges' decisions regarding forced defense align with the elements stipulated by law (Nisrina et al., 2023). Additionally, the author will further examine how Islamic law views forced defense and how its elements are perceived from an Islamic legal perspective.

Although the literature above has examined the normative aspects and sanctions in general, there is a crucial research gap, the lack of a study that thoroughly analyzes the objective threshold used

by judges to determine when an action shifts from a defense of necessity (noodweer) to a defense of excess (noodweer excess). The novelty of this research lies in its analytical focus on the alignment of judges' considerations with the elements of the law and a more specific perspective of Islamic law. The author not only compares sanctions but also examines the parameters of "exceeding the limit" in Islamic law and how these values can provide a more consistent standard for judges in Indonesia in realizing substantive justice. Based on the inconsistencies found in various Indonesian court decisions, this research aims to analyze judicial considerations in determining the threshold between noodweer and noodweer excess through a comparative approach between Indonesian Criminal Law and Islamic Criminal Law, in order to formulate more objective and consistent standards for future self-defense cases

The author found that several court decisions appear biased when compared to their underlying legal elements. These decisions seem inconsistent with the elements stipulated in the legislation. The following are the court decisions identified as having such biases

Table 1. Judicial Decisions on Noodweer and Noodweer Exces

Defendant	Brief Case Summary	Judges' Primary Legal Reasoning	Verdict
Nomor 30/Pid.B/2022/PN Kpg.(Perkara Pembunuhan, 2022)	A quarrel and fight occurred outside of a party. The defendant was struck by the victim until they fell; subsequently, in an emotional state, the defendant stabbed the victim repeatedly, resulting in the victim's death.	The court did not consider the existence of forced defense (<i>noodweer</i>). The defendant was found guilty of violating Article 338 of the Criminal Code (KUHP)..	The defendant was found guilty of 'Murder' and was sentenced to 10 years in prison.
Nomor 33/Pid.B/2024/PN Bir(Perkara Penganiayaan menyebabkan mati, 2024)	The defendant came to the aid of his mother, who fainted while being threatened by the victim with a machete. A fierce struggle ensued involving a machete and a spear; the defendant hacked the victim multiple times, resulting in the victim's death..	The act was committed to aid the mother and in self-defense. It was accepted as an exculpatory excuse (<i>alasan pemaaf</i>) under Article 49 of the Criminal Code (KUHP).	Proven to have committed the act, but cannot be sentenced to criminal punishment due to Excessive Forced Defense (<i>Noodweer Exces</i>).
Nomor 4/Pid.B/2024/PN Jnp(Perkara Pembunuhan, 2024)	While collecting the debt, the defendant was pushed and attacked with a knife by the victim. The defendant parried, kicked the victim, and then stabbed the victim with the same knife.	The act resulting from the victim's attack was carried out in a state of great mental shock in order to maintain life.	Proven to have committed a crime, but cannot be punished because the Defense of Force Exceeds the Limits (<i>Noodweer Exces</i>).
Nomor 41/Pid.B/2019/PN Rno(Perkara Penganiayaan menyebabkan mati, 2019)	The defendant witnessed his underage child being sexually assaulted by the victim. In a state of intense emotional distress, the defendant struck the victim and repeatedly hit the victim's head, neck, and back with a crowbar until the victim collapsed and went into convulsions.	Intense emotional distress arose from witnessing the immoral act (sexual assault) against the defendant's beloved child. This was accepted as Excessive Forced Defense (<i>Noodweer Exces</i>).	Proven to have committed the act, but cannot be sentenced to criminal punishment due to Excessive Forced Defense (<i>Noodweer Exces</i>).
Nomor 34/Pid.B/2020/PN Mll(Perkara Kealpaan	The defendant (a police officer) was dispersing a brawl. The victim attempted to seize the defendant's firearm. A struggle ensued, and the firearm	The Defendant's actions constitute Excessive Forced Defense (<i>Noodweer Exces</i>), and there is a need to provide	Proven to have committed negligence causing death, but cannot be held criminally liable due to

Defendant	Brief Case Summary	Judges' Primary Legal Reasoning	Verdict
menyebabkan mati, 2020)	discharged, striking the victim's face and resulting in death.	legal protection for officers performing their official duties.	Excessive Forced Defense (<i>Noodweer Exces</i>).
Nomor 1/Pid.B/2022/PN Bir(<i>Perkara Penganiayaan</i> , 2022)	The defendant's wife was struck and kicked by the victim. In an emotional state, the defendant immediately struck the victim with a piece of wood, strangled them, and continued the assault with further blows.	The act was based on the forced defense of the defendant's wife. It was accepted as Excessive Forced Defense (<i>Noodweer Exces</i>).	Proven to have committed the act, but cannot be sentenced to criminal punishment due to Excessive Forced Defense (<i>Noodweer Exces</i>).
Nomor 72/Pid.B/2020/PN Enr(<i>Perkara Penganiayaan</i> , 2020)	The defendant was being massaged by the victim. The victim suddenly kissed the defendant without consent. In an emotional state, the defendant pushed, struck, and hit the victim five times with a wooden beam.	The victim's attack (kissing without consent) was an unlawful act that triggered the Defendant's emotional state. The requirements for <i>noodweer exces</i> have been met.	The act was proven, but there existed an excessive forced defense (<i>noodweer exces</i>) which serves as an exculpatory excuse.

The author observes that based on the chronology of events, witness testimonies, and the defendants' statements across these decisions, there are significant biases and inconsistencies between one verdict and another. Furthermore, there appears to be diverging interpretations regarding the concept of 'excessive' in forced defense (*noodweer exces*). The ambiguity of whether the "excessive" parameter is measured based on the fatality of the consequences (the victim's death) or the disproportionality of the defendant's actions creates a clear bias in court decisions. Therefore, this study aims to analyze the judicial standards used by judges to minimize this legal uncertainty, while simultaneously formulating objective criteria for the validity of a forced defense through an integration of positive law and Islamic criminal law perspectives.

Based on the juridical contradictions found in various Indonesian court decisions, this research aims to comprehensively dissect judicial considerations in determining the threshold of forced defense (*noodweer*) as an exculpatory excuse. By employing a comparative method between Positive Criminal Law (KUHP) and Islamic Criminal Law (*Fiqh Jinayah*), this article seeks to formulate more objective parameters to minimize legal inconsistencies in future self-defense cases.

Method

This study aims to formulate objective criteria for determining the threshold between *noodweer* and *noodweer excess* through a comparative analysis of Article 49 of the Indonesian Criminal Code and the doctrine of Daf'u al-Shail in Islamic criminal law, in order to reduce ambiguity and judicial inconsistency in self-defense cases. A normative juridical approach was chosen because this research focuses on examining legal norms, judicial reasoning, and doctrinal consistency in court decisions. This approach is relevant to identify normative gaps and inconsistencies in the application of Article 49 of the Criminal Code in self-defense cases (Fajar ND & Achmad, 2017).

Normative legal research is a type of legal study that examines legal principles, legal systems, and judicial interpretations through the analysis of statutes, court decisions, and legal doctrines. Court decisions are selected as the primary legal materials because judicial rulings represent the concrete application of abstract legal norms. Through court decisions, this study examines how judges interpret the boundaries of proportionality and severe mental shock in determining *noodweer* and *noodweer exces*, thereby revealing patterns of inconsistent judicial reasoning. In addition, secondary legal

materials are employed, including legal literature, scientific journals, and books relevant to the research topic, as well as other studies concerning *noodweer* in both positive law and Islamic criminal law. This study applies documentary study techniques to analyze the ratio decidendi aspect of decisions, focusing on how judges determine the limitation standards for coercive defense. This study applies documentary study techniques to analyze the ratio decidendi of court decisions, focusing on how judges determine limitation standards for forced defense. Data were collected through reading, analyzing, and interpreting court decisions and relevant legal literature (Fajar ND & Achmad, 2017) Using qualitative legal reasoning, the data are analyzed to evaluate legal syllogisms in judicial considerations. This analysis aims to identify the roots of judicial inconsistency, particularly in how judges draw legal conclusions from similar self-defense facts, resulting in divergent verdict standards. Throughout this process, legal syllogism will be applied a method of legal argumentation consisting of three propositions in the form of statements that either affirm or reject a specific phenomenon (Fajar ND & Achmad, 2017). By comparing the facts within the court decisions with the norms of Article 49 of the Criminal Code (KUHP) and the principles of criminal law, this process aims to identify whether the judicial decisions align with the thresholds of forced defense as permitted by the law (Nugroho et al., 2020).

Results and Discussion

Forced Defense Under Criminal Law

Although the Binding doctrine affirms *noodweer* as a legitimate right against injustice, its implementation in Indonesia shows clear deviations through inconsistent guilty verdicts (Lamintang & Lamintang, 2016). The main problem lies in Article 49 of the Criminal Code, where the elements of proportionality of actions and the threshold of mental shock are crucial points that most often trigger discrepancies in judicial interpretation. The debate over whether this defense is still considered "necessary" or has "gone beyond the limit" is the root of legal uncertainty in determining the boundary between a legitimate response and a criminal act.

(1) No person shall be punished for committing an act mandated by the necessity of forced defense for oneself or for another, for one's own or another's honor or property, against an immediate and unlawful assault or threat of assault. (2) Excessive forced defense, which is directly caused by a severe emotional disturbance triggered by such assault or threat of assault, shall not be punished" (*Kitab Undang-Undang Hukum Pidana (KUHP)*, 2023).

In accordance with the provisions of this article, a person who is the target of illegal aggression has the right to defend himself even if this harms the interests of the attacker (Lamintang & Lamintang, 2016). Based on the examined court decisions, this study shows that judges apply different thresholds when determining whether a defensive act remains lawful or has shifted into *noodweer* excess. Doctrinally, *noodweer* negates the unlawful nature of self-defense because the act is mandated by self-defense. However, the crucial point that often triggers legal uncertainty lies not in the recognition of the right to self-defense, but rather in the threshold of judicial interpretation in determining when a defense turns into *noodweer* excess (defense beyond the limits). The main problem in Indonesian judicial practice is the disparity in judicial assessments regarding the element of 'severe mental shock'; some judges assess excess strictly based on proportionality of the means, while others are more lenient, taking into account the defendant's psychological trauma (Tombakan et al., 2023). Not every defense can These differing perceptions about where the boundaries of "reasonableness" end and "excessiveness" begin are often what obscure the objectivity of decisions. To understand these boundaries, it is important to review the basic elements of *noodweer* as outlined by P.A.F. Lamintang in his book "Fundamentals of Indonesian Criminal Law," which include:

1. There must be an unlawful assault (*wederrechtelijke aanranding*); such an assault must be directed against the physical body, honor, or property belonging to oneself or another. An

unlawful assault is defined as an attack that, according to the law, constitutes a prohibited act or is subject to criminal penalties.

2. The assault or threat of assault must be immediate (*ogenblikkelijk*) and imminent (*dreigend*). An immediate assault means that when the attack occurs, the individual no longer has time to seek assistance or choose any other alternative. Furthermore, an assault must pose a threat to one's physical safety, honor, or property.
3. The defense conducted must be a forced defense (*noodweer*) and not an act of revenge. This means that a defense categorized as *noodweer* must not be based on a grudge against the assailant, but rather must be an act committed solely to safeguard oneself, one's honor, or one's property.
4. The method of defense employed must be balanced (proportional) to the assault or threat faced. This means that the defense must be commensurate with the assault or threat received. (Lamintang & Lamintang, 2016)

In addition to P.A.F. Lamintang, R. Soesilo provides critical commentary on Article 49 paragraph (1), outlining three essential requirements for *noodweer*. These differences in interpretation are clearly reflected in judicial practice, where similar factual conditions often lead to different legal conclusions. However, the ambiguity within these requirements often leads to inconsistent judicial outcomes. According to Soesilo, an act is classified as *noodweer* only if:

1. The defense is absolutely necessary (*noodzakelijk*): This requirement is a primary source of inconsistency, as judges often differ in determining whether the defendant truly had 'no other alternative.' Some judges apply a strict standard, while others are more lenient regarding the possibility of retreat.
2. The defense is limited to protecting the body, honor, or property: Inconsistency arises particularly in property cases, where judges frequently vary in their assessment of whether the value of the property defended is proportional to the harm inflicted on the aggressor.
3. The assault is unlawful and immediate: The interpretation of what constitutes a 'sudden' or 'immediate' threat varies between cases, leading to disparate rulings on whether the danger had already passed or was still imminent at the time of the defense (Soesilo, 1995).

These theoretical requirements, while clear in Soesilo's text, become subjective benchmarks in the hands of different judges, directly resulting in the legal uncertainty and conflicting decisions observed in Indonesian jurisprudence. Article 49 paragraph (2) of the Criminal Code (KUHP) stipulates excessive forced defense (*noodweer exces*). According to Van Bemmelen, *noodweer exces* is a non-reprehensible act. The exceeding of forced defense limits is caused by severe psychological pressure resulting from an assault by another party. While the criminal act remains, the criminal liability is abolished (Nisrina, 2023). Excessive forced defense (*noodweer exces*) consists of several elements,

1. Exceeding the necessary limits. According to Pompe, excessive defense refers to a defense that has gone beyond what was required. Although the actual defense should have concluded, the individual continues to strike due to a severe emotional disturbance. Meanwhile, according to the *Hoge Raad* (Supreme Court), such emotional disturbance renders a person unpunishable for their actions (Nisrina, 2023).
2. The existence of a severe emotional disturbance (*hevige gemoedsbeweging*). According to Satohid, *hevige gemoedsbeweging* is defined as a state in which an individual experiences intense rage (*woede*), rather than merely being limited to fear or confusion (Maramis, 2013).
3. The existence of a causal link between the assault and a state of intense heat of passion. Thus, when an individual commits *noodweer exces*, they do so because of a severe disturbance within their soul. Consequently, the defense conducted exceeds what was necessary.

This study finds that the concept of 'excess' in *noodweer exces* is interpreted differently by judges, with some emphasizing the number and intensity of defensive acts, while others prioritize the defendant's psychological condition, even when the threat has objectively ceased. R. Soesilo, in his book, provides a commentary on Article 49 paragraph (2) regarding *noodweer exces* or excessive forced defense. Similar to forced defense (*noodweer*), excessive forced defense (*noodweer exces*) also requires a sudden and immediate assault (Soesilo, 1995). He illustrates this through an analogy: for instance, a police officer who witnesses his wife being raped, draws his pistol, and fires several shots at the assailant. This can be considered exceeding the limits of emergency defense, as typically the assailant would have ceased the act and fled without the need for multiple shots. However, if the judge concludes that the act exceeded those limits due to permissible rage, the police officer cannot be punished for his actions (Soesilo, 1995).

The findings of this study demonstrate that judicial inconsistency in applying Article 49 of the Criminal Code does not arise from the absence of legal norms, but from the lack of a standardized threshold in assessing necessity, proportionality, and severe mental disturbance. As a result, similar self-defense cases are decided differently, creating legal uncertainty and unequal protection under the law. The study's key findings highlight that inconsistencies in court decisions stem from the absence of a standard threshold for these elements, allowing judges to interpret "necessity" and "exigent circumstances" through different subjective lenses. Consequently, what is legally recognized as legitimate self-defense in one case may be unfairly punished in another, creating a significant gap between intended legal protections and their unpredictable enforcement in Indonesian courts. These elements must be fulfilled for a defense to be legally categorized as either forced defense (*noodweer*) or excessive forced defense (*noodweer exces*).

Forced Defense According to Islamic Law

In Islamic law, forced defense is known as *daf'u as-sa'il*. Etymologically, *daf'* means rejection or self-defense, while *as-sa'il* refers to aggression or arbitrary assault. In Islamic jurisprudence, *Daf' as-Sa'il* is a doctrine regarding the legal efforts of an individual to ward off and defend themselves against all forms of aggression toward their life, family, or material possessions, to the extent that such efforts can be carried out within their capability (Ramadhan, 2023). This concept is in accordance with the word of Allah SWT in Surah Al-Baqarah verse 194:

السَّهْرُ الْحَرَامُ بِالسَّهْرِ الْحَرَامِ وَالْحَرْمَةُ فِصَاصٌ ۝ فَمَنِ اعْتَدَىٰ عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَىٰ عَلَيْكُمْ ۝ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

"Fighting in the sacred month is for [fighting in] the sacred month, and for violations of prohibitions is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allah and know that Allah is with those who fear Him (Surat Al-Baqarah Ayat 194, 2025).

This verse serves as the primary foundation for the concept of *daf'u al-shail*, which explicitly balances the right to self-defense with a strict prohibition against transgression. The command to 'assault him in the same way that he has assaulted you' functions as both a justification and a legal limitation; it establishes that any response exceeding the original harm is no longer a sanctioned defense, but an act of injustice. By concluding with an exhortation to 'fear Allah,' the verse underscores that excessive defense is a violation of divine boundaries, demanding that the victim maintain self-restraint even under duress. Thus, Islamic law does not grant an absolute right to retaliate, but rather a proportional mandate that strictly forbids *noodweer excess* by framing proportionality as a matter of piety (*taqwa*) and legal necessity (Mallarangeng, 2024).

From Sa'id bin Zaid (may Allah be pleased with him), I heard the Messenger of Allah (peace and blessings of Allah be upon him) say:

عن سعيد بن زيد رضي الله عنه قال: سمعت رسول الله - صلى الله عليه وسلم - يقول: «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ». أخرجه أبو داود والترمذني

"Whoever is killed while defending his property is a martyr; whoever is killed while defending his religion is a martyr; whoever is killed while defending his life is a martyr; and whoever is killed while defending his family is a martyr." (Narrated by Abu Dawud and Tirmidzi) (*Orang Yang Tergolong Mati Syahid Di Jalan Allah*, 2023).

The hadith narrated by Imams At-Tirmidhi and Abu Daud affirms the legitimacy of self-defense by promising martyrdom to those who die while protecting their property, religion, life, or family. This aligns with the Maqasid al-Shari'ah doctrine, which mandates the protection of the five essential elements (al-daruriyyat al-khams). However, this hadith does not provide absolute justification for all forms of violence; the status of martyrdom and the legitimacy of self-defense remain bound by the principle of al-darurat tuqaddaru bi qadariha (emergency is measured by the degree of necessity). From this perspective, defensive action is justified only to the extent necessary to stop the aggression. If the perpetrator of the attack is helpless or flees, then defense that continues beyond the limit (excess) loses its basis in Islamic legitimacy and becomes a transgressive act prohibited by Islam (Mallarangeng, 2024).

The *fuqaha* (jurists) agree that forced defense is a legitimate path that an individual may take to protect themselves or others against an assault that threatens their safety. This study finds that Islamic law provides a clearer framework for assessing culpability in cases of excessive self-defense by linking legal responsibility directly to proportionality and necessity. The debate over self-defense as a right or an obligation significantly affects whether excessive actions are viewed as excusable errors or punishable transgressions. Scholars debate whether self-defense is a right (*haqq*) or an obligation (*wajib*), a distinction that fundamentally shapes the assessment of culpability when defensive actions become excessive. If self-defense is viewed merely as a right, an individual who exceeds the necessary limits faces a higher burden of culpability, as the choice to escalate the violence is seen as a discretionary misuse of that right. Conversely, if it is framed as an obligation, the 'excess' may be analyzed through the lens of a failed duty to maintain proportionality under extreme duress. This theoretical divide is crucial because it determines the degree of legal responsibility (sin or criminal liability) assigned to a victim who becomes an aggressor due to the inability to calibrate their response within the boundaries of necessity (Yana, 2015).

Forced defense in Islamic law involves several aspects, including:

1. The existence of an assault or an unlawful act. This means that the act inflicted upon an individual must be one that is prohibited by law. According to the opinion of Imam Abu Hanifa and his disciples, the assault must constitute a *jarimah* (crime) that is subject to punishment and must be committed by a person who can be held criminally liable.
2. The assault must be imminent. Forced defense must be carried out in response to an assault that occurs suddenly and immediately. Defense is permissible when an assault has actually occurred or when there is a strong presumption that an assault is about to take place. The defense performed must be proportional to the assault received or strongly anticipated.
3. There is no other way to evade the assault. If an assault can be avoided by shouting or by fleeing, then it is unnecessary to engage in a defense that involves inflicting harm or using weapons that could injure or even kill the assailant.
4. The repulsion of an assault must only be carried out with the necessary force. If the defense exceeds the necessary limits, it no longer qualifies as a legitimate defense. Therefore, an

individual under attack must not employ a defense that goes beyond what is required, and should instead use the least harmful means possible. If an assault can still be prevented by mild measures, then more severe methods are not permitted (Yana, 2015).

These elements demonstrate that Islamic law establishes strict and objective limits on defensive actions, leaving little room for subjective expansion once the threat has ceased. If an individual performs a defense that exceeds the necessary limits of self-defense, they must be held accountable for their actions. Fundamentally, self-defense is *mubah* (permissible) and carries no legal penalty. However, if it surpasses the established limits, the act is no longer considered *mubah*; instead, it becomes an error or negligence on the part of the defender (Yana, 2015).

The findings of this study indicate that Islamic law adopts a stricter and more consistent approach in assessing excessive self-defense by maintaining criminal and moral accountability once proportionality is breached. Unlike Indonesian positive law, which extinguishes criminal liability in cases of *noodweer exces*, Islamic law preserves responsibility, thereby offering a normative framework that reduces subjectivity and promotes consistency in judicial assessments of excessive defensive actions.

Analysis of the Application of Forced Defense

This study demonstrates that although criminal law and Islamic law share similar normative foundations regarding forced defense, judicial practice in Indonesia reveals significant inconsistencies in applying these principles. These inconsistencies arise not from doctrinal differences, but from divergent judicial interpretations of proportionality and mental agitation, which ultimately undermine legal certainty in self-defense cases.

1. Forced defense must be predicated on the existence of an unlawful assault,
2. The assault encountered must be imminent and occur instantaneously.
3. The defense carried out must be predicated on the absence of any other alternative, other than to resist.
4. The defense performed must be proportional to the assault received.

Criminal law and Islamic law share a harmonious understanding regarding excessive forced defense (*noodweer exces*). Both put forward similar elements, namely the existence of severe mental agitation. This mental agitation emerges as the cause for an individual to perform a forced defense that exceeds the necessary limits. Both systems base this on the psychological impulses present within the individual performing self-defense. However, regarding excessive forced defense, these two legal systems differ in terms of criminal liability. In positive criminal law, criminal liability for excessive forced defense is automatically extinguished. In Islamic law, criminal liability remains. Thus, an individual who performs an excessive forced defense must be held accountable for the consequences arising from their actions. By highlighting this fundamental difference in liability, this study provides a necessary framework to standardize the threshold of 'excess' and mitigate the current inconsistency in judicial rulings that stem from purely subjective interpretations of mental agitation.

It can be formulated that excessive forced defense (*noodweer exces*) in both criminal law and Islamic law is measured by the state of mental agitation within an individual, which results in that person having no other choice but to perform said act in order to defend themselves. If these elements are applied to the case presented by the author in the introduction, the analysis is as follows:

- a) Case Decision Number 30/Pid.B/2022/PN Kpg concerns an altercation at a party that resulted in a fatality. The Defendant was struck by the Victim until he fell; subsequently, in an emotional state, the Defendant stabbed the Victim repeatedly until death occurred. This case carries strong indications of Excessive Forced Defense (*Noodweer Exces*), as the Defendant after being struck

repeatedly and pinned down by the Victim, causing him to fall to the ground twice experienced a surge of 'emotion' (as a manifestation of severe mental agitation). As a result of this mental agitation, the Defendant drew a knife and stabbed the Victim indiscriminately until the Victim died. This fatal action clearly exceeded the necessary limits of self defense required to stop a non weapon assault; however, it was committed due to sudden rage arising from the continuous attacks he endured.

- b) Case Decision Number 33/Pid.B/2024/PN Bir concerns a Defendant who killed the Victim to protect his mother, who had fainted while being threatened by the Victim with a machete. A fierce struggle involving a machete and a spear ensued between the Defendant and the Victim, resulting in the Defendant hacking the Victim repeatedly until death. Although the judge acquitted the Defendant on the basis of *noodweer excesses*, this decision obscures the principle of proportionality because it does not establish a clear threshold between mental shock and the fatality of the act, thus exacerbating the inconsistency in the application of the law in similar self-defense cases. However, the Court's decision to grant an acquittal based on the excusatory defense of *noodweer excesses* in this case of fatal assault warrants critical scrutiny due to serious doubts regarding the elements of excessive defense. Although the element of severe mental agitation (*hevige gemoedsbeweging*) was deemed fulfilled as the Defendant acted to defend his unconscious mother from a machete-wielding Victim with a history of violence the application of Article 49 Paragraph (2) of the Criminal Code becomes problematic because the proportionality of the Defendant's actions is questionable. Considering that the Defendant inflicted multiple strikes to vital organs (neck, head, back) even after successfully seizing the machete and when the Victim was relatively defenseless, this extreme level of excessive defense makes it difficult to prove that the lethal actions were solely caused by mental agitation, rather than being intermingled with elements of intent or unpardonable rage. This reasoning contrasts sharply with other cases involving fatal self-defense, where similar levels of violence were deemed disproportionate, thereby illustrating inconsistency in judicial standards for assessing proportionality.
- c) Case Decision Number 4/Pid.B/2024/PN Jnp involves a Defendant attempting to collect a debt, who was subsequently pushed and assaulted with a knife by the Victim. The Defendant parried the blow, kicked the Victim, and then stabbed the Victim using the same knife previously wielded by the Victim. In the Panel of Judges' determination of *noodweer excesses* (Article 49 Paragraph 2 of the Criminal Code) to acquit the Defendant, a significant discrepancy is identified between the factual actions and the legal elements of excessive forced defense. Although the Victim's sudden lethal assault strongly triggered severe mental agitation (*hevige gemoedsbeweging*) in the Defendant, the sequence of stabbings including chasing the Victim who was fleeing to retrieve a machete and stabbing him five times demonstrates an extreme defense that exceeded the necessary limits, thereby violating the principle of proportionality. Consequently, due to this disproportionate and sustained excessive force, the crucial causal link (*causaliteit*) between the mental agitation and each of the Defendant's aggressive actions was severed. This indicates that the Defendant's conduct shifted from mere reflexive defense into uncontrollable rage or intent. The pure acquittal verdict in the *noodweer excesses* case still feels legally flawed because there are no standard objective parameters, the cause of the legal error stems from differences in subjective interpretations of judges in consistently determining the proportionality threshold. the Defendant should have remained criminally liable (such as under Article 351 Paragraph 3 of the Criminal Code) with the application of mitigating factors, rather than a total excusatory defense. This case exemplifies judicial inconsistency, as prolonged and aggressive defensive conduct was excused under *noodweer excesses*, while similar factual patterns in other decisions resulted in criminal liability, solely due to differing judicial perceptions of proportionality.

- d) Case Decision Number 41/Pid.B/2019/PN Rno involves a Defendant who witnessed his underage child being sexually assaulted by the Victim. In a state of intense emotion, the Defendant struck the Victim with a crowbar on the head, neck, and back until the Victim fell and experienced convulsions. The Defendant's actions, which resulted in the Victim's death, demonstrate that although striking the Victim three times in vital areas with a crowbar after the Victim fled the room was a clear and disproportionate excess (*exces*) to stop the initial threat, such lethal force can be considered solely driven by severe mental agitation (*hevige gemoedsbeweging*). This agitation stemmed from the uncontrollable rage of a father witnessing the rape of his 10-year-old adopted daughter. Thus, the causal link between the intense emotion and the fatal action is fulfilled, arguably allowing the Panel of Judges to apply the excusatory defense of *noodweer exces* (Article 49 Paragraph 2 of the Criminal Code) to acquit the Defendant. Despite the act being proven to violate criminal norms (Article 338 or 351 Paragraph 3 of the Criminal Code), the Defendant cannot be held morally blameworthy due to the psychological state triggered by the assault on his family's honor and safety.
- e) Case Decision Number 34/Pid.B/2020/PN Mll involves a Defendant (a police officer) attempting to break up a fight. The Victim attempted to seize the Defendant's firearm, leading to a struggle during which the firearm discharged, striking the Victim's face and resulting in death. The chronology of events in the verdict indicates that the Defendant faced a sudden assault by the Victim aimed at seizing the Defendant's pistol. The Defendant was charged with negligence causing death (Article 359 of the Criminal Code), which reveals a potential doctrinal inconsistency if the Panel of Judges utilizes the excusatory defense of Excessive Forced Defense (*Noodweer Exces*) as the basis for acquittal. This excusatory defense is fundamentally intended to negate liability in offenses committed with intent (*opzet*), as per Article 49 Paragraph 2 of the Criminal Code. Although the Defendant faced an assault that factually triggered severe mental agitation (*hevige gemoedsbeweging*) due to threats to personal safety and official responsibility, the fatal discharge of the weapon was formally constructed as negligence (*culpa*). Consequently, if the final verdict resulted in an acquittal, such an acquittal should ideally be based on the argument that the element of culpable negligence under Article 359 was not proven as the Defendant's actions were deemed a lawful execution of duty (Article 50 of the Criminal Code) under pressure rather than a justification of excess within the context of intentional self-defense..
- f) Case Decision Number 1/Pid.B/2022/PN Bir involves a Defendant who witnessed his wife being struck and kicked by the Victim. Overcome with emotion, the Defendant immediately struck the Victim with a piece of wood, choked him, and struck him again. The Judges considered that the Defendant's actions were based on a forced defense of his wife. A juridical analysis of this assault case shows that the Defendant's acquittal can be doctrinally justified if the Panel of Judges accepts the argument of Excessive Forced Defense (*Noodweer Exces*). Although the Defendant's actions striking the Victim with wood and choking him qualified as exceeding the limits necessary to merely stop the fight, this excessive act was triggered by severe mental agitation (*hevige gemoedsbeweging*) arising instantly from the threat to his wife's safety and his own. The trigger, consisting of the shout that his wife was being beaten followed by an intense physical struggle, fulfills the element of causality between said mental agitation and the intentional criminal act (assault). This allows the Panel of Judges to invoke Article 49 Paragraph 2 of the Criminal Code as an excusatory defense that negates the Defendant's guilt, resulting in a pure acquittal (*vrijspraak*). This acquittal is granted not because the elements of the crime were unproven, but because the perpetrator's criminal liability (*strafbaarheid van de dader*) is extinguished.
- g) Case Decision Number 72/Pid.B/2020/PN Enr involves a Defendant who was massaging the Victim when the Victim suddenly kissed the Defendant without consent. Overcome with emotion, the Defendant pushed and struck the Victim, eventually hitting the Victim five times with a

wooden beam. The Defendant was acquitted based on Excessive Forced Defense (*Noodweer Exces*), even though the Victim only sustained injuries and did not perish. In this case, the Defendant was unexpectedly assaulted by the Victim's attempted kissing and pushing, which the Defendant countered with a series of aggressive actions: pushing, punching, and culminating in striking the Victim five times on the head and back with a wooden beam, causing lacerations, bruising, and swelling (*Visum Et Repertum*). The Defendant's shift from passive self-defense (pushing) to a counter-attack using a wooden beam carried out repeatedly (five times) after the Victim had collapsed clearly indicates that the defensive action exceeded the necessary limits required to stop the initial assault. Consequently, *Noodweer Exces* (Article 49 Paragraph 2 of the Criminal Code) is potentially relevant as an excusatory defense if the excessive strikes with the wood are proven to be caused by severe mental agitation (*hevige gemoedsbeweging*) arising instantly from the shock and profound rage over the sudden and unexpected sexual harassment. However, the challenge for the Panel of Judges is to determine whether the Defendant's rage truly reached the level of *hevige gemoedsbeweging* that negates guilt, or if the act was purely a cruel retaliation after the threat had been neutralized, where the excessive nature of the strikes (using wood repeatedly after the victim collapsed) remains the key factor in determining *Noodweer Exces*.

The analysis of these court decisions confirms that the primary source of legal error does not lie in the absence of statutory regulation, but in the lack of objective and uniform standards for interpreting proportionality and severe mental agitation. Judges rely heavily on subjective assessments, resulting in divergent legal outcomes for comparable self-defense scenarios. This absence of standardized thresholds is the root cause of inconsistent verdicts in the application of Article 49 of the Criminal Code.

Conclusion

Indonesian criminal law (through Article 49 of the Criminal Code) and Islamic criminal law (through the concept of *Daf'u as-Sha'il*) agree that self-defense is a lawful act to protect oneself or others, honor, and property from life-threatening assaults. The elements of self-defense in both legal systems namely the existence of a life-threatening assault, the absence of any alternative other than to resist, and the requirement for proportional defense are fundamentally consistent. The primary difference lies in the legal consequences of excessive self-defense. Indonesian criminal law maintains that if the excessive defense is directly caused by severe emotional pressure (*hevige gemoedsbeweging*) resulting from an assault, the perpetrator is exempted from criminal liability. Conversely, Islamic criminal law holds that even if the excess is driven by emotional pressure, the perpetrator remains accountable for the consequences of their actions (by paying *diyat* or blood money for offenses against human life). This is because such actions are categorized as a form of fault or negligence and are legally impermissible. The application of *noodweer exces* by the Panel of Judges demonstrates inconsistencies and divergent interpretations, particularly regarding whether the defendant's actions which caused death or serious injury resulted purely from mental agitation or were intertwined with elements of intent or retaliation. This raises fundamental questions concerning the threshold of proportionality and the causal link between the initial assault, psychological injury, and the subsequent criminal act.

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