

## **Disparities in the Use of Necessary Defense (*Noodweer*) Versus Excessive Use of Necessary Defense (*Noodweer Excess*) Under Law No. 1 of 2023**

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**ABSTRACT**

This research aims to analyze the regulation and position of the concepts of forced defense (*noodweer*) and excessive forced defense (*noodweer excess*) in Law Number 1 of 2023 concerning the Criminal Code, as well as their implications for the criminal accountability system in Indonesia. The research method used is normative juridical, employing statutory and conceptual approaches through the analysis of legal norms, doctrines, and related literature. The results of the study show that *noodweer* is regulated as a justification that removes the unlawful nature of an act, as reflected in provisions concerning defense against attacks or threats of attacks that are immediate and unlawful. Meanwhile, *noodweer excess* qualifies as an excuse that removes criminal liability, even though the act is still considered unlawful, due to severe mental shock caused by the attack. The fundamental difference between the two lies in the principle of proportionality in *noodweer* and psychological factors in *noodweer excess*. However, in law enforcement practice, there are still unclear parameters, especially regarding the limits of proportionality and the proof of mental shock. This study concludes that more comprehensive normative affirmation and interpretive guidelines are needed to provide legal certainty and prevent disparities in decisions in the application of the two concepts. In addition, the evidentiary mechanism distinguishing between justifying and excusing grounds needs to be formulated more systematically within the criminal justice system.

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### **INTRODUCTION**

The enactment of Law Number 1 of 2023 concerning the National Criminal Code (*KUHP Nasional*) marks a fundamental renewal of Indonesia's criminal law, especially in strengthening the principle of criminal accountability oriented toward substantive justice. One of the regulations with strategic significance concerns necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*), as these two legal institutions determine whether a person can be held criminally responsible for acts that formally meet the elements of a criminal offense. In criminal law doctrine, necessary defense (*noodweer*) is classified as a justification that removes the unlawfulness of an act, while excessive necessary defense (*noodweer excess*) is an excuse that removes the culpability of the perpetrator (Alfathan et al., 2025; Ali, 2018; Ardata, 2021). This distinction has long been affirmed by Indonesian criminal law scholars,

including Moeljatno and Andi Hamzah, who assert that the distinction between justifications and excuses forms the foundation of the criminal accountability system (Baihaqi et al., 2024; Hamzah, 2017; Hutama, 2024).

Within the framework of the National Criminal Code, the regulation of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) in principle maintains its basic structure. However, the law does not provide clear operational normative parameters regarding the proportionality of the defense, the level of threat that may be justifiably countered, or objective limitations on the condition of severe mental shock as a requirement for excessive necessary defense (*noodweer excess*) (Lengkong et al., 2025; Lewokeda, 2018; Maharanti, 2022). The absence of such firm normative standards opens a wide scope for interpretation by law enforcement officials, particularly judges, in determining whether a concrete event constitutes necessary defense (*noodweer*) or excessive necessary defense (*noodweer excess*). In criminal justice practice, this condition has led to differing verdicts in cases with relatively similar factual patterns, thereby causing disparities in the application of justifications and excuses (Ningsih, 2025; Pratama et al., 2026; Tri Sakti, 2025).

This issue becomes even more relevant when associated with the provisions on sentencing guidelines in the National Criminal Code, which emphasize that punishment must be based on the level of culpability, the seriousness of the act, the impact caused, and the objectives of punishment oriented toward justice, humanity, and restoration (Jeffries & Bond, 2013; Pina-Sánchez & Linacre, 2021; Wisnujati, 2024). In this context, determining whether an act constitutes necessary defense (*noodweer*) or excessive necessary defense (*noodweer excess*) should serve as the initial basis for assessing whether the act is unlawful and for evaluating the degree of the perpetrator's culpability (Thomaidou & Berryessa, 2024; Yakubovich et al., 2021).<sup>1,4</sup> If the construction of justifications and excuses is not applied consistently, sentencing guidelines risk losing their primary function as instruments for ensuring uniformity and proportionality in punishment (Aebi et al., 2017).

In the criminal justice system, judges play a decisive role in harmonizing the regulation of grounds for excluding criminal liability with applicable sentencing guidelines. In this regard, the Supreme Court of the Republic of Indonesia holds a strategic position in fostering uniformity in the application of the law through its reasoning in decisions (Chiao, 2016; Muhaimin, 2020). Therefore, synchronization between the regulation of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) and the sentencing guidelines in the National Criminal Code is essential to prevent interpretive differences that lead to unjustifiable disparities in verdicts.

Based on research by Pratama et al., a study examines disparities in the application of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) using criminal law and criminological approaches. The study emphasizes that the absence of clear normative boundaries regarding the elements of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) contributes to legal uncertainty, injustice, and potential human rights violations in judicial practice. Additionally, another study by Alfathan et al. focuses on a juridical analysis of the elements of necessary defense and excessive necessary defense, particularly concerning the requirements of unlawful attack, immediacy, and the principle of proportionality in defense. However, these studies generally remain focused on conceptual aspects and the application of elements in court decisions based on the former

Criminal Code and have not positioned changes in the national criminal law system as the primary variable of analysis.

Based on these conditions, a research gap can be identified, namely the absence of a systematic and comprehensive study analyzing disparities in the application of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) within the framework of Law Number 1 of 2023 concerning the Criminal Code. Previous studies remain oriented toward the former criminal law regime and have not thoroughly examined the implications of normative changes on judicial reasoning patterns, particularly in making clear distinctions between justifications and excuses in criminal justice practice.

Therefore, this research is important and relevant to analyze in depth the legal construction of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) under Law Number 1 of 2023, as well as to examine the juridical factors influencing disparities in judicial decisions. Through this research, it is expected that a more comprehensive understanding can be achieved regarding the consistency of legal application, along with the formulation of normative recommendations aimed at strengthening legal certainty, substantive justice, and the protection of individuals acting in situations of necessary defense.

Accordingly, this research is important and relevant to conduct in order to analyze the legal regulation of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) under Law Number 1 of 2023 and to examine their juridical position as justifications and excuses within the Indonesian system of criminal liability. This study also aims to identify normative ambiguities that may give rise to interpretive differences and disparities in judicial decisions. Through this analysis, the research seeks to provide a clearer understanding of the legal construction of both concepts and their implications for criminal accountability. The benefits of this research are both theoretical and practical. Theoretically, it is expected to contribute to the development of Indonesian criminal law scholarship, particularly in relation to the doctrine of grounds for excluding punishment and criminal liability under the National Criminal Code. Practically, it is expected to serve as a reference for judges, prosecutors, advocates, and law enforcement officers in interpreting and applying the concepts of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) more consistently, thereby strengthening legal certainty, substantive justice, and protection for individuals acting in situations of necessary defense.

## METHOD

The type of research used in this study was normative juridical legal research, focusing on the assessment of positive law without examining empirical social facts. The study focused on the legal norms governing necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) as stipulated in Law Number 1 of 2023 concerning the Criminal Code. The research examined legal issues from a doctrinal perspective by analyzing applicable norms, principles, and the legal system. It was directed at legal dogmatics, particularly the juridical concepts of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) as justifications and excuses within the system of criminal liability.

The legal issues addressed in this study concerned potential ambiguities in normative construction and differences in interpretation of the regulation of necessary defense (*noodweer*)

and excessive necessary defense (*noodweer excess*) under Law Number 1 of 2023, particularly in determining their position as justifications and excuses within the criminal liability system.

This study employed a statute approach and a conceptual approach. The statute approach was conducted by examining relevant laws and regulations, particularly those governing necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) under Law Number 1 of 2023. It was used to analyze the formulation of legal norms, regulatory structures, and their relationship to the system of criminal liability. The conceptual approach was used to examine legal concepts developed in criminal law doctrine, especially those relating to necessary defense (*noodweer*), excessive necessary defense (*noodweer excess*), justifications, excuses, and criminal liability, in order to assess their consistency with the provisions of the National Criminal Code.

Legal materials were collected through library research. Primary legal materials consisted of binding legal sources, including the 1945 Constitution of the Republic of Indonesia and Law Number 1 of 2023 concerning the Criminal Code. Secondary legal materials included criminal law textbooks, scientific journals, prior research, and expert opinions relevant to necessary defense (*noodweer*), excessive necessary defense (*noodweer excess*), justifications, excuses, and criminal liability. Tertiary materials, such as legal dictionaries and encyclopedias, were used to clarify legal terms and concepts.

The collected legal materials were analyzed qualitatively using a normative juridical and descriptive-analytical method. The analysis was conducted by systematically examining the regulation of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) under Law Number 1 of 2023, as well as their position as justifications and excuses within the criminal liability system. The stages of analysis included identifying and classifying relevant legal materials, organizing them systematically according to the research problem, and interpreting legal norms to develop coherent and reasoned conclusions.

## RESULTS AND DISCUSSION

### **A. How are the arrangements for forced defense (*noodweer*) and forced defense that exceed the limit (*noodweer excess*) in Law Number 1 of 2023 concerning the Criminal Code?**

In the Criminal Code, we know what is called unlawful acts, not all unlawful acts can be imposed criminal sanctions. Unlawful (*wederrechtelijk*) in criminal law is an act that is contrary to the law (written law) and the general (unwritten) legal principles that apply in society. This includes acts of violating the rights of others or being carried out beyond their authority, and are the core elements of the crime to impose a criminal penalty. A nature against the Criminal Law is an act of an act against the formal law. There is a Justification where it is permissible to do so under the order of the Law

Article 34 of Law Number 1 of 2023 "Any person who is forced to commit a prohibited act shall not be punished, if it is done because of a defense against an attack or threat of an immediate attack that is against the law against oneself or others, honor in the sense of decency, or property" in the aforementioned rules that forced defense is an unlawful act committed because of a prior attack on honor, Morality is a treasure. In the event that the defense is forced to be the reason for the Justifier in an Action because it is justified by the Law.

Here there are reasons that eliminate this unlawful nature (*rechtvaardigings* ground). For this reason, the act cannot be punished, i.e. the concrete act is not a criminal event (*geen strafbaar feit*). The criminal abolition occurred because there was a justifying reason that as a justifying reason, the act could not be subject to criminal liability.

A person has the right to defend himself or others, and under certain circumstances, such acts may be exempt from criminal prosecution, provided that the act meets the criteria of self-defense recognized by law. The rights referred to above are the right to defend one's own dignity and dignity and that of others. That in terms of subjective elements, forced defense does not have to be present to oneself but can be done for others. In terms of the Objective Element of *Noodweer* must run with proportional elements, Attack Against the Law, forced (necessity).

William W. Berry III defines proportionality as the relationship between the severity of the criminal threat and the crime and the mistake of the perpetrator. This principle limits the power of the state to threaten criminal sanctions based on individual interests and political considerations. That *noodweer* is a state restriction to impose criminal witnesses against legal subjects who defend themselves, honor, morality, property, unlawfully.

*Noodweer* excess and *Noodweer* are an act of defense against oneself and others, but there is a difference in the element that goes beyond the limit, namely the principle of Proportionality.

*Noodweer* excess often leads to inequality and injustice. During the defense, the defendant's legal counsel stated that his actions were an excessive *noodweer*, but sometimes the Judge gave a different opinion by still imposing a criminal sentence on the defendant. In criminal cases, sometimes there is still confusion regarding forced defense, what kind of attack can be used as a basis for justification. The conditions of the attack include:

1. *Wederrechtelijk* or unlawful
2. Poses a direct threat
3. Being dangerous to one's own body, honor or property

Meanwhile, the conditions for the defense are:

- a. Must be necessary (*noodzakelijk*)
- b. The act done to make a defence must be justifiable

*Noodweer* excess must pay attention to how the attack is caused and the form of forced defense that goes beyond the limit. That the Parameters of the Proportionality Principle do not yet have a specific standardization whether through acts or criminal threats arising from the act

## **B. What is the position of the concept of forced defense (*noodweer*) and the concept of forced defense that exceeds the limit (*noodweer* excess) as justification and excuse in the criminal liability system?**

Criminal Liability cannot be imposed on people who are suspected of committing Criminal Acts. in accordance with the Presumption of Innocence. In this case, it is necessary to distinguish how the reason for the criminal expungement and in what process the criminal expungement can be carried out. *Noodweer* is a concept of Indonesian criminal law regulated in Article 49 paragraph (1) of the Criminal Code. allows a person not to be convicted if he commits an act of self-defense in a forced situation.

Criminal liability is considered to exist, unless there are reasons for the removal of the crime. In other words, criminal liability can be carried out as long as the perpetrator does not

defend himself when committing a criminal act. In the field of criminal proceedings, this means that a defendant is considered responsible for the criminal act he committed, if he cannot prove that he has a reason to delete when committing the criminal act.

Criminal liability can be lost and it is considered that an act or event did not occur due to the reasons for the removal of the Criminal Penalty. That there are justifiable reasons and excuses. That is the excuse of forgiveness. The Reason for the Justifier (*Noodweer*) pays attention to the Principle of Proportionality, while the Forgiver (*Noodweer excess*) must pay attention to the shock of the soul and the attack first. To determine between *Noodweer* and *Noodweer Excess* what is the basis of the proportionality principle. That the Personality Principle should be explicitly proven by the material elements of his actions between the perpetrator and the victim. The Personality Principle should be seen at the Investigation and Investigation Stages where the evidence can be strengthened by the testimony of expert witnesses that the Act is a forced Defense of *Noodweer*, This harmonizes that the Justificatory Reason is sufficient to be proven through the Police Stage does not have to go through the Trial stage because the act is justified by the Law.

Meanwhile, *Noodweer Exces* According to Van Bemmelen, the defense of forced overstep (*noodweer exces*) is interpreted as unlawful or reprehensible. The limit of the extreme of the forced defense is caused by a great mental pressure due to the presence of a threatening attack from another person. Criminal acts still exist, but the element of criminal responsibility has been removed. That in the description it is indeed necessary to have proof in front of the trial because there is an act that is more than what the victim did. Therefore, the proof of a severe mental shock must also be determined and/or confirmed through psychological, the circumstances of the occurrence of the crime, the attack that first leads to the perpetrator. This must be proven through expert testimony and supported by other factual witnesses.

That in the case of *Noodweer* and *Noodweer*, the process of proof must be differentiated and contained in the positive legal rules in Indonesia explicitly so that there is an arrest of people who commit criminal acts with the principle of Proportionality.

## CONCLUSION

Based on this study, the regulation of necessary defense (*noodweer*) and excessive necessary defense (*noodweer excess*) under Law Number 1 of 2023 was found to retain the classical distinction between justifications and excuses, where *noodweer* removes the unlawfulness of an act and *noodweer excess* removes criminal liability due to severe mental shock arising from an unlawful and immediate attack, with the key difference lying in proportionality versus psychological factors. However, the law did not provide sufficiently clear operational parameters regarding proportionality limits, the standard of immediacy, and evidentiary thresholds for severe mental shock, leading to interpretive ambiguities and disparities in judicial decisions in similar cases. This indicates that the distinction between *noodweer* and *noodweer excess* is not merely theoretical but also a practical issue in the application of criminal liability in Indonesia; therefore, future research should focus on developing clearer normative guidelines or judicial standards, including comparative studies with other legal systems, to enhance consistency, legal certainty, and fairness in judicial practice.

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