



## **Legal Review of the Defense of Forced Excess (Noodweer Exces) in the Crime of Assault in Decision No. 4/Pid.B/2024/PN JNP**

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### ***ABSTRACT***

Noodweer excess is a condition where a person commits an unlawful act as a form of forced defense that exceeds the limit due to a threat or sudden attack. The justification for Noodweer excess is regulated in Article 49 paragraph (2) of the Criminal Code which allows the judge not to impose a sentence if there is a legitimate reason for self-defense, so that the defendant can be released from the clutches of the criminal code. This also becomes the legal basis for the judge in decision Number 4 / Pid.B / 2024 / PN JNP to provide an acquittal for the defendant who has been proven to have committed a crime that resulted in the death of a person. Based on the background above, the author proposes a formulation of the problem, namely; first, how is the regulation of forced defense beyond the limit (noodweer excess) in the Criminal Code?, second, how is the analysis of the judge's considerations in decision Number 4 / Pid.B / 2024 / PN JNP. This research method uses a normative legal research type, with a statutory approach and a conceptual approach. The legal materials used are primary legal materials including: Criminal Code and Decision Number 4/Pid.B/2024/PN JNP. From the results of the study, it can be concluded that: first, Article 49 paragraph 2 of the Indonesian Criminal Code (KUHP) regulates forced defense (noodweer excess) that exceeds the limit. The act is still against the law, but due to the conditions or reasons for the forced defense that exceeds the limit, the error is eliminated. Justifying and forgiving reasons can eliminate the criminal nature of an act. Second, Case Number 4/Pid.B/2024/PN. Jnp shows that the defendant cannot be punished because his actions meet the requirements of noodweer excess, as a response to threats with a knife from the victim. The defendant's actions are proven to meet the elements of forced defense that exceeds the limit which is carried out due to mental shock due to serious attacks or threats..

**Keywords: Noodweer Exces, Criminal Act of Assault**



## Introduction

The Unitary State of the Republic of Indonesia is a state of law, the 1945 Constitution confirms that Indonesia is a state of law (Rechilstaat) which is proven from the provisions in the preamble, main provisions and explanation of the 1945 Constitution. equality for all social strata in society. However, in practice, there are many cases of neglect and neglect of this aim, whether carried out intentionally or unintentionally. Law enforcers should fulfill their responsibilities in accordance with existing provisions.<sup>1</sup>

The legal basis for the elimination of criminal acts according to the Criminal Code, and how the nature of the defendant's defense which is the reason for the elimination of criminal acts is regulated in Article 49 of the Criminal Code (KUHP). The regulation of the defense of being forced to exceed the limits or "Noodweer excess" according to Article 49 paragraph (2) of the Criminal Code states that:

“Anyone who commits an act that he is forced to do in order to defend his or another person's rights or to defend his or her own honor or property or property belonging to another person against someone who violates the right and plans immediately at that time must not be punished.”

Article 49 paragraph (2) states that:

“The defense was forced to go beyond the limits, which was directly caused by great mental shock due to the attack or threat of attack, not criminally justified.”

Self-defense actions that are forced to exceed the limit, there must be an unlawful attack and can threaten safety or life. So that someone can do the defense that is done in an emergency or often called noodweer, while the excess of the upper limit of self-defense actions is called Noodweer excess. Emergency or noodweer even though the perpetrator's actions (in the case of noodweer as the attacked party) will harm the attacker, but in fact his actions when experiencing an emergency are included in actions as an effort to protect himself from behavior that harms the

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<sup>1</sup>Ramly Hutabarat, *Persamaan Dihadapan Hukum Equality Before the Law di Indonesia*, Ghia Indonesia, Jakarta, 1985, h. 11.



attacker, in terms of integrity as a human being justified by law in other words, it is abolished unlawfully. This is because the anti-legal nature is abolished, so the crime against the perpetrator is also abolished. The basis for cancellation which is contrary to the law in nature is another justification stated in Article 49 paragraph (1) of the Criminal Code.<sup>2</sup>

An example of a criminal act of abuse that occurred in Indonesia is like the case of the case that the author raised in this research. In the case in the jurisdiction of the Jenepono District Court, there was abuse resulting in death by the defendant Ramlil Dg Ranil Biln Dg Tanga who had committed abuse resulting in death against the victim Hendrik Khonato which began with the perpetrator to collect debts from the victim who lived or stayed at the house of the witness Rilsno Sutaryo SE Kr Tompo Biln M Sailng Ranil Kr Ranil on Jl Lanto Dg Pasewang No. 29, Empoang Village, Bilnamu District, Jenepono Regency. When he arrived at home, the perpetrator knocked on the door while shouting the victim's name many times until the witness opened the door and invited the perpetrator to sit in the living room.

When the witness and the perpetrator were sitting in the living room, the victim came from inside the room while angry, then the victim pushed the perpetrator until he fell onto the sofa and the victim took out 1 (one) kitchen knife with a length of 27 cm (twenty seven centimeter) on the handle that was tucked in the waist earlier and tried to stab the perpetrator but missed and the witness tried to break it up but was unsuccessful. Both of them attacked each other and fought back. At that time, the perpetrator kicked the victim until he fell to the floor and when the victim fell, the perpetrator immediately stabbed him with a knife which was used by the victim, which was aimed at the victim's chest 2 times. However, he managed to be stabbed using the victim's wrist and then the victim ran to his room, taking 1 (one) machete which was 48 cm (forty eight centimeters) long The thing the victim was holding slipped from his hand. Then the perpetrator tried to run away and was

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<sup>2</sup>I Gede Windu Merta Sanjaya, Pembelaan Terpaksa Melampaui Batas (*noodweer excès*) dalam Tindak Pidana Pembunuhan Begal sebagai Upaya Perlindungan, Fakultas Hukum Universitas Warmadewa Denpasar – Bali, April 2022. h. 407-408



followed by the victim while she was covered in blood. When the perpetrator was at the door, the victim pulled the perpetrator's shirt so that the perpetrator stabbed the victim's chest and left arm 1 (one) time. Then because the perpetrator was still not satisfied, he stabbed the left chest 1 (one) time so that the victim immediately fell to the floor and the perpetrator took the key to open the door and immediately ran away. Then the perpetrator went to Reskil's brother's house and asked him to accompany him to surrender to the Binamu Police.

The victim died shortly after the crime scene and did not have time to receive medical assistance. The panel of judges stated that the perpetrator had been proven legally and convincingly guilty of committing a criminal act of abuse that exceeded the limits as the first alternative charge of the public prosecutor, but could not be convicted because he had carried out a forced defense that exceeded the limits (noodweer-exces) and the defendant was released from detention immediately after the verdict was pronounced. Thus it was decided in the deliberation session of the Panel of Judges of the Jenepono District Court, on Monday, April 1, 2021, by us, Billden, S.H., as the Chief Judge, Adhilita Brama Pamungkas, S.H., and Taufilq Nur Ardilan, S.H., each as Member Judges, which was pronounced in an open session for the public on Thursday, April 4, 2024 by the Chief Judge accompanied by the Member Judges, assisted by Theodores Harindah, S.H., Substitute Clerk at the Jenepono District Court, and represented by Ahmad Jafar, S.H., Public Prosecutor and the Defendant accompanied by his Legal Advisor.<sup>3</sup>

## Research methods

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<sup>3</sup>Putusan Nomor 4/Pid.B/2024/PN JNP



The type of research that will be used in this research is the juridical normative approach, which is an approach that refers to legal norms contained in laws and regulations and decisions in norms that exist in society. Because this type of research is normative juridical, the approach used is the legislative approach and the conceptual approach. The procedure for collecting materials, both primary, secondary, and tertiary materials are collected based on the problem topics that have been formulated and clarified according to their sources and hierarchies to be studied comprehensively. The legal materials used are primary legal materials including: Cases of the Criminal Law Law and Decision Number 4 / Pild.B / 2024 / PN JNP.

## **Research Results and Discussion**

### **Pembelaan Terpaksa Sebagai Alasan Pembenaar Penghapusan Pidana.**

Criminal acts or strafbaar feilt in Dutch have the meaning of criminal acts, criminal acts, criminal acts or acts that are criminalized. A person can be said to have committed criminal acts, if the act has been regulated by law, in accordance with the principle of legality in article 1 paragraph (1) of the Criminal Code which reads, if an act can be criminalized unless it is based on the strength of pildana regulations in existing legislation, before the action is carried out. Anti-pildana is an act that is prohibited by a legal prohibition which includes threats (sanksil) in the form of certain pildana, the distribution of illegal goods that violate the prohibition. Van Hammel formulates it as follows: "strafbaar feilt is a person's behavior (menselijke gedragilng) which is formulated in law, which is against the law, which deserves to be prosecuted (strafwaardilng) and is carried out with a mistake".<sup>4</sup>

According to Lamintang, every regional election act in the Criminal Code can generally be broken down into 2 (two) types, namely subjective elements and objective elements. Subjective elements are elements that are attached to the perpetrator's dilril sil or which are related to the perpetrator's dilril sil and include everything contained in his heart. Objective elements are elements that are related to

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<sup>4</sup>Moeljatno, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2008, h. 33-59



circumstances, namely conditions in which actions from the perpetrator's motives must be carried out..<sup>5</sup>

According to Pompe, the term strafbaar feilt can theoretically be formulated as "a violation of the norm (violation of the law) which is carried out by an actor, in the event of legal enforcement of the law by the actor, it is necessary for the perpetrator to violate the law and violate public interest" or vice versa *de normovertreding (verstoring der rechtsorde), waaran de overtreder schuld heeft en waarvan de bestraffing dienstig is voor de handhaving der rechts orde en de benhartiging van het algemeen welzijn*".<sup>6</sup>

In general, the most common offense in the Criminal Code is called aggravation. Recognizing the difference between the two is a legal basis for punishment. The most common offense is the failure to cause physical injury to the body. The injury is usually stated in the accusation. Actual abuse includes physical assaults such as slapping, biting, hitting, kicking, and throwing, but there are also other forms of abuse that involve physical or emotional abuse.<sup>7</sup>

R. Soesilo is of the opinion that in jurisprudence what is called persecution is:

- a. Intentionally causing unpleasant feelings (suffering)
- b. Causes pain
- c. Causes injuries.<sup>8</sup>

Thus, criminal violations can be said to be all unlawful acts or actions of a person against another person that result in injury or pain to that person's body, where the injury suffered by the victim is in accordance with the category of injury in Article 90 (Criminal Code).

Abuse has the following elements:

- a. Intention

The element of intention is a subjective element (error).

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<sup>5</sup>Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Sinar Baru, Bandung, 1984, h.183

<sup>6</sup>*ibid.* h.185.

<sup>7</sup>Anwita Fauziah, *Implementasi Tindak Pidana Ringan Dalam Kasus Penganiayaan*, Fakultas Hukum Universitas Medan Area, 2019, terbitan ke-1

<sup>8</sup>R.Soesilo. *KUHP Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Politeia. Bogor. 1995. h 245



b. Intention

The element of action is an objective element.

c. Intention

The element of action is an objective element.

c. Intention

The effect of the action (intended)

Feeling unwell, pain in the body, pain where the body does not show any changes, wounds on the body, showing changes in the body due to abuse, damaging people's health.

The reason for forgiveness concerns the person who committed the crime, in the sense that this person cannot be blamed (according to law) with other words, he is not guilty or cannot be held responsible, even though his actions are against the law. So, here there is a reason that eliminates the guilt of the perpetrator, so that there is no possibility of punishment. The reasons for forgiveness contained in the Criminal Code are article 44 (unable to take responsibility), article 49 paragraph (2) (noodweer excess), article 51 paragraph (2) (in good faith carrying out an invalid office order).<sup>9</sup>

The rationale for justification is the protection of rights against injustice, so that a person who commits an act and fulfills the elements of a criminal act according to the law is deprived of his legal authority due to the burden of being forced. If you draw a common thread, in this case, forced acquittal is an action or deed to judge other people who violate the law against themselves or other people's interests. If it happens in such a way, a person is allowed to be virginal even though virginity is basically prohibited by law. However, to protect oneself in an emergency, it is permissible to protect oneself and also to defend one's legal interests. Therefore, noodweer is said to be a justifying reason, namely a reason that negates the unlawful nature of an action.

The purpose of creating a national criminal law system is to create a punishment system that is in accordance with the conditions of Indonesian society. The

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<sup>9</sup>Soedarto, Kapita Selektta Hukum Pidana, Alumni, Bandung, 1986, h. 47.



functioning of the national criminal law system requires a formal criminal law system and a criminal enforcement law system. With the planned changes to the material criminal law in the current Criminal Code, it is necessary to conduct a study to what extent the new principles and norms in the concept cause problems from the perspective of criminal procedure law. To what extent does the draft Criminal Code require the support of new rules in the field of criminal procedure law, or better yet, to what extent does the current criminal procedure law (especially those contained in the Criminal Procedure Code) require a review with the principles and norms contained in the new Criminal Code concept. Thus, formal criminal law must support material criminal law. For the renewal of criminal law, it is not only in the material law, but it is broader than that, covering the whole, namely formal criminal law. The hope for the future is that the Criminal Procedure Code must be oriented towards the new Criminal Code, especially if it is related to the phenomenon of forced labor.<sup>10</sup>

#### **Noodweer Exces as Justification Reason in Decision of Case Number 4/Pild.B/2024/PN. Jnp.**

hat as the facts revealed in the trial obtained from the statements of witnesses and also the defendant's statement, it is known that on Friday, October 20, 2023 at around 16.30 WITA, at the house of witness Risno Sutaryo who lives on Jalan Anto Dg. Pasewang, Number 29, Empoang Village, Binamu District, Jenepono Regency, Rami Dg. Rani Bin Dg. Tanga has stabbed the victim Hendrik Khonarto alias Sony in the chest, stomach and left hand with a bear using a kitchen knife.

From the facts described above, the Panel of Judges believes that when this incident occurred, it was the victim who first attacked by stabbing the defendant before the two were involved in a fight. That based on the testimony of witness Risno Sutaryo, a few days before this incident occurred, the victim had told the witness that he felt offended by the defendant's actions in telling other people about the debts that the victim had, this is also in accordance with the defendant's statement

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<sup>10</sup>Saiful Bahri, Problema dan Solusi Peradilan Pidana yang Berkeadilan dalam Perkara Pembelaan Terpaksa, Fakultas Hukum Universitas Brawijaya Malang, 2021, terbitan ke-1





that when the defendant came to the house of witness Risno Sutaryo on the day of the incident, the victim had said to the defendant "you are making me want what I want" because the victim thought that the defendant had told other people about the debts that the victim had, then it was proven that when the victim came out of the room and saw the defendant, the victim immediately hit the wall in the house, so it was seen that from the beginning the victim had indeed felt emotional towards the defendant. From the description above, the forced retaliation is in the form of an unlawful attack and the same thing is charged, namely the body, human honor, and property, both for oneself and others, but what distinguishes it is that in noodweer-exces it cannot be punished because of the attack or threat of attack that is carried out suddenly so that it threatens at that time and Rami Dg. Rani Bin Dg. Tanga who did it.<sup>11</sup>

The Panel of Judges, taking into account the legal facts above, immediately chose the first alternative charge as regulated in Article 338 of the Criminal Code, the elements of which are as follows:

1. First Element "Whoever"
2. Second Element "Deliberately taking another person's life"

The Panel of Judges believes that if at the time this incident occurred, it was the victim who carried out the attack first by stabbing the Defendant with a knife before the two were involved in a fight, therefore the Panel of Judges will set aside and will not consider the matter further.

Thus, the Panel of Judges will consider whether there are grounds that can be used as a basis for eliminating the defendant's criminal sentence. That in the Criminal Code (KUHP), there is noodweer (forced retaliation) which is regulated in Article 49 paragraph (1) of the Criminal Code and noodweer-exces (forced retaliation that exceeds the limit) which is regulated in the provisions of Article 49 paragraph (2) of the Criminal Code which states that "forced retaliation that exceeds the limit, which is directly caused by great mental shock due to the attack or threat of attack, is not

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<sup>11</sup>Putusan Nomor 4/Pid.B/2024/PN Jnp, h. 27-33



punishable. Between noodweer (forced retaliation) and noodweer-excess (forced retaliation that exceeds the limit) both require an unlawful attack and the same thing is punished, namely the body, human dignity, and property, both of oneself and others, but what distinguishes it is that in noodweer-excess a person cannot be punished because there is a great mental shock due to an attack or threat of attack that is suddenly carried out so that it threatens at that time, however the unlawful nature of the forced retaliation that exceeds the limit still exists but the perpetrator cannot be punished because there is a mental shock that makes it the basis for forgiveness. That someone can be said to have committed a forced retaliation that exceeds the limit because the person who received the attack could not think clearly to act balanced in deciding whether he committed retaliation or not so that the mental condition or inner turmoil of the perpetrator is very important to consider. What is meant by severe mental shock is a state of mind or soul of a person that is unstable in the sense that it causes feelings of restlessness, fear, insecurity, anxiety that are felt extremely (terrible) which results in a disturbance in the state of the person's mind or soul.

That because the Defendant's actions have been proven to have committed a crime as stated in the first alternative charge of the Public Prosecutor, but there is a reason for forgiveness because it is included in the forced retaliation that exceeds the limit (noodweer-exces), then the Defendant cannot be punished and therefore the Defendant must be released from all legal charges (onstagg van ae recht vervoging). That because the Defendant is released from all legal charges and the Defendant is in detention, it is ordered that he be released from detention immediately after this decision is pronounced. That because the Defendant is released from all legal charges, the Defendant's rights must be restored in terms of his ability, position, dignity and honor.<sup>12</sup>

## **Conclusion**

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<sup>12</sup>Putusan Nomor 4/Pid.B/2024/PN Jnp, h. 26-37



Article 49 paragraph 2 of the Indonesian Criminal Code (KUHP) regulates excessive forced retaliation (*noodweer excès*). "Excessive forced retaliation, which is directly caused by severe mental shock due to an attack or threat of attack, is not punishable." The act is still against the law, but due to the conditions or reasons for excessive forced retaliation, its guilt is eliminated. In the decision of case Number 4/Pid.B/2024/PN. Jnp, the defendant cannot be punished because his actions meet the requirements of *noodweer excès*, driven by mental shock due to an attack or serious threat from the victim's knife

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