

legal Analysis of Criminal Responsibility of Perpetrators of Assault Due to Forced Defense (Noodweer) (Decision Study Number: 938 K/Pid/2022)

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Abstract. Abuse is a criminal act against the body that can cause physical suffering, injury, and even death. In practice, legal issues become complex when acts of abuse are committed in a state of forced defense (noodweer), because on the one hand the act fulfills the elements of a crime, but on the other hand it is carried out to defend protected legal interests. This study aims to analyze the criminal liability of perpetrators of criminal acts of abuse committed in a state of forced defense, as well as examine the application of the provisions of Article 49 of the Criminal Code and its provisions in the new Criminal Code (Law Number 1 of 2023). This study uses a normative legal research method with a normative juridical approach, which includes both a statutory and a conceptual approach. The data used is secondary data obtained through literature review, examining laws and regulations, books, and various other sources relevant to the problem under study. The results of the study show that the defense of necessity as regulated in Article 49 paragraph (1) of the Criminal Code is a justification that eliminates the unlawful nature of the act, while the defense of excessive necessity is a forgiving reason that eliminates the perpetrator's guilt. The provisions in the new Criminal Code basically maintain this substance with a more systematic formulation to guarantee legal certainty and justice

Keywords: Assault; Criminal Liability; Forced Defense; New Criminal Code.

1. Introduction

The Republic of Indonesia is a state based on law, that the 1945 Constitution establishes Indonesia as a state of law (Rechistaat) and can be proven from the provisions in the preamble, body and explanation of the 1945 Constitution. Law was created with the aim of providing protection and order in society in order to create justice for all levels of society. However, in practice, many violations and

deviations from the objectives of the law itself are still found, both intentional and unintentional. It is appropriate that the role of law enforcers carry out their duties in accordance with applicable provisions.¹

Law is a set of regulations concerning human behavior as members of society, while the purpose of law includes maintaining order, safety, security, and peace in society. According to Frans Magnis Suseno, legal norms are a set of norms of human behavior in society whose implementation can be demanded and violations will be punished with certainty by the legitimate authorities. Law means a set of rules officially created by the government, to bind everyone and its implementation can be enforced by authorized state officials. This indicates that legal sanctions cannot always be enforced. Where legal rules do not question the mental attitude of a person is good or bad.²

Every social relationship must not conflict with the provisions of existing legal regulations that apply in society. Sanctions in the form of punishment (criminal) will be imposed on any violators of existing legal regulations as a response to their unlawful actions. Consequently, existing legal regulations must be in accordance with the principles of justice in society, to ensure that legal regulations can continue to be enforced and accepted by all members of society.³

Every human being has the same right to life and has the right to their dignity and honor as a human being. Human Rights (HAM) are basic rights that every person has. The guarantee of human rights freedom has been regulated through several articles in the 1945 Constitution of the Republic of Indonesia. According to Law Number 39 of 1999 concerning Human Rights, it is a set of rights inherent in the nature and existence of humans as creatures of God Almighty. Human rights are also His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the sake of honor and protection of human dignity and honor.⁴

Today, problems in society are increasingly diverse, with some even willing to take the lives of others for a specific purpose. Therefore, criminal law, in particular, serves as a tool to enforce or guarantee human rights. To take the life of another person, the perpetrator must carry out a series of actions that cause the death of another person, and the record must show that the perpetrator

¹Ramly Hutabarat, 1985, *Equality Before the Law in Indonesia*, Ghia Indonesia, Jakarta, p. 11.

²Muhamad Erwin, 2016, *Philosophy of Law: Critical Reflections on Law and Indonesian Law (in the Dimensions of Ideas and Applications)*, PT Raja Grafindo Persada, Jakarta, pp. 146-147.

³Jan Rummelink, 2003, *Criminal Law: Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code*, Gramedia Pustaka Utama, Jakarta, p. 61.

⁴<https://www.detik.com/edu/detikpedia/d-5713321/ini-lho-10-pasal-dalam-uud-1945-yang-mengatur-tentang-ham> accessed on Saturday, July 13, 2024 at 16.05 WIB.

acted intentionally.⁵In Indonesia, the impact of globalization is clearly visible in society, one example being the rising crime rate. Humans have unique characteristics, resulting in differing perspectives, visions, and goals in life. These differences are seen as influencing interactions between people and can trigger conflict, ultimately leading to violence.⁶

One of the most common crimes committed in Indonesia is assault. In Indonesia, assault is regulated under Article 351 of the Criminal Code, but it does not clearly define the term. According to Indonesian jurisprudence, assault is defined as intentionally causing discomfort (suffering), pain, or injury.⁷Typically, the person who inflicts the injury or commits the crime of assault is the perpetrator, as they are considered guilty of causing bodily harm to another person or party. On the other hand, a person may resist with their bare hands or with the aid of a tool, simply to protect themselves in an urgent situation.⁸

Abuse is an act committed intentionally by a person that causes pain, injury, or health problems to another person, whether minor or serious, or resulting in the loss of life. Any act that meets the elements of abuse as defined in the Criminal Code is a crime.⁹

In relation to the issues discussed, the Criminal Code also contains provisions regarding grounds for exoneration that prevent the perpetrator from being punished. These grounds for exoneration include inability to assume responsibility, forced defense (noodweer), and the execution of an illegal official order in good faith. The existence of these grounds for exoneration demonstrates that even if an act objectively meets the elements of a crime, punishment cannot be imposed if the perpetrator is subjectively blameworthy.¹⁰

In the new Criminal Code (Law No. 1 of 2023), this principle is maintained and reinforced through more systematic provisions regarding culpability, capacity for responsibility, and grounds for expungement. This regulation emphasizes that criminal responsibility is not automatic but must be linked to the psychological

⁵PAF Lamintang, 2012, *Crimes Against Life, Body, and Health*, Jakarta, Sinar Grafika, p. 1

⁶National Commission on Violence Against Women, 2009, *Reference Book for Handling Cases Against Women in the General Courts*, National Commission on Violence Against Women, Jakarta, p. 10

⁷Hilman Adikusuma, 2001, *Indonesian Customary Economic Law*, Bandung, Citra Aditya Bakti, p.130.

⁸Halimah Annisaa Taufiq, *A Study of Forced Defense (Noodweer) in Cases of Criminal Assault*, *Verstek Journal* Volume 10 Issue 4, 2022, p. 717.

⁹R. Soesilo, *Criminal Code (KUHP) and its Complete Commentaries Article by Article*, Politeia, Bogor, 1996, p. 245

¹⁰Roeslan Saleh, *Criminal Acts and Criminal Responsibility*, Aksara Baru, Jakarta, 1983, p. 60

and mental state of the perpetrator and the specific circumstances at the time of the act.¹¹

Criminal liability can only be sought after a crime has been proven. Therefore, it must first be proven that the act committed meets all the elements of the crime charged. Furthermore, an act can only be punished if it has been previously determined by statute. This principle reflects the principle of legality, which is the primary foundation of modern criminal law and serves as a guarantee of legal certainty for everyone.

However, in criminal law there are several reasons that can be used as a basis for judges not to impose sentences/criminal penalties on perpetrators or defendants who are brought to court for having committed a crime.¹² These grounds are called grounds for expungement. Grounds for expungement are the authority vested in judges. These grounds establish various circumstances in which perpetrators, who meet the requirements for a crime as stipulated in the law, should be punished but are not. In this case, judges place their authority within themselves (in adjudicating a specific case) to determine whether the perpetrator has special circumstances as defined in the grounds for expungement. Therefore, these grounds for expungement are reasons that allow a person who commits a crime to avoid being subject to criminal sanctions.¹³

Defending oneself beyond measure is considered a forgiving reason in criminal law. Defending oneself beyond measure is a form of severe mental shock (noodweer excess) triggered by an unlawful attack that elicits an excessive and disproportionate response. A person who uses a defensive measure can be acquitted of criminal responsibility if the judge accepts that their actions were directly caused by severe mental shock, resulting in impaired mental function due to the attack or threat of attack they experienced. This provides grounds for forgiveness.¹⁴

As with the case that will be studied by the Author in this writing, the case of taking another person's life in the cassation decision Number 938 K/Pid/2022, namely the defendant MYO who was proven to have committed the crime of taking another person's life as the primary charge of the public prosecutor was due to forced defense (noodweer) and forced defense beyond limits (noodweer excesses). And the defendant cannot be sentenced because there are justification and excuse reasons in the ruling of the South Jakarta District Court Number 868/Pid.B/2021/PN. Jkt.Sel where the actions carried out by the defendant in the main event 1 (one) were that the FPI members had first carried

¹¹Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Kencana, Jakarta, 2010, p. 85

¹² HM Hamdan, 2013, *Reasons for Criminal Penalty Erasure (Theory and Case Study)*, PT Refika Aditama, Bandung, p. 27.

¹³*Ibid*, p. 26.

¹⁴Moeljatno, 2009, *Principles of Criminal Law*, Rineka Cipta, Jakarta, p. 160.

out an attack, armed robbery and shooting at the car in which the defendant was riding, together with Witness FR, ELW (deceased), FKA, while regarding the actions of the defendant in the main event 2 (two), because Witness FR as the perpetrator (pleger) in the act of intentionally taking the life of another person based on the above considerations is because the defense was forced to exceed the limit (noodweer exces) so even though at the time of the incident the defendant was not a person whose soul was shaken, the defendant was a person who participated in committing a criminal act so that it is appropriate and fair if the defendant's actions are qualified as participating in the defense being forced to exceed the limit (noodweer exces).

Holding a perpetrator who commits murder in self-defense or in defense of another person from a dangerous threat is not justified. This is because Article 49 paragraph (2) of the Criminal Code guarantees that excessive self-defense (noodweer exces) is not punishable if it is carried out due to severe mental shock due to an immediate and unlawful attack or threat. Even though objectively the act of self-defense remains unlawful, the perpetrator cannot be punished because subjectively it is not blameworthy. This provision is emphasized in the new Criminal Code (Law No. 1 of 2023) through Article 43, which emphasizes that excessive self-defense is not punishable if it occurs as a direct result of psychological disturbance or pressure arising from the attack or threat. Criminal responsibility contains the principle of fault (the principle of culpability), which is based on a monodualistic balance that the principle of fault based on the value of justice must be aligned with the principle of legality based on the value of certainty. In this noodweer excess, there is a reason that eliminates the perpetrator's guilt, so there should be no punishment for the perpetrator, or in this case, the perpetrator of the murder. The crime exists, but the element of criminal responsibility is removed.¹⁵

Based on the above problems, regarding the many phenomena of criminal acts of assault, it is recommended that people who do not know the rules for the community be careful and vigilant, such as the case registered at the Semarang District Court Number 463/Pid.Sus/2023/PN Smg tThis has become a special attraction for the author to study this matter in more depth by conducting research, for writing a thesis entitled "JURIDICAL ANALYSIS OF CRIMINAL RESPONSIBILITY OF PERPETRATORS OF ASSAULT DUE TO FORCED DEFENSE (NOODWEER) (Decision Study Number: 938 K/Pid/2022)".

2. Research Methods

The approach used in this research is a normative juridical approach. A normative juridical approach is legal research conducted by examining library

¹⁵Rendy Marselino, Excessive Forced Defense (Noodweer Exces) in Article 49 paragraph (2), Jurist Diction Volume 3 Number 2, March 2020, p. 634.

materials or secondary data solely. Normative legal research positions law as a system of norms. The normative system in question concerns the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings).¹⁶

3. Results and Discussion

3.1. Criminal Liability for Perpetrators of Criminal Acts of Assault Due to Forced Defense (Noodweer) Based on Decision Number 938 K/Pid/2022

Criminal liability is a fundamental concept in criminal law that relates to whether or not a person can be punished for actions that meet the definition of a crime. The principle of legality as recognized in Article 1 paragraph (1) of the Criminal Code serves as a basis for determining the existence of a crime, but this principle is not sufficient to give rise to criminal liability. Criminal liability can only be imposed if the perpetrator is guilty and has the ability to be legally responsible.

The new Criminal Code, through Law No. 1 of 2023, emphasizes the principle of fault as a prerequisite for criminal responsibility. This affirmation demonstrates that punishment rests not solely on the unlawful act but also on the subjective condition of the perpetrator, whether intentional or negligent. Thus, criminal responsibility is understood as a normative process for assessing the appropriateness of punishment for a perpetrator, not as an automatic consequence of violating criminal norms.¹⁷

In addition to culpability, the new Criminal Code also emphasizes the importance of the capacity to take responsibility. A person cannot be held criminally responsible if, at the time of the act, they were in a mental state that prevented them from understanding the meaning of their actions or controlling their will. This concept aligns with modern criminal law doctrine, which clearly distinguishes between the existence of a crime and the perpetrator's accountability.¹⁸

From a legal theory perspective, criminal liability was initially heavily influenced by retributive views that emphasized retribution for the perpetrator's wrongdoing, as argued by Roscoe Pound. However, the development of modern criminal law, reflected in the New Criminal Code, demonstrates a shift in the orientation of punishment toward protecting society, rehabilitating perpetrators, and restoring social balance. Therefore, criminal liability in the New Criminal

¹⁶Ibid, pp. 12-13

¹⁷Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2008, p. 165

¹⁸Roeslan Saleh, *Criminal Acts and Criminal Responsibility*, Aksara Baru, Jakarta, 1983, p. 80

Code serves not only as a basis for punishment but also as an instrument for achieving the goals of criminal law in a functional and humane manner.¹⁹

The imposition of criminal responsibility on the perpetrator of the crime of assault must also fulfill the four conditions for criminal responsibility mentioned above. If even one condition is not met, then the perpetrator of the crime cannot be charged with criminal responsibility. Proof of the four conditions for criminal responsibility is carried out before the trial in the evidentiary stage. Evidence according to M. Yahya Harahap is the stage to prove the criminal act and the mistake charged against the defendant by paying attention to the provisions and guidelines regarding the methods permitted by law.

Regarding the element of fault, Mezger provides his view regarding the element of fault in criminal liability as follows: fault is the existence of conditions that form the basis for personal blame for the person who committed the act. The explanation of the criminal law experts above, especially Prof. Moeljatno, uses fault based on the theory of will, which is the direction, intent, or goal of the act.

The consequence is that, in order to determine whether an act was intended by the defendant, (1) it must be proven that the act was in accordance with the motive for the act and the aim to be achieved; (2) there must be a causal relationship in the defendant's mind between the motive, act and aim.²⁰

In contrast to the opinions of previous experts, Van Hamel provides a view on a person's behavior that can be subject to criminal punishment or is included in a criminal act in the writings of Edi Setiadi and Dian Andriasari, namely, *strafbaar feit* is a person's behavior (*menselijke gegraging*) which is formulated in *wet*, which is against the law, which deserves to be punished (*strafwaardig*) and is done wrongly.

From a societal perspective, perpetrators of criminal behavior can be reprimanded because if they hadn't wanted to commit the crime, they could have done something else. When a crime is committed, people are generally blamed for acting in a way that harms society, even though they recognize the seriousness of the act. Therefore, it may be necessary to avoid such actions.²¹ This understanding allows actors to have certain mental (psychological) faults and psychological faults that focus on the relationship between their mental state and their behavior so that they can be held accountable for their actions. The concept is not adhered to. This leads to legal problems caused by the lack of an "intentional" or "negligent" component in the wording of illegal

¹⁹Hibnu Nugroho, "Legal Protection for Victims of "Black Market Banks", *Journal of Legal Dynamics*, Vol. 9, 2009 p. 9.

²⁰Moeljatno, 1994, *Principles of Criminal Law*, Second Edition, Bina Aksara, Jakarta, p. 172.

²¹Moeljatno in Mahrus Ali, 2012, *Basics of Criminal Law*, Sinar Grafika, Second Edition, Jakarta, p. 157.

activities. Under current criminal law, crimes do not contain elements that are "intentional" or caused by negligence. Therefore, legal practice is overshadowed by the question of whether the element is made "intentionally" or by "mistake" of the offense, and both forms of fraud occur, even if they do not lead to the perpetrator's conviction. This problem arises and raises questions about the ability of psychological error theory to explain the problem of culpability.²²

The concept of "no crime without fault" (no crime without fault) as a basis for holding an individual or legal entity accountable is also applied in Indonesia. Article 1 of the Criminal Code states:

"No act can be punished except under previously existing criminal law. If there is a change in the law after the act was committed, the most favorable provisions shall apply to the accused."

Normative error emphasizes society's assessment of a criminal act, so that the perpetrator can be blamed for the act. The normative definition of error states that error is the blameworthiness of the perpetrator of a criminal act based on society's assessment because the perpetrator is expected to have done something else (besides the crime).²³ This normative approach to guilt is in line with the development of Indonesian criminal law, particularly in the new Criminal Code, which emphasizes that criminal responsibility is not automatic after the elements of a crime have been fulfilled, but rather requires the existence of guilt and the ability to take responsibility on the part of the perpetrator as the basis for the legitimacy of punishment.

Abuse is a criminal act in the form of an attack on the body or part of the body that can cause pain or injury, even because of such injuries to the body can cause death. The absolute element of the crime of abuse is pain or injury desired by the perpetrator or in other words there is an element of intent and against the existing law. The law does not provide a formulation of what is called abuse. However, according to court jurisprudence, what is called abuse is as follows: Intentionally causing unpleasant feelings (suffering), Causing pain, Causing injuries According to Sudarsono, in his book, the legal dictionary provides the meaning that abuse is an act of hurting or torturing humans or intentionally reducing or damaging the health of others.²⁴

In general, crimes against the body are defined in the Criminal Code as assault. The provisions on crimes against the human body are intended to protect the legal interests of the body from acts involving attacks on the body or parts of the

²²Ibid, p. 158.

²³Halimah Humayra Tuanaya, "Corporate Criminal Liability: An Idea for Corporations as Independent Legal Persons in Corporate Criminal Liability", Journal of Legal Dynamics and Justice, Vol.7INo.1, 2017, pp. 35-36.

²⁴Sudarsono, Legal Dictionary, PT Rineka Cipta, Jakarta, 1992, p. 34.

body that result in pain or injury, even injuries of such a nature that can result in death.

The elements of serious assault include: the mistake (intentional), the act (inflicting serious injury), the object (another person's body), and the consequences (serious injury). When connected to the element of intent, this intent must be directed at both the act (for example, stabbing with a knife) and the consequences, namely serious injury.

This form of abuse must occur simultaneously/together so that the elements of serious abuse and premeditated abuse must be met. Death in premeditated serious abuse is not the goal. The deliberate effect is aimed at the serious injury alone and not at the death of the victim because, if the death of the victim is deliberate, it is called premeditated murder. Crime is a prototype of deviant behavior, namely behavior that violates or deviates from the rules of normative understanding or from the expectations of the social environment concerned. And one way to control it is with criminal sanctions.²⁵

The essence of criminal sanctions is retribution, while the purpose of criminal sanctions is to deter both the lawbreakers themselves and those who have the potential to become criminals. In addition, they also aim to protect society from all forms of crime and provide education or reform for criminals. The crime of assault resulting in the death of the victim is closely related to the determination of the element of intent (*dolus*), especially in the form of *dolus eventualis*. In the old Criminal Code, the act of intentionally taking another person's life was regulated in Article 338 of the Criminal Code, while murder with premeditation was regulated in Article 340 of the Criminal Code.

The new Criminal Code, as stipulated in Law Number 1 of 2023, continues to distinguish between murder and assault resulting in death. Murder is regulated under Article 458 of the new Criminal Code, while premeditated murder is regulated under Article 459 of the new Criminal Code, both of which require the deliberate act of taking another person's life. Therefore, the application of the murder article in cases of assault resulting in death remains dependent on proving the elements of *dolus*, including *dolus eventualis*, as the basis for criminal liability.

3.2. Obstacles and Solutions for Judges in Providing Legal Considerations Against the Perpetrator of the Crime of Assault Due to Forced Defense (Noodweer) based on Decision Number 938 K/Pid/2022

A judge's law enforcement is influenced by factors that hinder the implementation of his or her functions in various societal situations and

²⁵Saparinah Sadlli, 2007, *Social Perceptions Regarding Deviant Behavior*, Bulan Bintang, Jakarta, p. 35.

conditions. In this regard, to identify the obstacles to the role and functions performed by a judge in general, the author uses the following general factors that influence the justice process:

- a. The legal factors themselves
- b. Law enforcement factors
- c. Facilities and infrastructure factors
- d. Community factors

In relation to law enforcement against criminal acts of assault, judges during the examination process encounter many operational and procedural obstacles in providing legal considerations to victims of assault who resort to forced defense. According to the author, these obstacles are as follows:²⁶

- a. Internal Factors

1) Morals of Law Enforcement

The morals of law enforcers are one aspect that greatly determines the success of judges in providing legal protection to victims of motorcycle theft who resort to forced defense, law enforcement officers, especially judges, sometimes do not have principles or stances in carrying out their duties. Law enforcement officers are required to apply the Judge's professional code of ethics or refer to the Judicial Power Law in the examination and settlement process which will later have implications for the orientation of how to make decisions. According to the author, there are three moralities that must be possessed by judges, including daring to act with determination to act in accordance with professional demands, being aware of their obligations, having high ideals.

2) Law Enforcement Skills

In law enforcement, it is necessary to provide legal considerations regarding Noodweer and legal protection for victims of abuse who commit forced abuse that results in the loss of someone's life.

3) Limitations of law enforcement officers

The limited number of judges throughout Indonesia is one of the obstacles in resolving assault cases. The number of personnel is not commensurate with the number of cases handled, so that judges often examine more than one crime that requires legal consideration, so this greatly hinders the process of providing legal considerations for instant defense.

²⁶Soerjono Soekanto, 1983, *Factors Influencing Law Enforcement*, Raja Grafindo Persada, Jakarta, p. 5.

b. External Factors

External factors are factors that originate outside the judge. The course of a trial can be influenced by many factors, such as the following:

1) The defendant's statement. The defendant's statement, according to Article 184 point e, is classified as evidence. In this case, the defendant stated his statement in court regarding the actions he committed or that he himself knew or experienced. In the new Criminal Procedure Code, the defendant's statement is still recognized as valid evidence and it is emphasized that the statement must be given freely, without pressure, and assessed together with other evidence. Thus, the defendant's statement cannot stand alone to prove guilt, but must be supported by other valid evidence to form the judge's conviction.

2) Witness testimony. Witness testimony can be categorized as evidence as long as it concerns a criminal incident that the witness personally heard, saw, or experienced. It must be presented in court under oath. In such cases, witnesses provide statements based on their knowledge, so the judge will consider the witness's testimony. The witness's testimony will provide an understanding of whether the public prosecutor's charges are proven or not. Based on the witness's testimony, the judge will have a clear understanding of the public prosecutor's charges.

3) Evidence. The presence of evidence revealed during the trial will increase the judge's confidence in assessing the truth of the actions charged against the defendant. The judge will be more confident if the evidence is known and acknowledged by the defendant and witnesses.

A judge in examining and providing legal considerations for Noodweer in a decision on a criminal act of assault that results in the loss of another person's life can be seen to have made several efforts to overcome obstacles in implementing legal protection for victims of assault who resort to forced defense.

A judge's decision, reflecting legal certainty, plays a crucial role in determining the appropriate legal framework in the case resolution process. Judges, when rendering their decisions, do not rely solely on statutes, as they may not clearly regulate the matter. Therefore, judges are required to explore legal values, such as customary law and unwritten law, that exist within society. In this context, judges are required to explore and formulate these values in a decision. The judge's decision is part of the law enforcement process, which aims to establish legal truth or achieve legal certainty. The legal certainty outlined in the judge's decision is a product of law enforcement based on legally relevant trial facts derived from the results of the case resolution process in the trial.

The application of the law must be appropriate to the specific case, allowing judges to construct the case under trial holistically, wisely, and objectively. Judicial decisions that contain elements of legal certainty will contribute to the development of legal knowledge. This is because a final and binding judicial decision is no longer the judge's own opinion but rather the opinion of the court, which serves as a reference for the public.

Given the various internal and external obstacles faced by judges in providing legal considerations in cases of assault under the pretext of a forced defense (*noodweer*), concrete and systematic efforts are needed to ensure that the decisions rendered not only fulfill the elements of legal certainty but also reflect a sense of justice and legal benefit for the parties. This aligns with the goal of criminal law enforcement, which is not merely repressive but also oriented towards substantive justice.²⁷

a. Strengthening the Integrity and Morality of Judges

Strengthening the integrity and morality of judges is a fundamental solution to addressing obstacles stemming from internal factors within law enforcement. Judicial integrity is crucial for the quality of legal reasoning, as judges are central actors in the criminal justice process.²⁸ Efforts to strengthen integrity can be carried out through the continuous internalization of the code of ethics and guidelines for the conduct of judges, as regulated in the Code of Ethics and Guidelines for the Conduct of Judges, as well as through strengthening the independence of judges so that they are not influenced by public pressure or the interests of certain parties.²⁹

In cases of forced defense, judges are required to possess the moral courage to critically examine and evaluate the trial facts and render a just verdict, even if it does not align with the prosecutor's demands. Judicial integrity is key to ensuring that *noodweer* is positioned as a valid reason for expungement if the elements are proven to be met.³⁰

b. Improving the Competence and Skills of Judges in Assessing *Noodweer*

In addition to integrity, a judge's competence and skill also significantly influence the accuracy of the law's application, particularly in assessing the defense of necessity. The doctrines of *noodweer* and *noodweer excess* require a thorough

²⁷Sudikno Mertokusumo, *Understanding the Law, Liberty*, Yogyakarta, 2010, p. 74.

²⁸Jimly Asshiddiqie, *Introduction to Constitutional Law*, RajaGrafindo Persada, Jakarta, 2014, p. 233.

²⁹Indonesian Judicial Commission, *Code of Ethics and Guidelines for Judges' Conduct*, Jakarta.

³⁰Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2008, p. 147.

understanding because they are closely related to the concrete circumstances and subjectivity of the perpetrator at the time of the crime.³¹

Judges must not only assess the consequences of an act but also analyze the overall chronology of events, assess the presence of a sudden and unlawful attack, and consider the proportionality of the defendant's defense. Such an assessment aligns with criminal law doctrine, which emphasizes a balance between legal interests and the protection of human rights.³²

c. Optimizing the Role of Judges in Exploring Material Facts

In criminal procedural law, judges have an obligation to explore material truth based on valid evidence as regulated in Article 184 of the Criminal Procedure Code.³³ This obligation is reinforced in the new Criminal Procedure Code, which emphasizes the judge's active role in objectively and comprehensively assessing evidence to achieve material truth and justice. Therefore, the judge's assessment must be based on the entire evidence and facts of the trial, not solely on the formulation of the indictment. Therefore, the judge must not rely solely on the prosecutor's construction of the indictment, but must independently assess all the facts revealed at trial.

Optimizing the judge's role in exploring material facts is crucial in cases of forced defense, given that such incidents typically occur in emergency situations with limited witnesses and evidence. By placing each piece of evidence in a logical sequence, the judge can gain sufficient confidence to determine whether the elements of *noodweer* are met.³⁴

d. Application of Contextual and Sociological Approaches

A judge's decision must be based not only on normative provisions but also on the legal values prevalent in society. A juridical approach combined with a sociological and philosophical approach allows judges to understand the social context underlying the occurrence of forced defense.³⁵

This approach is in line with the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which requires judges to explore, follow and understand the legal values and sense of justice that exist in society.³⁶

³¹Andi Hamzah, *Indonesian Criminal Law*, Sinar Grafika, Jakarta, 2017, p. 132.

³²Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Kencana, Jakarta, 2016, p. 89

³³Article 184 of the Criminal Procedure Code.

³⁴Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code*, Sinar Grafika, Jakarta, 2012, p. 295.

³⁵Satjipto Rahardjo, *Law and Society*, Angkasa, Bandung, 2009, p. 56.

³⁶Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

e. Establishment of Guidelines or Standards for the Implementation of Noodweer

The provisions of Article 49 of the Criminal Code, which regulates the defense of necessity, are still general and open to wide interpretation. Therefore, consistent jurisprudence or judicial guidelines are needed to ensure that the application of the defense of necessity does not result in significant differences in decisions in similar cases.³⁷In the new Criminal Code (Law No. 1 of 2023), the provisions regarding the defense of necessity are emphasized through Articles 42 and 43, which emphasize that the defense of necessity must be carried out proportionally to the immediate and unlawful attack or threat, and must take into account the psychological condition of the perpetrator if the limits of defense are exceeded. However, because this norm remains general, consistency in jurisprudence or judicial guidelines is needed so that the application of the defense of necessity does not cause disparities in decisions and still guarantees legal certainty.

It is hoped that these guidelines will provide objective parameters for judges in assessing the elements of forced defense, thereby creating legal certainty and protecting the rights of the accused.³⁸

f. Judge's Decisions as a Means of Legal Development

A judge's decision that has become legally binding is not only binding on the parties but also serves as a source of law and a reference for future judicial practice. Therefore, the legal considerations in the decision, including Decision Number 938 K/Pid/2022, must be formulated comprehensively and argumentatively¹.³⁹

Quality decisions will contribute to the development of criminal law, strengthen legal certainty, and provide human rights protection, especially for victims of crime who are forced to defend themselves.⁴⁰

The discussion of the obstacles and solutions for judges in providing legal considerations for the crime of assault under the pretext of a forced defense (noodweer), as reflected in Decision Number 938 K/Pid/2022, can be concluded that the application of a forced defense is a complex issue and requires careful assessment. Judges are not only faced with normative limitations in the provisions of Article 49 of the Criminal Code which regulates forced defense, but also with various internal and external constraints that affect the evidentiary process and the assessment of trial facts. This condition requires strengthening

³⁷Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, Alumni, Bandung, 2010, p. 211.

³⁸Roeslan Saleh, *Criminal Acts and Criminal Responsibility*, Aksara Baru, Jakarta, 1983, p. 63.

³⁹Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2017, p. 181.

⁴⁰Sudarto, *Law and Criminal Law*, Alumni, Bandung, 2007, p. 98.

the integrity and professionalism of judges, increasing competence in understanding the doctrine of forced defense (noodweer) and excessive forced defense (noodweer excesses), and optimizing the role of judges in exploring material truth.

In the new Criminal Code (Law No. 1 of 2023), the provisions on forced defense as formulated in Articles 42 and 43 emphasize the importance of assessments that are not only normative, but also take into account the concrete conditions and psychological state of the perpetrator at the time of the act. Therefore, the application of a contextual and sociological approach, accompanied by consistency of jurisprudence or judicial guidelines in the application of noodweer, is essential to ensure legal certainty and a sense of justice. Thus, judges' decisions are expected not only to resolve concrete cases, but also to contribute to the development of criminal law and the protection of human rights, especially for those who commit criminal acts under forced circumstances.

4. Conclusion

1. Criminal liability generally provides punishment or consequences that must be given to the perpetrator or perpetrator, the perpetrator of the crime must fulfill the elements stated in criminal law, in addition, it is also seen from the perpetrator's perspective. capacity of responsibility, whether the perpetrator is able to be responsible for the crime he committed. Decision Number 938 K / Pid / 2022 The Panel of Judges in its considerations is of the opinion that the Defendant, MYO fulfills the elements of forced defense or noodweer. Then the Defendant fulfills the elements of the principle of proportionality and subsidiarity which strengthens the need to release the Defendant from all charges because the Defendant committed the assault on the basis of forced defense or noodweer in accordance with Article 49 paragraph 1 of the Criminal Code. 2. That judges in providing legal considerations regarding criminal acts of assault on the grounds of forced defense (noodweer) still face various obstacles both internal and external, which include limited integrity and competence of law enforcement, limited facilities and resources, and the complexity of proof that depends on the testimony of the defendant, witnesses, and evidence. These obstacles have implications for the judge's caution in assessing the fulfillment of the elements of noodweer as regulated in Article 49 of the Criminal Code, so that it is not uncommon for forced defenses to not be optimally accepted. Therefore, it is necessary to strengthen the integrity and competence of judges, optimize the excavation of material facts, and apply a balanced juridical and sociological approach so that the resulting decision not only fulfills legal certainty, but also reflects justice and legal benefits, especially for victims of criminal acts who carry out forced defense.

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