

Analysis of Excessive Self-Defense (Noodweerexces) in the Crime of Persecution

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Abstract: This study aims to examine and analyze the justification for excessive self-defense (noodweerexces) under the Criminal Code and to analyze court decisions granting release from all charges (ontslag van alle rechtsvervolgung) in cases of persecution resulting from excessive self-defense. This research is classified as normative legal research, encompassing studies on legal principles, legal systematics, legal synchronization, legal history, and legal comparisons. The results of this study indicate that self-defense in persecution cases can be accepted as a justification that eliminates the perpetrator's criminal liability. The removal of criminal liability in such cases serves as a form of legal protection against an immediate threat to the perpetrator's honor and safety and recognizes the legitimacy of actions taken in response to imminent threats. It is suggested that although persecution may be committed as an act of self-defense, every act of self-defense must involve an immediate threat faced by the perpetrator, and the threat must endanger the perpetrator's honor or safety. Furthermore, judges must consider the circumstances of both the perpetrator and the victim, ensuring that decisions to release the perpetrator from prosecution are rational and proportional, serving as legitimate justification for the elimination of criminal liability.

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INTRODUCTION

One of the problems in each country is related to crime or crime, both developed and developing countries, which is difficult to avoid and always face. Indonesia is a country with a moderate crime rate, when compared to South American countries, Iraq, and Colombia¹. Even though Indonesia is included in the category of countries with a moderate crime rate, crime is still a big problem faced by Indonesia where every day there are always cases of crime that occur.

However, the Indonesian government always strives and is responsive in responding to crimes that occur, this can be seen from the decreasing percentage of crime in Indonesia. The Central Statistics Agency noted that from 2020-2023 there was always a decrease in the number of crimes in Indonesia, where the number of crime incidents in 2020 was 294,281 incidents, then this figure decreased to 269,324 incidents in 2021 and in 2022 it decreased again to 247,218 incidents².

One of the cases of crime that often occurs in Indonesia is cases related to non-criminal persecution. The criminal act of persecution is a form of criminal act against the body regulated in Chapter XX of the Criminal Code. Criminal acts of persecution can occur due to various factors such as grudges, intentionality or envy of others. Criminal acts of persecution are no longer new in the community, because persecution is one of the easy actions and many occur in the community.

¹Suci Rahmalia, Ariusni, Mike Triani, "The Influence of Education, Unemployment, and Poverty on Crime in Indonesia", Journal of Economic and Development Studies, Vol.1 No.1, 2019, p. 22.

²Central Bureau of Statistics, Crime Statistics 2021, December 15, 2021, <https://www.bps.go.id/publication/2021/12/15/8d1bc84d2055e99feed39986/statistik-kriminal2021.html>, accessed June 29, 2022.

There is no law that explicitly defines persecution, but in jurisprudence it is stated that persecution is an act that is deliberately done and then results in bad feelings, feeling pain or injury³. Cases regarding criminal acts of persecution are among the cases that have arisen. One of the online news media, Kompas.com noted that there were 1,785 cases of criminal acts of persecution from 2020 to 2023⁴.

In general, violations of the law that occur cannot always be punished even though they have been regulated in the law. The Criminal Code not only regulates acts that are subject to criminal penalties but also regulates acts that cannot be criminally charged.⁵ In Chapter III of the Criminal Code, Articles 44 to 52 of the Criminal Code, regulating the reasons for abolishing a criminal offense are things that cause the provisions imposed in the criminal law cannot be determined on an accused who violates a criminal act. There are two principles that are the reason for the abolition of crime, namely the excuse of forgiveness and the reason for justification.

The justification is one of the defenses of the right to justice. Therefore, a person who commits a crime and fulfills its elements is eliminated from his unlawful nature by the law because it is a forced defense. Meanwhile, the reason for forgiveness is the reason for the elimination of mistakes from within the perpetrator. So, a person cannot be found guilty because there is a reason that erases the person's fault. One form of justification is the existence of a forced defense that exceeds the limit (*Noodweer Exces*).

Forced defense that exceeds the limit (*Noodweer Exces*) is regulated in Article 49 Paragraph 2 of the Criminal Code stipulates that "Forced defense that exceeds the limit, which is directly caused by severe mental shock due to the attack or threat of attack, is not punishable". The purpose of this Article is, in a case, it is stated that there is a forced defense if the attack received has exceeded the limit and caused a great shock of the soul, such as intense anger. In addition, the threat or attack must occur at that moment, if in a situation like this, resistance or defense can be carried out to save oneself, because humans have a spontaneous attitude that will do anything if there is a threat to property or personal safety. In such cases, judges and other law enforcement officials must give due consideration to the reasons and elements of the occurrence of a forced defense that exceeds the limits (*Noodweer Exces*).

Based on the presentation of the background and examples of the case, the main issue of this study is the application of the principle of forced defense that exceeds the limit (*noodweer exces*) in cases of persecution based on the Supreme Court court decision.

METHOD

In this study, a type of normative legal research was used⁶. According to Soerjono Soekanto, normative legal research includes research on legal principles, research on legal systematics, research on legal synchronization, research on legal history, and research on comparative law.⁷ Philipus M. Hadjon is of the view that although normative legal research is often classified as qualitative research, normative research still uses data and its consequences on analysis, causing normative research to also fall into the empirical domain.⁸ The normative research method used in this writing or *the library reaseach method*, legal research is carried out by examining related literature materials about self-defense that exceeds the limit (*noodweer exces*) according to the Criminal Code.

This research is perspectiveive, an analysis which reveals the laws and regulations related to the legal theories that are the object of research, as well as the law in its implementation in society related to the object of research. Three legal approaches are used: (1) Statute *approach*; (2) Conceptual *approach*; and (3) Case Approach. The data source consists of primary, secondary, and tertiary legal materials. The data collection technique was carried out by studying documents and literature. Data analysis with deductive logic, deductive logic or processing of legal materials in a deductive way, namely explaining something that is general and then

³ Hasmiah Hamid, Legal Protection of Victims of Persecution in Criminal Proceedings in Indonesia, Jurnal Ecosystem, Vol.16 No.2, 2016, p. 280

⁴ Ajulio Padly Sembiring, Sharfina Faza, Crime Rate Prediction Based on National News Articles Using the Support Vector Machine (SVM) Method, Applied Business and Engineering Conference, 2021, pp. 628-629.

⁵ Rendy Marselino, Forced Defense that Exceeds the Limit (Noodweer Exces) in Article 49 Paragraph (2), Juris-Diction, Vol.1 No.3, 2020, pp. 633-634.

⁶ Abdul Kadir Muhammad, 2004, *Law and Legal Research*, PT. Citra Aditya Bakti, Bandung, p. Sec. 52.

⁷ Peter Mahmud Marzuki, 2017, *Legal Research*, Kencana Predana Media Group, Jakarta, p. 33

⁸ Philipus M. Hadjon, Titiek Sri Djatmiati, 2017, *Legal Argumentation*, Gadjah Mada University Pres, Yogyakarta, p. 9

drawing it into a more specific conclusion. The analysis was carried out on cases of self-defense that exceeded the limit (*noodweer exces*) according to the Criminal Code.

RESULT

Chronology of the Reasons for the Forced Elimination of the Defense for the Perpetrators of Persecution in Case Number 32/PID. B/2021/PN. DGL

The chronology of the case, **first**, began with the incident on Wednesday, specifically November 4, 2020, at 11.00 WITA, where the defendant was at his residence, and then a witness named Maghfira came to his house on a motorcycle. Next, the defendant went out to Magh Fira, and the two of them got into an argument, and Maghfira got off his motorcycle. Second, the defendant hit Maghfira on his left cheek with his right fist 2 times, and continued to kick Maghfira in the abdomen 1 time. After that, Maghfira went to his motorcycle and when he was on the motorcycle, the defendant hit Maghfira again on his right hand once. Furthermore, after that, the defendant's family dissolved him. As a result of the act of persecution by the defendant, Maghfira experienced redness on her left cheek, accompanied by bluish on her left lower abdomen, as well as the ring finger of her right hand which was allegedly caused by a violent attack using a blunt object, as known from the results of the visum test. **Third**, behind the defendant's act of persecuting Maghfira was based on a form of forced defense (*noodweer*), which was forced to be carried out as an effort to defend himself, where the defense was very necessary because according to him there was no other way. **Fourth**, the attack launched by Maghfira on the defendant before the defendant hit Maghfira. In addition, Maghfira has succeeded in proving that the beating of Maghfira was carried out on the basis of maintaining honor and decency for the defendant who at the time of the incident Maghfira pulled the defendant's clothes to tear and exposed sensitive body parts. **Fifth**, in this case, that the incident began on November 4, 2020, when Maghfira came to Khofifa's house and the two were involved in an argument. In the process of this debate, Maghfira reportedly pulled Khofifa's shirt to tear, which caused Khofifa's sensitive body parts to be visible. **Sixth**, Khofifa admitted that his act of hitting and kicking Maghfira was a form of self-defense, motivated by the need to maintain his honor and safety, **especially considering Khofifa's pregnancy condition at that time**. Khofifa, whose status as a pregnant woman who is 4 months pregnant, feels threatened morally and physically. In fact, not only her, but Khofifa feels that her future baby is also threatened. **Seventh**, judging from the chronology of events, the beating carried out by Khofifa can be considered as a direct reaction to Maghfira's actions that threatened his honor and safety. However, Khofifa's actions must also be assessed whether they are proportionate. For example, if Khofifa's beating was excessive, such as hitting more than once or kicking with force that was not proportionate to the threat at hand, then a forced defense may not be acceptable to the judge. In this case, the law requires to check whether the actions taken by the defendant are a legitimate and rational reaction to the situation at hand⁹.

Reasons for Justified Defense Forced in Donggala Court Decision

In criminal law, justification is one of the reasons for the abolition of criminal acts. According to the concept, assumption and theoretical proposition that in the event that there is something that is coercion, then no criminal can be applied. In the event *that* the defense is forced by Khofifah, then the act carried out is an attack that endangers his interests so that he carries out an immediate counterattack. According to the factual conditions, the attack carried out by Khofifah resulted in injuries to Magfirah so that by the legal consideration of the panel of judges of the Donggal District Court, the perpetrator has been proven and convincingly persecuted as stipulated in Article 351 paragraph (1) of the Criminal Code. As a result of this action, the panel of judges considered that what Khofifah did was an unlawful act, because as a result of the counter-attack it resulted in injuries to Magfirah's body (**judge's consideration p.13**). In relation to the forced defense made by Khofifah, the judge considered that the perpetrator of Khofifah did not deserve to be criminally charged (**judge's consideration, p. 13**). From the theoretical aspect of evidence, Magfirah's injuries were categorized

⁹ Refin, F. R., & Azizi, S. D. N. (2023). "The legal basis of the defence is forced (Noodweer) and the defence is forced to go beyond the limit (Noodweer exces)." Journal of Fundamental Justice, pp. 141-156.

as serious injuries¹⁰, because she was unable to do work for 3 days (vide Article 90 of the Criminal Code). The injuries suffered by Magfirah by the judge obtained conviction based on the evidence of the visum et repertum results letter from the hospital. Tora Belo Donggala (Vide Article 184 of the Criminal Procedure Code).

Therefore, the results of the research on the aspect of the forced defense presented as the results of the research can be justified because it has been considered by the panel of judges, the existence of the results of the visum, and witness statements on the persecution carried out by the convict Khofifah against Magfirah. The action that Khofifah took was classified as an act of self-defense for an attack on himself and his interests as stipulated in Article 49 of the Criminal Code. The following shows that as a result of the research, the justification of Khofifah's actions which became the basis of the judge's decision as a forced defense as shown in Table 1 below:

Table 1. Some Forced Defense Acts Committed by Khofifah against Magfirah

No.	Action	Consequences of actions	Qualification of Deeds	Ket.
1	Hitting back at Magfirah	Magfirah falls to the ground, injured	<i>Nodoweer's defense</i>	<i>forced</i> Judge's Consideration p. 13 Appendix
2	Magfirah's attack hit but was repelled by the defendant	Magfirah's hand does not hit the target	<i>Nodoweer's defense</i>	<i>forced</i> Judge's Consideration p. 13 Appendix
3	<i>Hitting 2 times, kicking Magfirah for pulling the collar of the shirt until it was torn so that the Defendant's aura was visible</i>	Magfirah's cheeks are reddish, blue around the belly, bluish on the ring finger	<i>Forced (Nodoweer)</i>	<i>defense</i> Judge's Consideration p. 13 Appendix
4	<i>Hitting to protect the defendant's 4-month pregnancy</i>	Magfirah fell and couldn't get up	<i>Forced (Nodoweer)</i>	<i>defense</i> Judge's Consideration p. 12 Appendix

(Source: primary legal material, processed, 2025)

Based on the exposure of the legal material, the results of the research in Table 1 show that the legal basis of the Donggala district court decision *a quo* stipulates that there was a forced defense made by Khofifah for the attack on himself and his pentigtig and some of the acts carried out are all qualified as acts of self-defense that must be carried out by Khofiah so that the act is categorized as a forced defense (noodweer) even though the act or The attack carried out by Khofifah was classified as a forced defense that was categorized as a justification reason.

The verdict is free from all lawsuits of the perpetrators of persecution in the verdict

The Donggala District Court's Decision Number 32/Pid.B/2021/PN Dgl, which is the subject of analysis and the provisions of Article 49 of the Criminal Code, there are several reasons that can be used for judges not to impose criminal penalties on perpetrators or defendants of persecution who are convicted of committing criminal acts or classified as reasons for the abolition of criminal prosecution. The reason for the abolition of criminal prosecution is a number of articles in the Criminal Code used by the Halim assembly to assess whether or not the perpetrators can be sentenced to criminal charges. This regulation stipulates various circumstances of the perpetrator, who has fulfilled the formulation of the crime as stipulated by the Law that should be punished, but not convicted, the judge in this case, places the authority within him (in adjudicating concrete cases) as a determinant of whether the perpetrator is in a special circumstance, as formulated in the

¹⁰ Serious illness in the criminal law in Indonesia, as regulated in the Criminal Code, refers to wounds that are incurable or that pose a mortal danger, cause loss of the ability to work, or lose one of the five senses.

reason for expunging the crime.¹¹ In the provisions of the criminal law, especially those related to in casu, there are several provisions of legislation in the Criminal Code and HUHAP that are the target of analysis. In the provision in question, there are conditions needed for an act to be a forced defense (*noodweer*) as explained in Table 2 below:

Table 2. The Basis of Criminal Law Exceeding the Limit Becomes a Reference for the Elimination of Criminal Acts in the Donggal District Court Decision

No.	Legal Resources	Article Provisions	Article Substance	Ket.
1	Criminal Code and Criminal Code	Article 49, Article 351 paragraph (1), Article 191 paragraph (2)	<i>Noodweer, Persecution, Lawsuit</i>	<i>Minor Escape</i> Forced Defense (<i>Noodweer</i>)
2.	Indictment of the Public Prosecutor	Article 351 paragraph (1) of the Criminal Code	<i>Proven to have committed minor mistreatment with a single charge</i>	The Perpetrator of Khofifah Persecuted Criminal charges of 2 (two) months 17 (seventeen) days.
2	<i>Yudex Facti (Donggala District Court)</i>	Article 49 of the Criminal Code, Article 351 paragraph (1) of the Criminal Code, Article 191 paragraph (1) of the Criminal Code	<i>It was proven that it was not a forced defense, Light Persecution, not imprisonment because the amount of the crime was reduced by the detention period (verdict)</i>	Not a Forced Defense (<i>noodweer</i>)
3	<i>Yudex Yuris (Supreme Court)</i>	Article 49, Article 351 paragraph (1), Article 191 paragraph (2)	<i>Noodweer, Persecution, Lawsuit (onslag van Alle)</i>	<i>Minor Escape</i> Forced Defense (<i>Noodweer</i>)

(Source: primary legal material, processed, 2025)

Based on the exposure of the legal material from the results of the research in Table 1, it shows that the legal basis of the decision of the Donggal district court *a quo*, using the Criminal Code and the Criminal Code which is the legal basis in general (*lex generalis*) which is also used *yudex facti*, in this case the first level district court (*yudex facti*). The results of the court decision in the trial determined that the perpetrator of the persecution of Khofifah alias FIFA was proven convincingly to have committed a criminal act of persecution or proven to have violated Article 351 paragraph (1) of the Criminal Code with **a prison sentence of 2 (two) months and 17 (seventeen) days minus the defendant being detained**¹². However, in the court process of *a quo* cases, especially in the *judex facti* (Donggala District Court) trial, the panel of judges released the defendant Khofifah alias FIFA from prison because after calculating the detention period with the same number of criminal sentences so that the defendant was not imprisoned or "released from prison" (***not prijspraak***). Furthermore, as part of the results of this study, the following are some criminal law doctrines related to the reasons for the criminal abolition of criminal offenses caused by the conditions faced as in Table 3 below:

¹¹ Risan Izaak, *The Application of Criminal Expungement Reasons and Its Legal Considerations (Case Study of Supreme Court Decision of the Supreme Court of the Republic of Indonesia No. 103.K/Pid/2012, and Supreme Court Decision of the Republic of Indonesia No. 1850.K/Pid/2006)*, Journal: *Lex Crimen*, Volume 5, Number 6, August 2016, p. 132

¹² See Donggal District Court Judgment, *ibid*.

Table 3. Comparison of Legal Doctrines, Basic Ideas for the Abolition of Criminal Acts

No.	Doctrinal	Basic Thinking	Doctrines/Doctrines	Ket.
1	Van Hamel	The act is done under forced circumstances	Remove the unlawful nature of the act	Justification (<i>noodweer</i>)
2	Simons	The act is done because of coercion from others, against the law, which is not reprehensible	Removing the Guilt of the Offender	Excuse Me (<i>Stormweer Exess</i>)
3	Jonkers	Coercion as a justification	Remove the unlawful nature of the act	Reasons for the Restoration (<i>Noodweer</i>)
4	Andi Hamzah	Defense must be balanced with offense	Subsidy/propositional basis	Justification (<i>noodweer</i>)
5	Van Hattum	Coercion as a reason for forgiveness	Offender's fault deleted or eliminated (lost)	Excuse Me (<i>Stormweer Exess</i>)
6	Lagemayer	The reason for the criminal expungement is conditionally determined	In certain situations, a excuse for forgiveness is used if there is no unlawful act, in the condition of the reason there is a justification if there is an unlawful act	Excuses/Excuses (<i>extreme weather</i> and bad weather)
7	Van Bemmelen	Unlawful acts that are not reprehensible	Removing the Guilt of the Offender	Excuse Me (<i>Stormweer Exess</i>)

(Source: primary legal material, processed, 2025)

Based on the search of secondary legal materials, as in Table 3, it is known that in the case of criminal extermination of the perpetrators of criminal acts, especially acts committed due to coercive conditions and acts that result in mental shock in the doctrine of criminal law can be released from all lawsuits (*oslag van alle*) even though the act in question matches the formulation of the criminal law, *in casu*, the release of the lawsuit against the defendant Khofifah or Fifa from prison as demanded by the public prosecutor.

Furthermore, in the process of a *quo case court hearing*, especially in the Donggala court decision, there are several aspects that are the main points of consideration by the panel of judges as a reference in determining the fulfillment of the defendant's actions in adjudicating the criminal act of persecution as shown in Table 4 below:

Table 4. The Consideration of the Panel of Judges Became the Basis for the Fulfillment of the Criminal Act in accordance with the provisions of the Criminal Law in the Donggala Court Decision

No.	Points of Consideration of the Judge	Legal Basis	Judge's Results	Ket.
1	Magfirah Witness Unable to Carry Out Work as a Civil Servant for 3 Working Days	- Article 351 paragraph (1) of the Criminal Code and the Result Letter of Visum Revertum of Tora Belo Hospital No.940/445/800/V/Rsud SGI/XI/2020 - Magfirah Witness	Proven by the Results of Visum et Revertum	Consideration of the Panel of Judges, pp.4, 11, Appendix
2	The act of hitting the Magfirah Witness 2 times and the fist 1 time as persecution	- Article 351 paragraph (1) of the Criminal Code - Magfirah Witness	Meet the Shrimp-Law Requirements	Consideration of the Panel of Judges, p. 12, Appendix

3	As a result of the act of hitting, Magfirah felt pain, injuries to her left cheek, and abdomen, and harmed Magfirah's witness health	- Article 351 paragraph (1) of the Criminal Code - Magfirah Witness	Meet the Shrimp-Law Requirements	Consideration of the Panel of Judges, p. 11, Appendix
4	Acts are done intentionally (<i>dolus/opzettelijk</i>) and knowing the consequences (<i>welken en wetens</i>)	Article 351 paragraph (1) of the Criminal Code	Meet the Shrimp-Law Requirements	Consideration of the Panel of Judges, p. 12, Appendix
5.	Prosecutor's Office based on the Elements of Article 351 paragraph (1) of the Criminal Code	Article 351 paragraph (1) of the Criminal Code	Meet the requirements of the law to commit persecution	Consideration of the Panel of Judges, p. 12, Appendix

(Source: primary legal materials, processed, 2025).

Based on the explanation of the main considerations of the judge in determining the fulfillment of the act of persecution committed by the defendant Khofifah alias Fifa, it can be known that all of the acts of persecution have fulfilled the act of persecution against Magfirah so that the judge is convinced that Khofifah's act is proven to be an act of persecution and has clearly violated Article 351 paragraph (1) of the Criminal Code. However, the panel of judges of the Donggala court also considered several acts of the defendant Khofifah alias Fifa which also met the provisions of Article 49 paragraph (1) of the Criminal Code as acts that cannot be accounted for to him as Table 5 follows:

Table 5. The Reason for the Panel of Judges' Consideration of the Defense Forced to Be a Reference for the Elimination of Criminal Acts of the Perpetrators of Persecution in the Decision of the Donggala Court (Cassation)

No.	The Reasons for the Judge's Consideration	Legal Basis	Judge's Results	Ket.
1	The defendant Khofifah alias Fifa deliberately hit Witness Magfirah because she was 4 months pregnant and her clothes were torn until her body parts (aurat) were visible	- Article 351 paragraph (1) of the Criminal Code and the Visum Result Letter of Tora Belo Hospital No.940/445/800/V/Rsud SIGI/XI/2020 junto Article 49 of the Criminal Code - Witness Wiyanti	-Proven based on the results of Visum et Revertum	Deliberations of the Panel of Judges, pp.3, 12, Appendix
2	The act of being forced to hit the Magfirah Witness 2 times and the fist 1 time because of desperation, threatened with honor (aurat), its content, and to release the witness's grasp	- Article 351 paragraph (1) of the Criminal Code in conjunction with Article 49 of the Criminal Code - Witness Wiyanti - Magfirah Witness	Meet the Shrimp-Law Requirements	Considerations of the Panel of Judges, pp.2, 3,4, 12, Appendix
3	As a result of the act of hitting, Magfirah felt pain,	- Article 351 paragraph (1) of the Criminal Code in	Meet the Shrimp-Law Requirements	Considerations of the Panel of

	injuries to her left cheek, and abdomen, and harmed Magfirah's witness health	conjunction with Article 49 of the Criminal Code - Magfirah Witness	Judges, pp. 4,11, Appendix
4	Witness Magfirah attacked first but could not hit her because there was a repellent from her	- Article 351 paragraph (1) of the Criminal Code in conjunction with Article 49 of the Criminal Code - Witness Wiyanti	- Meet the Deliberations of the Panel of Judges, pp.5, 12, Appendix - Testimony of Wiyanti
5	apply " <i>Noodweer</i> " as the basis for criminal expungement and according to the Expert Opinion	Article 49 of the Criminal Code, Article 184 number (1) letter b of the Criminal Code	- Criminal Removal for Justifiable Reasons - Expert Description Consideration of the Panel of Judges, p. 13, Appendix

(Source: primary legal materials, processed, 2025).

The exposure of the legal material from the research results in Table 5 shows that there are a number of reasons why the defendant committed the act alleged by the public prosecutor as a criminal act of persecution. From the main points of the judge's considerations, there are reasons why the defendant Khofifah alias Fifa committed an act that was categorized as persecution by the Public Prosecutor which when viewed as a whole is an act of self-defense or *noodweer* as stipulated in Article 49 paragraph (1) of the Criminal Code.

DISCUSSION

The Reason for Justifying the Defense as a Justification in the Donggala Court Decision

The justification is the defense of the right to injustice, so that a person who commits an act and fulfills the elements of a criminal act by law is eliminated from his unlawful nature because of forced defense. In chapter 3 articles 44 to 52 of the Criminal Code, it regulates the grounds that eliminate a crime, namely something that causes the provisions applicable in the criminal law to not be enforced against a person who is accused of committing a criminal offense. One of the acts included in the justification is forced defense (*noodweer*) as contained in Article 49 paragraph (1) of the Criminal Code "Not convicted, whoever commits an act of forced defense for himself or others, the honor of morality or property of himself or others, because there is an attack or threat of attack that is very close at that time that is against the law at that time". In the case analyzed, the defendant Khofifah's actions were classified as a forced defense (Table 4, van Hamel, Jonkers, van Bemmelen).

Acts of persecution can also occur as a result of feeling resentful, feeling betrayed, or feeling harmed, humiliated by other parties, intimidated, threatened, or other motives that can be carried out simultaneously or separately, as can cause the victim to be moved to carry out acts that can cause injury to himself. Every action that is marked as having created fulfillment of the elements of persecution can be categorized as a criminal act, as stipulated in the Criminal Code, which is related to the problem to be discussed, in the Criminal Code it already contains a marked reason that can cause a deletion of the perpetrator's fault, so that a criminal process does not occur. The Criminal Code itself also contains a reason for forgiveness, as stated in Article 44 that the party is not able to be responsible, which is supported by article 49 paragraph 1, related to the forced defense (*Noodweer*). In its own application, there is a limit to how his actions are declared as a form of forced defense.¹³

¹³ Kusuma, N. P. K. N., Dewi, A. A. S. L., & Widyantera, I. M. M. (2023). "Forced defense (*noodweer*) as a repeal of the crime of persecution that causes death (Study of Criminal Case Decision Number 115/PID. B/2021/PN Stb)." *Journal of Legal Analogy*, 5(1), pp. 21-27.

This is in accordance with the theory of criminal responsibility from **Roeslan Saleh** stating that:¹⁴ "In talking about criminal responsibility, it is inseparable from one or two aspects that must be seen with philosophical views. One of them is justice, so talking about criminal liability will provide a clearer contour. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy".

Furthermore, the case in the Donggala District Court Decision Number 32/Pid.B/2021/PN Dgl issued on February 23, 2021, on behalf of the defendant Khofifa alias Fifa, who is 21 years old, has committed persecution, violated as stated in the provisions of the Criminal Code Article 351 paragraph 1, where the defendant is subject to a criminal sentence of 2 months and 17 days, minus the time the defendant was detained (**Public Prosecutor's Demands**). The chronology began with the incident on Wednesday, specifically on November 4, 2020, at 11.00 WITA, where the defendant was at his residence, and then a witness named Maghfira came to his house on a motorcycle. Next, the defendant went out to Maghfira, and they both got into an argument, and Maghfira got off his motorcycle.

Then, the defendant hit Maghfira on his left cheek using his right fist 2 times, and then kicked Maghfira in the abdomen 1 time. After that, Maghfira went to his motorcycle and when he was on the motorcycle, the defendant hit Maghfira again on his right hand once. Furthermore, after that, the defendant's family dissolved him. As a result of the act of persecution by the defendant, Maghfira experienced redness on her left cheek, accompanied by bluish on her left lower abdomen, as well as the ring finger of her right hand which was allegedly caused by a violent attack using a blunt object, as known from the results of the visum test.

In the Indonesian criminal law system, the Criminal Code provides space for defendants to present grounds for self-defense in the form of a forced defense (*noodweer*), which is regulated in Article 49 (Irfan, 2022). This compelling defense provides an opportunity for a person to be absolved of criminal responsibility if his or her actions are deemed to be a legitimate reaction to an unlawful attack or threat. However, even if the reasons for the defense are clearly regulated in the law, their application in each case needs to be adjusted to the basic principles of criminal law, especially in terms of suitability to the circumstances faced by the defendant, the proportionality of the action, and the limited time in dealing with the threat.¹⁵

The verdict is released from all lawsuits of perpetrators of persecution because the defense is forced to

In the case of Khofifa and Maghfira, which have been described earlier, the court gave consideration to the grounds of the compelled defence filed by Khofifa after he committed the act of persecution against Maghfira. Khofifa claimed that her act of hitting and kicking Maghfira was an attempt to defend herself and her self-honor and protect her safety, even more so since she was four months pregnant at the time of the incident (Table 1). Therefore, the main question that needs to be answered is how far the judge's consideration in deciding this case is in line with the provisions of Article 49 of the Criminal Code, which regulates forced defense as a reason for criminal expungement. In this case, Article 49 of the Criminal Code stipulates that a forced defense can be accepted as a reason that justifies an act that is essentially a criminal act, if it is done to defend oneself or others from unauthorized threats or attacks. Forced defense can only be justified if certain elements are met, namely: there is an urgent and unlawful attack, the action taken must be proportionate to the threat faced (proportionality), and there is no other way that can be taken other than the violent act (**Sumaryanto**). The attacks referred to in Article 49 are also marked as having to be direct and unlawful, which means that the attacks are not based on a legitimate right to violence, as happened in the cases of Khofifa and Maghfira.

In deciding Khofifa's case, the judge evaluated several key matters related to Article 49, namely:

Illegal Attack or Threat In this case, Maghfira is considered to be the party who first attacked Khofifa, by pulling his clothes to tear and exposing sensitive body parts. This was an unlawful attack, as Maghfira carried out physical acts against Khofifa without any legitimate legal basis for doing so. In addition, Maghfira's actions can be seen as an insult to Khofifa's self-honor, which is a strong reason for Khofifa to defend herself.

¹⁴ Roeslan Saleh. "Thoughts on Criminal Accountability". Ghalia Indonesia. Jakarta. 2002. p. 10

¹⁵ Sofyan, A. M., S. H., M., & Nur Azisa, S. H. Indonesian Criminal Law. (Jakarta: Prenada Media, 2023).

Threats to Honor and Personal Safety In addition to the physical threats faced by Khofifa, there are also threats to her honor as a woman, which is further exacerbated by her pregnancy condition. In this case, the attack on Khofifa's honor and physical safety can be seen as a legitimate reason to self-defense. Khofifa's pregnancy is a factor that aggravates the situation, because as a pregnant woman, she is more vulnerable to physical and emotional threats.

Proportionality of Action One of the main elements in forced defense efforts is proportionality. Actions taken to defend themselves must be in accordance with the level of threat faced. In Khofifa's case, although he felt physically and morally threatened, the question that arose was whether the beating and kicking he carried out against Maghfira was an act proportionate to the attack he faced. Whether a double spanking and a one-time kick are sufficient responses to self-defense, or whether the action exceeds the required limit (**Table 4** and **Table 5**). In assessing this proportionality, the judge needs to consider the context of the incident, including the direct reaction that may arise as a result of the attack carried out by Maghfira. Khofifa's actions carried out in a state of emotion and psychological distress due to physical attacks and humiliation, as well as in pregnancy situations, can be considered a legitimate form of reaction even if it is excessive. On the other hand, if the judge considers that Khofifa's actions were too harsh or excessive considering the existing threat, then the forced defense could be considered invalid.

There Is No Other Way Available Defense is forced to be accepted if there is no other way but to act of violence in self-defense. In this case, the judge must assess whether Khofifa has other options to protect himself without having to resort to violence. If the judge is of the opinion that Khofifa could have withdrawn or avoided conflict without resorting to violence, then the reason for the forced defense is unacceptable. However, given the tension in the situation, Khofifa's decision to commit acts of violence can be understood as a form of effort to protect himself from increasingly intense threats (**Table 4** and **Table 5**).

The argument against the acceptance of the forced defense (*noodweer*) against Khofifah by the panel of judges of the Donggala Court shows definitively that Khofifah's actions were legal according to the law, only that the acts that accompanied Khofifah when retaliating against Magfirah's attack were so as to cause injuries at that time in the "shadows" of the peak emotional state. If this is proven, then the reason for the criminal expungement of Khofifah is not a justification (*noodweer*) but a forgiving reason (*noodweer exess*). This qualification is justified by the description of the situation that occurred during the event which began with a "verbal fight" between Khofifah and Magfirah (***Chronological and tables 1-5***) and ended with a counter-attack and beating from Khofifah. In addition, the justification can also be confirmed in the criminal law doctrine that the reason for criminal elimination can occur between the doctrine of excuse for forgiveness (*noodweer exess*) and the doctrine of justificatory reason "*noodweer*" (**Table 3** number 6) or the application of the doctrine conditionally. Therefore, the application of justificatory reasons as the Donggala court decision still requires complete proof, especially an analysis of Khofifah's psychological condition as a perpetrator of the crime of persecution that is proven convincingly by the panel of judges of the Donggala court.

CONCLUSION

Forced defense can be accepted as a justification if it can be proven conditionally that the defense is compelled to be, even if the act of persecution is carried out in self-defense, the act must still be based on the factual conditions when the legal event occurred. The defense is forced to eliminate the unlawful nature of the act if the defendant can prove that his actions were a legitimate reaction and there is no other option but to take retaliatory actions.

The judge evaluated several key matters related to Article 49, namely the existence of an attack or an unauthorized form of threat, a threat to honor and personal safety, the proportionality of the action, and referring to the situation when there is no other way available.

BIBLIOGRAPHY

Books

- Abdul Kadir Muhammad, 2004, Law and Legal Research, PT. Citra Aditya Bakti, Bandung.
- Admaja Priyatno, 2004, Legislation Policy on the Criminal Liability System of Corporations in Indonesia, CV. Utomo, Bandung.
- Ahmad Rifa'i, 2010, Legal Discovery by Judges in the Perspective of Progressive Law, Sinar Grafika, Jakarta.
- Alfitra, 2018, The Abolition of the Right to Prosecute and Carry Out Crimes, Achieve Asa Sukses (Penebar Swadaya Group), Jakarta.
- Amrani, H., & Ali, M. 2015, Criminal Accountability System. First print. Rajawali Press, Jakarta.
- Andi Hamzah, 2009, Certain Delicacies in the Criminal Code, Sinar Grafika, Jakarta.
- , 2014, Principles of Criminal Law, Rineka Cipta, Jakarta.
- Bagir Manan, 2012, Cross-Disciplinary Legal Research Methods, Judicial Varia Year XXVII Number 315, IKAHI, Jakarta.
- Cholid Narbuko and Abu Achmadi, 2021, Research Methodology, PT. Bumi Aksara, Jakarta.
- Fuad Usfa and Tongat, 2014, Introduction to Criminal Law, Publisher of the University of Muhammadiyah Malang, Malang.
- Gorys Keraf, 2004, Composition–An Introduction to Language Proficiency, Nusa Indah Publishers, Flores.
- Hamdan, 2012, The Reason for Criminal Expungement: Theory and Case Study, Refika Aditama, Bandung.
- Huda, C., 2011, From criminal acts without fault to no criminal responsibility without fault. 2nd printing, Kencana, Jakarta.
- Irfan, N., 2022, Islamic Criminal Law, Amzah Publishers, Jakarta.
- Irmawaty et al., 2022, Guidebook for Thesis Writing for the Postgraduate Master of Law Study Program, University of Muhammadiyah Palu, Palu, Central Sulawesi.
- Ismu Gunadi and Jonaedi Efendi, 2014, Fast & Easy to Understand Criminal Law, Kencana Prenada media Group, Jakarta, p. 39-40.
- Kanter and Sianturi, 2012, Principles of Criminal Law in Indonesia and Its Application, Stora Grafika, Jakarta.
- Leden Marpaung, 2017, Principles, Theory, Practice, Criminal Law, Sinar Grafika, Jakarta.
- Moeljatna, 2021, Principles of Criminal Law, Rineka Cipta, Jakarta.
- Muladi, Crime and Criminality, in Muladi and Barda Nawawi Arief, 2013, Criminal Theories and Policies, Alumni, Bandung.
- R. Abdoel Djamali, 2010, Introduction to Indonesian Law Revised Edition, Rajawali Press, Jakarta, p.175
- Roeslan Saleh, 2002, Thoughts on Criminal Accountability, Ghalia Indonesia. Jakarta.
- Oemar Seno Adji, 1991, Professional Ethics and the Law of Criminal Liability of Doctors, Erlangga Publisher, Jakarta.
- Peter Mahmud Marzuki, 2017, Legal Research, Kencana Predana Media Group, Jakarta.
- Philipus M. Hadjon, Titiek Sri Djatmiati, 2017, Legal Argumentation, Gadjah Mada University Pres, Yogyakarta.
- P.A.F Lamintang, 2017, Indonesian Prison Law, Sinar Grafika, Jakarta.
- , 2012, Crimes Against Life, Body, and Health, Sinar Grafika, Jakarta.
- Roeslan Saleh, 2002, Thoughts on Criminal Accountability, Ghalia Indonesia. Jakarta.
- R. Soesilo, 2017, Criminal Code (KUHP) and its Comments Complete Article by Article.
- R. Sugandhi, 2013, Criminal Code and its Explanation, National Business, Surabaya.
- Satochit Kartanegara, 2001, Criminal Law, Yayasan Obor Indonesia, Jakarta.
- Soerjono Soekanto, 2012, Introduction to Legal Research, University of Indonesia Press, Jakarta.
- Sofyan, A. M., SH, M., & Nur Azisa, S. H., 2023, Indonesian Criminal Law, Prenada Media, Jakarta.
- Sudaryono, Natangsa Surbakti, 2017, Criminal Law Fundamentals of Criminal Law Based on the Criminal Code and the Criminal Code Bill, Publisher Muhammadiyah University Press, Surakarta.
- Teguh Prasetyo, 2016, Criminal Law, Rajawali Press, Jakarta, p. 61.
- Wirjono Projodikoro, 2016, Principles of Criminal Law in Indonesia, Refika Utama, Bandung.
- Wiyanto, R., 2012, Principles of Indonesian Criminal Law, Mandar Maju, Jakarta.
- Yulies Tiene Masriani, 2014, Introduction to Indonesian Law, Sin

Journals

- Bastianto Nugroho, The Role of Evidence in Criminal Cases in Judges' Decisions According to the Criminal Procedure Code, *Juridika*, Vol.32 No.1, 2017.
- Bimo Adhi Nugroho, Submission of the Public Prosecutor's Cassation on the Grounds of Imprecision of the Judge's Assessment of Legal Facts in the Trial of the Case of Embezzlement in Office (Study of Supreme Court Decision No: 413 K/Pid./2013), *Verstek Journal*, Vol.5 No. 3, 2017.
- Edi Rosadi, Judge's Decision with Justice, *Badamai Law Journal*, Vol.1 No.1, 2016.
- Endang Pratiwi et al., "Jeremy Bentham's Theory of Utilitarianism: Legal Purposes or Methods of Testing Legal Products", *Constitutional Journal*, Vol.19 No. 2 (June, 2022), 275
- Kermite, D. P., 2021, "A Study of Forced Defense (Noodweer) in Moral Crimes Based on Article 49 paragraph (1) of the Criminal Code." *Lex Privatum*, 9(4), pp. 139-146.
- Hasmiah Hamid, Legal Protection of Victims of Persecution in Criminal Acts in Indonesia, *Jurnal Ecosystem*, Vol.16 No.2, 2016.
- Josef M Monteiro, Judges' Decisions in Law Enforcement in Indonesia, *Journal of Pro Justitia Law*, Vol. 25 No.2, 2007.
- Kusuma, N. P. K. N., Dewi, A. A. S. L., & Widyantara, I. M. M. (2023). "Forced defense (noodweer) as a repeal of the crime of persecution that causes death (Study of Criminal Case Decision Number 115/PID. B/2021/PN Stb)." *Journal of Legal Analogy*, 5(1), pp. 21-27.
- Refin, F. R., & Azizi, S. D. N. (2023). "The legal basis of the defence is forced (Noodweer) and the defence is forced to go beyond the limit (Noodweer exces)." *Journal of Fundamental Justice*, pp. 141-156.
- Rendy Marselino, Forced Defense that Exceeds the Limit (Noodweer Exces) in Article 49 Paragraph (2), *Jurisdiction*, Vol.1 No.3, 2020.
- Risan Izaak, The Application of Criminal Expungement Reasons and Its Legal Considerations (Case Study of Supreme Court Decision of the Supreme Court of the Republic of Indonesia No. 103.K/Pid/2012, and Supreme Court Decision of the Republic of Indonesia No. 1850.K/Pid/2006), *Journal: Lex Crimen*, Volume 5, Number 6, August 2016, p. 132
- Rudy Regah, the Abolition of the Right to Carry Out Punishment Because the Defendant Died According to Article 83 of the Criminal Code, *Journal: Lex Privatum Volume VI*, Number 4, June 2018, p. 149.
- Samudra, I., & Wahyudi, F. (2023). "Criminal law's view of forced defense that goes beyond the bounds (noodweer exces)." *Wasatiyah: Journal of Law*, 4(2), pp. 1-18.
- Sanjaya, I. G. W. M., Sugiarta, I. N. G., & Widyantara, I. M. M. (2022). "The defense was forced to go beyond the limit (noodweer exces) in the crime of begal murder as an effort to protect themselves." *Journal of Legal Construction*, 3(2), pp. 406- 413
- Suci Rahmalia, Ariusni, Mike Triani, "The Influence of Education, Unemployment, and Poverty on Crime in Indonesia", *Journal of Economic and Development Studies*, Vol.1 No.1, 2019.
- Suryantoro, D. D. (2019). "Juridical review of Noodweer as a legitimate defense effort." *Jurisprudence: Journal of the Faculty of Law, University of Islam Malang*, 2(2), pp. 154-163.