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DOI: 10.46924/jihk.v8i2.579

The Continuity of a Threat as a Determining Factor in the Legitimacy of Self-Defense in Criminal Cases

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How to cite

Khairunnisa, Diva., & Rasji, Rasji. 2027. The Continuity of a Threat as a Determining Factor in the Legitimacy of Self-Defense in Criminal Cases. *Jurnal Ilmu Hukum Kyadiren* 8(2), 435-449. https://doi.org/10.46924/jihk.v8i2.579

Original Article

Abstract

The application of self-defense (noodweer) in criminal cases continues to raise challenges in distinguishing legitimate defensive actions from the excessive use of force. This study examines judicial reasoning concerning the existence of an immediate unlawful attack or the imminent threat thereof, as well as the limitations of self-defense under the principles of subsidiarity and proportionality, with particular emphasis on the continuity of the threat. Employing a normative legal research methodology, this study adopts statutory, conceptual, case-based, and comparative approaches. The relevant legal materials are analyzed qualitatively using prescriptive legal reasoning. The findings demonstrate that mere suspicion and actions that have already ceased do not satisfy the legal requirement of an immediate attack. A comparison of the Kasmito and Hazli cases further reveals that the lawfulness of an initial act of self-defense does not automatically legitimize subsequent defensive actions. Each action must be independently assessed in light of its necessity, proportionality, and the changing circumstances of the threat. This study concludes that the legitimacy of self-defense is temporally contingent. Accordingly, judicial assessments must consider the chronological development of events and determine whether the threat remained present when each defensive action was taken.

Keywords: *Self-defense, Continuity of Threat, Imminent Attack, Subsidiarity, Proportionality*

Abstrak

Penerapan pembelaan terpaksa (noodweer) dalam perkara pidana masih menghadapi persoalan dalam menentukan batas antara tindakan pembelaan yang sah dan penggunaan kekuatan yang melampaui kebutuhan. Penelitian ini bertujuan menganalisis pertimbangan hakim mengenai keberadaan serangan atau ancaman serangan seketika serta batas pembelaan berdasarkan prinsip subsidiaritas dan proporsionalitas dengan memperhatikan keberlanjutan ancaman. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan perbandingan. Bahan hukum dianalisis secara kualitatif melalui penalaran preskriptif. Hasil penelitian menunjukkan bahwa kecurigaan dan tindakan yang telah berakhir tidak memenuhi prasyarat serangan seketika. Perbandingan perkara Kasmito dan Hazli juga menunjukkan bahwa legitimasi pembelaan awal tidak otomatis membenarkan tindakan lanjutan. Setiap tindakan harus dinilai berdasarkan kebutuhan, keseimbangan respons, dan perkembangan ancaman. Penelitian menyimpulkan bahwa legitimasi pembelaan bersifat kondisional secara temporal sehingga evaluasi yudisial harus mempertimbangkan perkembangan peristiwa secara menyeluruh.

Kata kunci: *Pembelaan Terpaksa, Keberlanjutan Ancaman, Proporsionalitas*

1. INTRODUCTION

Self-defense (noodweer) is a legal mechanism in criminal law that protects legally recognized interests by allowing individuals to defend themselves or others against an imminent unlawful attack. The recognition of this right is based on the understanding that, under certain circumstances, state authorities and law enforcement agencies may not be able to provide immediate protection. However, the legitimacy of self-defense cannot be determined solely by an individual's subjective perception of a threat. Rather, the defensive act must satisfy objective legal requirements, particularly the existence of an imminent attack, the necessity of defensive action, and proportionality between the intensity of the attack and the force employed to repel it.[1] These requirements are essential to distinguishing legally justified protective actions from acts of retaliation or unilateral punishment.

Under Indonesian criminal law, self-defense is regulated by Article 49(1) of the former Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP) as a ground for justification, whereas excessive self-defense (noodweer exces) is governed by Article 49(2) as a ground for excuse. The distinction between these two doctrines lies in their legal consequences and the circumstances underlying the perpetrator's actions. In cases of *noodweer*, the defensive act is rendered unlawful neither in nature nor in legal effect because it is necessary to repel an attack that satisfies the applicable legal requirements. By contrast, in cases of *noodweer exces*, the excessive defensive act remains objectively unlawful, but the perpetrator may be excused from criminal liability if the excess results directly from an intense psychological disturbance caused by the attack. This conceptual distinction is retained in Law No. 1 of 2023 concerning the Indonesian Criminal Code through Articles 34 and 43, which entered into force on January 2, 2026. These provisions are relevant as a framework for normative comparison but cannot be applied retroactively as the legal basis for cases arising before the law took effect.

The principal challenges in applying the doctrine of self-defense concern the relationship between the existence of an attack, the necessity of defensive action, and the proportionality of the response.[2] The principle of subsidiarity requires that defensive action be necessary to confront the threat, while the principle of proportionality requires a reasonable relationship between the degree of danger and the

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1 Enni Merita, "Proporsionalitas Pembelaan Terpaksa Terhadap Serangan Mematikan Dalam Kejahatan Jalanan: Telaah Normatif Hukum Pidana Indonesia Dan Fiqh Jinayah," *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda* 32, no. 3 (2026): 201–16, https://doi.org/10.46839/disiplin.v32i3.2077.

2 Ridho Handianto, "Pembelaan Terpaksa (Noodweer) Dalam Perspektif Hukum Pidana Indonesia: Analisis Atas Kasus Hogi Minaya," *Journal of Contemporary Law Studies* 3, no. 4 (2026): 485–500, https://doi.org/10.47134/lawstudies.v3i4.6314.

intensity of the defensive response.[3] Neither principle can be separated from the temporal dimension of an attack. An action that is initially necessary to repel an attack may no longer be legally justified once the threat has ceased. Accordingly, the continuity of the threat becomes a crucial factor in determining whether defensive action retains its legal legitimacy or has instead evolved into an act of aggression.

These complexities are illustrated by the Demak District Court Decision No. 183/Pid.B/2021/PN Dmk and the Bireuen District Court Decision No. 33/Pid.B/2024/PN Bir, the latter of which was subsequently overturned by Supreme Court Decision No. 1118 K/Pid/2024. In the Kasmito case, the defendant attacked Marjani with a machete without having been subjected to an initial attack by the victim. The assault continued even after the victim pleaded for mercy. By contrast, the Hazli bin Sulaiman case involved an initial attack with a machete against the defendant, followed by defensive actions that continued after control of the weapon had changed. These contrasting sequences of events demonstrate that the applicability of self-defense cannot be assessed solely by establishing the existence of a threat at the beginning of an incident. Rather, the assessment must also account for changes in the circumstances as the events unfold. This distinction calls for a legal analysis that clarifies the relationship between an imminent attack, the necessity of defensive action, proportionality, and the continuity of the threat as criteria for determining the limits of criminal liability.

Scholarly discussions of self-defense under Indonesian criminal law have developed through conceptual analyses, normative examinations, and studies of judicial decisions. Kusuma et al., in their analysis of Decision No. 115/Pid.B/2021/PN Stb, explain that self-defense may preclude the unlawfulness of an act when the requirements stipulated in Article 49(1) of the former Indonesian Criminal Code are satisfied. Their findings demonstrate that an assault resulting in death does not necessarily lead to criminal punishment when the act is established as a legally justified form of self-defense.[4] Although their study examines the statutory framework and criminal liability associated with self-defense, it does not specifically develop temporal criteria for determining when the legal justification for defensive action begins and when it ceases to apply.

Refin and Nur Azizi explain the distinction between *noodweer* and *noodweer exces* by identifying subsidiarity, proportionality, and the causal relationship between an attack and the resulting psychological disturbance as essential elements.[5] Similarly, Susanti and

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[3] Dihan Ahmad Baslayn, "Parameter Pembelaan Terpaksa (Noodweer) Dalam Kasus Pencurian Yang Menyebabkan Kematian: Analisis Kasus Muhyani Di Kota Serang," *Journal of Citizenship* 5, no. 3 (2026): 905–16, https://doi.org/10.37950/joc.v5i3.839.

[4] Ni Putu Kristin Ningtyas Kusuma et al., "Pembelaan Terpaksa (Noodweer) Sebagai Penghapus Tindak Pidana Penganiayaan Yang Menyebabkan Kematian: Studi Putusan Perkara Pidana Nomor 115/Pid.B/2021/PN Stb," *Jurnal Analogi Hukum* 5, no. 1 (2023): 21–27, https://doi.org/10.22225/ah.5.1.2023.21-27.

[5] Fergio Rizkya Refin and Salman Daffa' Nur Azizi, "Dasar Hukum Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Melampaui Batas (Noodweer Exces)," *Jurnal Fundamental Justice* 4, no. 2 (2023): 141–56, https://doi.org/10.30812/fundamental.v4i2.3277.

Maduri, through their analysis of Decision No. 72/Pid.B/2020/PN Enr, emphasize that excessive self-defense may constitute a ground for excuse when the conduct occurs spontaneously under the influence of an intense psychological disturbance. Both studies provide a conceptual foundation for understanding the limits of defensive action and the psychological conditions of the perpetrator.[6] Neither systematically incorporates changes in the intensity of a threat throughout an incident as a criterion for assessing the legitimacy of self-defense.

Arthur R.W. and Rahaditya examine the application of noodweer exces as a ground for excluding criminal liability in Decision No. 01/PID.SUS-ANAK/2020/PN.KPN. Their study highlights the importance of sound judicial reasoning in determining whether the requirements for a ground of excuse have been satisfied.[7] Furthermore, Prochorus and Tjoneng identify inconsistencies in judicial outcomes across several self-defense cases, including those involving Rofinus Asa, Ramli Dg Rani, and Eko and Efendi. Their research highlights public misconceptions regarding the doctrine of self-defense and the importance of establishing its legal elements through judicial proceedings.[8] The problem of inconsistent judicial decisions has not been specifically linked to changes in objective circumstances that determine whether the legal justification for defensive action remains valid.

Labibah and Mahardhika examine Decision No. 33/Pid.B/2024/PN Bir concerning the application of *noodweer exces* in the case of Hazli bin Sulaiman. Their study argues that the defendant's actions exceeded reasonable defensive limits after the victim no longer posed a threat. It also emphasizes the importance of establishing the existence of an intense psychological disturbance through psychological considerations.[9] This study is directly relevant to the present research; however, its analytical scope is limited to a single judicial decision and does not compare the case with circumstances in which the element of an unlawful attack was absent from the outset. Other research has examined the perpetrator's psychological state as a basis for determining criminal liability in cases involving *noodweer exces*, thereby reinforcing the subjective dimension that distinguishes a ground for excuse from a ground for justification.

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6 Heni Susanti and Mutia Maduri, "Tindak Pidana Penganiayaan Dengan Alasan Pembelaan Diri Melampaui Batas," *Jurnal Yudisial* 16, no. 2 (2023): 143–60, https://doi.org/10.29123/jy.v16i2.550.

7 Stanislaus Arthur R.W. and Rahaditya Rahaditya, "Analisa Unsur-Unsur Pembelaan Terpaksa Dalam Suatu Tindak Pidana Dengan Studi Kasus Putusan Pengadilan Negeri Kepanjen Nomor. 01/Pid.Sus-Anak/2020/Pn.Kpn," *Jurnal Hukum Adigama* 4, no. 1 (2021): 975–1001, https://doi.org/10.24912/adigama.v4i1.12002.

8 Louisa Audyna Prochorus and Arman Tjoneng, "Penerapan Pasal 49 KUHP Terkait Dengan Pembelaan Terpaksa Dalam Kasus Kejahatan Di Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025): 3287–99, https://doi.org/10.38035/jihhp.v5i4.4450.

9 Balqis Salma Labibah and Vita Mahardhika, "Analisis Yuridis Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2) KUHP Dalam Perkara Tindak Pidana Penganiayaan: Putusan Nomor 33/PID.B/2024/PN Bir," *Indonesian Journal of Contemporary Law* 1, no. 2 (2024): 1–11.

Recent developments in the literature are reflected in Rahmah and Huzaeni, who examine the criteria for proportionate self-defense by emphasizing necessity, reasonableness, equivalence of defensive measures, and a comparative analysis of the legal frameworks in Malaysia and Singapore.[10] Pratama et al. likewise identify the lack of clear normative criteria distinguishing *noodweer* from *noodweer exces* as one of the factors contributing to sentencing disparities. Together, these studies demonstrate the need to standardize judicial assessment criteria to strengthen legal certainty and promote consistency in judicial decisions.[11]

Although previous studies have examined *noodweer*, *noodweer exces*, proportionality, and judicial disparities, a systematic comparative analysis connecting the initial legitimacy of self-defense with the continuity of the threat throughout an incident remains lacking. This study addresses that gap by comparatively examining Decision No. 183/Pid.B/2021/PN Dmk and Decision No. 33/Pid.B/2024/PN Bir in conjunction with Supreme Court Decision No. 1118 K/Pid/2024. It employs four analytical parameters: the existence of an imminent attack, subsidiarity, proportionality, and changes in the circumstances surrounding the threat. By integrating these parameters, the study develops a temporal framework for assessing whether the legal justification for self-defense persists as an incident unfolds or ceases when the threat is no longer present.

This study aims to analyze the legal boundaries of self-defense under Indonesian criminal law through two primary areas of inquiry. First, it examines judicial reasoning in determining the existence of an attack or an imminent threat of attack as a prerequisite for the application of *noodweer*, particularly by distinguishing an actual and imminent threat from mere suspicion, an attack that has already ceased, or circumstances that do not constitute an unlawful attack. Second, it analyzes the limits of defensive action under the principles of subsidiarity and proportionality, taking into account the continuity of the threat and changes in the circumstances as the incident unfolds.

2. RESEARCH METHODOLOGY

This study employs a normative legal research methodology with a prescriptive-analytical orientation to examine the legal norms, principles, doctrines, and judicial decisions governing the limits of justified self-defense (noodweer) under Indonesian criminal law. Four complementary approaches are adopted. First, the statutory approach examines Article 49(1) and (2) of the former Indonesian Criminal Code (Kitab

[10] Laila Wafiyatur Rahmah and Muchamad Huzaeni, "Kriteria Pembelaan Seimbang Dalam Pembelaan Terpaksa Pada Sistem Hukum Pidana Indonesia," *Journal of Law and Islamic Law* 4, no. 1 (2026): 73–94.

[11] Edwan Devka Pratama et al., "Disparitas Pemidanaan Dalam Kasus Pembelaan Terpaksa (Noodweer) Dan Noodweer Excess: Analisis Hukum Pidana Dan Kriminologis Dalam Sistem Peradilan Pidana Indonesia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 3927–37, https://doi.org/10.61104/alz.v4i1.3698.

Undang-Undang Hukum Pidana or KUHP), together with Articles 34 and 43 of Law No. 1 of 2023 concerning the Indonesian Criminal Code. Second, the conceptual approach examines the principles of subsidiarity and proportionality, as well as the doctrines of *noodweer* and *noodweer exces* (excessive self-defense). Third, the case approach analyzes District Court Decision No. 183/Pid.B/2021/PN Dmk, District Court Decision No. 33/Pid.B/2024/PN Bir, and Supreme Court Decision No. 1118 K/Pid/2024. Fourth, the comparative approach examines the development of the legal framework governing self-defense under the former and the new Indonesian Criminal Codes.

Primary, secondary, and tertiary legal materials were collected through library research. The materials were analyzed qualitatively using deductive reasoning, systematic interpretation, and teleological interpretation. The analysis focuses on four principal parameters: the existence of an imminent unlawful attack, the necessity of defensive action, the proportionality of the response, and the continuity of the threat. These parameters provide the basis for determining the legal boundaries between *noodweer* and *noodweer exces*, assessing their respective implications for criminal liability, and evaluating the consistency of judicial reasoning in the application of self-defense under Indonesian criminal law.

3. RESEARCH RESULT AND DISCUSSION

3.1. Judicial Considerations Regarding the Existence of an Attack or an Imminent Threat of Attack as a Prerequisite for Invoking Noodweer (Self-Defense)

The existence of an attack or an imminent threat of attack constitutes a fundamental prerequisite for invoking *noodweer* as a ground for justifying conduct that would otherwise constitute a criminal offense. The assessment of this requirement must be based on the objective circumstances prevailing at the time the defensive action was taken, rather than solely on the defendant's subjective perception of being threatened. At least three interrelated elements must be examined: the actuality of the attack, its unlawful nature, and the imminence of the threat. Actuality refers to the existence of an ongoing attack or a concrete threat against a legally protected interest.[12] The unlawful nature of the attack indicates that the conduct lacks legal justification.[13] Imminence requires that the threat be occurring or be sufficiently immediate to demand an urgent

[12] Siti Nur Ulyatin Zumaroh and Emmilia Rusdiana, "Analisis Yuridis Pasal 49 KUHP Terkait Pembelaan Terpaksa Dalam Studi Putusan Nomor 115/Pid.B/2021/PN Stb," *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 10, no. 2 (2025): 106–24, https://doi.org/10.32505/legalite.v10i2.13401.

[13] Fakhruddin Arrozi, "Perbuatan Melawan Hukum Materiil Menurut Hakim Pengadilan Negeri Kepanjen," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 1 (2014): 71–91, https://doi.org/10.15642/ad.2014.4.01.71-91.

defensive response.[14] These three elements must be assessed collectively because the mere existence of unlawful conduct does not, by itself, justify the use of physical force.

These requirements are illustrated by the Kasmito case, adjudicated in Demak District Court Decision No. 183/Pid.B/2021/PN Dmk. According to the facts established during the trial, Kasmito was aware of Marjani's activities near a fish pond and observed him from a concealed position. Kasmito subsequently attacked Marjani from behind with a sickle without issuing any prior warning. He delivered another blow even after Marjani had turned around and pleaded for mercy. These circumstances indicate that Kasmito initiated the physical violence and that no prior act of aggression or resistance by Marjani against him had been established. The panel of judges rejected the claim of *noodweer* because the essential prerequisite—an unlawful attack or an imminent threat of attack against a legally protected interest—had not been satisfied. Kasmito was ultimately convicted of assault resulting in serious bodily injury under Article 351(2) of the former Indonesian Criminal Code and sentenced to one year and two months of imprisonment.

An alleged act of fish theft cannot automatically be classified as an attack that justifies the use of physical force against the alleged perpetrator. Although Article 49(1) of the former Indonesian Criminal Code recognizes property as a legally protected interest, this recognition does not grant individuals unrestricted authority to use violence whenever their property rights are allegedly violated. A distinction must therefore be drawn between an unlawful act that causes property-related harm and an imminent attack that genuinely necessitates defensive action. In the Kasmito case, although Marjani's activities may have raised concerns regarding the protection of property, Kasmito's decision to strike him with a sharp weapon from behind, in the absence of any preceding attack directed against Kasmito, undermines the necessary connection between the alleged threat and the defensive response. A claim of self-defense cannot be established solely on the basis of an alleged criminal act committed by another person.

This distinction further underscores the importance of differentiating between an actual threat and subjective suspicion. A person's suspicion that another individual may commit a criminal offense is insufficient to satisfy the legal requirement of an imminent attack. Similarly, an act that has already been completed cannot be treated as an ongoing threat unless there is evidence of a continuing danger. The legal doctrine of self-defense is not intended to provide a means of punishing individuals for their past conduct. Rather, it serves to protect legally recognized interests against ongoing or imminent unlawful attacks. Accordingly, defensive action must be directly connected to the

[14] Rezwana Mohammadi, "Necessity and Proportionality as Conditions of Self-Defence in International and Islamic Law," *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* 4, no. 3 (2026), https://journal.uii.ac.id/psha/article/view/51055.

necessity of preventing or terminating an attack, rather than motivated by a desire to retaliate for an earlier act.

In contrast, the case of Hazli bin Sulaiman presents a factual situation that more clearly satisfies the characteristics of an actual and ongoing attack. As established in Bireuen District Court Decision No. 33/Pid.B/2024/PN Bir, subsequently reviewed in Supreme Court Decision No. 1118 K/Pid/2024, Hazli heard his mother calling for help and subsequently found her unconscious while Nurdin was holding a machete. Nurdin then swung the machete at Hazli, prompting the defendant to deflect the blow with a spear, causing the machete to fall. Unlike the circumstances in the Kasmito case, Nurdin's conduct constituted a direct and actual physical attack that posed an immediate threat to Hazli's safety. These circumstances provide an objective basis for concluding that Hazli's initial defensive response was directly connected to the necessity of protecting himself against an unlawful attack. Nevertheless, the existence of an initial attack does not automatically justify every subsequent defensive action.

The central legal issue in the Hazli case concerns the change in circumstances following the transfer of control over the weapons. After the machete was dropped, a series of subsequent actions occurred involving the use of both a spear and a machete by the parties. The Bireuen District Court accepted the defense of excessive self-defense (noodweer exces) and acquitted Hazli of all charges. However, the Supreme Court overturned the lower court's decision and sentenced him to two years of imprisonment under Article 351(3) of the former Indonesian Criminal Code. This divergence in judicial reasoning demonstrates the need to distinguish between the initial occurrence of an attack and the legal legitimacy of subsequent defensive actions. An attack that initially constitutes an actual and imminent threat may undergo a fundamental change when the aggressor loses possession of a weapon, becomes incapable of continuing the assault, or when the relative positions of the parties shift, enabling the person initially under attack to gain control of the situation. Accordingly, the requirement of an imminent attack cannot be assessed solely by considering the incident as a whole. Instead, it must be evaluated in light of the specific circumstances existing at the precise moment each defensive action is taken.

The requirement of an imminent attack has an inherently temporal dimension that defines the boundaries of legitimate self-defense. In the Kasmito case, the prerequisite of an unlawful attack was never established, meaning that the defendant's actions lacked a legal basis for justification. Conversely, in the Hazli case, an initial attack was established through the act of swinging a machete at the defendant. Nevertheless, the existence of that initial attack did not automatically justify subsequent actions after the circumstances had changed. In this regard, a distinction can be drawn between initial defensive legitimacy, referring to the lawfulness of defensive action when it is first undertaken, and continuing defensive legitimacy, referring to the lawfulness of

maintaining defensive action for as long as the threat persists. This distinction provides an analytical framework for interpreting the application of Article 49(1) of the former Indonesian Criminal Code without introducing additional normative requirements into the statutory provision itself.

This analysis is consistent with the findings of Refin and Nur Azizi, who identify subsidiarity and proportionality as essential requirements for the application of *noodweer* (self-defense).[15] The study by Labibah and Mahardhika is particularly relevant because it identifies changes in the circumstances surrounding an incident, particularly after a weapon has been successfully seized, as a critical factor in determining whether defensive action has exceeded its legally permissible limits, as illustrated by the Hazli case.[16] Meanwhile, Rahmah and Huzaeni emphasize that defensive action must be necessary, reasonable, and proportionate to an unlawful attack that is ongoing or imminent.[17] The present study connects the existence of an initial attack with the evolving nature of the threat as defensive action unfolds. The assessment of an attack should therefore consider not only the intensity of the violence but also the chronological sequence of events and changes in the aggressor's ability to continue posing a threat.

Judicial assessments of *noodweer* (self-defense) must be grounded in objective evidence establishing the existence of an unlawful attack or an imminent threat thereof. Mere suspicion of a potential criminal act, property-related offenses unaccompanied by an imminent threat, or conduct that has already ceased cannot automatically justify the use of physical force. When an actual unlawful attack has been established, the legitimacy of defensive action must still be assessed according to whether the threat persists at the time the action is taken. The existence of an attack establishes the initial threshold for invoking self-defense, whereas the continuity of the threat determines the extent to which defensive action remains legally justified. This analytical framework is essential to ensuring that criminal law protects individuals who genuinely face unlawful attacks without allowing the right to self-defense to become a justification for personal retaliation or extrajudicial punishment.

3.2. The Limits of Self-Defense Under the Principles of Subsidiarity and Proportionality: The Continuity of Threats and Changing Circumstances During an Incident

[15] Refin and Nur Azizi, "Dasar Hukum Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Melampaui Batas (Noodweer Exces)."

[16] Labibah and Mahardhika, "Analisis Yuridis Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2) KUHP Dalam Perkara Tindak Pidana Penganiayaan: Putusan Nomor 33/PID.B/2024/PN Bir."

[17] Rahmah and Huzaeni, "Kriteria Pembelaan Seimbang Dalam Pembelaan Terpaksa Pada Sistem Hukum Pidana Indonesia."

The principles of subsidiarity and proportionality serve as complementary criteria for determining the legal limits of self-defense (noodweer). The principle of subsidiarity examines whether the use of force is necessary to repel an attack, whereas the principle of proportionality assesses whether the intensity of the defensive response is reasonably commensurate with the degree of danger faced. Neither principle can be applied in isolation or reduced to a purely mathematical comparison of the weapons used by the parties involved. Rather, the assessment must take into account the specific circumstances of each incident, including the distance between the parties, the direction of the attack, the type of weapon used, the physical capabilities of those involved, the intensity of the threat, the availability of an opportunity to retreat, and the potential risks of refraining from defensive action. Defensive measures necessary to protect human life cannot be equated with those intended solely to prevent the loss of property when no threat to personal safety exists.

In the Kasmito case, the principles of subsidiarity and proportionality can be examined only after determining whether an ongoing attack or an imminent threat of attack existed. Based on the facts established by the Demak District Court, Kasmito observed Marjani's activities near a fish pond from a concealed position before striking him from behind with a sickle (celurit). Kasmito delivered a second blow after Marjani had turned around and pleaded for mercy. No evidence established that Marjani had attacked Kasmito or offered any resistance against him. Accordingly, the panel of judges rejected the defense of *noodweer* because the statutory prerequisite of an unlawful attack under Article 49(1) of the former Indonesian Criminal Code had not been satisfied. These circumstances demonstrate that Kasmito's conduct lacked the necessary connection to any actual threat directed against him.

The protection of property cannot constitute an unrestricted justification for the use of physical force. Although property interests fall within the scope of legally protected interests under Article 49(1) of the former Indonesian Criminal Code, the means employed to defend such interests must still satisfy the requirements of necessity and proportionality. In the Kasmito case, Marjani's alleged act of taking fish did not, in itself, justify the use of a machete, particularly because Kasmito acted without prior warning and his conduct was not a spontaneous response to a physical attack. The fact that Kasmito lay in wait, attacked Marjani from behind, and continued the assault even after the victim pleaded for mercy reveals a substantial disparity between the objective of preventing an alleged property offense and the degree of violence employed. Such conduct is therefore more appropriately characterized as an act of personal retaliation than as a defensive measure necessary to repel an imminent threat. It should be emphasized that this assessment of subsidiarity and proportionality represents a normative evaluation of the established facts rather than an assertion that the panel of judges explicitly applied these principles as separate legal tests.

By contrast, the Hazli bin Sulaiman case presents a more complex situation requiring a dynamic assessment because the nature of the threat and the parties' respective capabilities changed throughout the incident. Based on the sequence of events described in Supreme Court Decision No. 1118 K/Pid/2024, the incident can be divided into four analytical phases. The first phase began when Nurdin swung a machete at Hazli. Hazli parried the attack with a spear, causing the machete to fall. At this stage, Hazli's defensive action was directly connected to the necessity of repelling an armed attack. The second phase involved a shift in control of the weapons: Hazli took possession of the machete, while Nurdin seized the spear. This change did not automatically eliminate the threat because Nurdin remained in possession of an object that could potentially be used to continue the assault. Accordingly, the necessity of defensive action during this phase must be assessed in light of Nurdin's actual capacity and apparent intention to continue the attack, rather than solely on the basis that Hazli had successfully disarmed him of the machete.

In the third phase, Nurdin is shown swinging a spear, while Hazli strikes the back of his neck and head with a machete, causing him to stagger. At this stage, proportionality becomes a critical consideration. The legitimacy of defensive action must be assessed not only in light of the initial attack but also in relation to the intensity of the force used to neutralize subsequent threats. Although Nurdin's staggering suggests a diminished physical capacity to continue the assault, it does not necessarily establish that the threat had completely ceased. This possibility is further illustrated in the fourth phase, when the spear strikes Hazli's left hand and breaks, prompting Nurdin to attempt to retrieve the fallen spearhead. Hazli subsequently delivers repeated blows to Nurdin's left hand and back. This sequence of events demonstrates that changes in the parties' positions, control over weapons, and physical conditions must be examined chronologically to determine whether each subsequent defensive action remains necessary.

The Supreme Court concluded that Hazli's actions exceeded the permissible limits of self-defense and could not be classified as *noodweer exces* (excessive self-defense). In reaching this conclusion, the Court considered Hazli's act of taking possession of the spear, the repeated blows delivered after he had already gained control of the machete, and the fact that Nurdin was already staggering. The Supreme Court overturned the acquittal issued by the Bireuen District Court and sentenced Hazli to two years of imprisonment under Article 351(3) of the former Indonesian Criminal Code. This outcome underscores that the existence of an initial attack does not confer an unrestricted right to continue using force. As an aggressor's capacity to attack diminishes and the threat becomes increasingly manageable, the necessity of maintaining the same level of defensive force must be reassessed. Thus, the limits of self-defense are

determined not merely by identifying who initiated the attack but by evaluating the relationship between the actual threat and each subsequent defensive response.

A decline in an aggressor's offensive capability should not automatically be equated with the complete disappearance of a threat. Physical instability may indicate a reduced capacity to attack; nevertheless, Nurdin's ability to swing the spear and attempt to retrieve its broken tip must also be considered when determining whether the danger persisted. Accordingly, an assessment of proportionality should establish whether an imminent threat remained when the subsequent blows were delivered, whether Hazli had a genuine opportunity to disengage from the confrontation, and whether the use of a lesser degree of force was reasonably feasible. The principle of subsidiarity should not be interpreted as imposing an absolute obligation to retreat. Rather, it requires an assessment of the alternatives realistically available under the circumstances of an emergency.[18] Such an assessment must be based on the circumstances known to, or reasonably perceivable by, the individual at the time of the incident, rather than solely on the information available to a judge after the entire sequence of events has been reconstructed.

Exceeding the limits of self-defense does not automatically eliminate the possibility of being excused from criminal liability. Article 49(2) of the former Indonesian Criminal Code requires a direct causal relationship between the excessive defensive action and an intense psychological disturbance (keguncangan jiwa yang hebat) caused by an attack or the threat thereof. In the Hazli case, the fact that the defendant discovered his mother unconscious while confronting an assailant armed with a machete is relevant to assessing whether such psychological disturbance occurred. Nevertheless, the existence of an emotionally distressing situation does not, by itself, establish that the requirements for a ground for excuse (alasan pemaaf) have been satisfied. Sufficient evidence must demonstrate both the intensity of the psychological disturbance and its causal connection to the excessive defensive action. Therefore, the defendant's psychological condition must be evaluated in conjunction with the chronology of events, the defendant's conduct, and the temporal proximity between the attack and the allegedly excessive response.

This analysis is consistent with the findings of Refin and Nur Azizi, who identify subsidiarity and proportionality as the principal criteria for distinguishing between *noodweer* (lawful self-defense) and *noodweer exces* (excessive self-defense).[19] Labibah and Mahardhika similarly highlight the significance of changing circumstances, particularly following the transfer of control over a weapon, in determining the permissible limits

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[18] Muhammad Rizal et al., "Perlindungan Hukum Terhadap Upaya Pembelaan Diri Korban Tindak Pidana Pembunuhan," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 2, no. 4 (2024): 890–908, https://doi.org/10.70193/cendekia.v2i4.84.

[19] Refin and Nur Azizi, "Dasar Hukum Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Melampaui Batas (Noodweer Exces)."

of defensive action in the Hazli case.[20] Meanwhile, Rahmah and Huzaeni emphasize that proportionate self-defense must constitute a necessary, reasonable, and commensurate response to an ongoing or imminent attack.[21] Pratama et al. further identify the absence of clear normative criteria as a factor contributing to divergent legal interpretations and sentencing disparities.[22] Building on these findings, the present study argues that the persistence of a threat and changes in the circumstances of an incident should provide the basis for evaluating the necessity and proportionality of each defensive action, rather than treating the entire incident as a single, indivisible sequence of events.

The limits of self-defense are therefore determined by the dynamic relationship between the necessity of repelling an attack, the proportionality of the force employed, and the persistence of the threat throughout the various phases of an incident. In the Kasmito case, the legitimacy of self-defense was never established because no actual unlawful attack against the defendant had occurred. By contrast, in the Hazli case, although an initial attack was established, each subsequent defensive action still required independent assessment in light of the changing circumstances and the continuing necessity for defensive force. The principles of subsidiarity and proportionality cannot be adequately applied by examining only the beginning or the conclusion of an incident. Instead, they require an examination of the temporal relationship between the evolving threat and the individual's response. Judicial reasoning must therefore identify precisely when defensive action remains necessary, when a threat has been sufficiently contained, and whether subsequent actions continue to serve a legitimate defensive purpose. This analytical framework provides a basis for distinguishing legally justified self-defense from conduct that has evolved into retaliation. At the same time, it contributes to greater legal certainty and promotes consistency in the application of grounds for excluding criminal liability within the Indonesian criminal justice system.

4. CONCLUSION

The application of *noodweer* (self-defense) requires the existence of an actual, unlawful, and imminent attack. Mere suspicion, an alleged unlawful act, or conduct that has already ceased cannot, in itself, justify the use of physical force. A comparison of the Kasmito and Hazli cases demonstrates the need to distinguish between the initial legitimacy of defensive action and the legal justification for subsequent defensive actions. Even when an initial attack has been established, each subsequent action must be independently assessed in terms of the necessity of the defense, the proportionality

[20] Labibah and Mahardhika, "Analisis Yuridis Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Pada Pasal 49 Ayat (2) KUHP Dalam Perkara Tindak Pidana Penganiayaan: Putusan Nomor 33/PID.B/2024/PN Bir."

[21] Rahmah and Huzaeni, "Kriteria Pembelaan Seimbang Dalam Pembelaan Terpaksa Pada Sistem Hukum Pidana Indonesia."

[22] Pratama et al., "Disparitas Pemidanaan Dalam Kasus Pembelaan Terpaksa (Noodweer) Dan Noodweer Excess: Analisis Hukum Pidana Dan Kriminologis Dalam Sistem Peradilan Pidana Indonesia."

of the response, and the continuity of the threat. Accordingly, the legitimacy of self-defense is temporally contingent and must be evaluated in light of the actual progression of events rather than solely on the basis of the circumstances at the onset of the attack.

This study contributes to the existing literature by introducing the continuity of the threat as an analytical parameter for determining the legal boundaries of self-defense and promoting greater consistency in judicial reasoning. Nevertheless, the study has certain limitations, particularly its reliance on secondary legal materials and judicial decisions without empirical verification of the psychological conditions of the parties involved. In this regard, judicial policy should prioritize the development of structured and context-sensitive guidelines for assessing claims of self-defense. Future research should integrate normative and empirical approaches, including forensic psychological assessments, and examine the application of the doctrine of self-defense across different legal systems.

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