

IMPLICATIONS OF THE NOODWEER EXCESS APPROACH IN EXCESSIVE SELF-DEFENSE WITH THE INTEGRATION OF PHILOSOPHY AND LAW

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Abstract: This article discusses the case of Noodweer Excess, which is referred to as an emergency defense that exceeds the limits as regulated in Article 49, paragraph (2) of the Criminal Code. However, in reality, there are cases of Noodweer Excess that have caused someone's death. Then, this research attempts to discuss and explore how a philosophical perspective can answer and explain complex legal problems. The primary focus of this article's research is how philosophical and legal theories, such as the theory of justice and ethics, can explain the meaning and implications of an emergency defense that exceeds the limits. By integrating legal and philosophical theories, this article aims to provide a deeper and more comprehensive understanding of the case, compared to using only one area of legal approach. This research serves as a bridge between legal and philosophical studies and offers broader insights. Thus, this article provides a more complete perspective on how Noodweer Excess or an emergency defense that exceeds the limits as regulated in Article 49 paragraph (2) of the Criminal Code can be handled and decided fairly and ethically from the perspective of legal and philosophical theories.

Artikel ini membahas tentang kasus Noodweer Excess yang disebut sebagai pembelaan darurat yang melampaui batas sebagaimana diatur dalam Pasal 49 ayat (2) KUHP. Namun pada kenyataannya, terdapat kasus Noodweer Excess yang mengakibatkan kematian seseorang. Kemudian, penelitian ini mencoba membahas dan mengeksplorasi bagaimana perspektif filsafat dapat menjawab dan menjelaskan permasalahan hukum yang kompleks. Fokus utama penelitian artikel ini adalah bagaimana teori filsafat dan hukum, seperti teori keadilan dan etika, dapat menjelaskan makna dan implikasi dari pembelaan darurat yang melampaui batas. Dengan memadukan teori hukum dan filsafat, artikel ini bertujuan untuk memberikan pemahaman yang lebih mendalam dan komprehensif terhadap kasus tersebut, dibandingkan jika hanya menggunakan satu bidang pendekatan hukum. Penelitian ini berfungsi sebagai jembatan antara kajian hukum dan filsafat serta menawarkan wawasan yang lebih luas. Dengan demikian, tulisan ini memberikan sudut pandang yang lebih lengkap

tentang bagaimana Noodweer Excess atau pembelaan darurat yang melampaui batas sebagaimana diatur dalam Pasal 49 ayat (2) KUHP dapat ditangani dan diputus secara adil dan etis dari perspektif teori hukum dan filsafat.

Keywords: Noodweer Excess; Criminal Law; Law and Philosophy.

INTRODUCTION

Noodweer Excesses or excessive emergency defense is a situation where an act of forced defense that exceeds the limit can cause someone's death. This occurs when a person engages in self-defense that is disproportionate to the threat faced, either due to a strong emotional drive or a shaken mental state (Refin and Nur Azizi 2023). Concrete examples of Noodweer Exces can be found in several legal decisions. In Decision Number 272/PID/2020/PT PDG, the defendant Efendi Putra acted in self-defense from the threat of Adek Firdaus who threw a machete at him. The defendant experienced severe psychological pressure, so his actions were considered excessive reasonable defense. The judge decided that the act did not constitute a criminal offense under Article 49 Paragraph (2) of the Criminal Code because it was committed under duress and under mental pressure (Padang High Court Decision Number 272/PID/2020/PT PDG).

In contrast, in Decision Number 1/Pid.Sus-Anak/2020/PN KPN, the judge rejected the Noodweer Excess argument because the perpetrator's actions did not meet the elements of excessive self-defense. Although there was a threat to honor, the judge considered that the perpetrator's reaction was not proportional to the level of threat faced (Kepanjen District Court Decision Number 1/Pid.Sus-Anak/2020/PN KPN). These cases show how Noodweer Exces can occur in various situations, especially when self-defense is carried out in an uncontrolled emotional state. Along with the changes in Indonesian law, the provisions regarding Noodweer Excess have evolved in Law Number 1 of 2023 on the Criminal Code. Article 34 Paragraph (2) of the 2023 Criminal Code explicitly regulates excessive self-defense, providing a more comprehensive legal framework for the psychological condition of the perpetrator when facing threats or attacks (Law Number 1 of 2023 on the Criminal Code).

The legal impact of Noodweer Exces includes the elimination of criminal as an excuse as stipulated in Article 49 Paragraph (2) of the Criminal Code, identification of emergency situations due to threats, evaluation of evidence of mental shock, and a paradigm shift in interpreting self-defense (Syafaat 2022). In addition, this concept is also related to legal protection for victims in the context of justice. Therefore, an understanding of the legal and ethical boundaries of excessive self-defense becomes increasingly important. This research contributes to the development of criminal law, particularly in understanding Noodweer Excess through legal and philosophical approaches. So far, the discussion on Noodweer Excess has been mostly analyzed from a positive legal perspective that focuses on the interpretation of Article 49 Paragraph (2) of the Criminal Code.

This approach tends to emphasize the legalistic dimension without considering the philosophical, moral, and psychological aspects that accompany excessive self-defense. In this study, an integration of various theories of justice, such as retributive, distributive, and corrective justice, as well as utilitarianism and deontological ethics, is used. This integration provides a richer analysis by not only understanding the Noodweer Excess as a normative excuse, but also evaluating the moral and ethical validity of the offender's actions in a given situation. The main contribution of this research is to offer a framework that bridges between the ideal legal norm (*das sollen*) and the reality of legal practice (*das sein*) in the application of Noodweer Exces.

Accordingly, this research enriches the study of criminal law in interpreting forced defense that exceeds the limit more fairly and proportionally. In addition, this research provides a conceptual basis for law enforcement in assessing self-defense more objectively and humanely by considering the psychological aspects of the perpetrator when facing a real threat. The resulting new insights emphasize the importance of applying theories of justice and ethics in assessing acts of self-defense, as well as recommending clearer standards of assessment in criminal justice practice. Therefore, this research is expected to serve as a reference for policy makers, law enforcers, and academics in understanding and handling cases of Noodweer Exces in order to stay within the corridors of substantive justice and legal ethics. In addition, this research also explains how court decisions reflect the application of philosophical and legal theories in Noodweer Exces cases in Indonesia.

RESEARCH METHOD

This study adopts a normative juridical method, in which the law is conceptualized as a set of written norms (law in books) serving as the primary object of inquiry. The researcher examines and interprets statutory regulations, judicial decisions, legal opinions, and relevant scholarly literature (Zainuddin et.al 2023). Furthermore, employing an analytical approach, this study not only describes the content of legal norms but also evaluates their internal consistency, social relevance, and the extent to which their application aligns with the overarching purposes of law (Deny Prabowo et.al 2023).

In addition, the study integrates statutory, case-based, and conceptual approaches (Marzuki 2024). The statutory approach involves a critical analysis of the provisions concerning Noodweer Excess in both the former Indonesian Penal Code (KUHP) and the newly enacted Criminal Code, particularly Article 49 (2) of the KUHP and Article 34 (2) of Law No. 1 of 2023. This analysis aims to examine how positive law in Indonesia regulates excessive self-defense and identifies the differences between the two codifications. The case approach is employed through the examination of judicial decisions relating to Noodweer Excess, such as Decision No. 272/PID/2020/PT PDG and No. 1/Pid.Sus-Anak/2020/PN KPN. The analysis of judicial reasoning in these rulings is intended to elucidate how legal norms are applied in judicial practice, particularly in the assessment of the elements of

excessive self-defense and the psychological conditions of the defendant as potential grounds for criminal exoneration.

The conceptual approach is used to explore relevant legal theories, including the doctrines of retributive, corrective, and distributive justice, as well as utilitarian and deontological perspectives in evaluating the moral and ethical dimensions of Noodweer Excess. This analysis seeks to provide a robust theoretical framework for understanding the urgency of legal regulation concerning excessive self-defense. The data sources in this study comprise primary legal materials, such as the Penal Code and relevant statutory instruments, and secondary legal materials, including court decisions, legal textbooks, academic journals, and official documents. The collected data are analyzed using a qualitative-descriptive method, systematically interpreting legal norms, doctrines, and jurisprudence to draw conclusions regarding the application of Noodweer Excess within the Indonesian criminal justice system (Fenny Rita Fiantika, et al. 2022).

RESULT AND DISCUSSION

Philosophical Analysis of Noodweer Exces

The retributive theory emphasizes that punishment must be proportionate to the offense committed. In the context of Noodweer Excess (excessive self-defense), this theory serves to distinguish between legitimate defensive actions and excessive conduct that may be classified as unlawful. Based on Decision No. 272/PID/2020/PT PDG, the actions of Efendi Putra, who defended himself against a machete threat, were deemed not unlawful due to the presence of severe psychological pressure. In criminal law, such severe psychological pressure may be classified as *psychische overmacht* (psychic duress), a condition wherein an individual commits a criminal act under overwhelming inner compulsion, thereby nullifying or significantly impairing their capacity for rational judgment.

This condition constitutes grounds for the exclusion of criminal liability, as the actor is considered to be in a mentally inescapable situation, thus justifying the removal of penal responsibility (Arrie Budhiartie, Elizabeth Siregar 2022). In this decision, the judge applied a retributive approach to determine whether the defendant's actions warranted punishment, in line with Article 49(2) of the Indonesian Penal Code (KUHP). Conversely, in Decision No. 1/Pid.Sus-Anak/2020/PN KPN, the retributive theory was applied more rigidly. The court rejected the Noodweer Excess defense on the grounds that the defendant's actions were disproportionate to the threat faced (Haikal, Mawar, and Fithria 2020).

Hans Kelsen, a prominent legal philosopher, elaborated on the concepts of justice and retribution, arguing that retributive justice functions as a balancing mechanism between guilt and punishment, and between merit and reward analogous to a scale that maintains equilibrium. In this context, the notion of equality in the concept of *arkhē* emerges as a principle of balance. This balance, when manifested through retribution, implies that punishment should equitably correspond to the wrongdoing, and rewards to virtuous acts.

Kelsen's view reflects the essence of retributive justice as a means of achieving moral equilibrium in society by administering punishment commensurate with the offense committed (Ahmad Fauzi 2023).

Distributive justice emphasizes the equitable distribution of rights and legal protections to all parties involved (Elsyah Putra 2024). In the context of Noodweer Excess (excessive self-defense), this theory plays a crucial role in ensuring that individuals who act in self-defense receive equal legal protection without disregarding the rights and justice owed to the victim. Ronald Dworkin expanded the concept of distributive justice by introducing the notion of equality of resources, which posits that every individual should have fair and equal access to the resources necessary for leading a life of dignity. In legal terms, this principle demands fair and consistent treatment under the law, ensuring that the rights and responsibilities of all parties are proportionately and justifiably accounted for in accordance with the ideals of justice (Pratama 2023).

In Decision No. 1/Pid.Sus-Anak/2020/PN KPN, the principle of distributive justice is reflected in the court's reasoning to reject the Noodweer Excess defense on the basis that the threat faced was disproportionate to the response executed. This demonstrates that justice does not only consider the rights of the victim, but also acknowledges the situational and psychological conditions of the defendant in cases of excessive self-defense. Comparatively, the application of distributive justice in Noodweer Excess cases in Indonesia illustrates a cautious approach toward balancing the protection of both defendant and victim rights.

Nevertheless, the focus still tends to prioritize the formal elements of self-defense as stipulated in the Indonesian Penal Code (Fajar Seto Nugroho, Enik Isnaini 2024). In contrast, the Dutch legal system where the concept of Noodweer Excess originates takes a more progressive stance by incorporating subjective assessments of psychological state, social background, mental pressure, and the defendant's personal perception of the threat (Anak Agung Ngurah A. Arya Bramastha 2023). Meanwhile, in the United States, the application of distributive justice in self-defense cases often involves a jury that evaluates the reasonableness of the defendant's actions using the reasonable person standard, thus allowing a broader understanding of the context in which self-defense occurred (Donovan 2023). Accordingly, while Indonesia has acknowledged the relevance of distributive justice, its implementation can be further enhanced by recognizing the psychological and social dimensions of the defendant, thereby advancing a more humane and equitable administration of criminal justice.

John Rawls's principle of justice underscores the concepts of the veil of ignorance and the original position as foundational mechanisms for formulating legal rules that are fair and impartial to all parties (Christian, Nabilah, and Ajie 2025). In the context of Noodweer Excess (excessive self-defense), this approach serves to assess whether the legal system, from an objective standpoint, affords equitable treatment to individuals acting under extreme duress or emergency conditions. Decision No. 272/PID/2020/PT PDG exemplifies the Rawlsian principle of fairness, particularly in the court's consideration of the severe psychological

pressure experienced by Efendi Putra. This psychological distress was deemed a significant factor influencing his spontaneous act of self-defense. By acknowledging such factors, the judiciary applies Rawls's theory to ensure that individuals confronted with life-threatening situations are not unjustly penalized, but are instead treated in accordance with principles of fairness and moral equality before the law. Consequently, the application of Rawlsian justice in this case reinforces the imperative that legal norms must be structured in ways that protect the rights of the most vulnerable, including those compelled to act under extreme psychological or existential pressures.

Aristotle delineates justice into two principal categories: distributive justice and corrective justice. Distributive justice pertains to the equitable allocation of legal protections and entitlements among members of society, while corrective justice functions to rectify injustices arising from actions that inflict harm upon others (Febrian Duta Pratama, Rafly Pebriansya 2024). In the context of Noodweer Excess (excessive self-defense), corrective justice is invoked to assess whether the disproportionate use of force in self-defense may be justified in light of the circumstances surrounding the act.

The acquittal of Efendi Putra, for instance, demonstrates that the legal system recognizes the corrective dimension of justice by taking into account the severe psychological distress experienced by the defendant. Conversely, in cases where the excessive act cannot be justified by the context or psychological condition of the perpetrator, the individual remains subject to legal sanctions in accordance with Aristotle's corrective justice framework. A philosophical approach to Noodweer Excess thus facilitates a more nuanced understanding of how justice is operationalized within the legal system. By incorporating multiple theories of justice, the legal framework is better equipped to evaluate each case on a balanced and principled basis, ensuring that justice is not only enforced but also sensitively attuned to the rights and conditions of all parties involved.

Analysis of Noodweer Exces in Legal Perspective

According to a report by the Indonesian National Police (POLRI), the crime rate in 2023 increased by 4.3% compared to 2022. There were 288,472 criminal cases, up from 276,507 cases from the previous year. The National Criminal Information Center (Pusiknas) report recorded 434,768 crime cases throughout 2023, with details: theft with aggravation (63,355 cases), persecution (51,312 cases), and fraud or fraudulent acts (49,007 cases) (Pusiknas Bareskrim POLRI 2024). This high crime rate is the basis for the importance of research studies on forced defense, including the concept of Noodweer Exces.

In the Criminal Code (KUHP), there are Criminal Code (KUHP), there are reasons for criminal expungement which are consists of 1) Justification, which removes the unlawful nature of an act, such as forced defense and Excuse, which removes the guilt of the perpetrator due to certain conditions, one of which is is Noodweer Excess, which is an excessive forced defense due to mental shock (Soesilo 2013).

Regulation of Noodweer Exces in Criminal Code include Old Criminal Code (Article 49 paragraph (2): “Excessive forced defense, which is directly caused by a violent mental shock due to the attack or threat of attack, shall not be punished.” New Criminal Code (Law No. 1 of 2023, Article 34 paragraph (2): “Similar provisions continue to apply with a broader scope, considering mental distress in the psychological and social context of the perpetrator.”

Analysis of Court Decisions No. 272/PID/2020/PT PDG: The defendant Efendi Putra was acquitted of the crime because it was proven that he suffered severe mental distress due to the victim's attack, fulfilling the element of Noodweer Exces. Decision No. 1/Pid.Sus-Anak/2020/PN KPN: The judge did not grant an excuse because there was no evidence of severe psychological pressure underlying the perpetrator's actions.

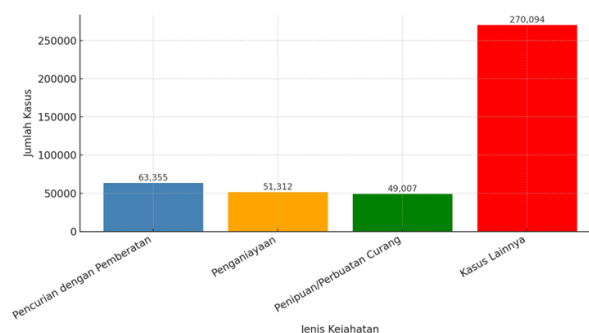
Excessive self-defense (Noodweer Exces) must fulfill the elements of an imminent threat and the spontaneity of the defensive action. However, the threshold for what constitutes “excessiveness” in self-defense remains a matter of considerable legal debate. The subjective dimension of mental pressure, coupled with the challenge of assessing proportionality between the perceived threat and the responsive act, presents significant difficulties in the practical application of this legal doctrine (Martinez, Carlos 2024). Accordingly, there is a pressing need for the establishment of more clearly defined legal standards to determine whether a particular act qualifies as Noodweer Exces, especially in cases involving fatal outcomes. Such standards would contribute to greater consistency and fairness in judicial reasoning, particularly in evaluating the psychological and situational factors that influence a defendant’s response to extreme threats.

Law and Philosophy Integration Approach to Excessive Defense (Noodweer Exces)

Das Sollen and Das Sein are philosophical concepts that distinguish between ideal norms and reality. Das Sollen refers to normative principles, such as justice and human rights that prescribe how things should be done. In contrast, Das Sein describes the reality that occurs in practice, which often does not align with ideal norms. (Rasyid Rizani, Ahmadi Hasan 2023)

Figure 1.1

Criminal Statistics in Indonesia of 2023



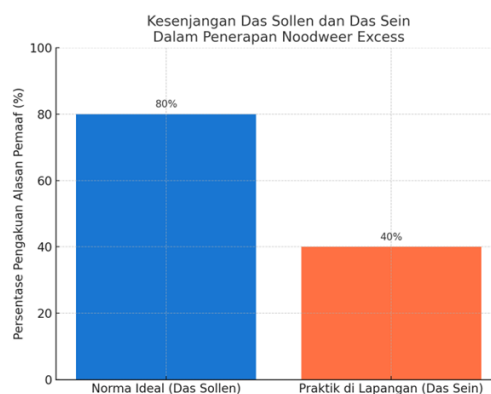
Source: (Pusiknas Bareskrim 2024)

In legal practice, a gap persists between the ideal normative framework and its actual implementation, as evidenced in the application of Article 49 paragraph (2) of the Indonesian Criminal Code (KUHP) and Article 34 of the 2023 KUHP. Although the legal provisions allow for excessive self-defense as a consequence of severe psychological disturbance, judicial practice frequently fails to recognize this exculpatory ground (Rahmat 2024). Data from the National Criminal Investigation Center (Pusiknas Bareskrim) reveal a high rate of rejected self-defense claims, indicating a disjunction between the ideal legal standards and their practical enforcement (Indonesian National Police 2023).

Philosophy serves a fundamental role in bridging the gap between legal theory and practice. John Rawls's theory of justice provides a comprehensive framework for evaluating whether legal norms fulfill the objectives of justice. Moreover, a philosophical understanding of social and psychological contexts aids in assessing why individuals may act beyond established legal norms (Smith 2023). By elucidating this disjunction, legal philosophy can offer critical recommendations for the formulation of more adaptable and socially responsive legal norms.

Figure 1.2

Das Sollen and Das Sein Gap in the Application of Noodweer Exces



Source: (Titis Pandan Wangi Reformasi 2024)

Philosophy provides a conceptual foundation for law by ensuring that legal norms embody substantive justice. Over time, legal philosophy has contributed to resolving value conflicts, adapting legal frameworks to social transformations, and balancing the interplay between law and morality (Harun 2019). Furthermore, philosophy plays a crucial role in guiding the law to remain pertinent amidst the challenges posed by globalization and technological advancements (Endratno 2022).

Implication of Noodweer Exces in Excessive Forced Defense

Noodweer Exces or excessive force defense is an important principle in criminal law that provides protection for individuals who commit unlawful acts in an emergency (Ngurah et al. 2024). Article 49 Paragraph (2) of the Criminal Code states that an overreaching forced

defense can be excused if it is carried out under severe psychological pressure due to an attack or threat.

The analysis of Decision Number 272/PID/2020/PT PDG and Decision Number 1/Pid.Sus-Child/2020/PN KPN shows that the recognition of the excuse in Noodweer Excess is highly dependent on the psychological evidence of the perpetrator. In the case of Efendi Putra, the reason was accepted due to evidence of severe mental stress, while in the case of the Child in KPN District Court, the reason was rejected because the element of mental shock was not fulfilled.

The principle of Noodweer Exces carries significant implications across legal, moral, and social dimensions. From a legal perspective, this principle affords protection to individuals who act excessively in perilous situations (Wahyudi 2023). However, courts face considerable challenges in distinguishing between legitimate self-defense and disproportionate conduct. Psychological evaluation becomes a crucial factor in determining whether the act was genuinely precipitated by uncontrollable psychological pressure or merely serves as a pretext to justify excessive behavior (I. Baihaqi, T. Makarao 2024). This process often necessitates a thorough examination of medical and psychological evidence.

The concept of Noodweer Exces may be subject to abuse by perpetrators who claim to have acted under psychological duress to evade punishment. Without stringent oversight, such misuse risks undermining public confidence in the judicial system (Ahmad Yahya et al. 2025). From the perspective of victims and their families, the acknowledgment of Noodweer Exces can engender a sense of injustice, particularly when offenders receive sentence reductions or acquittals.

The application of Noodweer Exces must be accompanied by judicial transparency to maintain public trust (Tutik Triwulan 2021). Furthermore, this doctrine underscores that the right to self-defense is subject to clearly defined limits that must be respected. Accordingly, legal education regarding rights and obligations in emergency situations is essential to prevent the misuse of this concept.

The application of Noodweer Exces significantly influences criminal justice system policies. The establishment of clear and objective criteria for its application is imperative to ensure that the law not only protects individuals but also prevents unnecessary violence. Moreover, the interpretation and implementation of this doctrine should be harmonized across different legal systems to avoid disparities in its enforcement. By comprehending the complexities inherent in Noodweer Exces, law enforcement officials are better equipped to make judicious decisions.

Training in criminal psychology and emergency response should be integrated into the curricula for police officers and prosecutors to enhance accuracy in handling such cases (Yayan Muhammad Royani and Hee Cheol Park 2023). Court rulings concerning Noodweer Exces cases not only impact defendants but also shape public perception of the legal system as a whole (Adhi Putra Satria and Eugenia Brandao 2023). Therefore, ongoing academic

discourse and legal practice regarding this doctrine are essential to maintain a balance between individual rights and the public interest.

CONCLUSION

This study critically examines the application of the *Noodweer Excess* doctrine within the framework of Indonesian criminal law, specifically addressing cases of disproportionate self-defense that result in fatality. Drawing upon a comprehensive analysis of statutory provisions, judicial precedents, and established theoretical frameworks, this research identifies that the adjudication of *Noodweer Excess* cases is profoundly influenced by the defendant's psychological state, the factual circumstances at the moment of the incident, and the judiciary's discretionary evaluation of proportionality and necessity in the defensive act.

The study reveals significant interpretative divergences regarding the thresholds of reasonable force in self-defense, which contribute to inconsistencies in judicial outcomes and highlight a systemic lack of doctrinal uniformity. In particular, the 2023 amendments to the Indonesian Criminal Code, notably Article 34 Paragraph (2), mark a progressive step by explicitly integrating the psychological dimension of the defendant's perception of threat into the legal criteria governing excessive defense. Nevertheless, practical challenges persist in the judiciary's consistent and effective application of this provision.

Given these complexities, the study advocates for the development of detailed judicial guidelines and standardized interpretative frameworks to harmonize *Noodweer Excess* jurisprudence, thereby safeguarding both the defendant's right to legal protection and the broader principles of justice for victims and society. From a theoretical vantage point, this research situates *Noodweer Excess* at the intersection of substantive justice theory, retributive justice, corrective justice, and legal ethical considerations, offering a multi-dimensional analytical approach that transcends positivist legal paradigms.

Furthermore, the study engages with comparative legal perspectives by juxtaposing Indonesia's approach with jurisdictions such as the Netherlands, the United States, and Germany, where doctrines analogous to *Noodweer Excess* incorporate more nuanced considerations of psychological, social, and cultural factors in assessing proportionality and reasonableness in self-defense claims. This comparative analysis elucidates potential pathways for Indonesian law to evolve towards a more balanced, humane, and context-sensitive adjudication model. Ultimately, this study contributes to the academic discourse by proposing a holistic framework for evaluating excessive self-defense that integrates normative legal analysis with moral philosophy and psychological insights. It serves as a valuable resource for legal practitioners, policymakers, and scholars seeking to refine the interpretation and enforcement of *Noodweer Excess* in a manner that upholds both legal certainty and ethical justice within Indonesia's evolving criminal justice system. [W]

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