

Comparative Analysis of Forced Defence (*Noodweer*) in Dealing with the Crime of Persecution: A Study of Indonesian Criminal Law and Islamic Law

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ABSTRACT

This research delves into the legal framework of forced Defence in addressing the crime of persecution, examining its application in Indonesian criminal law and its comparison with Islamic law. The study employs a normative legal approach, utilizing statutory analysis and case study methods to provide insights into the nuanced distinctions between the two legal systems. The investigation reveals that forced defence arrangements are rooted in juridical considerations, which evaluate the circumstances of victims and perpetrators according to the principles and conditions delineated in the Criminal Code. Intent, legal psychology, and human instincts for self-preservation are integral to the evaluation process. Positive and Islamic laws allow forced Defence when actions align with expert opinions and scholarly interpretations. However, Islamic criminal law limits Defence, prohibiting actions that lead to death or adultery. This study contributes to understanding the legal rationale underpinning forced Defence in the context of persecution. It underscores the similarities and disparities between Indonesian criminal law and Islamic law.

Keywords: forced Defence, *Noodweer*, persecution, Indonesian criminal law, Islamic law, legal comparison, juridical considerations, self-defence.

ABSTRAK

Penelitian ini menggali kerangka hukum pembelaan paksa dalam menangani tindak pidana penganiayaan, mengkaji penerapannya dalam hukum pidana Indonesia dan perbandingannya dengan hukum Islam. Studi ini menggunakan pendekatan hukum normatif, dengan menggunakan analisis undang-undang dan metode studi kasus untuk memberikan wawasan tentang perbedaan yang bernuansa antara kedua sistem hukum tersebut. Penyelidikan mengungkapkan bahwa pengaturan pembelaan paksa berakar pada pertimbangan yuridis, yang menilai keadaan korban dan pelaku menurut asas dan kondisi yang digariskan dalam KUHP. Faktor-faktor seperti niat, psikologi hukum, dan naluri manusia untuk mempertahankan diri merupakan bagian integral dari proses evaluasi. Baik hukum positif maupun hukum Islam memberikan kesempatan untuk pembelaan paksa ketika tindakan sejalan dengan pendapat ahli dan interpretasi ilmiah. Namun, hukum pidana Islam memberlakukan batasan pembelaan, melarang tindakan yang menyebabkan kematian atau perzinahan dalam situasi apa pun. Studi ini memberikan kontribusi untuk memahami alasan hukum yang mendasari pembelaan paksa dalam konteks penganiayaan dan menggarisbawahi kesamaan dan perbedaan antara hukum pidana Indonesia dan hukum Islam.

Kata Kunci: pembelaan paksa, *Noodweer*, penganiayaan, hukum pidana Indonesia, hukum Islam, perbandingan hukum, pertimbangan yuridis, pembelaan diri.

INTRODUCTION

Legal regulations stem from the existence of a society (*ubi-ius ubi-societas*) (Doak & Doak, 2019). The law aims to foster harmony and peace in communal living. It permeates honest and peaceful living across all societal strata. Sources of law can emerge from customary law, legislative regulations like

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Western law, and the Islamic legal framework whose basis and structure are ordained by Allah, governing human relationships with the divine, oneself, fellow beings, and the environment. Criminal acts have persisted throughout history, sparking debates on their occurrence and eradication methods. At the same time, criminal law codes lack explicit definitions of "strawboard feit" (punishable offence) (Senjaya, 2023). Scholars Sofyan et al. (2023) define it as an act violating the law, prohibited and punishable, which society perceives as disruptive to the desired societal order. Self-defence is a fundamental right and duty granted by law to safeguard one's life, dignity, and property. It is the instinctual response to counter malevolent actions that threaten to harm or damage unlawfully.

This study aims to explore and analyze the legal rationale behind forced defence arrangements (*Noodweer*) in both criminal law and Islamic law, particularly regarding the crime of persecution. While the broader aspects of criminal law and self-defence have been researched, this study seeks to delve deeper into the nuances and differences in the context of the specific crime of persecution. In the landscape of criminal law and self-defence studies, limited research has been conducted on the comparative analysis of forced defence arrangements in handling the crime of persecution (Aristo, 2020; Biberman, 2018). This research aims to bridge this gap and provide insights into the distinctive perspectives offered by Indonesian criminal law and Islamic law on the subject matter. The significance of such research lies in its potential to enrich theoretical understanding and practical implementation of laws in both jurisdictions.

Previous studies have primarily focused on general principles of criminal law, self-defence, and various types of crimes (Ahmadi, Ismail, & Machmud, 2023; Alexander Adams, 2022; McCormick, 2023). However, the specific comparison of forced defence arrangements within the context of persecution remains relatively unexplored. This study seeks to build upon existing knowledge by examining the legal reasoning of both legal systems with a specific emphasis on the crime of persecution. For instance, a recent case (ref. case number 41/Pid.B/2021/PN.Sdw) involved Yosebius Kolo and accomplices, where self-defence was exercised against an attack initiated by Muh Palli. In this situation, the complexity arises from the intersection of criminal law and self-defence principles. The case provides an illustrative example of how self-defence plays out in real-life scenarios, offering an opportunity for in-depth analysis.

The study seeks to analyze and compare the legal foundation and reasoning behind forced Defence (*Noodweer*) arrangements in Indonesian criminal law and Islamic law within the context of the crime of persecution. By examining this specific aspect, the research aims to contribute to the theoretical and practical understanding of how these legal systems handle cases involving self-defence in response to persecution.

RESEARCH METHOD

The type of research used is normative legal research or doctrinal legal research (Negara, 2023). This research focuses on legal principles and norms with a statutory and conceptual approach. This method allows for exploring the legal meaning of relevant legal regulations and literature. The approach applied in this study is normative (Fernández Castro & Heras-Escribano, 2020). This approach allows researchers to examine legal theories, concepts, legal principles, and interpretations of existing regulations concerning coercive Defence in crimes of maltreatment.

Sources of data used include primary data and secondary data. Primary data was obtained from an analysis of court decisions related to cases involving forced Defence in the crime of maltreatment. Secondary data was obtained from studies of relevant laws and regulations and various legal literature discussing the concept of forced Defence. The analysis technique applied is descriptive analysis with a

qualitative approach. Data obtained from research results are inventoried and analyzed in detail. This qualitative analysis process involves describing and interpreting the collected legal material. The analysis results will be summarized in simple and logical sentences to provide a comprehensive understanding of forced Defence in the crime of maltreatment.

Through this research method, it is hoped that a deeper understanding will be created regarding forced Defence in the crime of persecution, both from the perspective of Indonesian criminal law and Islamic law. The results of the analysis and interpretation resulting from this study will provide a clearer view of coercive defence arrangements in two legal systems. Thus, this research can potentially provide a valuable contribution to the development of legal science and the implementation of law in society.

RESULT AND DISCUSSION

Ratio Legis Forced Defence Arrangements in Criminal Law

In Indonesian criminal law, arrangements regarding forced Defence are contained in the Criminal Code (KUHP) Article 49 paragraph 1, which explicitly states:

"It is not criminalized whoever commits an act of defence for life, honour or property either for himself or other people due to the influence of coercive power are not punished."

Furthermore, forced Defence that exceeds the limit is regulated in Article 49, paragraph 2 of the Criminal Code, which states:

"Forced defence that exceeds the limit, which is directly caused by severe mental shock due to the attack or threat of attack, is not criminalized." Although the law does not provide a detailed explanation regarding the concept of "severe mental shock,"

In *Memorie van Toelichting* (MvT), information indicates a great mental shock as the basis for this regulation. Further interpretation by jurists of the concept helps to understand that the psychological situation which results in an overreaction to an overreaching forced defence is also taken into account (Schneider, 2017).

The ratio legislature regarding forced Defence in criminal law is based on juridical considerations and legal psychology (Nir & Liu, 2022). This principle includes an assessment of the situation of victims and perpetrators by the norms regulated in the Criminal Code (Saputra, Setiodjati, & Barkhuizen, 2023). In terms of intention, this arrangement considers the intentions of both the victim and the perpetrator in defending themselves or others (Ashworth, 2019). In addition, mental turmoil is an important factor confirming that reactions to attacks or threats of attack can create situations that make individuals unable to process defensive actions rationally. The principle of forced Defence also reflects the human instinct to protect oneself and others so that a person can be released from criminal responsibility if the action is proven to be by the conditions set out in the relevant articles. Thus, victims and perpetrators in a defence situation must be protected legally. The interpretation and implementation of this ratio legislature are important in maintaining a balance between individual rights to protect themselves and society that are safe from abuse of forced defence situations that go too far.

Juridical considerations

Juridical considerations of judges are judges' considerations based on juridical facts revealed in court and by law that have been determined as matters that must be included in a decision.

According to the Criminal Code (KUHP)

The presence of progressive law gives its colour to criminal justice in Indonesia, one of which is a legal policy that will accommodate matters that have not been resolved by people in need (Triantono, Marizal, & Rochaety, 2023). One of the policies in criminal law in Indonesia is a legal policy that can deal with all criminal acts with a policy of establishing criminal sanctions by the provisions of Law Number 1 of 2023 Amendments to Law Number 1 of 1946 concerning the Criminal Code (Criminal Code).

The Criminal Code not only regulates acts that are against the law but also regulates actions that cannot be punished with provisions. In other words, the abolition of punishment can be said as an excuse for forgiveness which is regulated in Article 49 paragraph (2) of Law Number 1 of 1946 concerning the Criminal Code (KUHP). Legal experts categorize the element of forgiveness in the abolition of a crime is determined based on which are (Chazawi, 2009):

1. Inability to take responsibility
2. Forced Defence that exceeds the limit; And
3. Executing an unauthorized position order in good faith.

Meanwhile, article 42 of Law Number 1 of 2023 concerning the Criminal Code, it explains that: Every Person who commits a Criminal Act shall not be punished for:

1. Forced by an irresistible force; or
2. Forced by an unavoidable threat, pressure, or force.

According to article 43 of Law Number 1 of 2023 concerning the Criminal Code, it explains that: Any person who carries out a forced defence that exceeds the limit which is directly caused by severe mental shock due to an attack or threat of instant attack, which is against the law, shall not be punished.

This is an explanation that the basic elements above state that forced Defence that exceeds the limit is a defence caused by coercion from around which cannot be avoided, both related to a person's psychology and physique.

The Dutch language explains that a criminal act can be considered a forced defence if every element that includes the terms of a forced defence is fulfilled (Fletcher & Ohlin, 2013). Forced Defence in Law Number 1 of 2023 Amendments to Law Number 1 of 1946 Concerning the Criminal Code (KUHP) is defined as *noodweer* in which the nature of the actions of a defendant is still said to be an act which is against the law until there is a judge's decision explaining that this can negate a person's sentence.

Judge's Decision

Judges can be interpreted as a concretization of law and justice that is abstract. Some even describe judges as God's representatives to uphold law and justice in making decisions. The proof is that judges are the only law enforcers who dare and can act on behalf of God in every decision they issue. And it becomes an obligation to include it (Arendt, 2009).

The judge's decision is a statement issued by the judge as a State official who is given the authority to do so, uttered in a trial that aims to end or settle a case or a conflict. The statement can be in the form of sentencing, acquittal or release from lawsuits according to the method specified in the law (Fletcher & Ohlin, 2013).

Decisions are interpreted as something very important in the process of settling cases. The position of legal considerations contained therein is considered the juridical core of a judge's decision if it meets the minimum consideration requirements as follows (Efendi, 2018):

1. Considerations based on laws and regulations;

2. Considerations to realize justice
3. Consideration for the sake of realizing the benefit.

Decision 41/Pid.B/2021/PN.Sdw is one of the decisions relating to forced Defence which causes injury to a person with charges of the crime of persecution. The indictment stated that the suspect, on behalf of Yosebius Kolo was with brother Anjelo, brother. Jose, brother. Martinus Nong Yanto and the witness Alosius sat on the terrace of the witness' house chatting while listening to music. Then the victim, on behalf of Muh Palli felt disturbed and came to the Defendant and immediately attacked the Defendant by stabbing the Defendant with a knife 1 (one) time until it hit the left arm. The Defendant so that the left arm was torn open after that, the victim, Muh Palli would stab the Defendant again. However, the Defendant immediately backed away and fell to the ground. Then the witness Muh Palli came to Martinus Nong Yanto's brother by swinging a sharp knife and hitting Martinus' left and right arm after the victim strangled brother Martinus' neck so that he fell from his seat and lay on the floor. Then the victim tried to return to stab Martinus' brother. Seeing this, the suspect came carrying two pieces of ironwood boards and then threw the wood at the victim, Muh Palli. As a result of the throwing wood, the victim Muh Palli sat down, was unconscious and suffered an injury to the left temple and left cheek. The results of the judge's consideration through this decision can be seen in the table 1 below:

Table 1. Judges' decisions and considerations in determining the *Noodweer* case or forced Defence

Decision Number	Judge's Decision	Judge's Consideration
41/Pid.B/2021/PN.Sdw Victim: MUH PALLI The suspect: YOSEBIUS KOLO, THE CHILD OF STEVANUS KOLO	<ol style="list-style-type: none"> 1. Declare that Defendant Yosebius Kolo, the son of Stevanus Kolo, has been legally and convincingly proven guilty of committing the crime of persecution as charged by the Public Prosecutor, but the Defendant's actions cannot be punished because the Defendant committed these acts in self-defence; 2. Freed the Defendant, therefore, from the Public Prosecutor's indictment; 3. Ordering the Defendant to be released from detention immediately after this decision is pronounced; 4. Restore the rights of the Defendant in terms of ability, position, dignity and worth; 	<ol style="list-style-type: none"> 1. Justifying reasons, namely reasons that eliminate the unlawful nature of the act, so that what was done by the Defendant then becomes an appropriate and correct action; 2. Reasons for forgiveness, namely reasons that eliminate the guilt of the Defendant. The actions committed by the Defendant are still against the law, so they are still criminal acts, but they are not punished because there is no mistake; 3. The reason for abolishing prosecution (<i>vervolgingsuitsluitingsgreden</i>), that is, lies not in the presence of reasons for justifying or forgiving reasons, so there is no thought about the nature of the act or the nature of the Person who committed the act. Still, the government considers that based on its utility or benefits to society, it is better not to prosecute.

Source: West Kutai District Court Decision

In the West Kutai District Court Decision with decision number 41/Pid.B/2021/PN.Sdw it can be concluded that the panel of judges, in making a decision, still takes into account justification, reasons and excuses in eliminating a person's criminal responsibility because the Defendant's actions can be categorized as forced Defence exceeding the limit. After all, all the elements of forced Defence that exceed the limit are fulfilled by the contents of the decision attached to the judge's considerations in deciding this case so that the rights and interests of the Defendant are still fulfilled fairly by the principles of proper justice.

Legal Psychology As An Auxiliary Science in the Formation of Criminal Law

Legal psychology emerged in the 1960s as an empirical approach that views law through the prism of human behaviour in a legal context (Ross, 2019). Traditional law evaluates human behaviour as "right" or "wrong." Legal psychology, on the other hand, classifies human behaviour based on its approach. This classification includes the difference between individual and group behaviour, normal and abnormal behaviour, and many other classifications typical in legal psychology (Ali, 2009). Several aspects reviewed by legal psychology in the context of the formation of criminal law include:

Intention

Intention is a fundamental concept in all legal aspects related to human action. Intentions are generally expressed verbally or explicitly, or at least in the form of rational thoughts. Criminal action without intention is considered invalid, and vice versa, intention without action is also the same. Therefore, the concept of intention in law has an important impact on the final result of an action. Intentions have a value of their own and can influence legal consequences in certain situations, even in contexts where intentions are inconsistent or contrary to individual will.

Soul Shaking

In the context of Article 49, paragraph (2) of the Criminal Code, the term "great mental turmoil" has three-word elements, namely "shaking," "soul," and "terrific." Grammatically, this concept refers to a person's unstable psychological state, creating intense feelings of anxiety, fear, insecurity, and anxiety, which impact mental instability or an individual's inner condition.

The Defensive Instinct

The human instinct for self-preservation is a natural response when feeling threatened or hurt. It results from a subconscious psychological reaction involving the urge to protect oneself from danger or threat. This reaction arises because someone thinks his life is threatened.

These three important points are relevant to the elements of the Defendant's Defence in the case that occurred in decision 41/Pid.B/2021/PN.Sdw. In this case, there is intention, turmoil, and instinct for self-preservation. The Defendant acted in self-defence after seeing Martinus' brother being strangled and about to be stabbed by Muh Palli. The Defendant felt shocked and panicked, which triggered an instinct to save Martinus' brother's life. In response, Defendant threw wood at the victim to prevent Martinus' brother from being made a threat.

Comparison of Islamic Law and Indonesian Criminal Law Approaches to Forced Defence (*Noodweer*) in Facing the Crime of Persecution

Terms of Legal Defence in Positive Law and Islamic Law

Decisions of law enforcers in deciding a case that is continuous with forced Defence, the law enforcers must pay attention to developments in the social life of the community in an environment, both police, public prosecutors and judges (Green & Roiphe, 2020). Discussing forced Defence which can result

in the waiver of punishment by law enforcers, must consider everything that can be aggravating and mitigating for the Defendant in the investigation process to the trial process. On the other hand, many factors can assist this process by looking for objective factors that can trigger the crime that occurred.

If you look at it from the point of view of the judge as one of the law's enforcers in deciding to abolish a sentence against a perpetrator of a crime, you can look at the case and the judge's assessment. So that in determining the Defendant's actions, it is categorized as a forced defence which cannot be sentenced from various angles, including:

1. Legal terms of forced Defence in Indonesian criminal law

- a. It is forced
- b. Something to do During a threat
- c. Overcome threats that may be against the law
- d. There is a balance of threatening attacks
- e. Defence s that are only limited to Defence
 - a) Legal interest in self (bodily and physically)
 - b) Legal interests that threaten the honour of decency
 - c) Legal interests that threaten property.

2. Legal terms of Defence are forced in Islamic law.

The provisions of self-defence in Islamic criminal law can be explained in various ways, including (Shah & Shah, 2008):

- a. There is an attack or behaviour that violates the law against someone who is attacked and must act in violation of the law. If the action does not violate the law, it is not permissible to carry out self-defence. So, it is not permissible to use rights or carry out obligations if there is no attack or attack, such as a parent beating their child solely to educate them or in the form of an executioner cutting off a hand to fulfil. However, if personal Defence also exceeds the limit, such as outside the necessity, then someone who initially acted as the perpetrator of the attack also carried out personal Defence, then this is permissible.
- b. A sudden attack is necessary if there is no surprise attack. The action of someone who is the target of the attack is an act of breaking the law. Defence is only permissible when an attack has occurred or is predicted to occur. Otherwise, if the attack has not occurred or is delayed so that there is no danger, self-defence is not needed. Meanwhile, if the bluff is deemed dangerous, it must be avoided immediately with an appropriate method, such as asking for protection or complaining about it to the authorities.
- c. There is no longer any way to dodge an attack, but if there are still other techniques left to block an attack, then that technique should be used. For this reason, if someone can defend himself by shouting, this is what must be done, and it is not permissible to use sharp tools that can cause injuries and even kill the perpetrators of the attack. Meanwhile, if this is carried out even though it is not needed, then it is classified as an attack as well as a criminal act. Fiqh experts have different views regarding leaving a location to save themselves from being able to repel an attack because this is likened to the easiest way.
- d. It is permissible to use enough power to avoid attacks. If the evasion exceeds the required capacity, this is not called a defence effort but an attack. For this reason, true intrusion victims must use the lightest defence method as long as this method can be used, so they cannot use heavier methods.

Self-defence beyond permissible limits A person carrying out personal Defence using greater power than is required must be responsible for his actions as follows:

- a. If an attack can be avoided by snapping at the perpetrator, but that Person hits the perpetrator, this must be accounted for.

- b. If the attack can be avoided through blows, but the Person injured the perpetrator, this must be accounted for.
- c. If the attack could have been avoided by injuring the perpetrator to the point of causing him to die, this must be accounted for
- d. If the perpetrator of the attack runs away and is chased by the victim and then causes the perpetrator to be injured, this must be accounted for
- e. If the victim can fight the perpetrator until he loses, but the victim slits his hands or feet and even kills him, this must be held accountable.

Forced Defence in terms of the interests that must be defended

According to Law Number 1 of 2023 concerning the Criminal Code (KUHP) articles 42 and 43, according to criminal experts in Indonesia, they include:

1. Fachrizal Affandi, Ph.D: only judges are given the authority to decide on reasons for forgiveness and justification in criminal acts and to judge whether a perpetrator of a crime is guilty or not.
2. Abdul Fickar Hadjar: if there is a case where there is an indication of forced Defence or reasons for abolishing a crime, then the investigator in the BAP must mention these reasons so that the information will be used as the basis for the judge to assess and decide whether or not a perpetrator of a crime is true.

According to Law Number 1 of 1946 concerning the Criminal Code (KUHP) article 49, according to criminal experts in Indonesia, they include:

1. Pompe: Criminal provisions as stipulated in Article 49 paragraph (2) of the Criminal Code, must be interpreted literally. "By the sound of the formulation of Article 49 paragraph (2) of the Criminal Code, this transgression can be related to the transgression of the Defence itself. The limits of this need have been exceeded, that is, whether the methods used to defend have been carried out excessively, for example, by killing the attacker, whereas with just one punch, one can make the attacker helpless, or if the Person actually there is no need to make a defence, for example, because he can save himself by running away.
2. Simons: the conditions of a *noodweer* need an attack that is against the law. It's just that the Person making the Defence can go unpunished, that is, if the act of carrying out a defence is unnecessary or if the limits of justifiable methods have been violated. Actions that have been carried out by exceeding the boundaries of a *noodweer* are against the law but cannot be held accountable to the perpetrators, and because of that, against a *noodweer* excess, people can be justified in carrying out a *noodweer*.

According to Islamic Law

1. The Koran

According to the term, *Daf'u al-shail* (self-defence) is an obligation that each Person has to fortify himself for someone else. It is a person's authority to fortify his assets from parties who commit denial or unjustified acts of attack. Characteristic attacks need to be carried out or the right to repel attacks but not as a penalty but only as self-defence. (Ahmad Wardi Muslich, 2004, p.86) The basis of self-defence is explained in Q.S Al-Baqarah verse 194. Allah Subhanahu wa Ta'ala says:

الَّذِينَ هُمْ بِالْحَرَامِ وَالْحُرْمِ قِصَاصٌ فَمَنْ أَعْدَىٰ عَلَيْكُمْ فَاَعْدُوا عَلَيْهِ بِمِثْلِ مَا أَعْدَىٰ عَلَيْكُمْ وَأَتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

Meaning: "Therefore whoever attacks you, then attack him, in proportion to the attack on you" (Al-Qur'an, 1:194)

This is in line with Islamic law which has confirmed *daf'u al-sail* to refute attacks on personal, honor, or assets and has also been determined to refute attacks on personal, honor, and other assets of a person. Laws of defence in general or *amar ma'ruf* and *nahi munkar* can be seen in the verses of the Koran and the hadiths of the Prophet *sallallahu 'alaihi wa sallam*, namely in Q.SAI-Maidah: 2.

وَكُنْتُمْ عَلَيْهِمْ فِيهَا أَنْ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

Meaning: O you who believe, do not violate the symbols of the sanctity of Allah, and do not (break the honour) of the forbidden months, do not (disturb) *hadyu* (sacrificial animals) and *qala'id* (sacrificial animals that are marked), and do not disturb the people who visit *Baitul Haram*, they seek the grace and pleasure of their God. But when you have finished *ihram*, then you may hunt. Don't let your hatred for a people because they prevent you from the *Masjidil Haram*, pushing you to do beyond (to them). And help you in sin and enmity. Fear Allah. Indeed Allah is very severe in punishment. (Quran, 3:2).

2. Hadith

Some of the descriptions and definitions of cases that require Defence are: (Sheik Ibrahim Al-Bajuri, 1994, p.256)

- Life, what is meant by life here, is something related to parts of the body, spirit, and one's body in general.
- Property, what is meant by property in this case, is tangible assets, including animals that have lives. As stated by the jurists, the Defence of property is obligatory. According to various opinions, the size of the *nisab* for the Defence of property is not enough, one *nisab* requires the punishment of cutting off the hand (*qisash*).

The hadith about defending property was narrated by Sa'id bin Zaid that the Prophet *sallallahu 'alayhi wa sallam* said:

مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ، أَوْ دُونَ دَمِهِ، أَوْ دُونَ دِينِهِ فَهُوَ شَهِيدٌ

Meaning: "Whoever is killed for defending his property then he is a martyr. Whoever is killed for defending his family is a martyr. Whoever is killed for defending his family is a martyr, and whoever is killed for defending his religion is a martyr." (Narrated by Abu Daud no. 4772 and An Nasa'i no. 4099. Al-Hafizh Abu Thohir said this *sanad hadith* is authentic).

Honour, what is meant by honour here, is closely related to parts of the body related to sexuality, for example, the anus, genitals, and other things. *Fiqh* experts have agreed that defending one's honour is necessary. The argument in the form of a hadith is that which Abu Sa'id Al-Khudri narrated that the Prophet *sallallahu 'alayhi wa sallam* said:

"Whoever among you sees a *munkar* (disorder), then he can change it with his hand, then let it be with his tongue (mouth). If you can't, do it with your heart, which is the weakest faith."

Among *fiqh* experts, it has been agreed that Defence, in general, or *amar ma'ruf nahi munkar* is a necessity that cannot be abandoned. Defence, in general, is carried out to make society stand on policy so that its personnel grow to excellence so that the number of fingers and deviations decreases.

3. Ijma' /Ulama

Ijma is the conformity of understanding or opinion among the Mujtahidin scholars at a certain period after the death of the Prophet Muhammad SAW, to determine the law of a matter that has no legal provisions (Hamid & Gofar, 2011). Jurisprudence experts agree that self-defence is a legitimate way of protecting another person from attacks on life, self-respect, and valuable assets. But the law is not the same in the form of rights or obligations (Richards, 1983). So the risk is that if self-defence is a right, a person can make a choice whether to do it or not, and he will not be rewarded with sin if he chooses one of them. Meanwhile, if defending oneself is an obligation, one cannot choose and be rewarded with sin if one does not do so. See table 2.

Table 2. Comparison of Forced Defence in Islamic Law and Positive Law

Equality	Difference
1. The terms of forced Defence in Islamic law and positive law are equal and continuous.	1. In terms of differences in forced Defence in its meaning, Islamic law not only regulates forced Defence in the Islamic term <i>daf'u sa-sail</i> (special Defence) but also regulates the general interests of <i>dif'a asy syar'i al-am</i> (public Defence).
2. In terms of interests	2. In positive law, it only regulates forced Defence as stated in article 49 paragraph 1 of the Criminal Code does not regulate public interests. However, positive law or the Criminal Code does not recognise the <i>amar ma'ruf nahi munkar</i> system.
3. What must be defended also has similarities between Islamic law and positive law.	3. In Islamic criminal law, a person must be responsible for acts of Defence that exceed the limits under any circumstances. Islamic law is more preventive than positive law so a person is not free to commit crimes beyond the limits of proper Defence, such as causing death or adultery under any circumstances.
	4. Whereas in positive law, as stipulated in the Criminal Code 49 paragraph 2, when excessive self-defence is carried out in conditions of mental shock, this can be used as a justification or excuse to abolish the punishment.

In essence, the original legal self-defence is *mubah* (permissible), and there are no sanctions for it, but if it exceeds the limits against the Person concerned, then the law is no longer permissible, namely the oversight and negligence of someone who defends himself.

CONCLUSION

The legal ratio of forced defence arrangements in criminal law comes from juridical considerations, which align with the conditions of both victims and perpetrators and refer to the principles and conditions of forced Defence in the Criminal Code. Analysis can be carried out from the perspective of intention, legal psychology, and human instincts in self-defence. Thus, a person can be considered not responsible for a crime committed if he fulfils the element of forced Defence and does not harm any party, both the victim and the perpetrator. The study of Islamic law and positive law related to Forced Defence (*Noodweer*) in the Crime of Persecution shows similarities in providing opportunities for individuals who carry out forced Defence. In both cases, if an individual's action can be categorized as a forced defence by the views of experts and scholars, then it can be considered valid. However, under Islamic criminal law, Defence is forced to be prohibited if it results in death or adultery in various circumstances.

In implementing the forced defence concept, the judge needs to consider the evidence and arguments of the perpetrators more carefully. The goal is that defence cases will not experience impartiality in the future due to a lack of in-depth review by law enforcement officials. It is hoped that, in

the future, the categorization of criminal acts of forced Defence can refer to the opinions of jurists and scholars by the provisions of positive criminal law and Islamic criminal law. That way, various considerations can be considered in deciding on a crime.

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