



Noodweer Exces in Self-Defense Perspective Positive Criminal Law and Islamic Criminal Law

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Abstract: The increase in criminal acts occurring nowadays has led some victims of crime to defend themselves when attacked by the perpetrators. Self-defense that has been carried out by someone sometimes exceeds the limits of what should be done. In this case, the perpetrator of self-defense is referred to as the crime of noodweer exces. The above issue makes the author want to examine and discuss the laws and sanctions for the perpetrators of noodweer exces. In this research, the author uses the normative legal research method with data collection techniques, namely library research, where the author examines and analyzes legal books, fiqh, the Criminal Code, and hadith. From the results of the research conducted, the author concludes that perpetrators of the crime of noodweer exces, according to the perspective of positive criminal law, cannot be punished, in accordance with the provisions of Article 49 paragraph (2). Meanwhile, in the perspective of Islamic criminal law, every perpetrator of the crime of noodweer exces will be subjected to qishas or may pay the specified diyat.

Keywords: Excessive Self-Defense, Positive Crime, Islam Crime

1. Introduction

Indonesia must uphold the supremacy of law above all else because this country is a rule of law state. Legal development is necessary for Indonesia to achieve legal clarity, legal awareness, legal language, and most importantly, legal justice. The 1945 Constitution of the Unitary State of the Republic of Indonesia and the enforcement of Pancasila both require adherence to the values of justice, human rights, and the guarantee that all citizens have equal standing before the law.

Islamic law encompasses various aspects of life, including the relationship between humans and God, as well as among humans themselves. Islamic criminal law, known as jinayah, is one part of Islamic law that regulates crimes and their punishments, which conventionally means offenses or violations prohibited by Sharia law and for which violators will be subjected to sanctions.

One of the principles of Islamic law is that a person is only held accountable for their own actions and is not held accountable for the crimes of others. This principle is based on the Qur'an, Surah Al-An'am, verse 164;

قُلْ أَعْيَرَ اللَّهُ أَبْغَى رَبًّا وَهُوَ رَبُّ كُلِّ شَيْءٍ ۗ وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ۗ قُلْ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ

Meaning: "Say (Muhammad), 'Should I seek a god other than Allah, when He is the Lord of all things?' Every sinful act of a person, they themselves are responsible for it. And no one will bear the burden of another's sin. Then to your Lord you will return, and He will inform you of what you used to dispute.

An action can be categorized as a crime only if there is a legal basis that prohibits it. Thus, the perpetrator who violates the provisions of the law must be held accountable for their actions. Criminal law is the entire body of law that applies in a country to determine actions that are

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prohibited or forbidden. If someone commits such an act, they will be threatened (with punishment) and the mechanism of criminal law will be determined. In this context, a criminal offense is an act that is not permitted by law and is committed by someone in a country. If someone violates the law, they must be held accountable for their actions and receive punishment in accordance with criminal law provisions.

Criminal acts are regulated in the Criminal Code (KUHP), which contains rules and sanctions or penalties. In the Criminal Code (KUHP), it does not only discuss the imposition of criminal acts but also includes non-punishable criminal acts and the annulment of those acts. The abolition of punishment, also known as the abolition of a crime, is a legal process that removes the legal consequences of a crime. The expungement of a criminal record can be carried out if the perpetrator has met certain conditions regulated by law.

Forced self-defense to protect oneself in the face of a criminal act is one of the actions that has a justification for not being punished and can be excused, thus eliminating the criminal act, as stated in Article 49 of the Criminal Code, which explains that if someone is forced to defend themselves due to an attack on their honor, decency, self, and property, then that person is not punished.

In Islamic Criminal Law, self-defense is referred to as *daf'u al-shail*. Abdul Qadir Audah mentioned that:

الدفاع الشرعي الخاص، أو "دفاع الصائل" ٣٣٢ - معنى الدفاع الشرعي الخاص: الدفاع الشرعي الخاص في الشريعة هو واجب الإنسان في حماية نفسه أو نفس غيره، وحقه في حماية ماله أو مال غيره من كل اعتداء حال غير مشروع بالقوة اللازمة لدفع هذا الاعتداء إذا زادت أعمال الدفاع عن الحد اللازم لرد العدوان اعتبر الزائد منها عدواناً وكان الصائل أن يدفعه ويقاد الموصول عليه بما زاد عن حاجة الدفاع ويؤخذ بجريئته

It means: "Personal Sharia defense, or 'defense against the attacker' 332 - The meaning of personal Sharia defense: In Sharia law, private legal defense is an individual's obligation to protect themselves or others, and their right to protect their property from unlawful attacks with the necessary force to defend themselves from such attacks.

If the act of defense exceeds the necessary limits to repel the attack, the excess will be considered as assault, and the attacker must pay for it, and the attacker must be prosecuted for the excess defense and be held responsible for it.

Islamic law has clear sharia objectives, which were formulated by Imam Asy-Syatiby into five basic principles known as *al-kulliyat al-khamsah*, and cannot be separated from these objectives, namely: Maintaining Religion, Preserving the soul, Keeping the mind, Protecting wealth protecting lineage (Audah, 1987).

The five *maqashid* must be upheld, and if someone tries to disturb them, the aggrieved party has the right to defend themselves. This is because everyone has the obligation to protect their life and property, and everyone has the right to protect their property from legal violations. According to Islamic law and the Criminal Code, a legitimate act of self-defense cannot be considered a criminal offense if carried out to counter an attack or violation, which means that self-defense is a justification for the elimination of a crime.

This normative legal research aims to analyze the legal norms that apply in Indonesia, specifically concerning the implementation of Islamic criminal law (*jinayah*) within the framework of the state's legal system based on Pancasila and the 1945 Constitution. This research will analyze primary legal materials such as the 1945 Constitution, criminal law, and court decisions by inter-

preting the texts and understanding their application within the context of Indonesia's rule of law. Additionally, secondary legal materials such as legal commentaries, academic articles, and reports from legal bodies will be used to provide expert interpretation, contemporary perspectives, comparative analysis, and to fill gaps or ambiguities in the existing law. A systematic analysis of these two types of materials will be conducted by comparing their content, identifying gaps or conflicts within the legal system, and examining how Islamic legal principles and the Indonesian rule of law work to achieve justice, human rights, and equality before the law. The selection of these secondary sources is important as they offer additional insights, theoretical perspectives, and an in-depth understanding of the ongoing legal reforms in Indonesia, ensuring that this research remains credible and relevant within the context of Indonesia's legal development.

From several crimes committed by someone, there are some who defend themselves against the perpetrator of the crime. The self-defense carried out sometimes unconsciously exceeds the actions taken by the attacker, resulting in legal action. In this case, the author intends to study the concept of *noodweer* excess from the perspective of positive criminal law and Islamic criminal law.

2. Materials and Methods

Methodology Research is a systematic and objective scientific approach to investigate and solve problems by meticulously and thoroughly collecting, processing, and analyzing data, so that valid and useful conclusions can be drawn for human life. This journal article uses the normative legal research method. Normative legal research is research that uses the analysis of legal regulations as primary legal material. Expert opinions, media, newspapers, and magazines serve as secondary legal materials to support primary legal materials. Normative legal research, also known as doctrinal research, focuses on legal literature and documents (Soejono and H. Abdurrahman, 2003). The main approach in this normative legal research is to systematically analyze legal regulations and literature to understand the application of legal norms and their implications. The research focuses on studying legal materials, such as statutes, regulations, and expert opinions, to explore legal principles and practices. In this context, the research method is a doctrinal approach, primarily analyzing documents such as court decisions, laws, regulations, contracts, agreements, legal theories, and scholarly opinions. Primary legal materials will be analyzed by thoroughly examining their text, intent, and practical application. These include legal documents like the 1945 Constitution of Indonesia, criminal laws, and relevant statutes. Secondary legal materials will be analyzed by interpreting scholarly opinions, legal commentaries, media sources, and expert analyses to provide further insight into the interpretation and application of these laws. This analysis will involve comparing different legal viewpoints, identifying gaps or ambiguities in the legal framework, and considering how these materials support or challenge the primary legal documents. The justification for selecting secondary legal sources is based on their ability to enhance the credibility of the research by providing expert interpretation and context. Secondary materials, such as academic articles and expert opinions, allow for a deeper understanding of how legal principles are applied, debated, and developed over time. They also provide a broader perspective on legal reform and contemporary issues within the legal system, making the research more comprehensive, accurate, and relevant to current legal challenges. By including these secondary sources, the research can bridge any gaps in primary legal materials and offer a more nuanced understanding of the legal landscape.

Normative legal research usually "only" constitutes a document study, using legal material sources such as court decisions, regulations, contracts, or agreements, legal theories, and scholarly opinions. And the data research used in this journal is library research. Where the data sources are taken from books that are relevant to the discussion of this journal.

3. Results and Discussion

3.1 *Excessive Self-Defense in the Perspective of Positive Criminal Law*

Necessity Defense (Noodweer) is a defense carried out in an emergency situation (Lamintang, *Dasar-Dasar Hukum Pidana Di Indonesia*, 2023). Meanwhile, excessive self-defense (Noodweer exces) is a defense that exceeds the necessary limits of self-defense in an emergency situation. Self-defense in an emergency situation is regulated in Article 49 of the Criminal Code, which states: (a) "Not punishable, anyone who commits an act of forced defense for themselves or for others, honor, decency, or property of themselves or others, because there is an attack or threat of attack that is very close at that time which is against the law. (b) "Excessive self-defense, directly caused by severe mental distress due to an attack or threat of attack, is not punishable."

The article mentioned above does not provide a clear and definitive explanation of what is meant by self-defense (noodweer). Article 49 of the Criminal Code only stipulates the conditions that must be met by someone who commits an unlawful act but is not subject to sanctions or punishment. In this context, Article 49 of the Criminal Code provides an exception for someone who acts in self-defense, with certain conditions that must be met. Based on the provisions of Article 49 of the Criminal Code, a person can be considered acting in self-defense and not be punished if they meet the following conditions: (a) There is an attack, where the attack must threaten immediately (ogenblijkelijke) or is feared to occur soon (onmiddelijke dreigen). (b) The attack must be unlawful (wederechtelijk). (c) The defense is limited to: oneself or others, honor (in the sexual sense) oneself or others, or property oneself or others (Santoso, 2022).

In carrying out a defense, there must be a balance between the attack or threat faced and the defensive actions taken. This means that defensive actions must not exceed the necessary and obligatory limits to counter the attack or threat. This principle is known as the principle of subsidiarity (subsidiariteit), which emphasizes the importance of balance, proportionality, and limitation in self-defense.

The difference between noodweer and noodweer exces lies in the legal basis that underpins them. Self-defense (noodweer) is considered a justification because it is not against the law, meaning self-defense actions At the moment an unexpected event occurs and requires immediate action to prevent loss or danger and to protect oneself from the threat, it is considered a legitimate and lawful action.

Meanwhile, forced self-defense actions that exceed reasonable limits are considered a violation of the law, as the perpetrator has exceeded reasonable limits in self-defense. This is caused by the severe psychological trauma experienced by the perpetrator, which led them to lose control and take excessive actions. Nevertheless, the perpetrators are not subjected to criminal charges; their actions are still considered a violation of the law due to the psychological trauma they experienced. In this case, excessive self-defense (noodweer exces) is considered a mitigating factor, meaning the perpetrator can obtain forgiveness or be released from punishment due to the unusual circumstances they faced. However, it should be noted that this exculpatory basis only applies in very specific circumstances and cannot be used as a motive for committing unlawful acts in general.

According to Article 49 paragraph (2) of the Criminal Code, which explains that exceeding limits can occur in two contexts, namely exceeding the limits of necessity and exceeding the limits of defense itself. The limit of necessity is considered to have been exceeded if the means of defense used have gone beyond reasonable limits and are disproportionate to the threat faced.

This act of defense cannot be punished due to the absence of schuld, in accordance with the opinion expressed by Professor Van Bemmelen that actions taken excessively still violate the law, but the perpetrator cannot be punished simply because they lack schuld, meaning they cannot be blamed for their actions. . (Lamintang, 2023)

The above opinion is also in line with the fundamental reason for the abolition of a crime, which is caused by the absence of an unlawful nature of the act or the absence of schuld (faults in the broad sense) of the perpetrator (Santoso, 2022). This reason applies in articles 44, 48, 49, 50, and 51 of the Criminal Code.

In positive law, there are limits that cannot be violated during self-defense. The principle of noodweer must be based on the principle of balance. This means that the defensive action taken must be balanced and proportional to the attack received, whether it is against oneself, property, honor, or others. Someone should not exaggerate their defense against the attack they are facing. Therefore, if possible, it is better to avoid or escape from dangerous situations. However, there is an exception to this principle of balance, namely when someone experiences significant psychological trauma as a result of the attack. In this case, self-defense that exceeds reasonable limits can be considered a violation of the law, in accordance with the provisions of the Criminal Code, Article 49, Paragraph 2. . (Manurung, Praktik Penerapan Aturan Pembelaan Diri Dalam Hukum Pidana, 2017).

According to Rummelink, for there to be noodweer excès, there must be a noodweer situation or a situation that compels the perpetrator to act in self-defense (noodweersituatie) (Rummelink, 2003). However, the requirement for noodweer excès cannot be limited to the aforementioned conditions; it must also include those directly caused by a disturbance of the mind (extreme anger, temporary blindness, emotional turmoil). This is what distinguishes between noodweer and noodweer excès and is the reason for the elimination of punishment for the actions of the noodweer excès perpetrator. According to Rummelink's opinion, there is "double causality," which means there are two causalities (cause-effect). (a) Exceeding the limits of forced defense is a direct consequence of a mental shock. (b) Mental disturbances are caused by an attack (Manurung, 2017).

Thus, it can be concluded that the concept of noodweer excès in Indonesian positive law, as stated in Article 49 of the Criminal Code, refers to the principle that a person who acts in an effort to protect themselves from a real threat that can endanger their life, property, and honor cannot be punished. This is because an act committed in self-defense during an emergency and under duress can serve as a justification that removes the unlawful nature of the crime, even though all elements of the crime have been fulfilled. In other words, noodweer excès in Indonesian law is a form of justification that allows someone to commit an act that initially appears to be against the law, but because it is done in an emergency and under duress, the act cannot be punished. However, the perpetrator of the crime cannot be held criminally responsible because it is a justification and excuse.

3.2 Excessive Self-Defense in the Perspective of Islamic Criminal Law

Basically, excessive self-defense has no meaning in Islamic law. However, the term that closely resembles self-defense in Islamic criminal law is *daf'u al-shail*. *Daf'u Al-shail* is a phrase consisting of two words, namely *daf'u* and *al-shail* (Fauzi, 2015). In Arabic, the word "daf'u" has a broad meaning, which is to protect or defend something from damage or danger. In a more specific context, the word "daf'u" means defending oneself from an unjust attack or threat. Meanwhile, the word "al-shail" means to attack or violate the rights of others in a cruel or unjust manner. Therefore, it can be concluded that "daf'u al-shail" is an effort to defend oneself against unjust attacks, whether on life or property. In Islamic teachings, every person has the obligation to defend their life and property from the attacks of others. (Haq & dkk, 2020). This obligation has been mentioned in several texts, such as Q.S Al-Baqarah verse 194 which states:

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتِ قِصَاصٌ فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ
وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

Meaning: "The sacred month is for the sacred month, and (for) the sacred things, there is (the law of) retaliation." Therefore, whoever attacks you, then attack him in a manner equal to his attack on you. Fear Allah and know that Allah is with those who are righteous.

From the verse above, it is explained that the act of self-defense applies the principle of balance, which is also in line with positive criminal law. The action taken must be proportionate to what has been done to you by others, meaning it should not exceed the limits of the attack itself. If the act of self-defense is excessive, it is classified as a *qisas* and *diyat* offense. *Qisas* involves seeking retribution by imposing the same punishment on someone who has committed an offense. For example, if someone commits murder, they will be punished by being killed in retaliation. However, if the victim's family forgives the murderer, they can pay *diyat* (blood money).

The excessive self-defense being studied is a criminal act that involves injuring, impairing someone's senses, or even taking a life. Basically, self-defense is allowed and not against the law, but if it exceeds the limits and is exaggerated in self-defense, then that action is no longer permissible; on the contrary, it becomes the fault and mistake of the person defending themselves.

In Islamic law, the principle of self-defense has certain limitations. If someone exceeds those limits, then they will be held accountable for their actions. Abdul Qadir explained that anger cannot be used as an excuse to commit a crime, and punishment will still be imposed. (Audah, 1987) As for the conditions of *daf'u* and *al-shail* according to the book of Abdul Qadir, it is mentioned:

شروط دفع الصائل: لدفع الصائل شروط يجب توفرها حتى يعتبر المصول عليه في حالة دفاع، وهذه الشروط هي: أولاً: أن يكون هناك اعتداء أو عدوان، ثانياً: أن يكون هذا الاعتداء حالياً، ثالثاً: أن لا يمكن دفع الاعتداء بطريق آخر، رابعاً: أن يدفع الاعتداء بالقوة اللازمة لدفعه

Meaning: "Conditions for self-defense: The following conditions must be met for the victim to be considered in a state of self-defense: First: There must be an attack or aggression, second: The attack must be direct, third: The attack cannot be repelled by any other means, and fourth: The attack must be repelled with the necessary force to repel it: The attack must be defended with the necessary force to defend it.

From the above quotation, it can be concluded that the conditions of *daf'u* and *al-shail* are:

- a. An attack or illegal action has occurred.

An attack on someone is certainly a violation of the law. If the attack on someone is not an unlawful attack, then they cannot defend themselves. So, exercising rights or fulfilling obligations,

whether by individuals, authorities, or actions that are legally justified, is not considered an attack, such as children being hit by their parents with the intention of teaching, educating, or punishing the child.

b. The attack happened suddenly.

In the context of *daf'u Al-shail*, the attack must occur directly and cannot be delayed. If the attack does not occur immediately, then the person's actions cannot be considered self-defense, but rather as an unlawful act. Self-defense is only permitted if an attack has occurred or if there is strong suspicion that an attack is imminent.

c. There is no other way to avoid the attack.

It is recommended in *daf'ual-shail* if there is no other way to avoid the attack. If there are still other ways to avoid the attack, then this method should be used. So, if there are still ways to deter that aggression by shouting or running, then there is no need to use sharp objects or blunt objects to harm the person attacking you. When this method has been used even though it was not necessary to do so This is considered an attack and a criminal act. The jurists have differing opinions on self-defense by running. There is an opinion among some *fuqaha* who do not agree with running as a way to avoid an attack. Meanwhile, according to some legal experts, running can be used as a means to avoid an attack, as it is considered the easiest and most effective way. However, this opinion is opposed by other legal experts, who argue that fleeing is not a legitimate form of self-defense.

d. Self-defense is carried out with the necessary force.

In line with the intensity of the aggression launched, self-defense must be balanced and proportional. The more intense the attack received, the stronger the defense that must be carried out. However, if the defense exceeds reasonable limits, it cannot be considered a defensive effort, but rather an unlawful counterattack.

e. Exceeding the limits of permissible self-defense

If someone defends themselves too aggressively, they must be held accountable for their actions. For example: (a) If the attack can be countered with a retaliatory threat, but the victim instead launches a physical attack, then they must be held accountable for their actions. (b) If the attack could have been repelled with just a punch but the victim ended up injuring the attacker, then he is obliged to take responsibility for the injury. (c) If the attack can be prevented by injuring, but the victim is accidentally killed, then the perpetrator must be held accountable for actions that exceed the limits of defense. (d) If the attacker's resistance can be overcome, but the person being attacked has their hand or leg cut off or is killed, then they must be held accountable for their actions. (Audah, 1987)

The difference in the conditions of self-defense in Islamic criminal law compared to positive criminal law is:

f. Exceeding the limits of self-defense.

In Islamic criminal law, if someone defends themselves too aggressively, they must be held accountable for their actions. Imam Abu Hanifah, Al-Shafi'i, and Ahmad ibn Hanbal opined that it is permissible to set traps like snares behind doors, fences, or on the road with the intention of killing or injuring the attacker. The owner of the place is not responsible if the intention is self-defense because the person entering it is considered to be committing suicide by unlawfully

entering someone else's house (without right). As for Imam Malik, he opined that anyone who does such a thing must be held accountable if their intention is to harm or destroy the person who enters the house without permission. It can be understood that the rule of self-defense is that defense is based on repelling an attack with the least resistance possible. In Islamic law, there is an equivalence of conditions between coercive defense and emergency defense, whereas in positive law, there is an equivalence of conditions in a state of emergency (noodtoestand). Among them are: (a) The state of emergency must truly exist, not just wait, in other words, the fear of death is already a reality. (b) A person who is forced has no choice but to disobey the commands or prohibitions of Sharia or has no other way. And other things that are justified to avoid harm regardless of breaking the law. Indeed, there is a need to worry about death. (c) To avoid emergencies, use only the necessary actions and do not overdo it. Whereas the difference is, it means that it should not violate the principles of Sharia (maqashid al-sharia). (d) In an emergency, it is not permitted to violate the objectives of Sharia.

However, self-defense is carried out to prevent criminal acts. If he commits an act intentionally without intending to take the victim's life, but it still results in a loss of life even though the act did not initially cause death, it is called semi-intentional murder. that is, intentionally on one side and negligence on the other. Criminal responsibility is lighter compared to responsibility due to intent, but heavier than responsibility due to negligence, meaning it cannot be dismissed. In this case, the perpetrator of the crime cannot be subjected to Qisas punishment if they receive forgiveness from the victim's family.

Due to the crime of excessive self-defense resulting in the death of the attacker, the applicable Islamic criminal law is qisas, as mentioned in Surah Al-Baqarah, verse 178:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ

Meaning: "O you who have believed, prescribed for you is legal retribution for those murdered." A free person with a free person, a slave with a slave, and a woman with a woman. Whoever receives forgiveness from their brother should follow it in a proper manner and fulfill it in a good way. That is a concession and mercy from your Lord. Whoever exceeds the limits after that will receive a very painful punishment.

The verse above explains that the primary punishment for someone who commits murder (intentionally) is the punishment of qisas (retribution), but it can also be seen in the verse that Allah SWT explains that this punishment cannot be carried out for reasons justified by Sharia. As a peaceful resolution between the murderer and the victim's family, which includes the element of forgiveness, the murderer must pay diyat (blood money) or compensation to the victim's family. This is a legal suggestion/argument that there is a type of punishment known in the Islamic criminal justice system called diyat. Therefore, we can conclude that diyat is the primary punishment for premeditated murder. In Surah Al-Baqarah verse 178, it is stated that diyat is an alternative punishment for premeditated murder. This is also explained in the hadith:

فَأَخْرَجَهُ أَبُو دَاوُدَ عَنْ مُحَمَّدِ بْنِ رَاشِدِ بْنِ سُلَيْمَانَ بْنِ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: { دِيَّةُ شَيْبَةَ الْعَمْدِ مُعْلَظٌ ، وَدِيَّةُ الْعَمْدِ ، وَلَا يُقْتَلُ صَاحِبُهُ ، وَذَلِكَ أَنْ يَنْزُرَ الشَّيْطَانُ بَيْنَ النَّاسِ ، فَتَكُونَ دِمَاءٌ فِي عَمِيٍّ فِي غَيْرِ صَغِيْبَةٍ وَلَا سِلَاحِ

Meaning: "Then Abu Dawud narrated it from Muhammad bin Rasyid, and Sulaiman bin Musa narrated to us, from Amr bin Syuaib, from his father, from his grandfather, from the Prophet Shallallahu Alaihi Wasallam who said, "The blood money for a killing that resembles intentional murder is mughallazah (heavy) just like the blood money for intentional murder." However, the killer is not punished with qisas. That is because the devil spreads evil whispers among humans, causing indiscriminate bloodshed not out of vengeance and without weapons." (Muhammad Ashraf bin Amir bin Ali bin Haider, 1995).

It should be noted that noodweer exces is not only about murder, but in the case of noodweer exces that has a hadith as evidence, one of which is the above hadith regarding murder, which explains that the main punishment for murder that resembles intentional killing is diyat. And why is noodweer exces mentioned in murder cases that resemble intentional acts? This is caused by a sense of shock brought about by fear, leading to urges or evil whispers to do something more (beyond limits) blindly. From those urges and whispers, it is also meant to be similar to intentionality. The amount of diyat for this murder is the same as the diyat for intentional murder, which is the diyat mughallazah, consisting of thirty jad'zah camels (female camels aged four years and entering their fifth year), thirty hiqqah camels (female camels aged three years and entering their fourth year), and forty pregnant female camels (Muslich, 2007). The details and amount of diyat mughallazah are in accordance with the hadith of the Prophet Muhammad (peace be upon him):

مَنْ قَتَلَ مُؤْمِنًا مُتَعَمِّدًا دُفِعَ إِلَىٰ أَوْلِيَاءِ الْمَقْتُولِ فَإِنْ شَاءُوا قَتَلُوا وَإِنْ شَاءُوا أَحَدُوا الدِّيَةَ وَهِيَ ثَلَاثُونَ حِقَّةً وَثَلَاثُونَ جَذَعَةً وَأَرْبَعُونَ حَلِيفَةً . رواه الترمذي و ابو داود

It means: "Whoever intentionally kills a person, he is handed over to the family of the deceased, who may kill him or impose a fine, which is: 30 female camels aged three years entering four years, 30 female camels aged four years entering five years, 40 pregnant female camels." (HR. Al-Tirmidzi and Abu Dawud).

In this murder case, the perpetrator who is not subjected to qisas is required to pay a substantial compensation to the victim's family. The amount of compensation is equivalent to the compensation for intentional murder that has received forgiveness from the victim's family. The main difference lies in the payment method, where in cases of intentional murder, the payment can be made in installments over three years, with one-third of the blood money paid each year, and the payment obligation is borne by the perpetrator's family. (Noerwahidah, 1994)

Here is another hadith regarding the amount of diyat for murder that resembles intentional killing:

١١٣٦. وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: [قَتِيلُ] الْخَطَا شِبْهُ الْعَمْدِ، قَتِيلُ السُّوْطِ وَالْعَصَا فِيهِ مِائَةٌ مِنَ الْإِبِلِ، أَرْبَعُونَ مِنْهَا فِي بَطْنِهَا أَوْلَادُهَا. رَوَاهُ أَحْمَدُ، وَأَبُو دَاوُدَ، وَابْنُ مَاجَهَ، وَالتَّنْسَائِيُّ، رَجَمَهُمُ اللَّهُ

Meaning: 1136. "From Abdullah bin Amr Radhiyallahu Anhuma, from the Prophet Shallallahu Alaihi wa sallam, he said, '(Murder victims) due to a mistake that resembles intentionality, such as murder victims with a whip or stick.'" It is obligatory to pay a blood money of one hundred camels for it; forty of which must be pregnant camels." (Reported by Ahmad, Abu Dawud, Ibn Majah, and An-Nasa'i, may Allah have mercy on them) (Abdillah, 2013).

In the phrase قَتْلُ شِبْهِ الْعَمْدِ (Murder that resembles intentionality), it means that the perpetrator of the crime intentionally strikes with a non-lethal weapon such as a whip, stick, or stone on non-vital parts of the body. It is also explained that the blood money for unintentional murder and

murder resembling intentional murder is one hundred camels, including forty pregnant female camels.

Murder resembling intentional (Diyat syibhul' amdi) in terms of type, value, and weighting is similar to the weighting of intentional murder. There are 3 types of diyat according to Imam Abu Hanifah and Malik, namely 100 camels, 1000 dinars, or 12,000 dirhams of silver, as well as according to the view of Imam Shafi'i regarding qaulul qadim. However, regarding the new opinion (qaulul jadid), the diyat is only camels, while for gold and silver according to Imam Shafi'i, it must be equated to the price of camels. (Djazuli, 1997) According to the following hadith:

عَنْ مَعْمَرٍ ، عَنِ الزُّهْرِيِّ ، قَالَ : كَانَتْ الدِّيَّةُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ بَعِيرٍ ، لِكُلِّ بَعِيرٍ أُوقِيَّةٌ ، فَذَلِكَ أَرْبَعَةُ آلَافٍ ، فَلَمَّا كَانَ عُمَرُ ، غَلَّتِ الْإِبِلُ ، وَرَخِصَتِ الْوَرِقُ ، فَجَعَلَهَا عُمَرُ أُوقِيَّةً وَنِصْفًا ، ثُمَّ غَلَّتِ الْإِبِلُ ، وَرَخِصَتِ الْوَرِقُ ، فَجَعَلَهَا عُمَرُ أُوقِيَّتَيْنِ ، وَذَلِكَ ثَمَانِيَةُ آلَافٍ ، ثُمَّ لَمَّا تَزَلَّتِ الْإِبِلُ تَعْلُو ، وَتَرَخَّصَتْ ، حَتَّى جَعَلَهَا عُمَرُ اثْنَيْ عَشَرَ آلَافًا ، أَوْ أَلْفَ دِينَارٍ ، وَمِنَ الْبَقَرِ مِائَتَيْ بَقَرَةٍ ، وَمِنَ الشَّاءِ أَلْفِي شَاةٍ

Meaning: From Ma'mar, from Al-Zuhri, he said: "The blood money during the time of the Messenger of Allah (peace be upon him) was one hundred camels, each camel being one uqiyah, which amounts to four thousand." When Umar saw the price of camels becoming expensive, and silver becoming cheap, he set it at one and a half uqiyah. Then camels became expensive and silver also became cheap, Umar set it at two uqiyah, which is eight thousand. Then camels continued to become expensive, and silver continued to become cheap until Umar set it at twelve thousand or one thousand dinars, and from cattle two hundred cattle, and from sheep one thousand sheep." (al-San'ani, 1983)

Thus, it is concluded that under Islamic criminal law, the action of noodweer exces must still be held accountable for the act committed. If someone is able to defend themselves only by threatening, but then proceeds to commit unnecessary violence, they must be held accountable for their actions. Similarly, if someone can defend themselves by merely injuring, but then commits an unjustifiable murder, they must be held accountable for that murder, which is manifested in the form of a blood money of 100 camels if they receive forgiveness from the family of the murdered victim.

4. Conclusions

Excessive self-defense (Noodweer exces) is a defense that exceeds the limits of necessary self-defense in an emergency or distressing situation. Self-defense is carried out based on the principle of balance. Self-defense against attacks on honor, decency, oneself, and property must be proportional to the incoming attack. At the moment self-defense has exceeded the necessary limits of the incoming attack, then according to positive law, excessive self-defense (noodweer exces) is not punishable, as stated in the Criminal Code (KUHP) article 49 paragraph (2). When self-defense exceeds the limits, the person acting in self-defense is in a state of emotional turmoil while carrying out the action, which serves as the justification or excuse for the removal of criminal liability. Meanwhile, in Islamic criminal law, excessive self-defense still requires accountability. However, it should be understood that the act of noodweer exces does not only apply to murder cases but also to other cases such as assault, bullying, and threats where noodweer exces can occur.

The differences between Indonesia's positive law and Islamic criminal law regarding excessive self-defense (noodweer exces) have significant implications for the criminal justice system, particularly in how legal responsibility is determined and the criteria for excusing criminal liability in

cases of self-defense. Under Indonesia's Criminal Code (KUHP), excessive self-defense is seen as a defense that, while exceeding the necessary limits of self-defense, is excused from criminal punishment when the individual acts in a state of emotional turmoil in response to an imminent threat. This provision reflects an understanding that the person's emotional state can impact their ability to make rational decisions, thus reducing their moral culpability for actions that exceed the proportional limits of self-defense.

However, Islamic criminal law takes a different approach. Even if the individual acts in excessive self-defense, they are still held accountable, as accountability for actions, including excess in self-defense, is a key principle in Islamic law. According to Islamic teachings, accountability for one's actions is essential, regardless of emotional disturbance, as long as the act does not fall under categories of legal exemption such as duress or necessity. This distinction means that individuals who exceed the limits of self-defense could be subject to punishment under Islamic law, even if they acted out of an emotional response.

These legal differences pose challenges within Indonesia's criminal justice system, especially given the dual legal system that applies in the country. The blending of secular law with Islamic law (in specific regions or contexts, such as Aceh) creates potential conflicts when it comes to determining legal responsibility in cases of excessive self-defense. A person who might be excused from punishment under the secular criminal code could face punishment under Islamic law, depending on the interpretation and application of the law. This duality raises questions about the consistency and fairness of legal outcomes, as different legal frameworks may produce contradictory results.

Furthermore, these differences also affect how the justice system approaches issues of justice and fairness. In cases where excessive self-defense results in harm or death, the distinction between the secular and Islamic legal principles may influence public perceptions of justice. For example, some may argue that holding individuals accountable under Islamic law, even when they acted in an emotionally charged situation, ensures strict adherence to moral responsibility and deterrence. On the other hand, the secular law's more lenient stance, which takes into account the emotional state of the individual, might be seen as more humane and understanding of human nature.

The implications of these legal differences thus highlight the need for clarity and consistency in Indonesia's criminal justice system, especially when reconciling legal norms and principles from multiple sources. This complexity also underscores the importance of ensuring that legal reforms address these discrepancies to create a more cohesive and equitable system that balances justice, fairness, and respect for human rights in line with Indonesia's diverse legal landscape.

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