

## **Two Systems, One Concept of Comparative Analysis of Dutch Noodweer and Indonesian Forced Defense**

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**Abstract.** *This study comparatively analyzes the concept of noodweer in Dutch criminal law and forced defense in the Indonesian Criminal Code. Using a qualitative analysis method with a normative and comparative juridical approach, this study examines the differences and similarities between the two concepts, as well as their implications in legal practice. The results show that there are significant differences in interpretation and application, although there are similarities in basic principles. The Netherlands tends to adopt a broader and more flexible interpretation of noodweer, reflecting its emphasis on individual rights. In contrast, Indonesia applies a stricter interpretation to forced defense, which can be understood as an attempt to strengthen the role of the state in conflict resolution. These differences are influenced by historical, socio-cultural factors and the development of each country's justice system. The implications are seen in law enforcement and the protection of individual rights. The Dutch approach offers greater flexibility in handling complex cases, while the Indonesian approach provides clearer guidance for law enforcement officials. The study also explores the challenges and prospects for harmonizing the concept of forced defence internationally, concluding that there are opportunities for partial convergence through the development of international minimum standards and increased knowledge exchange between countries.*

**Keywords:** *Criminal; Defense; Forced; Noodweer.*

### **1. INTRODUCTION**

The concept of necessitated defense, known in Dutch criminal law as noodweer, is one of the reasons for the elimination of punishment that is widely recognized in the criminal law system in various countries. This concept is based on the principle that every individual has the right to defend themselves or others from unlawful attacks. However, the interpretation and application of this concept can vary from one country to another, depending on the prevailing legal system, culture and social values.

Indonesia as a country whose criminal law system is heavily influenced by Dutch law due to its colonial history, has a concept of forced defense that is similar but not

identical to the concept of *noodweer* in Dutch criminal law. An in-depth understanding of the differences and similarities between the concept of *noodweer* in Dutch criminal law and forced defense in the Indonesian Criminal Code is not only important from an academic perspective, but also has practical implications in law enforcement and the protection of individual rights. This comparative analysis is expected to provide new insights in the development and improvement of the concept of forced defense in Indonesia. One of the forms of the concept of forced defense that can erase the punishment is an action taken by someone who aims to protect himself in the form of a threat, but it can exceed the limits of his ability so that it can eliminate life.

The criminal justice system in each stage runs as it should. One of them is the forced defense of Article 49 which is carried out against oneself in defending his body from attack. Crimes against the existence of offenses against life, property, and other offenses committed by victims and eventually become perpetrators in the criminal justice system.

Law usually has a regulating and coercive nature, which means that it regulates people's lives by establishing rules that are set by the national government and can be applied to any individual who violates them. From a legal perspective, a crime can be defined as a human action that violates or contradicts the provisions of the law, specifically an action that violates the prohibitions set by law, and does not fulfill or go against the rules set by local law. In Indonesia, the law guarantees the right of every citizen to a fair trial. To achieve a fair trial, the perpetrator of a criminal offense is entitled to legal certainty, which aims to provide protection. Forced defense is intended to eliminate the unlawfulness (*wederrechtelijkheid or onrechtmatigheid*), and also to eliminate the nature of the crime (*strafuitsluitingsgrond*).<sup>1</sup>

In a study conducted by Amelia Putri Rizkyta, she explained that justification in criminal law plays an important role in limiting punishment for perpetrators who act in urgent situations. Based on Article 49 of the Indonesian Criminal Code, acts of self-defense can remove the unlawful nature of an act if they meet certain conditions, especially if they are carried out to protect themselves from direct threats. In this context, emphasizing that forced self-defense, if it meets the legal elements, provides legal protection for the perpetrator from criminal threats, highlights the higher legal interests that must be assessed based on concrete circumstances<sup>2</sup>. Furthermore, the second journal by Cecep Ibnu Ahmadi explains the problem of injustice that occurs in the application of self-defense law in Indonesia. Although there are instances where acts of self-defense do not proceed to legal proceedings, differences in the handling of similar cases indicate legal uncertainty and injustice. This reflects the need for better oversight and harmony in the application of the law to protect the rights of all citizens in threatening situations.<sup>3</sup> I Gusti Ngurah Dwi Puspanegara's third journal raised the

concept of *noodweer exces* or excessive defense in the Criminal Code, which cannot be punished if the perpetrator acts under emotional or psychological pressure due to the attack. This excessive self-defense is still legally recognized if it occurs in urgent

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<sup>1</sup> Jadid, M. N., & Michael, T. (2023). *Perlindungan Hukum Bagi Pelaku Kekerasan Karena Pembelian terpaksa* (Vol. 10, Issue 1).

<sup>2</sup> Rizkyta, A. P., & Holish, A. M. (2023). "Victims of Robbery with the Forced Defence (*Noodweer*)": A Legal and Victimological Aspects. *Journal for Law, Justice, and Crime in Indonesia and Southeast Asia*.

<sup>3</sup> Ahmadi, C. I., Ismail, D. E., & Machmud, A. (2023). *The Politics Of Criminal Law In Self Defense In Indonesia Regulatory and Enforcement Discourses*. *Jurnal Legalitas*, 16 (1), 1–14.

circumstances and triggers a change in position from victim to perpetrator. This discussion demonstrates the judge's approach in deciding the punishment by considering the legal evidence and the psychological condition of the perpetrator<sup>4</sup>.

In this research, the *novelty* raised is a comparative analysis of the concept of *noodweer* in Dutch criminal law and the concept of forced defense in the Indonesian Criminal Code, with an emphasis on the similarities and differences related to the reasons for the abolition of punishment in the two legal systems conducted a comparative study of Dutch decisions and decisions in Indonesia. From the review of the three related journals, it was found that self-defense in the Indonesian Criminal Code focuses more on the concrete conditions and circumstances accompanying the act, as well as issues of injustice arising from inconsistent application in the field. This analysis provides a new comparative perspective, especially regarding the role of legal and psychological contexts that are recognized as different in legal protection between these two countries, thus enriching the discourse on legal certainty in self-defense cases. This aims objektif of this research is to comparatively analyze the two concepts, identify their similarities and differences, and understand how they are applied in judicial practice in each country.

## 2. RESEARCH METHODS

The method used in this study is the qualitative analysis method with a normative and comparative juridical approach. With primary data sources was obtained from laws and regulations, court decisions, and legal literature in both countries. Secondary data was collected through a literature study of books, journal articles, and other sources. The analysis was conducted by identifying and categorizing the important elements in the concepts of *noodweer* and forced defense, comparing the interpretation and application of the two concepts in the jurisprudence in each country, analyzing the historical, social, and cultural factors that influenced the development of the two concepts, evaluating the implications of the differences and similarities of the two concepts for the protection of individual rights and law enforcement.

## 3. RESULT AND DISCUSSION

### 3.1. Comparison of Involuntary Defense in the Indonesian Criminal Code The Beginning of the Concept of *Noodweer* and Involuntary Defense

Justification in criminal law can remove the unlawful nature of an act, even though the act fulfills the elements of a criminal offense. If an act is not considered unlawful, the perpetrator cannot be convicted. Article 49 of the Criminal Code stipulates that a person who acts in self-defense or forced self-defense cannot be convicted, especially in situations where the perpetrator is threatened. This legal protection against forced self-defense upholds higher legal interests, which must be considered based on the concrete circumstances surrounding the act. In emergency situations, people who are forced to engage in self-defense must be legally protected. The government needs to increase supervision and provide legal certainty for the public to protect them from threats to life, property and physical well-being. Judges, as law enforcers, must also

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<sup>4</sup> Puspanegara, I. G. N. D. P., & Wulandari, N. G. A. A. M. T. (2024) *Defense Exceed the Limits (Noodweer Exces) in Victim Repositioning Principle*. JUSTISI Journal Of Law, 10(2), 627–639.

pay attention to every person who commits forced self-defense and consider the factors that accompany the act in the sentencing process, so that social justice can be achieved.<sup>5</sup>

Excessive defense is not punishable under Article 49 Paragraph (2) of the Criminal Code, taking into account certain criteria. These criteria include a defense situation that exceeds reasonableness and emotional shock or psychological pressure due to the attack. This occurs when the victim turns into the perpetrator (repositioning the victim) in response to threats. Based on the theory of negative evidence, the judge determines the punishment by conviction from the valid evidence at trial, while considering whether the reasons for the abolition of punishment apply in the case.<sup>6</sup>

The act of self-defense regulated in the Indonesian Criminal Code is a form of legal protection for citizens in defending their lives from threats and crimes, and reflects the principle of the rule of law. In some cases, law enforcement officials have differed in handling similar cases, indicating differences in the application of the law. This difference reflects injustice and lack of legal certainty, and has an impact on not fulfilling the sense of justice for all citizens, which should be guaranteed in a state of law like Indonesia.<sup>7</sup> The analysis will discuss how the concept of *Noodweer* in Dutch law, forced defense in Indonesia, comparison of similarities and differences.

The beginning of the concept of *noodweer* in Dutch criminal law is regulated in Article 41 of the Dutch *Wetboek van Strafrecht (WvS)*. This concept is generally defined as an act of defense necessary to protect oneself or another person, honor, or property against an unlawful attack that is instantaneous or directly threatening.<sup>8</sup> According to Remmelink & Suringa, the important elements in the Dutch concept of *noodweer* include The existence of an unlawful attack (*wederrechtelijke aanranding*), The attack is instantaneous or directly threatening (*ogenblikkelijk of onmiddellijk dreigend*), The defense must be necessary (*noodzakelijk*) The defense is proportional to the attack faced.<sup>9</sup>

The concept of forced defense in Indonesian criminal law is regulated in Article 49 paragraph (1) of the Criminal Code. According to this provision, a person who is forced to defend himself or herself or another person, the honor of decency, or property against an attack or threat of attack that is unlawful and instantaneous, cannot be punished.<sup>10</sup> Prodjodikoro identified the elements of forced defense as an attack or threat of attack that is against the law, the attack is instantaneous, the defense is carried out against oneself, others, honor morality, or property, the defense must be balanced with the attack or threat faced.<sup>11</sup> An initial review of the two concepts

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<sup>5</sup> Rizkyta, A. P., & Holish, A. M. (2023). "Victims of Robbery with the Forced Defence (*Noodweer*)": A Legal and Victimological Aspects. *Journal for Law, Justice, and Crime in Indonesia and Southeast Asia*.

<sup>6</sup> Puspanegara, I. G. N. D. P., & Wulandari, N. G. A. A. M. T. (2024). *Defense Exceed the Limits (Noodweer Exces) in Victim Repositioning Principle*. *JUSTISI Journal Of Law*, 10(2), 627–639.

<sup>7</sup> Ahmadi, C. I., Ismail, D. E., & Machmud, A. (2023). *The Politics Of Criminal Law In Self Defense In Indonesia Regulatory and Enforcement Discourses*. *Jurnal Legalitas*, 16 (1), 1–14.

<sup>8</sup> Machielse, A. J. (1986). *Noodweer in Het Strafrecht*. Gouda Quint.

<sup>9</sup> Remmelink, J., & Suringa, D. H. (1996). *Inleiding Tot De Studie Van Het Nederlandse Strafrecht*. Gouda Quint.

<sup>10</sup> Moeljatno. (2008). *Asas Asas Hukum Pidana* (8th ed.). Rineka Cipta.

<sup>11</sup> Prodjodikoro, W. (2011). *Asas Asas Hukum Pidana di Indonesia* (4th ed.). Refika Aditama.

identifies some fundamental similarities and differences and a comparative analysis of the elements of noodweer and duress includes:

**Table 1.** Similarities and differences between Dutch Noodweer and Indonesian forced defense

Equation	Difference
Both are grounds for expungement.	The Dutch concept of noodweer explicitly includes "honor".
Requires an unlawful attack.	The Indonesian Criminal Code calls it "honor of decency".
Allowing defense of oneself, others and property.	The interpretation of "instantaneous" or " <i>ogenblikkelijk</i> " may differ in the judicial practice of the two countries.
	The emphasis on proportionality of defense is more explicit in the Dutch concept of noodweer.

**Table 2.** Comparison of elements of Dutch noodweer and Indonesian forced defense

Aspect	Noodweer (Belanda)	Forced Defense (Indonesia)
<b>Legal Basis</b>	Article 41 Dutch WvS	Article 49 paragraph (1) of the Indonesian Criminal Code
<b>Definition of Attack</b>	<p><b>Against the law, including non-criminal acts</b>            Kelk &amp; Jong, emphasize that an unlawful attack (<i>wederrechtelijke aanranding</i>) does not have to be a criminal act. It can be an act that violates a person's subjective rights or conflicts with the perpetrator's legal obligations.<sup>12</sup> For example, the act of entering another person's home without permission, although not a criminal offense, can be considered an assault against the context of noodweer.            Interpretation in the Dutch legal system, a person has a wider space to defend themselves against various forms of interference or violation of rights.</p>	<p><b>Tends to be limited to Criminal Acts</b>            Hamzah explained that the concept of "against the law" in forced defense tends to be interpreted more narrowly, namely as an action that fulfills the elements of a criminal offense. This can be seen from court decisions that tend to require the threat of a real criminal act to be categorized as an unlawful attack in the context of forced defense.<sup>13</sup> Interpreted in the Indonesian legal system, the defense of necessity tends to be limited to situations involving the threat of more serious criminal offenses.</p>

<sup>12</sup> Kelk, C., & Jong, F. De. (2023). *Studiboek Materieel Strafrecht*. Wolters Kluwer.

<sup>13</sup> Hamzah, A. (2019). *Hukum Pidana Indonesia* (3rd ed.). Sinar Grafika.

<p><b>Instantaneous Properties</b></p>	<p><b>Broad interpretation, including future threats</b>  The concept of <i>"ogenblikkelijk of onmiddellijk dreigend"</i> (immediate or directly threatening) is interpreted more broadly. According to Hullu &amp; Kempen, an imminent threat can also be considered an immediate attack. For example, someone who knows they will be attacked at night when they go home from work can take preventive measures that fall under the category of <i>noodweer</i>.<sup>14</sup>  The Dutch legal system seems to provide ample room for individuals to take self-defense measures.</p>	<p><b>Stricter interpretation, focus on immediate threats</b>  Arief, (explains that the interpretation of "instantaneous" tends to be stricter. Forced defense is generally only recognized if the attack is in progress or will occur within seconds or minutes. Preventive measures against threats that will occur hours or days later are difficult to categorize as forced defense.<sup>15</sup>  The Indonesian legal system emphasizes the role of the state in dealing with threats that are not immediate.</p>
<p><b>Object of Defense</b></p>	<p><b>Self, others, honor, property</b>  The Dutch concept of <i>noodweer</i> explicitly lists "eer" (honor) as a defensible object. Cleiren &amp; Verpalen, explain that this concept of honor includes not only honor in a sexual context, but also personal honor in general, including one's reputation and dignity.<sup>16</sup>  A person can claim <i>Noodweer</i> if they take defensive action against a defamatory verbal attack.</p>	<p><b>Self, others, honor morality, property</b>  The Indonesian Criminal Code mentions "honor of decency" as a defensible object. Soesilo, interprets that this "honor of decency" is limited to the context of attacks on sexual honor, such as attempted rape or sexual harassment.<sup>17</sup>  Forced defense in this context is generally limited to physical attacks that threaten sexual honor.</p>
<p><b>Proportionality</b></p>	<p><b>Strong emphasis, strict evaluation by the court</b>  The principle of proportionality (<i>evenredigheid</i>) is a highly emphasized element in the doctrine of <i>noodweer</i>. Borgers &amp; Kooijmans, explain that Dutch courts consistently evaluate whether the defensive measures taken do not exceed what is necessary to stop the attack.<sup>18</sup>  For example, the use of a firearm to stop a simple theft is generally considered disproportionate and cannot be claimed as <i>noodweer</i>.</p>	<p><b>Recognized, but more flexible interpretation</b>  Although the principle of proportionality is also recognized, its application in judicial practice tends to be more flexible. Marpaung, observed that courts often consider situational factors, such as the psychological state of the accused when facing an attack, evaluating the proportionality of the defense. This sometimes results in a more lenient interpretation of the principle of proportionality compared to Dutch practice.<sup>19</sup></p>

### 3.2. Historical, socio-cultural, comparative analysis of *noodweer* and forced defense

#### 1. Influence of Colonial History

<sup>14</sup> Hullu, J. De, & Kempen, P. H. P. H. M. C. van. (2024). *Materieel strafrecht*. Wolters Kluwer.

<sup>15</sup> Arief, B. N. (2016). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti.

<sup>16</sup> Cleiren, C. P. M., & Verpalen, M. J. (2010). *Tekst & Commentar Strafrecht*. Deventer: Wolters Kluwer.

<sup>17</sup> Soesilo, R. (2013). *Kitab Undang Undang Hukum Pidana Serta Komentar Komentarnya Lengkap Pasal Demi Pasal*. Politeia.

<sup>18</sup> Borgers, M. ., & Kooijmans, T. (2008). *The Scope of the Community's Competence in the Field of Criminal Law*. *European Journal of Crime, Criminal Law and Criminal Justice*, 379–395.

<sup>19</sup> Marpaung, L. (2012). *Asas - Teori - Praktik Hukum Pidana* (7th ed.). Sinar Grafika.

Indonesia, as a former Dutch colony, inherited many aspects of its legal system from the Netherlands. However, as Lev explains, the process of the reception of colonial law into the post-independence Indonesian legal system was not linear. There was an attempt to adapt the inherited legal concepts to the values and needs of Indonesian society.

In the context of forced defense, this can be seen from the stricter interpretation of the elements of forced defense in Indonesia compared to the original concept in the Netherlands.<sup>20</sup> This tendency can be understood as an attempt to limit the potential misuse of the concept of forced defense in the context of Indonesian society, which is still in the process of developing a post-colonial rule of law. As argued by Reksodiputro, stricter restrictions on forced defense can be seen as part of an effort to strengthen the state's monopoly on the legitimate use of force and prevent vigilantism.<sup>21</sup>

## **2. Defense of Social Structures and Cultural Values**

The Netherlands, as a Western European country with a strong tradition of liberalism, tends to place greater emphasis on individual rights, including the right to self-defense. This is reflected in the broader interpretation of the concept of *noodweer*. As Dijk explains, Dutch society has high expectations of the individual's ability to protect himself, which is in line with the more flexible concept of *noodweer*.<sup>22</sup>

In contrast, Indonesia, with its more communal social structure and strong values of harmony, tends to emphasize the role of the state and society in conflict resolution. Wahid, argues that the stricter interpretation of forced defense in Indonesia reflects a cultural preference to avoid direct confrontation in favor of resolution through more structured social or legal mechanisms.<sup>23</sup>

## **3. Development of the Criminal Justice System**

The differences in the application of the concepts of *noodweer* and duress are also influenced by the development of the criminal justice system in each country. The Netherlands, with its more established justice system and high level of public trust, has greater flexibility in interpreting legal concepts such as *noodweer*. This is supported by a strong tradition of jurisprudence and a judicial system that is more oriented towards the search for material truth.<sup>24</sup>

Indonesia's criminal justice system still faces many challenges, including corruption and public distrust. In this context, Atmasasmita, argues that a stricter interpretation of the

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<sup>20</sup> Lev, D. S. (2000). *Legal Evolution and Political Authority in Indonesia*; Selected Essays.

<sup>21</sup> Reksodiputro, M. (2020). *Sistem Peradilan Pidana Indonesia*. Pusat Pelayanan Keadilan Dan Pengabdian Hukum Universitas Indonesia.

<sup>22</sup> Dijk, J. J. . Van. (2008). *Slachtoffers Als Zondebokken* (Apeldoorn (ed.)). Maklu Uitgevers.

<sup>23</sup> Wahid, A. (2019). *Hukum Pidana Indonesia: Perkembangan dan Pembaharuan*. Citra Aditya Bakti.

<sup>24</sup> Tak, P. J. (2008). *The Dutch Criminal Justice System*. WODC Repository.

forced defense can be seen as an attempt to prevent the misuse of this concept by irresponsible parties.<sup>25</sup>

#### 4. Juridical Analysis of Noodweer and Involuntary Defense

To better understand the differences and similarities in the application of the concepts of noodweer and forced defense, it is necessary to analyze the jurisprudence in both countries.

**Table 3.** Differences between Dutch and Indonesian jurisprudence

Jurisprudence in the Netherlands	Courts in Indonesia
<p><b>HR case October 23, 1984, NJ 1986, 56 (Bijlmer noodweer)</b></p>	<p><b>Supreme Court No. 903 K/Pid/2019</b></p>
<p>The Hoge Raad (Dutch Supreme Court) in this case expanded the interpretation of "directly threatening attack". The defendant, who had previously been the victim of a robbery, took preventive action by attacking someone he suspected of robbing him based on suspicious movements. The court ruled that this act could be categorized as noodweer, even though the attack had not actually occurred. This decision shows the flexibility in the interpretation of "directly threatening attack" in Dutch law.</p>	<p>The case started when the victim did not pay for the cow that was purchased from the Defendant. The victim then tried to take the cow, which caused the Defendant to make a complaint. However, when the Defendant gave chase, there was an actual assault on the Defendant's body which occurred suddenly, due to the victim's being grabbed by the Defendant and this action was not foreseen by the Defendant. The Supreme Court considered that the defendant's action was a forced defense that did not exceed the limit. Therefore, the public prosecutor's appeal was rejected, and the defendant's actions were not considered a criminal offense under Article 49 of the Penal Code.</p>
<p><b>HR case February 22, 1995, NJ 1995, 167</b></p>	<p><b>Supreme Court No. 61 K/Pid/2020</b></p>
<p>This case occurred when the defendant was suddenly attacked and felt that he was in danger, in order to protect himself, the defendant counterattacked excessively which resulted in the death of the attacker, the Hoge Raad (Dutch Supreme Court) recognized that the defendant was in a situation of legitimate defense because there was a real threat and considered that the actions were taken under the influence of very strong emotions that arose spontaneously from the sudden attack. The defendant was acquitted, although the actions taken were deemed to be excessive, the response arose from understandable emotional tension in the urgent situation.</p>	<p>This case started when the defendant felt threatened by the victim's aggressive behavior. In this situation, the defendant claimed that he acted in self-defense when the victim attacked him. The defendant attempted to explain that his actions were the result of an emergency that forced him to act unlawfully to protect himself. The Supreme Court ruled that the defendant's actions did not qualify to be considered a defense of necessity. Although there was an element of threat, the actions taken by the accused were deemed to go beyond what was necessary for self-protection. This decision shows the importance of proportional assessment in assessing the act of defense, where a situation of pressure or urgency does not necessarily exempt a person from legal liability if the action is deemed disproportionate or excessive.</p>
<p><b>HR case February 8, 2011, NJ 2011, 107</b></p>	<p><b>Supreme Court No. 685 K/Pid/2021</b></p>
<p><i>Hoge Raad</i> menekankan proporsionalitas dalam noodweer. Terdakwa menggunakan pisau untuk</p>	<p>This case allegedly occurred when the defendant was involved in a fight between his family and the victim and his friends. The tension of the conflict</p>

<sup>25</sup> Atmasasmita, R. (2013). *Sistem Peradilan Pidana Kontemporer* (3rd ed.). KENCANA. (2013).



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membela diri dari serangan tanpa senjata. Pengadilan memutuskan bahwa penggunaan pisau dalam situasi ini tidak proporsional dan karenanya tidak dapat dianggap sebagai noodweer. Kasus ini mengilustrasikan bagaimana prinsip proporsionalitas diterapkan secara ketat dalam konteks noodweer di Belanda.

increased after the defendant saw the victim and his friends carrying sharp weapons, including machetes or machetes. The defendant claimed that his actions were driven by the need to protect himself and his family from the threat of violence posed by the victim. However, the Supreme Court considered that the defendant's actions did not meet the requirements of legitimate self-defense under Article 49 of the Criminal Code, as there were no exigent circumstances that forced the action.

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## 5. Implications of Different Concepts for Law Enforcement and Protection of Individual Rights

Differences in the interpretation and application of the concepts of noodweer and involuntary defense have significant implications for law enforcement and the protection of individual rights in the two countries

### 1. Law Enforcement

The Netherlands' broader interpretation of noodweer provides greater flexibility for law enforcement officials in handling cases involving self-defense. This allows a more nuanced approach in evaluating conflict situations. However, as Buruma argues, this flexibility can also pose challenges in terms of consistent application of the law. In Indonesia, a stricter interpretation of the involuntary defense tends to provide clearer guidance for law enforcement officials.<sup>26</sup> Hiariej, however, believes that this can also result in a lack of flexibility in dealing with complex cases, especially when the social and cultural context needs to be taken into account.<sup>27</sup>

### 2. Protection of Individual Rights

The broader concept of noodweer in the Netherlands can be seen as a form of stronger protection of an individual's right to self-defense. Cleiren, believes that this is in line with the strong principle of individual autonomy in Dutch society.<sup>28</sup> However, critics such as Van der Leun warn that too broad an interpretation could increase the risk of escalation of violence in society. In Indonesia, a stricter interpretation of involuntary defense can be seen as an attempt to protect individual rights through preventing vigilantism.<sup>29</sup> However, Arief, argued that this approach also has the potential to limit individuals' rights to protect themselves in certain situations, especially when a rapid response is required.<sup>30</sup>

### 3. Challenges and Prospects for Concept Harmonization

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<sup>26</sup> Buruma, Y. (2016). *Noodweer In De Rechtpraak*. Delikt en Delinkwent.

<sup>27</sup> Hiariej, E. O. S. (2016). *Prinsip Prinsip Hukum Pidana*. Cahaya Atma Pustaka.

<sup>28</sup> Cleiren, C. P. M. (1989). *Beginselen Van een goede procesorde: een analyse van rechtspraak in strafzaken* (Arnhem (ed.)). Gouda Quint.

<sup>29</sup> Van der Leun, J. (2018). *Crimmigrate*. Den Haag: Boom Juridische Uitgevers.

<sup>30</sup> Arief, B. N. (2005). *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*. Citra Aditya Bakti.

Given globalization and increasing interaction between legal systems in different countries, the question arises about the possibility and desirability of harmonizing the concept of involuntary defense internationally. Covers the challenges of Harmonization of Differences in legal systems: The Netherlands adheres to a civil law system, while Indonesia has a mixed legal system with strong influences from civil law. These differences create challenges in harmonizing Lindsey's legal concepts.<sup>31</sup> Differences in socio-cultural context: Different values and social norms between the Netherlands and Indonesia influence the interpretation and application of the concept of self-defense.<sup>32</sup> National legal sovereignty: Each country has the right to regulate its own legal system according to its local needs and context.<sup>33</sup> Prospects for Harmonization Although full harmonization may be difficult to achieve, there are several areas where convergence of concepts can be attempted Minimum standards: Elaboration of international minimum standards for involuntary defense that can be adopted by different legal systems.<sup>34</sup> Knowledge exchange: Increasing the exchange of knowledge and best practices between the Dutch and Indonesian legal systems in handling forced defense cases.<sup>35</sup> Contextual approach: Develop an approach that considers local context while maintaining universal principles of self-defense.<sup>36</sup>

#### 4. CONCLUSION

Overall, the results of this study are a comparative analysis of the concept of *noodweer* in Dutch criminal law and forced defense in the Indonesian Criminal Code shows that there are fundamental similarities but also significant differences in their interpretation and application. These differences are influenced by historical, socio-cultural factors and the development of the justice system in each country. The Dutch tend to adopt a broader and more flexible interpretation of *noodweer*, reflecting a strong emphasis on individual rights and personal autonomy. In contrast, Indonesia applies a stricter interpretation of forced defense, which can be understood as an effort to strengthen the state's role in conflict resolution and prevent vigilantism. These differences have important implications for law enforcement and the protection of individual rights in both countries. While the Dutch approach offers greater flexibility in handling complex cases, the Indonesian approach provides clearer guidance for law enforcement officials. Although full harmonization of the concept of involuntary defense between the two countries may be difficult to achieve due to differences in legal systems and socio-cultural contexts, there are opportunities for partial convergence through the development of international minimum standards and increased knowledge exchange. Further research is needed to explore how the two countries can learn from each other in developing interpretations and applications of the concept of involuntary defense that are more nuanced and responsive to the complexity of real situations, while still maintaining the integrity of their respective legal systems and the social values that underlie them.

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<sup>31</sup> Lindsey, T. (2008). *Indonesia: Law and Society*. The Federation Press.

<sup>32</sup> Bouchier, D. (2014). *Illiberal Democracy in Indonesia: The Ideology of the Family State*. Routledge.

<sup>33</sup> Juwana, H. (2010). *Hukum Internasional dalam Perspektif Indonesia sebagai Negara Berkembang*. Yarsif Watampone.

<sup>34</sup> Bassiouni, M. C. (2008). *International criminal law. Volume I, Sources, subjects, and contents* (Leiden (ed.); 3rd ed.). M. Nijhoff.

<sup>35</sup> Pompe, S. (2005). *The Indonesian Supreme Court: A Study of Institutional Collapse*. Cornell University Press, Southeast Asia Program Publications at Cornell University.

<sup>36</sup> Bedner, A. W. (2001). *Administrative Courts in Indonesia: A Socio-Legal Study* (Leiden (ed.)). Atlantics.

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