

The Limits of Deadly Force in Indonesian Self-Defense Law from a Human Rights Perspective

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Abstract

Purpose: This study examines the limits of deadly force in self-defense under Indonesian criminal law from a human rights perspective, focusing on whether the principles of necessity and proportionality adequately protect the right to life while ensuring legal certainty.

Research Methodology: This study employs a normative juridical method combined with qualitative case analysis. It reviews Article 49 of the former Criminal Code and Articles 34 and 35 of the 2023 Criminal Code, as well as selected judicial decisions, including Supreme Court Decision No.566 K/Pid/2025. The analysis is framed by Article 6 of the ICCPR and General Comment No. 36. This study is doctrinal and review-based, utilizing systematic statutory interpretation and case analysis.

Results: The findings show that the Indonesian self-defense law is normatively restrictive and aligned with the protection of the right to life. The cumulative requirements of unlawful attack, immediacy, necessity, and proportionality reflect a life-protective orientation. However, judicial reasoning often lacks a structured proportionality analysis and consistent articulation of necessity, particularly regarding retreat opportunities and psychological disturbance, resulting in operational inconsistency.

Conclusions: Indonesian law adequately limits deadly force in principle but requires clearer methodological articulation in judicial practice to enhance legal certainty and coherence with the human rights standards.

Limitations: This study relies on qualitative doctrinal analysis of selected cases without quantitative data, which may limit the generalizability of its findings.

Contributions: This study contributes to criminal law and human rights scholarship by clarifying the doctrinal limits of self-defense in Indonesia.

Keywords: *Deadly Force, Human Rights Law, Indonesian Self-Defense Law, Necessity, Proportionality*

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1. Introduction

The right to life occupies a central and non-derogable position within contemporary human rights law, forming the normative foundation upon which modern criminal justice systems are constructed (Zailani, Idham, & Erniyanti, 2022). As recognized in international human rights instruments and constitutional frameworks, the protection of life constitutes both a negative obligation on the state to refrain from arbitrary deprivation and a positive obligation to ensure effective legal safeguards (Dzhuska, Kaminska, & Makarukha, 2021). However, criminal law simultaneously acknowledges that under certain exceptional circumstances, the use of force—even lethal force—may be justified (Milanovic, 2020). This doctrinal accommodation of self-defense reveals a fundamental tension between the sanctity of life and the permissibility of violence in response to unlawful aggression (Gur-Arye 2024).

Therefore, the legal problem lies not in the recognition of self-defense per se but in determining the limits within which deadly force may be considered legitimate without undermining the right to life it appears to contradict. Within criminal law theory, self-defense is traditionally conceptualized as a ground of justification rather than an excuse, meaning that the act is deemed lawful because it protects a superior or equivalent legal interest against an unjust attack (Funk, 2021b). The classical requirements of necessity, proportionality, and immediacy function as normative constraints designed to prevent excessive or arbitrary violence (Flanigan, 2023). These principles reflect broader doctrines found in comparative jurisprudence, including the Roman law maxim necessities non habet legem and the proportionality principle embedded in modern constitutional adjudication (Adenitire & Fasel, 2025). Therefore, deadly force, the most extreme form of defensive conduct, demands the strictest scrutiny. It is precisely at this doctrinal threshold that the boundary between lawful defense and unlawful homicide becomes contested, raising profound human rights implications.

In the Indonesian context, the regulation of self-defense has historically been rooted in the inherited structure of the colonial Criminal Code (WvS), particularly through the doctrines of *noodweer* and *noodweerecexes*. While the statutory formulation appears concise, its interpretative scope has long depended on judicial construction and doctrinal scholarship (Wafi and Firmansyah, 2025). The normative architecture of Article 49 of the former Criminal Code suggests a restrictive approach, requiring an unlawful and imminent attack, as well as a necessary and proportionate defensive response (Fadhullah, Maulani, Monica, & Raharjo, 2025). From a law-in-the-books perspective, such a formulation ostensibly reflects compatibility with human rights standards, especially insofar as it prevents arbitrary recourse to lethal violence and maintains the primacy of the right to life.

The enactment of the 2023 National Indonesian Criminal Code represents a significant moment of penal reform, aimed at decolonizing and modernizing Indonesian criminal law (Alvisahrin, Soponyono, & Ma'ruf, 2022). This reformulation provides an opportunity to reassess the conceptual clarity and normative coherence of self-defense provisions within a contemporary constitutional and human rights framework (Nurcahyo, Ricky, Laksito, & Manitra, 2024). Although the new Code retains the essential structure of self-defense as a justificatory defense, it introduces refinements intended to clarify interpretative ambiguities and align the law with constitutional guarantees (Malau 2023). Thus, the reform raises an important doctrinal question: whether the new articulation strengthens the legal limits governing deadly force or merely reproduces earlier ambiguities under a different legislative formulation.

From an international human rights perspective, article 6 of the ICCPR and General Comment No. 36 require that any deprivation of life be strictly necessary, proportionate, and free from arbitrariness. Indonesian self-defense law, as reflected in the doctrinal requirements of immediacy, necessity, and proportionality, appears to align with these standards at the normative level. However, in practice, this alignment is not consistently achieved. Judicial decisions often lack structured proportionality reasoning and demonstrate inconsistent approaches to factors such as the duty to retreat and the assessment of psychological disturbances. This indicates a divergence between the formal legal framework and its practical application, where Indonesian courts do not always exhibit the methodological rigor expected in contemporary human rights jurisprudence.

Notwithstanding these normative developments, the practical application of self-defense in Indonesian courts reveals a more complex reality. Judicial decisions frequently demonstrate interpretative variability in assessing proportionality and necessity, particularly in cases involving lethal defensive acts (Ariansyah & Rosnawati, 2021; Lailam & Anggia, 2023). The evaluation of whether a defensive force exceeds permissible bounds often hinges on subjective judicial appreciation of facts, evidentiary standards, and moral intuitions regarding reasonable conduct. Such variability risks creating inconsistencies between the abstract normative limits enshrined in statutory provisions and their concrete implementation. In this respect, the distinction between law in the books and law in action becomes analytically indispensable for understanding whether the statute's protective intent is fully realized in practice.

This study challenges the prevailing assumptions in self-defense theory, particularly those rooted in classical doctrinal approaches, which presume that clearly defined elements, such as necessity and proportionality, are sufficient to prevent the excessive use of force. This article questions this assumption by demonstrating that doctrinal clarity alone does not guarantee the effective protection of the right to life. Instead, the decisive factor lies in how these elements are operationalized in the judicial practice. By shifting the analytical focus from substantive legal design to the consistency and structure of judicial reasoning, this study reframes the limits of self-defense as not only a matter of legal formulation but also of interpretative discipline in adjudication.

The research problem addressed in this article emerges from this normative-practical disjunction. While Indonesian criminal law, both under the former and 2023 Codes, appears to establish doctrinal safeguards consistent with human rights principles, it remains uncertain whether these safeguards are interpreted and applied in a manner that consistently upholds the right to life. The central issue is not merely the existence of legal limits but the effectiveness and coherence of those limits in judicial reasoning. This raises the broader theoretical question of whether statutory reform alone suffices to secure human rights protection or whether deeper structural and interpretative adjustments are required within judicial practice.

Accordingly, this study has three primary objectives. First, it examines the normative construction of the limits on deadly force under both the old and new Indonesian Criminal Codes, identifying points of continuity and reformulation. Second, it evaluates the extent to which these normative limits correspond with internationally recognized human rights principles, particularly the doctrines of necessity and proportionality as safeguards of the right to life. Third, it analyzes selected judicial decisions to determine whether the practical application of self-defense reflects a consistent and rights-oriented interpretation of the law. Through this tripartite inquiry, this study aims to bridge doctrinal analysis and practical adjudication.

This research is motivated by the relative scarcity of scholarship that systematically integrates human rights analysis into the doctrinal study of Indonesian self-defense law while simultaneously distinguishing between normative regulation and judicial implementation. Existing literature often focuses either on the doctrinal exposition of *noodweer* or on descriptive commentary concerning penal reform, without critically assessing the human rights implications of deadly force in adjudicative practice. By situating Indonesian self-defense law within a broader human rights discourse and interrogating its operationalization in court decisions, this study aspires to contribute to a more nuanced and comprehensive evaluation of the limits of lawful violence.

The significance of this study is both theoretical and practical. Theoretically, it advances the understanding of self-defense as a site of tension between individual autonomy and a collective commitment to the sanctity of life, illuminating how justificatory doctrines must be constrained to prevent the erosion of fundamental rights. Practically, it offers insights into how courts might refine their interpretative methodologies to ensure that proportionality and necessity are applied rigorously rather than rhetorically. In the context of ongoing penal reform, such an analysis provides constructive guidance for strengthening the coherence between statutory intent and judicial reasoning.

This article argues that Indonesian criminal law, as articulated in both the former and 2023 Criminal Codes, contains normative limits on deadly force that are broadly compatible with human rights standards. However, the persistence of interpretative inconsistencies in judicial practice indicates that the protection of the right to life depends not only on legislative drafting but also on principled adjudication. By critically examining the limits of deadly force from a human rights perspective, this study seeks to illuminate the conditions under which self-defense can remain a legitimate doctrine without compromising the foundational value it is meant to safeguard: the inviolability of human life.

2. Literature Review and Hypothesis Development

The doctrine of self-defense has been widely examined within Indonesian criminal law scholarship as a justificatory ground (*rechtvaardigingsgrond*) that negates the unlawfulness (*wederrechtelijkheid*) of an otherwise criminal act (Fadhullah et al. 2025). Classical doctrinal analyses emphasize that self-defense operates within a structured framework requiring an unlawful and imminent attack, the necessity (*noodzakelijkheid*) of defensive action, and proportionality (*evenredigheid*) between the attack and response (Taha, 2025). Indonesian scholars generally agree that these elements reflect a restrictive model intended to prevent arbitrariness and vigilantism (Fadhullah et al. 2025). However, much of this scholarship remains internally doctrinal, focusing on the statutory interpretation of the Criminal Code without situating the doctrine within broader constitutional or international human rights frameworks (Adiyatma, 2023).

In the Indonesian legal system, the doctrine of self-defense has historically been codified in the *Wetboek van Strafrecht*, particularly through the concepts of *noodweer* and *noodweerecnes* (Ariansyah & Rosnawati, 2021). Legal commentators have emphasized that these provisions articulate a justificatory defense grounded in the protection of legally recognized interests against an unlawful and immediate attack (Aisyah, Azharuddin, Rizal, & Zulkifli, 2022; Fadhullah et al., 2025). Doctrinal elements, such as immediacy, necessity, and proportionality, serve as cumulative requirements. Indonesian legal scholarship has frequently interpreted these elements as reflecting a restrictive model of self-defense, intended to ensure that lethal force remains an *ultima ratio* rather than a readily available option (Hosnah et al., 2020).

The philosophical foundations of self-defense can be traced to natural law theory, in which self-preservation is conceived as an inherent right preceding the formation of a political society (Funk, 2021a). Thinkers such as John Locke and Jean-Jacques Rousseau articulated the idea that in the *status naturalis*, individuals retain the right to defend their lives against aggression (Matsumoto, 2023). However, once the social contract (*pactum subjectionis*) established civil authority, this natural entitlement became subject to juridical regulation (Hernández and Dussan, 2021). Thus, modern criminal law transforms the natural right to self-preservation into a conditional legal doctrine governed by necessity and proportionality (Coca-Vila, 2024). Contemporary scholarship largely agrees that while natural law provides the moral genealogy of self-defense, positive law determines its permissible scope within the constitutional and human rights frameworks (Beard & Stephens, 2024; O'Meara, 2021).

A significant strand of literature examines the philosophical foundations of self-defence through natural law theory. One influential study analyzes John Locke's conception of self-preservation alongside Islamic jurisprudence, arguing that the right to defend life and property originates in the *status naturalis* and is retained, in a limited form, within civil society (Efendi, Susanti, Cahyaningrum, & Sudarsono, 2025). In a state of nature, individuals possess the authority to enforce natural law to protect life, liberty, and property. Upon forming a civil society, this executive power is delegated to the state, except when state protection is absent or ineffective (Natamiharja, 2025). This study contends that positive law must define clear limits on self-defense to prevent arbitrariness while preserving its justificatory function. This philosophical approach illuminates the moral foundations of self-defense and its regulation under positive law, while also indicating opportunities to explore how these principles relate to contemporary human rights frameworks and are applied in the judicial practice.

Comparative normative analyses examine self-defense in Islamic jurisprudence and Indonesian law. A study from Sandi, Bakry, and Jamaluddin (2024) identifies doctrinal parallels in justifying responses to unlawful and imminent aggression, particularly in protecting life (*hifz al-nafs*) and property. Both systems emphasize proportionality, immediacy, and restraint, although they are framed differently. This scholarship is primarily textual, offering insights into the self-defense doctrine while also highlighting opportunities to further examine procedural practices and alignment with international right-to-life and proportionality standards.

[Widnyani et al. \(2020\)](#) examine the doctrinal construction of *noodweer* under the Indonesian Criminal Code and clarify its cumulative requirements. They conceptualize self-defense as a ground for excluding criminal liability, applicable only in urgent situations to protect life, honor, or property from an unlawful attack. This study emphasizes key elements, including immediacy, unlawfulness, necessity, and proportionality. The analysis is primarily doctrinal, focusing on statutory interpretations and conceptual clarity. This study provides a foundation for understanding self-defense while also indicating the potential for further research on how courts apply these principles in practice and align them with international human rights standards.

[Sanjaya, Sugiarta, and Widyantara \(2022\)](#) examine the doctrine of *noodweerecexes*, addressing situations in which a defensive force exceeds proportional limits owing to psychological disturbance triggered by an attack. They analyze homicide cases involving excessive self-defense, particularly violent crimes such as attacks by *begals* (violent robbers). This study emphasizes the need to clarify *the concept of noodweerecexes* to ensure juridical protection for defensive actors. Focusing on doctrinal criminal law analysis, it documents the challenges courts face in distinguishing legitimate excess from retaliation. Simultaneously, it highlights opportunities for further research on how these issues relate to human rights principles, particularly the necessity, proportionality, and protection of the right to life.

In Decision No. 566 K/Pid/2025, the Court identified interpretative inconsistencies in Indonesian self-defense cases. Variability in judicial reasoning, particularly concerning necessity and proportionality, has been observed in homicide cases where defendants invoke self-defense ([Waldo & Budianto, 2025](#)). [Wafi and Firmansyah \(2025\)](#) examine *noodweer* and *noodweerecexes*, highlighting divergent judicial approaches to defining reasonable limits for excessive self-defense. They highlight both objective and subjective assessments, providing descriptive insights into the judicial approaches. This body of work provides valuable descriptive insights; however, it also suggests the need for further research to explore how such interpretations relate to Indonesia's human rights obligations, particularly within structured proportionality standards.

The enactment of the 2023 Indonesian Criminal Code has prompted renewed scholarly attention to the doctrinal configuration of self-defense ([Faisal et al., 2024](#)). Commentators note that the reform aims to modernize and decolonize the inherited structure of the *Wetboek van Strafrecht*, potentially clarifying ambiguous formulations ([Flora et al., 2023](#)). Preliminary analyses suggest that the new Code preserves the essential elements of *noodweer* while refining its articulation within the national legal framework. Nonetheless, systematic comparisons between the old and new codes remain scarce, particularly regarding whether the reform enhances the normative clarity of the limits governing deadly force ([Butt, 2023](#)).

Despite these developments, existing literature largely treats statutory reform descriptively rather than normatively. Scholars have discussed continuity and change but rarely evaluated whether the new formulation strengthens alignment with international human rights standards, especially the doctrines of necessity and proportionality as applied in right-to-life jurisprudence ([Nadianti & Kusumo, 2025](#); [Winoto, 2025](#)). This omission is notable because the legitimacy of deadly force cannot be assessed solely through the logic of internal criminal law; it must also be examined against the stringent standards developed under human rights law to prevent the arbitrary deprivation of life.

While existing Indonesian scholarship acknowledges inconsistencies in judicial outcomes, it remains descriptive and rarely engages in a systematic analysis of judicial reasoning, particularly in terms of how courts articulate necessity, apply proportionality, or assess the defender's perception of imminent danger. In contrast, the literature in jurisdictions such as Germany and the United Kingdom has developed more structured approaches to examining judicial reasoning, including the use of proportionality frameworks and retreat doctrines to enhance adjudicative consistency in self-defense cases ([Barot & Upadhyay, 2025](#)). This contrast highlights a significant gap in Indonesian legal scholarship, indicating the need to move beyond descriptive accounts of inconsistency toward a more analytical and methodologically grounded evaluation of the patterns of judicial reasoning.

International human rights jurisprudence has elaborated a structured proportionality test that requires any lethal force to be strictly necessary and proportionate to a legitimate aim ([Ferstman 2024](#); [Ruys 2020](#)). Although these standards are often articulated in the context of the state's use of force, their normative rationale equally informs domestic criminal law's regulation of private defensive violence ([Manwaring, 2025](#)). However, Indonesian scholarship on self-defense rarely integrates this structured analysis, instead relying on generalized references to proportionality without dissecting its constituent elements. This conceptual lacuna impedes a comprehensive evaluation of whether the domestic self-defense doctrine sufficiently safeguards the right to life ([Ashri, 2025](#); [Lailam & Anggia, 2023](#)).

Moreover, few studies explicitly differentiate between the law in the books and the law in action when assessing self-defense. Doctrinal analyses assume that statutory articulation ensures protection, while case studies frequently examine judicial reasoning without systematically comparing it with normative human rights benchmarks. The absence of an integrated framework obscures whether Indonesia's self-defense regime functions coherently across normative and practical dimensions. Such fragmentation in the literature necessitates a more holistic inquiry ([Iswahyudi, 2025](#); [Putri et al., 2024](#)).

Another underexplored dimension concerns the diachronic comparison between the old and 2023 Criminal Codes in relation to human rights compatibility. While scholars have broadly addressed penal reform, limited attention has been devoted to examining whether the reform substantively strengthens or merely reiterates the existing limits on deadly force. Without such comparative evaluation, it is impossible to determine whether legislative modernization translates into enhanced protection of life or remains primarily symbolic ([Aditama, 2026](#); [Nugraha, Rohaedi, Kusnadi, & Abid, 2025](#)).

Taken together, the literature reveals a significant research gap at the intersection of doctrinal criminal law, judicial practice and human rights analysis. Although philosophical, comparative, and empirical studies have enriched our understanding of *noodweer* and *noodweerecnes*, these perspectives remain insufficiently integrated. No existing study has systematically examined the limits of deadly force under both the old and 2023 Indonesian Criminal Codes through a structured human rights framework while also assessing judicial application. This gap calls for a more unified and analytically coherent approach. Accordingly, this study analyzes the normative formulation of deadly force and its operationalization in judicial reasoning from a structured human rights perspective.

To ensure conceptual clarity and coherence, this study focuses on three, interrelated dimensions. First, it examines the normative construction of the limits on deadly force within Indonesian self-defense law under both the former and 2023 Criminal Codes. Second, it analyzes how these limits are interpreted and operationalized in judicial reasoning, particularly in relation to necessity, proportionality, and the assessment of an imminent threat. Third, it evaluates whether both the normative framework and its judicial application align with international human rights standards, particularly the protection of the right to life. By integrating these dimensions, this study addresses the gap between doctrinal formulation and practical adjudication, providing a structured basis for assessing the effectiveness and coherence of legal limits on deadly force.

In light of this gap, the first hypothesis posits that the 2023 Indonesian Criminal Code articulates and systematizes the limits of deadly force more clearly than its predecessor, thereby strengthening conceptual alignment with the human rights principles of necessity and proportionality. The second hypothesis contends that, despite the apparent adequacy of normative limits in both Codes, judicial application remains inconsistent, creating a divergence between the law in the books and the law in action. This inconsistency is assessed against structured human rights standards, rather than solely internal doctrinal coherence. The third hypothesis suggests that persistent variability in judicial reasoning may weaken the effective protection of the right to life, even without formally expansive doctrines. In short, the erosion of legal limits may stem not from legislative overreach but from inconsistent adjudication of necessity and proportionality.

If the first hypothesis is disproven, it suggests that legislative reform under the 2023 Code does not substantively enhance human rights alignment but merely reproduces existing ambiguities, thereby limiting its normative significance. If the second hypothesis is not supported, it would indicate a higher degree of judicial coherence than previously assumed, challenging the prevailing claims of inconsistency in Indonesian case law. Conversely, confirmation of the third hypothesis would demonstrate that doctrinal adequacy alone is insufficient without methodological discipline in adjudication, highlighting the need for more structured judicial reasoning to ensure the effective protection of the right to life.

3. Methodology

This study employs a normative juridical research design based on qualitative doctrinal analysis and functions as a review-based study, rather than an experimental or survey-based inquiry. The primary materials include the former Indonesian Criminal Code, Law Number 1 of 2023 (New Criminal Code), and international human rights instruments, particularly the International Covenant on Civil and Political Rights (ICCPR) and General Comment No. 36. Secondary sources include peer-reviewed journal articles, criminal law scholarship, and selected philosophical works on natural law.

This research applies a statutory, conceptual, and case approach to analyze the doctrinal elements of self-defense and examine selected court decisions addressing lethal defensive force. Cases were selected based on three criteria: (1) the presence of a self-defense claim involving lethal or potentially lethal force; (2) the availability of sufficiently reasoned judicial decisions in accessible legal databases; and (3) relevance to the assessment of necessity and proportionality within a human rights framework. This purposive selection ensures that the analyzed cases are doctrinally significant and can illustrate patterns in judicial interpretation. The analytical framework is guided by the necessity and proportionality standards derived from human rights jurisprudence. Legal materials were collected through official legal databases and systematically analyzed using qualitative text analysis to assess the coherence between domestic criminal law and right-to-life principles, ensuring methodological transparency and replicability.

4. Results and Discussions

4.1 *The Normative Limits of Deadly Force under the Old Indonesian Criminal Code*

Under the former Indonesian Criminal Code, the doctrine of self-defense is codified primarily in Article 49, which recognizes self-defense as a justificatory ground that negates the unlawfulness of an act that would otherwise constitute a criminal offense ([Woo, 2021](#)). The provision establishes that a person shall not be punished for committing an act necessary to defend oneself or another person, honor, or property against an unlawful and immediate attack ([Prochorus & Tjoneng, 2025](#)). The structure of Article 49 reflects a restrictive model of defensive force in which lethal force is not explicitly authorized but is implicitly permitted only insofar as it satisfies the cumulative requirements of immediacy, necessity, and proportionality ([Hasan, 2024](#)). These elements operate as normative limits designed to prevent the degeneration of self-defense into vigilantism or retaliatory violence, thereby embedding a principle of restraint consistent with the *ultima ratio* character of criminal justification within the statutory framework.

The first normative limitation arises from the requirement of an unlawful and imminent attack. The concept of *ogenblikkelijkheid* demands that the threat be present and pressing, excluding hypothetical, future, or retaliatory responses to it. Imminence functions as a temporal boundary condition: defensive force is permissible only within the narrow window in which the attack is ongoing or immediately impending. This temporal constraint is critical in the context of deadly force, as it prevents the expansion of justification to situations motivated by fear of possible future harm, emphasizing that the defensive act must coincide with the attack in a manner that leaves no reasonable opportunity for recourse to state protection. Thus, the normative architecture of Article 49 implicitly rejects preemptive or revenge-based violence, confining lawful defensive action within clearly delineated temporal parameters.

The second and most decisive limit concerns necessity, requiring that defensive force be the only viable means of repelling an attack. This reflects the subsidiarity principle: if less harmful alternatives such as retreat, avoidance, or non-lethal resistance are available, the use of lethal force becomes unjustifiable. Although the Indonesian Criminal Code does not explicitly impose a duty to retreat, necessity is often interpreted as requiring the defender to exhaust all reasonable alternatives. Compared to more expansive doctrines, this framework embeds a presumption against lethal escalation, unless strictly unavoidable.

Closely connected to necessity is proportionality, which limits the intensity of the defensive force. It requires a reasonable balance between the gravity of the attack and the response to prevent excessive harm. In cases involving deadly force, the threat must justify a lethal response, not through strict equivalence but through rational correlation. However, the absence of explicit statutory criteria for assessing proportionality leaves significant room for judicial interpretation, making it both a safeguard and a source of doctrinal ambiguity.

Article 49(2) further introduces the concept of *noodweerexces*, recognizing that excessive defensive force may be excused if it results from an intense psychological disturbance caused by the attack ([Hardicky & Hardianti, 2024](#); [Sidik, Santoso, & Annisa, 2020](#)). This provision acknowledges the human dimension of defensive reactions, allowing for mitigation when emotional shock disrupts rational judgment. However, from a normative standpoint, *noodweerexces* does not expand the lawful limits of deadly force; rather, it operates at the level of culpability, shifting the analysis from justification to an excuse. The distinction is significant: while *noodweer* negates unlawfulness, *the latter* acknowledges the wrongfulness of excessive force but removes or reduces criminal liability due to diminished self-control. Consequently, the statutory framework maintains the primacy of proportionality as a boundary, even while accommodating the psychological realities.

The cumulative structure of imminence, necessity, and proportionality indicates that the old Criminal Code was designed to constrain rather than facilitate the use of deadly force. Although the text does not expressly differentiate between lethal and non-lethal defensive acts, the rigorous nature of its conditions effectively restricts the circumstances in which killing can be justified. The emphasis on immediacy and strict necessity implicitly safeguards the value of life by ensuring that the use of lethal force remains exceptional.

In normative terms, the statutory model aligns with a protective conception of the right to life by avoiding permissive language. However, ambiguities remain in Article 49, particularly regarding the proportionality and balance between subjective perception and objective necessity. This lack of guidance creates interpretative uncertainty, especially regarding when fear constitutes a legal necessity. Consequently, reliance on judicial discretion persists, potentially leading to inconsistencies in the application of self-defense laws.

Article 49 does not explicitly reference constitutional or international human rights standards, leaving its protective rationale implicit. Although imminence and necessity reflect the principles of minimal harm, the absence of a structured proportionality test makes alignment with the right-to-life standards inferential. The Code's cumulative requirements limit lethal force to exceptional cases; however, the lack of statutory clarity and reliance on judicial interpretation create variability. Whether these limits effectively protect the right to life requires further investigation.

4.2 Reformulation of Self-Defense in the 2023 Criminal Code: Continuity or Substantive Change?

The enactment of Law No.1 of 2023 concerning the new Indonesian Criminal Code represents a historic legislative transformation, replacing the colonial-era *Wetboek van Strafrecht* with a codification framed as a reflection of national legal identity and constitutional values ([Meidiantama & Charinda, 2024](#)). Within this broader reform, the regulation of self-defense retains its doctrinal core while undergoing terminological and structural refinements ([Faisal et al., 2024](#)). The new Code continues to recognize self-defense as a justificatory ground that eliminates unlawfulness, thereby preserving the classical distinction between justification and excuse (*schulduitsluitingsgrond*) ([Butt 2023](#)).

At first glance, the reform appears to maintain continuity rather than introduce radical innovation; however, a closer examination reveals nuanced adjustments that bear directly upon the normative limits of deadly force. The essential elements of self-defense under the 2023 Code, namely the existence of an unlawful attack, immediacy, necessity, and proportionality, remain conceptually consistent with the previous Article 49. The requirement of an unlawful and imminent attack continues to function as a temporal and situational threshold for defensive action. By retaining the immediacy criterion, the new Code affirms that defensive violence must respond to a present or immediately impending threat, thereby rejecting anticipatory or retaliatory rationalizations. This continuity underscores the legislator's commitment to a restrictive conception of defensive force, in which lethal action remains exceptional and contingent on urgent necessity.

The reform introduces a clearer structural articulation of the justificatory grounds within a more systematized chapter on criminal responsibility. By reorganizing the doctrinal framework, the 2023 Code situates self-defense within a broader architecture of grounds excluding criminal liability, thereby enhancing conceptual coherence. This structural clarity may indirectly strengthen the limits of deadly force by reducing interpretative ambiguity regarding the relationship between justifications and excuses.

The repositioning of self-defense within a harmonized scheme of criminal responsibility promotes greater systematic interpretation (*interpretatio systematica*) and may reduce the inconsistent application. Notably, the 2023 reform modernizes statutory language and clarifies normative intent without expanding the scope of defensive rights. Unlike jurisdictions that codify expansive "Stand Your Ground" doctrines or presumptions favoring defenders (Funk, 2021a, 2021b), the new Indonesian Penal Code introduces no categorical authorization of lethal force. It neither abolishes retreat-like considerations nor establishes presumptions of reasonableness in cases such as home intrusion. This legislative restraint indicates a deliberate commitment to legal certainty and a proportional balance rather than a populist penal expansion.

Simultaneously, the new 2023 Code maintains the recognition of excessive self-defense (*noodweerexces*) in circumstances of psychological disturbance caused by an attack. The retention of this doctrine indicates continuity in acknowledging the subjective dimension of defensive reactions (Senang, Panjaitan, & Harahap, 2025). However, as under the previous Code, excessive force remains normatively wrongful and is merely excused because of diminished culpability. The reform does not elevate emotional disturbance as a broader justification for lethal excess; instead, it preserves the conceptual boundary between lawful necessity and excusable overreaction.

In this sense, the 2023 Code reaffirms the centrality of proportionality as a normative limit rather than diluting it further. From a human rights perspective, the critical question is whether the reform enhances the explicit protection of the right to life or merely reproduces the inherited doctrinal formulations. While the 2023 Code reflects constitutional developments and Indonesia's evolving legal identity, it does not explicitly embed human rights language within the self-defense provisions. There is no direct reference to the right to life or to a structured proportionality analysis as developed in international jurisprudence. Consequently, the alignment between the reformed self-defense doctrine and international human rights standards remains unclear. The limits on deadly force continue to operate through classical criminal law concepts rather than articulated constitutional balancing.

Nevertheless, the reform may indirectly strengthen normative protection by clarifying interpretative coherence and reducing colonial ambiguity. By contextualizing self-defense within a comprehensive national code, the legislature signals its intention to harmonize the criminal doctrine with contemporary legal principles. This systemic integration may facilitate more consistent judicial reasoning, particularly if courts adopt a purposive interpretation (*interpretatio teleologica*) that considers constitutional values. However, the extent to which such interpretative evolution materializes depends not only on statutory language but also on judicial practice.

A further issue is whether the reform alters the practical threshold for invoking deadly force. Because the essential elements remain substantively unchanged, the legislature appears to have opted for doctrinal continuity rather than recalibration. This continuity can be interpreted in two contrasting ways. This suggests that the existing normative limits are adequate and compatible with contemporary standards. However, this raises the possibility that persistent ambiguities, particularly regarding proportionality assessment, remain unaddressed. Thus, the reform embodies both stability and unresolved tensions. From a comparative perspective, the 2023 Code's restraint contrasts sharply with more permissive self-defense regimes that explicitly prioritize individual autonomy over collective security considerations. Indonesian law continues to conceptualize defensive violence as an exception, strictly bounded by necessity and proportionality, thereby preserving the state's monopoly on legitimate force. The absence of expansive defensive presumptions reflects an underlying commitment to maintaining equilibrium between individual self-preservation and societal interest in preventing unnecessary loss of life. Such equilibrium resonates with constitutional values, emphasizing human dignity and the protection of life.

The reformulation of self-defense in the 2023 Criminal Code represents an evolutionary refinement rather than a revolutionary change. The normative limits of deadly force, such as immediacy, necessity, proportionality, and the constrained recognition of excessive defense, remain structurally intact. While the reform enhances systematic clarity and national codification, it does not fundamentally recalibrate the threshold for the use of lethal force. Whether this continuity signifies normative adequacy or a missed opportunity depends on subsequent judicial interpretation and its integration with human rights standards. Accordingly, the question of substantive change cannot be answered solely through textual comparison; it must be assessed in conjunction with the realities of adjudicative practice, to which the analysis now turns. In summary, both the former and the 2023 Criminal Codes preserve a restrictive and cumulative model of self-defense, grounded in unlawfulness, immediacy, necessity, and proportionality. The 2023 reform does not substantively expand or narrow the scope of deadly force. Rather, it reorganizes and clarifies the doctrinal structure within a more systematic framework of criminal responsibility. Thus, the difference between the two codes is primarily structural and terminological rather than substantive. The threshold for lawful lethal force remains largely unchanged, and any meaningful development in the protection of the right to life depends more on judicial interpretation than on legislative reforms.

4.3 Judicial Practice and the Problem of Law in Action: Necessity, Retreat, Proportionality, and the Right to Life

Judicial practice in Indonesia reveals that the normative limits of self-defense, although textually restrictive, are ultimately shaped and concretized through adjudicative reasoning. The transition from *law in the books* to *law in action* exposes interpretative tensions concerning necessity, proportionality, psychological disturbance, and protection of life ([Putra & Ahyani, 2022](#)). A critical examination of recent cases, including Supreme Court Decision No. 566 K/Pid/2025 and several widely publicized incidents, such as the cases of Hogi Minaya, Amaq Sinta, Muhammad Irfan Bahri, and Muhyani, demonstrate that Indonesian courts and law enforcement authorities navigate a delicate equilibrium between preventing vigilantism and safeguarding individuals confronted with violent aggression ([MARINews, 2025](#)).

These cases illuminate how doctrinal elements function in practice and whether they effectively uphold the right to life within a human rights framework. Supreme Court Decision No. 566 K/Pid/2025 offers a paradigmatic illustration of the judicial reassessment of self-defense claims. At first instance, the District Court accepted the argument of *noodweerexces*, concluding that the defendant's conduct, although constituting assault, was excused due to the excessive defensive reaction triggered by the confrontation. However, on cassation, the Supreme Court overturned this reasoning and held that the conditions for excessive self-defense were not satisfied. The Court emphasized that the defendant retained a "wide opportunity" to avoid further physical confrontation and that the situation did not reveal psychological shock sufficient to justify the excessive use of force ([MARINews, 2025](#)). By reframing the event as a mutual fight rather than an act of unilateral aggression, the Supreme Court effectively narrowed the scope of self-defense and reinstated criminal liability.

The central doctrinal pivot in this decision lies in the interpretation of necessity, particularly the implicit expectation of a retreat. Although Indonesian law does not codify a formal duty to retreat, the Supreme Court's reasoning suggests that if a defendant has a realistic opportunity to disengage, the necessity requirement is not fulfilled ([Ariansyah & Rosnawati, 2021](#)). The Court underscored that the defendant could have left the scene rather than escalating the confrontation by using a bamboo stick. This reasoning constructs necessity not merely as the absence of alternative means but as an obligation to avoid confrontation when feasible.

Therefore, Indonesian jurisprudence appears to internalize a retreat-like principle within the necessity analysis. This implicit expectation of retreat has significant implications. On the one hand, it reinforces the restrictive character of self-defense and prevents premature recourse to violence. However, it may impose demanding standards on individuals confronted with rapidly evolving threats. The Court's analysis in Decision 566 K/Pid/2025 suggests that the burden lies heavily on the defendant to demonstrate that an escape was impossible. Such an approach risks transforming necessity into a near-exhaustion requirement, thereby narrowing the circumstances in which a defensive force, including a potentially lethal force, can be justified.

The evaluation of proportionality is closely linked to necessity. In the same case, the Supreme Court treated the confrontation as a reciprocal altercation rather than as a one-sided attack. By characterizing the incident as a fight initiated by the defendant's push, the court effectively neutralized the asymmetry typically present in defensive scenarios. The use of a bamboo stick, although arguably reactive to being struck, was assessed within a framework that prioritized the resulting injury to the victim. The Court thus adopted an objective evaluation of proportionality, focusing on the harm inflicted rather than the immediacy and perceived gravity of the threat.

The proportionality assessment in practice reveals a tendency toward *ex post facto* harm comparisons. Instead of evaluating whether the defendant reasonably perceived imminent serious harm, judicial reasoning often centers on the tangible injuries suffered by the complainant. This retrospective orientation may inadvertently diminish the subjective dimensions of defensive actions. In the absence of explicit statutory guidance on balancing subjective fear against objective harm, courts exercise wide discretion, producing outcomes that may appear inconsistent across similar factual patterns.

The psychological threshold for *the occurrence of a noodweerexces* further illustrates this doctrinal complexity. In Decision 566 K/Pid/2025, the Supreme Court rejected the lower court's finding of psychological disturbance, reasoning that no circumstances demonstrated an emotional shock sufficient to justify excessive force. The Court's formulation implies a high evidentiary bar for establishing a disturbance of the soul (*guncangan jiwa*). By requiring demonstrable psychological disorientation beyond ordinary anger or fear, the judiciary limits the availability of excessive self-defense. This restrictive interpretation may strengthen normative clarity but simultaneously raises questions regarding sensitivity to the psychological realities of violent confrontation.

A contrasting dynamic appears in the widely discussed case of Amaq Sinta, who killed two alleged robbers during a night-time attack. Initially named as a suspect, he was later released after public scrutiny and reconsideration of the self-defense claim. The trajectory of this case reflects the tension between strict doctrinal application and societal perceptions of fairness ([Fadhilah, 2025](#)). Here, the immediacy and gravity of the threat were more readily acknowledged, and the lethal outcome was contextualized as a desperate response to the armed aggression. The shift from suspect status to exoneration suggests that prosecutorial discretion and public sentiment may influence the operationalization of the necessity and proportionality. Similarly, the case of Muhammad Irfan Bahri, a teenager who killed a robber during a street confrontation, underscores the variability in enforcement practices. Although initially threatened with prosecution, Irfan ultimately avoided conviction and received public commendation ([Kompas, 2018](#)). Framing the event as heroic self-defense rather than criminal violence demonstrates how narrative construction shapes legal outcomes. While the doctrinal elements remained constant, the interpretation of necessity and proportionality appeared more sympathetic, emphasizing the defender's vulnerability and aggressor's criminal intent.

The Muhyani case, which involved the killing of a thief during a confrontation over stolen livestock, further exposes the ambivalence in the application of the self-defense doctrine. Initially prosecuted, the defendant's case was eventually discontinued after legal and political debates ([Tempo, 2023](#)). Here, the question centered on whether the defensive response exceeded proportional limits or constituted legitimate protection of property and personal safety. The oscillation between prosecution and termination reflects uncertainty regarding how far defensive force may extend when property crimes escalate into violent encounters.

The Hogi Minaya case, discussed in the context of the new Criminal Code, likewise illustrates interpretative uncertainty concerning article 34 of the 2023 Code. Media commentary emphasized the conditions under which defensive force does not incur criminal liability, highlighting the cumulative requirements of immediacy and necessity ([Suara, 2026](#)). However, the public debate surrounding the case demonstrates that legal actors and society at large struggle to delineate the boundary between justified defense and punishable excess. The transition to the new Code has not eliminated this tension.

These cases show that Indonesian judicial practice affirms a restrictive approach to the use of deadly force based on strict necessity and proportionality. Implicit retreat expectation, objective harm assessment, and a high threshold for psychological disturbance limit self-defense, reflecting a commitment to the state's monopoly on legitimate violence. However, prosecutorial and judicial responses vary: some defendants face aggressive prosecution before release, whereas others receive immediate recognition of defensive legitimacy. This inconsistency undermines legal certainty (*rechtszekerheid*) and complicates the law's predictive function, illustrating the gap between law in the books and law in action.

From a human rights perspective, the critical inquiry concerns alignment with the right to a life. Article 6 of the ICCPR and General Comment No. 36 require that any deprivation of life be non-arbitrary and strictly necessary ([Eddine 2023](#)). Although these standards often apply to state action, their logic informs the domestic evaluation of private defensive killings. Indonesian courts, emphasizing strict necessity and proportionality, align with the principle that the use of lethal force must be exceptional. However, an overly rigid interpretation may force individuals to risk severe harm, compromising the protective dimension of Article 6.

The Supreme Court's focus on retreat in Decision 566 K/Pid/2025 reflects caution but raises questions about the adequacy of deference to defenders' assessments of imminent danger. Balancing the protection of aggressors and defenders remains delicate. Human rights jurisprudence calls for structured proportionality analysis, such as legitimate aim, suitability, necessity, and proportionality *stricto sensu*, whereas Indonesian reasoning often collapses these into general fairness and injury assessment. Explicit proportionality reasoning may improve consistency and strengthen life protection.

Judicial practice reveals both the strengths and vulnerabilities of Indonesia's self-defense regime. Courts invoke necessity and proportionality; however, discretion and evidentiary limits produce uneven applications. Effective limits depend more on consistent adjudication than on statutory design. The doctrine remains normatively restrictive but is operationally fluid. While certain principles support life protection, over-restriction may occur without proper attention to the contextual fear. Greater clarity regarding the necessity, proportionality, and psychological evaluation of these measures is essential to ensure fairness and protect lives.

4.4 Human Rights Assessment: Normatively Protective yet Operationally Inconsistent

Indonesian self-defense law is structurally restrictive within the framework of comparative criminal law, but the key human rights question is whether it effectively protects the right to life while keeping the use of lethal force exceptional. Normatively, the law aligns with life protection; however, judicial reasoning lacks a structured proportionality analysis and consistent articulation of necessity, creating operational uncertainty.

Article 49 of the former Criminal Code and Articles 34–35 of the 2023 Criminal Code establish cumulative requirements, such as unlawful attack, immediacy, necessity, and proportionality, that constrain deadly force. The obligation to respond only to imminent and unlawful aggression embodies the principle that private violence is the *ultima ratio*, reflecting constitutional and international commitments to the sanctity of life and a presumption against lethal harm.

Alignment with the right to life becomes more apparent when measured against Article 6 of the ICCPR and its interpretative elaboration in General Comment No. 36. International human rights law demands that the deprivation of life must not be arbitrary and must satisfy strict necessity ([Pazartzis & Merkouris, 2020](#)). Although primarily addressed to state actors ([Clark, 2020](#)), this normative structure indirectly informs domestic evaluations of private defensive killings.

By requiring immediacy and necessity, the Indonesian self-defense doctrine structurally reduces arbitrariness and confines lethal force within narrowly circumscribed conditions. Moreover, the proportionality requirement embedded in Indonesian law reflects the human rights principle that force must be limited to what is necessary to repel threats. Even in the absence of explicit statutory language detailing proportionality *stricto sensu*, judicial interpretations consistently affirm that defensive measures must correspond to the gravity of the attack. This indicates that the Indonesian legal system does not recognize an expansive entitlement to retaliatory violence. Instead, it conceptualizes self-defense as a defensive rather than punitive institution.

However, the normative adequacy of a framework does not automatically translate into methodological clarity. A recurring issue in judicial reasoning is the absence of a structured proportionality test comparable to the tripartite or four-stage analysis developed in constitutional and human rights jurisprudence. Courts frequently invoke necessity and proportionality in abstract terms but rarely articulate a sequential assessment distinguishing suitability, minimal impairment, and balancing ([MARINews, 2025](#)). This methodological opacity diminishes doctrinal transparency and risks inconsistent application across similar cases.

The evaluation of necessity illustrates this tension most vividly. In several judicial decisions, courts implicitly incorporated an expectation of retreat when assessing whether the use of defensive force was indispensable. Although Indonesian law does not codify a formal duty to retreat, necessity is interpreted to require the avoidance of confrontation where possible. From a human rights perspective, such an interpretation strengthens the life-protecting orientation of the doctrine by minimizing lethal outcomes. However, when applied without clear criteria, it may impose unpredictable burdens on defendants confronted with rapidly unfolding threats.

Implicit retreat expectations reveal both strengths and vulnerabilities. It strengthens the protective function of the right to life by discouraging escalation and prioritizing deescalation. Simultaneously, the absence of explicit doctrinal articulation leaves room for divergent judicial conclusions regarding what constitutes a “reasonable opportunity” to escape. Without standardized benchmarks, the assessment of retreat risks becomes contingent upon subjective judicial evaluation rather than principled legal reasoning.

Proportionality analysis in practice also reveals operational inconsistencies. Judicial reasoning often retrospectively evaluates proportionality, focusing on the injury inflicted rather than the defender’s reasonable perception at the moment of danger. This *ex post* orientation may inadvertently distort the evaluation of imminence and the perceived threat. Human rights jurisprudence recognizes that necessity must be assessed in light of the circumstances as reasonably perceived at the time, not solely by reference to eventual outcomes. The divergence between retrospective harm comparison and contextual threat assessment illustrates the methodological gap in Indonesian practice.

The doctrine of excessive self-defense further exemplifies this complexity. While the statutory framework acknowledges psychological disturbance as a ground for excuse, courts frequently impose a high evidentiary threshold for establishing emotional shock. Such rigor reinforces the restrictive

character of the doctrine and prevents the abusive invocation of psychological justification. Nevertheless, the absence of clear criteria for evaluating emotional disturbance generates uncertainty and inconsistent recognition across different cases.

Collectively, judicial practice confirms that Indonesia does not endorse the expansive or retaliatory use of deadly force ([MARINews, 2025](#)). Unlike jurisdictions that embrace stand-your-ground doctrines ([Funk, 2021b](#)), Indonesian law maintains a cautious stance toward private violence, consistent with the state's monopoly on legitimate force and commitment to social order. From a human rights perspective, this restraint affirms the primacy of life and limits privatization of lethal power. However, variability in prosecutorial and judicial outcomes persists. Defendants in analogous circumstances have faced divergent procedural paths, ranging from conviction to exoneration or termination of the investigation. This divergence does not necessarily reflect normative deficiency but the broad discretionary space within necessity and proportionality assessments, an effect intensified by the absence of structured reasoning.

The central finding is that Indonesian self-defense law is normatively aligned with human rights standards through its emphasis on necessity and proportionality; however, these limits remain under-articulated in judicial methodology. The resulting gap between principle and practice creates tension: restrictive interpretation curbs arbitrary killing, but unpredictability may weaken defenders' legitimate expectations of protection. The 2023 Criminal Code provides an opportunity for doctrinal refinement; however, consistency ultimately depends on jurisprudential development. Courts must adopt structured reasoning that integrates the necessity, proportionality, and psychological evaluation. Strengthening methodological clarity, rather than expanding or narrowing the substantive limits on deadly force, is essential to harmonize domestic law with evolving right-to-life jurisprudence. These findings challenge the classical assumption that doctrinal restrictiveness guarantees the effective protection of the right to life. Instead, they demonstrate that the legitimacy of deadly force regulation ultimately depends on the methodological rigor of judicial reasoning rather than on statutory formulation alone.

5. Conclusions

5.1. Conclusion

This study examined the limits of deadly force in Indonesian self-defense law from a human rights perspective by analyzing the necessity and proportionality under the former and 2023 Criminal Codes and their judicial application. The findings indicate that the Indonesian self-defense doctrine is normatively restrictive and broadly aligned with international human rights standards, particularly the principle that any deprivation of life must be non-arbitrary and strictly necessary. The cumulative requirements of unlawful attack, immediacy, necessity, and proportionality confine the use of lethal force to exceptional circumstances and affirm the primacy of life. However, a gap persists between the law in the books and the law in action. Judicial reasoning often lacks a structured proportionality analysis and consistent articulation of necessity, sometimes implying a retreat requirement and evaluating proportionality retrospectively rather than from the defender's reasonable perception of imminent danger. This methodological inconsistency weakens the legal certainty. Therefore, the principal challenge lies in improving judicial methodology rather than altering substantive doctrine. Developing clearer proportionality reasoning and interpretative guidelines, including judicial training and more structured reasoning frameworks, would enhance consistency, strengthen the protection of the right to life, and contribute to judicial reform in Indonesia's evolving criminal law system. In this respect, this study provides a conceptual basis for integrating human rights-based proportionality analysis into judicial practice and broader legal reform initiatives.

5.2. Research Limitations

This study employs a normative juridical approach based on selected statutes and landmark cases, without quantitative data on nationwide practice. Therefore, the conclusions regarding inconsistency are qualitative. The focus on leading cases may not reflect routine lower court decisions, and the human rights assessment emphasizes normative alignment rather than systematic comparative analysis.

5.3 Suggestions and Directions for Future Research

Future research should empirically analyze broader self-defense cases and conduct comparative studies on retreat and proportional doctrines. Interdisciplinary research integrating psychology and criminal law is also needed to refine excessive self-defense standards and inform judicial guidelines that enhance the consistency and protection of life.

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Author Contributions

IN contributed to all aspects of the study, including conceptualization, methodology design, formal legal analysis, investigation of case law, human rights framework development, original draft preparation, writing review and editing, and final approval of the manuscript.

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