

Defense Against Violence Directed at a Third Party: A Comparative Study of Islamic Criminal Law and Indonesian Criminal Law

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ABSTRACT

Defense of a third party is an act carried out by an individual to protect another person from unlawful attacks or threats. In practice, such actions often create legal dilemmas because they may fulfill the elements of a criminal offense despite being intended to protect victims. This study aims to analyze the concept of third-party defense in Indonesian criminal law and Islamic criminal law, identify their similarities and differences, and examine their implications for law enforcement in Indonesia. This research employs a normative juridical method with statutory, conceptual, and comparative approaches. Data were collected through library research involving legislation, legal literature, scientific journals, and Islamic legal sources such as the Qur'an, Hadith, and scholars' opinions. The findings indicate that Indonesian criminal law recognizes defense of others through the concept of noodweer, emphasizing objective elements such as unlawful attacks, necessity, and proportionality. Islamic criminal law recognizes third-party defense through the principles of *hifz al-nafs* and *maqashid al-syari'ah* by considering intention, public benefit, and prevention of harm. The similarity lies in the recognition of the right to defend others, while the difference lies in their philosophical foundations and assessment parameters. This study contributes a conceptual framework for third-party defense that integrates legal certainty, justice, and social benefit.

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1. INTRODUCTION

The phenomenon of violence committed in the defense of others is increasingly prevalent in modern society. Such violence often manifests physically (e.g., through beatings), psychologically, or economically (Quthny, 2018). Consequently, various cases reveal instances where individuals engage in defensive actions that exceed legal limits and violate criminal law (Andini et al., 2023), yet are motivated by the intent to protect a third party from an imminent threat. An example is an individual injuring a perpetrator while acting in defense to halt domestic violence (Dewi & Arifin, 2023).

In terms of causality, the act of defending a third party is generally triggered by an unlawful attack that threatens safety or life, necessitating defensive action in a state of emergency (noodtoestand) (Sanjaya et al., 2022). When law enforcement officers are absent or unable to provide immediate protection, individuals may be driven to commit acts of violence spontaneously and outside of judicial processes (Prasetyo et al., 2024). Consequently, the person acting in defense risks facing criminal prosecution, even though their motive was to protect another party.

In the context of positive law in Indonesia, the concept of necessary defense is recognized through the principle of noodweer, as stipulated in the Criminal Code (KUHP). Self-defense (noodweer) is governed by Article 34, while self-defense that exceeds necessary limits (noodweerecnes) is governed by Article 43 of the New Criminal Code. Both articles affirm that an individual's actions taken out of necessity to protect themselves, others, honor, or property from an unlawful attack are not criminally punishable, provided the actions are proportionate and immediate (Abyan & Gunawan, 2025). However, in judicial practice, interpretations of these elements often vary, particularly regarding the limits of proportionality and the urgency of the action.

On the other hand, in Islamic criminal law, the concept of defending others has a comprehensive approach in protecting human rights, including the right to life and self-defense (Wijaya et.al, 2025). The principle of protecting the soul (*hifz al-nafs*) is one of the main goals in maqashid sharia. This principle inspires a strong moral responsibility to safeguard and protect individual lives, so that defense can also be measured through the preservation of property (*Hifz al-Māl*) (Fazila & Nugroho, 2024), respecting life as a gift given to humans (Mustaqim, 2023). In addition, defense of third parties is seen as a justified and even recommended action, as long as it does not exceed the specified limits. However, assessment standards in Islamic criminal law tend to place more emphasis on intention (*niyyah*) and the balance between benefit and damage (*maslahah* and *mafsadah*).

A review of prior research reveals that most studies focus primarily on self-defense, without deeply examining the defense of a third party. Furthermore, comparative analyses of Islamic criminal law and Indonesian criminal law in this context remain relatively limited, failing to systematically explore fundamental differences and their implications for law enforcement. This indicates a significant gap, particularly regarding how both legal systems view the legitimacy of violence used to defend another person.

Therefore, this research is significant for analyzing and comparing the concept of defense involving violence against a third party from the perspectives of Islamic criminal law and Indonesian criminal law. The findings are expected to make a theoretical contribution to the development of legal science and serve as a practical reference for law enforcement officials in assessing similar cases more fairly and proportionately.

2. METHODS

This study is a normative legal research project aimed at analyzing the concept of defense of a third party from the perspectives of Islamic criminal law and Indonesian criminal law. The study focuses on legal norms, principles, doctrines, and concepts regarding the defense of others. It employs statutory, conceptual, and comparative approaches: the statutory approach is used to examine provisions on necessary defense within the Criminal Code (KUHP) and related regulations; the conceptual approach analyzes legal theories and doctrines; and the comparative approach contrasts the concepts of defense in Islamic criminal law and Indonesian criminal law. The legal materials utilized include primary sources such as the Qur'an, Hadith, the Criminal Code (KUHP), Law Number 1 of 2023 concerning the Criminal Code, and relevant court rulings as well as secondary sources (books, journals, and prior research) and tertiary sources (legal dictionaries and encyclopedias). Data collection was conducted through library research, and the data were analyzed using a descriptive-comparative method to explain and compare the concepts, thereby identifying the similarities and differences regarding the defense of a third party within the two legal systems.

3. FINDINGS AND DISCUSSION

The Concept of Defense of a Third Party in Indonesian Criminal Law

In the Indonesian criminal justice system, the defense of a third party is an integral part of the concept of necessary defense (*noodweer*), as stipulated in Article 49, paragraph (1) of the Criminal Code (KUHP). This provision establishes the legal basis that a person cannot be held criminally liable for an act that while technically satisfying the elements of a criminal offense is committed solely to defend oneself, another person, one's honor or decency, or property against an unlawful attack or the threat thereof. Thus, the defense of a third party constitutes a form of legal protection recognized by the Indonesian criminal justice system, as the law safeguards not only the interests of the individual acting in defense but also the interests of other parties facing a threat (Maulidah, 2023). According to Pompe, *noodweer* (necessary defense) is a justifying ground that negates the unlawful nature of an act; consequently, an action taken to defend a legal interest is no longer regarded as a criminal offense (Refin, 2023). Therefore, a person who acts to save another from an imminent threat is essentially performing a protective function regarding legal interests that are also guaranteed by the state.

The existence of the concept of *noodweer* (necessary defense) demonstrates that Indonesian criminal law is oriented not only toward legal certainty (*Rechtssicherheit*) but also toward the protection of fundamental human rights and the realization of justice (*Gerechtigkeit*). The right to defend oneself or protect others is universally recognized as an aspect of human rights specifically the right to life and the right to security. Consequently, the law provides an exception to the prohibition against the use of force when such action is taken to prevent greater harm or to save a person from an unlawful attack. From a criminal law perspective, the use of force in such circumstances is not viewed as an act of revenge (*wraak*), but rather as an effort to protect a legal interest under threat. This aligns with the view of Moeljatno, who stated that a justification negates the unlawful nature of an act, thereby rendering the perpetrator immune to criminal liability because the action is deemed legally justified.

In practice, the defense of a third party can occur in various situations. For instance, this might involve assisting a robbery victim under attack by a perpetrator, aiding a victim of sexual violence facing an immediate threat, intervening to stop an assault that endangers a victim's safety, or helping someone targeted by an attack with a sharp weapon. In such circumstances, defensive action is justifiable if undertaken solely to halt an ongoing attack, rather than to retaliate against or punish the perpetrator. Thus, the defense of a third party represents a manifestation of social solidarity that gains legal legitimacy, provided it meets the requirements stipulated in the provisions regarding *noodweer* (necessary defense).

For an action to be classified as necessary defense (*noodweer*), several elements must be satisfied. First, there must be an unlawful attack or a threat of such an attack. The attack must be real, actual, and either currently underway or imminent, thereby creating an unavoidable danger. A threat that is merely speculative or a mere possibility cannot serve as the basis for a claim of necessary defense. Second, the defensive action must be undertaken out of urgent necessity (*noodzakelijkheid*); this means the defense is the only available means to halt the attack and protect the threatened legal interest. Third, the defensive action must adhere to the principle of proportionality (*proportionaliteit*), requiring a balance between the action taken and the severity of the threat faced. The use of excessive force—going beyond what is necessary to stop the attack—cannot be justified as necessary defense. Fourth, the principle of subsidiarity (*subsidiariteit*) must be met, meaning there is no other, less severe, and safer alternative to avoid or halt the attack. These four conditions serve as the primary parameters for judges in determining whether an action truly constitutes a lawful act of necessary defense.

In addition to the concept of *noodweer* (necessary defense), Indonesian criminal law also provides for *noodweer exces* or necessary defense that exceeds the limits of necessity as stipulated in Article 49 paragraph (2) of the Criminal Code (KUHP). Unlike *noodweer*, which serves as a justification (*rechtvaardigingsgrond*), *noodweer exces* acts as an excuse (*schulduitsluitingsgrond*); the

act remains unlawful, yet the perpetrator is excused due to their psychological state. This form of excessive defense occurs when an individual takes action beyond what is necessary for defense while experiencing intense emotional agitation (*hevighe gemoedsbeweging*) directly triggered by an unlawful attack. Such agitation may manifest as extreme fear, panic, spontaneous rage, or psychological distress that causes the perpetrator to lose the ability to exercise proportionate self-control. Under such circumstances, even if a defensive action exceeds necessary limits, the actor may still be absolved of criminal liability because their state of mind is deemed to negate culpability. Thus, both the concepts of *noodweer* and *noodweer exces* demonstrate that Indonesian criminal law does not merely focus on the rigid enforcement of norms but also takes into account aspects of humanity, justice, and the protection of individuals acting to save themselves or others from unlawful attacks.

The Concept of Defense of a Third Party in Islamic Criminal Law

In the perspective of Islamic criminal law, the defense of third persons is a real implementation of the objectives of the Shari'a (*maqāṣid al-Syarī'ah*) (Bismar Siregar, 2025). Islamic Sharia not only regulates human relations with Allah SWT, but also aims to create benefits and prevent harm in social life (Imam Syafi'i, 2026). According to the *maqāṣid al-syarī'ah* theory developed by Imam al-Ghazali and then refined by Imam al-Syathibi, there are five main objectives of the Shari'a (*al-kulliyāt al-khams*), namely protecting the religion (*hifz al-dīn*), protecting the soul (*hifz al-nafs*), protecting the mind (*hifz al-'aql*), protecting the offspring or honor (*hifz al-nasl* or *hifz al-'ird*), and guarding wealth (*hifz al-māl*) (Habebullah Zakariyah, 2020). In the context of defending a third party, the most relevant objectives are the protection of life, honor, and property. Therefore, an individual who intervenes to save another person from threats such as murder, physical assault, sexual harassment, or the seizure of property is essentially upholding a Sharia objective aimed at safeguarding human well-being. Such an action gains legal legitimacy provided it is carried out in accordance with Sharia provisions and does not exceed necessary limits.

The normative basis for the permissibility of defending against an unlawful attack can be found in the Qur'an. Allah (SWT) says:

فَمَنْ اعْتَدَىٰ عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَىٰ عَلَيْكُمْ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

"So whoever attacks you, attack him in proportion to the attack he directed at you. Fear Allah and know that Allah is with those who fear Allah." (S. Al-Baqarah [2];, 190)

The verse indicates that Islam grants an individual the right to resist those who commit acts of oppression or aggression. However, such resistance must be proportionate and must not exceed the limits. This principle is reinforced in the words of Allah (SWT).

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ

"And fight in the way of Allah those who fight you, but do not exceed the limits. Indeed, Allah does not like those who exceed the limits." (S. Al-Baqarah [2];, 190)

These two verses emphasize the balance between the right to defend oneself and the prohibition on excessive action. Thus, defense in Islam is not a form of revenge, but rather a means to stop injustice and protect the rights guaranteed by the Shari'a.

Apart from the Koran, the legitimacy of the defense is also based on the hadith of the Prophet Muhammad saw. Rasulullah said:

مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِمِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ

"Whoever is killed defending their property is a martyr. Whoever is killed defending their life is a martyr. Whoever is killed defending their religion is a martyr. Whoever is killed defending their family (or their honor) is a martyr" ((HR. Abu Dawud, At-Tirmidzi, & An-Nasa'i).

The hadith demonstrates that Islam places great value on those who defend the legal interests protected by Sharia—namely life, property, and honor. Although the hadith explicitly refers to the defense of oneself and one's family, jurists have extended its meaning to include the defense of others facing injustice. This is based on the principle of *ta'āwun 'alā al-birr wa al-taqwā* (mutual cooperation in righteousness and piety), as commanded in Surah Al-Ma'idah, verse 2.

Jurists from the four schools of thought agree that it is permissible and in certain circumstances, obligatory for a person to defend others when there is a real threat to life, honor, or property (Wahbah al-Zuhayli, 1985). Hanafiyah scholars explain that defending one's life is an obligation if a person is able to prevent murder or abuse that is taking place ('Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, 1986). The Maliki school holds that defending one's life constitutes a form of fulfilling the obligation to enjoin good and forbid evil when faced with direct injustice (Khalīl, t.t.). Shafi'iyah scholars, as explained by Imam al-Nawawī in *Raudhah al-Thalibin*, emphasized that a person may use force to eliminate attacks against himself or others as long as it is done according to the level of need. Meanwhile, the cleric Hanabilah through Ibnu Qudamah in *Al-Mughni* explained that the defense of life and honor is a right justified by the Shari'a, and can even become an obligation if there is no other party who is able to provide assistance to the victim (Muwaffaq al-Din Abu Muhammad 'Abd Allah ibn Ahmad ibn Qudamah al-Maqdisi, 1994).

In *jinayah fiqh*, acts of defense have a number of conditions in order to be justified according to Islamic law. First, the threat faced must be real (*haqīqī*) or very likely to occur (*ghālib al-zann*), not just speculation or prejudice. Second, there is no other lighter way to eliminate the danger so the use of force is the last resort. Third, defensive actions must be carried out as necessary (*al-darūrah tuqaddaru bi qadarihā*), so that they must not exceed the level necessary to stop the attack. Fourth, the main goal of defense is to eliminate danger and save the victim, not to take revenge, vent anger, or gain personal gain. If these conditions are met, then the act of defense is seen as a valid act according to the Shari'a and does not give rise to criminal liability (Nurhakim, 2025).

Furthermore, the fuqaha explained that the use of force in defense is carried out in stages according to the level of threat faced (*al-tadarruj fi al-daf'*) (Zulfikri Sidik, 2020.) If an attack can be halted through counsel, a warning, or mild intervention, then the use of weapons or life-threatening force is not justified. However, if the threat involves murder, rape, or severe assault that cannot be stopped by other means, then the use of greater force is permissible to save the victim. This principle demonstrates that Islamic Sharia prioritizes the concepts of proportionality and necessity; consequently, any form of defense must always be commensurate with the level of danger being faced (The Act of Killing a Mugger in Self-Defense: A Perspective from Islamic Criminal Law and the Indonesian Penal Code, 2025).

The principle of defending a third party in Islamic law is also grounded in *fiqh* maxims that serve as guidelines for realizing the public interest. One of the most relevant maxims is:

درء المفاسد مقدم على جلب المصالح

This means, "Preventing harm must take precedence over securing benefit."

This principle implies that when faced with a choice between allowing an act of injustice to occur and taking the necessary action to halt it, preventing greater harm must be prioritized. This principle is reinforced by another jurisprudential maxim, namely:

الضرر يزال

It means, "Every harm must be eliminated." (Zayn al-Din Ibn Nujaym, 1999)

Based on these two rules, defending a third person is seen as an effort to eliminate harm that threatens a person's life, honor or property. Thus, from the perspective of *maqāṣid al-syarī'ah*, acts of defense are not only permissible, but are also a form of realization of the objectives of the shari'a in safeguarding the five basic human needs (*al-kulliyāt al-khams*).

Similarities in the Concept of Defense of a Third Party in Islamic Criminal Law and Indonesian Criminal Law

Research findings indicate that Islamic criminal law and Indonesian criminal law share significant common ground in recognizing the legitimacy of actions taken in defense of a third party. Both legal systems regard the protection of human life as a fundamental value that must be upheld. Consequently, an individual is permitted to carry out certain actions which would normally be prohibited by law if those actions are taken to protect another person from an imminent and unlawful threat.

In Indonesian criminal law, this principle is reflected in the concept of *noodweer* (necessary defense), as stipulated in Article 49 of the Criminal Code. This provision grants an individual the right to defend themselves or others against an unlawful attack on the person, honor, or property. Thus, the law not only protects the direct victim but also extends protection to those attempting to rescue the victim from danger.

The same principle is also found in Islamic criminal law. The protection of human life is one of the primary objectives of Sharia (*maqashid al-shari'ah*). The concept of *hifz al-nafs* entails a moral and legal obligation for every individual to prevent harm that threatens human life. Consequently, acting in defense of others is viewed as a form of upholding this fundamental objective of Sharia.

Another similarity lies in the conditions required for a plea of self-defense. Both Indonesian criminal law and Islamic criminal law require the presence of a real threat, an urgent situation, and the use of proportionate force. Both legal systems also reject acts of retaliation committed after the threat has ceased. In other words, self-defense is justified only while the threat is ongoing and is strictly necessary to halt the attack.

Furthermore, both legal systems prioritize the principle of proportionality. The use of force exceeding the level of the threat can result in the loss of the defense's legitimacy. Under Indonesian criminal law, this may lead to the actor still being held criminally liable. Meanwhile, in Islamic criminal law, actions that exceed these limits can be classified as unlawful acts that no longer enjoy the protection of Sharia.

Differences in the Concept of Defense of a Third Party in Islamic Criminal Law and Indonesian Criminal Law

Despite sharing a number of similarities, there are several fundamental differences between Islamic criminal law and Indonesian criminal law regarding the defense of a third party.

The first difference lies in the underlying philosophical basis. Indonesian criminal law is grounded in the principles of a modern state governed by the rule of law, emphasizing legal certainty, the protection of human rights, and the principle of legality. Consequently, the assessment of a defensive act relies heavily on objective elements that can be legally proven. In contrast, Islamic criminal law is grounded in divine revelation, *maqashid al-shari'ah* (the objectives of Sharia), and religious moral values. Beyond considering objective elements such as the existence of a threat and the necessity of defense, Islamic criminal law also takes into account the perpetrator's intent (*niyyah*). Intent serves as a crucial factor in determining whether the act of defense was genuinely aimed at protecting the victim or merely a means to vent hatred and vengeance.

The second difference lies in the scope of protection afforded. Under Indonesian criminal law, legal protection is granted provided the conditions for *noodweer* (necessary defense) are met; the primary focus is on the actions and objective circumstances present at the time of the incident. In contrast, Islamic criminal law considers not only the actions and objective circumstances but also the social impact of those actions on the welfare of society as a whole.

The third difference concerns the legal orientation employed. Indonesian criminal law is oriented towards legal certainty and the protection of the individual. Islamic criminal law is oriented towards realizing the public interest and preventing greater harm. Consequently, legal analysis within Islamic criminal law is often more flexible in considering the various aspects underlying an act.

A Maqāsid al-Shari'ah Analysis of Third-Party Defense

In the perspective of maqāsid al-syarī'ah, the defense of third persons has a very important position because it is directly related to the main objective of Islamic law in safeguarding the benefit of mankind (Nurhakim I. R., 2025). Sharia not only governs the relationship between human beings and Allah (SWT) but also safeguards the fundamental rights of every individual within society. Consequently, defending someone who is the victim of an attack or violence constitutes a tangible implementation of Sharia's objectives specifically the preservation of life (*hifz al-nafs*), honor (*hifz al-'ird*), and property (*hifz al-māl*). These three objectives fall under the category of *al-darūriyyāt al-khams* (the five primary necessities), which serve as the fundamental pillars of Islamic law. Should any of these interests be threatened, Sharia permits individuals to take necessary actions to eliminate the threat, provided they remain within permissible limits.

Protection of the human soul (*hifz al-nafs*) occupies a very high position in the hierarchy of *maqāsid al-syarī'ah* (Roslan, 2023). The Qur'an affirms that preserving human life is one of the primary objectives of Sharia. The word of Allah (SWT) in Surah Al-Mā'idah, verse 32, declares that whoever saves a single human life is as if they have saved all of humanity. This verse demonstrates that saving a life is not merely a permissible act; rather, it holds immense spiritual value and nobility in the sight of Allah (SWT). Based on this principle, an individual who witnesses another person falling victim to violence, abuse, or a threat of murder and possesses the ability to intervene is essentially upholding one of the fundamental objectives of Sharia. In such circumstances, defending another person is no longer viewed merely as an individual right; it can evolve into a moral and even a religious obligation if no other party is capable of providing assistance (Nurhakim I. R., 2025).

Beyond the protection of life, acts of defense also encompass the protection of honor (*hifz al-'ird*). In many instances, victims of criminal acts face threats not only to their physical safety but also to their dignity and honor such as in cases of sexual violence, harassment, or acts that degrade human dignity. Islamic Sharia places great importance on safeguarding human honor; consequently, any effort to prevent violations of an individual's honor aligns with the objectives of Sharia. Similarly, regarding the protection of property (*hifz al-māl*), Islam recognizes every person's right to defend their assets against unlawful seizure, theft, or destruction. Therefore, defending others to protect their property also holds strong legitimacy within the framework of maqāsid al-syarī'ah (M. Ilham, 2026).

This legitimacy is further reinforced by the fiqh maxim "*al-darar yuzāl*" (الضرر يزال), which means "harm must be removed." (Nujaym, 1999). This rule is one of the universal rules (*al-qawā'id al-fiqhiyyah al-kubrā*) which is the basis for various provisions of Islamic law. Threats to a person's life, honor or property are a form of harm that must be prevented as early as possible. Therefore, the use of force to stop an attack on another person can be justified as long as it is done proportionately and to the extent necessary to eliminate the danger. Defensive action is not intended as a form of revenge, but rather as a preventive effort to stop ongoing losses (Nurhakim I. R., 2025).

In addition, the fiqh rule "*irtikāb akhaff al-dararayn*" (ارتكاب أخف الضررين) or choosing the lighter harm also provides a strong theoretical basis for the legitimacy of defending third persons. This rule teaches that if a person is faced with two choices that both contain harm, the Shari'a orders him to choose the lightest harm in order to avoid greater losses. In the context of defending another person, the act of injuring an attacker can be justified if this is the only effective way to prevent death, serious injury or much greater harm to the victim. In this way, the harm caused to the attacker is seen as lighter than the harm that would be experienced by the victim if there was no defensive action at all (Zainuri, 2023).

Based on the foregoing, it is evident that Islamic criminal law through the *maqāsid al-sharī'ah* (objectives of Sharia) approach establishes a robust normative foundation for the act of defending others. The primary orientation of Sharia is not merely to assess the consequences of an action, but also to consider the underlying intent, exigencies, and the public interest (*maṣlahah*) sought to be realized. Consequently, provided that the act of defense is undertaken with the intention of protecting the victim and adheres to the principles of necessity (*darūrah*) and proportionality without exceeding

the limits of what is strictly necessary such an action aligns with the objectives of Sharia: establishing justice, preserving human life, and eliminating harm from society.

Analysis of Article 49 of the Criminal Code Regarding Defense of a Third Party

Article 49 of the Criminal Code (KUHP) provides a clear legal basis for the concept of necessary defense (*noodweer*) as a ground for excluding criminal liability (Marselino, 2020). This provision demonstrates that Indonesian criminal law recognizes certain extraordinary circumstances in which a person is compelled to commit an act that would normally be classified as a criminal offense, yet the act loses its unlawful character because it is performed to safeguard a protected legal interest. In essence, the article aims to provide legal protection to anyone facing an unlawful attack or threat against life, honor, decency, or property whether their own or that of another. Thus, the state allows individuals the scope to defend their fundamental rights when immediate protection from law enforcement authorities is unavailable (Prochorus, 2025).

Despite having a clear legal basis, the implementation of Article 49 of the Criminal Code in judicial practice still faces various challenges. One of the most frequently encountered issues is determining the limits of proportionality balancing the attack received against the defensive action taken. The principle of proportionality requires that the defense employed does not exceed the level of the threat faced. However, in real-world situations, an individual under threat generally lacks sufficient time to rationally weigh the appropriate degree of defense. Spontaneous reactions driven by psychological pressure, fear, or panic often cause defensive actions to appear excessive when evaluated after the event has concluded.

The issue is further complicated by the absence of truly uniform parameters for determining the limits of proportionality as stipulated in Article 49 of the Criminal Code. Law enforcement officials—ranging from investigators and public prosecutors to judges—often hold differing interpretations regarding whether a specific action constitutes justified necessary defense or exceeds permissible limits, thereby remaining criminally punishable. These divergent interpretations result in significant variations in court rulings concerning cases of necessary defense. In some instances, the accused is acquitted upon a finding that the elements of *noodweer* (necessary defense) were met, whereas in other cases with nearly identical characteristics, the accused is convicted on the grounds of having employed excessive force in their defense. Such a situation risks creating legal uncertainty and undermining the sense of justice for individuals who act to protect themselves or others against unlawful attacks.

Based on the findings of this study, the inconsistency in the application of Article 49 of the Criminal Code highlights the need for a more comprehensive approach to evaluating acts of necessary defense. An approach oriented solely toward legal certainty through textual interpretation has proven insufficient to fully accommodate the complexities of real-world circumstances. Therefore, law enforcement must prioritize substantive justice by considering the perpetrator's psychological state, the level of threat faced, the emergency situation prompting the defensive action, and the primary objective of that defense.

4. CONCLUSION

This study finds that both Indonesian criminal law and Islamic criminal law recognize the legitimacy of defending a third party as a justifiable act under certain conditions. The study's key findings indicate that the defense of another person receives legal protection when undertaken to counter a real and imminent threat and carried out proportionately. Indonesian criminal law addresses this through the concepts of *noodweer* (necessary defense) and *noodweer exces* (excess in necessary defense), which focus on objective elements such as the existence of an unlawful attack and the necessity of the defense. Meanwhile, Islamic criminal law bases the legitimacy of defending a third party on the principles of *maqashid al-shari'ah* specifically *hifz al-nafs* (preservation of life) while

considering elements of intent, public interest, and the prevention of greater harm. These findings demonstrate that the protection of human life is a universal value recognized by both legal systems.

From a scholarly perspective, this research contributes to strengthening the comparative study of Islamic criminal law and Indonesian criminal law specifically regarding the defense of a third party, a topic rarely addressed in depth in prior studies. The research not only confirms that both legal systems share the objective of protecting the human right to life but also highlights fundamental differences in their philosophical foundations, legal orientations, and the parameters used to evaluate acts of defense. Furthermore, it offers an integrative perspective that bridges the principle of legality in Indonesian criminal law with the value of public interest (*maslahah*) in Islamic criminal law, thereby serving as an academic reference for the development of a national criminal legal system that is more just and humane.

This study has several limitations. First, it employs only a normative-juridical method, meaning it does not empirically examine the practical application of the defense of a third party in court rulings. Second, the study focuses on Indonesian and Islamic criminal law without comparing them to the legal systems of other countries. Third, it does not deeply explore the psychological aspects influencing defensive actions taken in emergency situations. Therefore, future research is advised to adopt an empirical approach by analyzing court rulings, expanding the scope of comparison to include international legal systems, and integrating perspectives from legal psychology to gain a more comprehensive understanding of the defense of a third party.

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