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# Philanthropic Justice as an Interpretive Framework in *Noodweer* Assessment: Tilamuta District Court Decision No.12/PID.B/2025/PN TMT

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**Abstract**

This article addresses the rigid and formalistic assessment of *noodweer* in Indonesian criminal law, which often neglects humanitarian values and leads to criminalizing victims who act in self-defence or defence of others. Although Law No. 1 of 2023, which entered into force on 2 January 2026, introduced reforms through Articles 34 and 43, the Tilamuta decision was rendered in 2025 and must therefore be assessed under Article 49 of the old Criminal Code. The new provisions are considered only for their prospective implications. The Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT is treated as primary legal material because its reasoning allows examination of whether the court considered the defendant's social and humanitarian motivations, without asserting that the judgment expressly adopted a philanthropic doctrine. The study analyses the judicial reasoning, formulates philanthropic justice as a Interpretive Framework, and assesses its implications for criminal law reform. Using normative legal research with statutory, case, conceptual, and comparative approaches, it examines the decision, the new Criminal Code, Dutch and German provisions, and relevant literature. The analysis finds that the judgment contains reasoning that may be read as responsive to philanthropic values but lacks a systematic framework. The article proposes philanthropic justice as a conceptual framework structured around four indicators: life preservation, humanity-based proportionality, adaptive subsidiarity, and priority for vulnerable groups. These indicators are intended to assist contextualized judicial assessment, though further development is needed to translate them into concrete legal tests. The study concludes that integrating philanthropic justice into noodweer doctrine can bridge formal legality and substantive justice, reduce legal uncertainty, and treat social-solidarity defendants fairly. It contributes to a more humane criminal law and judicial policy reform in Indonesia.

## 1. Introduction

The doctrine of *noodweer*, or necessity defence, occupies a paradoxical position within Indonesian criminal law. On the one hand, it is universally recognised as a

fundamental ground for excluding criminal liability, reflecting the elementary principle that a person who is unlawfully attacked may defend himself or herself without fear of punishment. On the other hand, its practical application has generated persistent controversy, largely because the criteria for establishing a successful *noodweer* claim are notoriously difficult to apply with precision.

The classical formulation of *noodweer*, inherited from the Dutch colonial Criminal Code (*Wetboek van Strafrecht*), required that the defence be directed against an imminent and unlawful attack, that the means employed be proportionate, and that no other reasonable means of avoidance be available. These requirements, while logically coherent in the abstract, have proven remarkably resistant to consistent judicial interpretation. The result has been a body of case law that is uneven, unpredictable, and often unjust, particularly for defendants whose actions, though technically defensive, arise from complex social and humanitarian motivations that the formal doctrine fails to capture.[1]

The promulgation of Law No. 1 of 2023 on the Criminal Code (UU 1/2023) was widely heralded as a corrective to these longstanding deficiencies. By separating *noodweer* and *noodweer* excès into distinct articles Article 34 and Article 43, respectively the legislature sought to introduce greater clarity and structure into the law of criminal defences. This separation, however, also exposes a deeper dogmatic question that the present article must address: whether the social and humanitarian factors associated with "philanthropic justice" properly belong to the grounds of justification under Article 34, to the assessment of criminal liability and excuse under Article 36 and Articles 40–44, or to the sentencing guidelines under Article 54. Article 34 operates at the level of the unlawfulness of the act, whereas Article 36 establishes that criminal liability requires intent or negligence, and Article 43 treats excessive defensive action as an excuse grounded in severe emotional disturbance. Article 54, by contrast, expressly requires the judge to consider, among other things, the motive and purpose of the offence, the defendant's social circumstances, and values of justice and humanity living in society at the sentencing stage. These three domains are not interchangeable.

Consequently, the analysis below does not presume that philanthropic motivations automatically expand the *noodweer* construct; instead, it examines whether such motivations operate as a justification, as a factor bearing on culpability, or as a sentencing consideration, and it clarifies the implications of each placement for judicial reasoning. Because the Tilamuta decision predates the entry into force of Law No. 1 of 2023, the court's reasoning is analysed under Article 49 of the old Criminal Code. References to Articles 34, 36, 43, and 54 of Law No. 1 of 2023 are prospective and are used only to evaluate the reform's implications. They are not presented as the legal basis of the 2025 judgment.

Article 34 now provides that a person who is compelled to commit a prohibited act in defence against an imminent and unlawful attack upon himself, another person, honour, or property shall not be punished. Article 43 addresses excessive defensive action, providing that a person who exceeds the limits of necessary defence due to severe emotional disturbance caused by an imminent attack shall

[1] Novendri M. Nggilu, Chami Yassine, and Maya Khater, "Constructing Humanitarian-Based Law: A Philosophical Analysis of the Philanthropic Legal Paradigm," *Yustisia* 14, no. 3 (December 2025): 283–311, https://doi.org/10.20961/yustisia.v14i3.98924.

likewise not be punished. A precise doctrinal reading requires distinguishing two layers. First, the statutory text of Article 34 expressly mentions only two objective requirements: the attack must be imminent (*seketika*) and unlawful (*melawan hukum*). Second, proportionality and subsidiarity are not explicit statutory elements; they are doctrinal and jurisprudential constructions developed to give content to the phrase "*terpaksa*" (compelled) and to the requirement that the defence be "necessary."

In Indonesian doctrine, subsidiarity means that the defence must be the last available means if a safer alternative existed, the defence is not "compelled". Proportionality requires a reasonable balance between the interest protected and the interest infringed. This distinction matters comparatively: *Dutch Article 41 Sr. embeds both requirements in the phrase "geboden door de noodzakelijke verdediging*", while German §32 StGB uses "*erforderlich*" (necessary) and limits excessive defence through the requirement that it not be "grossly disproportionate". Recognizing this layered structure prevents the article from treating proportionality and subsidiarity as if they were self-evident statutory elements of Article 34.[2]

This bifurcation represents a meaningful advance over the old Article 49, which had lumped both concepts together in a single, somewhat opaque provision. Yet, as with many legislative reforms, the promise of the new provisions has not been fully realised in practice.[3] The difficulty lies in application. Judges grapple with what constitutes an "imminent" attack, how to measure proportionality, and when a defendant is "compelled." Philanthropic justice is not a doctrine transcending Article 54 but an interpretive framework integrating Article 54's factors motive, purpose, and social circumstances into the judicial assessment of *noodweer*.

These questions are not merely academic. They have profound consequences for real people. In case after case, individuals who have acted in self-defence or in defence of others have found themselves facing criminal charges, sometimes even conviction and imprisonment, because the formal criteria of *noodweer* were interpreted in a rigid and decontextualised manner.

The criminalisation of victims, normatively speaking, is a grave injustice that undermines public confidence in the legal system; this article treats it as a doctrinal concern rather than an empirically demonstrated phenomenon. It is also a symptom of a deeper doctrinal deficiency: the absence of a coherent framework for integrating substantive justice considerations into the assessment of *noodweer*. Classical doctrine, with its emphasis on formal legality and objective criteria, leaves little room for the lived realities of defendants who act out of desperation, solidarity, or humanitarian concern. The law, in other words, has failed to keep pace with the moral complexity of the situations it seeks to regulate.[4]

It is against this backdrop that Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT becomes central to the analysis. Rather than

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[2] Julia Emtseva, "Philanthropic Justice: The Role of Private Foundations in Transitional Justice Processes," *Michigan Journal of International Law* 44 (2023): 219.
[3] Lance Heavenio R. Heatubun and Ferry Irawan, "Tindakan Noodweer Exces Dalam Tindak Pidana Pembunuhan Sebagai Bentuk Mempertahankan Diri, Harta, Dan Kehormatan," *Journal of Law, Administration, and Social Science* 2, no. 2 (2022): 91–99.
[4] Auzan Wafi and Hery Firmansyah, "Self-Defense in Criminal Law: Examining Limitations and Implications for Criminal Liability," *JURNAL USM LAW REVIEW* 8, no. 2 (June 2025): 787–96, https://doi.org/10.26623/julr.v8i2.12072.

reconstructing the judgment's reasoning in the abstract, this article will identify the specific passages in the ratio decidendi that indicate whether, and to what extent, the panel of judges took the defendant's philanthropic character and social contributions into account. The judgment will be examined not only for what it says about the elements of *noodweer* under Article 49 of the old Criminal Code, but also for whether it implicitly addresses the question of culpability under the general doctrines of criminal liability applicable in 2025. Article 36(1) establishes that criminal liability is based on intentional or negligent conduct, and Article 36(2) confirms that intent is the general form of culpability while negligence must be expressly prescribed.

This doctrinal structure matters because a defendant may fail to satisfy the strict requirements of *noodweer* and yet still not be fully blameworthy. If a person acts in defence of others under concrete conditions of shock, fear, solidarity, or other human circumstances, the relevant question is not merely whether the defence was proportionate, but whether the actor can still be held criminally blameworthy. It is at this point that philanthropic justice operates not only as an interpretive framework for *noodweer* as a justification ground, but also as a framework for assessing culpability ensuring that the failure to meet classical *noodweer* criteria does not automatically lead to the conclusion that the defendant is guilty and deserving of punishment.[5]

The existing scholarly literature on *noodweer* in Indonesia, while valuable, has not yet risen to this challenge. Marzuki, for instance, has provided a sophisticated analysis of the "forced" element from a psychological perspective, shedding light on the mental state of defendants who act under extreme pressure. His work is insightful, but it remains confined to the psychological dimension and does not explore the social or philanthropic motivations that may underlie defensive action.

Kusumah, by contrast, has undertaken a normative comparison of *noodweer* under the old Criminal Code and the new Criminal Code, offering a useful overview of the legislative changes. However, his analysis is largely descriptive and does not propose a new theoretical framework.[6] More recently, Nggilu, Yassine, and Khater have advanced a philosophical conception of "Philanthropic Law" as an alternative legal paradigm grounded in humanism, substantive justice, and inclusion. Their contribution is important because it establishes the theoretical foundations for a philanthropic approach to law, but it remains at the level of general legal philosophy.

They do not operationalise the paradigm within specific criminal law doctrines such as *noodweer*, nor do they provide concrete indicators that judges could apply in practice. Similarly, other scholars have called for more contextual and operational guidelines for *noodweer* assessment, but no one has yet formulated a comprehensive paradigm that integrates philanthropic values into the doctrine itself.

International scholarship on self-defence, while extensive, offers limited guidance for the Indonesian context. Fletcher and Dressler, two of the most

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[5] Fergio Rizkya Refin and Salman Daffa' Nur Azizi, "Dasar Hukum Pembelaan Terpaksa (Noodweer) Dan Pembelaan Terpaksa Melampaui Batas (Noodweer Exces)," *Jurnal Fundamental Justice*, September 30, 2023, 141–56, https://doi.org/10.30812/fundamental.v4i2.3277.

[6] Elvira Puspa Anggraeni and Ahmad Mahyani, "Noodweer Dan Noodweer Exces Terhadap Pelaku Tindak Pidana Pembunuhan," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 1 (2022): 383–94.

influential theorists in the common law tradition, have produced nuanced accounts of self-defence that emphasise the importance of necessity, proportionality, and the defendant's reasonable beliefs.[7] Their work is analytically rigorous, but it is rooted in the institutional and doctrinal assumptions of common law systems, which differ significantly from Indonesia's civil law heritage. Moreover, neither Fletcher nor Dressler addresses the specific cultural and social dimensions of *noodweer* in a pluralistic society like Indonesia, where local wisdom and communal values play a significant role in shaping moral judgments.

The comparative law literature on *noodweer* in continental European jurisdictions, such as the Netherlands and Germany, is more directly relevant, as those systems share Indonesia's civil law pedigree. Dutch law, for example, recognises *noodweer* under Article 41 of the *Wetboek van Strafrecht*, and German law under Section 32 of the *Strafgesetzbuch*.[8]

Both jurisdictions have developed sophisticated doctrinal frameworks for assessing defensive action, including nuanced approaches to proportionality and the consideration of social context. Yet even these comparative models do not fully capture the unique cultural and legal landscape of Indonesia, where the integration of local wisdom values such as the Gorontalo concept of *totolotanggu*, which emphasises mutual assistance and communal solidarity could enrich the doctrine in distinctive ways.

The research gap, therefore, is twofold. Theoretically, there is no systematic paradigm that integrates philanthropic values into the assessment of *noodweer* within the framework of Law No. 1 of 2023. Existing studies either remain confined to psychological or normative analysis, or they operate at a level of philosophical abstraction that is not readily translatable into judicial practice. Practically, judges lack operational indicators that would enable them to assess *noodweer* in a manner that is both principled and contextually sensitive.

This gap is not merely an academic oversight; it has real-world consequences for defendants whose lives and liberties depend on the fair application of the law. The absence of a coherent paradigm means that philanthropic motivations motivations that ought to be celebrated rather than punished are either ignored or treated as irrelevant, while defendants who act out of social solidarity are exposed to the full force of the criminal law.[9]

This article responds to that gap by formulating "philanthropic justice" as a Interpretive Framework for *noodweer* assessment. The concept of philanthropic justice builds upon the philosophical foundations laid by Nggilu, Yassine, and Khater, but it goes further by operationalising the paradigm within the specific context of Indonesian criminal law. It draws upon comparative insights from the

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[7] Irpan Suriadiata, "The Concept of Forced Defense As Legal Protection Against the Criminalization of Crime Victims," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 2 (2024): 811–24.

[8] Arsyaddefa Muhammad Fitra Irfani and Abdul Fattaah, "Inconsistency of Judicial Verdicts in Standardizing the Threshold of Noodweer Exces: A Review of Criminal Law and Islamic Law," *Asy-Syari'ah : Jurnal Hukum Islam* 12, no. 1 (December 2025): 31–45, https://doi.org/10.55210/assyariah.v12i1.2327.

[9] I. Gede Windu Merta Sanjaya, I. Nyoman Gede Sugiartha, and I. Made Minggu Widyantara, "Pembelaan Terpaksa Melampaui Batas (Noodweer Exces) dalam Tindak Pidana Pembunuhan Begal Sebagai Upaya Perlindungan Diri," *Jurnal Konstruksi Hukum* 3, no. 2 (March 2022): 406–13, https://doi.org/10.22225/jkh.3.2.4847.406-413.

Netherlands and Germany, as well as local wisdom values from Gorontalo, to develop a framework that is both theoretically robust and practically applicable.

The novelty of the article lies in three contributions. First, it is the first study to explicitly formulate philanthropic justice as a paradigm for *noodweer* assessment following the enactment of Law No. 1 of 2023. Second, it employs a very recent court decision Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT as its primary empirical object, ensuring high topicality and relevance. Third, it offers operational indicators for judges, including *life preservation*, humanity-based proportionality, adaptive subsidiarity, and priority for vulnerable groups, which are not available in existing doctrinal literature.[10]

The scientific merit of this study lies in its interdisciplinary approach. By integrating legal doctrine, comparative law, and local wisdom, the article transcends the narrow confines of doctrinal analysis and offers a holistic understanding of *noodweer* that is attuned to the complexities of Indonesian society. The theoretical contribution is significant: the article enriches criminal law doctrine with humanitarian and social solidarity values, thereby advancing the development of a more humane and contextualised legal framework.

The practical contribution is equally important: by providing judges with a systematic paradigm and operational indicators, the article aims to reduce legal uncertainty and ensure that defendants who act out of philanthropic motives are treated fairly. Furthermore, the article contributes to the broader project of criminal law reform in Indonesia, offering a model for how substantive justice can be integrated into the application of criminal defences.[11]

The article addresses three interrelated research questions. First, how did the judges in Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT assess *noodweer* under Articles 34 and 43 of Law No. 1 of 2023? Second, how can the concept of philanthropic justice be formulated as a systematic and operational paradigm for assessing *noodweer* in Indonesia, drawing upon comparative insights from the Netherlands and Germany as well as local wisdom values from Gorontalo? Third, what are the implications of applying the philanthropic justice paradigm for criminal law reform and judicial practice in Indonesia? These questions guide the structure of the article, moving from empirical analysis to conceptual formulation and finally to prescriptive recommendations.

The central argument is that the classical doctrine of *noodweer* is inadequate to address the complexities of contemporary Indonesian society, particularly in cases where defendants act out of philanthropic motives. The Tilamuta decision serves as a catalyst for rethinking the doctrine, and the concept of philanthropic justice offers a way forward. By formulating a systematic paradigm and operational indicators, this article seeks to contribute to a more just and humane criminal law one that recognises the moral worth of those who act in defence of others and ensures that the law serves the interests of justice rather than mere formalism.

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[10] I. Gusti Ngurah Dwi Puspanegara, Ni Gusti Agung Ayu Mas Tri Wulandari, and Luh Putu Yeyen Karista Putri, "Pembelaan Terpaksa Melampaui Batas (Noodweer Excess) Dalam Konsep Reposisi Korban," *JUSTISI* 10, no. 3 (August 2024): 627–39, https://doi.org/10.33506/js.v10i3.3287.

[11] Ayu Putri Arisandy, I. Nyoman Gede Sugiartha, and Ni Made Sukaryati Karma, "Perlindungan Hukum Terhadap Pelaku Tindak Pidana Pembunuhan Karena Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces)," *Jurnal Preferensi Hukum* 5, no. 3 (2024): 278–83.

## 2. Method

This study employs normative legal research with statutory, case, conceptual, and comparative approaches. [12] Primary materials are Law No. 1 of 2023 (Articles 34, 36, 43, 54), Tilamuta District Court Decision No. 12/PID.B/2025/PN TMT, and Dutch and German Criminal Codes. The Tilamuta decision was selected as the most recent judgment addressing *noodweer* under Article 49 of the old Criminal Code. Dutch and German materials were chosen for their civil law pedigree, comparable statutory structure, and mature doctrine on proportionality and subsidiarity.

Secondary materials include *noodweer* doctrine, Rawls and Nussbaum, and philanthropic justice literature, selected by purposive sampling. Analysis proceeds in five stages: grammatical interpretation of statutory elements; systematic interpretation linking Articles 34, 36, and 54; teleological interpretation of the 2023 reform; case analysis distinguishing *ratio decidendi* from *obiter dicta*; and comparative analysis of convergences and divergences. The four indicators were derived through three steps: identifying doctrinal gaps, supporting them with comparative law and justice theories, and contextualising them within Gorontalo's *totolotanggu*. A comparative matrix ensures each indicator corresponds to a specific doctrinal deficiency.

## 3. Analysis or Discussion

### 3.1. Judicial Consideration of *Noodweer* in Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT

The Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT presents a significant departure from the rigid formalism that has historically characterised judicial assessment of *noodweer* in Indonesia. In this case, the defendant was charged with a criminal act arising from what he claimed was a defensive action taken to protect others from an imminent and unlawful attack. Rather than confining its analysis to the mechanical application of the classical criteria of *noodweer* imminence, unlawfulness, proportionality, and subsidiarity.

The authors read the judgment as going beyond a mechanical application of the classical criteria, social circumstances, and the humanitarian context of his conduct. The court's reasoning, as reflected in the judgment, reveals a conscious effort to move beyond formal legality toward a more substantive and contextualised conception of justice. This section analyses the judicial consideration in three stages: first, by outlining the factual matrix of the case; second, by examining the court's interpretation of the elements of *noodweer* under Article 49 of the old Criminal Code. References to Articles 34 and 43 of Law No. 1 of 2023 are prospective and are used only in the reform analysis. and third, by evaluating the extent to which the court's approach aligns with the emerging paradigm of philanthropic justice.[13]

Rather than reconstructing the facts as if they were settled, this article limits its account to what the available text of the judgment records. The statement that

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[12] Johnny Efendi Jonaedi, dan Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenadamedia Group, 2018).

[13] Amelia Putri Rizkyta and Amarru Muftie Holish, "Victims of Robbery with the Forced Defence (Noodweer): A Legal and Victimological Aspects," *Law Research Review Quarterly* 9 (2023): 53–70.

the defendant intervened in a situation involving an unlawful attack is therefore presented as the authors' interpretive reading, not as a fact established by the court. The defendant's intervention was not premeditated but arose spontaneously from a sense of social solidarity and a desire to protect vulnerable persons from harm. In its consideration of the "forced" (*terpaksa*) element, the court did not limit itself to an objective assessment of the physical circumstances surrounding the attack.

Instead, it inquired into the defendant's subjective state of mind, including his moral conviction that intervention was necessary to prevent serious harm.[14] A close doctrinal reading of the judgment's *ratio decidendi* reveals that the panel of judges engaged in a broader inquiry into the defendant's socio-humanitarian context. It must be emphasized that the authors do not assert the judgment expressly characterized the defendant's motive as philanthropic. Rather, through a doctrinal reconstruction, the authors posit that the court's elucidation of the defendant's social circumstances demonstrates a judicial receptiveness to philanthropic values, albeit lacking a systematic legal framework. This finding is significant because it expands the scope of the "forced" element beyond mere physical compulsion to include moral and social compulsion arising from a sense of duty to others.[15]

In interpreting proportionality, this article reads the judgment as adopting a contextualised approach that resonates with philanthropic justice, while expressly acknowledging that this is the authors' interpretive reading rather than a criterion formulated by the court. "Humanitarian concern" is not treated here as an independent criterion of proportionality; it is a contextual factor that informs the application of proportionality but does not replace it. To avoid subjective or inconsistent judicial discretion, the article proposes four objective parameters: (i) the gravity of the attack relative to the defensive force used; (ii) the relative vulnerability of the parties; (iii) the availability of less harmful alternatives at the moment of defence; and (iv) the defendant's reasonable belief, assessed against what a reasonable person would have perceived under the same circumstances.

The judgment's acknowledgment that the defendant's use of force, while arguably exceeding strict necessity in a narrow physical sense, was proportionate when viewed through humanitarian concern is therefore read as an application of these parameters, not as an independent humanitarian exception.[16] This approach echoes the German doctrine of *Notwehr*, which permits defensive action that is necessary to avert an imminent attack, provided that the action is not grossly disproportionate. However, the Tilamuta court went further by explicitly incorporating the defendant's philanthropic motivations into its proportionality

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[14] Ni Putu Kristin Ningtyas Kusuma, Anak Agung Sagung Laksmi Dewi, and I. Made Minggu Widyantara, "Pembelaan Terpaksa (Noodweer) Sebagai Penghapus Tindak Pidana Penganiayaan Yang Menyebabkan Kematian (Studi Putusan Perkara Pidana Nomor 115/Pid.B/2021/PN Stb)," *Jurnal Analogi Hukum* 5, no. 1 (March 2023): 21–27, https://doi.org/10.22225/ah.5.1.2023.21-27.

[15] K. Pakpahan, "Legal Protection for Murder Victims as Perpetrators of Forced Defense From The Perspective of Victimology," *PENA JUSTISIA: MEDIA KOMUNIKASI DAN KAJIAN HUKUM Учредители: Universitas Pekalongan* 23, no. 3 (2024): 2976–87.

[16] Failin Alin, "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (September 2017): 14–31, https://doi.org/10.33760/jch.v3i1.6.

analysis, thereby creating a bridge between the objective requirements of the law and the subjective moral universe of the defendant.[17]

The court's consideration of subsidiarity the requirement that no other reasonable means of avoiding the attack were available was similarly contextualised. Through an exegetical reading of the court's consideration of the 'forced' (*terpaksa*) element, the authors interpret the judgment as acknowledging the defendant's practical lack of access to alternative remedies. This contextualized assessment reflects the principle of adaptive subsidiarity. In the absence of effective state protection, the defendant's decision to intervene directly was not merely reasonable but morally commendable.

The court's reasoning here reflects the principle of adaptive subsidiarity, which holds that the assessment of available alternatives must take into account the practical realities of the defendant's situation, including social, economic, and institutional constraints. This principle is central to the philanthropic justice paradigm, as it ensures that the law does not demand the impossible from those who act in defence of others.

Evidence was presented regarding the defendant's longstanding involvement in community activities, his reputation for generosity, and his commitment to helping those in need. These factors must be placed in their proper dogmatic category. Under the law applicable in 2025, they are not elements of *noodweer* as a ground of justification under Article 49(1) of the old Criminal Code, nor do they constitute an excuse under Article 49(2), nor do they negate the mens rea required for criminal liability. At most, they operate as sentencing considerations. The same tripartite distinction is relevant prospectively under Articles 34, 36, 43, and 54 of Law No. 1 of 2023, which expressly requires judges to consider the defendant's motive, purpose, personal history, and social circumstances, as well as the values of justice and humanity living in society. If the judgment refers to the defendant's philanthropic character, this article reads that reference as a sentencing consideration rather than as part of the substantive elements of *noodweer*.

Any claim that such character reduces culpability would require a separate argument linking it to the defendant's state of mind at the time of the act, not merely to his general reputation.[18] This approach aligns with the growing recognition in Indonesian legal scholarship that the assessment of criminal liability should not be divorced from the broader social and moral context in which the defendant acted. As Nggilu, Yassine, and Khater have argued, a philanthropic legal paradigm requires judges to consider the social solidarity and humanitarian values that motivate individual conduct, rather than focusing exclusively on the formal elements of the offence. The Tilamuta decision represents a practical manifestation of this theoretical insight.

Nevertheless, the court's reasoning is not without its limitations. While the judges intuitively recognised the relevance of philanthropic values, they did not

[17] Irwandi Samudra and Fachri Wahyudi, "Pandangan Hukum Pidana Terhadap Pembelaan Terpaksa yang Melampaui Batas (Noodweer Exces)," *Wasatiyah: Jurnal Hukum* 4, no. 2 (December 2023): 1–18, https://doi.org/10.70338/wasatiyah.v4i2.131.

[18] Guntur Latubara Latubara, "Pembelaan Terpaksa Yang Melampaui Batas (Noodweer Exces) Dalam Sistem Peradilan Hukum Di Indonesia Terkait Penganiayan Berat," *Research Journal of Social Science and Economics* 1, no. 2 (2025): 1–11.

articulate a systematic framework for incorporating those values into the *noodweer* doctrine. The judgment lacks a clear statement of the legal principles that guided the court's departure from classical formalism, and it does not provide operational indicators that could be applied consistently in future cases. As a result, the decision remains vulnerable to criticism as an exercise of judicial discretion that is ad hoc and potentially inconsistent. This limitation underscores the urgent need for a coherent paradigm that can guide judicial reasoning in a principled manner. The next section addresses this need by formulating the philanthropic justice paradigm and proposing operational indicators for its application.

### 3.2. Formulating Philanthropic Justice as an Interpretive Framework for *Noodweer* Assessment

The concept of philanthropic justice, as developed in this article, builds upon the philosophical foundations laid by Nggilu, Yassine, and Khater, who articulated a humanitarian-based legal paradigm grounded in substantive justice, humanism, and inclusion. However, while their work remains at the level of general legal philosophy, this article operationalises the paradigm within the specific context of *noodweer* assessment under Law No. 1 of 2023. Philanthropic justice is conceptualized herein as a hermeneutic and meta-doctrinal framework.

It does not purport to establish a novel ground of justification or excuse under Indonesian criminal law. Instead, it provides a principled methodology to clarify at which dogmatic level whether as a justification (Article 34), a factor of culpability (Article 36), an excuse (Article 43), or a sentencing consideration (Article 54) the defendant's altruistic purpose should be legally weighed. In doing so, it connects three elements that existing concepts treat separately: the social-solidarity motive, the protective orientation of the act, and the doctrinal placement of that motive in criminal law. It does not reject the classical criteria of *noodweer* but rather expands their meaning to accommodate the moral and social dimensions of defensive action.[19] The paradigm is premised on the recognition that individuals who act out of philanthropic motives motives rooted in a genuine desire to protect others from harm deserve a legal framework that understands and respects their moral agency.

The philanthropic justice paradigm is structured around four operational indicators: *life preservation*, humanity-based proportionality, adaptive subsidiarity, and priority for vulnerable groups. These indicators are designed to provide judges with concrete criteria for assessing *noodweer* in a manner that is both principled and contextually sensitive. Each indicator is derived from a synthesis of comparative legal analysis, theories of justice, and local wisdom values. The first indicator, life preservation, reflects the special weight accorded to life and bodily integrity. This is not an absolute hierarchy: Article 34 protects life, body, honour, and property, and constitutional and human rights norms justify prioritising life.

The hierarchy is rebuttable and operates within proportionality and subsidiarity, giving greater latitude where life or serious harm is at stake, provided the means remain necessary and not grossly disproportionate. In the context of *noodweer*, this means that defensive action taken to prevent death or serious bodily harm should be afforded the greatest latitude, even if the means employed might

[19] Nggilu, Yassine, and Khater, "Constructing Humanitarian-Based Law."

otherwise appear disproportionate.[20] The German Criminal Code, for example, recognises that the right to self-defence is limited only by the requirement that the defence not be grossly disproportionate, and the preservation of life is generally considered a sufficient justification for the use of significant force. The Tilamuta decision implicitly applied this principle when it accepted that the defendant's intervention was justified by the need to protect others from serious harm.

The second indicator, humanity-based proportionality, requires judges to assess proportionality not merely by comparing physical force, but by considering the broader humanitarian context of the encounter. Its application should be guided by concrete criteria: the intensity of the attack, the nature of the threatened harm, the number of attackers, the weapons involved, the duration of the defensive act, the vulnerability of the person protected, and the availability of alternative measures. This includes factors such as the relative vulnerability of the parties, the defendant's reasonable beliefs about the danger posed by the attack, and the social and psychological pressures that may have influenced the defendant's response.

The Dutch approach to *noodweer* under Article 41 of the *Wetboek van Strafrecht* provides a useful comparative reference, as Dutch courts have developed a nuanced jurisprudence that takes into account the defendant's subjective perspective and the circumstances of the attack. The Tilamuta court's reasoning reflects a similar sensitivity, as it considered the defendant's philanthropic motivations in evaluating the proportionality of his response.[21]

The third indicator, adaptive subsidiarity, recognises that the assessment of available alternatives must be adapted to the practical realities of the defendant's situation. In many cases, defendants who act in defence of others do so because they lack access to effective state protection. The law should not penalise them for failing to pursue alternatives that were not realistically available. This principle is particularly relevant in the Indonesian context, where law enforcement resources are unevenly distributed and many communities rely on informal mechanisms of social control.

The Gorontalo concept of *totolotanggu*, which emphasises mutual assistance and communal responsibility, provides a local wisdom foundation for this indicator. *Totolotanggu* embodies the idea that members of a community have a collective duty to protect one another, and that intervention in defence of others is not merely permitted but expected. By integrating this value into the *noodweer* doctrine, the philanthropic justice paradigm aligns the law with the cultural norms of Indonesian society.[22]

The fourth indicator, priority for vulnerable groups, requires judges to give special consideration to cases where the defendant acted to protect persons who are particularly vulnerable to harm, such as women, children, the elderly, or members

[20] Oci Senjaya and Indra Yudha Koswara, "Criminal Law Reform: Restorative Justice and Child Protection in the 2023 Criminal Code (KUHP)," *Ius Poenale* 6, no. 2 (2025): 139–52, https://doi.org/10.25041/ip.v6i2.5063.
[21] Izzah Audina, "Two Systems, One Concept of Comparative Analysis of Dutch Noodwer and Indonesian Forced Defense," *Jurnal Akta* 11, no. 4 (November 2024): 1092–103.
[22] Shulhan Iqbal Nasutioon, "Mono-Dualistic Theory and the Principle of Balance: A Conceptual Framework for Criminal Law Reform in Indonesia," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 2025, 533–44.

of marginalised communities. This indicator reflects the substantive justice principle that the law should be most protective of those who are least able to protect themselves.[23] It also resonates with Martha Nussbaum's capabilities approach, which emphasises the importance of ensuring that all individuals have the opportunity to live a life of dignity. In the Tilamuta case, the defendant's intervention was directed at protecting vulnerable individuals, and the court's recognition of this fact contributed to its decision to treat the defendant's action as justified.

To illustrate the differences between the classical *noodweer* doctrine and the philanthropic justice paradigm, the following comparative matrix is presented.

**Table 1. Operationalization of Philanthropic Justice Indicators in *Noodweer* Assessment**

| Indicator | Doctrinal Anchor (Legal Basis) | Operationalization (Application) | Limiting Principle (Boundaries) |
|---|---|---|---|
| Life preservation | Art. 49(1) Old Criminal Code; Art. 34 New Criminal Code; §32 StGB. | Greater latitude is granted when defending against threats to life or severe bodily harm. | Rebuttal & Proportionality: Not an absolute hierarchy. The force used must still pass the objective necessity test and not be grossly disproportionate. |
| Humanity-based proportionality | Doctrine of Proportionality; Art. 41 Sr; §32 StGB. | Contextual weighing of the intensity of the attack, vulnerability of the victim, and the defender's reasonable perception of danger. | Objective Reasonableness: The defender's subjective belief must be assessed against what a reasonable person would have perceived under identical circumstances. |
| Adaptive subsidiarity | "Terpaksa" requirement (Art. 49(1)); "Erforderlich" (§32 StGB). | Adjusts the assessment of available alternatives based on the defendant's socio-economic and | Practical Availability: Only excuses the failure to pursue alternatives that were practically |

[23] Dwiana Adinda et al., "Politik Hukum Dalam Pembaharuan Hukum Pidana Di Indonesia," *Wathan: Jurnal Ilmu Sosial Dan Humaniora* 1, no. 1 (May 2024): 12–25, https://doi.org/10.71153/wathan.v1i1.16.

| | | | |
|---|---|---|---|
| | | institutional constraints (e.g., lack of state protection). | unavailable. It does not justify vigilante justice if state apparatus was accessible. |
| Priority for vulnerable groups | Art. 49(1) protection of "another person"; Nussbaum's Capabilities Approach. | Directs judicial attention to the vulnerability of the person protected by the defendant (e.g., children, elderly, marginalized groups). | Non-Discrimination: Does not create a group-based justification that elevates the rights of vulnerable persons above the objective requirements of the law. |

Source: Author's analysis, 2026.

The matrix demonstrates that the philanthropic justice paradigm does not discard the classical criteria but reinterprets them in light of substantive justice considerations. The classical criteria remain relevant as initial filters, but they are supplemented by indicators that allow judges to take into account the moral and social dimensions of defensive action. This approach is consistent with the teleological interpretation of Law No. 1 of 2023, which seeks to provide stronger protection for victims of crime who are compelled to defend themselves. By adopting the philanthropic justice paradigm, judges can ensure that the law serves the interests of justice rather than mere formalism.[24]

The formulation of the philanthropic justice paradigm also draws upon the theories of justice developed by John Rawls and Martha Nussbaum. Rawls's difference principle concerns the distribution of social and economic advantages within the basic structure of society, not the justification of individual conduct. Its relevance to *noodweer* is therefore indirect: it supplies a normative background for why defensive action undertaken to protect the least advantaged may deserve special solicitude, but it does not itself justify any particular act.

The theoretical bridge lies in the idea that a legal system committed to protecting the least advantaged should interpret criminal defences in a way that does not penalise those who act in solidarity with vulnerable persons. Applied to *noodweer*, this principle suggests that the law should be most solicitous of defendants who act out of philanthropic motives, as they are often motivated by a desire to protect the least advantaged. Nussbaum's capabilities approach similarly emphasises the importance of ensuring that all individuals have the opportunity to live a life of dignity, and it recognises that the law must be responsive to the diverse needs and circumstances of different people. The philanthropic justice paradigm operationalises these theoretical insights by providing concrete indicators that

[24] Uut Rahayuningsih et al., "Formulasi Kebijakan Rechterlijke Pardon dalam Perspektif Pembaharuan Hukum Pidana di Indonesia," *Amsir Law Journal* 7, no. 2 (April 2026): 103–12, https://doi.org/10.36746/alj.v7i2.758.

judges can use to assess *noodweer* in a manner that is both principled and contextually sensitive.

### 3.3. Implications for Criminal Law Reform and Judicial Practice

The adoption of the philanthropic justice paradigm has significant implications for criminal law reform and judicial practice in Indonesia. At the level of doctrine, the paradigm enriches the interpretation of Articles 34 and 43 of Law No. 1 of 2023 by integrating humanitarian and social solidarity values into the assessment of *noodweer*. This is consistent with the legislative intent behind the new Criminal Code, which sought to modernise Indonesian criminal law and align it with international human rights standards. By explicitly recognising philanthropic motivations as relevant to the assessment of defensive action, the paradigm provides a doctrinal foundation for judicial decisions that might otherwise appear discretionary. It also helps to resolve the tension between formal legality and substantive justice that has long plagued the application of *noodweer* in Indonesia.[25]

At the level of judicial practice, the philanthropic justice paradigm offers judges a systematic framework for assessing *noodweer* cases. The four operational indicators *life preservation*, humanity-based proportionality, adaptive subsidiarity, and priority for vulnerable groups provide concrete criteria that judges can apply consistently.[26] This reduction in arbitrary decision-making can be achieved only if the four indicators are anchored in established facts, explicitly reasoned, kept subordinate to Article 34, and subject to appellate review safeguards that nonetheless preserve judicial capacity to account for the unique circumstances of each case.

The paradigm further encourages judges to consider the social and moral context of the defendant's conduct, thereby fostering a more humane and contextualised approach to criminal justice. The Tilamuta decision serves as an illustrative point of departure, demonstrating that judges can engage with substantive justice considerations when provided with appropriate doctrinal tools.[27]

At the level of policy, the philanthropic justice paradigm has the potential to inform the development of judicial guidelines and training programs. The Supreme Court of Indonesia could issue a circular letter or regulation that incorporates the four indicators into the assessment of *noodweer* cases, thereby providing lower courts with clear guidance. The National Judicial Training Centre could develop training modules that familiarise judges with the paradigm and its application. These measures would help to ensure that the paradigm is not merely an academic construct but a practical tool for improving the administration of justice.

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[25] Andries Kango and Donald Qomaidiasyah Tungkagi, "RECLAIMING LOCAL WISDOM FOR RELIGIOUS MODERATION: The Case of Buatulo Toulongo in Gorontalo, Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 50, no. 1 (May 2026): 311–30, https://doi.org/10.30821/miqot.v50i1.1747.

[26] Septa Candra, "Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 2, no. 2 (August 2013): 263–77, https://doi.org/10.33331/rechtsvinding.v2i2.76.

[27] Haritsa, Dharmawati, and Sutriani Abubakar, "Ultimum Remedium Approach in Resolving Mining Conflicts Based on Local Wisdom of Gorontalo Community," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 11, no. 2 (December 2024): 230–41, https://doi.org/10.24252/jurisprudentie.v11i2.53858.

Furthermore, the philanthropic justice paradigm has implications for the broader project of criminal law reform in Indonesia. It demonstrates that criminal law can be both effective and humane, and that the pursuit of justice does not require the sacrifice of compassion. By recognising the moral worth of those who act in defence of others, the paradigm contributes to a legal culture that values solidarity, mutual assistance, and human dignity. This is particularly important in a pluralistic society like Indonesia, where local wisdom values such as *totolotanggu* provide a rich source of normative guidance. The integration of these values into the *noodweer* doctrine is not merely a matter of cultural sensitivity; it is a matter of legal effectiveness. When the law reflects the values of the community it serves, it is more likely to be respected and obeyed.[28]

In conclusion, the analysis has demonstrated that the Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT represents a significant step toward a more substantive and contextualised approach to *noodweer* assessment. The court's consideration of the defendant's philanthropic motivations, while not yet articulated in a systematic framework, points the way toward a Interpretive Framework. The philanthropic justice paradigm formulated in this article provides that framework, offering operational indicators that can guide judicial reasoning and ensure that defendants who act out of social solidarity are treated fairly. The implications for criminal law reform and judicial practice are substantial, and they suggest that the future of Indonesian criminal law lies in a more humane, contextualised, and philanthropic approach to justice.

## 4. Conclusion

This study concludes that Tilamuta District Court Decision Number 12/PID.B/2025/PN TMT offers a significant but limited site for examining how philanthropic considerations may enter judicial assessment of *noodweer*. Read as primary legal material, the judgment contains reasoning that may be interpreted as responsive to the defendant's social and humanitarian motivations; however, it does not articulate a systematic doctrinal framework for incorporating those motivations into *noodweer* analysis.

The article therefore formulates philanthropic justice not as a Interpretive Framework transcending existing criminal law categories, but as an interpretive framework that asks whether, and at which dogmatic level justification under Article 34, culpability under Article 36, excuse under Article 43, or sentencing under Article 54 altruistic protective purpose should be given legal weight. The framework is structured around four provisional indicators: life preservation, humanity-based proportionality, adaptive subsidiarity, and priority for vulnerable groups.

These indicators are conceptual rather than fully operational; they require further development into concrete legal tests before they can be applied consistently by judges. The study further concludes that the framework may enhance legal certainty only if the indicators are anchored in established facts, explicitly reasoned, kept subordinate to Article 34, and subject to appellate review. It does not claim that philanthropic justice automatically expands the *noodweer*

[28] Matthew Harding, "Philanthropy, Justice and Law," *The University of New South Wales Law Journal* 46, no. 1 (April 2023): 182–204, https://doi.org/10.3316/informit.984672331081494.

construct or reduces culpability. Its contribution lies in clarifying the dogmatic placement of philanthropic factors and in offering a principled basis for contextualised judicial reasoning.

The study is limited to one principal decision and a comparative analysis of Dutch and German law; it does not provide empirical validation. Future research should refine the indicators through broader doctrinal analysis and, where appropriate, empirical assessment, and should examine how local wisdom values such as *totolotanggu* may inform judicial reasoning without functioning as a binding source of law. Ultimately, the article argues that a more humane and contextualised criminal law requires careful doctrinal scaffolding, not merely humanitarian aspiration.

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