

Legal Review of the Punishment of Perpetrators of Criminal Act of Assault Resulting Serious Injuries (Study of Decision No: 334/Pid.B/2023/PN.Amb and Decision No: 30/Pid.B/2023/PN.Cjr)

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Abstract. *The crime of assault causing serious injury as regulated in Article 351 paragraph (2) of the Criminal Code (KUHP) is a form of crime against the body which has serious consequences for the victim. This study aims to analyze the legal construction of the crime of assault causing serious injury and to evaluate the application of the principle of legal certainty in court decisions. The research method used is a normative legal approach with descriptive-analytical specifications and case study techniques. The object of the study is focused on the Study of Decision No: 334 / Pid.B / 2023 / PN.Amb and Decision No: 30 / Pid.B / 2023 / PN.Cjr with an analytical approach to the elements of the crime, evidence, judges' considerations, and their relevance to the principles of legality, proportionality, and legal certainty. The results of the study show that the elements in Article 351 paragraph (2) of the Criminal Code are formally proven, but their application in material aspects is often inconsistent because it depends on the judge's subjective interpretation of the victim's injury conditions. This difference creates disparities in sentencing and weakens the principle of legal certainty. Therefore, this thesis recommends the importance of strengthening guidelines for interpreting material criminal law related to serious injuries, as well as harmonization between the results of the post-mortem and the legal construction in the decision in order to create a fair, proportional, and legally certain sentencing system.*

Keywords: *Abuse; Legal Certainty; Serious Injury.*

1. Introduction

Hearing the word criminal, something cruel, frightening and even threatening must appear in our perception. This cannot be denied because etymologically the meaning of the word criminal is misery, sadness, and being bound both in body and soul. A simple definition of criminal law is a law that contains various regulations that contain obligations and prohibitions against violators who are threatened with punishment in the form of physical torture.¹

The Criminal Code (KUHP) as a new codification of national criminal law, explicitly regulates the crime of abuse in Chapter XIV on Criminal Acts Against the Body. In this provision, abuse is defined as an act that unlawfully causes pain, injury, or disturbance to the health of another person, including light abuse, serious abuse, and abuse resulting in death. This regulation reflects a more systematic and structured approach compared to the previous Criminal Code, and adapts to developments in legal values and human rights.²

Islamic criminal law explains that criminal acts known as jarimah also have a scope, namely qishash, hudud, and ta'zir. In this case, the crime of assault is included in the jarimah qishash (Qishash of body parts) with various legal sanctions according to the method, type, and part where the crime of assault was committed against the victim. However, the legal sanction of qishash of body parts can be replaced with diyat punishment if the perpetrator's actions are forgiven by the victim or his family, and if both forms of sanctions are also forgiven by the victim and the victim's family, the replacement punishment is ta'zir and it will be investigated again whether the act of assault committed by the perpetrator on the basis of intent or not.³

The decision of the Ambon District Court with Case Register Number 334/Pid.B/2023/PN.Amb, and the decision of the Cianjur District Court with Case Register Number 30/Pid.B/2023/PN.Cjr, have obtained permanent legal force (inkracht van gewijsde). This is because there was no submission of an appeal or cassation from the parties to the case within the time limit specified as stipulated in Article 233 of the Criminal Procedure Code. Based on the above verdict, both were found guilty of violating Article 351 paragraph (2) of the Criminal Code. The Panel of Judges gave a sentence of 5 years for the defendant with the initials AT and the defendant with the initials MHI was given a sentence of 2 years. There were differences in the verdicts decided by the Panel of Judges. In determining a verdict, the Panel of Judges is faced with a demand for justice that forces it to look at the facts available in the trial or the evidence process. The verdict handed down by the Panel of Judges is very decisive in determining whether or not an act committed by the defendant is wrong. Based on Article 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code, it is emphasized that a judge is a state judicial official who is authorized by law to try. The word "try" in Article 1 of

¹ Lukman Hakim (2021), *Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia*, *Jurnal Konstitusi*, Vol.18, (No.4), p. 870.

² Rian Hidayat (2023), *Studi Putusan Nomor 320/Pid.B/2021/PN.MTR tentang Tindak Pidana Penganiayaan Yang Menyebabkan Luka Berat*, *Unizar Recht Journal*, Vol.2, (No.1), p. 157.

³ Criminal Code (KUHP)

the Criminal Procedure Code is a series of actions by the judge to receive, examine, and decide a case based on the principles of honesty, freedom, and impartiality in the trial. As one of the law enforcers, the judge in making a verdict is still based on the rules stated and applicable in the law. In addition, when making considerations, the Panel of Judges must also be based on valid evidence.⁴

2. Research Methods

This research is a normative research. The normative research method is a legal research that places law as a building of a norm system. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). The nature of this research is descriptive research, namely research that aims to organize and classify the symptoms described by researchers to achieve perfection on the basis of research problems.⁵

3. Results and Discussion

3.1. Legal Review

Legal review is a form of legal analysis conducted based on applicable legal norms, such as laws and regulations, legal doctrine, and court decisions. The purpose of legal review is to understand and evaluate a legal problem systematically and objectively, in order to provide an accurate view of the legal implications of a situation or case. In the context of criminal law, legal review is used to examine the application of criminal law to an act, including the elements of the crime, the perpetrator's responsibility, and the sanctions imposed. Thus, legal review plays an important role in providing clarity and legal certainty for a legal event that occurs.⁶

3.2. Criminalization

Criminalization is a legal action imposed by the court on a person who is legally and convincingly proven to have committed a crime. Criminalization not only functions as a form of retribution for the perpetrator's actions, but also has preventive and repressive purposes, such as providing a deterrent effect, protecting society, and rehabilitating the perpetrator. In criminal law doctrine, criminalization is seen as a realization of the principle of legality and criminal responsibility, where the punishment is imposed in accordance with applicable legal regulations and proportional to the level of the perpetrator's guilt. Criminalization is also an important instrument in maintaining order and social justice in society.⁷

⁴ Diana Sri Utami (2025), Implementasi Konsep Pertanggungjawaban Pidana Islam dalam Hukum Positif Indonesia, *Amandemen: Jurnal Ilmu Pertanahan, Politik dan Hukum Indonesia*, Vol.2, (No.1), p. 180.

⁵ Mukti Fajar & Yulianto Achmad (2015), *Dualisme Penelitian Hukum*, (Yogyakarta: Pustaka Pelajar) p.34

⁶ Nafi' Mubarak (2020), *Buku Ajar Hukum Pidana*, (Jawa Timur: Kanzun Books), p. 124.

⁷ Rahman Amin (2023), *Pidana dan Pemidanaan Menurut Hukum Nasional*, (Yogyakarta: Prenada Media), p. 47.

3.3. Perpetrator

The perpetrator of a crime is a person who consciously and responsibly committing an act prohibited by law and subject to criminal penalties. The perpetrator can be an individual (person) or a corporation (legal entity), depending on the form and nature of the crime committed. Based on criminal law doctrine, perpetrators are classified into direct perpetrators (pleger), indirect perpetrators (doen pleger), orderers (uitlokker), and assistants (medeplichtige), as explained in Articles 55 and 56 of the Criminal Code (KUHP). Determining the status of the perpetrator is important because it is related to criminal responsibility and the level of involvement of a person in a criminal event.⁸

3.4. Criminal Act

Criminal acts are a term that contains a basic understanding in legal science as a term formed with awareness in giving certain characteristics to criminal law events. Criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined in order to be able to separate them from the terms used in everyday life in society. Therefore, acts as a word are not so well known, so in legislation that uses the term criminal acts both in the articles themselves, as well as in their explanations, almost always use the word action.⁹

3.4.1. Construction of the Criminal Act of Assault Causing Serious Injury in the Concept of Legal Certainty

The Main Source of Law in Indonesian Positive Law is Legislation (Written Law), but often Legislation (Written Law) is left behind by the development of society, in this case there is a legal event that occurs in society but there is no regulation in Legislation (Written Law) so that there is a gap in Legislation to resolve concrete problems that occur in society or sometimes Legislation (Written Law) exists but is not clear so that it requires a search for the meaning of the Legislation. To fill the gap in Legislation (Written Law) and the search for the meaning and significance of a statutory regulation, in legal science it is known as Legal Construction and Interpretation (Legal Interpretation).

Legal Construction is a way to fill the gaps in legislation with legal principles and joints. Construction consists of 3 (three) forms, namely Analogy (Abstraction), Determination (Legal Refinement) and Argumentum A Contrario. Analogy is the application of a legal provision to a situation that is basically the same as the situation explicitly regulated in the legal provision. but the appearance or form of its manifestation (legal form) is different. Legal refinement is by not implementing or implementing the law in a way other than the existing written legal provisions or treating the law in such a way (subtly) that it seems as if no party is to blame. Argumentum a contrario is an expression of denial of the opposite, for example in marriage

⁸ Andi Hamzah, *Pengantar Hukum Pidana Indonesia*, (Jakarta: Ghalia Indonesia, 2015), p. 129.

⁹ Muhammad Mariadi, Penerapan Hukum Terhadap Pelaku Tindak Pidana Penganiayaan yang Mengakibatkan Luka Berat di Pengadilan Negeri Samarinda, *Jurnal Analogi Hukum*, Vol.3 (No.1) 2021.p.3.

law there is a provision that a woman who has divorced her husband is not allowed to marry another man before 300 days have passed, this provision does not apply to a man.¹⁰

Criminal law in Indonesia is one of the most important guidelines in realizing justice. The Criminal Code (KUHP) is a strong basis in determining prohibited acts and has strict sanctions for those who violate it. General provisions, crimes to violations are three important parts contained in the Criminal Code. Crime is an act that violates ethics and morals so that from a crime committed by someone, of course the act has a very detrimental impact on other people as legal subjects.

The act of abuse is one of the phenomena that is difficult to eliminate in community life. Various acts of abuse that often occur such as beatings and physical violence often result in injuries to the victim's body or limbs, and not infrequently make the victim physically disabled for life. including death. Abuse can also cause psychological effects or impacts on victims such as trauma, fear, threats and victims of abuse who experience mental and psychological disorders. The phenomenon of abuse is not new in physical and psychological violence and can be found both in the family environment or in public places so that it can happen to anyone when facing problems with other people.

The crime of abuse is a form of crime against the body that attacks the most basic human rights, namely the right to physical integrity. In Indonesian criminal law, abuse is defined as an act that intentionally causes pain or injury to another person's body. Abuse can be carried out in various ways, either directly physically or through tools, and is an offense that is expressly regulated in the Criminal Code (KUHP). The importance of this regulation lies in the legal protection of physical safety and human dignity, which if violated, must be subject to criminal sanctions to provide a deterrent effect and maintain social order.¹¹

The Criminal Code (KUHP) states that a crime against the body is called abuse. Abuse is defined as "an act that intentionally causes pain or injury to the body of another person". By understanding the law as a specific social technique regarding coercive regulations, it can be clearly distinguished. The law prohibits abuse by establishing statutory regulations that if someone commits assault, then the person appointed by the legal regulations will apply to the perpetrator of the assault a coercive measure determined by the legal regulations. Regarding which acts are considered criminal acts, the principle of legality is adopted which has been explained in Article 1 paragraph (1) of the Criminal Code, namely that an act cannot be punished except based on the strength of existing criminal statutory provisions.

According to Moeljatno, a crime is "an act that is prohibited by a legal rule and is punishable by law for anyone who violates it," and each crime has objective and subjective elements that must be proven strictly. In the context of Article 351 paragraph (2), the objective element in

¹⁰ Mario Julyano, Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivesme Hukum, *Jurnal Crepido*, Vol.01, (No.01)2021, p. 21.

¹¹ Nengah Ilawadini, Pertanggungjawaban Pelaku Tindak Pidana Penganiayaan yang Menyebabkan Kematian (Studi Putusan Nomor 55/Pid.B/2020/Pn.Lbo), *Jurnal Ilmu Hukum, Sosial dan Humaniora*, Vol. 2 (No.10) 2024, p. 607.

the form of "serious injury" requires concrete evidence, not only based on confessions or assumptions, but must be strengthened through scientific evidence such as a visum et repertum from a forensic expert. This is very important because it determines the classification of the act and the degree of punishment that will be imposed. The crime of assault is a material crime if the result of the act (such as injury or death) is the determining element. Conversely, if the act can be punished without the need to prove the result, then assault is qualified as a formal crime. In the context of assault that causes serious injury, the law requires a real result in the form of serious injury, which distinguishes it from ordinary forms of assault.¹²

The crime of assault causing serious injury is a special form of the crime of assault which is regulated in Article 351 paragraph (2) of the Criminal Code. As a crime material, the elements in the formulation of this crime not only require a criminal act, but also demand a real consequence, namely serious injury as defined in Article 90 of the Criminal Code. Systematically, the elements of this crime consist of subjective elements and objective elements. The main subjective element is the existence of intent from the perpetrator. This means that the perpetrator consciously and with his will carries out an act that causes injury to another person's body. This form of intent can be in the form of a direct intention to injure, or in an alternative form, namely the perpetrator is aware that his actions will most likely cause injury, but still does it. In the context of abuse that causes serious injury, the intent does not have to be specifically aimed at causing serious injury, but it is sufficient that the perpetrator wants the abuse and the serious injury to occur as a consequence.¹³

Meanwhile, the objective element consists of several important elements. First, there is an act of attacking the body or causing pain or injury to another person. Second, the result of the act must result in serious injury, which is explicitly explained in Article 90 of the Criminal Code, namely including loss of function or serious disability in the body, impaired five senses, miscarriage, and obstacles to work for more than four weeks. Third, there must be a causal relationship between the perpetrator's actions and the serious injury caused. Without this causal relationship, it cannot be proven that the serious injury is the result of the perpetrator's actions, and thus the crime is not legally proven. Proving the element of serious injury requires legally valid evidence, especially a visum et repertum from a doctor or medical personnel. authorized. The post-mortem examination is important evidence to objectively assess the severity of the injuries suffered by the victim, and is the basis for the judge to qualify the act as serious abuse or not. Therefore, the existence of these elements is a fundamental component in assessing the legality or otherwise of the punishment for the crime of serious abuse and at the same time is a manifestation of the principle of legality and the principle of legal certainty in Indonesian criminal law.

The regulation regarding the crime of assault causing serious injury is part of the criminal law that has important implications for the protection of individual rights, both for victims and

¹² Gilbert Immanuel Gultom, Analisis Kasus Penganiayaan Berdasarkan Pasal 351 KUHP, *Terang: Jurnal Kajian Ilmu Sosial, Politik dan Hukum*, Vol.2 (No.1) 2025, p. 32.

¹³ Anggara Hartono, Visum et Repertum sebagai Pembuktian Tindak Pidana Penganiayaan Berat, *Jurnal Analogi Hukum*, Vol.1, (No.2)2025, p. 152.

perpetrators. In the context of the Indonesian criminal law system, the provisions regarding assault causing serious injury are regulated in Article 351 paragraph (2) of the Criminal Code, which explicitly mentions a heavier criminal sanction than ordinary assault. However, the interpretation of the element of "serious injury" which is the core of this crime often raises legal issues, both in terms of norm construction and its application in judicial practice.¹⁴

Andi Hamzah emphasized that criminal law must pay attention to the principle of legality in the sense of *lex certa*, namely that criminal norms must be formulated clearly and not open to multiple interpretations. He stated that "legal certainty will not be achieved if the formulation of criminal norms leaves too much room for interpretation for judges or law enforcers". The regulation regarding the crime of assault causing serious injury in Indonesian criminal law is basically stated in Article 351 paragraph (2) of the Criminal Code, which states that if assault results in serious injury, then the perpetrator can be punished with a maximum imprisonment of five years. In this case, Article 90 of the Criminal Code provides a definition of "serious injury" as a result that is permanent or life-threatening, including serious disability, loss of organ function, or illness that does not heal.

Understanding the term "serious injury" is crucial because it is one of the main elements that distinguishes ordinary abuse from abuse that causes serious consequences. Legally, especially in the Criminal Code (KUHP) Article 90, serious injury is defined in a limited manner as an injury that results in serious disability, loss of five senses, mental disorders, impaired bodily functions for more than four weeks, or miscarriage due to physical violence. This regulation emphasizes that not all injuries experienced by victims can be qualified as serious injuries, thus providing clear boundaries so that legal norms can be applied appropriately. Based on a medical perspective, serious injury is a condition of injury that has a significant impact on a person's physiological or psychological function, and usually requires intensive medical treatment. Serious injuries can be categorized based on the type and location of the injury, such as deep muscle tissue injuries, broken bones, nerve injuries that cause paralysis, or injuries to vital organs that have the potential to be life-threatening. Medical measurement of the severity of the injury is very important to support the legal assessment, because there must be objective evidence that shows the impact of the injury on the victim's health and abilities.¹⁵

The construction of criminal law against abuse causing serious injury is part of the national criminal law system's efforts to regulate and enforce protection of a person's physical integrity. In this context, the crime of abuse causing serious injury is regulated normatively in Article 351 paragraph (2) Criminal Code (KUHP). The article states that: "If the act results in serious injury, the guilty party shall be punished by imprisonment for a maximum of five years." The phrase "serious injury" is further explained in Article 90 of the Criminal Code, which includes various conditions such as the loss of one of the five senses, serious disability, permanent impairment of the function of a limb, incurable illness, or danger of death. Based

¹⁴ Sahril Fadillah, Pertanggungjawaban Hukum Terhadap Pelaku Tindak Pidana Penganiayaan, *Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora*, Vol.1 (No.5), 2024, p. 290.

¹⁵ Suharto, Medical Assement of Severe Injuries:A Forensic Perspektive. *Journal Of Forensic Medicine*, Vol.18(No.2),2020, p. 131.

on the dogmatic legal perspective, abuse that causes serious injury is a form of material crime, where the element of consequence (serious injury) is an absolute requirement for the occurrence of a crime. Therefore, the construction of criminal law in the Criminal Code emphasizes a close causal relationship between the perpetrator's actions and the resulting consequences. The assessment of whether the injury suffered by the victim meets the elements of "serious injury" is very dependent on the judge's interpretation supported by medical evidence or expert testimony.

Doctrinally, the criminal construction in the provisions shows the classification of degrees of consequences as an important element in determining the severity of the crime. This indicates that Indonesian criminal law adheres to the principle of *lex certa* in providing limitations on the types of injury consequences as the basis for determining criminal sanctions. In practice, the formulation of the element of "serious injury" has a central position in determining the crime of assault as a material crime, namely a crime whose consequences become the main elements forming a criminal act. The construction of this criminal law often gives rise to different interpretations in criminal justice practices. This is due to the open norm nature of the definition of serious injury in Article 90 of the Criminal Code which opens up space for judges to assess based on facts and medical conditions that develop in concrete cases. Therefore, the application of this article is closely related to the testimony of medical experts and legal analysis of the causal relationship between the perpetrator's actions and the consequences caused. Therefore, the application of this norm must be carried out carefully so as not to cause disparities in decisions or abuse of discretion. Strengthening the medical criteria and technical guidelines in assessing serious injuries is urgently needed as part of efforts to harmonize legal and medical aspects.¹⁶

The construction of criminal law in Article 351 paragraph (2) and Article 90 of the Criminal Code must also be understood within the framework of the principle of proportionality in sentencing. This means that the greater the consequences caused by a criminal act, the heavier the criminal threat imposed. In this case, serious injury as a form of consequence indicates an escalation of violations of the victim's rights, so it is reasonable for the Criminal Code to provide a heavier response in the form of a longer prison sentence. This reflects the selective application of the principle of *ultimum remedium*, where criminal sanctions are imposed proportionally based on the degree of social danger of the crime committed. Viewed from a normative approach, the relationship between Article 351 paragraph (2) and Article 90 of the Criminal Code shows the importance of clarity of normative structures in the criminal law system.

Article 351 regulates the elements of the act and the threat of sanctions, while Article 90 clarifies the elements of consequences that are additional requirements in the form of material crimes. This shows the continuity between the norms that act as formal and material requirements in criminalization. The separation between the norm of the act and the norm

¹⁶ Fitri Wahyuni, *Dasar Dasar Hukum Pidana di Indonesia*, (Tangerang Selatan:PT. Nusantara Persada Utama, 2017), p. 193.

of the consequences of this kind strengthens the principle of legality (*nullum crimen sine lege certa*), namely that no act can be punished without a clear and firm legal formulation.

The application of criminal law or criminal legislation is related to the time and place where the act is committed. The application of Criminal Law according to time concerns the application of criminal law from another aspect. If an act (*feit*) that meets the formulation of a crime is committed before the relevant provisions come into effect, then not only can it not be prosecuted but the person concerned cannot be punished at all, that is the legality that binds acts that are expressly determined by law. The meaning of the principle of legality stated in Article 1 paragraph (1) of the Criminal Code is formulated in Latin "*Nullum Delictum Nulla Poena Sine Pravia Legi Poenali*" which can be interpreted literally in Indonesian, namely "There is no crime, no punishment without the criminal provisions that precede it".¹⁷

The construction of criminal law against assault causing serious injury is also inseparable from the principle of legal certainty and justice. On the one hand, the existence of a relatively clear formulation of norms in the Criminal Code is an objective basis for assessing acts perpetrator. However, on the other hand, flexibility in the interpretation of the element of consequence (serious injury) can also create disparities in sentencing, depending on the quality of evidence and the subjective considerations of the judge. The construction of criminal law on assault causing serious injury shows a dualistic character between normativeness and flexibility. This poses a challenge in realizing legal certainty that is just, especially in the context of consistent and proportional criminal law enforcement to the consequences of the perpetrator's actions.¹⁸

The principle of legal certainty (*rechtszekerheid*) is a fundamental principle in the legal system, including in criminal law. This principle emphasizes that the law must be clear, firm, and predictable, so that individuals can understand the legal consequences of their actions. In the context of criminal law, this principle serves to protect individuals from arbitrary actions by the state and ensure that no one is punished without a clear legal basis. In the Indonesian legal system, the principle of legal certainty is reflected in Article 1 paragraph (1) of the Criminal Code (KUHP), which states that "No act can be punished except by the force of criminal rules in legislation that existed before the act was committed." This provision emphasizes the principle of *nullum crimen sine lege*, which means there is no crime without law, and *nulla poena sine lege*, which means there is no punishment without law. Thus, a person can only be punished if his actions have been regulated as a criminal act by the laws in force before the act was committed.¹⁹

The principle of legal certainty is also closely related to the principle of legality, which demands that criminal law must be formulated clearly and unambiguously. This is important

¹⁷ Astri Dewi Setyarini, Pembahasan Mengenai Asas-Asas Dalam Ranah Hukum Militer dan Hukum Pidana Umum, *Socius: Jurnal Pendidikan Ilmu-Ilmu Sosial*, Vol.1 (No.5), 2023, p. 49.

¹⁸ Akbar F, Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia, *Jurnal Masalah-Masalah Hukum*, Vol.51(No.2), 2022, p. 201.

¹⁹ Danel Aditia Situngkir, Asas Legalitas Dalam Hukum Pidana Nasional dan Hukum Pidana Internasional, *Soumatera Law Review*, Vol.1(No.1) 2022, p. 31.

to prevent arbitrary interpretation by law enforcement officers and ensure that individuals can adjust their behavior in accordance with applicable laws. The principle of legality is an important instrument to ensure legal certainty and protect individual rights from abuse of power by the state. The principle of legal certainty in criminal law serves as a foundation for creating a fair, transparent, and predictable legal system, which ultimately aims to protect individual rights and maintain order in society.²⁰

Based on the context of criminal acts of assault causing serious injury, legal certainty is important to ensure that the perpetrator is given sanctions in accordance with the provisions of Article 351 paragraph (2) of the Criminal Code (KUHP). Legal certainty ensures that criminal norms governing serious injury are not interpreted arbitrarily by law enforcement officers, but are applied objectively and consistently for all parties. This also reflects the principles of *nullum crimen sine lege* and *nulla poena sine lege*, which are fundamental principles in modern criminal law. Meanwhile, in practice, there is often disparity in the application of the law, for example, in terms of determining serious injury, proving the element of intent, or in the imposition of criminal sanctions which can cause legal uncertainty for the parties, both the victim and the accused.²¹

In addition to legal certainty, the theory of legal justice is used to test whether the application of the law to cases of serious assault has fulfilled the values of substantive justice. The theory of justice, as put forward by Aristotle, can be divided into two forms: distributive justice, which is related to the proportional allocation of rights and obligations in society; and corrective justice, which aims to restore balance after an unlawful act has occurred. In the context of serious assault, corrective justice plays a central role because it concerns the relationship between the perpetrator and the victim. The legal process must be able to correct the losses experienced by the victim, either through criminalizing the perpetrator or through restitution and recovery mechanisms. Justice here lies not only in the validity of the rule of law, but also in the balance between actions, consequences, and sanctions. The application of criminal law to the crime of serious assault must be tested not only from the aspect of clarity and consistency of applicable legal norms, but also from the aspect of fulfilling a sense of justice for the parties involved. Good law is not only certain, but also fair.²²

In line with the development of national criminal law, Indonesia has ratified the National Criminal Code (RKUHP) through Law Number 1 of 2023. In the RKUHP, the provisions on abuse are regulated in Chapter XVIII concerning Criminal Acts Against the Body, specifically in Article 467. up to Article 471. One important change is the grouping and reformulation of types of abuse, including those causing serious injury, to be more systematic and oriented towards the principles of modern legality and protection of human rights. The discussion in the RKUHP, the term "serious injury" is maintained but is given a stronger emphasis on objective

²⁰ Siti Halilah, Asas Kepastian Hukum Menurut Para Ahli, *Siyasah: Jurnal Hukum Tata Negara*, Vol.4 (No.II), 2021, p. 58.

²¹ Hasudungan Sinaga, Pertanggungjawaban Pidana Terhadap Pelaku Penganiayaan Secara Bersama Sama yang Mengakibatkan Kematian, *Iblam Law Review*, Vol. 4, (No.1), 2024, p. 51.

²² Heni Susanti, Tindak Pidana Penganiayaan dengan Alasan Pembelaan Diri Melampaui Batas, *Jurnal Yudisial*, Vol.16 (No.2) 2023, p. 146.

standards for assessing the consequences, taking into account developments in science and medicine. In addition, the RKUHP also adopts an integrated codification-based approach, so that general provisions and exceptions to criminal liability are more structured, including provisions regarding justification and excuses, which can affect the criminal liability of the perpetrator in cases of abuse.²³

Based on the perspective of legal certainty, the construction brought by the RKUHP is considered more progressive because it provides clarity in the formulation and expands protection for victims. However, the application of the concept of "serious injury" in practice will still depend heavily on the ability of law enforcement officers, especially in terms of interpreting the consequences, collecting evidence, and proving the causal relationship between the act and the injury that occurs. So that the goal of legal certainty is absolutely to be achieved in order to protect the public interest (which also includes personal interests) with the function as the main motor of enforcing justice in society (order), upholding citizen trust in the ruler (government), and upholding the authority of the ruler in front of the views of citizens.²⁴

The following is a comparative table between the old Criminal Code and the National Criminal Code (RKUHP) regarding the crime of assault causing serious injury:²⁵

Aspect	Old Criminal Code	National Criminal Code (RKUHP)
Legal basis	Article 351 paragraph (2) and Article 90 Criminal Code	Articles 467 – 471 of the Draft Criminal Code, especially Article 470
Types of Crimes	Material Offense (must result in serious injury)	It remains a material crime, with a more systematic formulation.
Definition of Serious Injury	Regulated in Article 90 of the Criminal Code in a limited manner, such as serious disability, loss of five senses, incurable illness, danger of death	Still listing similar criteria, but with the possibility of expanding the meaning based on developments in science and technology (medical information is more accommodated)
Criminal Threats	Maximum 5 years imprisonment for assault causing serious injury	Still 5 years in prison (Article 470 paragraph (2) of the Draft Criminal Code), but more detailed in distinguishing the form of abuse (planned, repeated, against a particular person, etc.)

²³ Mauris Muyassar, Tantangan Perubahan dan Perkembangan Kitab Undang Undang Hukum Pidana di Indonesia, *Jurnal Kajian Hukum dan pendidikan Kewarganegaraan*, Vol.3 (No.1), 2024, p. 7.

²⁴ Hendy Parindo, Penerapan Konsep Dasar HAM dan Pembaharuan tiga pilar utama hukum pidana dalam KUHP baru UU No 1 Tahun 2023, *Jurnal Hukum Indonesia*, Vol.3 (No.3) 2024, p. 138.

²⁵ Edi Kristianta Tarigan, Tinjauan Yuridis Perbandingan KUHP Lama dan KUHP Baru, *Universitas Dharmawangsa*, Vol.18 (No.3), 2024, p. 596.

Setup Structure	Scattered and unsystematic, mixing ordinary and serious persecution	Structured in a separate chapter (Chapter XVIII), it classifies persecution as ordinary, serious, premeditated, against vulnerable groups, etc.
Principles Emphasized	The classical principle of legality and legal certainty	Also emphasizing the principles of restorative justice, proportionality, and victim protection.
Flexibility of Interpretation Serious Injury	Depends on the judge's interpretation and medical evidence	Space is given for objective consideration based on medical science, and can be further regulated in implementing regulations.

A comparison between the old Criminal Code and the National Criminal Code (RKUHP) shows a significant shift in the construction of criminal law in the regulation assault causing serious injury. The old Criminal Code regulates this crime in Article 351 paragraph (2), with an explanation of "serious injury" regulated in a limited manner in Article 90 of the Criminal Code. In this construction, serious injury is understood as a serious physical consequence, such as severe disability, loss of five senses, or an illness that does not heal. Although it provides normative certainty, this provision often causes debate in practice because its assessment is very dependent on the judge's interpretation based on medical evidence.²⁶

One of the crucial updates in the RKUHP is the emphasis on flexibility and objectivity in assessing serious injuries, which allows a science-based approach and medical expert testimony to be more dominant in the law enforcement process. This is an improvement on the weaknesses of the old Criminal Code which tended to be rigid and gave rise to disparities in interpretation. In addition, the RKUHP emphasizes modern values such as restorative justice, protection of victims, and proportionality in sentencing, all of which strengthen the aspect of substantive justice in the criminal justice process. Thus, the construction of criminal law in the RKUHP for the crime of assault causing serious injuries not only prioritizes legal certainty as in the old Criminal Code, but also accommodates the principles of justice and the development of science in the evidence. This reflects the orientation of national criminal law which is moving towards a system that is more responsive to social needs and the protection of human rights.

The author's research on the Differences in Court Decisions in Two Cases That Both Use Article 351 Paragraph (2) of the Criminal Code as the Basis of Charges Shows Serious Problems in the Application of the Principle of Legal Certainty in the Indonesian Criminal Justice System. In Both Cases, the Defendant Was Charged with an Act of Abuse That Caused Serious Injury. However, Although the Elements of the Crime and the Articles Used Were the Same, the Final Decisions Were Significantly Different, namely Decision No: 334/Pid.B/2023/PN.Amb the Defendant Was Sentenced to 5 Years in Prison and Decision No: 30/Pid.B/2023/PN.Cjr the Defendant Was Sentenced to 2 Years in Prison.

²⁶ Rian Prayudi Saputra, Perbandingan Pasal KUHP Lama dan KUHP Baru Tentang Pertanggungjawaban Pelaku Tindak Pidana, *Jurnal Review Pendidikan dan pengajaran*, Vol.7(No.3), 2024, p. 11458

Based on this difference, the author argues that this shows uncertainty in the legal construction of the crime of assault causing serious injury. One of the main causes is the nature of the norm used, namely Article 351 paragraph (2) of the Criminal Code which refers to Article 90 of the Criminal Code regarding the definition of serious injury. The article is formulated with open phrases such as "causing illness or obstacles to carrying out work" and "causing serious disability", which provides broad interpretation space for law enforcement officers. In practice, the *visum et repertum* statement is the main evidence to prove the existence of serious injury, but the *visum* does not automatically have the same evidentiary weight in every case, depending on the beliefs and considerations of each judge.

The absence of objective standards regarding serious injury in judicial practice results in the application of the law becoming casuistic and highly dependent on the subjectivity of the judge. This is contrary to the principle of legal certainty as outlined by Gustav Radbruch, that the law must be enforced consistently, predictably, and provide equal treatment to similar cases. If in two cases with identical elements can produce different decisions, so the law no longer functions as a tool that provides clarity and justice, but instead becomes a means of judicial subjectivity.²⁷

This condition shows that the legal construction of Article 351 paragraph (2) of the Criminal Code does not fully guarantee legal certainty. Therefore, there needs to be a reformulation of norms and the preparation of joint technical guidelines between law enforcement agencies regarding the parameters of serious injuries that can be applied consistently. These guidelines can regulate medical and legal limitations regarding serious injuries based on the duration of recovery, functional impact on the body, and risk to life. Thus, differences in verdicts in similar cases can be minimized, and the principle of legal certainty can truly be realized in criminal law enforcement.

Legal ambiguity also has implications for inconsistencies in law enforcement practices. In the context of abuse that causes serious injury, judges can have different interpretations of the victim's medical condition, so that the verdicts handed down in similar cases can vary greatly. This condition has the potential to create legal inequality (inequality before the law) and erode the public's sense of justice. As a result, the public can lose trust in the justice system because it is considered incapable of providing legal certainty and justice. The ambiguity of legal construction can also be misused by certain parties, both by law enforcement officers and perpetrators of crimes, to avoid legal accountability. Uncertain norms can open loopholes for manipulation of evidence and excessive discretion in sentencing. This is certainly contrary to the principle of due process of law and weakens the principle of legality which is the main foundation of modern criminal law. Therefore, it is important for lawmakers to formulate legal norms by paying attention to aspects of clarity, certainty, and harmony between provisions. Good legal construction will not only strengthen the national legal system, but also create a sense of security and public trust in legal justice. Thus, firmness in formulating

²⁷ Hukum Online, *Perkembangan Asas Legalitas dalam KUHP lama dan KUHP baru*, accessed on 3 July 2023, (<https://www.hukumonline.com/klinik/a/perkembangan-asas-legalitas-dalam-kuhp-lama-dan-kuhp-baru-lt645f50985c253/>), accessed on 21 May 2025).

elements of criminal acts, including elements of consequences such as serious injury, is part of an effort to maintain social stability and substantive justice in society.²⁸

3.5. Persecution

In general, criminal acts against the body in the Criminal Code are called abuse. In terms of grammar, abuse is a word derived from the root word "aniaya" which has the prefix "pe" and the suffix "an". Abusing is intentionally causing pain or injury to another person. The Big Indonesian Dictionary (KBBI) refers to abuse as arbitrary treatment (torture, oppression and so on). The Criminal Code states that criminal acts against the body are called abuse. Abuse is defined as an act carried out intentionally to cause pain or injury to another person's body.²⁹

The crime of persecution in the Criminal Code is generally regulated in Chapter XX, Articles 351 to 358 under the title Persecution. In terms of terminology, the Criminal Code does not explain in detail the definition of the crime of persecution. However, in terms of court jurisprudence according to R. Soesilo, what is meant by persecution is: a) Intentionally causing unpleasant feelings, b) Causing pain, c) Causing injuries. In the KBBI (Big Indonesian Dictionary) the word ||persecution|| has the meaning of arbitrary treatment (oppression, torture, and so on).

Hoge Raad stated that abuse is an act carried out intentionally to cause injury or pain to another person. Apart from that, according to MH Tirtaamidjaja, an act of abuse is an intentional act that causes injury or pain to another person and the act cannot be considered abuse if it is done to increase bodily safety.³⁰

In Islamic criminal law, the term persecution is also called jarimah. In the Al-Munjid dictionary, it is explained that injury comes from the word jarah which means shaqq ba'd badanih (hurting part of the body). It can be concluded that jarimah injury is an arbitrary act committed by someone to another person with the aim of hurting or torturing them.³¹

3.6. Serious Injury

Serious injuries are regulated in Article 90 of the Civil Code, namely illnesses or injuries that cannot be expected to heal completely or that can cause death. Serious injuries are physical damage or serious health disorders suffered by a person due to an act, whether intentional or unintentional and have a significant impact on the victim's bodily functions or life. Article 90 of the Criminal Code explains that serious injuries include illnesses or obstacles to carrying out work that arise due to the injury and last long. Losing one of the five senses is also

²⁸ Andi Kurniawan, Tinjauan Yuridis Terhadap Putusan Hakim dalam Kasus Tindak Pidana Penganiayaan Berat, *Jurnal Kajian Ilmu Sosial, Politik dan Hukum*, Vol.2 (No.1), 2025, p. 56.

²⁹ Marco Yoel Simamora Manalu, Pertimbangan Hakim Terhadap Hal yang Memberatkan pada Tindak Pidana Penganiayaan Luka Berat, *Verstek*, Vol.10 (No.4) 2023, p. 741.

³⁰ Adami Chazawi, *Kejahatan Terhadap Tubuh & Nyawa*, (Jakarta:PT Raja Grafi Persada, 2013), p. 11.

³¹ Joko Sriwiododo, *Hukum Kekerasan Dalam Rumah Tangga*, (Yogyakarta:Penerbit Kepel Press) p. 27.

considered a serious injury because it causes a permanent severe disability that can endanger the life of a person as a victim.³²

4. Conclusion

The construction of criminal law related to the crime of assault causing serious injury as regulated in Article 351 paragraph (2) of the Criminal Code and its definition in Article 90 of the Criminal Code, it can be concluded that the regulation is a form of material crime that emphasizes the consequences as the main element of the crime. This requires a clear causal relationship between the perpetrator's actions and the occurrence of serious injury to the victim. However, the provisions in Article 90 of the Criminal Code which are open with the phrase "and so on" cause the normative boundaries of the category of serious injury to be unclear. The unclear construction of this norm has an impact on legal certainty as a fundamental principle in criminal law. In its application, differences in perception between law enforcers can lead to disparities in decisions, even giving rise to injustice for the parties involved. Analysis of the elements of the crime shows that the meaning of "serious injury" is highly dependent on medical evidence through visum et repertum and expert testimony, which have a central role in building a criminal construction. Legal review of Decision No: 334/Pid.B/2023/PN.Amb and Decision No: 30/Pid.B/2023/PN.Cjr shows that even though both cases are based on the same charges, namely Article 351 paragraph (2) of the Criminal Code and the elements of the crime have been legally proven, the results of the sentences imposed by the judge differ significantly due to the influence of subjective factors such as the defendant's attitude, level of regret, and the background of the incident. This difference confirms that Judicial freedom without standard sentencing guidelines still has the potential to cause disparities and legal uncertainty, thus indicating the need to formulate national sentencing guidelines that guarantee consistency, proportionality and legal certainty in the criminal justice system.

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³² Febrianti, Analisis Yuridis Tindak Pidana Penganiayaan Berat Ditinjau dari Pasal 335 KUHP, *Lex Crimen*, Vol.4 (No.1) 2021, p. 108.

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