

## **Criminal Responsibility of Perpetrators of Assault Resulting in Death in the National Criminal Code**

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**Abstract.** *This study aims to analyze the concept and forms of criminal liability for perpetrators of criminal acts of assault resulting in death according to the 2023 National Criminal Code, as well as to examine the regulation of such criminal liability in criminal justice practices. StudyThis study uses a normative legal research method with a statute approach and a case approach. The research method used is descriptive analytical. Data sources consist of primary, secondary, and tertiary legal materials collected through library research. The research results show that the concept of criminal responsibility in the National Criminal Code is based on the principle of fault (geen straf zonder schuld), which requires the existence of a crime, fault, and the capacity to take responsibility. The National Criminal Code also applies a more humanistic approach by considering the subjective conditions of the perpetrator, including children, people with mental disorders, and certain circumstances that can eliminate criminal responsibility.*

**Keywords:** *Assault; Criminal; Liability; National; Resulting.*

### **1. Introduction**

As a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia upholds the supremacy of law in every aspect of national and state life that "The State of Indonesia is a state based on law." This principle is reaffirmed in Article 27 paragraph (1) which affirms the equality of every citizen before the law and government. This constitutional provision means that every citizen without exception is obliged to submit to the law and at the same time has the right to receive fair legal protection as a manifestation of the principle of equality before the law and the supremacy of law. The existence of this constitutional norm is the legal basis that every criminal act, including the crime of assault resulting in death, must be processed through a legal mechanism that guarantees legal certainty, justice, and the protection of human rights.

The implementation of the principle of the rule of law in the field of criminal law is realized through the regulation of material criminal law in the Criminal Code.

The development of national law shows a fundamental reform through the ratification of the National Criminal Code concerning the Criminal Code as the National Criminal Code that replaces the Criminal Code left over from the Dutch colonial era. The formation of the National Criminal Code is based on the need for a codification of national criminal law oriented towards the values of Pancasila, respect for human rights, and adaptation to the social dynamics of Indonesian society. The history of legal development in Indonesia cannot be separated from the influence of Dutch colonial law which gave birth to the *Wetboek van Strafrecht voor Nederlandsch-Indie* as the forerunner of the Criminal Code (KUHP). After independence, the Criminal Code continued to be enforced with adjustments to align with local values and national ideals. The legal reforms that are ongoing to date aim to establish a legal system that is responsive to social dynamics, while strengthening protection for victims of crime.

The National Criminal Code adopts a neo-classical approach which places a balance between objective elements in the form of criminal acts and subjective elements in the form of guilt or the mental state of the perpetrator as the basis for punishment.<sup>1</sup>This law is set to come into effect on January 2, 2026 after a three-year transition period since its enactment.

The provisions in the National Criminal Code also bring conceptual updates regarding criminal acts and criminal liability. The definition of a criminal offense not only emphasizes the existence of a prohibited act but also requires fault as the basis for punishment. The concept of criminal liability in the National Criminal Code positions the perpetrator as a legal subject who can only be punished if their actions fulfill the elements of an unlawful act and are committed intentionally or negligently in accordance with statutory provisions.<sup>2</sup>This approach shows an orientation towards the principle of *geen straf zonder schuld* which places error as the main foundation of punishment.<sup>3</sup>This principle becomes very relevant in cases of assault resulting in death, because determining criminal responsibility must take into account the causal relationship between the perpetrator's actions, the consequences that arise, and the form of fault inherent in the perpetrator.

This kind of violent act not only violates criminal law norms, but also harms human values and social order.<sup>4</sup>The impacts are not limited to physical losses and loss of life for the victim, but also cause psychological suffering for the victim's family and affect the sense of justice and public trust in the law enforcement system.

The phenomenon of assault resulting in death is a form of violent crime that remains prevalent in Indonesian society. Incidents of assault resulting in the loss

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<sup>1</sup>Muladi & Arief, BN (2005). *Criminal Theories and Policies*. Bandung: Alumni, p. 23.

<sup>2</sup>PAF Lamintang. (2014). *Fundamentals of Indonesian Criminal Law*. Bandung: Citra Aditya Bakti, p. 97.

<sup>3</sup>Moeljatno. (2008). *Principles of Criminal Law*. Jakarta: Rineka Cipta, p. 165.

<sup>4</sup>Soekanto, S. (2008). *Factors Influencing Law Enforcement*. Jakarta: RajaGrafindo Persada, p. 5.

of life often occur in various contexts, ranging from interpersonal conflicts, spontaneous altercations, group-based violence, to the practice of vigilantism carried out collectively. Such acts of violence not only violate criminal law norms but also violate humanitarian values and social order. The impact is not limited to physical harm and loss of life, but also causes psychological suffering for the victim's family and affects the public's sense of justice and trust in the law enforcement system.

The normative provisions regarding assault resulting in death were previously regulated in Article 351 paragraph (3) of the old Criminal Code, which stipulates that assault resulting in death is punishable by a maximum of seven years' imprisonment. This provision places the act of assault resulting in death as a separate crime, different from murder which requires the intention to take life.<sup>5</sup> In judicial practice, the application of this article often gives rise to debate regarding the boundaries between serious assault, assault resulting in death, and murder, particularly in terms of proving intent and the causal relationship between the act and the resulting consequences.

The development of national criminal law through the National Criminal Code has important implications for the construction of criminal liability in cases of assault resulting in death. Systematic changes, the formulation of elements of the offense, and the strengthening of the principle of fault require a more comprehensive understanding of the application of these new norms in criminal justice practice. Empirical conditions showing the continuing high number of cases of violence resulting in death emphasize the urgency of studying how criminal liability for perpetrators of assault resulting in death is formulated and applied from the perspective of the National Criminal Code. This study is crucial for assessing the extent to which national criminal law reforms are able to realize justice, legal certainty, and human rights protection for all parties involved in the criminal justice system.

The characteristics of the crime of assault resulting in death have specific characteristics that distinguish it from other crimes, particularly murder. Doctrinally, assault resulting in death is a form of aggravated crime (*gekwalficeerde mishandeling*), where the underlying act is assault, but the resulting consequences develop into the loss of the victim's life.<sup>6</sup>

One of the key characteristics of this crime is that there was no initial intent to kill the victim, but rather merely to inflict physical violence. However, the resulting consequences exceeded the perpetrator's intentions, resulting in death. In this

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<sup>5</sup>R. Soesilo. (2011). *Criminal Code (KUHP) and its Commentaries*. Bogor: Politeia, p. 245.

<sup>6</sup>Lamintang, PAF (2014). *Basics of Indonesian Criminal Law*. Bandung: Citra Aditya Bakti, p. 341.

case, criminal law still holds the perpetrator accountable due to the connection between the act and the resulting consequences.<sup>7</sup>

Furthermore, another characteristic is the existence of a causal relationship (cause and effect) between the act of assault and the victim's death. This relationship must be legally proven, indicating that the death was a direct consequence of the perpetrator's actions. If a causal relationship cannot be proven, criminal responsibility cannot be fully assigned to the perpetrator.<sup>8</sup>

The next characteristic relates to the perpetrator's fault, where the intent is directed only at the act of assault, not the resulting death. Therefore, in criminal law doctrine, the fault in this offense is often categorized as intent toward the act (*dolus*) rather than toward the result. This is the main difference from the crime of murder, which requires intent to take the victim's life.<sup>9</sup>

Furthermore, the crime of assault resulting in death is characterized by a high level of danger to legal interests, particularly to the right to life. Therefore, even if there is no intent to kill, the law still imposes severe penalties as a form of protection for a fundamental societal value, namely the right to life.<sup>10</sup>

Thus, these characteristics indicate that assault resulting in death is a crime that falls between ordinary assault and murder, both in terms of the elements of the offense, the consequences, and the level of criminal responsibility imposed on the perpetrator. Understanding these characteristics is important in determining the qualifications of the offense and the application of legal norms in criminal justice practice, particularly within the framework of the National Criminal Code.

Sri Endah Wahyuningsih explained that from a religious legal system perspective, law functions not only as a means of social control but also as an instrument that guarantees the protection of human rights based on divine values. Therefore, every policy and legal decision must be oriented towards substantive justice, legal certainty, and expediency, while ensuring the fulfillment of every individual's right to be free from all forms of violence and treatment that degrades human dignity.

However, in criminal justice practice, there are still challenges in determining the boundary between assault resulting in death and murder, particularly in terms of proving intent and causality. Furthermore, with the enactment of the National Criminal Code, further study is needed on how the construction of criminal responsibility for perpetrators in this offense is applied both normatively and practically.

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<sup>7</sup>Moeljatno. (2008). *Principles of Criminal Law*. Jakarta: Rineka Cipta, p. 69.

<sup>8</sup>Sudarto. (1990). *Criminal Law I*. Semarang: Sudarto Foundation, p. 77.

<sup>9</sup>Roeslan Saleh. (1983). *Criminal Acts and Criminal Responsibility*. Jakarta: Aksara Baru, p. 84.

<sup>10</sup>Arief, BN (2008). *Anthology of Criminal Law Policy*. Jakarta: Kencana, p. 112.

With this background, the author was motivated to conduct further studies in the form of a thesis entitled "Criminal Responsibility of Perpetrators of Assault Resulting in Death in the National Criminal Code."

## **2. Research Methods**

This research uses a normative juridical method, namely legal research that focuses on the study of legal norms contained in laws and regulations, court decisions, and the doctrines or opinions of legal experts. This method is used to analyze the legal regulations and construction of criminal liability for perpetrators of criminal acts of assault resulting in death based on the provisions of Law Number 1 of 2023 concerning the Criminal Code. The approaches used are the statute approach and the case approach. The statute approach is carried out by examining various legal provisions related to the crime of assault, while the case approach is carried out through a review of relevant court decisions to determine the application and interpretation of legal norms by judges in judicial practice. The type of research used is descriptive analytical research. Descriptive research aims to provide a systematic, factual, and accurate description of the object of study. Analytical research is used to examine and interpret the obtained data based on legal theory and applicable statutory provisions. Through this method, the research not only describes the legal provisions regarding the crime of assault resulting in death but also analyzes the form of criminal liability of the perpetrator from the perspective of Indonesian positive law. The data sources in this study are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, other laws and regulations related to criminal law, and court decisions relevant to cases of assault resulting in death. Secondary legal materials consist of criminal law literature books, national and international scientific journals, scientific articles, and previous research results relevant to the research theme. Tertiary legal materials include legal dictionaries, legal encyclopedias, and various other supporting references used to clarify the concepts, terms, and legal theories that are the object of study.

## **3. Results and Discussion**

### **3.1. The Concept and Form of Criminal Responsibility for Perpetrators of Assault Resulting in Death According to the National Criminal Code**

The concept of criminal responsibility for perpetrators of assault resulting in death in the National Criminal Code is based on the principle that a person can only be punished if they fulfill the elements of a crime and have committed a crime for which they are accountable. This is in line with Sudarto's opinion, which states that criminal responsibility is the transfer of objective blame for a criminal act to a perpetrator who is subjectively culpable. The main focus in criminal responsibility

lies not only on the act of assault committed, but also on the subjective condition of the perpetrator as a legal subject.

From the perspective of the 2023 National Criminal Code, the concept of criminal responsibility has been strengthened through the affirmation of the principle of *geen straf zonder schuld* (no punishment without fault). This means that a perpetrator of assault resulting in death can only be held criminally responsible if proven guilty, either intentionally (*dolus*) or negligently (*culpa*). This also aligns with Moeljatno's view, which asserts that a person cannot be punished without fault, even if their actions meet the definition of a crime in the law.

Furthermore, Roeslan Saleh explained that criminal responsibility requires the capacity to be responsible (*toerekeningsvatbaarheid*), namely the perpetrator's ability to understand the meaning of their actions and control their will. In this context, the National Criminal Code also emphasizes that not all perpetrators can be held criminally responsible, particularly if the perpetrator:

1) A person with a mental disorder cannot be held criminally responsible if the disorder prevents them from understanding or controlling their actions. Mental disorders here include conditions such as schizophrenia, psychosis, or other severe mental disorders that impair the ability to reason. In such circumstances, the perpetrator lacks *mens rea* (evil intent) that would constitute a basis for punishment. Therefore, the approach used is not punishment, but rather treatment or rehabilitation in a mental health institution.

2) Being in certain conditions that cause loss of consciousness is also not accountable. These conditions include unconsciousness due to fainting, sleepwalking (*somnambulism*), or the unintentional influence of certain substances. In these situations, the perpetrator lacks control over their actions, so the element of guilt (*schuld*) is not met. However, it is important to distinguish this from intentional unconsciousness, such as intoxication due to the conscious consumption of alcohol, which in some cases can still give rise to criminal liability.

3) Or, if a person lacks the capacity to understand the unlawful nature of their actions, they cannot be punished. This relates to the intellectual aspect of criminal responsibility, namely the ability to recognize that their actions violate applicable laws or norms. This inability can be caused by mental retardation, immaturity, or other conditions that hinder the perpetrator's cognitive development. In this case, the law considers the perpetrator to lack sufficient normative awareness to be held responsible.

These three conditions demonstrate that criminal responsibility is not based solely on the act (*actus reus*) but also on the perpetrator's mental state (*mens rea*). If the capacity to be responsible is not met, then punishment is inappropriate, and the law must respond more toward protection and recovery, rather than mere punishment. This aligns with Van Hamel's opinion that criminal responsibility can

only be imposed on individuals who possess awareness and free will in committing an act.

The author explores several important aspects that must be considered, namely:

#### 1) Perpetrator Status

The National Criminal Code recognizes that perpetrators of criminal acts can come from various categories, such as:

##### a. Adults,

In principle, adults are the primary subjects of criminal responsibility under the National Criminal Code. Anyone who commits a crime can be held accountable as long as they meet the elements of fault and capacity to take responsibility. This aligns with general provisions regarding criminal responsibility in:

1) Article 36 of the National Criminal Code, which states that a person can only be punished if he commits a crime with a mistake (the principle of *geen straf zonder schuld*).

2) Article 37 of the National Criminal Code, which states that a person cannot be punished if he does not have the capacity to take responsibility.

Adults are generally presumed to have full capacity to understand and control their actions, unless proven otherwise.

##### b. Children (who are subject to the juvenile criminal justice system),

The National Criminal Code recognizes that children as perpetrators of crimes are subject to special treatment. This is emphasized in:

1) Article 38 of the National Criminal Code, which states that provisions regarding criminal responsibility for children are implemented in accordance with laws and regulations governing the juvenile criminal justice system.

This means that child custody does not entirely follow the mechanisms of the Criminal Code, but rather refers to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). In this system:

1) Criminal liability for children is not applied as fully as for adults.

2) Prioritizes a coaching, educational and restorative approach

3) Prioritize diversion (outside of court settlement)

The concept of punishment for children is oriented towards the best interests of the child.

c. As well as people with disabilities or mental disorders.

The National Criminal Code also explicitly stipulates that perpetrators with mental disorders or disabilities may be exempted from criminal liability if they lack the capacity to take responsibility. This is stipulated in:

1) Article 44 of the National Criminal Code, which states that a person cannot be punished if at the time of committing a crime he is suffering from a mental disorder, mental illness or mental disability so that he is unable to understand the nature of his actions or is unable to control his will.

Furthermore:

1) For perpetrators in this condition, the judge can impose measures (not criminal), such as treatment in a mental hospital.

This provision shows that modern criminal law is not merely repressive, but also takes into account the humanitarian aspects and psychological condition of the perpetrator.

The National Criminal Code reflects a more humanistic and differentiated approach, as it not only focuses on the act but also considers the subjective condition of the perpetrator. The perpetrator's status plays a crucial role in determining the form of criminal responsibility. Adults are, in principle, fully responsible as long as there is evidence of wrongdoing as stipulated in Articles 36 and 37. Unlike children, criminal responsibility is not fully applied, but rather through a developmental approach in accordance with Article 38 in conjunction with the Child Criminal Justice System Law (UU SPPA). Meanwhile, for persons with mental disorders or disabilities, criminal responsibility can be set aside and replaced with action if they are proven unable to take responsibility, as stipulated in Article 44.

## 2) Form of Perpetrator's Error

The perpetrator's culpability from the perspective of the National Criminal Code (KUHP Nasional) is generally not directed at the death, but rather at the act of assault. In assaults resulting in death, the perpetrator's culpability generally includes:

a. Intentional intent towards the act (*dolus*), not towards the result of death. The error can be intentional (*dolus*), namely the conscious intention of the perpetrator to commit an act of violence against the victim, even though he did not directly want the result of death to occur. This is in line with the concept that intent can be directed at the act, not always at the result that occurs.

b. Or in certain circumstances, it can be negligence (*culpa*), namely when the perpetrator did not intend the consequences to arise, but due to carelessness,

negligence, or failure to calculate the risks, their actions actually cause death. In both forms of error, criminal responsibility can still be imposed as long as there is a causal relationship between the act of assault and the result of death. This means that the perpetrator may only have intended to commit assault, but the result develops into death. In this case, criminal responsibility can still be imposed because of the relationship between the act and the result.

This principle is related to the provisions in Article 36 of the National Criminal Code which emphasizes that punishment can only be carried out if there is a mistake, and is in line with the general doctrine of criminal law regarding the relationship between *actus reus* (action) and *mens rea* (error). Thus, even if the perpetrator did not explicitly have the intention to kill, he can still be held criminally responsible for the consequences of his actions as long as there is a connection between the action and the consequences.

### 3) Responsible Ability

The capacity to take responsibility is one of the most fundamental requirements in criminal law for determining whether a person can be punished for their actions. In the context of the National Criminal Code (KUHP Nasional), this principle is emphasized in Article 37, which states that a person cannot be punished if they lack the capacity to take responsibility. This provision is further clarified in Article 44, which specifically regulates perpetrators who suffer from mental disorders or disabilities.

Conceptually, the capacity to be responsible encompasses two main aspects: intellectual and volitional. The intellectual aspect relates to the perpetrator's ability to understand the meaning, significance, and unlawful nature of their actions. Meanwhile, the volitional aspect relates to the perpetrator's ability to control their will in accordance with that awareness. If a person is unable to understand what they are doing or are unable to control their actions, they are deemed to lack the capacity to be legally responsible.

If it is proven that the perpetrator lacks such capacity, either partially or completely, then full criminal responsibility cannot be imposed. This means that the perpetrator is not worthy of punishment because it does not meet the elements of guilt as a basis for punishment. In judicial practice, for such perpetrators, the judge does not impose a sentence, but may impose alternative measures, such as treatment in a mental hospital or rehabilitation, with the aim of restoring the perpetrator's condition and protecting society.

Based on the conceptual and normative descriptions above, the author argues that the concept and form of criminal responsibility for perpetrators of assault resulting in death in the National Criminal Code show significant development compared to the old Criminal Code. The old Criminal Code tended to emphasize the act (*actus reus*) and applied criminal responsibility in a more formalistic

manner, so that the aspects of fault and the subjective condition of the perpetrator did not receive adequate attention. In contrast, the National Criminal Code (KUHP Nasional) firmly prioritizes the balance between the act and fault (*mens rea*), by explicitly regulating the principles of fault, the capacity to be responsible, and the existence of excuses and justifications.

Furthermore, a causal relationship between the act of assault and the resulting death is a crucial requirement for imposing criminal responsibility. According to the author, this paradigm shift demonstrates that Indonesian criminal law has shifted from an act-oriented approach to a more offender-oriented one. This is evident in the recognition of the perpetrator's subjective circumstances, such as age (childhood), mental state, and capacity for responsibility, all of which influence whether or not a person can be held criminally responsible. Thus, criminal responsibility is no longer rigid, but rather more flexible and just.

Furthermore, in the context of assault resulting in death, the author argues that the forms of criminal responsibility in the National Criminal Code can be divided into three. First, punishment, which is imposed on perpetrators who are proven to fulfill all the elements of the crime, have committed a mistake either in the form of intent or negligence, and have the capacity to take responsibility. Second, the elimination of criminal responsibility, which occurs if there are excusable reasons such as *force majeure* or *noodweer excess*, or if the perpetrator does not have the capacity to take responsibility as regulated in Articles 37 and 44 of the National Criminal Code. Third, special responsibility, which is applied to perpetrators with certain conditions, such as children or perpetrators with mental disorders, whose handling emphasizes a development and rehabilitation approach rather than punishment.

From the perspective of the theory of the purpose of punishment, the author assesses that the provisions in the National Criminal Code are in line with the combined theory as proposed by Muladi and Barda Nawawi Arief. Criminal liability for perpetrators of assault resulting in death is not solely aimed at providing retribution, but also to create a deterrent effect, protect the community, and improve the perpetrator through rehabilitation efforts.

Furthermore, the author believes that the strengthening of the concept of criminal responsibility in the National Criminal Code also reflects efforts to harmonize legal certainty, justice, and utility in criminal law enforcement. In cases of assault resulting in death, this approach is particularly relevant because the consequences are serious, but not always accompanied by the intention to kill. Therefore, assessing the perpetrator's culpability is crucial in determining the degree of proportional criminal responsibility.

The author also believes that the National Criminal Code's provisions on the capacity to be responsible and grounds for expungement provide judges with the

opportunity to be more careful and judicious in their decisions. Judges no longer merely act as "mouthpieces of the law," but also as evaluators who consider the sociological, psychological, and moral aspects of the perpetrator. This allows for decisions that not only meet legal requirements but also foster a sense of substantive justice within society.

Furthermore, in the context of human rights protection, the author argues that the National Criminal Code provides stronger guarantees for the rights of perpetrators, particularly for vulnerable groups such as children and people with mental disabilities. The differential approach applied demonstrates that criminal law is not discriminatory but rather adaptive to the individual circumstances of the perpetrator.

The author emphasizes that the concept of criminal responsibility for the perpetrator in the context of assault resulting in death, this concept is important because the result of death is not always desired, so that determining the form of fault (*dolus* or *culpa*) becomes the main basis in determining criminal responsibility. In the National Criminal Code, it is based on the principle of fault (*geen straf zonder schuld*), which requires the existence of fault in the form of intent or negligence, as well as the ability to be responsible as the basis for punishment. This concept does not only emphasize the act, but also on the aspect of fault and the subjective condition of the perpetrator.

The forms of criminal liability that can be applied include punishment for perpetrators who meet all elements of responsibility, elimination of criminal liability in cases of excusable reasons or inability to take responsibility, and special liability for certain perpetrators, such as children and people with mental disorders, with a more rehabilitative approach. The National Criminal Code presents a more comprehensive, humane, and equitable system of criminal liability.

In the author's view, the overall construction of criminal liability in the National Criminal Code for perpetrators of assault resulting in death has essentially formed a more complete and layered system (layered liability system). This system is no longer solely oriented towards proving the criminal act, but has balancedly integrated the elements of the act (*actus reus*), fault (*mens rea*), and the subjective condition of the perpetrator as the main basis for punishment. Thus, the author believes that the National Criminal Code has succeeded in shifting the classical paradigm of criminal law, which is retributive-formalistic, towards a modern paradigm that is more corrective, individual, and humanistic.

Furthermore, the author argues that in the context of assault resulting in death, the key point that "locks" criminal responsibility lies in the judge's ability to carefully assess the causal relationship between the act and the consequences, as well as the degree of the perpetrator's culpability. This is where the relevance of

the principle of *geen straf zonder schuld* becomes crucial, because without clear proof of guilt—whether intentional or negligent—then punishment cannot be justified legally or morally. Therefore, the National Criminal Code not only demands legal certainty, but also requires individual justice in every decision.

Furthermore, the author emphasizes that the differentiation of criminal liability based on the perpetrator's status (adult, child, or person with mental illness) demonstrates that Indonesian criminal law has moved toward a system that is more adaptive to social realities. According to the author, this approach represents a concrete manifestation of the shift in the function of criminal law from merely a means of punishment to an instrument of social defense that upholds human dignity. Thus, punishment is no longer understood as an end in itself, but rather as a means to achieve balance between the interests of victims, perpetrators, and society.

Finally, the author concludes that the concept of criminal responsibility in the National Criminal Code, particularly in cases of assault resulting in death, reflects a synthesis of legal certainty, substantive justice, and expediency. By placing culpability and capacity to take responsibility as the primary "keys" to criminal responsibility, the National Criminal Code provides judges with more proportional space to assess each case on a case-by-case basis. Therefore, according to the author, this system represents a step forward in the development of a national criminal law that is not merely legalistic but also oriented towards the values of justice that exist in society.

### **3.2. Regulations on Criminal Responsibility for Perpetrators of Criminal Acts of Assault Resulting in Death as Regulated in the National Criminal Code in Criminal Justice Practice**

The provisions on criminal liability for perpetrators of assault resulting in death in the National Criminal Code essentially emphasize that punishment is based not only on the act itself, but also on the subjective condition of the perpetrator. This is in line with the theory of criminal liability put forward by Sudarto, who argues that criminal liability is the transfer of objective blame for the act to the perpetrator, who is subjectively culpable. The primary focus in criminal justice practice is not only on the occurrence of assault resulting in death, but also on whether the perpetrator can be held legally accountable.

The construction of criminal responsibility is based on several key elements: the existence of a criminal act, the existence of fault, the capacity to take responsibility, and the absence of any excuse for the crime. These elements serve as parameters used by judges to determine whether a perpetrator deserves to be punished. In criminal justice practice, judges first assess the status and condition of the perpetrator, including whether the perpetrator is a legal subject capable of

taking responsibility (toerekeningsvatbaarheid). This is important because not everyone who commits a crime can be held accountable. For example:

1) Juvenile offenders are subject to the juvenile criminal justice system, which has a different approach (prioritizing development over punishment). In this case, the approach used focuses more on development, education, and rehabilitation, rather than solely on punishment. This is based on the consideration that children do not yet have complete psychological and emotional maturity, so their ability to understand and take responsibility for their actions is still limited. Therefore, mechanisms such as diversion and restorative justice are prioritized.

2) Perpetrators with mental disorders or disabilities are unable to understand or control their actions. In this situation, the element of guilt as a basis for punishment is not met, because the perpetrator lacks consciousness or free will. Therefore, the law does not impose a penalty on such perpetrators, but rather prescribes treatment or rehabilitation for the perpetrator's benefit and the protection of society.

3) The perpetrator is in certain circumstances, such as being under duress (overmacht) or experiencing severe emotional distress (noodweer excess). In a state of overmacht, the perpetrator lacks freedom of action due to unavoidable pressure. In a state of noodweer excess, the perpetrator is actually acting in self-defense but exceeds the permissible limits due to severe emotional distress. In both of these circumstances, the law recognizes the existence of excusable reasons that eliminate the offense, preventing the perpetrator from being punished.

These three categories demonstrate that criminal responsibility in the National Criminal Code is not absolute, but rather considers the subjective circumstances of the perpetrator. This emphasizes that modern criminal law prioritizes substantive justice by assessing not only the act itself but also the circumstances that led to the perpetrator's actions. This approach demonstrates that the National Criminal Code affirms that criminal responsibility is individual and subjective, as Roeslan Saleh argued that criminal responsibility requires the perpetrator's capacity for responsibility and culpability.

Furthermore, in the context of criminal acts of assault resulting in death, judges also assess the perpetrator's culpability. In this case, intent generally refers only to the act of assault, not to the resulting death. However, as long as the perpetrator consciously committed the violence, they can still be held accountable for the resulting consequences. This aligns with Van Hamel's view that a person can be held accountable if they are aware of the unlawful nature of their actions and possess free will.

In judicial practice, proving the element of causality (causal verband) is also crucial. The judge must determine that the victim's death was a direct result of the

perpetrator's actions. This proof is usually supported by evidence such as a post-mortem examination (*visum et repertum*), expert testimony, and facts revealed at trial.

From the perspective of the theory of the purpose of punishment, as proposed by Muladi and Barda Nawawi Arief, the imposition of punishment in this case is not only intended as retributive retribution, but also as a means of prevention and community protection. In judicial practice, the judge will consider:

- 1) The level of culpability of the perpetrator is a primary consideration, as it will determine the severity of the punishment imposed. The higher the level of culpability, for example, if there is a strong element of intent, the more severe the criminal liability will be compared to negligence.
- 2) The manner in which the act was committed is also a significant factor in the judge's assessment. Cruel, premeditated, or dangerous means will weigh heavily on the perpetrator, as they demonstrate a higher level of awareness and intensity of intent in carrying out the act.
- 3) The consequences, particularly in this case the victim's death, are a crucial factor. Although death is not always desired by the perpetrator, it still has serious legal consequences. Therefore, the causal relationship between the act and the consequence is the basis for determining proportional criminal responsibility.
- 4) The subjective circumstances of the perpetrator (e.g., remorse, social background, etc.) are also taken into consideration, such as remorse, cooperation during the trial, social background, and the potential for future improvement. These considerations are crucial in determining whether the sentence imposed places more emphasis on retribution or on rehabilitation and rehabilitation efforts.

Sentencing in cases of assault resulting in death is not done mechanically, but rather through comprehensive and balanced consideration. This demonstrates that the criminal justice system in the National Criminal Code is oriented not only toward punishment but also toward achieving substantive justice and sustainable community protection.

A comparison of the old Criminal Code (WvS) and the National Criminal Code (KUHP Nasional) in the practice of criminal responsibility shows a fundamental paradigm shift, particularly in how perpetrators are viewed. In the old Criminal Code, the approach used was more focused on the act (*daad*), so the main focus was on fulfilling the formal elements of the crime. In practice, the element of fault was often understood in a limited way and had not been developed in depth as an integral part of criminal responsibility. Furthermore, the old Criminal Code also did not systematically regulate the capacity to be responsible or the concept of individualization of criminals, so that the imposition of punishment tended to be

general and did not take into account the personal circumstances of the perpetrator. As a result, the approach used was more repressive and solely oriented towards punishment.

In contrast, the National Criminal Code presents a more comprehensive approach, emphasizing the balance between the act (*actus reus*) and culpability (*mens rea*). In practice, the National Criminal Code not only examines whether an act meets the definition of a crime but also assesses whether the perpetrator is at fault and capable of taking responsibility for their actions. This is evident in the more detailed provisions regarding capacity for responsibility, excuses and justifications, and the application of individualized criminal penalties, which allow judges to consider the perpetrator's specific circumstances when issuing a verdict.

Furthermore, the National Criminal Code demonstrates a more humanistic and just approach by paying greater attention to the subjective circumstances of the perpetrator, such as their social background, psychological state, and potential for improvement. Furthermore, the National Criminal Code allows for the application of restorative justice in certain cases, emphasizing restoring the relationship between the perpetrator and the victim, rather than solely punishing them.

Based on a normative legal approach combined with case studies in criminal justice practice, judges handle cases of assault resulting in death through a series of systematic and comprehensive assessment processes. Judges do not simply impose a penalty simply because death has occurred, but first assess the various elements that form the basis for criminal responsibility.

- 1) Assessing the objective elements (act and consequence), namely the form of the perpetrator's fault, whether it was done intentionally (*dolus*) or negligently (*culpa*). This assessment is important because it will determine the level of culpability and directly influence the severity of the sentence imposed.
- 2) Assessing the subjective element, namely the form of the perpetrator's fault, whether it was intentional (*dolus*) or negligent (*culpa*). This assessment is important because it will determine the level of culpability and directly influence the severity of the sentence imposed.
- 3) Determining the perpetrator's capacity for responsibility, namely whether the perpetrator has the ability to understand the meaning of their actions and control their will. If the perpetrator is proven to lack these abilities, they cannot be held fully criminally responsible.
- 4) Examine the grounds for expungement, whether they are justifications or excuses, such as forced labor (*over macht*) or excessive defense (*noodweer excesses*). If these grounds are proven, the perpetrator can be acquitted of the sentence even if their actions fulfill the elements of a crime.

5) Assessing the causal relationship between the act of assault and the resulting death. This aims to ensure that the victim's death was truly a direct result, or at least a relevant causal relationship, of the perpetrator's actions.

6) Sentencing is based on the purpose of the sentence, whether as a form of retribution, deterrence, community protection, or correction of the perpetrator. At this stage, the judge also considers the subjective condition of the perpetrator and the circumstances underlying the crime.

Criminal liability in cases of assault resulting in death is not automatic, but rather requires a comprehensive assessment of both objective and subjective aspects. This demonstrates that the criminal justice system under the National Criminal Code prioritizes a more cautious, fair, and substantive justice-oriented approach.

The author argues that the provisions on criminal liability for perpetrators of assault resulting in death in the National Criminal Code are not only normative but also operational in judicial practice. This means that the norms stipulated in the National Criminal Code truly serve as concrete guidelines for judges in assessing and determining whether or not someone can be held criminally responsible.

According to the author, the main strength of the provisions in the National Criminal Code lies in the integration of legal and practical aspects. This is evident in how the elements of criminal responsibility—such as culpability, capacity to assume responsibility, and the absence of grounds for exculpation—are not merely theoretical concepts but are implemented in real-life evidence during trials. Thus, the provisions in the National Criminal Code are able to bridge the gap between legal norms and the reality of law enforcement on the ground.

In criminal justice practice, judges play a central role as both interpreters and enforcers of the law. The National Criminal Code provides judges with greater latitude to individualize sentences, tailoring decisions to the specific circumstances of the perpetrator and the circumstances. This differs from the previous Criminal Code, which tended to be more rigid and limited in its discretionary powers. This approach allows judges' decisions to be more contextual, proportionate, and reflect a sense of substantive justice.

The author believes that the National Criminal Code provides a clear framework for judges to distinguish between intentional acts intended to injure and unintended consequences such as death. Therefore, criminal responsibility is not simply equated with murder, but rather is assessed based on the degree of culpability and the causal relationship between the act and the consequence. This approach is crucial to avoid overcriminalization and ensure that the punishment imposed is truly proportionate.

Furthermore, the author argues that the provisions regarding grounds for expungement of criminal penalties in the National Criminal Code provide fairer

legal protection for perpetrators. In practice, conditions such as force majeure or excessive force majeure are often complex factors and require in-depth assessment by judges. With more explicit provisions, judges have a strong basis for determining whether perpetrators should be punished, thus preventing unfair sentencing.

In terms of the objectives of sentencing, the author assesses that criminal justice practices based on the National Criminal Code reflect a more progressive approach. Sentencing is no longer solely oriented toward retribution, but also considers aspects of prevention, community protection, and perpetrator rehabilitation. In this context, judges function not only as punishers but also as agents of justice, balancing the interests of victims, perpetrators, and society.

Furthermore, the author emphasizes that the provisions in the National Criminal Code also reinforce the principle of individual justice in criminal justice practice. Each case is assessed based on its individual characteristics, without generalizing the perpetrator or the act. This is particularly relevant in cases of assault resulting in death, as each case has a different background, motive, and dynamics.

Furthermore, the author believes that the provisions on criminal liability in the National Criminal Code implicitly emphasize a shift from a legalistic approach to a contextual approach in criminal justice practice. In this case, judges are no longer solely bound by formal proof of the elements of the crime, but are also required to explore the values of justice that exist within society. This is crucial in cases of assault resulting in death, as such incidents often occur in situations of social conflict, spontaneous emotions, or specific personal relationships that cannot be understood solely in normative terms.

The author also believes that strengthening the capacity to take responsibility and the grounds for expungement in the National Criminal Code represents a correction to the weaknesses of previous judicial practices, which tended to ignore the psychological and situational conditions of the perpetrator. In the old Criminal Code, there was often a tendency to oversimplify the perpetrator's guilt, whereby as long as the elements of the crime were met, the perpetrator was immediately punished without adequately examining the subjective aspects. With the National Criminal Code, this approach is improved by requiring judges to conduct a more comprehensive assessment, so that the resulting decision is not only legally valid but also morally just.

This regulation also serves as a control instrument against potential disparities in sentencing. With clearer parameters regarding the elements of culpability, capacity for responsibility, and conditions that can eliminate criminal penalties, judicial subjectivity remains, but within a defined framework. This is crucial for maintaining consistency in decisions across similar cases and avoiding excessive disparities in sentencing.

The author observes that in criminal justice practice, the application of the concept of criminal responsibility in the National Criminal Code also requires synchronization between law enforcement officials, particularly investigators, public prosecutors, and judges. Assessment of the capacity to take responsibility, for example, cannot be conducted solely at the trial level but must be identified early in the investigation through psychological or psychiatric examinations. Without proper coordination, the principles formulated in the National Criminal Code have the potential to be less than optimally implemented.

The author also emphasizes that in the context of assault resulting in death, the National Criminal Code approach is able to avoid overlapping or errors in the qualification of the crime, particularly in distinguishing assault resulting in death from murder. In practice, the line between these two offenses is often blurred, especially when the death is not directly intended. Therefore, emphasizing the form of fault (*dolus* or *culpa*) and the causal relationship is crucial to ensuring the correct application of the law.

Furthermore, the author believes that this regulation also reflects a dual protection orientation: protecting the public as potential victims, while simultaneously protecting perpetrators from disproportionate punishment. In this regard, criminal law functions not only as a repressive tool but also as a mechanism to maintain a balance between the interests of the individual and society.

The provisions on criminal liability in the National Criminal Code, in the practice of criminal justice for assault resulting in death, have essentially shown the right direction in building a more rational and just criminal justice system. This is evident in the affirmation that punishment is no longer solely based on the consequences, but rather on a comprehensive assessment of the culpability, the perpetrator's condition, and the legal causal relationship.

Furthermore, the author believes that the National Criminal Code's approach, which provides judges with ample scope to individualize criminal cases, represents a significant advancement in Indonesian criminal law. This space allows judges to act not merely as mechanical enforcers of norms but also as assessors of justice capable of considering the humanitarian dimension of each case, particularly in cases involving the loss of life.

The author also believes that the existence of more systematic regulations regarding the capacity to be responsible, grounds for expungement, and forms of wrongdoing in the National Criminal Code provides methodological certainty in judicial practice. Thus, the evidentiary process does not stop at the fulfillment of the elements of a crime but also moves toward a more in-depth assessment of an individual's suitability for punishment.

Furthermore, in the context of assault resulting in death, the author believes that the emphasis on causality is a key element that cannot be ignored. Without strong

and logical proof of causality, criminal penalties have the potential to lack justification. Therefore, the National Criminal Code appropriately positions causality as the primary bridge between an act and its resulting legal consequences.

Based on the above analysis, the author argues that the provisions on criminal liability in the National Criminal Code have provided methodological certainty for judges in criminal justice practice, as they have provided clear parameters for assessing culpability, capacity for responsibility, and grounds for expungement. Thus, the National Criminal Code serves not only as a normative basis but also as an operational guideline that ensures that the imposition of penalties on perpetrators of assault resulting in death is carried out proportionally, individually, and fairly.

#### **4. Conclusion**

Based on all the research findings and discussions outlined in the previous chapters, it is clear that the provisions on criminal liability for perpetrators of assault resulting in death in the National Criminal Code are not only normative but have also undergone significant conceptual development. This development is reflected both in the theory of criminal liability and in its implementation in criminal justice practice.

Therefore, to provide a more systematic and focused picture, the conclusions of this study are compiled based on two main aspects, namely the normative conceptual aspect and the application aspect in criminal justice practice as follows:

##### **1. The Concept and Form of Criminal Responsibility for Perpetrators of Assault Resulting in Death According to the National Criminal Code**

Based on the conceptual and normative descriptions, it can be concluded that the concept of criminal responsibility for perpetrators of assault resulting in death in the National Criminal Code is based on the principle of fault (*geen straf zonder schuld*), which requires the fulfillment of the elements of a criminal act, the existence of fault (either intentional or negligent), and the ability to take responsibility from the perpetrator. Criminal responsibility does not only focus on the act (*actus reus*), but also on the subjective condition of the perpetrator (*mens rea*), including intellectual and volitional aspects.

The National Criminal Code adopts a more humanistic and differentiated approach, taking into account the perpetrator's status, such as adults, children, and people with mental disorders or disabilities. In certain cases, perpetrators can be exempted from criminal liability if they lack the capacity to take responsibility or have a justifiable reason. Furthermore, in cases of assault resulting in death, the perpetrator's culpability is generally attributed to the act, not the death, as long as there is a causal relationship between the act and the outcome.

The forms of criminal responsibility in the National Criminal Code include:

- a. Punishment for perpetrators who fulfill all elements of responsibility,
- b. Removal of criminal liability if there is a reason for forgiveness or inability to take responsibility, and
- c. Special accountability for certain perpetrators such as children and people with mental disorders which places more emphasis on a rehabilitative approach.

## 2. Regulations on Criminal Responsibility for Perpetrators of Criminal Acts of Assault Resulting in Death as Regulated in the National Criminal Code in Criminal Justice Practice

Based on the description of the regulation of criminal responsibility for perpetrators of criminal acts of assault resulting in death in the National Criminal Code in criminal justice practice, it can be concluded that the National Criminal Code has built a criminal responsibility system that is more comprehensive, humanistic, and based on the principle of fault.

In judicial practice, the application of criminal responsibility is not done automatically based solely on the fulfillment of the elements of the act and its consequences, but rather through a comprehensive assessment process by the judge of both objective and subjective factors. The judge first assesses the existence of the act of assault and the resulting death, then assesses the nature of the perpetrator's culpability, capacity for responsibility, causality, and the existence of grounds for expungement. The judge then considers the purpose of the punishment in issuing the verdict.

The National Criminal Code also provides a clearer basis for judges in assessing the subjective circumstances of perpetrators, such as children, people with mental disorders, or perpetrators in situations of emergency or extreme circumstances. In these circumstances, criminal responsibility can be waived or shifted to an action, rather than a criminal offense. This demonstrates that criminal responsibility is individual and not absolute, but rather depends on the perpetrator's capacity to take responsibility and the level of culpability.

In practice, judges are not solely focused on retribution, but also consider aspects of prevention, community protection, and the rehabilitation of the perpetrator. Factors such as the degree of culpability, the manner of the act, the consequences, and the subjective condition of the perpetrator are important in determining the severity of the sentence.

Comparison with the old Criminal Code shows a paradigm shift, from a more action-oriented approach (daad-oriented) to an approach that balances actions and mistakes (actus reus and mens rea), and prioritizes individualization of criminal law and substantive justice.

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