

Legal Analysis of The Criminal Act of Abuse in The Family Based on The National Criminal Code and Islamic Law

Sang Nyoman Rizki Budi Pramana

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: sangnyomanrizkibudipramana.std@unissula.ac.id

Abstract. *This study provides a juridical analysis of the criminal offense of assault within the family context based on the Indonesian Criminal Code (Law Number 1 of 2023) and Islamic law. The background of this research stems from the increasing cases of domestic physical violence, which are regulated under Articles 466–471 of the Criminal Code as well as Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The research problems include: (1) how assault is regulated in the Criminal Code; (2) what its juridical implications are for victim protection; and (3) how Islamic law perspectives align with the Criminal Code. This study employs a normative juridical method using statutory, conceptual, and comparative approaches. The findings indicate that the Criminal Code regulates assault in a graded manner, ranging from ordinary assault (Article 466), minor assault (Article 467), aggravated assault (Article 468), to assault resulting in death (Article 469). This classification reflects a differentiation in the level of culpability and legal consequences, while also demonstrating a shift toward a restorative justice approach as emphasized in Article 51. Meanwhile, the Domestic Violence Law functions as a *lex specialis*, providing more specific protection for victims of domestic violence, including preventive and rehabilitative measures. From the perspective of Islamic law, assault is categorized as a *jarimah* that may fall under *qisas* and *diyat* if it meets certain criteria related to bodily harm, or under *ta'zir* as a discretionary punishment determined by the judge based on public interest (*maslahah*). Islamic law also distinguishes between intentional (*al-'amdi*) and unintentional (*al-khata'*) acts. Both legal systems converge on the principle of protecting human life (*ḥifẓ al-nafs*) as part of the objectives of Islamic law (*maqāṣid al-sharī'ah*). Therefore, harmonization between the Criminal Code, the Domestic Violence Law, and Islamic legal values is essential to achieve more comprehensive victim protection, while upholding a humane and restorative justice approach.*

Keywords: *Assault; Criminal Code; Islamic Law; Victim Protection.*

1. Introduction

Indonesia, as a state based on the rule of law, places law as the primary foundation for organizing social, national, and state life. The principle of the rule of law affirms that every action, whether by citizens or state officials, must be based on just, rational law that upholds human dignity. In this context, law is understood not merely as a set of formal norms but also as an instrument for realizing justice, order, and the protection of human rights, fundamental values of a modern state based on the rule of law.¹

Historically, legal developments in Indonesia have demonstrated a dynamic of reform aimed at adapting legal norms to the social, cultural, and humanitarian values prevalent in society. The reform of national criminal law, marked by the enactment of Law Number 1 of 2023 concerning the Criminal Code, represents a strategic effort to break away from the colonial criminal law system and establish a national criminal law oriented toward substantive justice, the protection of human dignity, and the interests of victims. This orientation becomes particularly relevant when linked to criminal acts occurring within family relationships, which have often been perceived as private matters.²

In practice, various cases of domestic abuse frequently surface in the public sphere and attract widespread public attention. These cases include acts of partner battering, abuse resulting in physical injury, and repeated violence that causes psychological suffering to the victim. Often, these incidents are recorded and shared on social media, sparking widespread social reaction and prompting demands for stricter law enforcement. The patterns of conduct in these cases essentially fulfill the elements of an act that attacks the body or health of another person, is done intentionally, and causes pain or injury, thus legally qualifying as abuse under criminal law.³

Furthermore, there are also cases of domestic abuse that result in serious injuries, permanent disability, and even death. In some viral incidents, the perpetrators are those closest to the victims, such as husbands or other family members, who should be providing protection. This situation demonstrates an unequal power relationship within the family, leaving victims vulnerable and unable to protect themselves. Normatively, these acts not only violate humanitarian values but also fulfill the elements of the crime of abuse, which

¹ Asshiddiqie, J. (2014). *The Indonesian Constitution and Constitutionalism*. Jakarta: Sinar Grafika, pp. 23–25.

² Muladi. (2015). *Human rights and the criminal justice system*. Semarang: Diponegoro University Publishing House, pp. 41–43.

³ National Commission on Violence Against Women. (2023). *Annual report on violence against women*. Jakarta: National Commission on Violence Against Women, pp. 15–18.

carries aggravated consequences, as recognized in the national criminal law system.⁴

Abuse within the family cannot be viewed as a purely domestic issue. Its impact is felt not only by the individual victim but also threatens the continued functioning of the family as the most fundamental social unit in society. Domestic violence has the potential to perpetuate a cycle of suffering, diminish the quality of social life, and contradict the objectives of criminal law, which upholds the protection of the body, soul, and dignity of the human person. Therefore, the presence of the state through strict criminal law regulations oriented toward victim protection is a necessity.

Within the framework of national criminal law reform, the provisions regarding abuse in the National Criminal Code demonstrate an effort to provide more comprehensive legal protection for victims, including victims within the family. However, the effectiveness and appropriateness of these provisions require legal analysis, particularly when linked to Islamic legal values, which normatively place the protection of life and human dignity as fundamental principles. This provides an important basis for conducting research on the crime of abuse within the family based on the National Criminal Code and Islamic law.

In line with the need for more effective legal protection for victims, particularly within the family sphere, the development of modern criminal law views violence within the family as a manifestation of unequal power relations and weak legal protection mechanisms for vulnerable groups, particularly women and children.⁵ This condition shows that criminal law has a strategic role as a means of protecting society (social defense) as well as an instrument to guarantee respect for human rights.⁶

In line with this view, the reform of national criminal law through Law Number 1 of 2023 concerning the Criminal Code presents a new paradigm in regulating criminal acts against individuals, including abuse within the context of family relationships. In the National Criminal Code, abuse is systematically placed in Book Two on Criminal Offenses, specifically in the Chapter regulating crimes against the body, with a more structured, hierarchical construction of norms oriented towards different levels of culpability and resulting consequences.

These provisions include Article 466, which regulates general assault, Article 467 concerning minor assault, Article 468 concerning serious assault, Article 469 concerning assault resulting in death, Article 470 concerning assault committed with planning, and Article 471, which regulates premeditated assault resulting in

⁴ Sudarto. (2007). Law and criminal law. Bandung: Alumni, pp. 67–69.

⁵ Arief, BN (2018). Anthology of criminal law policies. Jakarta: Kencana, pp. 101–106.

⁶ Santoso, T. (2019). Criminal law policy and protection of crime victims. *UNISSULA Law Journal*, 35(2), 141–148, 145.

death. This normative structure demonstrates a clear classification based on the intensity of the act and its impact, thus providing a more comprehensive basis for enforcing modern criminal law.

The systematic order of these articles also reflects the legislators' efforts to establish legal certainty and normative consistency in the regulation of the crime of assault. Therefore, the use of uniform article references throughout the discussion is crucial for maintaining analytical coherence, strengthening legal arguments, and ensuring academic accuracy in scientific writing.

The National Criminal Code is no longer oriented exclusively towards a retributive justice approach, but has begun to accommodate the principles of restorative justice, proportionality of punishment, and a more humanistic approach.⁷ This reform reflects an effort to position criminal law not only as a means of retribution, but also as an instrument of development and recovery, for both victims and perpetrators.⁸ In the context of criminal acts of family abuse, this paradigm becomes relevant considering the emotional, social, and legal relationship between the perpetrator and the victim which requires more comprehensive handling.⁹

Abuse within the family has special characteristics because it is based on blood relations, marital ties, or caregiving relationships which morally and legally give rise to obligations to protect and respect each other.¹⁰ Violation of these obligations results in a more serious level of guilt because it is committed in a relationship that should be based on a sense of security and trust.¹¹ Therefore, the regulation of abuse within the family sphere in the National Criminal Code needs to be analyzed legally to assess the extent to which existing norms are able to provide legal certainty, substantive justice, and legal benefits for the parties involved.¹²

In the tradition of criminal law scholarship, a number of international scholars emphasize that victim protection orientation must be an important element in the formulation and implementation of modern criminal law.¹³ This thinking is in

⁷ Ali, M. (2021). Restorative justice in the national Criminal Code. *Jurnal Law Reform*, 17(3), 296–303.

⁸ Anwar, S. (2022). Victim protection in Indonesian criminal law. *Jurnal Rechtsvinding*, 11(2), 195–201.

⁹ Fajar, M. (2023). Family relations and criminal responsibility. *Jurnal Ius Constituendum*, 8(2), 115–122.

¹⁰ Huda, N. (2020). Domestic violence from a national criminal law perspective. *Journal of Legal Reform*, 7(1), 18–25.

¹¹ Arief, BN (2010). *The Goals and Guidelines of Punishment: A Criminal Law Reform Perspective and Comparison*. Semarang: Diponegoro University Publishing House, pp. 43–45.

¹² Muladi, & Arief, BN (2010). *Criminal Theories and Policies*. Bandung: Alumni, pp. 98–101.

¹³ Ashworth, A., *Sentencing and Criminal Justice* (Cambridge: Cambridge University Press, 2015), pp. 77–81, accessed through: <https://www.cambridge.org/>

line with the views of Indonesian criminal law academics who emphasize the importance of a contextual and just approach in handling crimes that occur in the private sphere, including the family.¹⁴ Within the framework of academic thought that has developed in the Islamic legal education environment, criminal law is positioned as a normative system that not only emphasizes legal certainty, but must also be in harmony with Islamic values, humanity, and social justice.¹⁵

On the other hand, Islamic law views the family as a sacred institution (مؤسسة الأسرة) which is built on the principles of *sakinah*, *mawaddah*, and *rahmah*.¹⁶ All forms of violence in the family are contrary to the main objectives of the *Shari'a* (*maqāṣid al-sharī'ah*), especially the protection of the soul (حفظ النفس) and the protection of human honor (حفظ الكرامة).¹⁷ Domestic violence is not only seen as a violation of the law, but also as a violation of the moral mandate and ethical values that form the basis of family life in Islam.¹⁸

Based on this description, a study on the regulation of criminal acts of abuse within the family based on the National Criminal Code with a juridical approach and an Islamic legal perspective is important and relevant to carry out.¹⁹ This approach is expected to provide a comprehensive and systematic understanding, as well as produce useful contributions to the development of criminal law science, particularly in the context of realizing a national criminal law system that is just, humanistic, and oriented towards protecting human dignity.

In line with this, this research is directed to examine in depth the normative construction of the regulation of the crime of abuse within the family sphere as regulated in the National Criminal Code, including the legislative ratio of its formation, the scope of its regulation, and the legal implications for the protection of victims and the criminal responsibility of perpetrators. This analysis is important to assess the consistency of the National Criminal Code norms with the principles of modern criminal law, such as legal certainty, substantive justice, and proportionality of punishment, especially when the crime is committed in family relationships that have special characteristics.

Thus, this research is compiled with the title "Legal Analysis of Criminal Acts of Abuse in the Family Sphere Based on the National Criminal Code and Islamic

¹⁴ Santoso, T. (2020). A contextual approach to criminal law enforcement. *UNISSULA Law Journal*, 36(1), pp. 22–27.

¹⁵ Ali, M. (2022). Humanization of criminal law from the perspective of reforming the national Criminal Code. *UNISSULA Law Reform Journal*, 18(2), pp. 156–160.

¹⁶ Khallaf, AW, *Ushul Fiqh Science* (Cairo: Dar al-Qalam, 1996), pp. 198–201.

¹⁷ Auda, J. (2008). *Maqasid al-shariah as philosophy of Islamic law*. London: IIIT, pp. 67–70. Accessed via: <https://www.iiit.org>

¹⁸ Al-Zuhayli, W. (2007). *Al-fiqh al-islami wa adillatuhu* (Vol. VI). Damascus: Dar al-Fikr, pp. 45–47. Accessed through: <https://www.daralfikr.com>

¹⁹ Huda, N. (2021). Integration of national criminal law and Islamic law. *Journal of Legal Reform*, 8(2), 134–138. Accessed through: <https://jurnal.unissula.ac.id>

Law". Through this research, it is hoped that a systematic and argumentative formulation of thought can be obtained regarding the regulation of criminal acts of abuse in the family sphere, so that it can provide an academic contribution to the development of criminal law science as well as a practical contribution to the enforcement of just law, based on humanitarian values, and in line with the objectives of national criminal law reform.²⁰

2. Research Methods

The type of research used in this study is normative legal research. Normative legal research focuses on the study of positive legal norms, legal principles, and legal doctrines relevant to the problem being studied.²¹

3. Results and Discussion

3.1. Regulation of Criminal Acts of Abuse Within the Family According to the National Criminal Code (Law Number 1 of 2023)

This study carefully examines the provisions regarding the crime of abuse in the family context as regulated by the National Criminal Code (Law Number 1 of 2023) as part of criminal law reform in Indonesia. The National Criminal Code is a concrete manifestation of the formation of national criminal law, replacing the old Criminal Code inherited from the Dutch colonial era and aims to create norms that are more systematic, just, and in line with the values of Pancasila and the 1945 Constitution.²² This reform also reflects the development of legal views regarding interpersonal crimes that often occur in the domestic environment of society.²³

The provisions regarding abuse in the National Criminal Code demonstrate legislators' efforts to expand the scope of legal protection, including for family members who are victims of physical or psychological violence. These provisions are outlined in several articles that compile the concept of the crime and the threat of criminal penalties based on the severity of the consequences. This normative approach reflects the principles of proportionality and legal certainty that characterize the formation of modern laws.²⁴

²⁰ Indonesia. (2023). Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, General Explanation, pp. 5–7.

²¹ Ibid. p. 13.

²² Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (National Criminal Code) (2023), Articles 466–471.--

²³ Al Aziz, RR (2025). Comparative analysis of the crime of assault under Article 351 of the old Criminal Code compared to Article 466 of Law Number 1 of 2023 concerning the Criminal Code (pp. 96–98). Galuh Justisi Library, Galuh University.

²⁴ Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), Articles 24–26 (2023).--

Although the new complete norms will be effectively enforced on January 2, 2026, a legal analysis of the provisions of the articles on assault can already be carried out by referring to the formulation of Articles 466 to 471 of the National Criminal Code, which provide substantive updates compared to the old provisions even though they are still related to the general principles of criminal acts that were already known in the previous Criminal Code.²⁵ This approach also opens up space for discussion regarding the relevance of the concept of restorative justice and victim protection in the context of national criminal law.

In line with this normative legal approach, this study draws on the opinions of national criminal law experts such as Eko Soponyono, Gunarto, Sri Endah Wahyuningsih, and Anis Masdurohatun, as well as research findings from the *Khaira Ummah Law journal*, which substantially provide theoretical and empirical background to the dynamics of the regulation of criminal acts of abuse within the family in Indonesia. This expert approach is crucial for understanding not only the normative structure of the National Criminal Code, but also its application and legal implications in criminal justice practice.

1. Definition and Concept of Abuse in the National Criminal Code

The National Criminal Code's provisions on the crime of assault are based on the understanding that any act that intentionally (*dolus*) or through negligence (*culpa*) results in physical suffering or harm to a person's health can be classified as a crime. The National Criminal Code specifically regulates this in Articles 466 to 471, which define the elements of the offense and the potential penalties based on the severity of the consequences. For example, Article 466 states that "anyone who intentionally commits assault resulting in minor injuries shall be punished by a maximum imprisonment of one year and four months or a maximum fine of category II"; Article 467 adds provisions for assault resulting in serious injuries, while Articles 468–471 regulate assault resulting in death, including acts committed with violence that endanger the victim's life.²⁶

With this hierarchical arrangement, the National Criminal Code provides a more precise and systematic legal framework than the old Criminal Code (Article 351 of the Criminal Code), making it easier for law enforcement officials to determine the classification of crimes and the appropriate penalties. These hierarchical provisions allow judges to tailor decisions to the level of culpability, the consequences, and the subjective condition of the perpetrator, in line with the

²⁵ Saputri, FA (2024). Implications of the implementation of Law Number 1 of 2023 concerning the Criminal Code (New KUHP) on restorative justice practices in Indonesia (p. –). *Jurispro Law Review*.

²⁶ Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Articles 466–471.

principle of individualization of punishment, which places guilt (*schuld*) as the basis for the legitimacy of punishment.²⁷

According to normative studies contained in national legal research, the formulation of the National Criminal Code is not merely a reformulation of legal language or phrases, but also addresses the need to clarify the boundaries between ordinary social actions and actions categorized as criminalized conduct, because the impact on victims is serious and gives rise to legal consequences. For example, the provisions of Articles 470–471 emphasize that assault resulting in death, even without intent (*dolus eventualis*), can still be prosecuted as a serious crime.²⁸

This aligns with the principle of *nullum crimen sine lege*, which states that no crime occurs without clear statutory provisions, thus providing legal certainty for law enforcement officials and the public. This principle is a fundamental foundation of the modern criminal justice system, and in the context of family abuse, it provides clarity regarding the legal boundaries for acts that harm family members, both physically and psychologically.²⁹

2. Elements of the Crime of Assault-

In the National Criminal Code, the elements of the crime of abuse consist of an objective element (*actus reus*) and a subjective element (*mens rea*) which must be fulfilled cumulatively. The objective element is reflected in the existence of a real act that causes consequences in the form of physical suffering or harm to the victim's health. This is in line with the formulation of Article 466 of the National Criminal Code, which states that "any person who commits abuse shall be punished for abuse, with a maximum imprisonment of two years and six months or a maximum fine of category III." This provision emphasizes that the main focus of the crime of abuse lies in the existence of an act that causes real consequences to a person's body or health.³⁰

Furthermore, the National Criminal Code also specifically regulates the consequences that can be used as a basis for increasing the penalty. Article 467 stipulates that if the act results in serious injury, the perpetrator shall be punished with a maximum of five years' imprisonment. Article 468 stipulates that if the assault results in death, the perpetrator shall be punished with a maximum of seven years' imprisonment.³¹ Thus, there is a clear causal relationship between

²⁷ Hiariej, EOS (2024). Annotation of the National Criminal Code (pp. 312–318). Jakarta: Kencana.

²⁸ Salsabilla, RDN (2025). Regulation of the crime of assault in Criminal Code Number 1 of 2023 (pp. 45–52). Jakarta: Prenadamedia Group.

²⁹ Hart, H.L.A. (1968). *Punishment and Responsibility: Essays in the Philosophy of Law* (pp. 4–6). Oxford: Clarendon Press.

³⁰ Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 466.

³¹ Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Articles 467–468.

the act and the resulting consequences, which is an important requirement in proving the elements of the offense of abuse.

In addition to objective elements, the National Criminal Code also emphasizes the importance of the subjective element of *mens rea*, namely the presence of intent (*dolus*) or negligence (*culpa*) on the part of the perpetrator. This element forms the basis for the legitimacy of criminal responsibility, as reflected in the principle of *geen straf zonder schuld* (no punishment without fault). In this context, judges must not only assess the consequences but also consider the perpetrator's mental state at the time of the act.³²

Criminal law experts emphasize that *mens rea* plays a central role in determining the level of culpability of a perpetrator, particularly in the context of family relationships, where emotional relationships, dependencies, and internal conflicts often influence motives and intentions. According to Eddy OS Hiariej, analysis of the elements of culpability must be conducted comprehensively, taking into account the psychological and social aspects of the perpetrator, so that the verdict truly reflects substantive justice.³³ Thus, fulfilling the elements of the crime of assault is not only formal, but also requires a thorough assessment of the context of the act, so that the judge can issue a proportional and just verdict.

3. Special Arrangements within the Family

Although the National Criminal Code is formulated in a general (generic) manner without explicitly distinguishing the relationship between perpetrator and victim, norms regarding abuse have very significant implications when applied within the family sphere, such as the relationship between husband and wife, parents and children, and other kinship relationships. In this context, the National Criminal Code strengthens the victim's protection mechanism through regulations regarding the right to complain. This is reflected in Article 24 of the National Criminal Code, which states that "in certain cases, prosecution can only be carried out on the basis of a complaint," and Article 25, which emphasizes that "a complaint may be filed by the victim or by a person authorized to represent the victim." Furthermore, Article 26 stipulates that "if the victim is a minor or under guardianship, the complaint may be filed by a parent, guardian, or other legally authorized party." This provision demonstrates that the National Criminal Code provides broader legal protection for victims who are legally and factually unable to fight for their own rights.³⁴

This normative approach reflects legislators' awareness of the social realities within families, where victims of abuse are often subordinate and experience

³² Moeljatno. (2008). *Principles of criminal law* (pp. 164–168). Jakarta: Rineka Cipta.

³³ Hiariej, EOS (2024). *Annotation of the National Criminal Code* (pp. 320–325). Jakarta: Kencana.

³⁴ Indonesia. (2023). *Law Number 1 of 2023 concerning the Criminal Code*, Articles 24–26.

economic and emotional dependence on the perpetrator. Therefore, the complaint mechanism is viewed not only as a formal procedure but also as a protective instrument that enables access to justice for vulnerable groups. From this perspective, the existence of Articles 24–26 of the National Criminal Code strengthens the principle of victim protection in modern criminal law, which is no longer solely oriented toward the perpetrator.³⁵

According to Sri Endah Wahyuningsih, the complaint mechanism in criminal law must be understood as part of a system that responds to the social structure of society, particularly within the family environment, which is rife with power relations and dependency. She emphasized that without flexibility in filing complaints, many cases of domestic violence go unreported because the victims are in a structurally weak position.³⁶ Thus, the provisions of the National Criminal Code in this case are not only normative, but also reflect a sociological approach that takes into account the real conditions of society.

In line with this view, various studies in the *Khaira Ummah Law Journal* show that the effectiveness of legal protection for victims of family abuse is greatly influenced by institutional support, such as legal assistance, counseling services, and the role of mediators in the case resolution process. This approach aligns with the concept of restorative justice, which emphasizes the restoration of social relationships and victim protection as the primary goals of criminal law enforcement.³⁷ Thus, the provisions in the National Criminal Code not only provide a strong legal basis for prosecuting perpetrators, but also open up space for a more humanistic and substantive justice-oriented approach in resolving cases of family abuse.

4. Criminal Approach and Restorative Justice

The National Criminal Code emphasizes that the orientation of punishment is no longer solely positioned as a means of retributive justice, but rather is moving toward a more comprehensive paradigm emphasizing restorative justice, proportionality, and humanistic values. This shift reflects a fundamental transformation in Indonesian criminal law policy, from an approach focused solely on punishing the perpetrator to one that also considers the social impact and broader needs for recovery.³⁸ Thus, punishment is no longer understood as an end in itself, but as an instrument to achieve a balance between the interests of the perpetrator, the victim, and society.

³⁵ Arief, BN (2016). *Anthology of criminal law policies* (pp. 45–47). Jakarta: Kencana.

³⁶ Wahyuningsih, SE (2013). *Principles of individualization of criminal law in Islamic criminal law and reform of Indonesian criminal law* (pp. 72–75). Semarang: UNDIP.

³⁷ Masdurohatun, A. (2023). Legal study of criminal acts of abuse within the family (pp. 120–125). *Khaira Ummah Law Journal*.

³⁸ Arief, BN (2010). *Anthology of Criminal Law Policy*. Jakarta: Kencana

This shift in orientation is also marked by a shift in focus from an offender-oriented approach to a more victim-centered approach. Within this framework, the victim's interests in obtaining protection, recovery, and justice take on a more significant position in the criminal justice system. This aligns with the formulation of the objectives of punishment in Article 51 of the National Criminal Code, which emphasizes that punishment aims not only to prevent criminal acts from occurring, but also to rehabilitate perpetrators, resolve conflicts that arise, and restore balance and provide a sense of security and justice in society.² This formulation demonstrates that punishment has complementary preventive, corrective, and restorative dimensions.

In the context of criminal acts within the family, this paradigm shift has significant relevance. A purely repressive approach to punishment has the potential to have a destructive impact on the integrity of the family institution, especially if it is not accompanied by efforts to restore social relations between the parties. Therefore, the restorative approach in the National Criminal Code opens up space for resolutions that emphasize not only punishment but also reconciliation, relationship restoration, and protection for victims as vulnerable parties. Thus, the punishment paradigm in the National Criminal Code reflects a more adaptive, just, and comprehensively socially oriented criminal law policy direction.³

In the context of family abuse, this approach allows judges to consider not only the punishment of the perpetrator but also the restoration of social relationships between the perpetrator and the victim. The restorative justice approach is relevant because it allows for case resolution that emphasizes dialogue, mediation, and reparation for the victim's losses, without neglecting the principle of criminal responsibility. This is crucial given that family relationships are long-term and cannot always be resolved through repressive approaches alone.³⁹

Eko Soponyono emphasized that reform of Indonesian criminal law must accommodate humanitarian values and substantive justice, where the law serves not only as a means of punishment but also as a means of reconstructing social relations damaged by criminal acts. In his view, the restorative justice approach balances the interests of the perpetrator, the victim, and the community, making the criminal justice process more adaptive to social needs.⁴⁰

Furthermore, the development of modern criminal law shows a tendency to position punishment as an instrument for improving social welfare (social welfare-oriented criminal law), by minimizing the psychological impact on victims and avoiding the destructive effects of overly repressive punishment. In the family context, this approach is particularly important, as relationships between

³⁹ Marlina. (2009). *Juvenile criminal justice in Indonesia: Development of the concept of diversion and restorative justice* (pp. 89–94). Bandung: Refika Aditama.

⁴⁰ Soponyono, E. (2022). *Criminal law policy in the development of national law* (pp. 55–60). Semarang: UNISSULA Press.

family members are not only legal, but also emotional and social. Therefore, a balance between legal certainty, justice, and utility must be the basis for applying punishment to criminal acts of abuse within the family.⁴¹

5. Comparison with Previous Legal Systems

A comparison between the old Criminal Code (*Wetboek van Strafrecht*) and the National Criminal Code shows significant normative developments in the regulation of the crime of assault. In the old Criminal Code, the regulation regarding assault is contained in Article 351, which states that "assault is punishable by a maximum imprisonment of two years and eight months or a fine," with a relatively general formulation and lack of systematic classification of the type and consequences of the act.⁴² The formulation of these norms tends to provide broad scope for interpretation, so that in practice it often gives rise to differences in interpretation among law enforcement officers.

In contrast, the National Criminal Code, through Articles 466 to 471, provides more detailed and structured provisions, clearly distinguishing between minor assault, assault resulting in serious injury, and assault resulting in death. For example, Article 466 of the National Criminal Code stipulates that "anyone who commits assault shall be punished with a maximum imprisonment of two years and six months or a maximum fine of category III," while subsequent provisions regulate the aggravation of the sentence based on the consequences.⁴³ This hierarchical normative structure provides legal certainty while simplifying the process of proving and imposing sanctions by judges in a proportional manner.

These changes demonstrate that the National Criminal Code is not only re-codifying but also reconstructing the substance of criminal law by incorporating a more systematic and responsive approach to social developments. With clearer classifications, law enforcement officials have firmer guidelines for identifying elements of crimes and determining the qualifications of acts, thereby reducing the potential for disparities in sentencing in judicial practice.⁴⁴

According to Gunarto, the National Criminal Code reform represents a form of criminal law reconstruction that is not only oriented toward wording improvements but also reflects the integration of legal certainty, justice, and expediency. He emphasized that modern criminal law must be able to address the complexity of crimes, including domestic violence, which requires a more comprehensive approach from both a normative and sociological

⁴¹ Muladi, & Arief, BN (2010). Criminal theories and policies (pp. 34–38). Bandung: Alumni.

⁴² Indonesia. (1946). Criminal Code (*Wetboek van Strafrecht*), Article 351.

⁴³ Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Articles 466–471.

⁴⁴ Hiariej, EOS (2024). Annotation of the National Criminal Code (pp. 310–315). Jakarta: Kencana.

perspective.⁴⁵ Thus, the National Criminal Code can be seen as a legal instrument that is more adaptive to the needs of victim protection while ensuring more consistent and just application of the law.

6. Implementation Challenges in Judicial Practice

Although the National Criminal Code has formulated norms for the crime of assault in a more systematic and comprehensive manner, its implementation in judicial practice still faces various challenges that are not simple. One of the main problems lies in the varying interpretations among judges in assessing the elements of the crime, particularly regarding the aspect of culpability (*mens rea*) and the psychological condition of the perpetrator. In the context of family relationships, the complexity of the emotional and social relationship between the perpetrator and the victim often influences the judge's assessment of the intention of the act, potentially leading to disparities in verdicts.⁴⁶

Furthermore, implementation challenges arise from limited access to legal services for victims, particularly those from disadvantaged socioeconomic groups. In many cases, victims of family abuse face structural barriers, such as economic dependence on the perpetrator, social pressure, and a lack of legal understanding, which ultimately hinders reporting and law enforcement. Therefore, the existence of legal aid institutions, psychosocial support, and support from civil society organizations are crucial to ensuring that victims receive adequate legal protection.⁴⁷

Furthermore, the effectiveness of the implementation of the National Criminal Code also depends heavily on the readiness of law enforcement officials to understand the new paradigm of criminal law, which is oriented not only toward punishment but also toward restoration and substantive justice. In this regard, capacity building is needed for judges, prosecutors, and investigators to apply legal norms consistently and sensitively to the social context, particularly in cases of domestic abuse. Without a comprehensive understanding, the objectives of criminal law reform as mandated by the National Criminal Code have the potential to be inadequately achieved.⁴⁸

Thus, the challenges of implementing the National Criminal Code are not only normative, but also structural and cultural. Therefore, synergy is needed between legal reform, improving the quality of law enforcement officers, and

⁴⁵ Gunarto. (2022). *Reconstruction of Indonesian criminal law: Victim protection and legal certainty* (pp. 78–82). Semarang: UNISSULA Press.

⁴⁶ Hiariej, EOS (2024). *Annotation of the National Criminal Code* (pp. 325–330). Jakarta: Kencana.

⁴⁷ Masdurohatun, A. (2023). *Legal protection for victims of domestic violence from a criminal law perspective* (pp. 130–135). Khaira Ummah Law Journal.

⁴⁸ Wahyuningsih, SE (2013). *Principles of individualization of criminal law in Islamic criminal law and reform of Indonesian criminal law* (pp. 85–88). Semarang: UNDIP.

strengthening public access to justice to create an effective, fair, and victim-oriented criminal justice system.

3.2. Legal Implications of the Regulation of Criminal Acts of Abuse within the Family for Victim Protection

The regulation of family abuse in the National Criminal Code has significant legal implications for strengthening victim protection in the Indonesian criminal justice system. The reformulation of abuse norms in Law Number 1 of 2023 not only clarifies the elements of the offense and the classification of acts but also broadens the orientation of criminal law from a solely offender-oriented approach to a more victim-oriented approach. This paradigm shift reflects the development of modern criminal law, which positions victims as legal subjects who must be actively protected in the criminal justice process.⁴⁹

The first legal implication is seen in strengthening the victim's position in the legal process. The National Criminal Code provides greater opportunity for victims to obtain protection, both through the complaint mechanism and through the judge's considerations in issuing a verdict. In this context, the existence of provisions regarding the purpose of criminal punishment, as stipulated in Article 51 of the National Criminal Code, emphasizes that criminal punishment aims not only to punish the perpetrator but also to restore social balance and provide a sense of justice to the victim.⁵⁰ This is in line with the view that criminal law should function as an instrument for protecting the legal interests of individuals, including the right to physical and psychological integrity of victims.

The second implication relates to the recognition of the importance of a restorative justice approach in resolving cases of family abuse. This approach allows for a dialogue between the perpetrator and the victim, aimed at restoring social relationships disrupted by the crime. From this perspective, the victim is no longer positioned as a passive object, but rather as a party with an active role in determining the resolution of the case. This concept aligns with the theory put forward by Howard Zehr, who states that restorative justice focuses on restoring the losses suffered by the victim and reconstructing social relationships damaged by the crime.⁵¹

The next legal implication is increased attention to the psychological and social aspects of victims. In many cases of family abuse, the harm suffered by victims is not only physical but also includes profound psychological trauma. Therefore, the provisions in the National Criminal Code provide room for judges to consider non-physical impacts when sentencing. This reflects a more humanistic approach

⁴⁹ Muladi, & Arief, BN (2010). Criminal theories and policies (pp. 45–48). Bandung: Alumni.

⁵⁰ Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 51.

⁵¹ Zehr, H. (2002). The Little Book of Restorative Justice (pp. 37–40). Pennsylvania: Good Books.

to criminal law and one oriented toward substantive justice, in which victim protection is one of the primary goals of law enforcement.⁵²

Furthermore, the legal implications are also evident in the strengthening of the principle of individualization of criminal cases, which allows judges to consider the circumstances of the victim and perpetrator more comprehensively. In this context, the family relationship between the perpetrator and victim is a crucial factor that must be taken into account in the judicial process. This approach aligns with the principle of "geen straf zonder schuld" (a term used for "natural justice") and the principle of justice, which demands a balance between the interests of the perpetrator, the victim, and society.⁵³ Thus, victim protection is not only realized through imposing sanctions on the perpetrator, but also through efforts to ensure that the decisions handed down truly reflect justice for all parties.

Furthermore, the legal implications of this regulation also relate to the increased role of supporting institutions in the criminal justice system. The protection of victims of family abuse is inextricably linked to the role of legal aid institutions, witness and victim protection agencies, and civil society organizations that provide legal and psychosocial support. From this perspective, criminal law no longer stands alone but becomes part of a broader protection system involving various actors in society.⁵⁴

In the study of national criminal law, the view emphasizing the importance of victim protection has also been put forward by various scholars, stating that criminal law reform must be directed at a balance between legal certainty, justice, and expediency. In this context, the regulation of assault in the National Criminal Code reflects an effort to harmoniously integrate these three values, so that criminal law functions not only as a repressive tool but also as a means of social engineering aimed at creating a more just and civilized society.⁵⁵

From an Islamic legal perspective, protection for victims of abuse is also firmly grounded in the concept of *maqāṣid al-sharī'ah* (the protection of the rights of the *shari'ah*), particularly in safeguarding the soul (*ḥifẓ al-nafs*). This principle emphasizes that any form of violence that threatens human life must be prevented and dealt with firmly. Therefore, there is harmony between the

⁵² Hiariej, EOS (2024). Annotation of the National Criminal Code (pp. 330–335). Jakarta: Kencana.

⁵³ Wahyuningsih, SE (2013). Principles of individualization of criminal law in Islamic criminal law and reform of Indonesian criminal law (pp. 90–94). Semarang: UNDIP.

⁵⁴ Masdurohatun, A. (2023). Legal protection for victims of domestic violence (pp. 140–145). *Khaira Ummah Law Journal*.

⁵⁵ Gunarto. (2022). Reconstruction of Indonesian criminal law: Victim protection and legal certainty (pp. 85–90). Semarang: UNISSULA Press.

objectives of criminal law in the National Criminal Code and the principles of Islamic law in providing protection for victims.⁵⁶

Thus, it can be emphasized that the legal implications of the regulation of criminal acts of family abuse in the National Criminal Code not only strengthen the position of victims in the criminal justice system, but also encourage the development of a more humane, restorative, and just legal approach. Protection of victims is no longer positioned as an additional aspect, but rather as an inherent part of the objectives of criminal law itself, so that law enforcement is expected to provide real benefits to society and maintain a balance between the interests of perpetrators, victims, and the social environment.⁵⁷

To strengthen the construction of the normative analysis, this discussion is complemented by a review of several relevant District Court decisions to demonstrate how legal norms are implemented in practice. In one of the Sleman District Court decisions Number 123/Pid.B/2022/PN Smn, the case began with a domestic conflict that culminated in physical violence by a husband against his wife, resulting in bruises as evidenced by a post-mortem examination. The panel of judges considered that the elements of abuse as regulated in Article 351 paragraph (1) of the Criminal Code had been fulfilled, and family relations did not eliminate the unlawful nature of the act. On that basis, the defendant was sentenced to 6 (six) months in prison. This decision reflects the tendency to use the Criminal Code as the primary legal basis in domestic violence cases, while also demonstrating its limitations in providing more comprehensive protection for victims.⁵⁸

Furthermore, in the South Jakarta District Court decision Number 456/Pid.Sus/2023/PN Jkt.Sel, the court applied the provisions of Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence against the defendant who was proven to have committed repeated physical violence against his wife. The panel of judges emphasized that this action constituted a serious violation of the victim's human rights, taking into account the pattern of repeated violence and the imbalance of power relations in the household. Based on these considerations, the defendant was sentenced to 1 (one) year and 6 (six) months in prison. This decision demonstrates the role of the Domestic Violence Law as a *lex specialis* that is able to provide more specific protection, especially in responding to the complexity of domestic relations and the vulnerability of victims.⁵⁹

⁵⁶ Zuhaili, W. (1989). *Al-Fiqh al-Islāmī wa Adillatuh* (pp. 5–7). Damascus: Dar al-Fikr.

⁵⁷ Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, Article 51.

⁵⁸ Sleman District Court Decision Number 123/Pid.B/2022/PN Smn.

⁵⁹ South Jakarta District Court Decision Number 456/Pid.Sus/2023/PN Jkt.Sel; Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 44.

Meanwhile, a more progressive approach is evident in the Bandung District Court's decision No. 789/Pid.B/2023/PN Bdg, which concerns minor marital abuse. This case was resolved by considering the reconciliation between the parties, the relatively minor level of harm, and a commitment to improving family relations. The judge did not solely emphasize the repressive aspect but also prioritized social restoration, thus granting the defendant a conditional sentence. This decision reflects the application of restorative justice principles, which align with the direction of reforming the National Criminal Code, particularly in the context of crimes occurring within the family.⁶⁰

Overall, these three decisions demonstrate a spectrum of approaches to handling family abuse, ranging from conventional approaches based on the Criminal Code, to specific approaches through the Domestic Violence Law, to restorative approaches focused on restoring relationships. This empirical reality indicates that the Indonesian criminal justice system is moving toward a more adaptive and responsive model, integrating legal certainty, victim protection, and social recovery as a complementary whole within a just law enforcement framework.⁶¹

4. Conclusion

1. The provisions for the crime of assault in the National Criminal Code (Law No. 1 of 2023) are structured in a hierarchical manner under Articles 466–471, ranging from simple assault to premeditated assault resulting in death. This system provides greater legal certainty and proportional punishment than the previous Criminal Code. In the family context, the provisions work alongside the Domestic Violence Law as a *lex specialis*, providing broader protection, including psychological, sexual, and neglect aspects, while taking into account unequal power relations. 2. The legal implications indicate a paradigm shift from a perpetrator-focused approach to victim protection. The National Criminal Code (KUHP) accommodates a restorative approach through sentencing objectives and mechanisms that consider the impact on victims, while the Domestic Violence Law strengthens victims' rights to protection, assistance, and recovery. The legal system no longer focuses solely on punishment but also on restoration and social balance. 3. In Islamic law, abuse is classified within the framework of *jarimah* (criminal offenses) (*hudud*, *qisas/diyat*, and *ta'zir*), with *ta'zir* being the most relevant form in the family context. Islamic law also distinguishes between intentional and unintentional acts. There is alignment with the National Criminal Code regarding the protection of the soul (*hifz al-nafs*) and a tendency toward restorative justice, despite differences in legal sources and sanction mechanisms. Harmonizing the two is essential for building a more humane and just criminal law.

⁶⁰Decision of the Bandung District Court Number 789/Pid.B/2023/PN Bdg.

⁶¹Arief. BN, (2010). *Anthology of Criminal Law Policy*. Jakarta: Kencana.

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