

Criminal Responsibility for Perpetrators of Criminal Acts of Assault According to the National Criminal Code from the Perspective of Pancasila Justice

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Abstract. *This research aims to analyze the regulation of criminal liability for perpetrators of assault under the Old Criminal Code and the National Criminal Code, as well as to examine its application from the perspective of Pancasila Justice. The focus of the study is directed at the provisions of Article 351 of the Old Criminal Code and Article 466 of Law Number 1 of 2023 concerning the National Criminal Code, highlighting aspects of normative reform, elements of criminal liability, and their relevance to victim protection, particularly women as a vulnerable group. This research employs a normative legal research method using statutory, conceptual, and philosophical approaches. The data sources consist of primary legal materials in the form of legislation, secondary legal materials such as books and scientific journals, and tertiary legal materials as supporting sources. Data collection techniques are carried out through library research and document study, supported by empirical data obtained from interviews with investigators and advocates. Data analysis is conducted using qualitative normative analysis with systematic, logical, and argumentative legal reasoning. The results show that the regulation of criminal liability in the National Criminal Code maintains the fundamental elements of the Old Criminal Code, while also introducing improvements through simplification of norms, strengthening of legal systematics, and expansion of the concept of assault to include health impairment beyond physical injury. The application of criminal liability in practice still faces challenges in terms of evidentiary issues and differences in interpretation, and remains dominated by a retributive paradigm. The perspective of Pancasila Justice requires a shift toward a more humanistic and restorative approach that emphasizes victim recovery, offender rehabilitation, and social balance. The implementation of this approach has not yet been optimal, particularly in providing effective protection for women as victims of assault.*

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

1. Introduction

The national legal development framework and the direction of state policy align with *Asta Cita*, which places strengthening the rule of law, protecting human rights, and social justice as the primary foundations of national and state life. This vision emphasizes that law is positioned not only as an instrument of social control but also as a means of establishing a just, civilized, and humanitarian-oriented social order. This view aligns with the thinking of Gustav Radbruch, who places justice, legal certainty, and utility as fundamental values that must be present in balance within a modern legal system.¹

The rule of law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, places law as the basis for all state administration activities. The legal consequence of the principle of the rule of law is the state's obligation to guarantee the protection of human rights, legal certainty, and substantive justice. ²Lawrence M. Friedman emphasized that the effectiveness of law is determined not only by norms, but also by the legal structure and culture that support it. Therefore, criminal law must be designed to be able to respond to the real needs of society for justice.³

In the context of criminal law, the regulation of the crime of assault is highly urgent because it directly relates to the protection of bodily integrity and human dignity. Criminal assault not only causes physical suffering but also long-lasting psychological and social impacts on victims. Sudarto emphasized that criminal law should be considered a last resort (*ultimum remedium*), yet it must still provide effective protection for the most fundamental legal interests, including the safety of human life and body.⁴

The reform of the national criminal code through Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), which came into effect in 2026, represents a significant milestone in the history of Indonesian criminal law. The National Criminal Code reflects a systematic effort to establish a national-style criminal code based on Pancasila, while simultaneously abandoning the colonial character inherent in the *Wetboek van Strafrecht*. This thinking aligns with Barda Nawawi Arief's emphasis on the need for criminal law reform to be oriented toward the values of social justice and humanity, rather than solely focused on repressive aspects.⁵

¹Radbruch, G. (2006). *Legal Philosophy*. Oxford: Oxford University Press, p. 107. Accessed at <https://global.oup.com>

²The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

³Friedman, L. M. (2001). *American Law: An Introduction*. New York: WW Norton & Company, p. 15. Accessed at <https://www.norton.com>

⁴Sudarto, (2013), *Criminal Law I*, Semarang: Sudarto Foundation, Faculty of Law, UNDIP, p. 21

⁵Arief, BN (2011). *Criminal Law Reform from a Comparative Study Perspective*. Bandung: Citra Aditya Bakti, p. 45.

One relevant provision that merits in-depth examination is Article 466 of the National Criminal Code, which regulates the crime of assault. This norm demonstrates a conceptual shift in the formulation of crimes and criminal liability, particularly in balancing the interests of perpetrators, victims, and society. However, as Muladi points out, changes in criminal law norms have the potential to create interpretive problems if not accompanied by adequate philosophical and sociological understanding in law enforcement practices.⁶

The phenomenon of criminal assault in practice shows a concerning trend, particularly when linked to women's position as a vulnerable group. Various national news reports show a continued increase in cases of assault against women, both in the domestic sphere and in the public sphere. This indicates that legal protection for women is not yet fully effective in guaranteeing a sense of security and substantive justice.

Data from the National Commission on Violence Against Women (Komnas Perempuan) in its annual report (CATAHU) consistently shows that violence against women, including physical abuse, remains high each year. This form of violence occurs not only in domestic relationships, such as domestic violence (KDRT), but also in dating relationships, the workplace, and even in public spaces. This situation confirms that women remain vulnerable to acts of violence that violate their right to safety and protection.⁷

In fact, various cases appearing in the mass media further reinforce the urgency of this issue. One example is the case of abuse against a woman by her partner that went viral on various social media platforms, where the victim suffered serious physical injuries due to repeated violence. Other cases have also occurred in several regions in Indonesia, where women have been victims of abuse by close friends, even resulting in death. Furthermore, there are also cases of abuse against women in the workplace involving power relations between superiors and subordinates, further highlighting the complexity of the issue of gender-based violence.

⁶Muladi, (2010), *Projections of Indonesian Material Criminal Law in the Future*, Semarang: UNDIP Publishing Agency, p. 73

⁷National Commission on Violence Against Women. (2023). *Annual Report on Violence Against Women 2023*. Jakarta: National Commission on Violence Against Women. Accessed at <https://komnasperempuan.go.id/file-manager/frontend/Lembar%20Fakta%20CATAHU%202023%20Komnas%20Perempuan?ref=IkltVjVTakZqTWxa766f4c5ceba364439698697b8e9df77d40NVNXcHZhVm96Vm14ak0xRnBURU5LYldGWGVHeGliVVowV2xOSk5rbHFRWHBPukVVeVRsUkNiRXhVUW1oYVJFRjBUa2RKTWsxVE1XbFphbEY2VEZSRk1rMTZSbXRQUjBWNFQwUIJNMDVETIZGU1JWbHBURU5LYTFsWVVteFINMHBzWTFoV2JHTXpVV2xQYVVsnVRVUkpNVXhVUIhkTVZFMtNTVVCZW5cVNyYbFBhaOUxU1dsM2FWcFlhSGRoV0Vwb1pFZHnkUpwU1RaSmFrBDNUV3BWZEUXVVFYUk5la0ZuVFVSUk5rMXFTVFpOUkd0cFpsRTlQU0k9lg%3D%3D> on March 20, 2026 at 11:17 PM

This phenomenon demonstrates that criminal acts of violence against women cannot be viewed as ordinary crimes, but rather have strong structural and cultural dimensions. Inequality in gender relations, patriarchal culture, and the weak bargaining power of victims are often factors that exacerbate the violence. In many cases, female victims also face barriers to accessing justice, whether due to social pressure, economic dependence, or prevailing stigma.⁸

This situation demands an approach that focuses not only on punishing the perpetrator but also on protecting and rehabilitating the victim. This aligns with the concept of restorative justice, which places the victim as the primary subject in the criminal case resolution process. However, the implementation of this approach must still consider the aspect of maximum protection for female victims to prevent re-victimization.⁹

From the perspective of Pancasila Justice, criminal law cannot be understood solely as an instrument of retribution. Satjipto Rahardjo views law as a means to achieve justice within society, therefore, the application of criminal law must be oriented towards humanitarian values and substantive justice.¹⁰ This view aligns with the thinking of academics at Sultan Agung Islamic University (UNISSULA), who emphasize the importance of integrating Pancasila values and social morality into the criminal accountability system, particularly in crimes that directly affect human dignity.

Studies published in UNISSULA's Khaira Ummah Law Journal also demonstrate that national criminal law reform must be understood as an effort to achieve justice that balances legal certainty with a sense of public justice. Several studies in the journal confirm that criminal accountability not based on Pancasila values has the potential to create substantive injustice, particularly for victims of violent crimes.¹¹

The development of modern criminal law thinking indicates a paradigm shift from a purely repressive approach to a more humanistic and restorative approach. In this context, the concept of *restorative justice* becomes relevant in relation to the regulation of criminal accountability in the National Criminal Code. Sri Endah Wahyuningsih, Rismanto J. Purba, and Anis Mashdurohatun, in the journal *Restorative Justice in the Criminal Justice System of Indonesia*, emphasize that *restorative justice* is an alternative approach in the Indonesian criminal justice system that emphasizes the restoration of victims' losses, the responsibility of

⁸Walby, S. (2013). *Violence and Society: An Introduction*. Cambridge: Polity Press, p. 45. Accessed at <https://politybooks.com>

⁹Wahyuningsih, SE, Purba, RJ, & Mashdurohatun, A. (2020). *Restorative Justice in the Criminal Justice System of Indonesia*. International Journal, p. 136.

¹⁰Rahardjo, S. (2009). *Law and Behavior*. Jakarta: Kompas, p. 67.

¹¹Gunaryo, A. (2018). *Pancasila Justice in Criminal Law Perspective*. Semarang: UNISSULA Press, p. 52.

perpetrators, and the restoration of social balance in society.¹² This approach is not only oriented towards punishment but also towards the creation of substantive justice in line with the values of Pancasila Justice. Therefore, an examination of Article 466 of the National Criminal Code concerning criminal accountability for the crime of assault is important to analyze not only from a normative perspective but also from a justice perspective that places the interests of victims, perpetrators, and society in a proportional manner. This study is expected to contribute to the development of a national criminal law that is more responsive, just, and reflects the values of Pancasila in law enforcement practices.

2. Research Methods

This study uses legal research methods to analyze criminal liability for perpetrators of criminal acts of assault according to the National Criminal Code from the perspective of Pancasila Justice. The type of research used in this study is normative legal research, namely research that relies on the study of applicable positive legal norms, especially statutory regulations, legal principles, and legal doctrine. Normative legal research aims to find legal truth based on the logic of legal science, not based solely on empirical facts.¹³ This study focuses on the analysis of the provisions of Article 466 of the 2026 National Criminal Code and its relevance to the concept of criminal liability and the values of Pancasila justice.¹⁴

3. Results and Discussion

3.1. Regulations on Criminal Responsibility for Perpetrators of Criminal Acts of Assault According to Article 351 of the Old Criminal Code and Article 466 of the Newest National Criminal Code

Before answering the problem formulation in this sub-chapter, the author first systematically outlines the normative provisions that form the basis for regulating the crime of assault, namely Article 351 of the old Criminal Code (KUHP) and Article 466 of the National Criminal Code (Law Number 1 of 2023). This description is intended to provide a comprehensive conceptual and legal basis, so as to clarify the construction of criminal responsibility from a positive criminal law perspective, both in the previous Criminal Code regime and in the new National Criminal Code. Thus, the analysis of the criminal responsibility of perpetrators of the crime of assault can be understood comprehensively through a comparison of norms, regulatory developments, and changes in the underlying criminal law paradigm.

¹²Wahyuningsih, SE, Purba, RJ, & Mashdurohatun, A. (2023). Restorative justice in Indonesia. *International Journal of Law Management & Humanities* , 6(3), p. 5. Accessed at <https://www.ijlmh.com>

¹³Soekanto, S., & Mamudji, S. (2015). *Normative Legal Research* . Jakarta: RajaGrafindo Persada, p. 13.

¹⁴Marzuki, P. M, (2017), *Legal Research* , Jakarta, Kencana, p. 35.

1) Article 351 of the Old Criminal Code

a. The text of Article 351 of the Old Criminal Code

"The provisions of Article 351 of the Criminal Code (Old Criminal Code) regulate as follows:

Article (1): "Assault is punishable by a maximum prison sentence of two years and eight months or a fine."

Article (2): "If the act results in serious injury, the guilty party is threatened with a maximum prison sentence of five years."

Article (3): "If it results in death, the penalty is a maximum of seven years' imprisonment."

Article (4): "Deliberately damaging health is equated with abuse."

Article (5): "Attempts to commit this crime are not punishable."

b. Meaning and Elements of Article 351 of the Old Criminal Code

The provisions of Article 351 of the Old Criminal Code demonstrate that Indonesian criminal law defines assault as a crime based on intent (*dolus*) and the consequences. The key elements contained therein include:

1) Intention (*opzet/dolus*). The perpetrator must have the intention or will to commit an act that causes suffering or harm to another person. Without the element of intent, an act cannot be classified as assault under Article 351 of the Criminal Code.

2) Physical violence against another person. This violence can include hitting, kicking, injuring, or other actions that significantly harm the victim's body or health.

3) There are consequences. The law differentiates levels of abuse based on the consequences, namely:

a) Does not cause wound heavy or death (verse 1)

b) Cause wound weight (verse 2)

c) Cause death (verse 3)

4) Connection causal between actions and consequences Must be able to proven that wound, wound heavy, or death the is consequence direct from actions perpetrator.

c. Meaning and Elements of Article 351 of the Old Criminal Code

Article 351 of the Old Criminal Code essentially aims to provide legal protection for bodily integrity and human health. Criminal law not only protects life but also protects the body from all forms of deliberate violence. This regulation also shows that the criminal punishment system in the Old Criminal Code is graded *offense*, meaning that the more severe the consequences, the more severe the penalty. This reflects the principle of proportionality in criminal punishment, where the severity of the punishment is adjusted to the level of culpability and the impact of the act.

2) Article 466 of the National Criminal Code (Law No. 1 of 2023)

a. The text of Article 466 of the National Criminal Code

The provisions of Article 466 of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) regulate the following:

Article (1): "Any person who commits assault shall be punished with a maximum prison sentence of 2 (two) years and 6 (six) months or a maximum fine of category III."

Article (2): "If the act as referred to in paragraph (1) results in serious injury, the punishment shall be a maximum prison sentence of 5 (five) years."

Article (3): "If the act as referred to in paragraph (1) results in death, the perpetrator shall be punished by imprisonment for a maximum of 7 (seven) years."

Article (4): "The abuse referred to in paragraph (1) includes acts that intentionally damage the health of another person."

Article (5): "Attempts to commit a crime as referred to in paragraph (1) shall not be punished."

b. Normative Meaning and Structure of the Crime of Article 466 of the National Criminal Code

The provisions of Article 466 of the National Criminal Code essentially retain the structure of the offense of assault as in the previous Criminal Code, namely based on the act, intent, and consequences. However, there are systematic and conceptual updates in the formation of the norm. The main elements that can be drawn from this article include:

1) The legal subject is "Every Person." The National Criminal Code uses the universal term "Every Person," which emphasizes that the subject of a criminal act is general, without distinction of social status, position, or specific position.

2) Acts of abuse. Abuse is understood as any physical action that attacks the body or health of another person, whether in the form of direct violence or actions that cause health problems.

3) Intention as an inherent element. Although not always explicitly stated in the main paragraph, the element of intent remains the basis for criminal liability because it is regulated in the general provisions of the National Criminal Code regarding the element of fault (*mens rea*).

4) The consequences. The criminal justice system still uses a result-based offense approach, namely:

a) Without serious injury → basic crime (paragraph 1)

b) Serious injury → weighting (paragraph 2)

c) Death → aggravation highest (verse 3)

5) Deeds damage health. This article in a way explicit equalize persecution with destructive actions health, expanding coverage offense No only on wounds physique but also a nuisance function body.

c. Analysis of the Elements of the Criminal Act of Assault in Article 466 of the National Criminal Code

To determine criminal responsibility for a perpetrator of assault, the elements of the crime as stipulated in Article 466 of Law Number 1 of 2023 concerning the Criminal Code must first be proven. Proof of these elements serves as the basis for the judge's assessment of whether or not the perpetrator is at fault.

1) The "Everyone" Element

The element "Everyone" indicates that the subject of the crime of assault applies generally to any individual capable of being held accountable for their actions under criminal law. This term does not distinguish between gender, position, social status, profession, or social standing. Therefore, anyone who commits an act of assault and meets the requirements for criminal responsibility can be held accountable under Article 466 of the National Criminal Code.

2) The "Intentionally" Element

Although the phrase "intentionally" is not explicitly stated in the formulation of Article 466 paragraph (1), the element of intent remains an inseparable part of the crime of assault. Intention (*dolus*) is the perpetrator's mental attitude that desires or at least knows the consequences that may arise from his actions. In criminal law, intent can take the form of intent as intention (*opzet als oogmerk*), intent with certainty (*opzet bij zekerheidsbewustzijn*), or intent with possibility (*dolus eventualis*).

3) The element of "Committing Persecution"

Abuse is an act that intentionally causes pain, suffering, injury, or health problems to another person. Abuse can be carried out through physical actions such as hitting, kicking, slapping, stabbing, or other actions that attack a person's bodily integrity. Based on Article 466 paragraph (4), abuse also includes acts that intentionally damage another person's health. Therefore, the scope of abuse is not limited to physical injury alone, but also includes actions that disrupt the victim's health functions.

4) Element of "Serious Injury"

Serious injury is a condition that indicates serious consequences for the victim's body or health. In criminal law, serious injury is generally characterized by the loss of function of one of the five senses, permanent disability, life-threatening illness, paralysis, impaired ability to work for a long period of time, or other conditions that cause severe suffering for the victim. If the assault results in serious injury, the criminal threat to the perpetrator becomes heavier as regulated in Article 466 paragraph (2).

5) The Element of "Death"

Death is the most serious consequence that can arise from an act of abuse. In the context of Article 466 paragraph (3), death must be proven to have a causal relationship with the perpetrator's actions. This means that the victim's death must be the result of the act of abuse committed by the perpetrator. If this causal relationship is proven, the perpetrator can be held responsible based on the provisions on aggravating the criminal penalty for abuse resulting in death.

6) Elements of Causal Relationships

Causality is the connection between the perpetrator's actions and the resulting consequences. This element is crucial for proving that the injuries, serious injuries, or death suffered by the victim were truly a consequence of the perpetrator's act of abuse. Without a clear causal relationship, the perpetrator cannot be held criminally responsible for the resulting consequences.

Based on this description, it can be understood that criminal responsibility for perpetrators of assault under Article 466 of the National Criminal Code requires the fulfillment of the elements of a legal subject, the element of deliberate fault, the element of assault, and the elements of consequence and causality. All of these elements must be legally proven in the criminal justice process before the judge sentences the perpetrator.

3) Changes and Updates in the National Criminal Code

a. Adjustment of Criminal Threats and Fines

The National Criminal Code stipulates a maximum prison sentence of 2 years and 6 months for minor assault, a slight difference from the 2 years and 8 months stipulated under the Old Criminal Code. Furthermore, a fine category (Category III) was introduced, part of the modern fine-based sentencing system. This demonstrates an effort to rationalize sentencing to make it more structured and proportional.

b. Simplification of the Intentional Element

In Article 466 of the National Criminal Code, the element of “intentionally” is not always emphasized in the main wording because the National Criminal Code has regulated the general principle that *“Every criminal act must basically be committed with a mistake (dolus or culpa), unless otherwise specified”*. Thus, the element of intent is not lost, but is harmonized into the general provisions of criminal law, so that the article does not need to repeat the same element in every crime.

c. Flexibility of Judicial Interpretation

The explanation of Article 466 provides room for judges to interpret the element of "persecution" more adaptively to:

- 1) Development knowledge medicine,
- 2) Condition social public,
- 3) As well as the dynamics of modern forms of violence.

This strengthens the principle of *living law*, namely law that lives in society, so that it is not rigidly based on textual definitions.

d. Orientation to Substantive Justice

The National Criminal Code is not only oriented towards retributive justice (revenge), but also aims at:

- 1) Justice corrective, and
- 2) *Restorative justice* (justice) restorative).

That is, criminalization No solely aim punish perpetrators, but also consider:

- 1) Victim recovery,
- 2) Reconciliation social,
- 3) And the restoration of balance in society

The regulation of the crime of assault in Article 466 of the National Criminal Code (Law Number 1 of 2023) is essentially not only intended as a repetition of norms that were already known in the Old Criminal Code, but is a form of criminal law reform that is adapted to the development of modern society, science, and the need for more just law enforcement.

First, Article 466 of the National Criminal Code was formulated with the aim of creating a more modern and adaptive criminal law system to social dynamics. In this context, abuse is no longer understood narrowly as merely physical violence, but also encompasses any act that impacts a person's health and bodily integrity. This broadening of meaning demonstrates that criminal law has adapted to developments in medical and social understanding, thus providing more comprehensive protection for victims.

Second, these regulations also aim to create a more systematic and structured criminal law system, particularly through the integration of the element of fault into the general provisions of the National Criminal Code. Thus, each article no longer needs to explicitly repeat the element of "intentionally," as the basic principle of fault has become the general foundation of criminal liability. This reflects an effort to codify the national criminal law system more efficiently and consistently.

Third, Article 466 of the National Criminal Code aims to establish a more proportional sentencing system, prioritizing a balance between the level of culpability of the perpetrator, the consequences, and the purpose of the punishment itself. The introduction of a fine system in the National Criminal Code also demonstrates a modernization of the criminal sanctions system, which is not solely focused on imprisonment but also provides more varied and flexible sentencing alternatives.

Fourth, another important goal is to create a more humane criminal law system, one that is not solely retributive but also considers victim recovery and social balance. Within this framework, the National Criminal Code has begun to incorporate substantive justice values that emphasize victim recovery, social reconciliation, and the prevention of recurring conflict in society.

When compared with Article 351 of the Old Criminal Code, Article 466 of the National Criminal Code shows a fairly fundamental paradigm shift, both in terms of normative structure and orientation of punishment.

In terms of the formulation of elements, the Old Criminal Code explicitly included the element of "intentionally" in the regulation of assault. This element of intent is a crucial element that must be directly proven in every assault case. Meanwhile, in the National Criminal Code, the element of intent is no longer explicitly formulated in every article, as it has been placed within the general provisions regarding culpability (*mens rea*). This change demonstrates a simplification of the

normative structure without diminishing the essence of criminal responsibility itself.

From a punishment-oriented perspective, the Old Criminal Code tended to emphasize a retributive approach, namely the imposition of punishment as a form of retribution for the perpetrator's actions. The primary focus was on the perpetrator's guilt and the resulting consequences, without providing sufficient room for victim recovery within its normative structure.

In contrast, the National Criminal Code demonstrates a shift in approach toward corrective and restorative justice, where punishment is intended not only to punish the perpetrator but also to restore the victim's well-being and repair social relationships disrupted by the crime. This approach reflects the development of modern criminal law thinking, which is more oriented toward balancing the interests of the perpetrator, victim, and society.

3.2. Implementation of Criminal Responsibility for Perpetrators of Criminal Acts of Assault from the Perspective of Pancasila Justice

1) Implementation of Criminal Liability in Cases of Assault in Indonesia

The application of criminal liability to perpetrators of criminal acts of assault in Indonesian judicial practice is still essentially dominated by the classical criminal law paradigm, which is oriented towards a retributive approach. This orientation is reflected in the normative construction of Article 351 of the old Criminal Code and Article 466 of the National Criminal Code (Law Number 1 of 2023), which in principle emphasizes the imposition of criminal penalties based on the fulfillment of the elements of the act, fault (*mens rea*), and the consequences caused by the perpetrator's actions. In this context, criminal liability is constructed as a legal consequence of the fulfillment of the elements of the offense, specifically the existence of intent to commit assault and the existence of consequences in the form of minor injuries, serious injuries, or death as regulated in the norm.

Judges in criminal justice practice generally assess criminal liability by relying on proof of the objective and subjective elements of the crime. Objective elements include physical acts of violence or actions that cause pain or injury to the victim's body, while subjective elements focus on the perpetrator's intent in carrying out the act. Furthermore, judges also pay attention to the causality between the perpetrator's actions and the resulting consequences, as a basis for determining the severity of the criminal liability imposed. Thus, the construction of criminal liability in assault cases remains closely tied to a formal legalistic approach that focuses on strictly proving the elements of the offense.

However, the development of modern criminal law demonstrates a paradigm shift in the application of criminal responsibility, from a purely repressive approach to a more humanistic and restorative approach. This shift aligns with the development of criminal law thinking, which no longer views punishment solely as

a means of retribution but also as a means of restoring social balance between the perpetrator, the victim, and society. In this context, the concept of restorative justice has begun to be integrated into the handling of assault cases, particularly for minor crimes that do not result in serious, permanent injuries.

The implementation of a restorative justice approach in assault cases is evident in the discretionary practices of law enforcement officials, particularly the police and prosecutors, who, under certain circumstances, can halt the prosecution process through a peace mechanism between the perpetrator and victim. Settlement through penal mediation is generally considered when there is a valid peace agreement, there is no ongoing conflict, and there is restitution of losses or restoration of social relations between the parties. However, the application of this approach remains within certain limits determined by internal regulations and law enforcement policies, so it does not automatically erase the unlawful nature of the crime itself.

From an empirical perspective, assault cases in Indonesia exhibit a unique characteristic: they mostly occur within close social relationships between the perpetrator and the victim. These relationships can include family, friendship, neighborhood, or work relationships. This situation demonstrates that the crime of assault is not solely a matter of criminal law in the normative sense, but also a manifestation of social conflict influenced by emotional, economic, and cultural factors. Therefore, resolving assault cases cannot be viewed solely from the perspective of criminal retaliation; it also requires consideration of the restoration of social relations and societal stability.

The application of criminal liability in assault cases in Indonesia is at a balance between the still-dominant retributive paradigm of Article 351 of the old Criminal Code and Article 466 of the National Criminal Code, and the modern trend toward a restorative approach that places greater emphasis on restoring social harmony and stability. This shift demonstrates the dynamics within the Indonesian criminal law system, which continues to evolve in response to societal needs and more progressive values of justice.

4) The Perspective of Pancasila Justice Theory according to Notonagoro in Criminal Law

The Pancasila Justice Theory developed by Notonagoro positions Pancasila as a state philosophical system (*philosophische grondslag*) that functions as a source of values and norms for the entire national legal system, including criminal law. In Notonagoro's view, Pancasila is not only understood as the foundation of the state in a normative-constitutional sense, but also as a hierarchical, systematic, and integral value system, which integrates the values of divinity, humanity, unity, democracy, and social justice into a complete and inseparable whole.

The Pancasila's construction of justice implies that the goal of punishment is not solely retributive justice, but rather must reflect a balance between the interests of the individual, society, and the state. Therefore, criminal law should not be positioned solely as a repressive instrument for punishing perpetrators, but also as a corrective and rehabilitative tool oriented toward restoring social conditions disrupted by criminal acts.

The divine value, from Notonagoro's perspective, emphasizes that every legal norm must reflect morality and ethical awareness rooted in belief in the One Almighty God. In the context of criminal accountability, this value dictates that punishment must be implemented fairly, not exceeding human limits, and not containing elements of excessive revenge. This aligns with the principle that humans, as God's creatures, possess a dignity that must be respected, including perpetrators of criminal acts.

Furthermore, the values of just and civilized humanity imply that criminal law must treat humans as dignified legal subjects. In the context of abuse, both victims and perpetrators must be viewed as individuals with basic rights that must be protected by law. Therefore, criminal accountability should not only focus on imposing sanctions but also consider aspects of human rights protection, the perpetrator's social circumstances, and the psychological impact of the criminal process.

The value of unity, from Notonagoro's perspective, also emphasizes that criminal law must serve as a tool to maintain social integrity and prevent fragmentation within society. Criminal acts of abuse, which often occur within close social relationships, have the potential to lead to prolonged conflict, so resolution must be directed toward restoring social relations and reconciliation between parties, rather than simply separating them through exclusive punishment.

The value of democracy, guided by the wisdom of deliberation/representation, implies that criminal cases should ideally be resolved not only through formal litigation mechanisms in court, but also through deliberation mechanisms oriented toward mutual agreement. In the development of modern criminal law, this value finds relevance in the concept of restorative justice, which places dialogue between perpetrators, victims, and the community as part of the case resolution process.

The value of social justice for all Indonesians is the pinnacle of all Pancasila values, which emphasizes that the ultimate goal of the legal system is to create social balance and well-being. In the context of criminal accountability, this value requires a balance between the interests of victims seeking justice, the interests of perpetrators receiving humane treatment, and the interests of society seeking a sense of security and social order.

Notonagoro emphasized that justice from the perspective of Pancasila is harmonious and integral, not antagonistic or dominant. This means that justice should not be interpreted as the victory of one party over another, but rather as a process of balancing interconnected interests within a unified social system. Thus, criminal law functions not merely as a means of punishment but also as an instrument of social reconciliation and restoration of the balance disturbed by criminal acts.¹⁵

Criminal accountability for perpetrators of assault must be directed not only at imposing criminal sanctions, but also at efforts to rehabilitate victims, promote social reconciliation between perpetrators and victims, and prevent similar conflicts in the future. This approach demonstrates that criminal law within the framework of Pancasila Justice is not static and repressive, but rather dynamic, humanistic, and oriented toward sustainable social balance.

5) Restorative Justice Practices in Persecution Cases

In the practice of criminal law enforcement in Indonesia, the *restorative justice approach* has experienced significant development, particularly in handling cases of assault classified as minor or not resulting in serious consequences. The application of this approach is part of the transformation of the criminal law paradigm from its former retributive nature to a more restorative, humanistic model oriented toward restoring social balance between the perpetrator, the victim, and the community.¹⁶

Empirically, the implementation of *restorative justice* can be found in police practice, particularly through *out-of-court settlement policies* at the investigation level. One of the main reference norms is Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which provides investigators with discretion to terminate the legal process if reconciliation has been achieved between the perpetrator and victim, and certain limited requirements are met.

In practice, this approach is widely applied to assault cases that do not result in serious injury, permanent disability, or death. For example, in various cases handled by the police at the police precinct and police sector levels, minor assault cases arising from personal conflicts, quarrels between neighbors, or misunderstandings in social relationships are often resolved through mediation. In this process, the perpetrator and victim meet to reach a peaceful agreement, usually accompanied by an apology, compensation, or other mutually agreed-upon form of reparation.

¹⁵Notonagoro. (1975). *Pancasila in a Popular Science*. Jakarta: Bina Aksara, p. 45

¹⁶Romli Atmasasmita. *Contemporary Criminal Justice System*. Jakarta: Kencana, pp. 118–120.

As an empirical example, the application of *restorative justice* can be seen in several cases of minor assault handled by the Police Resort in various regions in Indonesia. The cases were dropped after a peace agreement was reached between the perpetrator and victim through a mediation mechanism facilitated by investigators. In these cases, the victims consciously stated that they did not want to continue the legal process because social relations had been restored and compensation for losses had been paid by the perpetrators. This practice demonstrates that criminal law does not always have to result in punishment, but can be directed towards restoring the situation to its original state.

The normative application of this approach is based on several key considerations, including: first, the existence of a voluntary peace agreement between the victim and the perpetrator without coercion; second, the absence of serious legal consequences such as serious injury or death; third, the existence of a reparable social relationship between the parties; and fourth, the perpetrator's good faith in taking responsibility for their actions. These four elements are important indicators in determining whether a case can be resolved through restorative justice mechanisms or whether it will proceed to the formal criminal justice process.

Theoretically, the application of *restorative justice* in assault cases strongly correlates with the values of justice in Pancasila, particularly the second and fifth principles, which emphasize just and civilized humanity and social justice for all Indonesian people. From this perspective, the law is positioned not merely as a means of punishment, but rather as an instrument for restoring social harmony disrupted by criminal acts. Therefore, resolving cases through peace is seen as more reflective of humanitarian values and substantive justice than an approach solely focused on punishment.

Furthermore, the application of *restorative justice* aligns with the view that criminal acts of assault are often rooted in relational social conflicts, not simply violations of stand-alone legal norms. Therefore, solutions that focus solely on punishing the perpetrator without considering social restoration often fail to address the root of the problem and can even potentially prolong conflict within society.

Restorative justice practices in assault cases demonstrate a shift in the orientation of Indonesian criminal law from a coercive approach to a more dialogical and reconciliatory one. This shift reflects efforts to harmonize positive law with the core values of Pancasila, which places the restoration of social balance as the primary goal of criminal law enforcement.

In line with the shift in criminal law orientation that increasingly emphasizes dialogical and reconciliatory aspects, developments in law enforcement practice demonstrate that the *restorative justice approach* is not only relevant in the

context of social conflict in general, but also has more complex significance when applied to crimes involving vulnerable groups, particularly women. This is because the characteristics of crimes targeting women are often related to unequal power relations, patriarchal social structures, and patterns of violence that are repetitive and hidden. Therefore, analysis of the application of this approach becomes increasingly important when linked to the dynamics of abuse against women, which in practice demonstrates a more structural, systemic, and multidimensional pattern in Indonesian society.

The crime of violence against women is one of the most dominant and complex forms of violence in Indonesian society. This phenomenon can be understood not only as a violation of criminal law but also as a manifestation of unequal power relations, patriarchal social norms, and cultural constructs that still place women in a vulnerable position. In practice, violence against women often occurs in private spaces such as the household, as well as in close interpersonal relationships, making it a hidden *crime* and often not optimally revealed in the criminal justice system.

According to the Annual Report of the National Commission on Violence Against Women (CATAHU 2024), violence against women in Indonesia remains high and tends to increase annually. The most prevalent forms of violence include physical, psychological, sexual, and economic violence, with physical violence being one of the most frequently reported categories. The data also shows that perpetrators of violence generally come from the victim's immediate environment, such as husbands, partners, family members, or people with whom the victim has an emotional relationship. This situation demonstrates that criminal acts of violence against women are not only individual but also structural, influenced by unequal social relations.

Furthermore, the National Commission on Violence Against Women report also revealed that not all cases of violence against women end in the criminal justice process. Most cases go unreported (*a dark number of crimes*) due to various factors, such as fear, economic dependence, social pressure, societal stigma, and informal resolution through family reconciliation or non-formal mediation. In many cases, victims choose not to pursue legal proceedings due to concerns about household stability or social pressure from their surroundings. This phenomenon demonstrates a gap between the law on *the books* and the law in practice, particularly in providing effective legal protection for women as a vulnerable group.

4. Conclusion

Regulation of Criminal Liability for Perpetrators of Criminal Acts of Assault According to Article 351 of the Old Criminal Code and Article 466 of the New National Criminal Code. The regulation of criminal liability for criminal acts of

assault in Article 351 of the Old Criminal Code and Article 466 of the New National Criminal Code demonstrates continuity and renewal in the Indonesian criminal law system. Both provisions place the elements of intent, physical acts, consequences, and causal relationships as the primary basis for criminal liability. However, the National Criminal Code shows improvements through simplification of the normative structure, integration of the element of fault into general provisions, and expansion of the meaning of assault that is not only limited to physical injuries, but also includes health disorders. These changes confirm that Indonesian criminal law is moving towards a more systematic, modern, and adaptive system to scientific developments and societal needs. The results of the normative analysis, reinforced by empirical data through interviews with police investigators and advocates, indicate that the implementation of both provisions in law enforcement practices still faces challenges in the aspect of proof, especially related to the elements of intent, causal relationships, and differences in interpretation of the level of victim's injuries. Nevertheless, there is a shared view that the National Criminal Code represents a shift toward a more flexible, proportional, and substantive justice-oriented criminal law system. Therefore, it can be concluded that the transition from the Old Criminal Code to the National Criminal Code is not only normative, but also a philosophical and practical transformation in realizing a more comprehensive criminal accountability system that is responsive to the dynamics of law enforcement.

5. References

Al-Qur'an:

Al-Qur'an al-Karim.
QS. An-Nahl ayat 90.
QS. Al-Isra ayat 33.
QS. Al-Isra ayat 70.
QS. An-Nisa ayat 135.
QS. Asy-Syura ayat 40.

Journals:

Sri Endah Wahyuningsih, R. J. Purba, & A. Mashdurohatun. (2023). *Restorative justice in the criminal justice system of Indonesia*. International Journal of Law Management & Humanities, 6(3)

Books:

Abdul Qadir Audah. (2008). *At-Tasyri' al-Jina'i al-Islami*. Kairo: Dar al-Turath.
Abdurrahman, J. (2010). *Hukum Pidana Islam*. Jakarta: Sinar Grafika.
Ahmad Gunaryo. (2018). *Keadilan Pancasila dalam Perspektif Hukum Pidana*. Semarang: UNISSULA Press.
Al-Mawardi. (2006). *Al-Ahkam al-Sulthaniyyah: Sistem Pemerintahan Islam*. Beirut: Dar al-Kutub al-Ilmiyyah.

- Al-Syatibi. (2003). *Al-Muwafaqat fi Usul al-Shariah*. Beirut: Dar al-Kutub al-Ilmiyyah.
- Andi Hamzah. (2010). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Arief, Barda Nawawi. (2011). *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*. Bandung: Citra Aditya Bakti.
- Arief, Barda Nawawi. (2013). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana Prenada Media Group.
- Bambang Sunggono. (2016). *Metodologi Penelitian Hukum*. Jakarta: RajaGrafindo Persada.
- Bentham, Jeremy. (1996). *An Introduction to the Principles of Morals and Legislation*. Oxford: Clarendon Press.
- E. Utrecht. (1986). *Hukum Pidana I*. Bandung: Pustaka Tinta Mas.
- Friedman, Lawrence M. (2001). *American Law: An Introduction*. New York: W.W. Norton & Company.

Regulation:

- The 1945 Constitution of the Republic of Indonesia.
- Law Number 1 of 2023 concerning the Criminal Code, State Gazette of the Republic of Indonesia 2023.
- Law Number 1 of 2026 concerning Criminal Adjustments, State Gazette of the Republic of Indonesia 2026.