

Legal Analysis of Criminal Punishment of The Criminal Act of Assault Based on The National Criminal Code (Law Number 1 of 2023) from a Justice Perspective

Azhar Ghazi Saepuloh

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

Abstract. *This study aims to analyze the implementation, issues, and challenges in the application of sentencing for assault offenses under the Indonesian Criminal Code (Law Number 1 of 2023) from a justice perspective. The reform of the National Criminal Code reflects a paradigm shift in sentencing from a retributive approach toward a more integrative one, accommodating victim protection, offender rehabilitation, and the restoration of social balance. This indicates that the modern criminal justice system in Indonesia increasingly emphasizes substantive justice as a primary objective in law enforcement. The research employs a normative juridical approach supported by conceptual and statutory approaches. Data were obtained through library research and analyzed qualitatively. The findings reveal that the regulation of sentencing for assault offenses in the National Criminal Code has been systematically structured based on the principles of legality, culpability, and proportionality. However, in practice, several issues persist, including broad interpretative space in determining the classification of injuries, difficulties in proving elements of fault, and the potential for sentencing disparities. Furthermore, the application of the restorative justice approach in assault cases has not yet been fully optimized and continues to raise debates regarding the balance between the interests of victims and offenders. Other challenges include the limited capacity of law enforcement officers, the absence of comprehensive technical guidelines, and the suboptimal protection of victims. Therefore, optimization efforts are required through strengthening the capacity of law enforcement, developing judicial guidelines, and enhancing a more comprehensive victim protection system, in order to achieve judgment that is not only formal but also substantive, humane, and dignified.*

Keywords: Assault; Sentencing; Substantive Justice.

1. Introduction

The reform of criminal law through the enactment of the National Criminal Code (Law No. 1 of 2023) demonstrates a conceptual transformation in understanding the punishment of assault, from a purely retaliatory orientation to a broader social protection instrument. Punishment is now viewed not only as a state response to unlawful acts but also as a means to achieve social harmony, victim recovery, and the moral improvement of perpetrators. This orientation reflects the implementation of substantive justice, which emphasizes material justice over mere formal certainty.¹

Philosophically, the principle of a democratic state based on the rule of law demands that criminal penalties respect human dignity as subjects entitled to legal protection. This is enshrined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that government is organized based on law (*Rechtsstaat*). This provision forms the moral basis that every criminal act, including assault, must be treated fairly in accordance with the inherent human values of each individual.²

The value of substantive justice also stems from the fundamental values of Pancasila, which positions humans as dignified and individual beings within the national culture. This thinking demands that punishment be assessed not only based on the degree of wrongdoing or consequences of the act, but also on the actual impact on the victim and social relationships within the community.

Within the legal framework, the crime of assault is explicitly regulated in the National Criminal Code. For example, Article 466 of the National Criminal Code establishes the basic provisions for assault, while subsequent articles address assault with more serious consequences, including serious injury and death. Furthermore, the provisions on participation in the crime, as stipulated in Article 20 of the National Criminal Code, also demonstrate the complexity of criminal liability in cases of assault.³

The legal phenomenon of assault crimes in practice shows a persistent intensity, and in fact, tends to increase in line with the complexity of social relations in modern society. Police and judicial data show that assault cases rank among the highest in statistics for crimes against the body, with incident patterns ranging from fights between individuals and domestic violence to clashes motivated by communal disputes. This reality confirms that assault is not merely a normative

¹Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, Kencana, Jakarta, 2016, p. 23.

²Jimly Asshiddiqie, *The Constitution and Constitutionalism of Indonesia*, Sinar Grafika, Jakarta, 2014, p. 152.

³See Article 466 and Article 20 of Law Number 1 of 2023 concerning the Criminal Code (State Gazette of the Republic of Indonesia of 2023 Number 1).

issue on paper, but rather a concrete legal event arising from the dynamics of everyday social conflict.

To clarify how a factual event transforms into a legal event, a common pattern of incidents can be examined. A dispute that begins as a verbal argument often escalates into physical contact when one party hits, kicks, or attacks the victim with an object. These deliberate acts, which cause pain, injury, or even death, legally fulfill the elements of the crime of assault. At this point, a social event transforms into a legal event, as the act violates the prohibitions outlined in criminal law.

The legal consequences of such incidents are multi-layered and not singular. For the perpetrator, the consequence is criminal liability, which can result in imprisonment or other penalties depending on the severity of the injuries. For the victim, the consequences include not only physical suffering but also psychological trauma and material losses that require reparation. Meanwhile, for the state, such incidents require law enforcement officials to initiate the criminal justice process, from investigation and prosecution to sentencing, as a form of responsibility to maintain order and protect the rights of its citizens. This series of legal consequences demands that the criminal provisions for assault be implemented proportionally and fairly.

This provision not only emphasizes the prohibition against acts of assault, but also requires that criminal responsibility be formulated based on the quality of the fault (*culpa*), the consequences, and the proportionality of the sanction. This approach leads to the imposition of just and balanced punishment, commensurate with the degree of culpability of the perpetrator.

Sociologically, the crime of assault remains a significant phenomenon in contemporary social life. Empirical data from various research institutions shows a relatively high incidence of assault, including in the context of interpersonal violence, domestic violence, and social conflict, which impacts the physical and psychological health of victims.

This phenomenon creates a perception of injustice in society when punishment focuses solely on legal formalities without considering the social context and the victim's overall experience. Social dissatisfaction with criminal decisions perceived as insufficiently repressive or inadequate can create a sense of insecurity and diminish the legitimacy of the criminal justice system in the public eye.

In criminal justice practice, the application of a restorative justice approach to assault cases has shown a tendency to impose relatively light sentences. This approach essentially aims to restore the relationship between the perpetrator and the victim and restore the social balance disturbed by the crime. However, its implementation often gives rise to the public perception that such punishment

does not fully reflect a sense of justice, particularly when the victim's suffering is not adequately addressed.⁴

This situation demonstrates a gap between the normative objectives of punishment, which emphasize substantive justice, and the reality of its application in criminal justice practice. This gap is evident in efforts to balance the interests of perpetrators and victims, so that punishment not only fulfills formal legality but also provides moral and social legitimacy within society.

This normative gap does not stop at the abstract level, but can be traced concretely through court decisions that have permanent legal force (*inkracht van gewijsde*). One recent example that is relevant to note is the Bengkulu District Court Decision Number 35/Pid.B/2026/PN Bgl. This case places Riko Dwi Irawan alias Riko as a defendant who is accused of committing the crime of assault against Herfaldi Pratama Putra alias Paldi, who is still related to the defendant. This case serves as an empirical illustration of how the provisions of Article 466 paragraph (1) of the National Criminal Code are applied factually by the judge.⁵

The incident began on June 25, 2025, at around 10:00 PM WIB, when the defendant received a call from his father informing him that the victim had hit his father. Driven by anger and emotion, the defendant went to the victim's grandmother's house. After a verbal argument, the defendant took off his helmet and hit the victim twice on the head. As a result of the beating, the victim suffered a head injury that required medical treatment in the form of stitches. The incident was witnessed by several people who then separated the defendant and the victim.

This series of facts demonstrates the transformation of a social incident into a legal one, as previously described. Although the parties attempted to reach a settlement, the victim continued to file a police report, resulting in the case proceeding to trial. During the trial, the defendant admitted his actions, expressed regret, and apologized to the victim. This fact demonstrates that there is indeed room for reconciliation between the parties, but it does not necessarily absolve the defendant of his criminal responsibility.

The panel of judges finally declared that the defendant was legally and convincingly proven to have committed the crime of assault as regulated in Article 466 paragraph (1) of the National Criminal Code. In its considerations, the judges placed a number of aggravating circumstances, namely the victim suffered injuries, the defendant's actions caused public unrest, and the defendant had previously been convicted. On the other hand, mitigating circumstances included

⁴Eva Achjani Zulfa, *Restorative Justice*, Publishing Agency of the Faculty of Law, University of Indonesia, Depok, 2011, p. 65.

⁵Bengkulu District Court Decision Number 35/Pid.B/2026/PN Bgl, as published in the Directory of Decisions of the Supreme Court of the Republic of Indonesia (putusan3.mahkamahagung.go.id).

frank confession, remorse, apology, polite behavior during the trial, and the presence of family responsibilities. Based on these considerations, the defendant was sentenced to 1 (one) year and 2 (two) months in prison, with the entire detention period deducted, the defendant remained in detention, and the helmet used as a tool of assault was confiscated for destruction.

Decision Number 35/Pid.B/2026/PN Bgl provides a concrete illustration of how judges assess the proportionality of punishment in assault cases under the National Criminal Code. On the one hand, this decision demonstrates the application of the principle of culpability and consideration of the gradation of the victim's injuries; on the other hand, the presence of mitigating circumstances in the form of regret and efforts to reconcile confirms that the restorative dimension has been included in the judge's sentencing reasoning. It is precisely at this point that the question arises that needs to be examined: the extent to which the punishment imposed reflects substantive justice that balances the interests of the victim, the perpetrator, and society.

To clarify the problem and assess the direction of reform Indonesia is taking, the provisions on criminalizing assault in the National Criminal Code need to be read alongside the foreign legal traditions that serve as historical references. Such a comparison is not intended to simply transfer foreign norms, but rather to demonstrate that the tension between formal and substantive justice is also faced by other legal systems, with varying solutions.

In the Dutch legal system, mishandeling is regulated by Articles 300 to 306 of the Criminal Code, which historically served as the parent of Article 351 and beyond in the old Criminal Code. The conflict that arises there is relatively similar, namely how to measure the severity of sanctions based on the gradation of injuries, but the resolution emphasizes the transaction mechanism and prosecutorial discretion (*opportuiniteitsbeginsel*) as a balancing valve. The fundamental difference lies in the orientation of the National Criminal Code, which links punishment to the goals of social restoration and balance, rather than merely prosecutorial efficiency.⁶

German criminal law places assault (*Körperverletzung*) under § 223 to § 227 of the *Strafgesetzbuch*, with a strong emphasis on the principle of culpability (*Schuldprinzip*) and the proportionality of punishment. The tension between certainty and justice is mitigated through the formulation of detailed gradations and the discretion of judges to assess *Strafzumessung* based on the perpetrator's concrete culpability. This approach is in line with the spirit of the National Criminal Code, which also adheres to the principle of no punishment without

⁶Jan Rummelink, *Criminal Law: Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code*, Gramedia Pustaka Utama, Jakarta, 2003, p. 344.

fault (*geen straf zonder schuld*), making it a relevant comparison for assessing whether the gradation of sanctions for assault in Indonesia is sufficiently proportional.

Meanwhile, Malaysia, through its Penal Code (Act 574), specifically Sections 319 to 338 concerning hurt and grievous hurt, represents a common law tradition that distinguishes between the qualifications of injuries based on case-by-case basis. Justice issues there are often resolved through plea bargaining and victim compensation, a space that, in the Indonesian context, is precisely what the restorative justice approach seeks to fill. This comparison demonstrates that the issues facing the National Criminal Code are not merely local, but rather a general struggle in linking criminal accountability with victim reparation.

Based on this comparison, it appears that almost all legal systems strive to reconcile certainty and justice, but with different instruments. It is precisely at this point that the gap in Indonesian criminal justice practice becomes more apparent: the orientation of substantive justice and restoration adopted by the National Criminal Code is not fully supported by adequate procedural tools as possessed by comparative jurisdictions. This gap between normative ideals and the reality of implementation is both a conflict of norms and the focus of the issues to be examined in this research, as also reflected in Decision Number 35/Pid.B/2026/PN Bgl above.

The development of modern criminal justice theory has shifted from a retributive justice paradigm to corrective and restorative approaches, which emphasize the need to repair social impacts rather than simply administering punishment. Cesare Beccaria's thinking, for example, highlights the importance of proportionality between the act and the punishment as part of civilized law.⁷

Within the national criminal law tradition, punishment is also understood as a means of protecting society, not merely a means of retribution. Barda Nawawi Arief emphasized that criminal policy must maintain a balance between the need for social protection and humanitarian principles to prevent punishment from becoming an unjust form of punishment.⁸

This thinking aligns with the concept of dignified justice developed in contemporary law enforcement studies, which places respect for human rights as the primary foundation of the sentencing process. Every sentence imposed must respect the honor and dignity of the perpetrator as a citizen, as long as it does not disregard the rights of the victim.

⁷Cesare Beccaria, *On Crimes and Punishments*, translated by Wahmuji, Genta Publishing, Yogyakarta, 2011, p. 47.

⁸Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention*, Kencana, Jakarta, 2010, p. 89.

The dignified justice approach also corresponds to Islamic legal values, which emphasize that the protection of the human body and soul is a fundamental principle (al-'adl and al-maslahah). In Islamic law, abuse is viewed as a violation of social and moral balance, which not only harms the individual but also disrupts the social order.

The concept of responsibility in Islamic law, which emphasizes the elements of intent (al-qasd) and the capacity to be responsible (al-ahliyyah), demonstrates that punishment must take into account the perpetrator's intent and moral capacity, not merely the consequences of the act. This approach is consistent with the principle of fault (Schuldprinzip) in the National Criminal Code.

Various empirical and theoretical studies demonstrate that just sentencing must integrate positive legal values with the social and moral sensitivities inherent in society. This integrative approach is seen as strengthening the legitimacy and effectiveness of national criminal law, as the law serves not only as a normative instrument but also as a means of internalizing ethical and humanitarian values within social consciousness.

Thus, a critical study of the criminalization of the crime of assault based on the National Criminal Code from a justice perspective is important as an effort to understand the level of legal bias towards victims, the proportionality of punishment, and the relevance of humanitarian values in contemporary criminal justice practices.

Based on the description above, this research is formulated under the title: "Legal Analysis of Criminalization of Criminal Acts of Assault Based on the National Criminal Code (Law Number 1 of 2023) from a Justice Perspective."

2. Research Methods

The type of research used is normative legal research. Normative legal research focuses on the study of applicable positive legal norms, legal principles, and the doctrines and views of legal experts related to the criminal punishment of assault. This research aims to examine the suitability of the criminal punishment provisions in the National Criminal Code with the principle of justice as the objective of criminal law.

3. Results and Discussion

3.1. How are the provisions for criminal punishment for the crime of assault implemented according to the National Criminal Code (Law Number 1 of 2023)?

The implementation of the provisions for criminal punishment for assault in the National Criminal Code (Law No. 1 of 2023) represents a paradigmatic transformation in the Indonesian criminal law system, which no longer emphasizes solely retaliation but instead prioritizes a more humanistic,

proportional, and substantive justice-oriented approach. Criminal punishment is positioned as a normative instrument that functions not only to enforce the law but also to maintain social balance, protect the interests of victims, and encourage improvements in perpetrator behavior.⁹

Within a normative framework, the implementation of criminal punishment is based on the fundamental principles of criminal law, namely the principle of legality, the principle of culpability (*schuldbeginsel*), and the principle of proportionality. These three principles form the conceptual foundation for determining criminal responsibility and for formulating the type and severity of punishment imposed on perpetrators of assault.¹⁰

The provisions for the crime of assault in the National Criminal Code are systematically placed in the Chapter on Crimes Against the Body, reflecting the state's recognition of the importance of protecting physical integrity as a fundamental human right. This provision is comprehensively regulated in Articles 466 to 473 of Law Number 1 of 2023, which classify forms of assault based on the severity of the consequences.¹¹

Article 466 of the National Criminal Code defines the basic form of abuse as an act that intentionally causes pain or bodily injury to another person. This norm emphasizes that the element of intent (*dolus*) is essential in the construction of the crime of abuse, thus clearly distinguishing it from acts of negligence.¹²

Furthermore, the provisions in Articles 467 and 468 expand the scope of assault to include elements of planning or specific circumstances that aggravate the nature of the act. This differentiation demonstrates the legislators' attention to the quality of the perpetrator's culpability, which forms the basis for determining the level of criminal responsibility.¹³

Articles 469 to 471 regulate assault resulting in serious injury, which in practice requires expert testimony, particularly in the medical field, to prove. This demonstrates that the implementation of criminal penalties relies not only on normative construction but also involves a scientific approach to ensure accuracy in assessing the consequences.¹⁴

Articles 472 and 473 regulate assault resulting in the victim's death, which legally carries more severe criminal consequences. This regulation reflects the principle

⁹Arief, BN (2016). *Anthology of criminal law policies*. Jakarta: Kencana, pp. 45–47.

¹⁰Saleh, R. (1983). *Criminal acts and criminal responsibility*. Jakarta: Aksara Baru, pp. 23–25.

¹¹Indonesia. (2023). *Law Number 1 of 2023 concerning the Criminal Code, Articles 466–473*.

¹²Moeljatno. (2008). *Principles of criminal law*. Jakarta: Rineka Cipta, pp. 64–66.

¹³Prasetyo, T. (2015). *Criminal Law*. Jakarta: RajaGrafindo Persada, pp. 112–114.

¹⁴Chazawi, A. (2010). *Crimes against body and life*. Jakarta: Rajawali Pers, pp. 78–80.

of proportionality, namely, a balance between the severity of the consequences and the severity of the sanctions imposed.¹⁵

The implementation of criminal penalties for the crime of assault cannot be separated from the general provisions in Book I of the National Criminal Code, particularly regarding the objectives of criminal penalties as formulated in Article 51 and Article 52. These two provisions emphasize that criminal penalties are aimed at preventing criminal acts, developing perpetrators, and restoring balance in society.¹⁶

In criminal justice practice, judges play a central role in implementing these provisions through a contextual, non-mechanistic sentencing process. Judges are required to consider various aspects, including the perpetrator's background, the victim's circumstances, and the social impact of the crime.¹⁷

This approach aligns with Barda Nawawi Arief's view, which emphasizes that criminal punishment must be understood as part of a criminal law policy oriented toward community protection and social justice. Therefore, punishment should not be imposed rigidly but rather should reflect the values of humanity and justice that exist within society.¹⁸

From a modern criminal law perspective, the implementation of punishment is also influenced by the development of a restorative justice approach that emphasizes restoring the relationship between the perpetrator and the victim. This approach broadens the meaning of justice by focusing not only on punishment but also on reconciliation and reparation for the losses suffered by the victim.¹⁹

This idea is strongly relevant to the concept of justice with dignity, which places respect for human dignity at the heart of the penal system. In this context, the punishment for assault must maintain a balance between protecting the victim and respecting the perpetrator's rights as a legal subject.²⁰

From an Islamic legal perspective, the implementation of criminal penalties for assault is based on the principle of *المصلحة والعدل*, which demands a balance between individual and societal interests. Criminal liability is based on the

¹⁵Muladi. (2015). Human rights and the criminal justice system. Semarang: Diponegoro University Publishing Agency, pp. 23–25.

¹⁶Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Articles 51–52.

¹⁷Laksana, AW (2021). Criminalization policy from a justice perspective. *Khaira Ummah Law Journal*, 16(2), pp. 210–212.

¹⁸Arief, BN (2016). Anthology of criminal law policies. Jakarta: Kencana, pp. 78–80.

¹⁹Braithwaite, J. (2002). Restorative justice and responsive regulation (pp. 11–15). Retrieved from <https://books.google.com>

²⁰Soponyono, E. (2020). Reconstruction of criminal law based on dignified justice. Semarang: Pustaka, pp. 56–58.

elements of intent (القصد) and the capacity to be responsible (الأهلية), which demonstrates that justice is measured not only by the consequences but also by the moral quality of the perpetrator.²¹

The concepts of القصاص and الدية in Islamic law reflect a balance between retribution and restitution, which substantially aligns with the modern criminal justice approach in the National Criminal Code. This demonstrates that integrating religious values can enrich the implementation of just punishment.²²

Various studies in national criminal law literature and scientific journals indicate that the implementation of criminal provisions for assault still faces challenges in maintaining consistency between norms and practice. However, the National Criminal Code has provided a more comprehensive normative foundation for realizing criminal penalties that are not merely legalistic but also reflect substantive justice and the protection of human dignity.²³

3.2. What are the issues or problems that arise in the application of the provisions on criminal penalties for criminal acts of assault in Law Number 1 of 2023?

The problems in applying the criminal provisions for assault under Law Number 1 of 2023 are not merely technical legal issues but also reflect the dynamic transformation of the national criminal law paradigm toward substantive justice. This shift in orientation has logical consequences in the form of various challenges in operationalizing legal norms to align with the values of justice that exist in society.²⁴

Normatively, the provisions for the crime of assault in the National Criminal Code, as contained in Articles 466 to 473, have been systematically formulated, distinguishing between the severity of the consequences. However, in practice, this normative construction still leaves considerable room for interpretation, particularly in determining the boundaries between minor injuries, serious injuries, and permanent consequences.²⁵

While this interpretive space allows judges the freedom to adapt their decisions to the specific circumstances of the case, it also has the potential to lead to inconsistencies in sentencing. This inconsistency often leads to disparities in decisions, which draw public criticism because they are perceived as not

²¹Zahrah, M.A. (1997). *Usul al-fiqh* (pp. 312–315). Retrieved from <https://archive.org>

²²Peters, R. (2005). *Crime and punishment in Islamic law* (pp. 54–58). Retrieved from <https://books.google.com>

²³Laksana, AW (2022). Implementation of criminal penalties in the National Criminal Code. *Khaira Ummah Law Journal*, 17(1), pp. 95–97.

²⁴Arief, BN (2018). *Anthology of criminal law policies*. Jakarta: Kencana, pp. 45–46.

²⁵Indonesia. (2023). *Law Number 1 of 2023 concerning the Criminal Code*, Articles 466–473.

reflecting the principles of justice that should be upheld in the criminal justice system.²⁶

The next issue relates to the application of the principle of fault as a basis for sentencing. In criminal law doctrine, punishment can only be imposed if there is a justifiable fault, whether in the form of intent (*dolus*) or negligence (*culpa*). However, in practical evidence, determining this subjective element is often difficult, particularly in cases of abuse that occurs spontaneously or is triggered by emotional situations.²⁷

The difficulty in proving this subjective dimension has direct implications for determining the level of culpability of the perpetrator, which ultimately influences the severity of the sentence imposed. In this context, the thoroughness and caution of law enforcement officers are crucial in maintaining the balance between legal certainty and substantive justice.²⁸

Furthermore, the application of the principle of proportionality in sentencing also faces significant challenges. Although the National Criminal Code normatively stipulates a differentiation of criminal penalties based on the consequences of the act, in practice, decisions still do not fully reflect the appropriateness of the level of culpability and the sanction imposed.²⁹

Another issue that has emerged is the application of a restorative justice approach in assault cases. This approach essentially aims to restore the relationship between the perpetrator and the victim and restore disturbed social balance. However, its implementation often sparks debate, particularly when the sentences imposed are deemed too lenient and insufficiently deterrent.³⁰

From a certain perspective, the application of restorative justice actually creates ambiguity in the meaning of justice, especially when the victims' interests are not optimally accommodated. This situation demonstrates the tension between the restorative approach and demands for retributive justice, which remains strong in public perception.³¹

Furthermore, the issue of victim protection is also crucial in the application of criminal penalties for assault. While conceptually, victims have the right to

²⁶Laksana, AW (2020). Disparity in sentencing in cases of violence. *Khaira Ummah Law Journal*, 15(2), pp. 210–212.

²⁷Saleh, R. (2002). Criminal acts and criminal responsibility. Jakarta: Aksara Baru, pp. 78–79.

²⁸Muladi. (2015). Human rights and the criminal justice system. Semarang: BP UNDIP, pp. 112–113.

²⁹Arief, BN (2018). Anthology of criminal law policies. Jakarta: Kencana, pp. 67–68.

³⁰Laksana, AW (2019). Restorative justice in Indonesian criminal law. *Khaira Ummah Law Journal*, 14(1), pp. 95–96.

³¹Soponyono, E. (2021). Dignified justice in sentencing. *Khaira Ummah Law Journal*, 16(3), pp. 301–302.

protection and reparation, in practice, the implementation of these rights is often suboptimal, either in the form of restitution or rehabilitation.³²

The limitations of the victim protection mechanism show that the criminal justice system still tends to be perpetrator-oriented, so it does not fully reflect the balance of interests as expected in the modern justice paradigm.³³

In addition to normative and conceptual factors, structural constraints also influence the effectiveness of the application of criminal provisions. Limited capacity among law enforcement officials and unequal understanding of the National Criminal Code paradigm hinder consistent and equitable implementation of the law.³⁴

Coordination issues between law enforcement officials also pose a challenge, particularly in assault cases that require medical evidence such as a post-mortem examination. Lack of synchronization in the evidentiary process can impact the overall quality of law enforcement.³⁵

From a theoretical perspective, these various issues demonstrate that criminal law cannot be understood solely as a system of written norms, but also as a social phenomenon influenced by societal values, culture, and legal awareness. Therefore, the application of criminal law must accommodate both the normative dimension and evolving social realities.³⁶

Furthermore, within the framework of dignified justice, punishment for assault crimes must maintain a balance between the interests of the perpetrator, the victim, and society. An imbalance in any of these aspects has the potential to create substantive injustice, ultimately undermining the law's legitimacy in the public eye.³⁷

Thus, the various issues that have arisen in the application of criminal provisions for assault indicate that criminal law reform through the National Criminal Code still requires strengthening in its implementation. Harmonization between legal

³²Wahyuningsih, SE (2020). Victim protection in the criminal justice system. Semarang: Suryandaru Utama, pp. 54–55.

³³Muladi. (2015). Human rights and the criminal justice system. Semarang: BP UNDIP, pp. 130–131.

³⁴Arief, BN (2018). Anthology of criminal law policies. Jakarta: Kencana, p. 89.

³⁵Laksana, AW (2021). Proving criminal acts of violence. *Khaira Ummah Law Journal*, 16(1), pp. 145–146.

³⁶Friedman, L. M. (2001). American law: An introduction (pp. 34–35). Retrieved from <https://www.wwnorton.com>

³⁷Soponyono, E. (2021). Dignified justice in sentencing. *Khaira Ummah Law Journal*, 16(3), pp. 310–311.

norms, judicial practices, and the values of justice inherent in society is a primary prerequisite for realizing a just, humane, and dignified penal system.³⁸

To clarify the underlying issues arising from the application of criminal provisions for assault, the issue needs to be framed within a broader context through comparisons with several foreign jurisdictions. This comparison demonstrates that the issue of assessing the proportionality of sanctions and reparation for victims is not solely a domestic issue, but a challenge faced by other legal systems. This allows for a more objective assessment of the weaknesses in the implementation of the National Criminal Code.³⁹

In the Dutch legal system, mishandeling, as regulated in Articles 300 to 306 of the Criminal Code, provides prosecutors with the discretion, through the principle of opportunity, to offer out-of-court settlements. This instrument structurally reduces the burden of minor cases and provides victims with the opportunity to recover from the prosecution stage. In contrast, in the implementation of the National Criminal Code, similar settlement opportunities are not supported by equivalent procedural instruments, making it easier for perceptions of injustice to arise from perceived lenient sentences.⁴⁰

German criminal law, through Articles 223 to 227 of the Strafgesetzbuch, provides detailed guidelines for determining punishment (Strafzumessung) based on the principle of fault (Schuldprinzip). This detailed gradation narrows the scope for interpretation, which in turn creates problems in the application of Articles 466 to 473 of the National Criminal Code, particularly in distinguishing between minor injuries, serious injuries, and permanent consequences. This comparison demonstrates that interpretive issues in Indonesia can be mitigated through more measured sentencing guidelines.⁴¹

Malaysia, through its Penal Code (Sections 319–338), distinguishes between hurt and grievous hurt and provides for victim compensation as part of the settlement of cases. This approach aligns with the spirit of restorative justice in the National Criminal Code and, when read in conjunction with Islamic legal analysis emphasizing al-'adl and al-maṣlahah, strengthens the argument that criminalizing assault should balance the perpetrator's accountability with the victim's reparation.⁴²

³⁸Rawls, J. (1999). A theory of justice (pp. 52–54). Retrieved from <https://www.hup.harvard.edu>

³⁹Reitz, J. C. (1998). How to do comparative law (pp. 617–621). The American Journal of Comparative Law. Retrieved from <https://www.jstor.org>

⁴⁰Kelk, C., & de Jong, F. (2019). Studieboek materieel strafrecht (7th ed., pp. 210–214). Deventer: Wolters Kluwer. Retrieved from <https://www.wolterskluwer.com>

⁴¹Roxin, C., & Greco, L. (2020). Strafrecht Allgemeiner Teil (Band I, 5th ed., pp. 88–92). Munich: CH Beck. Retrieved from <https://www.beck.de>

⁴²Yeo, S., Morgan, N., & Chan, W. C. (2018). Criminal law in Malaysia and Singapore (3rd ed., pp. 401–407). Singapore: LexisNexis. Retrieved from <https://www.lexisnexis.com>

From this comparison, it can be concluded that the main problem with the application of the provisions for criminalizing assault in the National Criminal Code lies not in the formulation of the norms, but rather in the inadequacy of procedural instruments and sentencing guidelines that support a substantive justice orientation. Comparative jurisdictions demonstrate that a balance between certainty and justice can be achieved through measured gradation and institutionalized victim reparation mechanisms, two things that remain gaps in criminal justice practice in Indonesia.⁴³

3.3. What are the obstacles and barriers faced by law enforcement officers in implementing criminal penalties for criminal assault based on Law Number 1 of 2023, and how can they be optimized?

The obstacles and barriers to the implementation of criminal sanctions for assault under Law Number 1 of 2023 are essentially a manifestation of the paradigm shift in national criminal law toward substantive justice, which is more oriented toward humanitarian values. This transformation requires adjustments not only at the normative level but also in the practical aspects of law enforcement by officials carrying out criminal justice functions.⁴⁴

In this context, one fundamental obstacle lies in the suboptimal understanding of the structure and philosophy of the National Criminal Code among law enforcement officials. Changes to the systematics and orientation of criminal punishment, which emphasize a balance between community protection and perpetrator development, require in-depth internalization to prevent errors in the application of norms.⁴⁵

Furthermore, interpretative obstacles also arise in understanding the provisions of the crime of assault as regulated in Articles 466 to 473. Norms that are hierarchical based on the consequences of the act often give rise to differences in interpretation, particularly in determining the category of injury and the impact caused to the victim.⁴⁶

These differing interpretations have implications for inconsistencies in sentencing practices. In some cases, significant variations in verdicts between cases indicate disparities that have the potential to undermine the public's sense of justice.⁴⁷

In addition to normative aspects, obstacles are also encountered in proving the element of fault as the basis for criminal liability. Determining the existence of

⁴³Barda Nawawi Arief. (2018). *Anthology of Criminal Law Policy* (pp. 74–78). Jakarta: Kencana. Retrieved from <https://www.prenadamedia.com>

⁴⁴Arief, BN (2018). *Anthology of criminal law policies*. Jakarta: Kencana, pp. 45–46.

⁴⁵*Ibid*, pp. 52–53.

⁴⁶Indonesia. (2023). *Law Number 1 of 2023 concerning the Criminal Code*, Articles 466–473.

⁴⁷Laksana, AW (2020). Disparity in sentencing in cases of violence. *Khaira Ummah Law Journal*, 15(2), pp. 210–212.

intent (*dolus*) or negligence (*culpa*) is often difficult, particularly in cases of abuse that occur in situations of spontaneous, emotionally charged conflict.⁴⁸

These evidentiary difficulties are further complicated by limited evidence, particularly medical evidence such as a post-mortem examination. Reliance on expert medical testimony is often the deciding factor, so the quality and timeliness of medical examinations significantly impact the evidentiary process in court.⁴⁹

On the other hand, coordination issues between law enforcement officials also pose a significant obstacle. Lack of synchronization between investigators, prosecutors, and judges in understanding case construction can hamper the overall effectiveness of law enforcement.⁵⁰

Another structural obstacle relates to limited human resources, both in terms of quantity and quality. The uneven competence of officers in understanding the new paradigm of national criminal law is a factor affecting the quality of handling assault cases.⁵¹

From a sociological perspective, the pressure of public opinion and societal expectations for "fair" decisions often pose challenges for law enforcement. The prevailing perception of justice does not always align with prevailing principles of positive law.⁵²

Another issue that has emerged is the application of a restorative justice approach to assault cases. While this approach aims to restore social relations and balance, in practice it often draws criticism for being deemed too lenient toward the perpetrator.⁵³

In certain contexts, the application of restorative justice actually gives rise to ambivalence in law enforcement, because on the one hand it prioritizes recovery, but on the other hand it has the potential to ignore the victim's sense of justice if it is not accompanied by an adequate recovery mechanism.⁵⁴

⁴⁸Saleh, R. (2002). Criminal acts and criminal responsibility. Jakarta: Aksara Baru, pp. 78–79.

⁴⁹Laksana, AW (2021). Proving criminal acts of violence. *Khaira Ummah Law Journal*, 16(1), pp. 145–146.

⁵⁰Laksana, AW (2020). Disparity in sentencing. *Khaira Ummah Law Journal*, 15(2), p. 211.

⁵¹Soponyono, E. (2021). Dignified justice in sentencing. *Khaira Ummah Law Journal*, 16(3), pp. 300–301.

⁵²Muladi. (2015). Human rights and the criminal justice system. Semarang: BP UNDIP, pp. 120–121.

⁵³Laksana, AW (2019). Restorative justice in Indonesian criminal law. *Khaira Ummah Law Journal*, 14(1), pp. 95–96.

⁵⁴Soponyono, E. (2021). Dignified justice in sentencing. *Khaira Ummah Law Journal*, 16(3), p. 302.

Protection for victims also remains an unresolved issue. Implementing victims' rights to restitution and rehabilitation often faces administrative and substantive obstacles, resulting in suboptimal results.⁵⁵

Furthermore, the potential for disparity in sentencing is also an important issue to address. Differences in judges' backgrounds, perspectives, and approaches to assessing a case can result in different decisions, even when the legal facts are relatively similar.⁵⁶

From a theoretical perspective, this condition shows that the effectiveness of law enforcement is not only determined by the quality of norms, but also by the legal culture that develops in society and the capacity of law enforcement institutions.⁵⁷

To overcome these various obstacles, comprehensive and sustainable optimization measures are required. One strategic effort is to increase the capacity of law enforcement officers through education and training oriented toward understanding the substantive justice paradigm in the National Criminal Code.⁵⁸

Furthermore, developing technical guidelines for the application of the assault articles is crucial to ensure uniform interpretation and minimize disparities in sentencing. These guidelines can serve as a practical reference for law enforcement officers in carrying out their duties.⁵⁹

Strengthening victim protection mechanisms must also be a priority in optimizing the criminal justice system. Providing broader access to restitution, rehabilitation, and legal assistance is a crucial step in realizing victim-centered justice.⁶⁰

Thus, optimizing the application of criminal penalties for assault cannot be done in a piecemeal manner, but rather through an integrative approach that takes into account normative, structural, and cultural aspects. This approach is expected to create a criminal justice system that not only guarantees legal certainty but also delivers substantive, humane, and dignified justice in society.⁶¹

⁵⁵Wahyuningsih, SE (2020). Victim protection in the criminal justice system. Semarang: Suryandaru Utama, pp. 54–56.

⁵⁶Laksana, AW (2020). Disparity in sentencing. *Khaira Ummah Law Journal*, 15(2), pp. 212–213.

⁵⁷Friedman, L. M. (2001). American law: An introduction (pp. 34–35). Retrieved from <https://www.wwnorton.com>

⁵⁸Arief, BN (2018). Anthology of criminal law policies. Jakarta: Kencana, pp. 89–90.

⁵⁹Rawls, J. (1999). A theory of justice (pp. 52–54). Retrieved from <https://www.hup.harvard.edu>

⁶⁰Wahyuningsih, SE (2020). Victim protection in the criminal justice system. Semarang: Suryandaru Utama, pp. 60–61.

⁶¹Soponyono, E. (2021). Dignified justice in sentencing. *Khaira Ummah Law Journal*, 16(3), pp. 310–311.

4. Conclusion

Based on the overall research results and analysis that have been described in the previous chapter, the following conceptual, critical and argumentative conclusions can be formulated: 1. The implementation of criminal penalties for assault in the National Criminal Code (Law Number 1 of 2023) fundamentally reflects a paradigm shift from a retributive justice-oriented model of punishment to a more integrative model, one that accommodates preventive, corrective, and restorative dimensions. The regulatory structure in Articles 466 to 473 demonstrates a system of differentiation of offenses based on the level of consequence, which theoretically aligns with the principles of proportionality and culpability. However, at the implementation level, this normative construction has not fully guaranteed consistent application, thus leaving room for irregularities in the practice of sentencing. 2. The main problem in the application of criminal provisions for assault lies not only in the technical legal aspects, but also in the philosophical and sociological dimensions of criminal law itself. Ambiguity in the interpretation of the category of injury, the complexity of proving the element of guilt (*mens rea*), and the lack of internalization of the substantive justice paradigm among law enforcement officials have contributed to the emergence of disparities in sentencing. On the other hand, the application of the restorative justice approach, although conceptually progressive, in practice still faces resistance because it is considered to have the potential to reduce the repressive function of criminal law and does not fully guarantee the protection of victims' rights. 3. The obstacles and barriers in the application of criminal penalties for assault demonstrate that the problematic nature of law enforcement is not solely due to weak norms, but rather to limited institutional capacity, disharmony between criminal justice subsystems, and the lack of a legal culture aligned with the spirit of reforming the National Criminal Code. Therefore, the effectiveness of criminal penalties depends heavily on the legal system's ability to simultaneously integrate normative, structural, and cultural dimensions, thereby delivering justice that is not only formal, but also substantive and dignified.

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