



## Minimizing Assault Crimes Caused by Alcohol: Between Challenges and Solutions

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### ABSTRACT

The objective of this study is to examine and analyze the legal regulation of assault crimes caused by alcohol consumption, as well as the application of restorative justice and progressive law in minimizing such crimes. This research is classified as normative legal research, which employs a statutory approach, a case approach, and a conceptual approach, supported by field data. The analysis in this study employs qualitative data analysis through the processing of legal materials in a deductive manner. The research findings indicate that, first, the classification of drunkenness as an offense under positive law results in sanctions, either imprisonment or fines. In instances where alcohol abuse is accompanied by a criminal act, such as assault, the perpetrator may be held accountable under Article 351 of the Criminal Code (KUHP). However, a notable lacuna in the substance of the law regarding assault crimes caused by alcohol consumption is the lenient penalty for individuals who sell or provide alcohol or other intoxicating substances to an already intoxicated individual. The imposition of a more substantial penalty could potentially serve a preventative or deterrent function. Second, restorative justice is predicated on three key principles: an agreement between the perpetrator and the victim to settle the issue outside of court, the voluntary action of the perpetrator to take responsibility for fulfilling the victim's rights, either in the form of compensation or other measures to restore the situation to what it was before the crime, and once these principles are met, the victim may withdraw their report to the police.

**Keywords:** Criminal Law; Restorative Justice; Assault.

### 1. Introduction

The Criminal Justice System (CJS) is inherently an open system, inherently subject to interactions, interconnections, and interdependencies with its environment, including society, the economy, politics, education, technology, and the subsystems within the CJS itself.<sup>1</sup> The implementation of criminal law within the judicial process entails the enforcement of criminal law itself, in addition to the execution of criminal policy, which constitutes a rational strategy for crime prevention, with the overarching objective of achieving justice and human welfare.<sup>2</sup> Society, in its capacity as a system, is subject to perpetual change, whether it is progressing or regressing, expanding or contracting, rapidly or gradually.<sup>3</sup> Confronted with these changes, individuals often encounter various issues and problems that can impede the criminal justice process, whether intentionally or not. However, one constant is the presence of law, which serves to regulate the actions of individuals within the nation and state, with the overarching objective of fostering a just society. In accordance with this objective, legal principles will evolve in tandem with the progression of human social life.<sup>4</sup>

The law plays a foundational role in society, from two fundamental perspectives: as a mechanism for social control and as a tool for social engineering.<sup>5</sup> The implementation of extant legal norms must be balanced with enforcement on the ground through a case-based approach and the process during the resolution of those cases. Criminal acts represent one form of deviant behavior or actions that do not align with social norms, which are always present and inherent in every form of society.

<sup>1</sup> N. Mahmudah. 2020. *Perlindungan Hukum Terhadap Perempuan Dalam Sistem Peradilan Pidana*. Setara: Jurnal Studi Gender dan Anak. Vol. 2. No. (1). Hal. 31-47.

<sup>2</sup> Dian Ekawaty Ismail dan Avelia R. Y. Mantali. 2021. *Hukum Acara Pidana (Sebuah Pengantar)*. Yogyakarta: UII Press. Hal. 2

<sup>3</sup> C. Dewi Wulansari. 2013. *Sosiologi Konsep dan Teori*. Bandung: Refika Aditama. Hal.127

<sup>4</sup> Abdoel Djamali. 2014. *Pengantar Hukum Indonesia*. Jakarta: Rajawali Pers. Hal. 3

<sup>5</sup> Erdianto Efendi. 2014. *Hukum Pidana Indonesia; Suatu Pengantar*. Bandung: Refika Aditama. Hal. 41

Assaults represent a tangible form of criminal activity that persists and is closely associated with law enforcement in contemporary society. The Indonesian context is characterized by not only an escalation in the overall crime rate but also a rapid evolution in the nature and severity of criminal acts. In response to this pressing issue, criminal sanctions have emerged as a prominent solution.<sup>6</sup> Notably, assaults perpetrated under the influence of alcohol have witnessed a significant surge.

A detailed analysis of the Pohuwato Police Resort jurisdiction reveals that the number of assault cases caused by alcohol has increased significantly over the past three years.

**Table 1. Number of Assault Cases Caused by the Influence of Alcohol in the Jurisdiction of the Pohuwato Police Resort**

| Year                                 | Police Report |
|--------------------------------------|---------------|
| 2021                                 | 3 Cases       |
| 2022                                 | 11 Cases      |
| 2023                                 | 12 Cases      |
| <b>Total Assault Cases: 26 Cases</b> |               |

Source: Pohuwato Police Resort Data, November 2023

As indicated by the data presented in Table 1, the incidence of assault crimes resulting from alcohol consumption within the jurisdiction of the Pohuwato Police Resort has exhibited a consistent upward trend over the past three years, marked by a notable increase from 2021 to 2022 and continuing into 2023, with a total of 26 assault cases recorded. The data further reveals that the resolution of these cases has been achieved through a combination of criminal proceedings at the police station and restorative justice measures.

The prevalence of assault crimes in society, manifesting as interpersonal or group interactions, underscores the need for effective resolution mechanisms. Notably, many cases of assault crimes are perpetrated with either premeditated or unplanned intent, underscoring the complexity of criminal behavior. The occurrence of repeated offenses, also termed recidivism in the context of assault crimes, has become a pervasive concern, necessitating the implementation of robust penal actions aimed at deterring future criminal activity.<sup>7</sup> While the handling of criminal acts within the criminal justice system often results in imprisonment, contemporary concepts contend that incarceration should not be regarded as the sole or optimal solution to criminal behavior. The concept of restorative justice, which emphasizes the restoration of harm to its original state, has gained traction as an alternative to retributive and rehabilitative approaches to criminal justice. This approach involves the restoration of harm caused to the victim and the offender, potentially leading to the reformation of the offender and the reintegration of the victim into their community.<sup>8</sup>

The process of resolving criminal cases through the implementation of restorative justice offers a divergent perspective and approach to understanding and addressing criminal offenses. From the perspective of restorative justice, the concept of a crime is fundamentally consistent with the general criminal law perspective, as it focuses on relationships within society.<sup>9</sup> The process of restoration entails the repair of the relationship between the victim and the perpetrator, and it is based on mutual agreements between the victim and the perpetrator. The victim articulates the losses incurred, and the perpetrator is granted the opportunity to make amends through compensation, reconciliation, community service, or other agreements.<sup>10</sup> The legal regulations employed by police investigators to apply restorative justice in criminal cases are delineated in Article 12 of the Indonesian National Police Chief Regulation No. 6 of 2019 on Criminal Investigation, and the Indonesian National Police Circular Letter No. SE/8/VII/2018 on the Implementation of Restorative Justice in Criminal Case Resolution, and the Indonesian National Police Regulation No. 8 of 2021 on Handling Criminal Acts Based on Restorative Justice. These regulations serve as the legal foundation for police investigators currently carrying out investigations and inquiries into criminal cases deemed to benefit from this approach, which is now referred to as the restorative justice approach.<sup>11</sup>

A subsequent analysis of law enforcement related to assault caused by alcohol consumption can be undertaken by examining how the law addresses its resolution, the challenges, and solutions in minimizing assault crimes caused by alcohol.

<sup>6</sup> Ramdhan Kasim. 2020. *Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (overspanning van het strafrecht)*. Jurnal Jambura Law Review. Vol 2. No. (1). Hal.3

<sup>7</sup> Setiono. 2014. *Rule of Law (Supremasi Hukum Cetakan Ke II)*. Surakarta: Sebelas Maret Pustaka. Hal. 122

<sup>8</sup> Anas Yusuf. 2016. *Implementasi Restorative Justice Dalam Penegakan Hukum Oleh Polri*. Jakarta: Universitas Trisakti. Hal. 208

<sup>9</sup> Koesriani Siswosoebroto. 2009. *Pendekatan baru dalam Kriminologi*. Jakarta: Universitas Trisakti. Hal. 34.

<sup>10</sup> S. P. Liu. 2021. *Prinsip Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga*. Jurnal Lex Privatum. Vol. 9. No. (10). Hal. 67

<sup>11</sup> Nor Soleh. 2015. *Restorative Justice Dalam Hukum Pidana Islam Dan Kontribusinya Bagi Pembaharuan Hukum Pidana Materil Di Indonesia*. Jurnal Studi Hukum Islam. Vol. 2. No. (2). Hal. 4.

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## 2. Research Questions

1. What are the legal regulations concerning assault crimes resulting from alcohol consumption, and what are the current challenges associated with these regulations?
2. What solutions can be implemented to minimize the occurrence of future assault crimes resulting from alcohol consumption?

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## 3. Methods

This research constitutes a normative legal study that employs a statutory approach, a case approach, and a conceptual approach, with field data providing a foundation for the analysis. The analysis utilized in this study is qualitative data analysis through the processing of legal materials in a deductive manner, wherein general concepts are elucidated and subsequently employed to derive more specific conclusions.

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## 4. Discussion

### 4.1 Legal Regulation of Assault Crimes Caused by Alcohol Consumption and Its Challenges

The term "criminal act" refers to an unlawful act committed intentionally by an individual who is legally liable for their actions and has been formally declared by law to be subject to criminal prosecution.<sup>12</sup> The foundation of a criminal act is the principle of legality, while the basis for the punishability of the perpetrator is the principle of fault. Consequently, the principle of fault dictates that a perpetrator can only be subjected to legal sanction if their culpability for the crime in question is established. The concept of fault is intrinsically linked to the realm of criminal responsibility. A person is considered to have fault if, at the time of committing the crime, from a societal perspective, they can be reproached for their actions.<sup>13</sup>

The concept of criminal responsibility is predicated on the notion that an individual who has committed a criminal act and has met the criteria delineated by law should be subject to punishment. From the vantage point of the commission of a prohibited act, an individual is deemed criminally responsible for those actions if they are deemed unlawful (and there is no justification or legal defense for the act). From the vantage point of accountability, only an individual who is capable of assuming responsibility will be held to account.

The concept of "someone capable of responsibility" (*toerekeningsvatbaar*) is determined by an assessment of their mental state and their capacity for reason, which encompasses the following factors:<sup>14</sup>

- a) Mental state
  1. Not disturbed by continuous or temporary illness (temporary conditions)
  2. Not impaired in development (stuttering, idiocy, imbecility)
  3. Not disturbed due to shock, hypnosis, uncontrollable anger, subconscious influence (reflex movements), sleepwalking, or delirium caused by fever. In other words, the person must be in a conscious state
- b) Mental capacity
  1. Able to comprehend the nature of their actions
  2. Able to determine their will regarding the action, whether it will be carried out or not
  3. Able to recognize the reprehensibility of the action

The concept of criminal responsibility is predicated on the state and mental capacity of the individual, as opposed to their reasoning and cognitive abilities. The objective of criminal responsibility is to ascertain whether an accused individual should be held accountable for a criminal act. In other words, the determination of whether the accused will be punished or acquitted. In the event of a positive determination, it is incumbent upon the court to demonstrate that the act in question was both unlawful and that the accused was capable of responsibility. This capability demonstrates the fault of the perpetrator, which can be in the form of intent or negligence. This entails that the act in question is deemed reprehensible and that the defendant has demonstrated awareness of their actions.

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<sup>12</sup> P.A.F. Lamintang. 2011. *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Sinar Baru. Hal. 172

<sup>13</sup> Raskita Mardatila Polihu. 2017. *Tindak Pidana Penganiayaan Akibat Pengaruh Minuman Beralkohol Menurut KUHP Pasal 351*. Lex Crimen. Vol. 6. No. (2). Hal. 117

<sup>14</sup> Ibid. Hal. 117

The relationship between the perpetrator and their act, in terms of holding them accountable, must be established in order to determine the appropriate punishment. The punishment meted out to the perpetrator must be thoroughly examined and substantiated to ensure that:<sup>15</sup>

- a) The subject must align with the provisions of the law
- b) There must be a fault on the part of the perpetrator
- c) The action must be unlawful
- d) The action is prohibited and punishable by law in a broad sense
- e) The action must be carried out in accordance with the place, time, and other circumstances as specified by law

The concept of criminal liability is predicated on the commission of a criminal act by an individual. Moelyatno's assertion that an individual cannot be held accountable (or punished) in the absence of a criminal offense is a salient one. Consequently, the primary dependence of criminal liability on the commission of a criminal act is a key tenet in the field. The existence of criminal liability is predicated on the existence of prior criminal behavior.<sup>16</sup>

Furthermore, Van Bemmelen's assertion that an individual must be capable of responsibility to be criminally liable is a crucial element in this paradigm. In the event that an error is made and the perpetrator is deemed incapable of responsibility, the act cannot be held against them, and they will be released from all legal claims. According to Van Bemmelen, the prosecution of an individual is predicated on the prerequisite that said individual is genuinely capable of assuming responsibility for their actions. In contrast, Frans Maramis's position asserts that, by default, every individual is presumed to be of sound mind and therefore capable of responsibility, unless proven otherwise. This fundamental principle is at the core of criminal law. The capacity for responsibility is not a codified element of a criminal offense, thereby negating the necessity for its demonstration.<sup>17</sup>

An examination of the regulation regarding the abuse of alcoholic beverages or spirits in the Indonesian Penal Code (KUHP) reveals that intoxication is classified as a violation regulated in Book III of the KUHP under "violations." As a violation, the penalties imposed for intoxication are limited to detention or fines. However, if the abuse of alcohol or spirits is accompanied by a criminal offense such as assault, the perpetrator may be held accountable under Article 351 of the KUHP. It is crucial to note that being intoxicated does not serve as a mitigating factor in the severity of the penalty or the sanctions imposed under the violation sections of Book III of the KUHP. Conversely, an individual under the influence of alcohol or spirits may be subject to prosecution under other articles of the KUHP if they perpetrate another criminal offense while in an intoxicated state.<sup>18</sup>

The KUHP's Book III, under the section on Violations, provides a framework for addressing disturbances caused by individuals who are intoxicated, as outlined in Article 492 of the KUHP.

#### Article 492

- (1) Any individual who, while under the influence of alcohol in a public setting, obstructs traffic, disturbs public order, threatens the safety of others, or performs any act that should be done with caution or with certain preventive measures to avoid endangering the lives or health of others, shall be subject to criminal prosecution and, upon conviction, may be sentenced to a maximum of six days of imprisonment or a fine of up to three hundred seventy-five rupiah.
- (2) In the event that the aforementioned offense is committed within one year of a final judgment for the same offense, or for an offense as outlined in Article 536, the offender shall be punished with imprisonment for a maximum period of two weeks.

In his book *KUHP dan Komentar-Komentar Lengkap Pasal Demi Pasal* (in English, "KUHP and Complete Comments Section by Section"), R. Soesilo expounds on the application of Article 492 of the Penal Code. The aforementioned article's implementation is contingent upon the substantiation of the following:<sup>19</sup>

- a) The individual in question is considered to be in a state of intoxication. It is imperative to note that the term "intoxication" differs from the term "obviously intoxicated," as both concepts are subject to regulation under Article 536 of the Penal Code. The term "intoxication" denotes the consumption of a substantial amount of alcohol, resulting in the loss of control over one or more senses or body parts. Conversely, the term "obviously intoxicated" signifies a state where an individual is visibly inebriated and is causing a disturbance. Article 536(1) stipulates that any individual found to be visibly intoxicated in a public space shall be subject to a fine amounting to up to two hundred twenty-five rupiah.

<sup>15</sup> Ibid. Hal. 118

<sup>16</sup> Chairil Huda. 2006. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Jakarta: Kencana Prenada Media. Hal. 19

<sup>17</sup> Frans Maramis. 2012. *Hukum Pidana Umum dan tertulis di Indonesia*. Jakarta: RajaGrafindo Persada. Hal. 116.

<sup>18</sup> Raskita Mardatila Polihu. Op.Cit. Hal. 119

<sup>19</sup> Ilman Hadi. 2012. *Jerat Hukum Bagi Orang Mabuk yang Mengganggu Orang Lain*. <https://www.hukumonline.com/klinik/a/mabuk-di-tempat-kerja-mantan-pacar-lt50727434498a8/> (Diakses pada 10 Maret 2024 Pukul 20.30 Wita)

- b) The commission of the offense occurs in a public place. The term "public place" is not confined to public roads but encompasses any space that is accessible to the general public. Conversely, if the incident occurs within the confines of a private residence, it does not fall under the purview of this regulation.
- c) Obstructing traffic, disturbing public order, and similar acts. However, if an individual is found to be inebriated within their residence and does not pose a threat to public order, Article 492 will not be applicable.

Moreover, suppose an individual is found to be in a state of intoxication and engages in intimidation accompanied by physical assault or violence. In that case, they may be subjected to prosecution under the assault provisions of Article 351 or Article 352 (light assault) of the Penal Code.

#### Article 351

- (1) Assault is a criminal offense that can result in a prison sentence of up to two years and eight months or a fine of up to four thousand five hundred rupiahs.
- (2) If the act results in serious injury, the offender shall be punished with imprisonment for up to five years.
- (3) If the act causes death, the offender shall be punished with imprisonment for up to seven years.
- (4) Assault is considered equivalent to intentionally causing harm to health.

Concurrently, Article 352 delineates the legal ramifications of light assault, which is defined as an act of physical aggression that does not result in injury or hinder the individual's ability to perform their occupational responsibilities. This category of assault is classified as "light" and is subject to penalties, including imprisonment for a maximum period of three months or a fine amounting to a maximum of four thousand five hundred rupiah. The penalty may be increased by one-third if the crime is committed against an individual who is employed by the perpetrator or under their authority.

The Penal Code of 1946, specifically Article 300(1), has provisions for the prevention of assault crimes caused by alcohol consumption. This article stipulates that individuals who intentionally sell or provide intoxicating beverages to a person already visibly intoxicated may face imprisonment for up to one year or a fine of up to four thousand five hundred rupiah.

In this regard, the Modul Asas-Asas Hukum Pidana, published by the Center for Education and Training of the Indonesian Prosecutor's Office, provides an explanation of a ruling regarding a criminal case committed by an intoxicated person, namely the Arrest Hoge Raad of June 27, 1932. The ruling addressed a case in which an intoxicated individual physically assaulted a police officer, striking the officer's chest and kicking their leg while the officer was on duty. Initially, the defendant was convicted and sentenced for assaulting the police officer (Article 356 of the Penal Code). However, the prosecutor also charged the defendant with disturbing public order while intoxicated (Article 492 of the Penal Code). The court accepted this second charge and sentenced the defendant accordingly. The defendant subsequently appealed the decision, and the appellate court ruled that there was a violation of the *ne bis in idem* principle. Subsequently, the prosecutor petitioned the Hoge Raad, contending that the defendant's actions should be regarded as two distinct crimes under the prevailing criminal legislation.<sup>20</sup>

The Hoge Raad's decision on June 27, 1932, established that an individual's state of intoxication does not serve as a mitigating factor in the severity of their punishment or result in exemption from liability. In fact, an individual in a state of intoxication may be held accountable under other articles of the Penal Code if they perpetrate additional crimes while intoxicated. For instance, causing disturbances or public unrest while intoxicated is considered a criminal offense regulated under Article 492 of the Penal Code. Furthermore, if an individual engages in another criminal act, such as assault (regardless of its severity), while in an intoxicated state, they may be held accountable under other pertinent provisions of the Penal Code.

#### 4.1.1. Development of Future Regulations (The Penal Code Based on Law No. 1 of 2023)

Legal reform can be defined as a deliberate, methodical, and ongoing endeavor to establish a robust and effective legal framework that is both substantively sound and institutionally robust from a normative as well as a practical standpoint, thereby encompassing all facets of life. The measures undertaken in the course of reforming Indonesia's criminal legislation, which is grounded in Law No. 1 of 1946 concerning the Criminal Code, bear implications for the regulations pertaining to crimes of assault that are precipitated by alcohol consumption. This is expected to be a measure to minimize assault crimes resulting from alcohol use.

Based on the above explanation, a simplified comparison of the substance of the regulation on assault crimes caused by alcohol consumption, both currently and in the future, can be outlined as follows:

**Table 2. Comparison of Substance in the Regulation of Penal Provisions for Assault Crimes Resulting from Alcohol Consumption**

| <i>Ius Constitutum</i> | <i>Ius Constituendum</i>       |
|------------------------|--------------------------------|
| (KUHP Tahun 1946)      | KUHP Tahun 2023 (Berlaku 2026) |

<sup>20</sup> Ibid.

|   |   |
|---|---|
| <p><b>Article 300 Paragraph (1):</b> This article stipulates that any individual who intentionally sells or provides intoxicating beverages to a person who is already visibly intoxicated shall be subject to a penalty of <b>imprisonment for a period of up to one year or a fine of up to four thousand five hundred rupiahs.</b></p>   | <p><b>Article 424 Paragraph (1):</b> This article stipulates that any individual found to have sold or provided intoxicating substances to an already intoxicated individual may face a penalty of <b>imprisonment for a period not exceeding one (1) year or a fine not exceeding Category II.</b></p> <p>The fine for Category II, as delineated in Article 79, is Rp10,000,000 (ten million rupiah).</p>   |
| <p><b>Article 492, Paragraph (1)</b> stipulates that: Any individual who, while under the influence of alcohol in a public space, obstructs traffic, disrupts public order, threatens the safety of others, or engages in actions that should be performed with caution or prior precaution to prevent harm to the life or health of others, shall be subject to a penalty of <b>imprisonment for up to six days, or a fine of up to three hundred seventy-five rupiah.</b></p> | <p><b>Article 316</b> stipulates the following:</p> <ol style="list-style-type: none"> <li>(1) Any individual who, while in a state of intoxication in a public space, causes disruption to public order or poses a threat to the safety of others, is liable for a <b>fine amounting to a maximum of Category II (Rp 10,000,000).</b></li> <li>(2) Any individual who, while under the influence of alcohol, engages in an activity that necessitates extreme caution or poses a threat to the life or health of others, is liable to <b>imprisonment for a period not exceeding one (1) year or a fine not exceeding Category III (Rp 50,000,000).</b></li> </ol> |
| <p>Article 351</p> <ol style="list-style-type: none"> <li>(1) Assault is punishable by <b>imprisonment for up to two years and eight months, or a fine of up to four thousand five hundred rupiah.</b></li> <li>(2) If the act results in serious injury, the offender is subject to <b>imprisonment for up to five years.</b></li> <li>(3) If the act results in death, the offender is subject to <b>imprisonment for up to seven years.</b></li> </ol>                       | <p>Article 466</p> <ol style="list-style-type: none"> <li>(1) Anyone who commits assault shall be punished with <b>imprisonment for up to two (2) years and six (6) months, or a fine of up to Category III.</b></li> <li>(2) If the act referred to in paragraph (1) results in serious injury, the offender shall be punished with <b>imprisonment for up to five (5) years.</b></li> <li>(3) If the act referred to in paragraph (1) results in death, the offender shall be punished with <b>imprisonment for up to seven (7) years.</b></li> </ol>   |

As illustrated in Table 2, the criminal sanctions imposed for offenses stemming from alcohol consumption are as follows:

1. Any individual found guilty of selling or providing intoxicating beverages to an individual who is visibly intoxicated is subject to the same prison sentence (1 year). However, the amount of the fine differs. According to the 2023 Criminal Code, the fine is classified under Category II, which will be adjusted according to future currency values.
2. A notable distinction exists in the legal consequences imposed on individuals who, while in a state of intoxication, cause public disturbance or endanger the well-being of others in a public setting. According to the 1946 Criminal Code, the maximum penalty for such an offense was six days' imprisonment or a fine of up to 375 rupiahs. In contrast, the 2023 Criminal Code stipulates a maximum prison sentence of one year or a fine categorized under Category II or, at most, Category III. This indicates an enhancement in the severity of the sanction imposed by the 2023 Criminal Code.
3. According to the 1946 Criminal Code, any individual found guilty of assault is subject to a maximum penalty of two years and eight months of imprisonment or a fine of up to 4,500 rupiahs. However, the 2023 iteration of the Criminal Code stipulates a more lenient penalty for such infractions, ranging from a maximum of two years and six months of imprisonment to a fine of up to Category III. This indicates a 2-month reduction in the prison sentence under the 2023 Criminal Code. However, in cases involving severe assault resulting in death, the prison sentences remain unchanged in both codes, with penalties set at 5 years and 7 years, respectively.

#### **4.1.2 Weaknesses in the Legal Substance of Regulations on Assault Crimes Caused by Alcohol Consumption**

The notion of a universal norm or rule has been identified as a key factor in guiding states toward the realization of legal ideals, as articulated by Gustav Radbruch. This concept posits the existence of three fundamental components of legal ideals, which must be present in a proportionate manner. These

components include justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and utility (*zweckmasigkeit*).<sup>21</sup> This conception is founded on the principle of the supremacy of law. The establishment of regulations entails the creation of legal norms that apply externally and generally in a broad sense.

The formation of regulations is comprised of two fundamental aspects: the establishment of the content of the regulation, and the fulfillment of the regulatory form, the method of formation, and the process and procedures for regulation formation. The formation of regulations, in its authentic sense, encompasses the stages of planning, drafting, discussion, ratification, or determination, and promulgation.

The present issue pertains to the legal substance of the regulation on crimes of assault caused by alcohol consumption (positive law), one of which involves public disorder caused by drunkenness, which is classified as a violation. The regulation on the misuse of alcoholic beverages or intoxicating drinks in the 1946 Criminal Code (KUHP) classifies drunkenness as a violation under Book III of the Criminal Code on "violations." This classification entails consequences, namely sanctions, which are confined to either imprisonment or financial penalties.

This distinction persists in the KUHP of 1946, perpetuating an ongoing divergence between criminal acts and violations. Conceptually, the distinction between crimes as *rechtsdelict* and violations as *wetsdelict* is not tenable. This is because many *rechtsdelicts* have been reclassified as violations, and conversely, some actions that should have been classified as *wetsdelicts* have been formulated as crimes, solely due to the heavier penal sanctions. The relative nature of the severity and impact of these legal categories has led to the need for a re-evaluation of the qualitative criteria used to differentiate between crimes and violations. Despite the KUHP 2023 revision's abolition of the classification of violations and crimes in the Criminal Code, its immediate implementation is hindered by the necessity of a transition period and socialization, with full enforcement anticipated in 2026.

A notable lacuna in the legal substance concerning the regulation of assault crimes caused by alcohol consumption pertains to the inadequate criminal sanctions for individuals who sell or provide intoxicating drinks or substances to individuals already affected by alcohol intoxication. A more substantial criminal penalty could potentially serve as a preventive measure or act as a deterrent, discouraging society from committing similar acts.

The enforcement of law is critical for the realization of a prosperous society, nation, and state. While the notion underlying this principle may appear noble and profound, its practical implementation is challenging. The development of law is supported by three fundamental pillars: substantive law, legal structure, and legal culture.<sup>22</sup> The process of legal reform involves the evolution of the law to account for the development of legislation and existing laws in response to global advancements. This evolution encompasses the enhancement of certainty, knowledge, service, and law enforcement, thereby contributing to the enhancement of state governance in terms of justice, truth, order, and the welfare of its citizens.

#### 4.2 Restorative Justice in Assaults Caused by Alcohol Consumption as a Solution

The utilization of criminal sanctions and restorative justice in assaults stemming from alcohol consumption can be exemplified by the following data concerning assaults caused by alcoholic beverages over the past three years, as reported by the jurisdiction of the Pohuwato Police Resort:

**Table 3, Development of Assault Case Resolutions Caused by Alcohol Consumption in the Jurisdiction of the Pohuwato Police Resort**

| Year                                 | Police Report | Description  |
|--------------------------------------|---------------|--|
| 2021                                 | 3 Cases       | Restorative Justice: 3 Cases   |
| 2022                                 | 11 Cases      | Halted Investigation: 6 Cases<br>Stage II Criminal Case: 5 Cases   |
| 2023                                 | 12 Cases      | Halted Investigation: 3 Cases<br>Criminal Investigation: 3 Cases<br>Stage II: 3 Cases<br>Final Investigation: 1 Cases<br>Case Dismissed: 2 Cases |
| <b>Total Assault Cases: 26 Cases</b> |               |  |

Source: Pohuwato Police Resort Data

As illustrated in Table 3, the criminal offense of assault caused by alcohol consumption in the jurisdiction of the Pohuwato Police Department has exhibited a consistent increase over the past three years. A notable surge in cases was observed from 2021 to 2022, with a continuation of this trend into

<sup>21</sup> Fence M. Wantu. 2011. *Idee Des Recht (Kepastian Hukum. Keadilan dan Kemanfaatan)*. Yogyakarta: Pustaka Pelajar. Hal. 75.

<sup>22</sup> Fence M. Wantu, dkk. 2024. *Restoration of Court Services As A Configuration for Legal Development with Legal Certainty, Justice and Benefits*. Multidisciplinary Reviews. Vol. 7. Issue (4). Hal. 6

2023, resulting in a total of 26 assault cases. The resolution of these cases was primarily achieved through the criminal justice process at the police department, with a number of cases being resolved via restorative justice.

A total of 26 assault cases were attributed to alcohol consumption. Of these, three cases were resolved through restorative justice, nine involved the withdrawal of reports, two received a SP3 (Case Termination Notice), and 13 continued through the stages of the criminal process. This indicates that while a substantial number of assault cases related to alcohol were reported to the police, a significant proportion of these reports involved the withdrawal of complaints by the complainants, resulting in the cases not being pursued within the criminal justice system. It is noteworthy that the number of assault cases resulting from alcohol consumption has exhibited a consistent annual increase.

As delineated in the preceding section, assault offenses are codified under Articles 351 to 358 of the Indonesian Criminal Code (KUHP). These offenses can be categorized into five types: common assault (Article 351 of the KUHP), light assault (Article 352), premeditated assault (Article 353), aggravated assault (Article 354), and premeditated aggravated assault (Article 355). The severity of the punishment for assault offenses is commensurate with the nature of the assault committed.<sup>23</sup>

The Indonesian criminal law, as codified in the Indonesian Penal Code, Article 351, delineates penalties for various criminal acts related to assault. Paragraph (1) of the aforementioned Article stipulates that the offense of assault is punishable by a maximum of five years of imprisonment and a fine of up to four thousand five hundred rupiahs. Paragraph (2) stipulates that if the assault results in severe injury to the victim, the offender is liable to a sentence of up to two years and eight months in prison. Paragraph (3) stipulates that in cases where the assault results in the death of the victim, the penalty is increased to a maximum of seven years of imprisonment. Paragraph (4) extends the punishment if the assault causes harm to health, as regulated by other legislation.<sup>24</sup>

The necessity to apply criminal sanctions (the criminal process) in assault cases caused by alcohol at the Pohuwato Police Department has relied on several indicators, as revealed in an interview with the Head of Unit I of the Criminal Investigation Unit (Sat Reskrim) at the Pohuwato Police Department. The aforementioned interview expounds upon the law enforcement process in assault cases caused by alcohol, as follows:<sup>25</sup>

“The criminal process may be implemented in instances where a suspect has repeatedly engaged in criminal activity (i.e., recidivism), the penalty exceeds a duration of five years, and the consequences result in injury, injury of a severe nature, or death to the victim. Concurrently, the impediments encountered by law enforcement in criminal cases of assault resulting from alcohol consumption include inadequate evidence and the absence of witnesses who can offer clear testimony regarding the incident.”

A review of the aforementioned interview results reveals several key indicators that facilitate the resolution of criminal cases through legal proceedings. These indicators include the following: the suspect has a documented history of repeatedly committing assault crimes due to alcohol, the criminal threat exceeds five years, and the consequences of the crime include the victim suffering from injuries, severe injuries, or death. In light of these criteria, the probability of achieving a resolution through restorative justice is deemed low, as this approach entails substantial assault. Witness testimony is paramount in elucidating cases of assault caused by alcohol, as inadequate evidence and a paucity of witnesses will impede the progression of the case to subsequent stages.

Alcohol-related assaults are prevalent in society, manifesting in both interpersonal and group settings. These assaults can transpire abruptly or be premeditated, and frequently entail recidivism. Consequently, these offenses necessitate penal action, entailing strict sanctions, which should function as a deterrent.

As previously discussed, Muladi identifies three approaches in the criminalization and penalization policy:<sup>26</sup>

- 1) The Evolutionary Approach, which involves improving, refining, and amending existing regulations
- 2) The Global Approach, which entails the creation of new regulations outside the Criminal Code (KUHP).
- 3) The Compromise Approach, which adds specific chapters to the Criminal Code (KUHP) regarding certain crimes

In the context of assault caused by alcohol, criminal resolution can be viewed from the enforcement of criminal law (penal) and through the use of restorative justice, which upholds the values of restorative justice through deliberation, or it can be classified as a non-penal effort. The latter approach involves the establishment of a distinct regulatory framework, external to the Criminal Code (KUHP), thereby adopting a global approach. The resolution is codified in the Indonesian National Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

The efficacy of the restorative justice policy hinges upon the engagement of components from both the criminal justice system and external entities, such as the community, customary courts, or other institutions whose authority must be explicitly delineated by law to facilitate reconciliation between the

<sup>23</sup> Lihat Undang-Undang Nomor 1 Tahun 1946 tentang Hukum Pidana atau Kitab Undang-Undang Hukum Pidana Pasal 351-355.

<sup>24</sup> Lihat Pasal 351 Kitab Undang-Undang Hukum Pidana Indonesia

<sup>25</sup> Wawancara bersama Bapak Amzai, S.E pada 8 Maret 2024 Pukul 13.00 Wita

<sup>26</sup> Muladi dan Barda Nawawi Arief. 2010. *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni. Hal. 32



offender and the victim. Individuals assisted by non-criminal justice subsystems should not be subject to interrogation regarding their legal validity or authority.

Furthermore, the implementation of restorative justice by law enforcement entities in Indonesia is closely tied to the Republic of Indonesia Regulation No. 8 of 2021, which governs the adjudication of criminal acts through the lens of restorative justice. According to this regulation, minor violations qualify for restorative resolution, as stated in Article 2, Paragraph 4. The application of restorative justice principles is contingent upon the fulfillment of both general and specific standards delineated in Article 3, Paragraph (1). The aforementioned broad criteria are further classified as follows: the offender should not be radical or separatist; not a repeat offender as determined by a court decision; not a terrorist, a security threat, a corrupt official, or a criminal threatening human life; should not affect social conflict; should not have the ability to undermine the state; and should not be radical or separatist. The formalities encompass but are not limited to, mutual forgiveness (excluding drug crimes) and the satisfaction of the victim's rights while holding the offender accountable (excluding drug violations). In select instances, the integration of electronic information and transactions (ITE), narcotics, and traffic offenses can facilitate the realization of restorative justice through the presence of customary institutions.<sup>27</sup> These institutions offer numerous advantages and contribute positively to the Indonesian criminal justice system.<sup>28</sup>

Regulations pertaining to minor criminal offenses, as delineated in the Indonesian Criminal Code (KUHP) and associated legislation, are distinguished by the background of the perpetrator, the motive underlying the offense, and the consequences of the crime, which do not result in widespread harm to society. Nevertheless, the implementation of these regulations often gives rise to concerns regarding the administration of justice. Specifically, the judicial resolution of these matters through court proceedings may not always be necessary, and could instead be resolved through a process of deliberation and consensus outside the court system. This approach is an integral mechanism in Indonesian society. The resolution of minor criminal offenses can be achieved through penal mediation, known as the restorative justice approach, which emphasizes the active participation of the offender, the victim, and the community. This approach conceptualizes criminal offenses as assaults on individuals and society as a whole. Justice is therefore conceptualized as a process of resolving issues through the involvement of all parties, with a focus on improvement, reconciliation, and the continuity of these efforts.<sup>29</sup>

According to the researcher, the optimal resolution for cases of minor assault caused by alcohol should be achieved through the implementation of restorative justice, spearheaded by law enforcement officials (investigators), by undertaking the following actions:

1. Law enforcement officials are bound by duty to consistently offer mediation or settlement endeavors prior to advancing to the subsequent legal phase by implementing restorative justice for the parties implicated in the case. Ideally, the police are expected to offer mediation up to three times. Should the first two mediations fail, this is indicative of emotional factors present in the parties involved. The third mediation is regarded as an opportunity to reach a reconciliation that upholds the principle of utility.
2. In the event that the aforementioned mediation efforts do not yield an agreement (settlement), law enforcement authorities will proceed to the subsequent stage of the legal process, namely the investigation.

Berikut skema keterlibatan unsur-unsur atau pihak dalam penyelesaian perkara tindak pidana penganiayaan ringan akibat minuman keras yang diselesaikan melalui *restorative justice*:<sup>30</sup>

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<sup>27</sup> Yusna Arsyad, Fence M. Wantu, Dian Ekawaty Ismail. 2023. *Kembali Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Indonesia: Sebuah Gagasan Mencapai Idealitas*. Jurnal Ilmu Hukum Prima. Vol. 6. No (2). Hal. 260

<sup>28</sup> Dian Ekawaty Ismail, dkk. 2023. *The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice*. Jambura Law Review. Vol. 5. No. (2). Hal. 229

<sup>29</sup> Muhaimin. 2019. *Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan*. Jurnal Penelitian Hukum DE JURE. Vol. 19. No. (2). Hal. 205

<sup>30</sup> Skema sebagai olahan Peneliti dalam memperjelas pelaksanaan RJ dan unsur-unsur yang terlibat.



As illustrated in the above schematic, the implementation of restorative justice (RJ) by law enforcement in cases of light assault offenses caused by alcohol can be measured by the indicators of a successful RJ implementation, up to the mutual agreement of the parties, taking into account its benefits, including:

1. The implementation of RJ by the police is extended to both parties (the complainant and the defendant)
2. The presence of a statement letter from both parties, which includes:
  - a) A statement from the defendant that they will not repeat their actions
  - b) A statement from the complainant to not proceed with further legal action
3. The presence of an agreement on compensation for physical recovery and the restoration of reputation to the individual, the public, or society
4. The report is then withdrawn from the police
5. The implementation of RJ must be witnessed by the parties involved, the police, as well as community leaders, religious leaders, government officials, and the family members who are considered important in the process of resolving cases of light assault offenses caused by alcohol

Restorative Justice is limited by specific conditions, particularly in a case that occurs, including:

1. The offense or case eligible for RJ, in this case, is the offense of light assault caused by alcohol
2. The defendant must apologize to the victim (complainant) both orally and in writing
3. The victim (complainant) must accept the apology and agree to reconcile with mutual consent without any intervention from third parties

The three fundamental principles that govern the resolution of cases through restorative justice are as follows:

- (1) The establishment of an agreement between the defendant and the victim to resolve the issue outside the judicial process
- (2) The voluntary action of the defendant to assume responsibility by fulfilling the victim's rights, either in the form of compensation or other means to restore the situation to what it was before the offense occurred
- (3) Upon the fulfillment of these principles, the victim withdraws their complaint from the police

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## 5. Conclusion

The impending enactment of the 2023 Penal Code (KUHP), scheduled to take effect in 2026, will introduce a series of amendments to the existing legal framework. Among these amendments is a provision that stipulates a maximum prison sentence of two years and six months, or a fine of up to category III, for individuals found guilty of assault. This signifies a divergence in the sanction for imprisonment, as the 2023 KUHP incorporates a reduction of two months in the imprisonment period compared to the 1946 KUHP. Concurrently, the implementation of restorative justice in assault cases stemming from alcohol consumption can be pursued through the resolution of such cases. In resolving these cases through restorative justice, three fundamental principles underpin the restorative justice process: Firstly, an agreement between the defendant and the victim to resolve the issue outside the judicial

process. Secondly, the voluntary action of the defendant to take responsibility by fulfilling the victim's rights, either in the form of compensation or other means, to restore the situation to its previous state.

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