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Article Title

**Judicial Discretion in Sentencing Perpetrators of
Aggravated Assault: An Analysis of Decision Number
221/Pid.B/2024/PN Rhl**

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ABSTRACT

*This research aims to analyze judicial discretion in sentencing perpetrators of aggravated assault resulting in serious bodily injury. The research method employed is normative legal research with a statute approach and a case study approach, which is analyzed qualitatively through content analysis. The results show that the defendant was charged alternatively with a primary indictment of attempted murder, a subsidiary indictment of aggravated assault resulting in serious bodily injury, and a lesser subsidiary indictment of simple assault. The charges by the Public Prosecutor were in line with the subsidiary indictment of aggravated assault resulting in serious bodily injury as supported by the *Visum et Repertum*. Conversely, the judge's verdict, based on the lesser subsidiary indictment of simple assault, emphasizes judicial discretion. Judicial discretion is an effort to balance the enforcement of positive law and the achievement of substantive justice by considering the values that live in society (living law). The decision reflects the struggle between formal legality and contextual substantive justice. Therefore, more precise guidelines are needed regarding the limits and parameters of judicial discretion, especially in cases that intersect with living law. Improving the quality of the *Visum et Repertum* and strengthening judges' capacity to understand living law are also important to strive for in order to achieve a responsive and just judicial system.*

Keywords: Assault; Honor; Judicial Discretion; Living Law; Serious Bodily Injury.

INTRODUCTION

In social life, honour is recognized as a fundamental and upheld entity. Honour, which represents the dignity and worth of individuals and families, significantly influences a person's social status (Rezah & Muzakir, 2021). As a social construct, the values and norms contained in the concept of honour are dynamic and vary between community groups. Nevertheless, honour is closely related to integrity, reputation, and self-esteem. Within the family sphere, the responsibility to maintain and defend this honour is often mandated to the head of the family (Samatan et al., 2023).

The head of the family, generally held by men in the social structure of Indonesian society, either as husbands or fathers, bears significant responsibility for maintaining family honour. This role is not only external as a social responsibility but also internal as a reflection of self-esteem and personal pride. Maintaining family honour will bring moral and social legitimacy and strengthen the family's position in the social structure (Zalukhu & Kolibu, 2022). Conversely, the loss of honour can have fatal consequences, destroying self-esteem, tarnishing dignity, and lowering the family's reputation, and can even lead to social sanctions in the form of ostracism (Rusman et al., 2023).

In societies that adhere to a patriarchal system, women are often seen as symbols of family honour (Maiyo et al., 2023). This social construction places women, in their roles as mothers, wives, daughters, or sisters, in a vulnerable position. Consequently, actions that demean, harass, or defile women are often perceived as attacks on the honour of the family as a whole (Christianson et al., 2021).

The perception that the harassment of women is a serious threat to family honour can trigger complex and intense emotional responses, especially from men in the family. Fathers, husbands, or brothers who feel responsible for protecting family honour are often overwhelmed by anger, shame, and humiliation. This emotional pressure can lead to impulsive actions that often go beyond the limits of rationality, as an attempt to restore honour that is considered to have been tarnished (Loza, 2022).

Under certain conditions, the outburst of emotion due to the violation of family honour can manifest as vigilantism or *eigenrichting* (Iskandar et al., 2024). This act can be defined as direct punishment by individuals or groups outside the formal legal corridor. The motives underlying vigilantism are generally sentiments of revenge, dissatisfaction with the legal process, and the urge to enforce social norms that are considered to have been violated.

Although it can be understood in the context of emotions and socio-cultural background, vigilantism is still not justified from the perspective of Indonesian positive law. The Indonesian legal system views vigilantism as a form of law violation that has the potential to undermine the principles of justice and legal certainty. Therefore, vigilantism, the manifestation of which can be in the form of assault or murder, is subject to criminal sanctions as stipulated in the Penal Code (Senjaya, 2021). The variation of these criminal threats is adjusted to the degree of the act, the element of intent, and the consequences.

In the criminal justice system, judges are granted discretionary authority, namely the flexibility to make decisions by considering factors beyond normative legal provisions (Nasrullah, 2020). This discretion allows judges to explore and weigh specific aspects of a case, such as the defendant's psychological condition, motives, and the socio-cultural context surrounding the crime. The use of this discretion is an important instrument in realizing substantive justice, which goes beyond mere formal legal certainty (Zahra et al., 2024).

Although it has a noble purpose, applying judicial discretion often creates polemics, especially in cases that intersect with the moral and social values embraced by society. There are situations where an act is *letterlijk* wrong and can be punished under positive law, but morally and socially it may be understood or even considered reasonable by some people (Bustan & Jumadi, 2024). In such a dilemmatic situation, judicial discretion is tested to balance legal certainty and the sense of justice that exists in society while adhering to the principles of law and justice (Mustafa, 2021).

Decision Number 221/Pid.B/2024/PN Rhl presents a concrete and relevant example for examining the use of judicial discretion in handling complex cases, both from a legal and moral perspective, primarily related to aggravated assault. This

case involves a defendant named Zufri, who committed an assault against a victim. This case is interesting because it is motivated by family problems that triggered the defendant's anger and resulted in violent actions.

This case began on December 26, 2019, when the Defendant was released from prison and learned that his wife was pregnant by another man whom the defendant suspected was the victim. The Defendant had looked for the victim but was delayed because the defendant returned to serve a prison sentence from 2020 to 2022. Finally, on Tuesday, August 15, 2023, the defendant discovered the victim's whereabouts. Carrying a knife, the defendant attacked the victim and stabbed him once. The stab, which was initially aimed at the victim's neck, hit the victim's right cheek and right shoulder, resulting in lacerations and bleeding as described in *Visum et Repertum* Number 10/Vsm-Rm/III/2024. These injuries required the victim to be hospitalized and unable to carry out activities for a while.

The Defendant was then brought to trial by the Public Prosecutor with an alternative indictment. The primary indictment of the Public Prosecutor contains Article 338 juncto Article 53 section (1) of the [Penal Code](#) concerning attempted murder. The subsidiary indictment contains Article 351 section (2) of the [Penal Code](#) concerning aggravated assault resulting in serious bodily injury. Finally, the Public Prosecutor's lesser subsidiary indictment contains Article 351 section (1) of the [Penal Code](#) concerning simple assault. The Public Prosecutor then charged the defendant with 2 years and 6 months imprisonment based on Article 351 section (2) of the [Penal Code](#). However, the Panel of Judges handed down a lighter sentence, namely 2 years imprisonment, based on the lesser subsidiary indictment, Article 351 section (1) of the [Penal Code](#).

The lighter sentence than the charges by the Public Prosecutor and based on a lighter indictment indicates the existence of judicial discretion in handling this case. It is suspected that the Panel of Judges considered factors beyond normative provisions, such as the background of the family problem that triggered the defendant's anger. Therefore, [Decision Number 221/Pid.B/2024/PN Rhl](#) is significant for further analysis. This study aims to comprehensively analyze the basis of the judge's considerations in using their discretion, its implications for substantive justice, and its conformity with the principles of criminal law. Hopefully, this research can substantially contribute to the discourse on the role and limitations of judicial discretion, especially in handling cases with substantial social and moral dimensions. Furthermore, the results of this study are expected to be a reference for academics, legal practitioners, and policymakers in developing a more just, humane, and responsive criminal justice system to social dynamics, primarily related to the concept of substantive justice and judicial discretion in the context of aggravated assault.

METHOD

This research employs a normative legal research methodology with a statute approach and a case study approach (Qamar & Rezah, 2020). This methodological framework is relevant to the research objective of analyzing the application of judicial discretion in sentencing perpetrators of aggravated assault. The statute approach will focus on the provisions of the Penal Code concerning the crime of assault. The case study is conducted through an in-depth examination of the court's decision to provide comprehensive insights into the practical application and interpretation of legal norms. In addition to primary legal sources in legislation and court decisions, this research utilizes secondary legal materials, including legal doctrines, scientific journals, and other relevant literature obtained through library research. Data analysis uses a qualitative content analysis approach to systematically examine and interpret non-numerical data, such as legal texts and court decisions. This technique enables identifying, classifying, and interpreting key themes, patterns, and arguments in the data. Through this rigorous methodological approach, this research seeks to produce a comprehensive and systematic analysis to describe the problem and answer the research objectives (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. Chronology of the Criminal Act of Aggravated Assault Based on the Indictment by the Public Prosecutor in Decision Number 221/Pid.B/2024/PN Rhl

The chronology based on the indictment by the Public Prosecutor in [Decision Number 221/Pid.B/2024/PN Rhl](#) began on December 26, 2019. The Defendant, who had just completed a prison sentence for another case, faced a bitter reality. He received information that his wife was pregnant with another man's child. This man was alleged to be the victim. This information immediately triggered emotional turmoil and deep anger within the defendant. The Defendant felt that his dignity as a husband had been trampled on and his family's honour tarnished.

Overwhelmed by anger and resentment, the defendant intended to find and meet the victim to vent his disappointment. However, the plan had to be postponed. In 2020, the defendant served another prison sentence for a different case. This detention period lasted until 2022. After being released, the defendant's determination to find the victim reignited. An intensive search was carried out to settle the grudge still burning in his heart.

The defendant's efforts to find the victim finally paid off. On Tuesday, August 15, 2023, at around 1:50 PM Western Indonesian Time, the defendant obtained

accurate information regarding the victim's whereabouts. It was known that the victim was spending time at an internet cafe. Without delay, the defendant immediately rushed to the location. The malicious intent and anger that were still raging prompted the defendant to arm himself with a knife. The knife had a handle covered with tyre rubber and was tucked into the defendant's waistband, hidden from view.

Arriving at the internet cafe around 2:00 PM Western Indonesian Time, the defendant found the victim sitting inside, engrossed in his activity. Without any hesitation, the defendant approached the victim. The defendant's quick and directed movements showed his strong determination to injure the victim. In seconds, the defendant took out the knife he had prepared from his waistband.

In the primary indictment, the Public Prosecutor alleges that the defendant deliberately aimed the knife at the victim's right neck. The motive expressed in the primary indictment was to sever the victim's artery, indicating the defendant's intention to take the victim's life. However, in the subsidiary and lesser subsidiary indictments, the Public Prosecutor only stated that the defendant aimed the knife at the victim's right neck without mentioning the motive to sever the artery. This substantial difference in the description of the motive for the attack is the main differentiator between the primary indictment and the subsidiary and lesser subsidiary indictments.

Regardless of the different descriptions of the motive in the indictment, the chronology of the attack alleged by the Public Prosecutor in all three indictments is consistent. The Defendant, with a quick and powerful movement, stabbed the knife once towards the victim's right neck. However, the attack did not fully hit the target. The victim, who may have realized the danger, managed to evade it. As a result, the knife only hit the victim's right cheek and right shoulder. Immediately, the victim screamed "help" loudly, an expression of deep fear and pain. The scream attracted the attention of people around and made the defendant panic.

Hearing the victim's screams and realizing that his actions were known to others, the defendant was struck by panic. Without thinking, the defendant immediately fled the scene. The Defendant left the injured and bleeding victim without providing assistance or showing remorse. The defendant's main priority at that time was to escape from being chased by the mob or law enforcement officers.

As a result of the brutal attack, the victim suffered quite serious injuries. Based on *Visum et Repertum* Number 10/Vsm-Rm/III/2024 dated March 28, 2024, made and signed by dr. Azizah, the examining physician at the Regional General Hospital dr. RM. Pratomo Bagansiapiapi, medical facts were revealed that

strengthened the indictment by the Public Prosecutor. The results of the medical examination concluded that the victim suffered a laceration on the right cheek measuring 7 x 2 cm. In addition, two lacerations were found on the victim's right shoulder, each measuring 2 x 0.5 cm and 1 x 0.5 cm. All of these wounds were caused by a sharp object, which in this case was the knife used by the defendant.

Furthermore, the *Visum et Repertum* explained that the injuries suffered by the victim resulted in significant bleeding. The victim had to be rushed to the Regional General Hospital dr. RM. Pratomo Bagansiapiapi to receive intensive medical treatment. Besides the physical impact, the attack also affected the victim's activities. The victim could not carry out daily activities and was forced to postpone his work for a while until his condition improved.

After several investigation processes, the defendant was finally brought to justice. In court, the Public Prosecutor filed an alternative indictment against the defendant. The primary indictment, which is the most serious indictment, refers to Article 338 juncto Article 53 section (1) of the [Penal Code](#) concerning attempted murder. This indictment is based on the allegation that the defendant intentionally tried to take the victim's life. The subsidiary indictment, which is an alternative if the primary indictment is not proven, refers to Article 351 section (2) of the [Penal Code](#) concerning aggravated assault resulting in serious bodily injury. This indictment is based on the fact that the victim suffered serious injuries as a result of the defendant's attack. The lesser subsidiary indictment, filed as a last alternative, refers to Article 351 section (1) of the [Penal Code](#) concerning simple assault.

The Public Prosecutor read out their charges after going through the evidentiary stages, including examining witnesses and evidence. In their charges, the Public Prosecutor believed that the defendant was legally and convincingly proven guilty of committing the crime of assault that resulted in serious bodily injury, as regulated in Article 351 section (2) of the [Penal Code](#), by the subsidiary indictment. Therefore, the Public Prosecutor requested the Panel of Judges to sentence the defendant to 2 years and 6 months imprisonment. The charges also included requesting the defendant to remain in custody during the legal process.

In addition to the imprisonment charges, the Public Prosecutor also submitted a request regarding evidence and court costs. In this case, the Public Prosecutor requested that the evidence in the form of a short-sleeved t-shirt belonging to the victim, which had a tear on the right sleeve, be confiscated and destroyed. This request was based on the consideration that the evidence no longer had economic value and was closely related to the crime committed by the defendant. The Public Prosecutor also requested the Panel of Judges to charge the defendant with court costs of IDR 5,000 (five thousand rupiahs).

The charges by the Public Prosecutor based on Article 351 section (2) of the [Penal Code](#), which regulates assault resulting in serious bodily injury, are considered appropriate. It is supported by substantial evidence, especially the results of the *Visum et Repertum*, which clearly describes the condition of the injuries suffered by the victim. The charges of 2 years and 6 months imprisonment brought by the Public Prosecutor are still within the range of the criminal threat stipulated in Article 351 section (2) of the [Penal Code](#), which states a maximum imprisonment of five years. Thus, the charges are legally valid and grounded, considering that the article only regulates the maximum limit of punishment without determining the minimum limit.

B. Judicial Discretion in the Selection of Indictments: A Case Study on Aggravated Assault Based on Decision Number 221/Pid.B/2024/PN Rhl

[Decision Number 221/Pid.B/2024/PN Rhl](#) presents a compelling legal phenomenon concerning judicial discretion in determining the most appropriate indictment. Originating from a criminal act of assault, this case embodies a unique complexity, intersecting with social dynamics and prevailing moral values in the community. In this matter, the Public Prosecutor filed three alternative indictments: primary, subsidiary, and more subsidiary, each carrying distinct legal implications. As the adjudicator, the judge faced a challenging decision in selecting the indictment that best aligned with the facts presented at trial and the principles of justice.

The primary indictment, based on Article 338 juncto Article 53 section (1) of the [Penal Code](#) concerning attempted murder, revealed significant weaknesses upon closer examination. The essential element of “intention” or *opzet*—the deliberate intent to deprive another of life—proved challenging to substantiate convincingly in this case. Although the defendant wielded a sharp weapon and directed it toward the victim’s neck, the act did not conclusively demonstrate a deliberate and premeditated intent to commit murder. The incident’s setting—a crowded internet cafe—and the solitary nature of the attack suggest the defendant’s actions stemmed more from a momentary emotional outburst than from calculated intent.

Furthermore, the “failure to complete the act due to external factors,” stipulated in Article 53 section (1) of the [Penal Code](#) on attempts, was also challenging to satisfy. Trial evidence indicated that the defendant fled the scene immediately after the victim screamed, fearing discovery by others. The cessation of the defendant’s actions resulted not from a change of intent but from external factors, namely fear and panic. Consequently, the elements necessary to establish

attempted murder under the primary indictment were not conclusively proven, either in terms of intent or the interruption of the act.

In contrast to the primary indictment, the subsidiary indictment based on Article 351 section (2) of the [Penal Code](#) concerning assault resulting in serious injury was deemed more appropriate and proportional. This indictment aligns with the facts established during the trial, particularly regarding the victim's condition. The *Visum et Repertum* Number 10/Vsm-Rm/III/2024 was crucial evidence, objectively documenting the victim's injuries. A 7 x 2 cm laceration on the right cheek and two additional lacerations on the right shoulder, measuring 2 x 0.5 cm and 1 x 0.5 cm, respectively, caused by a sharp object, were medically classified as serious injuries.

Legally, these injuries meet the "serious injury" criteria under Article 351 section (2) of the [Penal Code](#). Although the [Penal Code](#) does not define "serious injury," jurisprudence and criminal law doctrine have provided clear parameters. Injuries that significantly disrupt the victim's activities or employment for a considerable period ([Azis & Hamsir, 2022](#)), or require serious medical intervention ([Tanjung & Widjajanti, 2024](#)), are commonly categorized as severe. In this case, the victim required hospitalization and was temporarily unable to perform daily activities or work. Thus, the "serious injury" element under the subsidiary indictment was fulfilled.

After a comprehensive evidentiary process, including witness testimonies, evidence, and the defendant's statements, the Public Prosecutor concluded that the defendant was legally and convincingly proven to have committed a criminal act under Article 351 section (2) of the [Penal Code](#). This conclusion was reflected in the charges read during the trial, wherein the Public Prosecutor requested the court impose a sentence of 2 years and 6 months imprisonment on the defendant under the subsidiary indictment. This indicated that, after evaluating all evidence, the Public Prosecutor deemed the subsidiary indictment the most accurate and substantiated in this case.

On the other hand, the more subsidiary indictment, referencing Article 351 section (1) of the [Penal Code](#) concerning simple assault, was deemed less relevant and failed to reflect the essence of the offence. This provision only applies where the assault does not result in serious injury. In this case, the medical evidence contained in the *Visum et Repertum* demonstrated that the victim suffered significant injuries that disrupted daily activities. Thus, applying Article 351 section (1) of the [Penal Code](#) would obscure the substance of the case and risk undermining the sense of justice.

The verdict of [Decision Number 221/Pid.B/2024/PN Rhl](#), which in its first point declared the defendant legally and convincingly guilty of committing “assault” under the more subsidiary indictment, and in its second point imposed a prison sentence of 2 years, highlights the exercise of judicial discretion. In criminal law, sentencing theories provide the philosophical foundation for the objectives and justifications of punishment ([Putra & Ahyani, 2022](#)). Broadly, these theories are classified into retributive (retribution), utilitarian/preventive (deterrence), and rehabilitative/restorative (restoration) theories ([Nasrullah, 2023](#)). In this context, judicial discretion serves as an instrument to achieve these sentencing objectives more contextually ([Prasetya et al., 2023](#)). Judges are not strictly bound by rigid statutory provisions but may consider extralegal factors, such as socio-cultural backgrounds and prevailing community values.

Moreover, judicial discretion in rendering decisions is often linked to substantive justice. Substantive justice emphasizes not only the alignment of decisions with written law (legal justice) but also the consideration of societal values and the community’s evolving sense of justice ([Faisal et al., 2024](#)). In this context, judges may explore and weigh values, norms, and customs adhered to by local communities, commonly referred to as living law ([Kuntadi, 2022](#)). The application of living law seeks to bridge the gap between rigid, positive law and dynamic social realities ([Laia, 2024](#)). The judgment also ordered the confiscation and destruction of evidence, including a brown short-sleeved shirt, and required the defendant to pay court fees.

In this case, the lighter sentence imposed under the more subsidiary indictment suggests the judge considered factors beyond normative legal frameworks. The decision accounted for the defendant’s emotional trigger, specifically the alleged pregnancy of his wife by the victim. The court acknowledged the complex socio-cultural context while the defendant’s actions cannot be legally justified. In certain Indonesian regions, family honour remains highly valued, and breaches of such honour often provoke strong reactions ([Warjiyati et al., 2023](#)). Additionally, concepts such as family reconciliation, forgiveness, and peace, which are integral to living law, influenced the judge’s decision to render a fair and culturally appropriate verdict ([Sulistiani et al., 2022](#)).

Although the subsidiary indictment under Article 351 section (2) of the [Penal Code](#) regarding assault causing serious injury was more legally appropriate based on the evidence, the judge’s choice of the more subsidiary indictment should be interpreted as an effort to balance legal enforcement, substantive justice, and respect for living law. This judgment reflects the interplay between applying positive law, achieving substantive justice, and honouring societal values. Judicial

discretion, in this instance, emerges as a crucial tool to deliver a decision that is not only lawful but also equitable and humane. By considering social dynamics, local wisdom, and broader sentencing objectives, the judge sought to resolve the case in a manner acceptable to all parties and conducive to social harmony. Ultimately, this case enriches Indonesia's legal discourse and offers valuable insights into the complexities of law enforcement amidst social and cultural dynamics.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that [Decision Number 221/Pid.B/2024/PN Rhl](#) reflects judicial discretion in determining the appropriate indictment for the defendant in an assault case. Furthermore, the Public Prosecutor filed an alternative indictment. The primary indictment based on Article 338 juncto Article 53 section (1) of the [Penal Code](#) regarding attempted murder was deemed inappropriate because it was weak in proving the element of intent to take the victim's life. Conversely, the subsidiary indictment, which focused on assault resulting in serious bodily injury, was more in line with the legal facts that were revealed, especially with the support of substantial evidence in the form of the *Visum et Repertum*. This document objectively describes the condition of the victim's injuries, which fulfils the "serious bodily injury" elements regulated in Article 351 section (2) of the [Penal Code](#).

However, the judge's verdict was based on the lesser subsidiary indictment under Article 351 section (1) of the [Penal Code](#), with a lighter sentence. This decision indicates that the judge's considerations went beyond the normative formulation of the indictment, leading to the use of judicial discretion. In this case, the use of judicial discretion is an embodiment of the effort to balance the enforcement of positive law and the achievement of substantive justice. The judge considered the values that live in a society (living law), such as family honour and amicable settlement, which are still upheld in some areas of Indonesia. Although different from the charges and the indictment, the lighter sentence, which was considered more juridically appropriate, remains within the applicable legal corridor.

Thus, more precise guidelines are needed regarding the limits and parameters of judicial discretion, especially in cases that intersect with the values of living law. This is important to create legal certainty and contextual and humanistic justice and minimize the potential for sentencing disparities. These guidelines must be prepared by considering input from various parties, including academics, legal practitioners, and community leaders. In addition, improving the quality of the *Visum et Repertum* also needs to be considered to provide a more comprehensive and detailed description of the condition of the victim's injuries. A high-quality *Visum et Repertum* will be a more substantial piece of evidence in supporting fair and precise law enforcement. Strengthening the capacity of law enforcement officials, especially judges, in

understanding and applying the concept of living law wisely is also crucial to realizing a judicial system that is responsive to social and cultural dynamics and capable of producing decisions that are not only legal but also reflect a sense of justice in society.

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