

## REPOSITIONING THE VICTIM'S LEGAL STANDING: TRANSFORMING UNLAWFUL ACT LAWSUITS INTO SUBSTANTIVE RESTITUTION EXECUTION CERTAINTY IN ASSAULT CASES UNDER LAW NO. 20 OF 2025."

Stefanus Fernandus Pardosi<sup>1\*</sup>, Faizin Sulistio<sup>2</sup>, Djumikasih<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, Universitas Brawijaya (Malang)

E-mail: [fernanduspardosi@student.ub.ac.id](mailto:fernanduspardosi@student.ub.ac.id)<sup>1\*</sup>, [faizin@ub.ac.id](mailto:faizin@ub.ac.id)<sup>2</sup>, [kimujd@ub.ac.id](mailto:kimujd@ub.ac.id)<sup>3</sup>

Received : 20 November 2025

Published : 31 January 2026

Revised : 01 December 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i6.5094>

Accepted : 30 December 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

### Abstract

This study examines the paradigm shift in criminal procedure law, moving from an offender-centered focus toward the restoration of victim rights through restitution mechanisms. Article 101 of the old Criminal Procedure is considered to have failed in providing effective justice because it positioned compensation as an "accessory" claim subject to civil procedure. This placed the burden of independent proof on the victim and resulted in court orders that were difficult to execute. Using normative legal research with a conceptual approach, this study analyzes the urgency of Law No. 20 of 2025 (the New Criminal Procedure Code), effective as of January 2, 2026. The results indicate that Articles 183-192 of the New Criminal Procedure Code carry out a significant transformation by fully integrating restitution into the criminal justice system. This innovation shifts the burden of proof to the Public Prosecutor and provides enforcement power through substitute imprisonment for offenders who refuse to pay. This procedural transformation cuts through the complexity of judicial bureaucracy and guarantees legal certainty and substantive recovery of victim rights. This arrangement serves as a solution to the legal vacuum and the ineffectiveness of the old mechanism, particularly in ordinary criminal cases, to realize comprehensive restorative justice.

**Keywords:** Assault; Article 101 KUHAP; Law No. 20 of 2025; Restitution; Restorative Justice

### INTRODUCTION

Debates regarding Human Rights (HAM) within the realm of criminal law are often trapped in the protection of the rights of suspects or defendants to avoid the abuse of power by the state. However, the essence of justice and respect for human dignity must not stop at the perpetrator but must also touch the side of the victim. In criminal justice practice, victims have often become forgotten entities, where the physical suffering, psychological trauma, and material losses they experience are not adequately compensated. The crime of assault, as regulated in Article 351 of the Indonesian Penal Code (KUHP), serves as a clear precedent where victims experience a degradation in their quality of life. Traditionally, claims for damages for such losses followed the path of an Unlawful Act (Tort) through Article 1365 of the Indonesian Civil Code. Although Articles 98 to 101 of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) provided a mechanism for the joinder of claims, its implementation over more than four decades has shown a failure of the paradigm. Article 101 KUHAP positioned victim compensation merely as an "accessory" (accessoire) claim subject to the rigidity of civil procedure law (HIR/RBg). Consequently, victims bore the private burden of proof in the midst of criminal proceedings, which were often rejected or ignored by Judges as they were deemed to hinder the examination of the main criminal case. This ineffectiveness was exacerbated by execution issues; compensation orders frequently ended as "paper tigers" due to expensive and exhausting procedures. Legal inequality becomes even more apparent when comparing the treatment of victims of special crimes—such as terrorism, human trafficking (TPPO), or sexual violence (TPKS)—with victims of ordinary crimes like "common" assault. In special crimes, the state, through the LPSK, actively facilitates restitution. This creates a hierarchy of suffering, as if the pain of a common assault victim is less worthy of state-led recovery. This procedural discrimination forced victims back into the ancient and ineffective mechanism of Article 101 KUHAP. The enactment of Law Number 20 of 2025 on Criminal Procedure (New KUHAP), officially effective as of January 2, 2026, serves as a crucial momentum to end this stagnation. Through Articles 183-192, the New KUHAP performs a fundamental repositioning by integrating restitution into criminal sanctions and shifting the burden of proof to the Public

Prosecutor. This article aims to analyze the procedural transformation from the mechanism of Article 101 of the old KUHAP toward a new restitution system as an effort to guarantee legal certainty and substantive recovery of victim rights. The presence of this new regulation demands judicial courage to perform legal discovery (rechtsvinding) that prioritizes restorative justice, making the recovery of victim rights not merely an attachment, but the essence of legal enforcement itself.

## LITERATURE REVIEW

**Criminal Assault and the Complexity of Victim Loss** Assault is defined as an intentional act to cause pain or injury to another person. In the context of victimology, the loss experienced by assault victims is not singular. It is not limited to material dimensions such as medical expenses and loss of income—but also encompasses immaterial dimensions, such as psychological suffering (trauma) and the loss of specific bodily functions. Therefore, victim recovery is not sufficient solely by imprisoning the perpetrator; it must touch upon the aspect of reparation for the losses suffered.

**1. Construction of Unlawful Act (Tort) from a Civil Perspective** As the material foundation for claiming damages, Article 1365 of the Indonesian Civil Code plays a vital role. This article states: "Every unlawful act that causes loss to another person obliges the person whose fault caused the loss to compensate for such loss." Doctrinally, the cumulative elements that must be met in an Unlawful Act include:

1. **Act:** Either positive (doing something) or negative (omitting to do something).
2. **Unlawfulness:** The act violates the law, the subjective rights of others, morality, or propriety.
3. **Fault (Schuld):** Contains elements of intent or negligence.
4. **Loss:** Includes both material and immaterial losses.
5. **Causality:** A direct cause-and-effect relationship between the unlawful act and the resulting loss.

**2. Theory of Restorative Justice** Restorative justice is a paradigm that views a crime not merely as a violation of the state or the law, but as a violation of people and human relationships. According to Howard Zehr (2002), the primary focus of restorative justice is repairing the harm for the victim, offender accountability, and community involvement. In the Indonesian context, Muladi emphasizes that the criminal justice system should not only be offender-oriented but must also be victim-oriented. This paradigm is the philosophical basis for Law No. 20 of 2025 to replace Article 101 KUHAP.

**3. Victimology and the Right to Restitution** Victimology places the victim as a subject with human rights to obtain recovery. Stephen Schafer put forward the theory of functional responsibility, where one of the responsibilities of the legal system is to ensure that perpetrators compensate victim losses. Restitution, unlike ordinary civil damages, is viewed as part of a criminal sanction aimed at providing a deterrent effect while simultaneously providing economic recovery for the victim without the need for complex civil bureaucracy.

**4. Doctrinal Critique of Articles 98-101 KUHAP (1981)** The mechanism for joinder of compensation claims in Articles 98 to 101 of the old KUHAP was often criticized by legal scholars such as M. Yahya Harahap. He stated that the application of civil procedure law (HIR/RBg) into criminal trials created procedural ambivalence. The main obstacles were:

- **Accessory Nature:** Compensation was considered a mere "attachment," so if the criminal case resulted in an acquittal, the compensation claim was legally void.
- **Burden of Proof:** Victims had to prove their own losses in detail like a civil plaintiff, which was often inconsistent with the speed of criminal trials.
- 
- 6. **Procedural Transformation in Law No. 20 of 2025 (New KUHAP)** Law No. 20 of 2025 introduces the concept of integrated restitution which is mandatory in criminal charges. Recent legal literature highlights the shift of the burden of proof from a private burden to a public burden. The presence of the LPSK as an appraisal body for losses in ordinary crimes (such as assault) is a crucial point, aiming to erase discrimination in the treatment of victims between special and ordinary crimes.

7.

**6. The Role of the Judge in Legal Discovery (Rechtsvinding)** In procedural law literature, a judge is no longer seen merely as the "mouth of the law" (bouche de la loi), but as an enforcer of substantive justice. Literature on

judicial activism shows that in the face of a legal vacuum or the ineffectiveness of compensation procedures during the transition, the judge has the authority to perform legal discovery to ensure victim rights.

## **METHOD**

The research method used is normative legal research with a statute approach and a conceptual approach. Data were collected through literature studies, namely examining the positive law of KUHAP (specifically Articles 98-101), the Civil Code (specifically Article 1365), and the Penal Code (specifically Article 351). Legal literacy included books, scientific journals, and court documents related to Unlawful Acts and the joinder of compensation claims in assault cases, as well as Articles 183-192 of Law No. 20 of 2025 (New KUHAP), Law No. 1 of 2023 (National Penal Code), and Supreme Court Regulations (PERMA) related to restitution.

## **RESULTS AND DISCUSSION (TNR, 12 BOLD)**

**1. Doctrinal Synchronization: Unlawful Act in the Offense of Assault** Substantively, an Unlawful Act (Tort) is a material basis inherent in the crime of assault. The strength of a claim for damages in a criminal case lies in the convergence of the elements of Article 1365 of the Civil Code with the offense of assault in Article 351 of the Penal Code:

- **Unlawful Act:** The defendant's act of committing assault inherently violates the legal duty to respect the physical integrity of others (subjective legal duty).
- **Fault:** Assault is an offense that requires intent (dolus). Proving the defendant's fault in a criminal trial automatically satisfies the fault requirement in the civil realm.
- **Loss:** The victim experiences real losses (damnum emergens) in the form of medical costs, as well as loss of employment opportunities (lucrum cessans) as material losses, alongside immaterial suffering.
- **Causality:** The injury suffered is a direct consequence of the physical attack, meeting the cause-and-effect requirement (adequaat) in civil law.

**2. Article 101 KUHAP: The Ignored Bridge of Justice** Article 101 KUHAP normatively functions as a "bridge" connecting criminal procedure with civil substance. However, in practice, this bridge is often not crossed as it is considered to hinder the efficiency of the main case examination. If optimized, Article 101 KUHAP guarantees legal certainty through:

- **Hybrid Evidentiary Hearing:** The Panel of Judges is required to have dual competence: examining the defendant's criminal guilt while simultaneously assessing the validity of civil evidence (receipts, medical records).
- **Efficiency of the Ruling:** Substantive justice is achieved when the Judge decides on the criminal case and the damages in one breath (simultaneous ruling). The executorial power is born immediately after the ruling becomes legally binding (inkracht).

**3. Hierarchy of Suffering: Discrimination of Ordinary vs. Special Crime Victims** This study found a sharp disparity in victim protection. In "Special Crimes" (Terrorism, TPPO, TPKS), the state through the LPSK actively facilitates the calculation and prosecution of restitution. Conversely, victims of "ordinary" assault are often left to struggle alone with the rigid Article 101 KUHAP. This hierarchy of suffering suggests that the pain of an ordinary victim is less valued.

**4. The Urgency of Legal Discovery (Rechtsvinding) Toward the New KUHAP** The ineffectiveness of Article 101 KUHAP must be overcome by adopting a spirit of recovery equal to the standards for special crimes. The New KUHAP (Law 20/2025) must be a momentum for Judges to perform legal discovery that prioritizes victim rights, making restitution the essence of law enforcement itself.

## **CONCLUSION**

The mechanism for the joinder of compensation claims based on Article 101 of Law No. 8 of 1981 has proven ineffective in providing justice for victims of ordinary crimes, especially assault. Its nature as a mere "attachment" (accessoire) with a rigid civil burden of proof often causes victim rights to be ignored, rendering the resulting rulings as "paper tigers." The arrival of Law No. 20 of 2025 (Articles 183-192) brings a revolutionary change by fully integrating restitution into the criminal justice system. This transformation erases the criminal-civil procedural dichotomy, shifts the burden of proof to the Prosecutor, and provides real enforcement power through

substitute imprisonment. This new regulation legally ends the discrimination between victims of special and ordinary crimes, ensuring assault victims have equal standing to obtain recovery through state-facilitated restitution without being trapped in civil complexity.

## REFERENCES

Indonesian Civil Code [Burgerlijk Wetboek].  
Indonesian Penal Code [Wetboek van Strafrecht voor Indonesië].  
Law Number 8 of 1981 on Criminal Procedure [KUHAP].  
Law Number 31 of 2014 on the Amendment of Law Number 13 of 2006 on the Protection of Witnesses and Victims.  
Law Number 1 of 2023 on the National Penal Code.  
Law Number 20 of 2025 on Criminal Procedure.  
Supreme Court Regulation (PERMA) Number 1 of 2022 on Procedures for Restitution and Compensation to Victims of Crime.  
Agustina, Rosa. (2013). *Perbuatan Melawan Hukum*. Jakarta: Universitas Indonesia.  
Gosita, Arif. (2009). *Masalah Korban Kejahatan*. Jakarta: Universitas Trisakti.  
Harahap, M. Yahya. (2009). *Pembahasan Permasalahan dan Penerapan KUHAP*. Jakarta: Sinar Grafika.  
Lubis, M. Solly. (2012). *Asas dan Dasar-Dasar Hukum Pidana*. Jakarta: Sinar Grafika.  
Sidharta. (2006). *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Berpikir*. Bandung: PT Refika Aditama.  
Soekanto, Soerjono. (2001). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Press.