

***DISSENTING OPINION IN THE VERDICT OF
CRIMINAL ASSAULT CASE
(Case Study of Decision Number 59/Pid.B/2021/PN Lbh)***

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ABSTRACT

This study examines the phenomenon of dissenting opinion in a criminal court decision on assault resulting in death, as reflected in Decision No. 59/Pid.B/2021/PN Lbh. The case involves the defendant, Sunario Sumitro alias Rio, accused of committing an assault on Bastia Arba, resulting in the victim's death. The research focuses on the legal reasoning of both the majority and minority judges in imposing the sentence. This study employs a normative juridical approach, using statutory and analytical methods, with data derived from primary, secondary, and tertiary legal materials. The findings show that the majority of judges considered that the element of intent to kill, as stipulated in Article 338 KUHP, was not fulfilled. The Majority of Judge concluded that the defendant's actions were motivated by lust to have sexual intercourse with the victim, aiming merely to incapacitate rather than to kill. Consequently, the defendant was found guilty under Article 351 paragraph (3) KUHP concerning assault resulting in death. Conversely, the dissenting judge argued that the defendant's repeated blows with a wooden stick to the victim's vital parts (head, neck, chin) indicated awareness of the likelihood of causing death (dolus eventualis). Therefore, the act should have been classified as murder under Article 338 KUHP.

Keywords: *Dissenting Opinion; Judicial Reasoning; Assault*