



DOUBLE VULNERABILITIES OF UNREGISTERED WIFE AFTER THE NEW KUHP: AN ANALYSIS OF THE COHABITATION ARTICLE AS A THREAT OF STRUCTURAL VICTIMIZATION

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Abstract

Article 412 of Law No. 1 of 2023 concerning the Criminal Code (the Cohabitation Article) is often promoted as a guardian of public morality. However, for those practicing nikah siri (unregistered marriage), this article creates a new dimension of threat that did not previously exist. This study aims to dissect how the cohabitation article in the New Criminal Code potentially serves as an instrument of structural victimization for unregistered wives. This study employs a socio-legal research method with a criminological-victimology and critical legal theory approach. The study finds that unregistered wives face "double vulnerability." First, civil vulnerability due to the lack of legal protection regarding alimony, inheritance, and child status due to the absence of official records. Second, criminal vulnerability where they are now at risk of being reported for cohabitation offenses by third parties (family/relatives) or being criminalized by their own unregistered husbands as a tool of intimidation in domestic disputes. This article challenges the government's narrative that complaint-based offenses (delik aduan) are "safe." The research proves that instead of protecting the institution of the family, this article facilitates structural victimization against women by strengthening the husband's bargaining power in unequal unregistered relationships, thereby positioning the state not as a protector, but as an actor that exacerbates domestic oppression.

Keywords: *Unregistered Wife, New Criminal Code, Cohabitation, Structural Victimization, Double Vulnerability*

I. INTRODUCTION

Unregistered marriages in Indonesia refer to marriages that are valid under Islamic law (fiqh) but are not officially registered with the state, creating a dual legal status where the marriage is religiously recognized but lacks formal legal recognition (Fajrina et al., 2025). This lack of registration raises significant legal concerns, particularly for wives and children, affecting rights related to inheritance, maintenance, birth certificates, and access to public services (Simbolon & Ridwan, 2025). Indonesian Marriage Law No. 1/1974 requires marriage registration to ensure legal protection, but unregistered marriages persist due to social, economic, and administrative factors, including convenience and cost (Anwar et al., 2025). Studies highlight the social risks of unregistered marriages, such as stigmatization and economic marginalization of women, and call for harmonization of Islamic and state law by requiring registration to protect family rights and public welfare (Wahyudani, 2020). Several studies have also revealed the misuse of unregistered

marriage as a cover for forced marriage and sex trafficking, revealing darker social implications beyond legal issues (Mutaqin & Sopyan, 2024). Over the past decade, the debate over unregistered marriage has generally been mired in a normative dichotomy between fulfilling the requirements of the pillars of Islamic jurisprudence and certainty in positive law. However, the enactment of Law Number 1 of 2023 concerning the Criminal Code (the New Criminal Code) Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 20 has shifted the boundaries of this debate to a more extreme realm: criminalization. The introduction of Article 412, which regulates cohabitation without a legal marriage bond, has ushered in a new era in the regulation of private space in Indonesia, directly impacting the existence of unregistered marriages.

The new National Criminal Code embodies the spirit of decolonization and recodification of criminal law by attempting to accommodate local Indonesian values. However, the cohabitation article demonstrates the state's ambivalence in defining public morality. The state seeks to safeguard the sanctity of marriage through criminal penalties for extramarital relationships, but ignores the social reality that many couples, particularly those from lower socioeconomic classes, choose unregistered marriages due to bureaucratic and sociocultural obstacles, rather than to violate morality (Sembiring et al., 2025). Bureaucratic obstacles and administrative complexity are often the primary reasons poor communities choose unregistered marriages as an easier and more affordable alternative. Furthermore, strong religious and cultural values also influence this decision, with unregistered marriages still considered religiously valid even if not officially registered. This situation reflects the tension between state legal norms and the social realities faced by society, which demands a policy approach that is more sensitive to the socio-economic and cultural context. Therefore, legal reform, more responsive public services, and public education are key to addressing this issue without compromising the protection of individual rights and public morality.

A fundamental problem arises when the state reduces the definition of "legal marriage" to merely administrative proof in the form of a marriage certificate. Under Article 412 of the New Criminal Code, couples in unregistered marriages can technically be categorized as cohabitants because their relationship lacks legal standing in the eyes of the state. The inability to provide this official record transforms a relationship considered religiously sacred into an act with criminal consequences, shifting from a religious sin to a criminally punishable administrative crime. Under Indonesian positive law, a marriage is considered valid if it meets the administrative requirements of official registration, as stipulated in Marriage Law No. 1 of 1974 and its amendments, including Law No. 16 of 2019 (Hartini et al., 2025). Article 412 of the New Criminal Code criminalizes cohabitation without an administratively valid marriage bond, so that unregistered couples who do not have an official marriage certificate can be categorized as perpetrators of unlawful cohabitation (Andayani et al., 2022). This causes a shift in the status of unregistered marriages from being considered religiously valid to being a criminal act because they have no legal standing in the eyes of the state. Religiously, unregistered marriages are still considered valid if they meet the pillars and requirements of Islamic law, but the state requires official registration as proof of legality that is legally binding (Meirina, 2023). This tension reflects the conflict between religious law and state law, where the state places administrative evidence

as the sole measure of marriage validity, while social reality and community religious beliefs still recognize unregistered marriages (Hartini et al., 2025). Therefore, this issue creates legal uncertainty and the risk of criminalization for unregistered marriage couples who actually carry out their marriage according to their religion.

This situation creates what researchers call "Double Vulnerability" for women in the position of unregistered wives. The first vulnerability is civil in nature and has become a classic problem: the lack of access to iddah (waiting period) maintenance, mut'ah (waiting period), inheritance rights, and legal protection for children. Unregistered wives have been structurally marginalized by family law due to the lack of recognition of their rights, which places them in a very fragile position of economic and social dependence. The second vulnerability, the main focus of this paper, is the criminal vulnerability arising from the implementation of the New Criminal Code. With the crime of cohabitation, unregistered wives are now under the threat of imprisonment. Although this article is a complaint offense, its existence creates a real risk of victimization. Third parties, such as family or children who feel aggrieved, have the "legal weapon" to report the relationship, which ultimately often has the most severe impact on women as more vulnerable legal subjects.

Article 412 of the New Criminal Code can be understood as a tool of structural victimization because the law not only functions as a guardian of morality but also creates systemic harm for individuals, particularly women, who are trapped within rigid and discriminatory legal and administrative structures. The theory of structural victimization explains that the harm experienced is not solely the result of the criminal acts of other individuals, but rather the design of policies and laws that place victims in vulnerable and marginalized positions (Yunara & Kemas, 2024). In this context, women who engage in unregistered marriages or extramarital relationships can be positioned as both "perpetrators" who violate the law and "victims" of a system that does not accommodate their social realities and administrative constraints. A legal system that emphasizes the enforcement of administrative norms without considering the socio-economic and cultural context has the potential to reinforce marginalization and discrimination against vulnerable groups. Thus, the state, through its laws, has created a structure that allows women to be positioned as both "perpetrators" and "victims" of a rigid administrative system. The "complaint offense" aspect of this article also gives rise to the phenomenon of the weaponization of law. A common-law husband with greater economic or social power can use the threat of reporting a cohabitation as a tool of intimidation to silence his common-law wife from demanding her rights. Thus, the law, which should serve as a protector, has instead become an instrument of oppression, reinforcing the unequal power relations within unregistered households.

Furthermore, there is a sharp disconnect between living law (the law that exists in society) and positive law. Communities in many regions in Indonesia still consider unregistered marriages to be a legitimate moral solution to prevent adultery (Abadi et al., 2022). When the state intervenes with criminal sanctions, a severe clash of legal cultures occurs. This tension not only fails to achieve the goal of crime prevention but also risks creating social chaos where stable domestic relationships are destroyed by disproportionate state criminal intervention

(Febrianty, Ryendra, et al., 2025) When the state applies criminal sanctions to relationships that are not administratively registered, a clash of legal cultures occurs that can disrupt social stability and damage domestic relationships that are already harmonious according to societal norms. Rigid law enforcement that does not accommodate this social reality has the potential to fail in its goal of crime prevention and instead lead to social chaos (Febrianty, Faturachman, et al., 2025).

This study fills a gap in the literature by highlighting the criminogenic impact of the National Criminal Code on women in unregistered marriages through a victimological lens. This is rarely discussed in previous studies that focused more on the legality of Islamic law or the administrative impact on children (Silalahi & Panjaitan, 2023). This study critically examines the criminogenic impact of the National Criminal Code on women in unregistered marriages through a victimological lens. This is the novelty of this study. The researchers attempt to fill this gap in the literature by highlighting how the new national criminal legislation actually deepens the gap of injustice for women already trapped in a family law system that is not on their side. This study aims to deeply analyze the risk of structural victimization faced by unregistered wives following the ratification of the New Criminal Code. Through a juridical-sociological approach, this paper will demonstrate that without reforms in the administrative recognition of marriage, the cohabitation article will only serve as a tool for criminalizing marginalized groups. This article is expected to provide recommendations for policymakers to review the implementation of this article to avoid escalating injustice for women in Indonesia.

II. PROBLEM FORMULATION

Based on the above introduction, the problem formulation is as follows:

1. How does the construction of Article 412 of Law No. 1 of 2023 (the New Criminal Code) create a pattern of double vulnerability for unregistered wives in the Indonesian legal system?
2. To what extent does the implementation of the crime of cohabitation in the New Criminal Code have the potential to become an instrument of structural victimization and the "weaponization of law" against women?

III. RESEARCH METHODS

This study employs a juridical-normative legal research approach focused on the vertical and horizontal synchronization between national criminal regulations and the protection of women's rights. The approach employed is a statutory approach to examine Article 412 (Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023) and its relationship to (Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan, 1974), and a conceptual approach to examine the theories of structural victimization and gender vulnerability. The researcher focuses not only on the legal text but also on how these norms operate within the social structure that positions unregistered marriage as a living reality (living law).

The data sources for this research rely on primary legal materials, including the National Criminal Code and legislation related to family law. In addition, secondary legal materials in the form of reputable scientific journals, textbooks on critical victimology, and research reports from non-governmental organizations focusing on women's rights were used to strengthen the analysis of the sociological

impact of the criminalization of cohabitation. Data were collected through library research using systematic document tracing techniques to identify legal gaps between administrative formalities and substantive justice for unregistered wives. Data analysis was conducted qualitatively using deductive reasoning, drawing conclusions from general statements (theory of victimization and criminal law policy) to specific facts related to the legal risks of unregistered wives in Indonesia. All collected legal materials were analyzed descriptively and analytically.

IV. RESULTS AND DISCUSSIONS

The Construction of Article 412 of the National Criminal Code and the Manifestation of the Double Vulnerability of Unmarried Wives

Article 412 of Law No. 1 of 2023 concerning the National Criminal Code criminalizes cohabitation, namely living together as husband and wife outside of a valid marriage according to the state's administrative definition, without recognizing the validity of a religiously valid unregistered marriage. This approach creates a dichotomy between administrative-positivistic legal validity and the theological validity recognized by society, thereby increasing the legal risks for unregistered couples in Indonesia. Article 412 of Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code) introduces the crime of cohabitation, fundamentally changing the legal risk landscape for unregistered couples in Indonesia. Textually, this article criminalizes the act of "living together as husband and wife outside of a valid marriage." Legal problems arise because the state uses a purely administrative-positivistic definition of "legal," referring to registration with a state institution. This creates a sharp dichotomy between theological validity (religiously valid) and legal validity (officially recognized by the state).

This normative construction has given rise to the phenomenon of Double Vulnerability for women. The first vulnerability is civil, where unregistered wives have long been marginalized due to the lack of a marriage certificate, resulting in the loss of rights to maintenance, inheritance, and certainty of the status of children (Ningrum, 2025). When "the state has no official record" of these marriages, when conflict arises, unregistered wives lack legal standing to assert their basic rights in the Religious Courts. This lack of official records is an "Achilles' heel" that makes women's positions extremely fragile from the outset of the relationship. The second, more repressive vulnerability arises through the threat of imprisonment (Putri & Junaidy, 2025). With the enactment of the National Criminal Code, unregistered wives now not only lose their civil rights but also face the risk of losing their physical freedom. While unregistered marriages were previously considered a "safe" private domain as long as there was no dispute, the state now presents them with the threat of criminal sanctions. A common-law wife is caught in a legal paradox, namely that she is considered a wife before God, but is branded as a criminal (cohabitant) before state law because of the absence of a piece of administrative paper.

This analysis shows that the state has criminalized maladministration. Unregistered marriages, often intended to prevent adultery, are categorized as unlawful simply because of procedural failures in registration (Mubarok, 2023). For unregistered wives, this represents a systemic injustice. They are often in a weak bargaining position to force their husbands to register their marriages, yet they face

equally severe criminal penalties when the relationship is challenged. The crucial point is that "legal risks arise when a dispute arises." This demonstrates that Article 412 operates as a passive yet deadly legal minefield. During a harmonious relationship, the lack of official documentation may not seem like a threat. However, once friction arises, the lack of authentic proof of marriage automatically classifies the relationship as cohabitation. A common-law wife has no criminally recognized defense mechanism to assert that her cohabitation is based on a valid religious marriage. Furthermore, Article 402 of the National Criminal Code concerning obstacles to marriage exacerbates this risk. If a secret marriage is carried out to conceal the existence of another legal wife (unlicensed polygamy), the secret wife can face even more severe criminal penalties. In many cases, women are unaware that their secret husbands face legal obstacles to remarriage (Lubian & Suyaman, 2023). Here, the secret wife becomes a double victim: a victim of identity fraud by her husband and a victim of criminalization by the state for being considered involved in a marriage that has legal obstacles.

Article 412 of the Criminal Code, which criminalizes cohabitation outside of a formal marriage, not only imposes criminal sanctions but also reinforces the negative social stigma against unregistered wives, often referred to as "cohabitants" or "kumpul kebo." This stigma undermines women's dignity and is more persistent than the criminal penalty itself, as it is socially embedded and difficult to eradicate. The state, through this article, indirectly legitimizes this social judgment without providing adequate administrative mechanisms to protect women's rights in unregistered marriages. This legal approach creates legal uncertainty and vulnerability that worsens the position of women, who often lack access to claim basic rights such as child support and child status in court (Akitha & Rinwigati, 2025). In this context, the criminalization of cohabitation also has the potential to violate human rights by ignoring an individual's right to choose a life partner and to engage in a relationship that is lawful according to religion or custom. Another study shows that the resolution of cohabitation disputes in some indigenous communities, such as the Bajo, uses customary law as an alternative to address social conflicts and provide more contextual justice (Tijow et al., 2021). The impact of this double vulnerability also extends to the fulfillment of children's human rights. Children born from relationships classified by the state as cohabitation face psychological and social burdens. Even if the child is not the subject of a crime, criminalizing the mother will cut off access to care and protection. This criminal policy is counterproductive to the spirit of family protection, the purported goal of the morality article in the National Criminal Code.

Policies criminalizing unregistered or unregistered marriages often ignore living law, where unregistered marriages are considered a legitimate moral solution in many communities, particularly in remote areas of the archipelago (Rosyadi et al., 2025). The clash of values between state authorities, which demand formal administrative standards, and religious or customary authorities, which recognize unregistered marriages, results in women undergoing unregistered marriages becoming victims, as they are forced to submit to procedures that are economically and geographically inaccessible (Bachmid et al., 2021). Studies indicate that low public awareness of marriage registration procedures and administrative barriers are key factors contributing to the continued prevalence of unregistered marriages, despite their serious social and legal impacts, particularly for women and children

who lack legal protection (Febriansah et al., 2025). Legal approaches that rely solely on criminal sanctions without integrating with the cultural and social context of society are considered ineffective and generate social resistance (Naachy, 2024). Therefore, inclusive policies based on cultural approaches and contextual education are needed to ensure that marriage registration is accepted and accessible to the wider community without sacrificing existing social values (Rosyadi et al., 2025). Legal reforms that accommodate this social reality are crucial to reduce the tension between state law and community practice, while protecting the rights of women and children in unregistered marriages (Gultom & Bawono, 2024). Unregistered wives are victims in the conflict between religious and state authorities, where they are forced to comply with administrative standards that are often inaccessible and economically inaccessible.

Analysis shows that unregistered marriage is a high-risk decision whose impacts are not shared equally between men and women. Men in unregistered relationships typically have greater social and economic mobility, making it easier to avoid legal consequences. Conversely, women, who are tied to domestic and childcare responsibilities, are the most vulnerable and often targeted for criminalization during raids or reports by third parties. This imbalance reflects gender injustice in the application of criminal law regarding unregistered marriage, where women bear a heavier legal burden even though men are also involved in the relationship. This situation reinforces existing social and economic inequalities and worsens women's position within the family and society. Therefore, legal policies criminalizing unregistered marriage need to consider gender implications to avoid deepening injustice and women's vulnerability.

The policy of criminalizing unregistered marriages hinders women's access to justice in cases of domestic violence (KDRT) because the unregistered marital status makes victims afraid to report to the police. Women experiencing violence in unregistered marriages fear that their relationships will be classified as cohabitation, which could lead to criminal prosecution, so they choose to remain silent to avoid legal risks. This situation effectively "silences" victims of domestic violence who lack formal legal protection, exacerbating their vulnerability to domestic violence. Administrative barriers and the unclear legal status of unregistered marriages are major obstacles to upholding the rights of women victims of violence. Therefore, criminal policies that fail to consider the social context and informal marital status can worsen the situation of victims and reduce reporting of domestic violence cases. A more inclusive and socially sensitive approach is needed to ensure that women victims of violence receive adequate protection and access to justice.

The use of criminal law to address unregistered marriages is considered a violation of the principle of *ultimum remedium*, which states that criminal law should be a last resort after other efforts have failed. If the primary goal is administrative order, the state should prioritize simplifying the *isbad nikah* (legalization of unregistered marriages) process or implementing less stringent administrative sanctions rather than criminal threats. The threat of imprisonment for unregistered wives due to administrative document issues is a form of overreach of power that ignores humanitarian aspects and the gender inequality that exists in Indonesia. Studies show that a criminalization approach is ineffective and actually worsens the position of women. The state needs to strengthen the function of

institutions such as the Office of Religious Affairs (KUA) and raise public awareness through inclusive policies based on socio-cultural contexts (Zuhri, 2014). A reform model that integrates ease of marriage isbat (legalization of unregistered marriages) with the protection of women's and children's rights has been proposed as a fairer and more effective solution, as implemented in Malaysia (Maruan et al., 2025). Thus, a more humane legal and administrative approach can reduce the risk of injustice and strengthen legal protection for women in unregistered marriages.

This vulnerability is further exacerbated by the low level of legal literacy among women in unregistered marriages. Many believe that as long as they are "religiously legitimate," they are safe from legal interference. Article 412 shatters this false sense of security. Unregistered wives live under a constant shadow of fear, where their safety is not guaranteed by law, but rather depends solely on how long their relationship can remain "fine" without external interference. The construction of Article 412 of the Criminal Code, which criminalizes unregistered wives, creates a "legal trap" that positions women as objects to be regulated, rather than as subjects whose rights are protected. This demonstrates the gender insensitivity of legal policies that fail to understand the social complexities and realities of marriage in Indonesia. These policies ignore the need for a more humane and responsive approach to the plight of women in unregistered marriages, who are often vulnerable to legal and social injustice. This demonstrates that the dual vulnerability of unregistered wives is a direct product of positive law's inability to accommodate the realities of religious law without resorting to a repressive approach. Unmarried wives bear the burden of this failure of legal synchronization by losing civil protection while facing criminal threats, a condition that systematically places them in a position that has never been advantaged by the national legal system.

Dynamics of Structural Victimization and the Weaponization of the Law in the Implementation of the Cohabitation Crime

Article 412 of the Indonesian Criminal Code, which grants exclusive complaint rights to husbands/wives, parents, or children in cases of unregistered marriages, places women's personal autonomy under the control of the extended family, which in Indonesia's communal culture often acts as a repressive social control. This allows families who disapprove of unregistered marriages to use the article as a tool to criminalize women, thus enabling the state to act as a facilitator in enforcing the family's will through the threat of criminal law. This complaint mechanism has the potential to become a form of legal weaponization that leads to structural victimization of women, particularly unregistered wives, whose losses are not due to individual actions but to rigid legal design and family social control. In this context, the state does not function as an intermediary protecting women's rights, but rather reinforces the dominance of the extended family over women's autonomy.

The myth that "complaint crimes are safe," "as long as the relationship is good, it's safe," must be deconstructed because in reality, this security is illusory, as the reporting button is in the hands of others (family) (Prawira, 2024). Structural victimization occurs when a person's sense of security does not depend on their compliance with the law, but on the "mercy" or "agreement" of others who have the right to complain. This creates an extreme power imbalance, where unregistered

wives must always be submissive to avoid being reported. Furthermore, this offense triggers legal blackmail. Parties who know a person's unregistered marriage status, even though they don't have the right to complain, can pressure the unregistered couple by threatening to reveal their secret to those who do (such as parents or the legal wife). Unregistered wives are again the primary targets of this blackmail because they are the ones most socially disadvantaged if their "cohabitation" status is revealed to the law.

The law enforcement process for cohabitation crimes often results in secondary victimization, primarily because law enforcement officers must enter the private realm of women's domestic lives to prove "cohabitation as husband and wife." This evidentiary process typically involves revealing highly personal details of intimate relationships and daily lives, which can cause trauma and demean the victim, particularly the common-law wife. This experience deepens the psychological wounds of dispute victims as they are forced to face stigma and legal judgment that can view them as perpetrators of the crime. Although there is little empirical research specifically addressing secondary victimization in the context of cohabitation crimes, criticism of the violation of privacy and its psychological impact has been a concern in legal and social studies. A more sensitive legal approach to the privacy rights and psychological protection of victims is essential to mitigate the negative impact of this evidentiary process. This also aligns with the debate regarding the compatibility of cohabitation laws with existing religious values and social norms (Multazam & Mujab, 2023). In patriarchal structures, women are often scapegoated in cases of moral indecency. When Article 412 was enforced, society tended to impose harsher social sanctions on women than on men. This structural victimization is evident in how the media and society labeled unregistered wives as "homewreckers" or "cohabitants," while men often received social acquiescence. The new criminal code reinforces this gender bias by providing a legal framework for mob justice.

Article 412 often serves as a barrier to the protection of female victims of domestic violence (KDRT) in unregistered marriages due to the additional legal risks victims face when reporting, such as retaliation for reports of infidelity or cohabitation from their husbands. Law No. 23 of 2004 concerning the Elimination of Domestic Violence provides the right to legal protection for victims, including in unregistered marriages, provided that the marriage and cohabitation actually occurred (Nurdin et al., 2022). However, the unclear legal status of unregistered marriages and differing judges' views on the validity of unregistered marriages create uncertainty regarding legal protection and make it difficult for victims to obtain consistent protection (Akmal et al., 2024). Several studies also show that victims of unregistered marriages tend to remain in abusive relationships due to limited access to reporting without additional legal risks. Therefore, Article 412 reinforces women's vulnerability by creating legal barriers to escaping violence (Fitriana et al., 2024). Alternative legal protection options for victims of unregistered marriages include the use of articles in the Criminal Code, although this protection is still suboptimal. Integrating the principles of Maqāṣid al-Sharī'ah and itsbat nikah has also been proposed as a solution to strengthen legal protection and official recognition of unregistered marriages, allowing victims to receive more effective protection (Akmal et al., 2024).

A criminological analysis shows that Article 412, concerning unregistered marriages, constitutes a form of over-criminalization, as it criminalizes acts of cohabitation that do not cause real social harm, such as crimes of violence or corruption. The state allocates significant resources to enforcing this private morality law, which is actually more administrative and social than criminal. As a result, unregistered wives become "intermediate victims" in the state's repressive efforts to regulate population administration through criminal channels, thereby facing disproportionate legal risks. This approach ignores the social context and the protection of women's rights, and creates an additional burden on victims who should be protected from violence and discrimination. This study highlights the need for more proportionate legal reforms that focus on victim protection rather than repressive enforcement of private morality. A more humane approach and cross-institutional coordination are also crucial to addressing this issue effectively without burdening victims.

Unequal access to legal aid exacerbates the victimization of unregistered wives, particularly for those from low-income families who cannot afford lawyers for defense or conduct marriage confirmations as a preventative measure. This leads to criminal provisions related to unregistered marriages more often targeting the poor and those illiterate, while the wealthy can avoid legal consequences through administrative negotiations. This situation renders the law less a tool of justice and, instead, deepens inequality and impoverishment for vulnerable groups. Related studies show that financial barriers and socioeconomic inequality are key obstacles to the fulfillment of women's rights, including in family law processes such as the right to maintenance and divorce, which impact gender inequality and post-divorce poverty for women (Ruslan, 2025). Therefore, strengthening access to legal aid and legal awareness is crucial to reducing this inequality and providing fairer protection for vulnerable women in the context of unregistered marriages and other family issues. An inclusive and participatory approach to law enforcement is also necessary to ensure social justice and the effective protection of women's rights (Kholidah et al., 2023).

The criminalization of cohabitation, as occurs in unregistered marriages, can have serious intergenerational impacts, particularly on children who lose primary care when their mothers are imprisoned. Children in these situations are at risk of structural victimization, including shame, grief, and impaired psychosocial development due to stigma and family instability, which contradicts the principle of protecting the best interests of the child. Research shows that parental criminal behavior increases the risk of children imitating that criminal behavior, with stronger transmission from mothers to daughters, so parental criminalization can reinforce the intergenerational cycle of criminality (Besemer et al., 2017). Furthermore, positive intergenerational parenting relationships, such as grandparent involvement, can help reduce problem behavior and improve children's social development, but disrupted family conditions due to parental incarceration can hinder this (Zhang et al., 2025). The psychological and social impacts of the loss of primary care can also influence future parenting practices, potentially perpetuating the cycle of maltreatment and child developmental difficulties (Greene et al., 2020). Therefore, a repressive legal approach to cohabitation without considering the impact on children and families risks creating structural victimization that is detrimental to future generations.

Unregistered marriages are often used to conceal relationships when legal obstacles exist, and Articles 402 and 412 impose severe penalties on perpetrators. However, many unregistered wives are actually victims of fraud who are unaware of their husbands' legal obstacles. Therefore, without protection mechanisms for those in good faith, they are treated as perpetrators rather than victims. Research shows that wives in unregistered marriages face serious legal uncertainty, including the loss of rights to marital status, maintenance, and inheritance rights, because their marriages are not officially registered (Wati et al., 2025). Existing legal protection measures, such as marriage confirmation (*isbat nikah*) lawsuits, can help clarify marital status and provide appropriate rights, but this process remains difficult to access and does not guarantee full protection for wives in good faith (Soraya et al., 2025). Several studies also highlight the need for legal reform and more inclusive mechanisms to protect women and children from the negative impacts of unregistered marriages, including public education and the involvement of religious and state institutions in the prevention and handling of cases (Maruan et al., 2025). Without adequate protection, Articles 402 and 412 have the potential to exacerbate the vulnerability of duped common-law wives, necessitating policies that are fairer and more responsive to their circumstances.

Fear of criminalization will also reduce citizen participation in population registration. Unmarried couples will be increasingly reluctant to register their children's births or renew their Family Cards (*Kartu Keluarga*) for fear that their status will be detected by village officials or the Civil Registration Office (*Dukcapil*), which could trigger complaints. This actually distances the state from its desired goal of orderly administration and expands the population of "invisible" and unprotected citizens.

Finally, this dynamic demonstrates that the state has failed to distinguish between "sin" from a religious perspective and "crime" from a public law perspective. By enforcing administrative standards as the sole measure of legitimacy that cannot be violated, the state has closed off space for the diversity of long-standing social practices. Unmarried wives become victims of a legal modernization process that lacks empathy for the sociological realities of society. Therefore, the implementation of Article 412 of the National Criminal Code has the potential to become a powerful engine of structural victimization. Through the complaint mechanism and the lack of protection for unregistered parties, the law has been weaponized to weaken the position of unremarried wives in every domestic conflict. The state must not allow its legal instruments to be used as tools of intimidation that rob women of their human rights and dignity simply for the sake of official document order.

V. CONCLUSION

This study concludes that Article 412 of the National Criminal Code has legally created a pattern of double vulnerability for unregistered wives by combining the lack of civil rights protection and the threat of new criminalization based on positivistic administrative standards. The state has transformed failure to register a marriage into an administrative crime, where the nature of the complaint offense in the cohabitation article becomes an instrument of structural victimization that facilitates the practice of "weaponization of law" by third parties and unregistered husbands in domestic disputes. Thus, rather than substantively

safeguarding public morality, this policy actually weakens the bargaining position of women in unregistered marriages and positions the state not as a protector but as an actor perpetuating the oppression of marginalized groups lacking access to legal formalities. This study's limitations lie in the juridical-normative and conceptual approaches used, which have prevented it from capturing empirical data on the pattern of law enforcement under Article 412 in practice, given that the National Criminal Code is still in the transitional stage towards full implementation. As a recommendation, the government needs to reorient its policy by facilitating inclusive access to marriage confirmation and considering the recognition of theological validity in the criminal evidence process to prevent discriminatory mass criminalization of women. Future research is recommended to use a socio-legal approach or empirical victimology to map the effectiveness of family complaint rights in real-life disputes in society, thereby providing a more comprehensive picture of the sociological impact of this policy of criminalizing the private sphere in Indonesia.

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