



ADULTERY AS AN ABSOLUTE COMPLAINT OFFENSE IN THE NEW INDONESIAN CRIMINAL CODE: NORMATIVE ANALYSIS AND LAW ENFORCEMENT ISSUES

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Abstract

The enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) brings significant changes in the regulation of criminal acts against morality, particularly adultery, which is closely related to the cultural and moral values of society. This article aims to analyze the regulation of the crime of adultery in the New Criminal Code and identify potential legal issues in its implementation. This study uses a normative legal research method with a statutory and conceptual approach, focusing on Articles 411, 412, and 413 of the New Criminal Code. The results show that the New Criminal Code classifies the crime of adultery into three forms: ordinary adultery, cohabitation or living together as husband and wife outside of marriage, and sexual intercourse with a nuclear family member. Articles 411 and 412 are constructed as absolute complaint offenses that limit the complainant to certain legal subjects, while Article 413 is an ordinary offense. This article also identifies several implementation issues, including the potential criminalization of commercial sex workers (CSWs), legal vulnerabilities for unregistered couples in cohabitation regulations, and the risk of raids or persecution inconsistent with the nature of absolute complaint offenses. Therefore, clarity in implementing regulations and understanding by law enforcement officials are needed to ensure legal certainty.

Keywords: *Adultery; New Criminal Code; Absolute Complaint Offense; Cohabitation; Legal Certainty*

I. INTRODUCTION

The ratification of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) marks a new chapter in criminal law reform in Indonesia and simultaneously ends the use of the old Criminal Code that has been in effect since the Dutch colonial era. This reform is a response to the need for national law that can reflect the diverse cultural values, morals, and norms of Indonesian society, while also addressing the shortcomings of the colonial legacy of criminal law construction that is often criticized as irrelevant to contemporary social life. According to academic studies, criminal law regulations in Indonesia have been heavily influenced by colonial legacies that do not fully reflect national legal values. Therefore, the reform of the Criminal Code is an important step in national criminal law policy (Sani, 2024).

One of the most controversial aspects of the New Criminal Code is the regulation of the crime of adultery, which is now receiving widespread attention

among academics, legal practitioners, and the general public. Adultery, which was historically regulated under Article 284 of the old Criminal Code only as a complaint offense between married couples, has seen its scope expanded in the New Criminal Code through Article 411, which includes sexual relations outside of marriage without the limitations of traditional marital status. This change reflects an effort to adapt criminal law to the moral and cultural values of Indonesian society, which highly upholds religious values and customs (Ramadani, 2024).

Academic discourse shows that regulating the crime of adultery is not only a formal legal issue, but also involves complex socio-cultural dimensions. The concept of adultery varies significantly from one culture to another, and its regulation is not only normative but also influenced by the moral and religious values prevalent in society (Positif et al., 2022). In many legal traditions, including customary criminal law and Islamic law, adultery is viewed as a serious violation of moral values, although approaches differ in terms of sanctions and enforcement mechanisms.

The New Criminal Code regulates the crime of adultery in Chapter XV concerning crimes against morality, particularly in the section on adultery (Huda, 2015). Here, adultery is classified into three main forms: (1) ordinary adultery, (2) cohabitation or living together as husband and wife outside of a legal marriage, and (3) sexual intercourse with a nuclear family member. This approach demonstrates a broader expansion of the dimensions of criminalization compared to the old Criminal Code, while also giving rise to substantial debate regarding its relevance and effectiveness in the context of local cultural values (Ramadani, 2024).

The concept of absolute complaint offenses applied in adultery articles (for example Article 411 and Article 412 of the New Criminal Code) is also a point of concern because it limits the authority to report only to certain subjects such as husband/wife, parents, or children. (Sani, 2024). Normative legal studies show that this formulation has implications for legal certainty and criminal law enforcement, where the limitations of absolute complaint offenses can create evidentiary challenges, obstacles to the enforcement process, and the potential for excessive criminalization of certain groups in society. Furthermore, criticism of the adultery article in the New Criminal Code also includes aspects of violations of individual privacy rights and personal space in private life, which according to other researchers can create an imbalance between the state's interest in upholding moral norms and individual rights to privacy and freedom. In a pluralistic society with diverse values and beliefs, moral regulation in criminal law is often considered a form of moral policing that carries the risk of discrimination, especially against religious and cultural minority groups (NS Putri, 2025).

Public debate surrounding the adultery article has been ongoing since the early stages of deliberations on the New Criminal Code, marked by pros and cons regarding its scope, the principle of the complaint offense, and its implications for social life. Critics argue that there needs to be a harmonization of societal moral values with the principles of modern criminal law, which emphasize aspects of justice, effective law enforcement, and respect for human rights (Sani, 2024). Against this backdrop, a systematic and comprehensive academic study of the provisions of the criminal act of adultery in the New Criminal Code is crucial for

enriching the discourse on criminal law in Indonesia and providing appropriate and contextual legal policy recommendations.

II. PROBLEM FORMULATION

The author will formulate the problem in this article in the form of a question, which will focus on discussing 3 (three) things, namely:

1. How is the legal construction of the crime of adultery in the New Criminal Code (Law Number 1 of 2023)?
2. How does the character of the absolute complaint offense in Article 411 and Article 412 of the New Criminal Code affect legal certainty and law enforcement of the crime of adultery?
3. What are the potential legal issues and implications of implementing the provisions on the crime of adultery in the New Criminal Code for law enforcement practices in Indonesia

III. RESEARCH METHODS

This research uses a normative legal research method, also known as doctrinal legal research or library legal research. In normative legal research, law is conceptualized as norms or rules contained in statutory regulations (*law in books*) and as behavioral guidelines that regulate social relations within society. The approaches used include the statute approach and the conceptual approach (Butarbutar, 2018). The primary legal materials in this study consist of statutory provisions, specifically Articles 411, 412, and 413 of Law Number 1 of 2023 concerning the Criminal Code. Secondary legal materials include scientific journal articles, criminal law textbooks, and academic studies relevant to criminal law reform and crimes against morality. The analysis is conducted systematically through legal interpretation and juridical reasoning to examine the construction of norms, legal implications, and potential problems in implementing the regulation of the crime of adultery in the New Criminal Code.

IV. RESULTS AND DISCUSSIONS

Regulation of Adultery Acts in the New Criminal Code

Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) regulates the crime of adultery more broadly and systematically than the colonial-era Criminal Code. This regulation is contained in Chapter XV concerning Criminal Offenses Against Morality (Rahmadhiani, 2024), especially Article 411, Article 412, and Article 413, which normatively classify adultery into three forms, namely ordinary adultery, cohabitation adultery (living together as husband and wife outside of marriage), and adultery with members of the immediate family.

Article 411 of the New Criminal Code broadens the meaning of adultery by no longer limiting it to sexual relations involving married parties only, but also includes sexual intercourse between men and women who are not both married (Ningrum, 2024). This expansion reflects a paradigm shift in Indonesian criminal law, which is no longer solely oriented towards protecting the institution of marriage, but also towards protecting the moral values that exist within Indonesian society (Sunhaji, 2022). However, the law makers still place adultery as an absolute criminal offense, so that law enforcement is limited by the principles of protecting

privacy and family harmony (Sirajuddin, Risdayani, & Indriani, 2024). Furthermore, Article 412 of the New Criminal Code criminalizes cohabitation, or living together as husband and wife outside of marriage. This provision emphasizes that the state is taking serious note of the practice of living together without the bonds of marriage, which is sociologically considered contrary to the cultural and moral values of Indonesian society (Aminudin, Rokan, & Zulham, 2025). The criminalization of cohabitation in the New Criminal Code also demonstrates a criminal law approach based on collective morality, which is commonly found in countries with strong communal values (Setyawan, 2024).

In contrast to the two previous articles, Article 413 of the New Criminal Code regulates adultery committed with members of the immediate family and is constructed as an ordinary crime with a maximum prison sentence of 10 years (Kurniawan, Sihombing, & Berliane, 2023). The severity of the criminal threat reflects the view of the lawmakers that incest is a serious crime that not only violates morality, but also damages the family structure, endangers the victim, and has the potential to cause long-term psychological and medical impacts (Swarianata, 2016).

Analysis of the Characteristics of the Crime and the Criminal System for Adultery

Further discussion shows that the characteristics of the crime of adultery in the New Criminal Code are clearly differentiated based on the level of seriousness of the act and the resulting social impact. Adultery in Articles 411 and 412 is classified as an absolute complaint offense (Sirjon, 2023), which means that the law enforcement process can only be carried out if there is a complaint from a party who has limited legal standing, namely husband or wife, or parents and children for parties who are not bound by marriage (Susanti, 2013). This regulation is in line with the principle of *ultimum remedium* in modern criminal law, which places criminal law as the last means in resolving social conflicts (Lesmana, 2019). Furthermore, the sentencing system in Articles 411 and 412 utilizes an alternative punishment model, namely imprisonment or a fine. This approach provides judges with ample discretion to consider the subjective circumstances of the perpetrator, the impact of the act, and the interests of the victim and their family (Irmawanti & Arief, 2021). In fact, based on Article 85 paragraph (1) of the New Criminal Code, it is possible to impose social work sentences and supervision sentences, which shows the direction of reforming Indonesian criminal law towards a restorative and rehabilitative approach (Falah, 2025).

On the other hand, Article 413 does not provide an alternative to a fine and is not qualified as a complaint offense, which confirms that adultery with the immediate family is seen as a crime against the public interest (Sirjon, 2023). This approach is consistent with comparative criminal law practice which places incest as a serious crime against humanity and the protection of children and families (Yurita & Marpaung, 2022).

From the perspective of criminal law theory, the regulation of absolute complaint offenses reflects the application of the principles of subsidiarity and *ultimum remedium*, where criminal law is only used when social and family mechanisms are no longer able to resolve the conflict that occurs (Y. Arafat, 2017). Therefore, prosecution for the crime of adultery cannot be carried out automatically by law enforcement officials, but rather depends on the will of the directly injured

party, namely the husband or wife, or parents and children for those not bound by marriage. This model is considered capable of preventing excessive criminalization of acts that are morally sensitive and highly contextual (Widiyanti, 2025).

The New Criminal Code also opens up the opportunity for the application of non-imprisonment penalties, such as community service and supervision as regulated in Article 85 paragraph (1). This policy reflects the direction of reforming Indonesian criminal law, which shifts the orientation of punishment from a retributive approach to a corrective and restorative approach (M. Arafat, 2025). In the context of private crimes against morality, community service is considered more relevant because it does not cause excessive social stigmatization and still provides a rehabilitative effect for the perpetrator (Rafsanjani, Prasetio, & Anggayudha, 2023).

Problems of Implementation and Challenges of Law Enforcement

Although the New Criminal Code's provisions for the crime of adultery have been systematically formulated, analysis reveals a number of potential problems in its implementation. First, the criminalization of adultery in Article 411 has the potential to ensnare prostitutes, particularly commercial sex workers (CSWs), who are often in situations of economic hardship and social vulnerability (Wicaksono, nd). The repressive approach through criminal law towards the practice of prostitution is considered inconsistent with the principles of substantive justice and criminal policies that are oriented towards protecting vulnerable groups (Bahri, 2025).

Second, the application of Article 412 concerning cohabitation has the potential to create legal uncertainty for couples who have a secret marriage or a marriage that is legally valid according to religion but is not administratively registered by the state (Prawira, 2024). Without clear implementing regulations, this article risks giving rise to over-criminalization and is contrary to the principles of legality and human rights protection (N. Putri et al., 2026).

Third, the absolute nature of complaint-based offenses in Articles 411 and 412 demands consistency from law enforcement officials in refraining from repressive actions such as raids, raids, or persecution in the name of maintaining moral order. Law enforcement outside of legitimate complaint mechanisms not only contradicts the New Criminal Code but also violates the principles of due process of law and the protection of citizens' privacy rights (Hasibuan, Panjaitan, & Harahap, 2024). Therefore, technical regulations and extensive outreach to law enforcement officials, including local governments and Public Order Agency (Satpol PP), are needed to ensure the implementation of adultery articles aligns with the objectives of criminal law reform.

V. CONCLUSION

Based on the results of the discussion and analysis that have been carried out, it can be concluded that the regulation of the crime of adultery in Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) shows a conceptual update in Indonesian criminal law that seeks to balance the protection of moral values, family interests, and respect for citizens private space. The New Criminal Code normatively classifies the crime of adultery into three forms, namely ordinary adultery and cohabitation adultery as regulated in Article 411 and Article 412 which

are constructed as absolute complaint offenses with alternative criminal threats in the form of imprisonment or fines, as well as adultery in the form of sexual intercourse with members of the immediate family in Article 413 which is qualified as an ordinary offense with one type of criminal threat in the form of imprisonment. The difference in the construction of these offenses and the criminal system reflects the differentiation of the level of seriousness of the act and the social impact it causes. Furthermore, from the perspective of the characteristics of the offense and sentencing policy, the provisions in Articles 411 and 412 demonstrate the application of the principle of *ultimum remedium* and individualization of punishment, which provide discretion for judges to impose proportionate sentences and consider non-imprisonment approaches. In contrast, the provisions of Article 413 emphasize the state's firm stance against incest as a serious crime that violates public legal interests, damages family integrity, and has the potential to cause severe psychological and social impacts, so that the state has full legitimacy to prosecute without relying on the victim's complaint.

However, the implementation of the provisions on adultery in the New Criminal Code also has the potential to create a number of problems in law enforcement. Criminalizing adultery risks ensnaring commercial sex workers already in economically and socially vulnerable situations, so non-penal policies should be prioritized in addressing the issue. Furthermore, the provisions regarding cohabitation have the potential to create legal uncertainty for couples who are married under Islamic law and lack administrative proof of marriage. Furthermore, the absolute nature of the offenses under Articles 411 and 412 requires implementing regulations and clear communication to law enforcement officials to prevent raids, arrests, or persecution that violate the principles of due process of law and human rights protection.

The policy implications of these findings emphasize the need for the government to immediately draft more technical and comprehensive implementing regulations, strengthen the non-penal approach in handling structural moral issues, and increase the capacity and understanding of law enforcement officials so that the implementation of the New Criminal Code is carried out consistently, proportionally, and in line with the principles of justice and human rights.

VI. REFERENCE

- Aminudin, A., Rokan, MK, & Zulham, Z. (2025). The Influence of Globalization on Changes in Marriage Values in Islamic Families in Indonesia. *Rechtsnormen Journal of Legal Communication and Information*, 3(2), 61–69.
- Arafat, M. (2025). New sentencing paradigm in the 2023 Criminal Code: Alternative sanctions and transformation of the Indonesian criminal justice system. *Journal of Legal Studies*, 2(1), 33–46.
- Arafat, Y. (2017). Settlement of Complaint Offense Cases with a Restorative Justice Perspective. *Borneo Law Review*, 1(2), 127–145.
- Bahri, RA (2025). Reconstruction of Non-Penal Policies for Criminal Offenses Against Morality in Indonesia. *Journal of Interdisciplinary Legal Perspectives*, 2(1), 15–27.
- Butarbutar, EN (2018). *Legal Research Methods*. Bandung: PT. Refika Aditama.
- Falah, TA Al. (2025). Review of the Regulation of Social Work as an Alternative Short-Term Criminal Procedure According to Law Number 1 of 2023

- concerning the Criminal Code.
- Hasibuan, K., Panjaitan, BS, & Harahap, AM (2024). The Draft Criminal Procedure Code: Challenges and Harmonization between the Principle of Due Process of Law and the Criminal Justice System in Indonesia. *Journal of Research in the Social, Political, and Humanities Sciences Cluster*, 3(2), 57–72.
- Huda, S. (2015). Adultery in the Perspective of Islamic Law and the Criminal Code. *HUNAFI Journal of Islamic Studies*, 12(2), 377–397.
- Irmawanti, ND, & Arief, BN (2021). The urgency of objectives and guidelines for sentencing in the context of reforming the criminal law sentencing system. *Journal of Indonesian Legal Development*, 3(2), 217–227.
- Kurniawan, T., Sihombing, AM, & Berliane, A. (2023). Political Construction of Criminal Law Regarding the Crime of Adultery in the Draft Criminal Code. *Binamulia Hukum*, 12(1), 11–24.
- Lesmana, CSAT (2019). Penal Mediation as an Alternative for Resolving Criminal Cases from the Perspective of Reforming the Indonesian Criminal Justice System. *Jurnal Rechten: Penelitian Hukum dan Hak Asasi Manusia*, 1(1), 1–23.
- Ningrum, ADS (2024). The Existence of Human Rights in the Crime of Adultery from the Perspective of National Law and Islamic Law (Analysis of Article 411 of Law No. 1 of 2023 concerning the Criminal Code). Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta.
- Positive, H., Kurnia, T.D., Syahrudin, E., Law, I., Tinggi, S., & Law, I. (2022). *Journal of Education and Counseling*, 4, 109–119.
- Prawira, MRY (2024). Potential for Overcriminalization in the Regulation of Cohabitation Crimes in the Criminal Code: A Fair Trial Perspective. *Journal of Statutory Law*, 4(1), 31–49.
- Putri, N., Hermawati, Y., Ramdhan, MI, Putri, AK, Ningrum, NS, Asroni, AM, ... Cstudentumsacid, E. (2026). The Crime of Cohabitation Complaint in the New Criminal Code as a Restriction on Personal Freedom: Human Rights Analysis of Reporting Mechanisms that Can Affect Personal Freedom and Private Space, 5(9), 1748–1757.
- Putri, NS (2025). Moral Offenses under Indonesian Criminal Code 2023 in Perspective of Religious Minorities. *Human Rights Journal*, 16, 61.
- Rafsanjani, JI, Prasetio, RB, & Anggayudha, ZH (2023). The Existence of Criminal Social Work from a Progressive Law Perspective. *Journal of De Jure Legal Research*, 23(2), 219–230.
- Rahmadhiani, D. (2024). Comparative Analysis of Electronic Media-Based Criminal Offenses Against Morality Based on the Sexual Violence Crime Law and the Electronic Information and Transactions Law (Study of Decision Number 144/Pid. Sus/2023/PN. Tbh). Hasanuddin University.
- Ramadani, S. (2024). Criminalization for Adultery in Indonesia Comparative Analysis of Article 284 of the 1946 Criminal Code and Article 411 of the Criminal Code No. 1 of 2023, 2(2), 125–135.
- Sani, A. (2024). *Journal of Legal Facts: A Juridical Review of the Controversial Article on Adultery*, 2, 103–113.
- Setyawan, D. (2024). Criminalization of Cohabitation in Law Number 1 of 2023 concerning the Criminal Code.
- Sirajuddin, S., Risdayani, R., & Indriani, D. (2024). The Crime of Adultery from

- the Perspective of Criminal Law and Islamic Law. *BUSTANUL FUQAHA: Journal of Islamic Law*, 5(2), 359–372.
- Sirjon, L. (2023). Criminalization of the Crime of Adultery in Law Number 1 of 2023 concerning the Criminal Code. *Legitimacy: Journal of Criminal Law and Legal Politics*, 12(1), 53–67.
- Sunhaji, A. (2022). Reconstruction of the Regulation of Victims' Rights in Filing Complaints Against Perpetrators of Sexual Intercourse Crimes Based on Justice Values. Sultan Agung Islamic University (Indonesia).
- Susanti, AD (2013). Legal Review of the Status and Development of Children Born Outside of Marriage from a Civil Law Perspective. Tadulako University.
- Swarianata, V. (2016). Criminalization of Incest (Incestuous Sexual Relations) from the Perspective of Criminal Law Reform. Brawijaya University.
- Wicaksono, EN (nd). Legalization of Commercial Sex Workers from Legal, Ethical, and Moral Perspectives.
- Widiyanti, W. (2025). Efforts to Prevent Overcriminalization of Criminal Acts Against Morality (Case Study of Case No. 46/PUU-XIV/2016). Muhammadiyah University of Education, Sorong.
- Yurita, D., & Marpaung, DSH (2022). Aspects of Protection for Victims of Incest Crimes Based on Law No. 35 of 2014 Concerning Child Protection. *JUSTITIA: Journal of Law and Humanities*, 9, 1491–1500.