

RECONSTRUCTION OF THE REGULATION OF ADULTERY IN THE NEW CRIMINAL CODE: PROTECTION OF WOMEN IN INDONESIA

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Abstract. This study aims to analyze the reconstruction of adultery regulation in Indonesia's new Criminal Code and its relevance to the protection of women in Indonesia. The study employs a normative juridical method with statutory, conceptual, and qualitative approaches by examining the old Criminal Code, the new Criminal Code, legal doctrines, scholarly literature, and previous studies related to adultery, cohabitation, women's protection, criminal law reform, and Indonesian socio-cultural values. The results show that Articles 411 and 412 of the new Criminal Code represent a significant paradigm shift from the colonial criminal law framework toward a national criminal law system grounded in Pancasila, religious values, morality, social order, and Indonesian legal identity. The novelty of this study lies in positioning the expanded regulation of adultery and cohabitation not merely as moral criminalization but as a preventive legal instrument for protecting women from social, economic, psychological, and reproductive vulnerabilities arising from legally uncertain relationships. Practically, the regulation may strengthen legal awareness, encourage responsible relationships through lawful marriage, and reduce social risks affecting women and young generations. This study contributes to the discourse on Indonesian criminal law reform by emphasizing the protective, preventive, and socio-cultural functions of the new Criminal Code in safeguarding women, families, and public morality.

Keywords: Criminal Law Reform; Indonesian New Criminal Code; Social Morality; Women's Legal Protection; Zina Regulation..

I. INTRODUCTION

The reform of Indonesian criminal law through Law Number 1 of 2023 concerning the Criminal Code marks a significant transition from a colonial legal framework toward a national criminal law system that seeks to reflect Indonesian legal identity, Pancasila values, religious morality, cultural norms, and social order. For decades, Indonesia relied on the old Criminal Code inherited from the Dutch colonial legal tradition, which was often criticized for being insufficiently responsive to the socio-cultural realities of Indonesian society. One of the most debated provisions in this reform concerns the regulation of adultery and cohabitation. Under Article 284 of the old Criminal Code, adultery was narrowly defined and could only be applied to individuals bound by marriage. Consequently, sexual relations outside marriage involving unmarried persons and the practice of living together without lawful marriage were not adequately covered by criminal law, although such practices were widely perceived as conflicting with religious, moral, and customary values in Indonesia [1], [2].

The enactment of Articles 411 and 412 of the new Criminal Code represents a reconstruction of the legal concept of adultery. Article 411 regulates sexual intercourse outside lawful marriage, while Article 412 addresses cohabitation or living together as husband and wife without a valid marital

bond. This expansion demonstrates a shift in the orientation of Indonesian criminal law from a purely formal and individualistic colonial approach toward a more socially embedded legal framework. Recent studies have argued that the new formulation of adultery in the Criminal Code is not merely a technical amendment but a policy reform that reflects the state's effort to harmonize criminal law with the living values of society [2], [3]. At the same time, the reform continues to attract debate because it touches the sensitive intersection between public morality, privacy, family integrity, and individual autonomy [4], [5].

The controversy surrounding the criminalization of adultery and cohabitation is rooted in two competing perspectives. On the one hand, supporters argue that the new provisions are necessary to protect morality, strengthen the institution of marriage, prevent social disorder, and safeguard vulnerable parties, particularly women and children. In many social contexts, women are more likely to suffer the consequences of relationships without legal certainty, including unwanted pregnancy, abandonment, social stigma, psychological pressure, reproductive health risks, and economic vulnerability. Therefore, the expansion of adultery and cohabitation regulation can be understood as a preventive legal mechanism intended to reduce the risks of irresponsible relationships and to encourage lawful marriage as a legally

protected social institution [6], [7]. On the other hand, critics argue that the criminalization of private consensual conduct may create potential risks of overcriminalization, selective enforcement, misuse of complaints, and interference with private life [4], [8].

The legal construction of adultery and cohabitation in the new Criminal Code attempts to address these concerns through the mechanism of complaint-based offences. Articles 411 and 412 are not formulated as ordinary offences that can be prosecuted automatically by the state. Instead, prosecution depends on complaints submitted by legally recognized parties, such as a spouse, parent, or child. This mechanism is intended to limit excessive state intervention and prevent unrelated third parties from initiating criminal proceedings. However, the complaint-based model does not eliminate all implementation risks. It still requires careful interpretation by law enforcement institutions to ensure that the provisions are applied proportionally, fairly, and consistently with the principles of legality, legal certainty, non-discrimination, and gender-sensitive justice [5], [9].

From the perspective of criminal law policy, the reconstruction of adultery regulation in the new Criminal Code can be located within the broader agenda of national legal reform. Indonesian criminal law reform is not only concerned with replacing colonial legislation but also with developing a legal system that corresponds to national values and social needs. In this regard, morality-based criminalization must be evaluated not only from the perspective of punishment but also from its preventive, protective, and social functions. Criminal law should not be used merely to impose sanctions; it should also serve as an instrument for protecting social welfare, maintaining public order, strengthening family responsibility, and preventing harm to vulnerable groups [10], [11].

The relevance of this issue is also connected to the broader framework of character formation, legal awareness, and social responsibility in Indonesian society. Legal reform cannot operate effectively without public understanding and ethical awareness. Studies in education and social development emphasize that character education, technological literacy, supervision, and responsible learning environments play important roles in shaping disciplined, reflective, and socially responsible citizens [12], [13]. Such studies are relevant to this article because the enforcement of morality-related criminal provisions requires not only legal instruments but also public education, social awareness, and institutional responsibility. In this sense, legal reform and civic education should support one another in building a society that respects both moral values and legal certainty.

Furthermore, the regulation of adultery and cohabitation in the new Criminal Code must be examined in relation to women's protection. Women often occupy a vulnerable position in non-marital relationships because legal uncertainty may reduce their access to protection, responsibility, and recognition. When pregnancy, abandonment, social stigma, or economic burden occurs, women may experience greater consequences than men. Therefore, the state's role in regulating relationships outside marriage may be interpreted as part of a preventive legal policy to minimize gendered harm. Nevertheless, such protection must not result in new forms of

discrimination against women. Legal enforcement must avoid victim-blaming, stigmatization, and unequal application of criminal provisions [6], [14].

In addition to its gender dimension, the regulation of adultery and cohabitation also has social and public health implications. Sexual relations without responsibility may increase vulnerability to reproductive health problems, sexually transmitted infections, unwanted pregnancy, and social instability. However, criminal law alone cannot resolve these issues. Legal regulation must be accompanied by public education, reproductive health awareness, family counselling, and accessible social support systems. Without these supporting measures, the new provisions may be reduced to punitive instruments rather than functioning as preventive and protective legal norms [7], [15].

Based on the foregoing discussion, this study aims to analyze the reconstruction of adultery regulation in Indonesia's new Criminal Code and its relevance to the protection of women. The study focuses on the transition from Article 284 of the old Criminal Code to Articles 411 and 412 of the new Criminal Code. Specifically, it examines how the expanded regulation of adultery and cohabitation reflects national criminal law reform, how the complaint-based offence mechanism balances morality and privacy, and how the provisions may contribute to women's protection if implemented through gender-sensitive and proportionate legal enforcement. The novelty of this study lies in its attempt to interpret the new regulation not merely as moral criminalization, but as a preventive and protective legal framework situated within the broader development of Indonesian criminal law based on national values, social responsibility, and justice for vulnerable groups.

II. RESEARCH METHODS

This study employed a normative juridical research design to examine the reconstruction of adultery regulation in Indonesia's new Criminal Code and its relevance to the protection of women. Normative juridical research was considered appropriate because the primary focus of the study was not to measure empirical behaviour, but to analyse legal norms, statutory provisions, legal doctrines, and principles underlying criminal law reform. The research was directed toward understanding the shift from Article 284 of the old Criminal Code to Articles 411 and 412 of the new Criminal Code, particularly in relation to adultery, cohabitation, public morality, social order, and women's legal protection. In this context, legal research was used as a systematic method to identify, interpret, and evaluate the coherence of legal norms within the national legal system [16], [17]. The normative approach also enabled the study to position adultery regulation within the broader framework of Indonesian legal identity, Pancasila values, religious norms, cultural morality, and the protection of vulnerable groups.

The study applied statutory, conceptual, and qualitative approaches. The statutory approach was used to examine relevant legal instruments, including the old Criminal Code, Law Number 1 of 2023 concerning the new Criminal Code, the Marriage Law, and other legal provisions related to

women's protection, morality, and social order. The conceptual approach was employed to clarify key legal concepts such as adultery, cohabitation, criminalization, complaint-based offences, women's vulnerability, legal certainty, and social protection. These concepts were analysed through legal doctrine and scholarly discourse to determine whether the new formulation of adultery offences reflects merely moral regulation or also serves a broader protective function. Normative legal research is particularly relevant for analysing the structure, meaning, and justification of legal norms, especially when the issue concerns the relationship between written law, living values, and legal reform in Indonesian society [18]. Therefore, the research did not treat the Criminal Code only as a set of penal provisions, but also as a legal policy instrument that reflects the direction of national criminal law development.

The legal materials used in this study consisted of primary, secondary, and tertiary legal sources. Primary legal materials included statutory regulations, particularly the old Criminal Code and the new Criminal Code, while secondary legal materials included books, journal articles, legal commentaries, and previous studies discussing adultery, cohabitation, women's protection, criminal law reform, and Islamic legal perspectives. Tertiary legal materials, such as legal dictionaries and academic indexes, were used to support conceptual clarification. The data were collected through library research and analysed using descriptive-prescriptive qualitative analysis. The descriptive stage was used to explain the development of adultery regulation from the colonial Criminal Code to the new national Criminal Code, while the prescriptive stage was used to formulate legal arguments concerning the protective, preventive, and socio-cultural functions of Articles 411 and 412. This analytical model is consistent with doctrinal legal method, which involves describing, deriving, systematising, and interpreting legal norms to understand both their textual meaning and normative justification [19]. Qualitative analysis was also applied to interpret legal materials contextually, allowing the study to connect legal provisions with social vulnerability, gender protection, and the values underlying Indonesian criminal law reform [20].

III. RESULTS AND DISCUSSION

A. The Reconstruction of Adultery Regulation in the New Criminal Code

The results of this study indicate that the reconstruction of adultery regulation in Indonesia's new Criminal Code reflects a fundamental transformation in the orientation of national criminal law. Under Article 284 of the old Criminal Code, adultery was regulated narrowly and could only be applied to persons who were legally bound by marriage. This formulation was rooted in the colonial legal tradition, which emphasized individual liberty and limited state intervention in private morality. As a result, sexual relations outside marriage involving unmarried individuals were largely beyond the reach of criminal law, even though such conduct was often considered contrary to religious, cultural, and social values in

Indonesian society [4]. The limitation of Article 284 created a normative gap between positive criminal law and the living values of society.

The enactment of Law Number 1 of 2023 concerning the new Criminal Code represents an important effort to reconstruct Indonesian criminal law based on national legal identity. Articles 411 and 412 expand the regulation of adultery and cohabitation by criminalizing sexual intercourse outside marriage and living together as husband and wife without lawful marriage. This change demonstrates that the state no longer views adultery merely as a violation of marital fidelity, but also as a legal issue connected to public morality, family protection, and social order [5], [21]. In this sense, the new Criminal Code does not simply reproduce moral values into penal provisions; rather, it attempts to create a legal framework that corresponds to the socio-cultural and religious foundations of Indonesian society.

The reconstruction of adultery regulation also shows the effort to indigenize criminal law by replacing colonial legal concepts with national values. Indonesia's criminal law reform cannot be separated from the broader agenda of decolonizing legal norms inherited from the Dutch colonial system. The new Criminal Code seeks to align criminal law with Pancasila, religious morality, customary values, and social justice. However, this reconstruction also raises theoretical and constitutional debates. On the one hand, the expansion of adultery regulation is viewed as a legitimate expression of Indonesian moral and cultural identity. On the other hand, it may be criticized as an excessive intervention of the state into private life if not implemented carefully [22]. Therefore, the most significant finding of this study is that Articles 411 and 412 should be understood as legal norms requiring balanced interpretation between morality protection, privacy protection, and legal certainty.

Complaint-Based Offence as a Balancing Mechanism

Another important result of this study is that the formulation of adultery and cohabitation in the new Criminal Code as complaint-based offences serves as a balancing mechanism between public morality and individual privacy. Articles 411 and 412 do not allow unrestricted prosecution by the state. Legal proceedings may only be initiated when a complaint is submitted by certain eligible parties, such as a husband, wife, parent, or child. This mechanism distinguishes the new regulation from broad moral policing because the state does not automatically prosecute every alleged act of adultery or cohabitation [23].

The complaint-based mechanism has at least three legal implications. First, it limits the potential for arbitrary enforcement by preventing third parties or unrelated members of society from initiating criminal proceedings. Second, it preserves the role of the family as the primary institution affected by adultery or cohabitation. Third, it reflects the principle of proportionality because criminal law is only activated when the conduct causes a legally recognized harm within the family or social relationship. This approach demonstrates that the new Criminal Code attempts to maintain equilibrium between the protection of social morality and the protection of citizens' private sphere [24].

Nevertheless, the complaint-based model also requires careful implementation. If applied without clear procedural safeguards, it may generate selective enforcement, social pressure, or misuse of criminal complaints in family conflicts. In this regard, law enforcement officers must interpret Articles 411 and 412 consistently with the principles of legality, proportionality, non-discrimination, and protection of vulnerable groups. The effectiveness of the new provisions depends not only on their textual formulation but also on institutional sensitivity in handling complaints, especially when women are involved as victims, complainants, or accused persons.

Protection of Women through the Regulation of Adultery and Cohabitation

The expansion of adultery and cohabitation regulation in the new Criminal Code can be interpreted as a preventive legal instrument for protecting women. In many social contexts, women are more vulnerable to the negative consequences of relationships outside lawful marriage. These consequences may include unwanted pregnancy, abandonment by partners, social stigma, psychological pressure, economic burden, reproductive health risks, and loss of educational or employment opportunities. The absence of legal certainty in non-marital relationships often places women in a structurally disadvantaged position, particularly when male partners avoid responsibility after pregnancy or relationship breakdown [25].

From this perspective, Article 412 on cohabitation is not only a moral provision but also a preventive measure against relationships that may leave women without legal protection. Lawful marriage provides a clearer legal structure regarding rights, obligations, inheritance, child legitimacy, maintenance, and family responsibility. By discouraging cohabitation without legal marriage, the new Criminal Code may indirectly encourage more responsible relationships and strengthen the legal protection of women and children. This finding supports the argument that the criminal law reform should not be understood only as punitive policy, but also as part of a broader social protection framework.

However, the protective function of Articles 411 and 412 must be interpreted cautiously. Criminalization alone does not automatically guarantee women's protection. In certain cases, women may also become targets of stigma or criminal complaints, especially when social norms operate unequally between men and women. Therefore, the implementation of adultery and cohabitation provisions must be accompanied by gender-sensitive legal procedures, victim protection, legal aid, and public education. Without these safeguards, the provisions intended to protect women may instead reproduce gender injustice. Thus, the protective value of the new Criminal Code depends on whether its enforcement prioritizes substantive justice and prevents discrimination.

Social, Moral, and Health Implications of the New Regulation

The study also finds that the regulation of adultery and cohabitation in the new Criminal Code has broader implications for social morality and public health. In Indonesian society, sexual relations outside marriage are generally viewed not merely as private conduct but also as behaviour that may affect family stability, social harmony, and moral education. The new

provisions therefore reflect the state's attempt to preserve values that are considered important in maintaining social order. In this sense, criminal law functions not only as an instrument of punishment but also as a normative guide for social conduct [7], [26].

The public health dimension is also relevant. Sexual relations outside stable and responsible relationships may increase vulnerability to reproductive health problems, unwanted pregnancy, and sexually transmitted infections. Women often bear the greater biological, social, and economic consequences of these risks. Therefore, the new regulation may be viewed as part of a preventive policy to promote responsible sexual behaviour and protect public health. Nevertheless, criminal law should not be treated as the only solution. Preventive legal policy must be supported by health education, reproductive rights awareness, family counselling, and access to social services [27].

In addition, the regulation may contribute to the protection of young generations. The normalization of casual sexual relationships without responsibility may have long-term implications for education, family formation, and social development. By placing adultery and cohabitation within the framework of complaint-based criminal offences, the new Criminal Code seeks to send a normative message about the importance of lawful, responsible, and socially accountable relationships. However, such normative messaging must be balanced with respect for human dignity, non-discrimination, and legal certainty.

E. Legal Challenges and Implementation Risks

Although the new Criminal Code provides a broader legal basis for regulating adultery and cohabitation, several implementation challenges remain. First, there is a risk of differing interpretations among law enforcement officers regarding the elements of adultery, cohabitation, complaint eligibility, and evidentiary standards. Second, the provisions may be misused in domestic disputes, inheritance conflicts, or family disagreements. Third, social pressure may influence the filing of complaints, especially in communities where moral issues are highly sensitive. These risks demonstrate that the effectiveness of Articles 411 and 412 depends heavily on clear legal interpretation and responsible enforcement [28].

Another challenge concerns the relationship between morality-based criminalization and constitutional rights. Critics argue that the regulation of private sexual conduct may create tension with privacy, personal autonomy, and equality before the law. Supporters, however, argue that the provisions are justified because they are rooted in Indonesian moral, religious, and cultural values and are limited by the complaint-based mechanism. This debate shows that the new Criminal Code must be interpreted through a contextual and balanced approach. The aim should not be excessive moral policing, but the protection of family integrity, social order, women's dignity, and legal certainty [22], [29].

Therefore, the implementation of Articles 411 and 412 requires several safeguards. Law enforcement institutions should develop clear guidelines on complaint procedures, evidence assessment, victim protection, and gender-sensitive handling. Judges must interpret the provisions in accordance with the principles of legality, proportionality, justice, and

human rights. Public education is also necessary to prevent misunderstanding, vigilante action, and social stigmatization. With these safeguards, the reconstructed regulation of adultery in the new Criminal Code may function more effectively as a preventive and protective legal instrument rather than merely as a punitive provision.

Novelty and Contribution of the Study

The novelty of this study lies in its interpretation of the reconstruction of adultery regulation not merely as an expansion of moral criminalization but as part of the broader development of Indonesian criminal law based on national values and social protection. Previous discussions often focus on the controversy between morality and privacy, while this study emphasizes the protective dimension of Articles 411 and 412, particularly for women who are vulnerable to the social, economic, psychological, and health-related consequences of relationships without legal certainty.

The contribution of this study is threefold. First, it contributes to criminal law scholarship by explaining how the new Criminal Code represents a transition from colonial legal orientation toward Indonesian national legal identity. Second, it contributes to gender and legal protection discourse by showing that adultery and cohabitation regulation may be understood as preventive instruments for protecting women, provided that enforcement is gender-sensitive and non-discriminatory. Third, it contributes to legal policy by recommending that the implementation of Articles 411 and 412 must be supported by clear procedural safeguards, public education, reproductive health awareness, and institutional accountability. Thus, the new Criminal Code should be positioned not only as a penal instrument but also as a legal framework for protecting women, strengthening family responsibility, and maintaining social morality within the Indonesian constitutional order.

IV. CONCLUSIONS

The change in the regulation of adultery in the new Criminal Code through Article 411 and Article 412 shows a change in the paradigm of criminal law in Indonesia from the colonial legal system to a national criminal law based on the values of Pancasila, religion, culture, and morals of the Indonesian people. The regulation in Article 284 of the old Criminal Code is considered no longer able to answer the social development of the community because it only regulates adultery committed by parties bound by marriage, thus creating a legal vacuum for various phenomena of sexual relations outside marriage and the practice of gathering together in society. This condition encouraged the birth of the new Criminal Code as a form of reconstruction of the national criminal law that is more in line with the identity of the Indonesian nation and pays more attention to the value of morality, social order, and protection of family institutions. The regulation on adultery and the prohibition of gathering in the new Criminal Code also shows the state's efforts to provide protection for women. In the practice of social life, relationships outside of marriage often place women in vulnerable positions both socially, economically, psychologically, and healthily. Women are often the most disadvantaged parties due to relationships without

legal certainty, especially when there are pregnancies outside of marriage, social stigma, and loss of access to education and employment. The regulation regarding the prohibition of gatherings can be seen as a form of state preventive protection so that women do not become victims of relationships that do not have clear legal responsibilities and certainty. The regulation on adultery in the new Criminal Code also has dimensions of moral, social, and public health protection. The prohibition of sexual relations outside of marriage is in line with the religious and cultural values of the Indonesian society that uphold the morality and honor of the family. The regulation can also be seen as a preventive step in maintaining public health from the risk of spreading sexually transmitted diseases and protecting the future of the younger generation from the negative impact of promiscuity. The establishment of the new Criminal Code does not only function as a means of punishment, but also as an instrument to maintain social morality, public order, women's protection, family protection, and the development of a national criminal law that is more in accordance with the character and values of the Indonesian nation.

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