

Justice and Utility in The Regulation of The Crime of Adultery in Law Number 1 of 2023

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Abstract

Developments in criminal law provide new insights into law enforcement in Indonesia. The enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) is particularly interesting. One interesting aspect concerns the crime of adultery, which is punishable by criminal sanctions for unmarried couples upon a complaint from either party or their parents. These sanctions include imprisonment and fines, as stipulated in Law Number 1 of 2023. The legal research used is normative legal research. The purpose of this research is to provide insights into the adultery article from the perspective of legal objectives, namely justice and utility. The increasing number of adultery cases in Indonesia results in losses for all parties. Therefore, regulations regarding the crime of adultery can deter perpetrators or make them think twice before committing the act. Thus, legal objectives can be achieved in Indonesian society.

Keywords: *Adultery, Benefit, Justice, Regulation*

INTRODUCTION

The enactment of Law Number 1 of 2023 concerning the Criminal Code (furthermore called the Criminal Code) which provides actual view in legal system in Indonesia, the existence of this new provision in the Criminal Code will be realized in early 2026. The thing that wants to be conveyed is related to one of the criminal acts related to adultery. Because there are many cases of adultery that occur in Indonesia and are acts that are contrary to the values of morality in social life in Indonesia. Regarding adultery, it has been contained in Articles 411- 413 of Law

Number 1 of 2023 and the old Criminal Code also regulates adultery contained in Article 284 of the Criminal Code. From above changes related to the crime of adultery, one of which is related to the perpetrators which has been regulated in the new Criminal Code.

Indonesia as a country rich in culture and customs in this case still upholds life norms, including the existence of religious norms, moral norms, and legal norms. Even though we already have these norms, it is still not enough to fortify the community in life, including in the current era with the

rapid socio-cultural development in Indonesia as well as the influence of communication technology which makes many acts appear that are not in line with the existing norms.¹

Regarding the regulation of adultery offenses, it must consider the existence of values believed by the community. Therefore, the law does not only have a rational relationship but also a structural relationship between the society.²

In the scope of social life, ethics and law form the moral and normative foundation that provides direction to individual actions. One of the important aspects in this case is the handling of sanctions for adultery or adultery. Ethical and legality debates that include essential questions related to limits, sanctions, and understanding of the concept of justice in society. It is important to recognize that each legal system has its own unique approach to moral issues and prohibited actions.³

The influence of Western ideas in the form of liberalism and secularism related to their lifestyle has had a great influence on society today. The existence of its slogans in the name of Human Rights and freedom to become a religion does not play a role in regulating human life. Thus, people are free to carry out their activities regardless of religious and moral norms, including sexual matters. The existence of an absolute complaint in the adultery offense provides a gap for everyone who commits adultery because the reason for the action is carried out on a consensual basis. The importance of criminalizing adultery because the act of adultery is a heinous act that has a destructive or destructive nature. The consequences of adultery are not only limited to the perpetrator but also to the community. However, the ratification of Law Number 1 of 2023 has pros and cons. Some consider that adultery for the single is considered action that can be criminalized as a violation of human rights and the state is considered too excessive to enter the realm of individual privacy.⁴

¹ Lukmanul Hakim, Aprinisa, Chiquita Apriliyandra, Penegakan Hukum Terhadap Tindak Pidana Perzinaan (Studi Putusan Nomor:1213/Pid.B/2020/PN.Tjk), *Case Law-Journal of law*, Vol. 4, No. 1 (2023): 27.

² Teguh Kurniawan Z, Adelina Mariani Sihombing, Aurelia Berliane, Konstruksi Politik Hukum Pidana Terhadap Delik Perzinaan Dalam Rancangan Kitab Undang-Undang Hukum Pidana, *Binamulia Hukum*, Vol. 12, No. 1 (2023): 18.

³ Ilham Maulana Sidiq, Arini A. Justify Sultan, Rahmi Zubaedah, Studi Perbandingan Hukum Pidana Islam dan Hukum Positif Tentang Delik Perzinaan, *Jurnal Ilmiah Wahana Pendidikan*, Vol. 10, No. 18 (2024): 514.

⁴ Nunung Dian Wahyuningsih, Perbandingan Hukum Perzinahan Dalam UU No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP) dengan Hukum Islam, *Journal of Law, Society, and Islamic Civilization*, Vol. 11, No. 2 (2023): 98.

One of the cases that has occurred in 2025 is a woman with the initials PI (22 years old) who was tragically killed by her own boyfriend with the initials JB (23 years old) on the edge of the rice fields of Gowa Regency, South Sulawesi. The victim was sadly murdered with 79 stabs after reporting her pregnancy to the perpetrator's parents. This is because the perpetrator knew about his girlfriend's pregnancy so that her pregnancy was revealed and the victim conveyed it to the perpetrator's parents, then the perpetrator committed murder against the victim, namely PI. The autopsy results from the victim showed that the victim was four to five months pregnant.⁵

From the above case we can see that from the act of adultery gives birth to various other criminal acts, such as murder, and in other cases there have also been criminal acts, namely when a woman is pregnant from a relationship resulting from adultery, the child or fetus she is carrying is aborted by the adulterer, because there is no legal relationship in marriage and also to avoid the embarrassment of the perpetrator and her family.

When adultery occurs, for example, a husband who commits adultery with

another woman also causes harm to his legal wife or child and can even result in divorce or a disharmonious household.. Dilihat dari psikologis, Adultery has a significant impact on the victim, as it can provide a painful and distressing experience. The general impact that may be felt by the victim of adultery is emotional responses, such as shock, anger, sadness, and loss of self-esteem. Please note that everyone's experience of adultery is different, and the impact on the victim can also vary depending on their condition and personality characteristics.⁶

So that it is related to the impact of the act of adultery that harms many parties, so the author feels the need for strict rules to provide protection for all parties and society by creating rules or laws that provide a sense of justice, utility, and certainty because it can create decent rules for society and the imposition of criminal sanctions has a deterrent effect for the perpetrators.

⁵ <https://www.detik.com/sulsel/hukum-dan-kriminal/d-7745461/pilu-wanita-di-gowa-dibunuh-pacar-79-tikaman-usai-lapor-hamil-ke-ortu-pelaku>. Retrieved November 12, 2025.

⁶ Prasya Putri Ramadhani, Hudy Yusuf, Tindak Pidana Pelaku Perzinahan Ditinjau Dalam Hukum Kriminologi yang Berlaku di Indonesia, Media Hukum Indonesia, Vol. 3, No. 3 (2025): 834.

PROBLEM FORMULATION

The formulation of the problem that will be studied in this study is as follows:

1. How is the regulation of adultery in Law Number 1 of 2023?
2. What is justice and utility in regulating the crime of adultery in Law Number 1 of 2023?

RESEARCH METHODS

The research method applied this study is normative legal research. This research method is theoretically rational in nature so its disclosure is tied to a method based on the requirements of deductive logic.⁷ Based on the method of approaching laws and regulations to explore related to the crime of adultery, specifically Law Number 1 of 2023 concerning the Criminal Code.

RESULTS AND DISCUSSION

1. Regulation of the Crime of Adultery in Law Number 1 of 2023

Adultery is a heinous act and a very bad way because it can confuse the nasab or

lineage. On the other hand, adultery causes community diseases and sexually transmitted diseases that are very dangerous and there is no cure or cure for it, namely HIV/AIDS.⁸

The existing society or religion, especially in Indonesia, views zina as a serious violation of religious norms, morality, decency and legal norms. Many religions teach that adultery behavior is a sin and a violation of religious teachings. In Islam, adultery is seen as a violation of God's commands. Other religions also consider the same thing related to adultery as a moral offense.⁹

In any country, especially countries that respect values, the value of morality, society will denounce a woman who is pregnant without a legal husband, especially in Indonesia. Because a man and a woman who have sexual intercourse without a marriage bond will try not to get pregnant, especially on the part of the woman.¹⁰

Adultery provisions in the Dutch Criminal Code can cause problems. The regulation on adultery in the previous Criminal Code was seen as not in line with

⁷ Zainuddin Ali, *Legal Research Methods*, (Jakarta: Sinar Grafika, 2014), 20.

⁸ Nurul Irfan, *Hukum Pidana Islam*, (Jakarta: AMZAH, 2016), 51.

⁹ Silvia Dea Anggraini, Zul Akli, Sumiadi, *Analisis Perbandingan Pengaturan Tindak Pidana Perzinahan*

Dalam KUHP Lama dan KUHP Baru (Undang-Undang No. 1 Tahun 2023, *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIMFH)*, Vol. 8, No. 3 (2025).

¹⁰ Zainuddin Ali, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2007), 52.

the implementation in Indonesian society, especially adultery in Indonesia as a very inappropriate act and contrary to the religion and morals of the religious community. Thus, this is the background and importance of legal reform on the regulation of adultery in Indonesia.¹¹

Criminal law policies related to adultery in Indonesia have been confirmed by Law Number 1 of 2023, this will replace the existence of the Dutch Heritage Criminal Code which has been promulgated through Law Number 1 of 1946.¹²

Regarding adultery, it is regulated in Articles 411 to 413 of Law Number 1 of 2023 concerning the Criminal Code, namely:

"Article 411:

(1) Every person who commits sexual intercourse with a person who is not his husband or wife, shall be punished for adultery, with imprisonment for a maximum of 1 (one) year or a maximum fine of category II

- (2) For the criminal act referred to in paragraph (1), no prosecution shall be carried out except for complaints:
 - a. Husband or wife for a person who is bound by marriage
 - b. Parents or children of a person who is not bound by marriage
- (3) Against complaints as intended in paragraph (2), the provisions as intended in Article 25, Article 26, and Article 30 do not apply.
- (4) The complaint may be withdrawn as long as the examination at the court hearing has not begun.

Article 412 is:

- a. Every person who lives together as husband and wife outside of marriage is sentenced to a maximum of 6 (six) months in prison or a maximum fine of category II
- b. For the criminal act referred to in paragraph (1), no prosecution shall be carried out except for complaints:
 - a. Husband or wife of a married person, or
 - b. Parents or children of a person who is not bound by marriage

¹¹ Ika Oktaviani dan Agusmidah, Pembaharuan Hukum dan Rasa Keadilan Masyarakat Yang Religius: Pengaturan Tindak Pidana Zina Dalam KUHP Terbaru, *Jurnal Ilmiah Penelitian Law Jurnal*, Vol. III No. 1 (2022): 185.

¹² Mukhlis R, Riduan Z, Davit Rahmadan, Kebijakan Hukum Pidana Terhadap Perbuatan Perzinahan di Indonesia, *Jurnal Das Sollen*, Vol. 10, No. 2 (2024), 139.

(3) For complaints as intended in paragraph (2), the provisions as intended in Article 25, Article 26, and Article 30 shall not apply.

(4) The complaint may be withdrawn as long as the examination at the court hearing has not commenced.

As well as Article 413, namely: Every person who has sexual intercourse with someone who he knows that the person is a member of his immediate family shall be sentenced to a maximum of 10 (ten) years in prison. ¹³

In the explanation of Law of the Republic of Indonesia Number 1 of 2023 in Article 411 paragraph (1):”

What is meant by "not husband or wife" is:

- a. Men who are in a marriage bond have sexual intercourse with women who are not his wives;
- b. Women who are in a marriage bond have sexual intercourse with a man who is not her husband;
- c. Men who are not in a marriage bond have sexual intercourse with women, even though it is known that the woman is in a marriage bond;
- d. Women who are not in the marriage bond have sexual intercourse with men,

even though it is known that the man is in the marriage bond; or

- e. Men and women who are not bound by marriage each have sexual intercourse.”

Explanation in Article 412 paragraph (1): the provisions regarding living together as husband and wife outside of marriage are known as cohabitation.

As well as the explanation in article 413 which is meant by the "batih family" consisting of father, mother, and biological child.

Observing from the sanctions related to adultery in Article 411 and Article 412, there is a low sanction for the perpetrator in the form of a prison sentence which is light and a fine that is only imposed with a category II fine, in this case the maximum fine is Rp. 10,000,000.00 (ten million rupiah).

2. Justice and Utility in the Regulation of the Crime of Adultery in Law Number 1 of 2023

Justice is an ideal for every individual in a country, One of which is to realize justice by creating rules or laws that provide balance for everyone regardless of their status and position in society.

Soerjono Soekanto said that justice is essentially based on 2 things, namely: (a)

¹³ Pasal 411-413 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

The principle of equality gets an equal share; (b) is based on need. So as to produce a comparison that is usually applied in the field of law. Law enforcement and its implementation must achieve justice.¹⁴

If law enforcement focuses on the value of justice alone while the value of legal usefulness and certainty is set aside, then the law will not be implemented properly. Likewise, if the emphasis on the value of usefulness and legal certainty is set aside, then the law will not run smoothly and well.¹⁵

On the other hand, in certain cases, rigid written laws often do not reflect a sense of justice for society. This injustice is due to the weak written law that requires law enforcement officials to think progressively. When justice can no longer be achieved with written law, therefore law enforcement officials must dare to break through existing norms. For this reason, the positivistic mindset of law enforcers must be changed so that they can see the law in its entirety or comprehensively. So that justice can be obtained more for justice seekers.¹⁶

Related to Article 411 of Law Number 1 of 2023 it seeks to fill the void of these norms so that they are more in line with the religious values and morality believed by most people. The momentum of national criminal law reform with the enactment of Law Number 1 of 2023 concerning the Criminal Code has significantly expanded the scope of adultery, not only for those who are married but also for those who have sexual intercourse without a marital bond. This change shows the state's efforts to accommodate the values and norms that live in society that were previously not fully summarized in the Criminal Code.¹⁷

Although there has been a new breakthrough in Law Number 1 of 2023, there are still some things that are still debatable for other parties, for example, saying that adultery is a person's private or personal domain, but another view is that adultery is a violation of morals and religion believed by Indonesian people.

Regarding the criminal sanctions imposed for adulterers, it is still relatively light for only 1 year. That in the new Criminal Code related to the sanctions

¹⁴ Serlika Aprita, *Sosiologi Hukum*, (Jakarta: Kencana, 2023), 165.

¹⁵ Januri dan Nelti Lita, Hakekat Keadilan Dalam Perspektif Filsafat Hukum, *Jurnal Penelitian Hukum*, Vol. 2, No. 02 (2023): 129-130.

¹⁶ Mahrus Ali, Ed. *Membumikan Hukum Progresif*, (Yogyakarta: Aswaja, 2013): 12.

¹⁷ Aji Nugraha, Yuliana Surya Galih, Ibnu Rusydi, Taopik Iskandar, Analisis Tindak Pidana Perzinahan Menurut Pasal 284 Kitab Undang-Undang Hukum Pidana Dibandingkan Dengan Pasal 411 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, *Jurnal Pustaka Galuh Justisi*, Vol. 3, No. 2 (2025): 237.

imposed is not so different from the sanctions of the Dutch heritage. Not only the punishment can be said to be not so much different, in the new Criminal Code for adulterers, criminal responsibility can be asked if there are complaints from the parties described earlier.¹⁸

So that the imposition of sanctions in adultery has not achieved the purpose of criminalization because it has not provided a deterrent effect for the perpetrator and also the complaint is absolute, making it limited if the public knows about adultery, the community cannot convey it to the authorities.

In the data obtained, as many as 218 minors in Bojonegoro Regency who are eager to get married. On average, they reason because they have already committed adultery with their partner before having an official marriage. The total cases are based on data on marriage dispensation submissions at the Religious Court of Bojonegoro Regency, since early July 2024. So that the couple of children who live in this household are immature, so their mindset is still immature in making decisions. The Religious Court granted the

request for a discount because it was concerned about greater benefits, or it could have a bad impact if it was not granted, especially for those who had committed adultery and became pregnant.¹⁹

The current practice of many parties who normalize the occurrence of adultery even in the media admit to having committed adultery and are pregnant, of course there is a concern that there will be many parties who commit these acts without any shame and leave things that are actually not allowed to be done either in religious norms or customs.

The benefits of law enforcement are matters that should not be separated in determining the success of law enforcement in Indonesia. In the view of the Utilitarianism school, law enforcement has a purpose based on certain benefits and is not only limited to retaliating against the actions of the criminal perpetrator, not just to provide retribution or reward to the person who commits a criminal act, but has certain useful purposes. This benefit is interpreted as happiness. A good law is a law that brings happiness to many people.²⁰

¹⁸ Rya Elita Br Sembiring, Edo Maranata Tambunan, Herman Fasiona Hutabarat, Muhammad Afandi, Analisis Tindak Pidana Perzinaan Dalam pembaharuan Hukum Pidana dan Qanun Jinayat di Aceh, *Iblam Law Review*, Vol. 4, No. 2 (2024): 65.

¹⁹ <https://www.pa-bojonegoro.go.id/kategori/detail/berita/330>. Diakses pada 12 November 2025.

²⁰ Hasaziduhu Moho, Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemamfaatan, *Jurnal Warta*, Edisi : 59, (2019).

Criminal law policy pays more attention to the interests and wishes of the victim, but also considers the balance between individual rights and social interests. Although we already know that adultery in this provision is classified as an absolute complaint offense, the law still provides space to protect the rights of victims and efforts to resolve them peacefully before entering the court process. However, keep in mind that when the court begins an investigation, the opportunity to retract the complaint or reach a peaceful settlement becomes limited.²¹

If we base it on the new Article 411 of the Criminal Code, then the public does not have the right to report the act of adultery as a criminal offense because there is a limitation of the provisions of the article because those who can make a complaint about the crime of adultery as a complaint offense are legal partners for married people and parents for someone who is not married, so that this action will expand and not focus only on acts of adultery by married people but also for all those who commit adultery outside of a valid marriage. If there is a deep criticism in the process of resolving adultery cases that

occur, it is necessary to have legal restoration so that the community can play an active role in efforts to overcome adultery cases. If this becomes an ordinary complaint in terms of the elements of the community can fulfill the criminal proof process, when it is found that there is a pair of men and women who commit adultery in the proof that at least 2 pieces of evidence are needed, surely there will be a change in the type of crime there will be a lot of action from the authorities related to the adultery case because the public can freely report the act of adultery.²²

So that in creating benefits and *maslahah* must also pay attention to the aspects of society, because the ideal law provides the fulfillment of rights for many people, and is beneficial to others and does not contradict the norms that live and develop in society.

CONCLUSION

Regulations on the crime of adultery are regulated in Articles 411-413 of Law Number 1 of 2023 concerning the Criminal Code. Article 411 paragraph (1) regulates sexual intercourse with a person who is not his husband or wife, convicted of adultery,

²¹ Sirajuddin, Risdayani, Dewi Indriani, Delik Aduan Tindak Pidana Perzinahan Dalam Pandangan Hukum Pidana Islam, *Bustanul Fuqaha: Jurnal Bidang Hukum Islam*, Vol. 5, No. 2 (2024): 366.

²² Ahmad Wildan Rofrofil Akmal, Rekonstruksi Delik Tindak Pidana Zina Dalam KUHP Berbasis *Maslahah* di Aceh, Indonesia, *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)*, Vol. 6, No. 1 (2024): 28-29.

with a maximum prison sentence of 1 year or a maximum fine of category II. Article 412 (1) regulates cohabitation or people who live together as husband and wife outside of marriage are punished with a maximum prison sentence of 6 (six) months or a maximum fine of category II. In this case, it is related to adultery, including complaints that can be made, namely husband or wife for people who are bound by marriage, children or parents for people who are not bound by marriage. Article 413 relates to those who have sexual intercourse with a person whom he knows that the person is a member of his or her immediate family shall be sentenced to a maximum of 10 (ten) years in prison. The meaning of the *batih* family consists of father, mother, and biological children.

Justice is an ideal for every individual in a country, One of which is to realize justice by creating a law that provides balance for everyone regardless of their status and position in society. Observing Article 411 of Law Number 1 of 2023 seeks to fill the void of these norms so that they are more in line with the religious values and morality believed by most people. A person who has sexual intercourse without a marital relationship. Although there has been a new breakthrough in Law Number 1 of 2023, there are still some things that are still debatable for other parties, for

example, saying that adultery is a person's private or personal domain, but another view is that adultery is a violation of morals and religion believed by Indonesian people. The imposition of sanctions is not much different from the previous Criminal Code so that the imposition of sanctions in adultery has not achieved the purpose of criminalization because it has not provided a sense of justice and a deterrent effect. Related to the benefits in law enforcement is a matter that should not be separated in determining the success of law enforcement in Indonesia. In this case, we see that the law must provide benefits to the community, but in the crime of adultery it still uses the complaint deliction, so that the community has not been able to make a complaint when they find that there is a couple of men and women who commit adultery because it is not an ordinary crime.

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