

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

Muhammad safar¹, Suci Ramadani², Ismaidar³

Universitas Pembangunan Panca Budi

e-mail: safarbrow@gmail.com, suciramadani@dosen.pancabudi.ac.id,
ismaidar@dosen.pancabudi.ac.id

ABSTRACT

Adultery has long been a sensitive and complex legal issue in the Indonesian criminal law system. Article 284 of the 1946 Criminal Code limits the crime of adultery to married couples, which can only be processed through a complaint from the legal spouse. However, along with the development of social values, Article 284 is considered inadequate in accommodating the dynamics of modern society. In 2023, Indonesia enacted the Criminal Code No. 1 of 2023, specifically Article 411, which expands the scope of the crime of adultery by including acts of adultery by those who are not married and provides the right to complain to parents or children. This study aims to analyze the comparison between Article 284 of the 1946 Criminal Code and Article 411 of the Criminal Code No. 1 of 2023 in regulating the punishment of adultery perpetrators in Indonesia. The method used is normative juridical with a doctrinal approach to examine the legal substance, identify changes, and examine the social and legal impacts of this reform. The results of the study show that Article 411 provides a broader legal scope and strengthens protection for the injured party. However, the complaint offense mechanism that is maintained poses challenges in implementation, especially related to the potential for abuse of complaint rights and the high burden of proof for law enforcement officers. In conclusion, changes in Article 411 are expected to balance the protection of social norms and respect for individual privacy. The effectiveness of its implementation is highly dependent on the sensitivity of law enforcement officers in implementing this rule fairly and adaptively in the context of diverse Indonesian society.

Keywords:

Adultery crime, Article 411 of the Criminal Code, complaint offense

1. INTRODUCTION

Adultery has become one of the sensitive and complex legal issues in the criminal law system in Indonesia (Yasdin, Rapung, and Rafi 2024). Adultery cases not only involve legal aspects but also moral and social aspects that are closely related to religious and cultural norms adopted by

Indonesian society. Adultery involves acts of sexual intercourse carried out by people who are not bound by a legal marriage bond, and is often considered a violation of moral and religious values in Indonesia, especially in the context of a Muslim majority society. The norms governing the prohibition of adultery are not only born from positive law, but also from religious traditions, where the majority of the population considers adultery as an act that tarnishes the sanctity of the family and damages the harmony of society. Yasdin,Rapung, and Rafi 2024).

The history of the regulation of adultery in Indonesian criminal law can be traced back to the Dutch colonial era, where Article 284 of the 1946 Criminal Code limitedly regulated adultery. In this article, the law only covers cases of adultery committed by married individuals, both men and women. One of the specifics of the provisions of Article 284 of the Criminal Code is the requirement for a complaint from the party who feels aggrieved, namely the legal spouse of the perpetrator of adultery. In practice, this regulation is often considered limited, because it only provides criminal sanctions for married couples and does not cover acts committed by unmarried individuals. Furthermore, this provision narrows the scope of the crime of adultery to only certain cases based on complaints, which often causes obstacles in law enforcement. (Marentek 2019)

The development of the era and changes in social values in Indonesia have encouraged the need for a more comprehensive revision of the Criminal Code, especially to accommodate the dynamics of modern social life. In 2023, Indonesia enacted Criminal Code No. 1 of 2023 which changed many aspects of criminal law, including the regulation of adultery. Article 411 of the new Criminal Code expands the definition and scope of the crime of adultery. Here, not only married couples can be punished for having intercourse outside of marriage, but also unmarried couples. In addition, this new regulation also provides the right to complain to parents or children for unmarried perpetrators, thus expanding the group of people who can file lawsuits for adultery cases. (NINGRUM, n.d.)

Empirically, cases of adultery in Indonesia have several data that show the urgency of more comprehensive regulations. Based on reports from various institutions that handle cases of domestic violence and divorce, cases of infidelity are one of the main factors causing divorce in Indonesia. Data from the Religious Courts show that in recent years, infidelity or adultery has become the dominant reason for divorce applications. This shows that the impact of adultery not only affects the perpetrators, but can also destroy the family structure and have an impact on children. (Meliala and Sahlepi 2024)

On the other hand, the implementation of this new regulation has also caused debate in society, especially in terms of morality and individual freedom. Several groups consider that this regulation is too restrictive of individual freedom in determining their personal relationships. However, there are also views that support this regulation as an effort to strengthen social norms and maintain moral integrity in society. This debate reflects a shift in social paradigms in Indonesia, where there is a broad spectrum of thinking about how the law should regulate people's personal behavior. The revision of the Criminal Code through Article 411 can be seen as an effort to answer the demands of a diverse society, but also reflects the challenges in the law enforcement process. Related to evidence in adultery cases, the requirement for a complaint from a spouse or parent presents a challenge for law enforcement officers in terms of investigation and ensuring the validity of the evidence. In addition, this requirement also creates a psychological burden for the reporting party who must reveal cases of adultery in the family environment or the wider community, which is often seen as a disgrace. (Saragih and Zarzani, n.d.)

In this case, this study aims to provide a comparative analysis between Article 284 of the 1946 Criminal Code and Article 411 of the Criminal Code No. 1 of 2023 in regulating criminal

penalties for adultery. Through this analysis, the study wants to see how far the changes presented by the new Criminal Code are able to answer the legal, social, and moral challenges faced by Indonesian society. It is hoped that by understanding the substance and context of the two articles, this study can contribute to the development of criminal law theory in Indonesia and provide recommendations for the application of laws that are fairer and in accordance with the development of society.

According to the results of a survey by the National Commission on Violence Against Women, the factor of infidelity is often associated with dissatisfaction in marriage and a lack of effective communication between husband and wife. Infidelity in marriage tends to have a negative impact on the psychological and emotional condition of the victim, which often ends in divorce or serious domestic conflict. This fact strengthens the argument that adultery needs to be regulated more clearly in the Criminal Code to provide legal protection for couples who feel aggrieved, as well as to maintain social order. In this context, this study also aims to identify the challenges faced by law enforcement officers in implementing articles on adultery, both under the old and new Criminal Codes. For example, in the 1946 Criminal Code, many cases of adultery were difficult to follow up on due to limited complaint requirements and a narrow scope of violations. Therefore, Criminal Code No. 1 of 2023 tries to improve this weakness by providing the right to complain to certain parties in cases of adultery committed by unmarried people, although challenges in terms of evidence and public perception still remain.

With this broad background, it is clear that the regulation of adultery in the Criminal Code is a response to the social, moral, and legal dynamics that continue to develop in Indonesia. This study seeks to explore the extent to which changes in the regulation of the crime of adultery have a positive impact on law enforcement in Indonesia and how society responds to the new regulations. With a comparative approach, this study will make an important contribution to evaluating the effectiveness of Criminal Code No. 1 of 2023 and identifying possible improvements in Indonesian criminal law, especially in terms of adultery. It is hoped that this study will not only provide an in-depth legal perspective but also provide constructive solutions for the implementation of adultery articles in a diverse society in Indonesia.

2. LITERATURE REVIEW

a. Definition of Criminal

Criminal law is a legal rule that binds a criminal act that meets certain requirements to a consequence in the form of a criminal act. The definition of criminal law according to Mezger has two main things, namely legal rules that regulate acts that meet certain requirements and criminal acts. What is meant by acts that meet certain requirements is that certain acts must be prohibited acts, and certain acts must be carried out by people. While what is meant by criminal acts is suffering or misery that is deliberately imposed on people who commit acts that fulfill certain requirements. Criminal law can also be interpreted as all regulations that regulate criminal acts, criminal responsibility and criminal acts.

Criminal law can be divided into Material Criminal Law and Formal Criminal Law. Material criminal law is criminal law that contains rules that determine and formulate acts that can be punished, and rules that contain the conditions for imposing criminal penalties, as well as provisions regarding criminal penalties. While formal criminal law is criminal law that regulates the authority of the State through law enforcement officers to exercise its right to impose criminal penalties.

b. Definition of the Criminal Act of Adultery

Criminal Act, is a term derived from the Dutch language, *het strafbare feit*. Another term for a crime is an act that can or may be punished, a criminal event or criminal act. According to Simon, a crime is: "An act/deed (*handeling*) that is threatened with punishment by law, contrary to the law (*onrechtmatig*) carried out with error (*schuld*) by a responsible person.

Muljatno defines a crime as an act that violates the law and is detrimental to society, because it is contrary to or hinders the implementation of a good and just social order. He emphasized that a crime or criminal act is an anti-social act. Therefore, these acts are prohibited or must not be carried out. Criminal acts are a basic concept in criminal law (normative juridical). Crimes or evil acts in the normative juridical sense are acts such as *in-abstracto* in criminal regulations. While crimes in the criminological sense are human actions that violate the norms that live in society in a concrete way. Regarding the definition of criminal acts (*strafbaar feit*) several scholars provide different definitions, namely according to Moeljatno "criminal acts (criminal acts) are acts that are prohibited by a legal rule, which prohibition is accompanied by a threat (sanction) in the form of a certain penalty, for anyone who violates the prohibition.

The provisions of Article 284 can be clearly stated that the concept of adultery according to the Criminal Code is sexual intercourse committed by two people who are already bound in a marriage and is carried out with someone other than their husband or wife. Adultery committed by two people who are still single, in English, is known as fornication. While adultery committed by two people who are married or one of them is married, is known as adultery. Zina means including adultery and fornication. So, according to the Criminal Code, adultery is only considered a crime if the perpetrators or one of them is a person who is bound in marriage with another person. What can be punished according to the Criminal Code is adultery in the context of adultery. If the perpetrators are still both single, according to the Criminal Code, it is not a criminal act of adultery at all. (Neng Bjubaedah, 2010)

3. RESEARCH METHODS

This study adopts a doctrinal methodology (Indra Utama Tanjung 2024) with a normative legal approach to analyze and compare Article 284 of the 1946 Criminal Code and Article 411 of the Criminal Code No. 1 of 2023, which regulates the punishment for adultery in Indonesia. This method involves an in-depth study of relevant laws and regulations and related literature to identify changes in the law and their impact on social dynamics and moral values in Indonesia. Primary and secondary data sources such as regulations, journal articles, and law books are used in data collection through documentation studies and comparative analysis. The purpose of this study is to provide an understanding of the evolution of adultery criminal law in Indonesia and to assess the urgency and implications of these changes for society and the legal system as a whole.

4. DISCUSSION AND RESEARCH RESULTS

a. The Crime of Adultery in the Old and New Criminal Codes

Adultery has long been a sensitive issue in the context of criminal law in Indonesia. As a country with plurality in terms of culture, religion, and social values, the regulation of adultery is not only regulated from a positive legal perspective but is also influenced by religious norms, especially in a society whose majority adheres to Islam. In this context, Article 284 of the 1946 Criminal Code (Criminal Code) has been the main reference for criminalizing adultery for more than seven decades. However, along with the dynamics of social and cultural changes, as well as the development of legal norms, the regulation of adultery has been updated through the

Criminal Code No. 1 of 2023, especially Article 411, which is expected to better reflect the legal needs of contemporary society. (Risdawati and Zarzani 2023)

Article 284

(1) The following shall be punished by imprisonment for a maximum of nine months:

- a. a married man who commits gendak (overspel), even though it is known that Article 27 BW applies to him,
- b. a married woman who commits gendak, even though it is known that Article 27 BW applies to her,
- c. a man who participates in the act, even though it is known that the co-culprit is married;
- d. a married woman who participates in the act, even though it is known that the co-culprit is married and Article 27 BW applies to her.

(2) No prosecution shall be carried out except upon complaint from the husband/wife who is defiled, and if Article 27 BW applies to them, within a period of three months followed by a request for divorce or separation from bed and board for that reason as well.

(3) Articles 72, 73, and 75 do not apply to this complaint.

(4) The complaint may be withdrawn as long as the examination in the court hearing has not yet begun.

(5) If Article 27 of the Civil Code applies to a husband and wife, complaints will not be considered as long as the marriage has not been decided due to divorce or before the decision stating that the separation of bed and board becomes permanent.

Gendak in the context of criminal law in Indonesia, especially in Article 284 of the Criminal Code, refers to an act of adultery or adultery committed by someone who is bound in marriage with someone else who is not their partner. This act includes sexual intercourse between a married man or woman with a third party who is not their legal partner. Thus, the term "gendak" in criminal law is used to describe an illegitimate relationship outside of marriage carried out by married individuals. (Ritonga, Hasibuan, and Zarzani 2024)

In Indonesia, the crime of adultery is regulated in Article 284 of the Criminal Code which was drafted during the Dutch colonial era. The provisions in this article focus on sexual intercourse carried out by those who are bound by marriage, both men and women. (Ismaidar and Rahmayanti 2023) The crime of adultery can only be processed through a complaint from a partner who feels aggrieved. (Amirah 2024) In this context, Article 284 of the 1946 Criminal Code is considered quite limited because it only covers violations committed by married couples, and prosecution can only be carried out on the basis of a complaint from the husband or wife who is tainted. (Fikri 2024)

However, along with the development of the times, Indonesian criminal law requires more comprehensive changes in regulating adultery cases. This is based on several main factors. First, the demand to revise the rules that are too narrow in the scope of the crime of adultery, which is only limited to married people. Second, changes in social values that influence people's perceptions of morality and ethics, which require adjustments in criminal law. Third, there is pressure from certain groups who want to see laws that are more in accordance with the religious values and customs of Indonesian society. It is in this context that Article 411 of the Criminal Code No. 1 of 2023 comes with a number of broader and more inclusive updates. (Wahyumah 2024)

Contents of Article 411 of Law 1 of 2023

Furthermore, the crime of adultery in Article 411 of Law 1/2023 reads as follows:

1. Any person who has sexual intercourse with a person who is not his/her husband or wife shall be punished for adultery, with a maximum imprisonment of 1 year or a maximum fine of category II, namely IDR 10 million.
2. No prosecution shall be carried out against the Criminal Acts as referred to in paragraph (1) except upon complaint:
 - a. husband or wife for people who are bound by marriage.
 - b. Parents or children for people who are not bound by marriage.
3. The provisions referred to in Article 25, Article 26, and Article 30 shall not apply to the complaint as referred to in paragraph (2).
4. The complaint may be withdrawn as long as the examination in the court hearing has not yet begun.

Similar to Article 284 of the Criminal Code, based on Article 411 of Law 1/2023, the crime of adultery can only be prosecuted if there is a complaint. However, complaints in the Criminal Code only come from husbands/wives for those who are married or parents/children for those who are not married. (Syifaa 2024)

Then, as stated in Article 284 of the Criminal Code and Article 411 of Law 1/2023, (Meina 2023) this complaint can be withdrawn as long as the examination in the court hearing has not begun. Then, based on the Explanation of Article 411 paragraph (1) of Law 1/2023, what is meant by "not husband or wife" as stated above is:

- a. a man who is in a marriage has sexual intercourse with a woman who is not his wife;
- b. a woman who is in a marriage has sexual intercourse with a man who is not her husband;
- c. a man who is not in a marriage has sexual intercourse with a woman, even though it is known that the woman is in a marriage;
- d. a woman who is not in a marriage has sexual intercourse with a man, even though it is known that the man is in a marriage; or
- e. a man and a woman who are not bound by marriage have sexual intercourse.

What is meant by "her child" in this article is a biological child who is 16 years old. (Imani 2023) Article 411 of the Criminal Code No. 1 of 2023 expands the scope of the crime of adultery by including adultery committed by anyone, whether bound by marriage or not, as long as the act involves someone who is not the legal partner. (Reni Suryani 2024) On the one hand, this change is considered a form of legal adjustment to social reality and the dynamics of relationships between individuals in modern society. On the other hand, this regulation has given rise to a number of pros and cons in society, both from the perspective of legality and morality.

The urgency of this change arises from the fact that Indonesian society, which consists of diverse cultural and religious backgrounds, requires a legal system that is fairer and in accordance with current developments. In this case, Criminal Code No. 1 of 2023 is considered to be trying to answer this need by expanding the definition of adultery and introducing clearer sanctions. However, this change is also not without criticism. Several groups stated that this new regulation could cause problems in its enforcement, especially because there is still an element of complaint as a condition for starting the legal process. In addition, the developing social dynamics show that there is debate regarding the application of this law in areas that have different customs and religious values. (Yasdin, Rapung, and Rafi 2024)



- b. Urgency of Changing Criminal Penalties for Adultery Perpetrators in Indonesia Comparative Analysis of Article 284 of the 1946 Criminal Code and Article 411 of the Criminal Code No. 1 of 2023

Adultery has long been a sensitive issue in the context of criminal law in Indonesia. As a country with a plurality of cultures, religions, and social values, regulations regarding adultery are not only determined based on a positive legal perspective but are also influenced by religious norms adopted by the majority of society, especially Islam. In Indonesia, adultery is considered not only a violation of state law, but also a violation of moral values that affect family structure and social life. (Suprayogi 2023) In this context, Article 284 of the 1946 Criminal Code (KUHP) has been the basis for criminalizing adultery for more than seven decades. (Rahmayanti and Ismaidar 2023) Article 284 of the 1946 Criminal Code regulates adultery as a criminal act that is punishable by a maximum imprisonment of nine months, on the condition that:

1. The act of adultery is committed by a married man or woman.
2. The legal process can only be carried out through a complaint from a legal partner who feels aggrieved.

This article limits the crime of adultery as a complaint offense that requires a report from the party who feels aggrieved, namely the husband or wife of the adulterer. Specifically, Article 284 reads as follows:

Paragraph (1): "Threatened with a maximum imprisonment of nine months:

- a) a married man who commits gendak (overspel), even though it is known that Article 27 BW applies to him;
- b) a married woman who commits gendak, even though it is known that Article 27 BW applies to her."

This provision indicates that the crime of adultery in the 1946 Criminal Code only targets acts of adultery committed by those who are bound by marriage. This limits the scope of the crime of adultery and only covers violations that occur between married couples. In addition, in practice, this regulation reflects a complaint offense, which means that law enforcement officers can only process adultery cases if there is an official complaint from the party who feels aggrieved, namely the legal spouse who has been defiled.

Along with social changes and growing demands of society, it is evident that the provisions in Article 284 of the 1946 Criminal Code are considered no longer able to handle the complexity of adultery in the context of modern society. Provisions that limit adultery to married couples are considered less relevant in a society whose moral values have developed. In this development, Indonesian criminal law requires more comprehensive changes and includes various forms of relationships involving adultery, not only limited to married couples. (Suprayogi 2023)

Responding to this need, Article 411 of the Criminal Code No. 1 of 2023 comes with a number of broader and more inclusive updates. This article expands the scope of the crime of adultery by not only covering married couples, but also covering relationships carried out by those who are not in a marriage bond. Article 411 paragraph (1) of the Criminal Code No. 1 of 2023 states that:

Paragraph (1): "Anyone who has sexual intercourse with someone who is not his husband or wife, shall be punished for adultery, with a maximum imprisonment of 1 year or a maximum fine of category II, namely IDR 10 million."

With this provision, Article 411 introduces stricter criminal sanctions, where perpetrators of adultery can be subject to imprisonment for up to one year or a fine of Rp10 million. In addition, this Article extends the right to complain not only to legal spouses, but also to parents or children of perpetrators who are not married. This can be seen in paragraph (2), which reads:

Paragraph (2): "For Criminal Acts as referred to in paragraph (1) no prosecution shall be carried out except upon complaint:

- (a) husband or wife for people who are bound by marriage;
- (b) Parents or children for people who are not bound by marriage."

In this case, the changes to Article 411 provide broader complaint rights, which include parents or children of the perpetrator who are not bound by marriage. Thus, this update shows that adultery in Article 411 is no longer limited to relationships involving married couples, but also includes relationships involving those who are not yet bound by marriage. This provides an opportunity for the community to demand legal accountability for actions that are considered to violate morals and social norms. (Fajarwati, n.d.)

However, despite the improvements, the implementation of Article 411 as a complaint offense still has major challenges, especially in terms of evidence and legal process. In the context of criminal law that prioritizes the principle of justice, the complaint offense is considered inadequate because it places the legal burden on individuals who must file a complaint first before law enforcement officers can take action. From a legal perspective, this complaint offense mechanism hinders the effectiveness of the law because not all victims or injured parties will have the courage or willingness to report acts of adultery, especially if it is related to family shame or social pressure. (Atmasasmita 2017)

In addition, the expansion of the right to complain to children or parents of unmarried perpetrators also poses a risk of abuse. There are concerns that this complaint can be used as a tool to resolve personal conflicts or as a form of revenge. Therefore, caution is needed from law enforcement officers in processing adultery cases based on complaints, so that there is no excessive criminalization or abuse of the law that can harm other parties. (Fitriani 2024)

From a critical legal perspective, the changes introduced by Article 411 reflect the government's efforts to balance social norms with the values of legal justice. The expansion of the scope of the crime of adultery provides an opportunity for law enforcement to prosecute various forms of adultery, both within and outside of marriage. In this case, criminal law reflects the greater public interest, namely maintaining the moral order of society that is believed in together. On the one hand, this change provides more protection for victims of adultery or family members who feel aggrieved, but on the other hand, it must be recognized that this approach opens up the possibility of conflict in a society that has different views on personal relationships. (Situmorang and Zarzani 2023)

In addition, the amendment to Article 411 is expected to provide broader social protection for victims of infidelity or moral violations that occur outside of marriage. In an increasingly complex society, the expansion of the scope of adultery reflects the adaptation of the law to social dynamics. However, on the other hand, this change can also create an additional burden for law enforcement officers in terms of evidence and investigation, considering that the complaint requirement is still applied as a basis for initiating legal proceedings. The process of evidence based on complaints requires caution so as not to cause excessive criminalization or injustice for the parties involved.

In conclusion, the change from Article 284 to Article 411 shows the urgency of legal reform in the context of adultery in Indonesia. By expanding the scope of the crime of adultery, Article 411 of the Criminal Code No. 1 of 2023 seeks to answer the challenges faced by society in regulating actions

that are considered to damage moral values and social norms. This change shows legislative efforts to provide broader legal protection, not only to married couples but also to families and individuals who feel disadvantaged by adultery. However, the effectiveness of this change is highly dependent on its implementation in the field, where law enforcement officers must be able to balance social protection and respect for individual privacy rights. This change needs to be accompanied by an adaptive approach and take into account the diversity of values in Indonesian society. It is hoped that with proper implementation, Article 411 can become an effective legal instrument in maintaining a balance between social norms, justice, and human rights.

5. CONCLUSION

In conclusion, the change in the legal provisions related to adultery in Article 411 of the Criminal Code No. 1 of 2023 is a significant step in an effort to update the Indonesian criminal law system, which has so far relied on Article 284 of the 1946 Criminal Code. This update expands the scope of criminal law against adultery, so that it is not only limited to individuals who are bound by marriage but also includes adultery by those who are not married. By providing broader complaint rights to parties who feel aggrieved, such as spouses, children, or parents, Article 411 provides greater space for the community to demand legal accountability for acts of adultery that are considered to violate moral and social norms. On the one hand, this provision strengthens protection for victims within the family, however, the complaint offense mechanism also requires carefulness from law enforcement officers to ensure that the legal process is not misused for personal gain personal or internal family conflict.

Although Article 411 is considered a relevant response to social dynamics and the ever-growing demands of public morality, its effectiveness still depends on its fair and wise implementation by law enforcement officers. This regulation demands a balance between the public interest in maintaining social norms with respect for the right to privacy and individual freedom. Thus, the success of implementing Article 411 depends not only on the legal provisions themselves, but also on how these provisions are applied in the context of Indonesia's diverse society. It is hoped that, through a sensitive and adaptive approach, this regulation will be able to become an effective legal instrument in maintaining the moral order of society without sacrificing the principles of justice and respect for human rights.

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