
**JURIDICAL ANALYSIS REGARDING CHANGES IN THE REGULATIONS ON ADULTERY IN LAW NUMBER
1 OF 2023 CONCERNING THE CRIMINAL CODE IN INDONESIA**

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ABSTRACT

This research aims to explain the comparison of adultery regulations in the old Criminal Code and the new Criminal Code, as well as the implications of changes to the adultery regulations in the new Criminal Code. The research method is normative. This research is a type of normative research that uses secondary data. The approach taken is a statutory and conceptual approach. The data analysis method used is qualitative. The results of this research are regarding adultery in the old Criminal Code which is regulated in Article 284 of the Criminal Code, which provides the meaning of adultery only between a man and a woman, one of whom is at least married, while the new Criminal Code is regulated in Article 411 of the Criminal Code, which expands the meaning of adultery. also covers men and women who are not related by marriage, who are threatened with imprisonment for a maximum of 1 (one) year. Adultery is a complaint offense in both the old and new Criminal Code, but in the new Criminal Code there are additional parties who can file a complaint about adultery, namely not only husband/wife, but also parents and children for people who are not related by marriage, in addition there is an increased threat of imprisonment in the new Criminal Code, namely for 1 (one) year. The implications of the changes to the regulation of adultery in the new Criminal Code are to minimize opportunities for adulterous behavior that could potentially be committed by married young couples, to apply customary law in Indonesia and to abandon western concepts, namely the Netherlands, to realize responsive criminal law, meeting the needs of Indonesian society. religious, and minimizing the presence of vigilantism by society, provides a deterrent effect because there are increased criminal penalties for perpetrators of adultery.

Keywords: Implications, Criminal Code, Comparison of regulations, Adultery

INTRODUCTION

Provisions regarding the criminal act of adultery in Indonesian laws and regulations are considered to have not been successful in dealing with the problem of adultery in Indonesia. The provisions for adultery in the old Criminal Code are no longer in accordance with the culture in Indonesia. The act of adultery often worries the public because it cannot be prosecuted as expected, even though adultery represents a behavior that can damage the foundations of the nation's morality. This is in line with R. Soesilo's opinion that laws and regulations in Indonesia have not been successful in dealing with the problem of adultery that occurs in society, even though adultery is an act that is not in accordance with the spirit of the Indonesian nation, namely Pancasila.¹

In the old Criminal Code, adultery was regulated in Article 284 of the Criminal Code. The definition of adultery in Article 284 of the old Criminal Code is only specific to sexual relations between men and women, at least one of whom is married to another person.²Based on this, it can be interpreted that if a couple is married and has sexual relations outside of legal marriage, this act cannot be prosecuted by law

¹ Alfatdi AR, Cahyani IAR, Khusnannisa S. Menelisik Lebih Dalam Pengaturan Tindak Pidana Perzinahan dalam RKUHP Melalui Berbagai Pandangan. *J Stud Leg J Ilmu Huk.* 2022;3(1):14

² Nurhadi S. Perzinahan Dalam RUU KUHP. *J Kapita Sel Adm Publik.* 2020;1(1):1–11

and the couple cannot be categorized as having committed adultery, because they are both not married. For this reason, the regulation of adultery in the old Criminal Code often caused polemics because it was considered inappropriate when applied to Indonesian society. The provisions of Article 284 of the old Criminal Code, both directly and indirectly, have given groups who engage in sex outside of marriage the freedom to carry out this act, without any positive legal procedures that limit it, even though the majority of society considers this behavior dispute with religious values, customary law and morality.³

Based on the description above, it is indeed necessary to reform the law regarding the regulation of the crime of adultery in Indonesia, so that the adultery article in the Criminal Code can reflect the soul values of the Indonesian nation and provide a sense of justice for religious communities. Currently, the Criminal Code Bill, which is a formulation of criminal law reform since 1964, has been passed as law, namely Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the new Criminal Code). One of the new Criminal Codes regulates the crime of adultery. On the other hand, it is not regulated in a separate section regarding adultery, but the causes related to adultery are included in the chapter regarding crimes regarding morality. The article that regulates adultery in the new Criminal Code is Article 411 of the Criminal Code paragraph (1) which states that "every person who has sex with someone who is not their husband or wife, shall be imprisoned for adultery with a prison sentence of 1 (one) year and compensation." most often category II". Then, Article 411 paragraph (2) of the Criminal Code regulates that "For the criminal act of adultery, prosecution can be carried out on charges of: 1) husband or wife for people connected by marriage; 2) parents or children for people not connected by marriage."

old Criminal Code	New Criminal Code
Regulated in Article 284 of the Criminal Code	Regulated in Article 411 of the Criminal Code
Adultery is sex between a man and a woman who obey Article 27 BW and at least one of them is married.	Adultery is sex between a man and a woman, whether each party is married or not married at all.

Based on this article, this means that in the new Criminal Code there is an expansion of the definition of adultery, namely that it not only applies to couples who are married, but also applies to couples who are not married. However. in fact, even though criminal law reforms have been carried out, especially in this case relating to adultery. There is still agreement and disagreement among groups of people, some people even feel that this is a private domain and the State is going too far in managing the affairs of their community.⁴On the other hand, there are also people who support the reform of the regulation of adultery in the new Criminal Code with the opinion that the new Criminal Code applies the values of Indonesian society that have been adhered to so far, and in fact, no religion says that adultery is a legal act.

Based on the explanation above, the author is interested in carrying out a juridical analysis related to changes in the regulation of adultery from the old Criminal Code to the new Criminal Code, including Law Number 1 of 2023 concerning the Criminal Code, with the main problem being: How does the regulation of criminal acts compare?adultery in the Old Criminal Code and the New Criminal Code?; and What are the implications of changes to the regulation of adultery in the New Criminal Code? This research aims to find out the comparison of the regulation of the crime of adultery in the old and new Criminal Code as well as the implications of changes to the regulation of adultery in the new Criminal Code.

³ Marpaung L. *Kejahatan terhadap Kesusilaan dan Masalah Prevensinya*. Jakarta: Sinar Grafika; 2004. 56

⁴ Adam DB, Satrio N. Politik Hukum Tindak Pidana Perzinahan Dalam Kitab Undang-Undang Hukum Pidana Dan Dalam Rancangan Kitab Undang-Undang Hukum Pidana. *Islam Fam J*. 2021;2(02):90

RESEARCH METHODS

In this research the author describes using a normative, doctrinal approach. In doctrinal or normative legal research, law is viewed from its own perspective as a system of views, an ideal system, and as a positive legal system. Law is defined as Sollen.⁵ The type of data used is secondary data as a basis for observation by conducting searches related to statutory regulations and analyzing theories in several library materials and literature. The research approach used is legislative strategy and ideal strategy. The statutory strategy represents a strategy that uses statutory regulations as the initial basis for the analysis. This approach is taken because statutory regulations represent the focal point of this research.⁶ Then the ideal approach symbolizes an approach that starts from legal theories in describing a problem. This approach is taken because in discussing a legal principle, inspiration and views from legal experts are needed to answer the problem being discussed.⁷ Meanwhile, the data analysis method used is qualitative, namely a data analysis technique by explaining secondary data. The results are then presented descriptively, so that there is an answer to the problem, and then a conclusion can be given on the answer to the problem.

RESULTS AND DISCUSSION

1. Comparison of the Regulations on Adultery in the Old Criminal Code and the New Criminal Code

The regulations regarding adultery in the old Criminal Code were contained in Article 284 of the Criminal Code, which states that:

- (1) Threatened with imprisonment for 9 (nine) months if:
 - a. A married man who commits concubinage (adultery with his girlfriend/other woman) actually knows that Article 27 BW applies to him; as well as
 - b. A woman participates in this behavior knowing that the man is guilty and Article 27 BW applies to the man.
- (2) Not collecting, but on the report that the husband/wife's name is contaminated, if Article 27 BW applies to them, within the three month time limit according to the application for divorce, separate tables and beds because of this mistake.

Based on the contents of Article 284 of the old Criminal Code, a maximum prison sentence of 9 (nine) months can be given to a person who commits adultery, if proven guilty. Article 27 BW referred to in Article 284 of the old Criminal Code is that a man is only advised to marry a woman and the opposite applies. Based on this, married people apply Article 27 BW to them, and are prohibited from committing adultery with other people who are not their partners. In Article 284 of the old Criminal Code, there are 3 (three) elements that must be considered to charge the perpetrator with the article of adultery, including:⁸

- 1) Having sex with men and women who are not their husband or wife;
- 2) For him, Article 27 BW applies;
- 3) Being connected in marriage.

So adultery based on Article 284 of the old Criminal Code is defined as sex committed by men and women who are married to women or men who are not their wives or husbands.⁹ Based on Article 284 of the old Criminal Code, if the man or woman who engages in sexual intercourse are not related by marriage, meaning they are not married or married, even though they comply with Article

⁵ Qamar N. Metode Penelitian Hukum (Legal Research Methods). Makassar: CV. Social Politic Genius; 2017

⁶ Asikin A& Z. Pengantar Metode Penelitian Hukum (Edisi Revisi). Jakarta: Rajawali Pers; 2016. 164

⁷ Achmad MF& Y. Dualisme Penelitian Hukum Normatif & Empiris. Yogyakarta: Pustaka Pelajar; 2013. 186

⁸ Andi H. Asas Asas Hukum Pidana. Jakarta: Rineka Cipta; 2014. 4

⁹ R. Sugandhi. KUHP dan Penjelasannya. Surabaya: Usaha Nasional; 2001. 300

27 BW, if both parties are male or female Those who commit sexual intercourse cannot be classified as having committed adultery under Article 284 of the old Criminal Code, so they cannot be sentenced to prison.¹⁰ Basically, the old Criminal Code is the Dutch view that adultery is a denial of marriage, which is at odds with Indonesian customs which consider adultery to be a desecration of the meaning of purity rather than sex.¹¹ So the definition of adultery in the old Criminal Code was only limited to men or women who were not related by marriage.

With the regulation regarding adultery in Article 284 of the old Criminal Code, it provides an opportunity for unmarried people to be able to have sex without the threat of imprisonment, because there is no prohibition against it in the Criminal Code. This is in line with the Indonesian legal system which believes in the Civil Law System and focuses on the principle of formal legality, so that behavior can only be punished if there are specific and stated regulations.¹² The old Criminal Code, which was a product of Dutch law as conditions in society developed, was basically no longer efficient with the views that prevail in Indonesian society.

Changes in increasingly modern times also have an impact on the habits of Indonesian people who are influenced by western culture. Discipline and loyalty to the social and religious views of Indonesian society increasingly need to be questioned. There are quite a lot of crimes that occur in society, especially cases of adultery. Adultery is experienced not only between men and women who are married, but also between men and women who are not connected in a legal marriage. This act of adultery has the potential to result in teenagers becoming pregnant out of wedlock, which is one of the factors causing teenagers to have abortions. People feel that their morals and religious feelings have been damaged, because the act of adultery for unmarried couples in Indonesia does not yet have positive legal regulations that regulate it.¹³ After going through a long process since 1963,¹⁴ In the end, the Criminal Code Bill was formalized as Law Number 1 of 2023 regarding the Criminal Code.

The regulation of adultery in the new Criminal Code is regulated in Article 411 of the Criminal Code paragraph (1), which states that:

"Every person who has sex with someone who is not their husband or wife, is imprisoned for adultery with a maximum prison sentence of 1 (one) year and the most frequent penalty is category II."

Then Article 411 paragraph (2) of the new Criminal Code regulates that

"For the criminal act of adultery, prosecution can be carried out based on the report:

- 1) husband or wife for people connected by marriage;
- 2) parents or children for people who are not related by marriage."

In Article 411 of the new Criminal Code, there are 3 (three) elements that must be reminded of in order to charge the perpetrator with the article of adultery, including:

- 1) The sexual intercourse is carried out between a man and a woman who is not her husband or wife;
- 2) A man and a woman, whether each party is married or not yet married;
- 3) Those who can carry out charges are husband and wife if the perpetrator is married, and parents or children if the perpetrator is not married.

Based on Article 411 of the new Criminal Code, not only couples who are connected by marriage can be charged with the crime of adultery, but also unmarried couples who have sexual

¹⁰ Prodjudikoro RW. *Tindak-Tindakan Pidana Tertentu di Indonesia*. Jakarta: Refika Aditama; 2012. 40

¹¹ P.A.F. L. *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Citra Aditya Bakti; 2011. 138

¹² Lisma. *Internalisasi Nilai Hukum Islam dalam Rancangan KUHP di Indonesia (Studi terhadap Tindak pidana perzinahan dalam KUHP dan RKUHP)*. 18(1):726

¹³ Oktaviani I, Agusmidah. *Pembaharuan Hukum dan Rasa Keadilan Masyarakat yang Religius: Pengaturan Tindak Pidana Zina Dalam KUHP Terbaru*. *J Ilm Penelit*. 2023;III(2):191.

¹⁴ Anwar Z, Harahap A. *Reformulasi Tindak Pidana Zina Dalam RUU KUHP Indonesia dan Sumbangan Hukum Islam Terhadapnya*. *Yurisprudencia*. 2015;1(1):18

relations can be charged with the crime of adultery based on Article 411 of the new Criminal Code.¹⁵Based on this, Article 411 of the new Criminal Code expands the definition of adultery which was prepared in Article 284 of the old Criminal Code which is only limited to couples who are connected by marriage. With the existence of Article 411 of the new Criminal Code, adultery covers both men and women who are connected. in marriage, but the male and female parties are not related by marriage. The definition of adultery is expanded in the new Criminal Code after listening to the hopes of Islamic religious figures.¹⁶The crime of adultery, whether in the old Criminal Code or the new Criminal Code, is included in the offense of complaint, the difference is that in the new Criminal Code there are additional parties who can make a complaint, namely not only husband/wife, but also parents and children for people who are not related by marriage. Another difference regarding the regulation of adultery in the new Criminal Code and the old Criminal Code is related to the severity of punishment for perpetrators of adultery. In the old Criminal Code, the severity of the punishment for perpetrators of adultery was punishable by a maximum imprisonment of 9 (nine) months, while in the new Criminal Code, the severity of the punishment for perpetrators of adultery was punishable by imprisonment for 1 (one) year. This means that in the new Criminal Code, the threat of imprisonment for perpetrators of adultery has been increased to 1 (one) year.

2. Implications of Changes in the Regulation of Adultery in the New Criminal Code

There was a reform of the criminal law regarding the crime of adultery, this was motivated by the public's view that the act of adultery is an act that really disrupts social life and should not be allowed to go unpunished. Apart from that, the absence of positive legal regulations that further regulate adultery committed between couples who are not yet married allows legal thinkers and policy implementers in Indonesia to formulate appropriate regulations in order to create an ideal regulation regarding adultery in Indonesia, so that certainty law and legal authority are not lost.¹⁷

Reforming the criminal law, especially reforming the crime of adultery, is considered necessary in practice, because Article 284 of the old Criminal Code is no longer felt to be up to par with the developments of the times.¹⁸The expansion of the definition of adultery in the new Criminal Code, which means that the act of adultery is not only limited to men and women who are bound by a marriage relationship, but also between men and women who are not bound by a marriage relationship, refers to the definition of adultery in Islamic law.¹⁹With the expansion of the meaning of adultery in Article 411 of the new Criminal Code, this article reflects the social and religious views of Indonesian society.

The implication of the changes to the regulation of adultery in the new Criminal Code is to minimize opportunities for young couples who are not yet married to commit adultery, because this act is categorized as a criminal act of adultery which is a complaint offense and is punishable by a maximum prison sentence of 1 (one) year. Apart from that, with the expansion of the meaning of adultery in Article 411 of the new Criminal Code, it also applies customs that exist in Indonesia and abandons western concepts such as in the old Criminal Code which is a Dutch product. Customs in Indonesia generally show traditional styles, beliefs, solidarity, actuality, openness and

¹⁵ Umbara C, editor. Dalam KUHP perzinahan disebut dengan melakukan gendak (overspel). KUHP dan KUHP. Bandung; 90–91

¹⁶ Purba S, Mustamam, Akhyar A. Penegakan Hukum Terhadap Pelaku Perzinahan Dalam Perspektif KUHP dan Qanun di Lhoksukon Aceh Utara. *J Ilmu Metadata*. 2021;3(2):658

¹⁷ Adnan I. Reformulasi Pasal 24 Tentang Zina (Overspel) Kitab Undang-Undang Hukum Pidana. *J Darussalam Pemikir Huk Tata Negara dan Perbandingan Huk*. 2021;1(1):72

¹⁸ Kholiq MA. Prospek Hukum Pidana Islam Dalam Pembaharuan Hukum Pidana Nasional. *J Huk Ius Quia Instan*. 1997;8(4):11

¹⁹ Sinulingga NS. Analisis Perbandingan Efektifitas Aturan dalam Kitab Undang-Undang Hukum Pidana lama dan Revisi Kitab Undang Undang Hukum Pidana (Khususnya Dalam Pasal Perzinahan). *J Huk Kaidah Media Komun dan Inf Huk dan Masy*. 2021;19(1):37

simplicity.²⁰ Customs are basically also strongly influenced by religious law. Things that are prohibited in religious law are also prohibited by customary law, including adultery.²¹ The renewal of the criminal law for adultery in the new Criminal Code also has implications for the realization of law (especially criminal law) that is responsive and commensurate with the character of the Indonesian nation, which in the process of its formation also takes materials from the customs and religious laws that live in Indonesia, so that in accordance with Pancasila, especially the 1st principle of Pancasila.²² This is important because it is based on Mochtar Kusumaatmadja's opinion that law is a societal norm that cannot be separated from views developing in society.²³

Basically, according to Barda Nawawi Arief, criminal law innovation is closely related to the background and objectives of implementing the innovation which can be viewed from various socio-political, socio-philosophical, socio-cultural perspectives or from various policy perspectives (especially social policy, criminal policy, and policy). law enforcement). This means that criminal law innovation symbolizes the manifestation of changes in the various perspectives and policies behind it. Therefore, criminal law innovation symbolizes an effort to carry out reorientation and reform of criminal law that is commensurate with the views of the soul of the Indonesian nation.²⁴ Reform of criminal law, in this case the crime of adultery is part of efforts to protect society. Another implication of the expansion of the meaning of adultery in the new Criminal Code is that the needs of the religious Indonesian people who oppose adultery can be met.²⁵ With the reform of criminal law in the new Criminal Code, especially regarding adultery which is regulated in Article 411 of the new Criminal Code, it has been able to reflect and accommodate the values of religious law, especially Islam which is the majority religion in Indonesia. Basically, according to Islamic criminal law, adultery is sex committed by two or more people who are not husband and wife. This definition of adultery applies not only to married people, but also to unmarried people. There are different meanings for scholars in providing definitions of adultery, but basically the substance is almost the same. Basically, adulterous behavior has two elements that must be considered, including:

- 1) There is sex between men and women.
- 2) The man and woman do not have a legal marriage relationship.²⁶

So based on this, it appears that Article 411 of the new Criminal Code which regulates adultery has the implication that the new Criminal Code, especially the adultery chapter, has accommodated religious legal values, especially Islam as the majority religion in Indonesia because it is not only men who can be categorized as perpetrators of adultery. - men and women who have sexual intercourse where at least one of them is married, but also includes men and women where each party is not married at all. This article reflects the values of religious law, because in essence all religions prohibit the act of adultery, because adultery is a very reprehensible act and is not compatible with Indonesian culture.

Apart from that, it is also to minimize the presence of vigilantism by the community because there are positive legal rules that regulate the criminal act of adultery which does not only apply to couples who are married, but also applies to men and women who are not married. Although there are changes to the regulations regarding adultery in the new Criminal Code, although they are not optimal, they are more able to fulfill the sense of justice of society which prioritizes religious and

²⁰ Hadikusuma H. Pengantar Ilmu Hukum Adat Indonesia. Maju M, editor. Bandung; 2003. 33

²¹ DT.Pangeran AA. Islam dan Adat. Pekanbaru: Melayu Riua; 2006. 11

²² Setyadi T. Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan. Bandung: Alfabeta; 2008. 111

²³ Aulia MZ. Ulasan Tokoh dan Pemikiran Hukum Friedrich Carl von Savigny tentang Hukum: Hukum sebagai Manifestasi Jiwa Bangsa. Undang J Huk. 2020;3(1):121

²⁴ Oktaviani I, Agusmidah. Pembaharuan Hukum dan Rasa Keadilan Masyarakat yang Religius: Pengaturan Tindak Pidana Zina Dalam KUHP Terbaru. J Ilm Penelit. 2023;III(2):195

²⁵ Arief BN. Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru. Jakarta: Kencana; 28–29

²⁶ Oktaviani I, Agusmidah. Loc. Cit.

moral values in carrying out social and state life.²⁷The final implication of the change in regulations regarding adultery in the new Criminal Code is that there is a deterrent for perpetrators of adultery because of the increased threat of imprisonment from the original maximum of 9 (nine) months to a maximum of 1 (one) year, which applies not only to those who have been convicted. only connected by marriage but also applies to those who are not connected by marriage.

CONCLUSION

A comparison of the regulations for adultery in the old Criminal Code and the new Criminal Code, namely that in the old Criminal Code it was prepared in Article 284 of the Criminal Code which provides the understanding that adultery can occur only to a man and a woman, one of whom is at least connected by marriage. Meanwhile, the new Criminal Code for adultery is formulated in Article 411 of the Criminal Code, which expands the meaning of adultery, namely that it also includes men and women who are not related by marriage, which is punishable by a maximum of 1 (one) year in prison. In both the old Criminal Code and the new Criminal Code, the crime of adultery is a complaint offense, the difference lies in the party who can make a complaint, in the new Criminal Code, apart from the husband/wife, those who can make a complaint are parents or children for people who are not related by marriage. There is an increased threat of imprisonment in the new Criminal Code, namely a maximum prison sentence of 1 (one) year.

The implications of changes to the regulation of adultery in the new Criminal Code are minimizing the opportunity for adultery to be committed by unmarried young couples because there is a threat of imprisonment, applying customary law in Indonesia and abandoning western concepts, namely the Netherlands, can create a responsive criminal law that is appropriate. with the views of the Indonesian people, meeting the needs of the religious Indonesian people who are against the act of adultery, and minimizing the presence of vigilantism because there are positive legal rules that regulate adultery for unmarried people, as well as providing a deterrent for perpetrators of adultery because there are aggravated threats prison sentence.

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²⁷ Rozi ZBP. Perkembangan Delik Zina Dalam Yurisprudensi Hukum Pidana. *VeJ.* 2019;5(2):145

- pidana perzinahan dalam KUHP dan RKUHP). 18(1):726.
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