

LEGAL REVIEW OF ADULTERY CRIMES

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Abstract

Adultery is a religious and legal prohibition against sexual intercourse between men and women without a legal marriage. It applies to individuals in religion, culture, and society. This research will discuss how the legal review of the criminal offense of adultery in Indonesia and how it is implemented in legal practice. The research method used is normative juridical legal research and approach through legislation. The results of this study explain that the criminal offense of adultery is regulated in the Criminal Code as a complaint offense. The legal review related to the criminal offense of adultery needs to clarify the practice of implementing the provisions in the Criminal Code against the perpetrators because it has not been able to provide a deterrent effect. In fact, the implementation of criminal regulations is not optimal due to the indifferent society towards norms, social values, and religion.

Keywords: *Legal Review, Adultery Crimes, Criminal Law*

1. Introduction

Indonesia is a legal state that makes Pancasila the ideology, foundation, and philosophical view that is embodied into legislation. This regulates society regarding behavior in life that is realized with values in each principle of Pancasila. Pancasila values have a strong connection with the assessment of adultery crimes. One of them is found in the first principle of Pancasila, which is Belief in the One and Only God. In the context of adultery, the first principle reflects the existence of moral and religious norms inherent in Indonesian society, and there are prohibitions from all religions regarding adultery. In addition, the value of unity and democracy provides a basis for assessing adultery as a potential threat to social order and unity within a family. Usually, the law in a country must be in accordance with reflecting the personality of its society and cultural values. (Saragih, G. M, 2022), (Mahrus Ali, 2016).

The relationship between Pancasila values and adultery crimes is closely influenced by social norms in society. The change in social norms plays an important role in understanding the dynamics of adultery, especially when adultery is seen as a criminal act. Along with the change in social norms in society, the way society views adultery as a crime also changes. In the past, when moral and religious norms still applied, adultery was often seen as a serious violation and a reprehensible act against collective values.

Morality is defined by W. Poespoprodjo as the right or wrong, good or bad quality of human actions. The moral condition of society experiences decadence or widespread moral decline, not only in big cities but also in remote areas, small towns, and even villages. This is evidenced in the context of adultery, where there is a rampant occurrence of adultery crimes from big cities to remote villages due to moral decline. (Asmara As, 1992), (Zakiah Daradzat, 1977).

Adultery crimes are prohibited for anyone, both from religious, cultural, and social aspects. Adultery is a term derived from Arabic that refers to sexual relations outside of marriage. Generally, adultery can be defined as an act without a valid marriage bond according to religion and law by engaging in sexual relations between a man and a woman. One of the factors that influences the occurrence of adultery is that the criminal provisions related to adultery are often considered ineffective in providing justice for society. (Erman Sulaeman, 2008).

Regulations related to adultery refer to the existing legal system in Indonesia. The Indonesian legal system is based on the 1945 Constitution. Adultery laws in Indonesia have sparked controversy both in terms of regulations and the implementation of sanctions.

According to the Indonesian society, rules related to adultery, as stated in the Criminal Code (KUHP), are considered unsuitable for use. In Article 285 of the Criminal Code, it only regulates issues of infidelity, where one or more perpetrators are still legally bound in a valid marriage with another individual. Furthermore, in paragraph (2), it states that adultery can be prosecuted if one of the legitimate partners objects or files a complaint. (Mudzakkir, 1997), (R Soesilo, 1996).

Another factor that contributes to the prevalence of adultery is that the sanctions imposed on adulterers are not as expected. Adultery is often seen as a private matter and not related to the law. However, in Indonesia, regulations regarding adultery have been clearly established in criminal law, customary law, and Islamic law. In reality, the regulation of adultery as a criminal act has sparked several debates. Therefore, there is a need to study the legal regulations regarding the crime of adultery. Thus, the author intends to conduct further research on the legal jurisdiction of adultery with the title "A Juridical Review of the Crime of Adultery". Based on the above description, the issues can be identified as follows: How does Indonesian law jurisdiction cover the crime of adultery? And how is it implemented in legal practice?

Legal research method refers to a specific method, arrangement, and thinking in the form of scientific activities, which aims to study one or more specific legal phenomena by analyzing them. This research requires a normative juridical research type (legal research) and is categorized as normative/doctrinal legal research. This research uses an approach method based on the analysis of primary legal materials that study theories, concepts, legal principles, and relevant regulations related to the research topic. The adopted approach method is the statutory approach, which involves a comprehensive analysis of all legal regulations related to the discussed legal issue. (Soerjono Soekanto, 2006).

2. Discussion

Regulation of the Crime of Adultery in Indonesia

The Criminal Code (KUHP) regulates the prohibition of adultery in Book II. Article 284 of the Criminal Code states that adultery is sexual intercourse outside of marriage committed by a man and a woman, both of whom are either married to someone else or one of them is married to someone else, and is punishable by a maximum of nine months imprisonment. Based on this, there is an opportunity for an unmarried man or woman to engage in sexual relations outside of marriage and not prevent the occurrence of adultery. (Muhammad Abdul Malik, 2003).

The crime of adultery regulated in the Criminal Code is an admissible offense. An admissible offense is a crime that can be pursued and sanctioned if someone reports the offense or crime. Based on the regulation of the crime of adultery, the public perceives that the perpetrators cannot be prosecuted as expected. The Criminal Code originates from the colonial legacy of the Netherlands or *Nederland Strafwetboek*. Therefore, it is considered that regulations related to the crime of adultery are not in accordance with the prevailing norms or moral values in Indonesian society, because this Dutch legacy Criminal Code separates the roles of religion and the state or can be called secular in nature. (Prianter Jaya Hairi, 2019), (Hamzah, A, 2010), (Joko Sriwidodo, 2019).

Referring to the provisions of the Criminal Code, adultery is defined as *overspel* or *zina*, which has a narrower definition than the definition of adultery itself. The definition of *zina* is not only limited to sexual intercourse for those who are married, but it also applies to men or women who engage in sexual relations outside of marriage without a valid marriage bond with someone else or who are not married to someone else. The difference between adultery and *zina* will give rise to lengthy debates, differences of opinion, and multiple interpretations in the application of the rules. Meanwhile, in criminal law, the principles of *lex scripta*, *lex certa*, and *lex stricta* clearly state that all rules must be clear, precise, and not open to multiple interpretations. (Dhea Sukma Putri, dkk, 2022).

Based on this and in line with the development of time, it is necessary to make revisions to the provisions of the Criminal Code that contain regulations regarding the crime of adultery, in line with the reality and the law that is based on the norms and morals of

Indonesian society. Specifically, on January 2, 2023, Law Number 1 of 2023 concerning the Criminal Code was enacted. The enactment of this Law is an effort to strengthen the criminal law system in Indonesia. In the context of adultery, which is regulated in Law Number 1 of 2023, it is regulated in Articles 411-413. (Parningotan Malau, 2023).

Article 411 paragraph (1) of the new Criminal Code states, "Anyone who has sexual intercourse with someone who is not their spouse shall be punished for adultery, with a maximum imprisonment of 1 (one) year or a fine of up to category II." This article expands the meaning of adultery based on the process of determining the act of intimate relations between an unmarried man and woman. Then, in Article 412 paragraph (1) of the new Criminal Code, it is stated that "Anyone who lives together as husband and wife outside of marriage shall be punished with a maximum imprisonment of 6 (six) months or a fine of up to category II." Furthermore, Article 413 states that "Anyone who has sexual intercourse with someone whom they know to be a close relative shall be punishable. The punishment is in the form of a maximum imprisonment of 10 (ten) years."

In the provisions of Law Number 1 of 2023, or commonly known as the new Criminal Code, it regulates the provisions of sanctions or punishments related to adultery, cohabitation, and incest. The sanctions imposed for these acts are regulated differently. With the existence of the new Criminal Code, it turns out that there are no major changes to the rules regarding the crime of adultery. There are many pros and cons regarding the enactment of this new Criminal Code. The rules are considered to be in conflict with privacy rights, human dignity, and the principle of equality before the law, as they are seen as interfering with matters that are private to individuals. (Agustin, Y. N,2024).

The crime of adultery causes many losses to individuals, society, and the state, therefore it needs to be addressed through criminalization. Efforts to combat a crime or offense must achieve the ultimate goal, which is to protect society (social defense) and consider the welfare of society (social welfare). One of them is the renewal of the rules regarding adultery in the new Criminal Code, which has a positive impact on the criminal law system in Indonesia. However, these rules are still not very clear and instruments are still needed to clarify the practical application of the provisions of the Articles of Law Number 1 of 2023 concerning the Criminal Code. This makes the regulations regarding the crime of adultery very weak, so they are unable to create a deterrent effect for those who commit the crime of adultery. (Nawawi, B, 2010), (Nunung Dian Wahyuningsih, 2023).

Implementation in Legal Practice

Adultery is a social problem that causes many losses and tarnishes the ethics and morals in society. Although adultery is rampant, in reality, the crime of adultery is very rarely prosecuted due to the complicated rules regarding the proof of the crime of adultery. Proof in criminal procedural law can be defined as a method to obtain information through evidence and exhibits to determine the presence or absence of guilt on the part of the perpetrator. (H. Rusli Muhammad, 2007).

In cases of adultery, there are difficulties in uncovering adultery cases due to the lack of evidence and witnesses to the act of adultery. This is because it is difficult to obtain witness testimony due to the fact that adultery is a disgrace that makes others unwilling to get involved in the case. Based on these reasons, many cases of adultery are not reported and not resolved legally. In addition, the sanctions imposed based on the Criminal Code against the perpetrators are considered very lenient, causing the victims to feel harmed both materially and immaterially, which is why the legal route is not pursued. (Lamrony Putra Sianturi, dkk, 2022).

Many efforts have been made by law enforcement officials to reduce and eradicate this adultery crime, one of which is by conducting raids and providing education to the community about the negative impacts of adultery. However, with the advancement of modern times, Indonesian society has become less obedient to the established rules and often disregards both social and religious norms and values. (Lukmanul Hakim, dkk, 2023).

To achieve the goal of implementation in legal practice, cooperation between the police, the community, and the victims of adultery is needed. The community serves as a social control that can continuously observe and provide information to the authorities when

adultery crimes occur within the community. In Articles 411 and 412 of the new Criminal Code, there are limitations, namely that adultery is included as an absolute complaint offense, which means that parties outside of these articles cannot file a lawsuit. Therefore, cooperation between the police, the community, and the victims is crucial in handling adultery crimes.

Raids are one effective way to uncover cases of adultery, with information from the community to the authorities. This allows for undercover operations that facilitate the investigation process, leading to the discovery of evidence related to adultery. This evidence is used as a requirement for proof in the investigation, prosecution, and trial processes. (HMA Kuffal, 2007).

Judges, in delivering their verdicts, rely on evidence, facts, and testimonies. For example, the testimony of witnesses who can provide information about the circumstances during the adultery incident, such as the presence of the perpetrator and the situation during the raid. In addition, evidence such as fabric or bedsheets containing semen can be found. Based on these factors, they are considered circumstantial evidence to prove the occurrence of adultery, as it is difficult to obtain witnesses who have heard, seen, or experienced the adultery incident that needs to be proven. (Rusli Muhammad, 2006)

The implementation of circumstantial evidence in determining the occurrence of adultery is based on the Supreme Court's jurisprudence No. 854.K/Pid/1983, which states that "a man found together with a woman in a room on a bed is an indication that the man has had sexual intercourse with the woman." However, there are weaknesses in drawing conclusions because the basis for assessing the occurrence of adultery is still based on possibilities or uncertainties. Therefore, facts, evidence, and supporting evidence are needed to avoid incorrect conclusions.

Considering that adultery is an absolute complaint offense, both perpetrators and victims often hesitate to report to the authorities due to feelings of shame on the part of the victim, and the perpetrator's desire to avoid punishment. Despite the efforts made by law enforcement officials to combat adultery and gather evidence, and the lack of initiative from the community as a social control to provide information if adultery occurs, it is considered a private matter and people are reluctant to get involved in such cases. Therefore, the implementation in legal practice is minimal and a reevaluation of the regulations governing adultery is needed.

3. Conclusion

Based on the research presented above, the following conclusions can be drawn.

Adultery is regulated in the Criminal Code and classified as a complaint offense. Before the amendment, the rules regarding adultery were stated in Article 284 of the Criminal Code, which stated that adultery is a sexual relationship that occurs outside of marriage between a man and a woman, where one or both are bound by a valid marriage and can be punished with a maximum prison sentence of nine months. However, the provisions on adultery in the old Criminal Code needed to be updated, which was later amended by Law Number 1 of 2024 concerning the Criminal Code and has been enacted. With the existence of the new Criminal Code, it seems that there have not been significant changes to the rules regarding the act of adultery, and instruments are still needed to clarify the implementation practices of the provisions in the Criminal Code because they are unable to have a deterrent effect on perpetrators of adultery.

The development of modern times has led to the disobedience of society towards the implementation of the rules on adultery because society is more indifferent to both social and religious norms and values. In addition, in handling cases of adultery, cooperation between the police and the community is needed to achieve the goal. However, in reality, the efforts made by the police in providing education on the act of adultery to the community are often disregarded because the community considers adultery to be a private matter and is reluctant to get involved. Therefore, the rules regarding adultery need to be further studied to make the boundaries and sanctions clearer.

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