



## Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code

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### ABSTRACT

The criminal policy for handling adultery offenses in Indonesia has undergone significant changes with the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP). Article 411(1) in the new KUHP expands the definition of adultery, covering not only sexual relations between a man and a woman where one or both are married but also including sexual relations outside of marriage, whether the partners are married or not. This study aims to evaluate this criminal policy by examining the legal, social, and human rights implications of the expanded definition of adultery. The methodology used in this research is normative juridical analysis with a legislative and conceptual approach. The results of the study indicate that although this policy is intended to uphold the moral and ethical values of society, the expanded definition of adultery may raise controversies related to individual privacy and the potential criminalization of consensual adult behavior. This research recommends further evaluation of the implementation of this policy, considering the balance between protecting the moral values of society and respecting human rights.

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## **INTRODUCTION**

The implementation of criminal policy is an important instrument for maintaining public order and security. In the context of Indonesia, criminal policies regulating sexual behaviour, including adultery, have garnered widespread attention. With the enactment of Law Number 1 of 2023 concerning the new Criminal Code (KUHP), significant changes have been made in the handling of adultery cases in Indonesia. This law introduces several changes and additions to the provisions related to the criminal offense of adultery. These changes include the definition of what is considered adultery, the penalties imposed, and the related law enforcement procedures. While the implementation of this law is expected to have a deterrent effect, it also raises several questions regarding legal, social, and human rights implications.

In this context, adultery is defined as sexual relations between a married person and someone who is not their spouse. This provision aims to protect the institution of marriage and uphold public morality. The expanded definition of adultery includes situations where either or both parties are not married, thus broadening the scope of criminal law concerning adultery in Indonesia. According to Satjipto Raharjo, in modern society, law regulates behaviour with the aim of achieving desired objectives. In this context, legal patterns can eliminate practices deemed inappropriate by creating new practices that better align with these objectives. Thus, the law plays a role in directing societal behaviour toward achieving goals desired by modern society.

The significant changes in Indonesia's criminal policy are reflected in the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP). One aspect receiving special attention is the expanded definition of adultery in Article 411(1). In the new law, adultery is defined to include not only sexual relations between a man and a woman where one or both are married but also sexual relations outside of marriage, regardless of the marital status of the partners. This change has sparked various debates and controversies regarding its impact on individual privacy, human rights, and the application of criminal law in Indonesia. On one hand, stricter regulation of the criminal offense of adultery is expected to protect the moral and social values upheld by Indonesian society. On the other hand, there are concerns that the implementation of this criminal policy could negatively impact individual privacy rights and the potential misuse of the law by authorities. Additionally, differing views among various societal groups on what should be considered a criminal offense add to the complexity of implementing this law.

In the social and cultural context of Indonesia, which is rich in moral and ethical values, criminal policies regulating the offense of adultery are intended to preserve and protect these values. However, these policies also face challenges in terms of respecting human rights, particularly the rights to privacy and freedom of behaviour. Therefore, it is important to evaluate this criminal policy from various legal, social, and human rights perspectives. This study aims to examine the criminal policy related to the offense of adultery in the new KUHP, focusing on normative juridical analysis. The study will evaluate the legal implications of the expanded definition of adultery, its impact on society, and its alignment with human rights principles. Thus, this research

is expected to provide a comprehensive and critical insight into the criminal policy on adultery offenses in Indonesia, as well as recommendations for improvements and adjustments to ensure a balance between protecting moral values and respecting human rights.

## **LITERATURE REVIEW**

This research is based on several key theories and concepts relevant to criminal policy and criminal law, particularly the offense of adultery. First, the theory of the function of law explains how law functions in society, including its roles in regulation, social control, conflict resolution, and the protection of human rights. This theory helps in understanding the objectives of the criminal policy regulating adultery and its implications for society. Second, the theory of criminalization discusses the foundations and reasons behind the criminalization of an act. This theory is used to analyse the rationale behind the expanded definition of adultery in the new KUHP and to evaluate its conformity with prevailing legal principles. Third, human rights theory is crucial for analysing the impact of criminal policy on individual rights, especially the right to privacy and freedom of behaviour, and for assessing whether the expanded definition of adultery in the new KUHP aligns with international human rights standards and the Indonesian constitution. Furthermore, the theory of social control explains how the law is used as a tool for social control to maintain order and stability in society. This theory is used to understand the role of the law in regulating social behaviour and preventing actions deemed to undermine public morality. By integrating these theories, this research aims to provide a comprehensive analysis of the criminal policy on adultery offenses in Law Number 1 of 2023 concerning the KUHP, as well as its implications for law, society, and human rights in Indonesia.

## **METHODOLOGY**

This research uses a normative juridical method, focusing on the study of legal norms written in legislation and various other legal documents. The approach used includes the statute approach, which examines various laws and regulations related to the offense of adultery, particularly Article 411 (1) in Law Number 1 of 2023 concerning the Criminal Code (KUHP). Additionally, a conceptual approach is used to understand the legal concepts underlying the criminal policy on adultery, including concepts of morality, human rights, and individual privacy in the context of criminal law. Data is obtained from secondary sources, such as law books, scientific journals, articles, and related official documents, and is analysed qualitatively by interpreting and linking various legal sources to produce comprehensive conclusions regarding the criminal policy on adultery offenses in the new KUHP.

## **RESULT AND DISCUSSION**

Criminal law has the main goal of building social order, protecting society, preventing crime, and sanctioning offenders. From its perspective, criminal law can be viewed from two angles, namely the normative perspective

(das sollen) and the reality perspective (das sein). Normatively, criminal law regulates what individuals should or should not do in society. Meanwhile, the reality perspective emphasizes how criminal law is applied in real life, including regulating human relationships. Thus, criminal law can be seen as part of normative social science, which aims to regulate human relationships in society. Criminal policy is a step taken by society to address crime. In formulating a crime for an act, criminal law must consider the fundamental principle, namely the principle of legality. This principle guarantees that an act cannot be criminally punished if it is not regulated by law. Therefore, in assessing an act to be formulated as a crime, criminal policy must also consider the principle of legality.

Zina is a sexual relationship between a man and a woman without a valid marriage bond, whether done by mutual agreement or under pressure from one party, such as in rape cases. According to Moeljatno, adultery is a sexual relationship conducted by someone who is still married to someone else other than their legitimate partner. This definition emphasizes that adultery is not only a legal violation but also a violation of moral and social norms in society. Moeljatno asserts that adultery is considered a betrayal of the marriage bond and a serious violation of the religious and moral values held by society.

In the Indonesian Criminal Code, adultery is considered a crime against decency, which implies an act that degrades and disregards the rights of others. Crimes against decency specifically include several acts such as adultery, rape, molestation, prostitution, sexual harassment, and others. This indicates that the Criminal Code categorizes adultery as one form of decency crime that must be prosecuted. The regulation regarding adultery in its legal aspect in Indonesia is stipulated in Article 284 of the Dutch-inherited Criminal Code. This article only regulates adultery if one or both of the perpetrators are still bound by a valid marriage. This colonial view sees adultery as a violation of the marriage bond.

However, Article 284 of the Criminal Code opens opportunities for individuals who are not bound by marriage to commit adultery without legal consequences. Because unmarried adulterers cannot be caught by this article, sexual relationships outside of marriage have become more common and uncontrollable. The legal regulation regarding adultery in the Criminal Code is considered less suitable to be applied in Indonesian society. Adultery in Indonesia is considered a very inappropriate action and contrary to the religious and moral values of a religious society.

Article 284 of Criminal Code Law Number 1 of 1946 concerning the Criminal Code (KUHP) did not previously regulate the prohibition of adultery between unmarried men and women because, in this context, they do not have a marriage bond, so this action cannot be called adultery. Therefore, they cannot be punished. This creates a loophole for those who are unmarried to commit adultery without fear of criminal punishment. However, in the new Article 411 of the Criminal Code, the scope of criminalization has been expanded. The New Criminal Code does not provide a loophole for unmarried men or women to commit adultery. Both those involved in marriage and those who are single will be punished if they are involved in adultery.

Law Number 1 of 2023 concerning the Criminal Code (KUHP) has expanded the criminalization related to decency articles that include adultery. This expansion is reflected in the new Article 411 (1) of the KUHP, which regulates that anyone who engages in sexual intercourse with someone other than their spouse can be punished for adultery, with a maximum penalty of one year in prison or a category II fine. In this context, "someone other than their spouse" can be explained as a man who, in a marital bond, engages in sexual intercourse with a woman who is not his wife; a woman who, in a marital bond, engages in sexual intercourse with a man who is not her husband; a man who is not in a marital bond engages in sexual intercourse with a woman, even though he knows that the woman is married; a woman who is not in a marital bond engages in sexual intercourse with a man, even though she knows that the man is married; or a man and a woman who are both not in a marital bond engage in sexual intercourse.

The expansion of the meaning of adultery in criminal law, as found in the new Article 411 (1) of the KUHP, aims to maintain the sanctity of marriage and prevent actions that can damage household stability. By expanding the legal scope regarding adultery, it is hoped that society will pay more attention to moral values in family life. This is also considered to strengthen public order by creating a more protected social environment from the negative impacts of actions that contradict both written and unwritten values. In the latest Criminal Code, the regulation regarding the crime of adultery remains an absolute complaint offense, just like in the inherited Dutch Criminal Code. This means that prosecution for adultery cases can only be carried out if there is a complaint from the authorized party. Article 411 paragraph (2) of the new Criminal Code stipulates that a spouse in a marital bond, or a parent or child for those not in a marital bond, has the authority to report an act of adultery. This means that concerns about raids or vigilante actions will not occur. The term "child" in this article refers to a biological child who has reached the age of 16.

Updating the rules in the Criminal Code in accordance with the values and norms in Pancasila, as well as with the character, culture, and noble values of the Indonesian nation, is a form of criminal law policy. Reflecting the values of Pancasila and the characteristics of the Indonesian nation is expected to create laws that are more in line with the social, cultural, and moral realities of society. Thus, criminal law policy can be more effective in preventing criminal acts, protecting individual rights, and advancing the overall welfare of society. Updating the Criminal Code based on the noble values of the Indonesian nation can also reflect the spirit of justice, equality, and freedom that are fundamental principles in Pancasila. Therefore, in designing updates to the rules in the Criminal Code, it is important to involve various elements of society so that the results reflect the aspirations and common interests in creating a fair and just legal system.

The law not only affects social life in society but is also influenced by the social conditions of society. Changes and developments in values in society affect the formation of laws. Mochtar Kusumaatmadja argues that law, as a

social norm, is always connected with the values existing in society. When these values change, the law will also undergo changes because it is part of social norms. Therefore, the prevailing values in society become a key factor in the formation of law because law originates from the legal consciousness of society, which reflects the values of society itself. The expansion of the adultery offense, as explained earlier, cannot be separated from the idea or policy of developing a national legal system based on Pancasila as the desired national values. This shows that in legal reforms (the Criminal Code), one must follow the basic ideas of Pancasila, which include the values of divinity, humanity, nationality, democracy, and social justice. In addition, criminal law reforms should also consider unwritten legal sources and values that live in society, including religious law and customary law.

Criminal policy related to the crime of adultery in Indonesia, as regulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP), raises important questions regarding the right to privacy and freedom of behaviour. The new Article 411(1) of the KUHP regulates that adultery includes sexual relations conducted by someone who is already married with someone who is not their spouse. The implementation of this article can be seen as a form of state interference in the private affairs of individuals, which can violate the right to privacy. However, this criminal policy also has clear goals. One of them is to maintain morality and social order in society. By criminalizing the expansion of adultery, the government seeks to uphold moral values considered important by the majority of Indonesian society. Furthermore, this policy aims to protect the institution of marriage and the family, which is considered an important foundation of social order. Adultery can cause conflicts in households, disrupt family harmony, and even lead to divorce, which ultimately can have negative impacts on children and social stability as a whole.

The awareness to create legislation that considers consciousness and reflects the values of community life is known as the concept of living law. In this concept, living laws in society, such as norms, morals, and ethics, play a key role in shaping effective laws and legitimizing the rules in place. Living law acknowledges that law consists not only of written texts but also involves practices, norms, and interpretations that develop in everyday life. The moral and ethical values believed in by society become the basis for the formation of laws that reflect the needs and aspirations of society itself. By building laws based on these values, the law is more likely to be accepted by society, which legitimizes the rules in place.

According to the values and norms that develop in society, adultery is considered shameful and contrary to decency. The renewal of the substance of the adultery offense in the Criminal Code aims to maintain the nation's morality in accordance with the values of Pancasila. Adultery is considered to be contrary to the philosophical aspects of the 1945 Constitution and Pancasila, as well as the values and characteristics of Indonesian society. Through this criminal policy, it is hoped that adultery can be prevented in society.

## CONCLUSIONS AND RECOMMENDATIONS

The criminal policy related to adultery offenses in Law Number 1 of 2023 concerning the Criminal Code (KUHP) affirms the government's commitment to maintaining morality and social order. The expanded definition of adultery in Article 411 (1) of the new KUHP includes not only those who are married but also individuals who are not married but engage in sexual relations. While the implementation of this article may be seen as a form of state interference in private matters, it aims to protect the institution of marriage and family, as well as to prevent behaviours that undermine household stability and public morality. However, this policy must be carefully evaluated to ensure it does not violate the right to privacy and freedom of behaviour guaranteed by the constitution and human rights standards. Awareness of creating laws that reflect the moral and ethical values of Indonesian society is essential in achieving just and equitable laws. Law enforcement officials must understand and apply these rules fairly and proportionally. Academic evaluations and studies on the potential social and legal impacts of this policy must also be conducted to ensure that it does not violate the right to privacy and individual freedom, and that it aligns with human rights standards.

## FURTHER RESEARCH

This research still has limitations, indicating the need for further study on "Criminal Policy Regarding Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code."

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