



LIMITATIONS ON COMPLAINTS IN COHABITATION AND ADULTERY ACCORDING TO THE NATIONAL CRIMINAL CODE

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Received: 12/07/2025 | Revised: 11/12/2025 | Accepted: 11/12/2025 | Published: 16/12/2025

Abstract

The regulation regarding the crime of cohabitation and adultery in the National Criminal Code is part of the national criminal law reform that seeks to adapt the law to the moral, religious, and cultural values of Indonesian society. This regulation is accompanied by a limitation on complaints through an absolute complaint offense mechanism that only grants the right to complain to certain parties. This study aims to analyze the normative construction of the limitation on complaints in the crime of cohabitation and adultery according to the National Criminal Code and examine its relevance to the objectives of the national criminal law reform, with a statute approach, a conceptual approach, and a philosophical approach. The legal materials used consist of primary legal materials in the form of the National Criminal Code and related regulations, secondary legal materials in the form of books, journals, and opinions of criminal law experts, as well as tertiary legal materials that support the research. The analysis was conducted qualitatively by examining the synchronization of norms and criminal law politics in the regulation of moral offenses. The results of the study indicate that the limitation on complaints in the crime of cohabitation and adultery is a form of criminal law politics that aims to limit state intervention in the private sphere of citizens and prevent excessive criminalization. These regulations reflect a balance between protecting moral values and respecting individual privacy rights. However, the limitations on complaints also raise normative issues related to legal certainty and the effectiveness of protecting moral values in Indonesia's pluralistic society. Therefore, a more adaptive and proportional criminal law policy is needed to ensure that the regulation of criminal acts of cohabitation and adultery continues to reflect the values of justice, expediency, and legal certainty within society.

Keywords: complaint restrictions, cohabitation, adultery, National Criminal Code, normative criminal law.

INTRODUCTION

The rule of law according to FR Bothlingk is "De taat waarin de wilsvrijheid van gezagsdragers is beperkt door grenzen van recht" (a state where the freedom of the will of the holder of power is limited by a legal will). It is further stated that in order to realize the limitation of the holder of power, it is realized in the way, "Energijds in een binding van rechter administratie aan de wet, anderzijds in een binding van de bevoegdheden van wetgever", (on the one hand the binding of judges and the government to the law, and on the other hand the limitation of authority by the law makers) (Ridwan HR - 2014). A. Hamid S. Attamini, quoting Burkens, said that a state that places law as the basis of state power and the implementation of that power in all its forms is carried out under the rule of law (A. Hamid S. Attamini - 1997). The law itself not only regulates individual human behavior, but also regulates relationships between each other because humans are naturally social creatures who need other people in carrying out their daily lives. In their interactions, humans form bonds that give rise to the phenomenon of mutual influence (Pahrur Rizal, "The Basis for Criminalizing Cohabitation in Reforming Indonesian Criminal Law", Binawakya E-Journal, Edition No. 1 Vol. 15). Legal regulation in a relationship between humans requires a limitation in norms formed by themselves, including one in terms of morality. Human behavior continues to develop and gives rise to other forms of action that violate these social norms, so that renewal of these norms is needed. As time progresses, the values contained in Pancasila have experienced a gap in the behavior of Indonesian society. Recently, there has been a shift in religious values and morality in people's lives regarding sexual freedom. In the matter of sexual

freedom, the phenomenon of cohabitation is now rife, which is considered by most people as a form of sexual deviation, because in cultural values held, a legal relationship between men and women must be based on marriage (Fitrah Maulana - 2023). One of the deviant behaviors that is increasingly widespread and needs to be addressed is the act of cohabitation or often known by the community as "kumpul kebo". Cohabitation was adopted from westernized behavior where 2 (two) people who are not bound by a legal marriage relationship live together in one building (Thesis Ismiyanti Nur Mahmudzah - 2021). Cohabitation clearly does not reflect the values of the lives of the Indonesian people who adhere to the principles of divinity, culture, and morality so it needs a serious response from the government. The consideration to criminalize the act of cohabitation is because besides the act violating moral values, it can also be a source of other criminal acts, such as adultery, rape, molestation, or kidnapping, even to the point of assault and murder in an act of *concursum* (togetherness) (Muh. Zulfan Uzawah – 2014).

Sudikno Mertokusumo argues that in addition to religious or belief principles, moral principles, and decency, legal principles are still needed. Legal principles are more adequate in providing protection for the interests of individuals and society in a broader scope. When existing social norms do not comprehensively provide protection, legal principles are needed to improve protection for interests within society (Danardana and Vincentius Patria Setyawan - Journal). The new Criminal Code was created to limit complaints about cohabitation and adultery, but this rule was also formed to respect the privacy of each individual as a citizen and to prevent the occurrence of vigilante justice. Therefore, the new Criminal Code was formulated to improvise the existing Criminal Code after colonial occupation. In the old Criminal Code, adultery was limited to mere public complaints, but with the new regulations, adultery has finally expanded to include cohabitation to be more in accordance with Indonesian law. In the old regulations, adultery was only a complaint for married parties or parents or children if they were not yet married, this new regulation was created so that complaints of adultery could be handled in a more orderly and measured manner so that no third parties such as neighbors or unknown people participated in the problem of adultery and cohabitation.

However, the expansion of legal regulations from the old Criminal Code to the new Criminal Code is not without problems, this expansion actually strictly limits the right to complain (*klachtrecht*), where complaints regarding adultery and cohabitation can only be made by parties who have close family ties. Therefore, this limitation actually gives rise to discourse regarding the balance between protecting citizens' private space and upholding public morality in Indonesia. Furthermore, there is no mention of human rights issues. From a human rights (HAM) perspective, the regulations regarding cohabitation and adultery in Law Number 1 of 2023 concerning the Criminal Code cannot be separated from the issue of the right to privacy as part of the fundamental rights of individuals. The right to privacy basically includes a person's freedom to determine personal life choices without unauthorized intervention from the state, including in terms of personal relationships and family life. Constitutionally, protection of the right to privacy in Indonesia can be traced to the 1945 Constitution of the Republic of Indonesia, specifically Article 28G paragraph (1) which guarantees the protection of oneself, family, honor, dignity, and a sense of security. In addition, in Law Number 39 of 1999 concerning Human Rights, the right to personal protection is also emphasized as part of the rights that cannot be arbitrarily reduced by the state.

In the context of international law, the right to privacy is also recognized in Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which prohibit arbitrary interference with a person's private life. Indonesia, as a state party to the ICCPR, has an obligation to ensure that all national legal policies, including criminal law, remain in line with these human rights principles (Law Number 12 of 2005 concerning the Regulation of the Republic of Indonesia Ratifying the International Covenant on Civil and Political Rights). According to Sinta Dewi Rosadi (2015), the right to privacy is part of internationally recognized human rights, included in instruments such as the UDHR and ICCPR, and is the basis for personal data protection in various countries. Lawmakers appear to be trying to balance these two interests by making cohabitation and adultery limited complaint offenses. This means that the state does not immediately enforce the law without a complaint from a party with a direct relationship, such as a husband, wife, parent, or child. This mechanism can be understood as a form of protection for the right to privacy, as it limits the intervention of law enforcement officers to certain situations deemed to have a direct impact on family interests. Therefore, the issue of privacy rights and human rights is an important aspect in examining the limitations on complaints regarding cohabitation and adultery in the new Criminal Code. From a human rights perspective, the right to privacy is part of the fundamental rights inherent in every individual. This right relates to a person's freedom to determine their personal life without unauthorized intervention from other parties, including the state. According to Jimly Asshiddiqie (2017), "Human rights are rights inherent to humans, as God's creatures that must be respected, upheld,

and protected by the state." The regulation of cohabitation and adultery in this law is an interesting topic to study in normative research.

LITERATURE REVIEW

a. Acts of Cohabitation and Adultery

The formulation of Article 412 of Law No. 1 of 2023 concerning the Criminal Code, explains that:

- (1) Any person who lives together as husband and wife outside of marriage shall be punished with a maximum prison sentence of 6 (six) months or a maximum fine of category II.
- (2) No prosecution will be carried out for criminal acts as referred to in paragraph (1) except upon complaint:
- (3) Husband or wife for people who are bound by marriage; or
- (4) Parents or children for people who are not married.
- (5) The provisions of Article 25, Article 26 and Article 30 do not apply to complaints as referred to in paragraph (2).
- (6) Complaints can be withdrawn as long as the examination in the court hearing has not yet begun (M. Irsan Arief-2023).

Cohabitation is a loanword from the English word "cohabitation," which refers to the behavior of living and having sexual relations with someone, especially someone you're not married to. In the Big Indonesian Dictionary (KBBI), cohabitation is defined as living together without the bonds of marriage. Although "cohabitation" is now a standardized term in the KBBI, Indonesians are more familiar with the term "kumpul kebo." According to Cindy Wi, Elly Sudarti and Taufik Yahya (Scientific Journal and Educational Vehicle). Cohabitation is the practice of two unmarried individuals living together in an intimate relationship, similar to husband and wife, without the formal bonds of marriage. According to researchers, cohabitation is the act of a man and a woman living together without the formal bonds of marriage, which resembles a marital relationship and has the potential to lead to extramarital sexual relations.

According to Muhammad Dani Hidayatulloh (2023), Cohabitation in the new Criminal Code is the act of living together between a man and a woman who are not bound by a legal marriage, with a relationship pattern resembling that of husband and wife, which is legally qualified as a criminal act against morality.

Article 411 of Law Number 1 of 2023 concerning the Criminal Code:

- (1) Any person who has sexual intercourse with someone who is not their husband or wife, shall be punished for adultery with a maximum prison sentence of 1 (one) year or a category II fine.
- (2) No prosecution will be carried out for criminal acts as referred to in paragraph (1) except upon complaint:
 - a. Husband or wife for people who are married.
 - b. Parents or children for people who are not married.
- (3) The provisions referred to in Article 25, Article 26 and Article 30 do not apply to complaints as referred to in paragraph (2).
- (4) Complaints can be withdrawn as long as the court hearing has not yet begun.

The explanation of the article according to M Irsan Arief (2023), observing Article 411 paragraph (2) letter a which regulates Criminal Acts as referred to in paragraph (1), no prosecution is carried out except on the complaint of a husband or wife for people who are bound by marriage, then paragraph (2) no prosecution is carried out except on the complaint of parents or children for people who are not bound by marriage shows that this crime is an absolute complaint crime. This crime is a formal crime. Criminal acts that apply the provisions of this article can have their complaints withdrawn as long as the examination in the court hearing has not begun as regulated in Article 411 paragraph (4).

Adultery in the Old Criminal Code was considered reprehensible if it occurred within a marriage. Regarding this article, R. Soesilo explained that adultery was sexual intercourse between a married man or woman and a woman or man who was not their wife or husband (Djoko Prasoko – 1998).

Theory of Punishment

Criminalization can be defined as the determination of sanctions and the stages of sanctioning in criminal law. The word "criminal" is generally interpreted as "law," while "penalty" is defined as "punishment." Throughout the history of criminal law, there have been various opinions regarding criminalization, but most can be grouped into three broad categories (Adami Chazawi, 2002):

a. Absolute Theory or Retribution Theory (vergeldings theorien)

The foundation of this theory is retribution. This justifies the infliction of suffering in the form of punishment on criminals. The imposition of punishment, which essentially inflicts suffering on criminals, is justified

because the criminals have caused suffering to others. Retribution in the imposition of punishment has two directions:

1. Aimed at the criminal (subjective angle of revenge).
2. Aimed at satisfying feelings of revenge among the community (objective perspective) of revenge).

Criminal acts are also distinguished between complaint-based offenses and ordinary offenses. A complaint-based offense is a criminal act whose prosecution is only carried out if there is a complaint from the affected or injured party. Complaint-based offenses are divided into two types, namely absolute complaint-based offenses and relative complaint-based offenses. The first is an offense that absolutely requires a complaint for prosecution, such as defamation, which is regulated in Article 310 of the Criminal Code. While the second is a complaint-based offense committed within the family environment, such as theft within the family, which is regulated in Article 367 of the Criminal Code (Mahrus Ali – 2011).

b. The relative theory or objective theory is based on the principle that punishment is a tool to enforce order (law) in society. The purpose of punishment is social order, and to enforce order, punishment is necessary for perpetrators of crimes.

c. Combined Theory (verneginnings theorien)

This combined theory bases punishment on the principles of retribution and the principle of maintaining social order. In other words, these two reasons form the basis for sentencing. This combined theory can be divided into two main groups:

- A combined theory that prioritizes revenge, but this revenge must not exceed the limits of what is necessary and sufficient to maintain social order.
- A combined theory that prioritizes the protection of social order, but the suffering resulting from the imposition of a criminal penalty must not be heavier than the act committed by the convict.

c. Theory of Legal Certainty

Legal certainty is a principle which states that the law must be clear to its subjects so that they can adjust their actions to existing rules and so that the state does not act arbitrarily in exercising its power (Mark Fenwick and Stefan Wrba- 2016).

Legal certainty is a principle found in both civil and common law systems (James R. Maxeiner, *Journal of International Law*, 2008). Currently, the principle of legal certainty is considered a key element in the concept of the rule of law (K Claes, Wouter Devroe, and Bert Keirsblick, 2009). Normatively, legal certainty can be defined as a statutory regulation that is created and enacted with certainty (Zainal Asikin, 2014).

According to Gustav Radbruch, there are four basic things that are closely related to the meaning of legal certainty itself, namely: (Heather Leawoods – 2000).

- (1) Law is a positive thing, which means that positive law is legislation;
- (2) Law is based on a fact, meaning that the law is made based on reality.
- (3) Facts contained or stated in the law must be formulated in a clear manner, so as to avoid errors in terms of meaning or interpretation and can be easily implemented.
- (4) Positive law should not be easily changed. Gustav Radbruch's opinion regarding legal certainty is based on his view that legal certainty is the certainty of the law itself. Gustav Radbruch argues that legal certainty is a product of law, or more specifically, a product of legislation (Robert Alexy – 2015).

Jan M. Otto is of the opinion that legal certainty is required in several things as follows (Jan Michiel Otto – 2012).

- (1) Legal certainty provides clear, consistent, and easily accessible legal rules. These legal rules must be issued by state authorities and must possess three characteristics: clarity, consistency, and accessibility.
- (2) Some government or government agencies can apply legal rules in a consistent manner and can submit to or obey them.
- (3) The majority of citizens in a country have a principle of agreeing to the content of the content. Therefore, citizens' behavior will conform to the regulations issued by the government.
- (4) Judicial judges have an independent nature, meaning that judges do not take sides in applying legal rules consistently when the judge can complete the law.
- (5) Judicial decisions can be concretely implemented. According to Jan M. Otto, these five requirements for legal certainty demonstrate that legal certainty can be achieved if the substance of the law aligns with the needs of society.

d. Legal Protection Theory

According to Radbruch in Satjipto (Satjipto Rahadjo – 2004) in the concept of *idee des recht* or the teaching of legal ideals, there are 3 (three) elements of legal ideals whose existence must be proportional. These three elements are legal certainty, legal justice, and benefit. These three elements that constitute the legal ideal are a form of legal protection for justice seekers from arbitrary actions which means that legal subjects will and can obtain something they hope for in certain circumstances (Sudikno Mertokusumo – 1993).

According to Soetiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with legal regulations in order to create order so that humans can enjoy their dignity as human beings (Furthermore, according to /Soerjono Soekanto, legal protection is all kinds of efforts made to fulfill rights and provide assistance to provide a sense of security to legal subjects (Soerjono Soekanto - 1984). and according to Sigid Suseno (2000). Legal protection is an effort implemented by the state and is aimed at the interests of society implemented through regulations in national legislation.

Legal protection requires the provision of protection for human rights, which can be realized by fulfilling the rights of legal subjects to those human rights. Efforts to fulfill human rights are the responsibility of the state as the duty bearer. The state, as the duty bearer, is responsible for fulfilling human rights in the following ways:

- (1) Respect is the state's obligation to refrain from intervention or interference that could potentially diminish or hinder the enjoyment of rights. For example, regarding the right to life, the state's obligation is to refrain from killing. Regarding the right to freedom of religion, the state's obligation is to refrain from forcing someone to convert to a particular faith.
- (2) Protecting (to protect), protecting (to protect) human rights, the fulfillment of which can be implemented by actions that must be taken by the state to ensure that no party interferes with the enjoyment or implementation of human rights by human rights holders.
- (3) Fulfillment is the obligation of the state to take legislative, administrative, judicial, and other necessary measures to ensure that the rights in question are implemented to the greatest extent possible or are accessible to all. For example, every person detained has the right to be accompanied by a legal representative, doctor, and/or consulate from their country of origin immediately upon detention. Delaying the granting of this right could potentially lead to unlawful acts, such as torture or disappearance. Therefore, the state is obliged to ensure adequate domestic implementation structures and legal guarantees.

METHOD

This research is a normative legal research, namely research that focuses on the study of applicable legal norms, both those contained in laws and regulations, court decisions and the doctrines of legal experts. The study in this research is the limitation of complaints in the act of cohabitation and adultery according to the National Criminal Code. According to Soerjono, normative legal research is legal research conducted by examining library materials or secondary data (Soerjono Soekanto - 2015). This research uses an approach that focuses on norm analysis, namely how the regulation of limitations on complaints of cohabitation and adultery in the National Criminal Code and also seen from the human rights regulations related to the privacy rights of citizens and by referring to moral norms that exist in society which are a depiction of the values of Pancasila that underlie the foundation of the Indonesian state.

The data collection technique used was a literature review related to restrictions on complaints of cohabitation and adultery. The regulations underlying these restrictions were identified. A normative qualitative analysis was used to obtain a brief overview of the problem in implementing restrictions on complaints of cohabitation and adultery. Conclusions were then drawn using a deductive method, which involves moving from the general to the specific.

RESULTS AND DISCUSSION

a. National Criminal Law Paradigm

The paradigm shift of national criminal law through the regulation in Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), can be seen in the considerations of letters b and c, namely the formation of criminal law is certainly adjusted to the legal politics, conditions and also the development of the life of the nation and state that aims to respect and uphold human rights based on the principles of Pancasila. And the material of national criminal law must also regulate the balance between public or state interests and individual interests, between protectors and against perpetrators of criminal acts and victims of criminal acts, between elements of actions and inner attitudes, between legal certainty and justice, between written law and the law that lives in society, national values and universal values (balance of human rights and obligations).

Also the paradigm shift can be seen from how the Academic Manuscript is structured in the National Criminal Procedure Code, which is certainly related to the procedural process in a criminal act that occurs.

In the theoretical study of the academic text of the Criminal Procedure Code there are two concepts of fair trial and due process model, the concept of fair trial is to include human rights values in the system and process of punishment, the main components of which are human dignity, truth, and justice in the process (fairness). In the concept of Dignity, one of them is mentioned about the applicable regulations must be able to prevent behavior that can harm or violate human dignity, and if applied in limiting complaints of cohabitation and adultery, is how society cannot take the law into their own hands when seeing the act. The phenomenon of cohabitation and adultery, therefore the act is subject to a complaint offense, is to maintain the dignity of the perpetrator and also the victim, as quoted from the academic text about Ulpianus' opinion which put forward the principle of "cogitationis poenam nemo patitur," which is freely translated as "no one can be punished for his thoughts." In Dutch, there is an expression *gedachten zijn tolvrij*, which means "people are free to think as long as they are not spoken.", so when others see the act, they do not have the right to report according to what is in their minds (Academic Manuscript of the National Criminal Procedure Code). It can be said that in the National Criminal Code, cohabitation and adultery are now considered individual moral violations. The limitation of the complaint is as an offense that protects the institution of the family, social order, and moral values that live in Indonesian society.

According to Barda Nawawi Arief, national criminal law policy must pay attention to the balance between community protection and individual protection. In this perspective, the use of complaint offenses in crimes against morality is a form of limiting state authority so that criminal law is not used repressively against a person's private life (Barda Nawawi - 2010). Furthermore, in his book *Bunga Rampai Kebijakan Hukum Pidana* (Anthology of Criminal Law Policy), he explains that criminal law must be used as the *ultimum remedium* and must not enter the private moral realm excessively if it can still be resolved through social or family mechanisms. Therefore, the limitation of complaints in crimes of adultery and cohabitation is seen as a form of rational limitation on the use of criminal law (Barda Nawawi - 2010).

A similar view was expressed by Sudarto, who stated that criminal law should not be used solely to enforce morality without considering the sense of justice and benefit in society (Sudarto – 2007). Furthermore, Sudarto's opinion, as quoted by Dion Valerian in *Law and Criminal Law*, emphasized that criminalization must be based on the existence of a legal interest that truly needs to be protected by the state. Thus, the limitation of complaints shows that lawmakers are aware of the boundaries between state authority and citizens' privacy rights. The state only provides space for law enforcement if the family directly affected feels aggrieved and wants legal proceedings (Dion Valerian, in the journal *Veritas et Justitia*, Vol. 8 No. 2 of 2022).

From a human rights perspective, reporting restrictions can also be considered a protection of privacy rights. Vigilante action, criminalization based on social hatred, and abuse of the law can occur due to the criminalization of personal relationships without a complaint from the injured party. Therefore, normatively, reporting restrictions are used to ensure that criminal law remains proportional. However, questions remain about how to define the line between private and public interests in crimes against morality.

b. Implementation of the National Criminal Code in Progressive Theory

Indonesian society that lives by cultural and customary values, of course, experiences pros and cons regarding the Article on the criminal penalties for cohabitation and adultery as regulated in the National Criminal Code, therefore the regulations in the Criminal Code can also cause legal uncertainty, which is due to the disharmony with the social values of plural Indonesian society. In certain societies, cohabitation is seen as not only violating family norms, but also customary norms, religious norms, and social order. Limiting complaints that are too narrow can cause people to not have legal access to protect the social values they believe in. If we quote the opinion of Satjipto Rahardjo, the law must essentially live and develop according to the values that grow in society.

In progressive legal theory, Satjipto Rahardjo emphasizes that law should not be understood only as a normative text, but should also pay attention to social reality and the sense of justice of society (Satjipto Rahardjo – 2009). From this perspective, complaints about criminal acts of cohabitation and adultery can be questioned if they hinder the protection of social values that live in society. However, progressive law requires that the law not be used as a tool of moral repression that can violate human rights and private freedoms of citizens.

Hotman Paris Hutapea, as reported by CNN Indonesia, stated that the adultery provisions in the new Criminal Code are ambiguous in practice. Siti Aminah, a Commissioner of the National Commission on Violence Against Women, echoed this sentiment in *Liputan 6*, stating that this article criminalizes women for unregistered marriages. If linked to issues of religious morality, this provision could be used to blame women (Klik Legal-2023 Team).

The opinion of those who support the criminalization of cohabitation argues that cohabitation is a social reality that gives rise to a social problem so that there needs to be a concrete regulation and there is no evidence that the implementation of criminal sanctions for perpetrators of cohabitation will create horizontal conflict. The Deputy Minister of Law and Human Rights, Edward Omar Sharif Hiariej, as reported in *detik.com*, is of the opinion that the crime of adultery in the new Criminal Code has been improved by the provision of a complaint offense which means that only certain people are legally confirmed who can report the crime of adultery to the authorities and no religion recognized in Indonesia permits the act of adultery so that the new Criminal Code has implemented the appropriate values of Indonesian society (Ibid).

c. Criminalization of Cohabitation and Adultery in the National Criminal Code

Criminalization of cohabitation as a complaint offense is a strategic policy that is included in the policy that establishes policies through laws that aim to protect society (community protection) and achieve community welfare (community welfare), or known as criminal policy in the broad sense. The criminal law reform is carried out through a criminalization policy implemented by the government, to determine an act that is not a crime to be a crime with various considerations oriented towards national law (law reform). According to Barda Nawawi Arief, in criminalizing the act of cohabitation (*samen leven*) as an offense, it is necessary to consider the following views as a form of benchmark, namely as follows:

- (1) Based on the concept of values and interests in moral matters related to the institution of marriage, which is influenced by societal views on adultery and marriage. According to societal views, marriage is related to values and interests that exist in society such as family, relatives of both parties and the environment. As well as the assessment as a society and socio-cultural culture of Indonesia which considers the act of cohabitation (*samen leven*) as a problem related to morality is not only an individual problem, but concerns the interests and values of community life. Therefore, if the act of cohabitation (*samen leven*) is categorized as an absolute complaint offense (*absolute klacht delicten*) it is felt that it will not be effective if it is then implemented.
- (2) Based on the objective aspect of criminal policy, the criminalization of cohabitation (*samen leven*) as a complaint offense is said to be a means to achieve certain goals, namely by strengthening more just preventive and repressive efforts. However, this is felt to be inversely proportional, where repressive efforts become suboptimal and preventive efforts are weakened because they provide opportunities and a basis for legitimacy for individuals to engage in cohabitation (*samen leven*) which can give rise to criminogenic factors.
- (3) Based on the aspect of national morality, the aim of criminal policy is to prohibit cohabitation (*samen leven*) because it violates the provisions of the marriage institution and causes negative impacts that are criminogenic. These negative impacts that are criminogenic, such as destroying the future of children, damaging legitimate offspring if the act produces offspring, encouraging other acts that cause major sins such as abortion, killing a partner or committing suicide because of shame over the act, and causing various types of venereal diseases if the adultery is committed by changing partners.
- (4) Based on individual and public interests, cohabitation (*samen leven*) results in losses for individuals, which must be weighed against the public interest, which is also harmed. Therefore, proportional consideration of these interests is fundamental. Regulations regarding cohabitation have drawn varying views from factions and the public.

CONCLUSION

Restrictions on complaints of cohabitation and adultery As a complaint offense in the National Criminal Code, which is formulated as a criminalization (*samen leven*) is based on a juridical, philosophical, and sociological basis that focuses on protecting moral values, social norms, and community welfare. By placing it as a complaint offense, this rule simultaneously prevents the actions of judges themselves, maintains religious values, and emphasizes the function of law as a controller of social behavior. The implementation of the National Criminal Code

regarding Cohabitation and adultery will certainly remain polemic and multi-interpretable, therefore the state, in this case the legislature, must conduct continuous evaluation.

The implementation of restrictions on reporting cohabitation and adultery within the National Criminal Code certainly requires appropriate oversight, particularly by law enforcement officials and law-making bodies, and especially by the legislative branch. Therefore, the implementation of the National Criminal Code in this regard fulfills the objectives of current criminal law reform.

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