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Juridical Analysis of the Status of Absolute Complaint Offenses for the Crime of Adultery and Cohabitation Based on the Criminal Code

Analisis Yuridis Status Delik Aduan Absolut Tindak Pidana Perzinaan dan Kohabitasi Berdasarkan KUHP

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Abstract

This study examines the legal status of the absolute complaint offense in the crimes of adultery and cohabitation based on the new Criminal Code (KUHP), namely Law No. 1 of 2023. Changes in criminal law norms include covering merely adultery (*overspel*) to the realm of living together without marriage ties (*cohabitation*). This expansion triggers, including regarding the limits of state intervention in the private sphere and the risk of the main judge's own actions (*eigenrichting*). This study aims to analyze the consistency of the regulation of the absolute complaint offense in the crimes of adultery and cohabitation with the new Criminal Code and identify violations of law enforcement and human rights. The research method used is a normative legal research method with a regulatory approach

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(statutory approach), a contextual approach (conceptual approach), and a historical approach (historical approach). Data collection was carried out through literature studies and document studies of secondary legal materials. The research findings indicate that the absolute complaint offense serves as a safeguarding procedure that limits the authority of authorities to intervene indiscriminately in the private sphere by transferring the right to report only to the immediate family (husband/wife, parents, or children). However, this creates an imbalance between positive law and the sociological expectations of communal society (living law), thus triggering the risk of mass raids or the judge's own actions due to the limited scope of authority. This research concludes that this new regulation has the potential to become a purely symbolic rule that shifts the moral burden onto the immediate family. It is recommended that clear operational definitions be aligned to avoid misinterpretation in law enforcement. Keywords: Adultery, Cohabitation, Absolute Complaint Offense, Law No. 1 of 2023, Right to Privacy.

Keywords

Absolute Complaint Offenses; Adultery; Cohabitation; New Criminal Code; Human Rights.

Abstrak

Penelitian ini mengkaji secara yuridis status delik aduan absolut dalam tindak pidana perzinaan dan kohabitasi berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) yang baru yaitu UU No. 1 Tahun 2023. Perubahan norma hukum pidana memperluas cakupan dari sekadar perzinaan (*overspel*) ke ranah hidup bersama tanpa ikatan perkawinan (*kohabitasi*). Perluasan ini memicu perdebatan mengenai batas intervensi negara dalam ruang privat serta risiko terjadinya tindakan main hakim sendiri (*eigenrichting*). Penelitian ini bertujuan untuk menganalisis konsistensi pengaturan delik aduan absolut dalam tindak pidana perzinaan dan kohabitasi terhadap KUHP baru serta mengidentifikasi implikasinya terhadap penegakan hukum dan hak asasi manusia. Metode penelitian yang digunakan adalah metode penelitian hukum normatif dengan pendekatan

perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan historis (*historical approach*). Pengumpulan data dilakukan melalui studi pustaka dan studi dokumen terhadap bahan hukum sekunder. Hasil penelitian menunjukkan bahwa konstruksi delik aduan absolut berfungsi sebagai pengaman prosedural yang membatasi kewenangan aparat untuk melakukan intervensi sembarangan di ranah privat, dengan cara mengalihkan hak melapor secara terbatas hanya kepada keluarga inti (suami/istri, orang tua, atau anak). Namun, hal ini menimbulkan ketimpangan antara hukum positif dengan harapan sosiologis masyarakat komunal (*living law*), sehingga memicu risiko penggerebekan massal atau tindakan main hakim sendiri akibat keterbatasan ruang gerak aparat. Penelitian ini menyimpulkan bahwa regulasi baru ini berpotensi menjadi aturan simbolis semata yang memindahkan beban moral ke pundak keluarga inti. Disarankan adanya penyelarasan definisi operasional yang jelas agar tidak menimbulkan salah tafsir dalam penegakan hukum.

Kata Kunci

Delik Aduan Absolut; Perzinahan; Kohabitasi; KUHP Baru; Hak Asasi Manusia

A. Introduction

Crimes Against Morality are a category of crimes that essentially attack or damage the moral values, decency, and propriety recognized and upheld by a community or society, especially those concerning sexual life. The main purpose of regulating this crime is to protect the moral order of society and protect the honor, integrity, and bodily autonomy of each individual from unwanted or norm-violating sexual acts. Crimes against morality are all forms of actions that fundamentally violate the norms of morality, decency, and propriety that are firmly held by society, especially those related to sexual aspects

and lust.¹ In the context of Indonesian law, the regulation of crimes against morality is historically regulated in Chapter XIV of Book Two of the old Criminal Code (KUHP) (Articles 281 to 303 bis), which includes classic crimes such as violating public decency (Article 281), adultery (Article 284).²

Cohabitation, popularly known as "*kumpul kebo*," is the act of living together permanently under one roof as a married couple without being bound by a legal marriage bond according to religious or state law. This act is a category of moral offense that has been newly criminalized in Indonesian positive law through Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), in contrast to the old Criminal Code (WvS) which only regulated adultery (sexual intercourse).³ Although cohabitation is regulated under Article 412 of the New Criminal Code as an effort to internalize moral values and living law held dear by Indonesian society, its criminalization is governed by the absolute complaint offense mechanism. This provision strategically limits state intervention, with prosecutions only possible upon formal complaints from legitimate family members, namely the husband or wife for those married to another person, or parents or children for those unmarried. This absolute complaint offense is key to balancing the protection of public morality with the right to individual privacy, preventing law enforcement officials from acting arbitrarily without the initiative of the personally aggrieved party.

The reform of Indonesian criminal law through Law No. 1 of 2023 brings fundamental changes regarding moral offenses, specifically adultery and cohabitation (*kumpul kebo*), which will come into full effect in 2026. Under the old Criminal Code (WvS), only adultery (sexual intercourse between married persons) was regulated under Article 284 and constituted an absolute complaint offense. In the New Criminal Code, the scope

¹ Setyawati, N.K., & Artha, I. G.P. "*The Relevance of the Expansion of the Crime of Adultery in the National Criminal Code to Moral Values*" *Udayana Master of Law Journal*, Vol. 12, No. 1, P 45-52.

² Law Number 1 of 1946 concerning the "Criminal Code (KUHP), Chapter XIV:Crimes Against Morality", Article 281.

³ Law Number 1 of 2023 concerning the "*Criminal Code (New Criminal Code)*", Chapter XV: Criminal Offenses Against Morality, Article 412: Living Together as Husband and Wife Outside of Marriage.

of criminalization is expanded to include adultery (sexual intercourse outside of marriage) and cohabitation (living together as husband and wife outside of marriage), both of which are regulated in Articles 411 and 412. However, to protect the private sphere and avoid excessive state intervention, these two offenses are categorized as very limited absolute complaint offenses, prosecution can only be carried out if there is a complaint from the husband/wife or parent/child. This change emphasizes the effort to balance the protection of community moral values with the protection of individual privacy rights.⁴ The implementation of Articles 411 and 412 of the New Criminal Code in 2026 will have important implications for the protection of family law and the enforcement of moral values. The designation of these two offenses as very limited absolute complaint offenses is not merely a legal formality, but rather an instrument for privatizing moral enforcement. This means the state places the interests and integrity of the family as the primary filter before criminal proceedings can be initiated.

The crimes of adultery and cohabitation in the New Criminal Code are constructed as absolute complaint offenses, which expressly stipulate that prosecution of the entire criminal incident can only be initiated upon a formal complaint from the parties entitled to file a complaint, which has been defined in a limited manner: the husband or wife for perpetrators who are married, or parents or children for perpetrators who are not married. The resulting legal consequence is that the Public Prosecutor's right to prosecute only arises after receiving a valid complaint from one of these parties, making the complaint an absolute requirement for initiating criminal proceedings.⁵

Thus, this legal structure grants full control to the will of the immediate family, as stipulated by law, including the right to withdraw a complaint before the trial begins, which would then halt the prosecution process. Therefore, the construction of the

⁴ Mulyana, Y, "The Criminal Act of Living Together (Cohabitation) in Law Number 1 of 2023 concerning the Criminal Code, Related to Criminal Law Reform in Indonesia". International Journal of Social Sciences, Vol. 2, No. 1, p. 154.

⁵ Eko Prasetyo, "Implications of the Absolute Complaint Offense of Adultery and Cohabitation in Maintaining Family Unity Following the Enactment of the Criminal Code," Journal of Criminal Law, Vol. 10, No. 2, p. 75

Absolute Complaint Offense has significant procedural implications for law enforcement officials, particularly at the police and prosecutorial levels. This provision requires investigators to strictly verify the status of the complainant. Investigators cannot process adultery or cohabitation cases based on ordinary reports from the general public, but must instead ensure that the formal complaint (*klacht*) originates from a legally limited subject (husband/wife, or parent/child). Therefore, if a report is filed by an unauthorized party (e.g., a neighbor or community leader), it must be ignored or cannot be escalated to the investigation stage. Law enforcement functions as a passive party and is bound by the family's initiative, ensuring that state resources are only used to follow up on cases explicitly requested by the injured immediate family. The primary legal consequence of the crimes of adultery (Article 411) and cohabitation (Article 412) in the New Criminal Code (Law No. 1 of 2023) lies in their status as very limited absolute complaint offenses. This consequence means that no criminal prosecution can be initiated by prosecutors or the police unless there is a formal complaint from the party directly harmed. If a complaint is filed, the criminal penalty for adultery is a maximum of one year's imprisonment and for cohabitation a maximum of six months. Another crucial consequence is that the right to prosecute is automatically forfeited if the complaint is withdrawn before the trial begins, demonstrating the law's focus on resolving this issue within the private family sphere, rather than broad state intervention.⁶

In criminal law, the main difference between Ordinary Crimes and Complaint Crimes lies in the conditions for initiating prosecution by the state. Ordinary Crimes are crimes for which prosecution must be carried out by the prosecutor immediately after the act is discovered, without requiring a report or complaint from the victim, and the legal process cannot be stopped even if the victim withdraws the report. While in complaint crimes are crimes for which prosecution can only be absolutely initiated if the victim or the entitled party,

⁶ *Law Number 1 of 2023 concerning the "Criminal Code (New Criminal Code)", Article 411 paragraph (1) and (2)" concerning Adultery, Article 412 paragraph (1) and (2) concerning Cohabitation."*

complaint crimes are divided into two parts, namely relative and absolute⁷. Individually in both articles, they are categorized as absolute complaint offenses, the prosecution of which may only be brought by the directly injured party, namely the husband/wife who is legally married, the parents, or the child. This fundamental difference is not merely procedural, but reflects different legal policies in responding to crime. Ordinary crimes prioritize the public interest and social stability (*ultimum remedium*), while complaint offenses prioritize autonomy and the protection of the private sphere. Specifically, in the Adultery and Cohabitation Articles of the New Criminal Code, the determination as absolute complaint offenses is a crucial mechanism used by the state to balance efforts to protect morality and the institution of the family with guarantees of individual privacy rights.⁸ In other words, even though the act is criminalized, the state deliberately filters its legal intervention. Consequently, prosecution for adultery or cohabitation is not only initiated by the injured party (husband/wife, parent, or child), but can also be automatically stopped if the complainant withdraws the complaint, provided the withdrawal is made within the time limit set by law. This effectively places the power of prosecution (discretion) in these sensitive cases in practice in the hands of the family, rather than entirely in the hands of the Prosecutor's Office, which is a characteristic feature of legal protection in the moral and family sphere.

Although the status of this complaint offense is intended as a compromise to protect the private sphere, the substance of these articles has limited the reporting of aggrieved parties such as unregistered husbands/wives, who are in a relationship outside the formal framework that is only recognized by religion (unregistered marriage). These articles should be able to provide protection for the moral interests of the injured party, but in reality there are still gaps in the granting of rights for several injured parties in cases of adultery and cohabitation. In addition, the provisions of the Absolute Complaint Offense in

⁷ Andi Hamzah, 2014 "*Principles of Criminal Law*", Jakarta Rineka Cipta, p. 120.

⁸ Erdianto Efendi, 2011, "*Criminal Law: An Introduction*", Refika Aditama, P. 98

the new Criminal Code are considered to ignore the interests of collective morality of society and customary law (living law) which are highly respected in their environment, so that indigenous communities do not have the legal right to report acts of adultery or cohabitation that are considered to violate their ethical norms and customs. This situation is feared to violate the sense of justice because it has the potential to create significant discrimination, especially against groups who have relationships outside the formal framework of the state, where the husband or wife of unregistered marriage loses the right to complain even though they are the party most harmed morally and emotionally. Therefore, although these articles should function to protect the moral interests of all parties who are harmed, the reality is that there is still a large gap in granting the right to report, namely for husbands/wives of unregistered marriages and also indigenous communities, which results in legal protection being partial and only recognizing interests based on the formal legality of the state. Thus, this study aims to examine through the principle of human rights, because the state does not provide access to criminal justice solely based on discriminatory status, and communities whose customary and Islamic laws are morally damaged in their environment. If not reviewed, this provision will continue to be maintained by the state and will continue to apply.

Although there are still injured parties who have not received the right to report, this has the potential to cause unexpected things, namely vigilante actions by those who feel injured. Therefore, this study is present to fill this gap, by emphasizing the importance of legal evaluation that not only considers aspects of protection for individuals but can also be seen from a political morality perspective, and places the protection of human rights as the main foundation in Indonesian criminal law politics.

B. Method

This research is classified as a Normative (doctrinal) Legal Research type. The approach used includes three types of analytical methods, namely the statute approach to Law No. 1 of 2023, a conceptual approach regarding the absolute complaint offense and the right to privacy, and a historical approach to trace the evolution of norms from Article 284 of the old *Wetboek van Strafrecht* (WvS). Data collection techniques were carried out through library studies and document studies of secondary data grouped into three main legal materials. Primary legal materials include Law No. 1 of 2023 concerning the Criminal Code, as well as moral rules in previous laws. Secondary legal materials were obtained selectively through searches of criminal law doctrine textbooks, reputable scientific journals, and previous research results relevant to the complaint offense and Human Rights. Finally, tertiary legal materials in the form of legal dictionaries were used to clarify operational terms. All legal materials collected are analyzed qualitatively using deductive reasoning to provide readers with a complete technical picture of the enforcement of crimes.

C. Result And Discussion

1. Regulation of Absolute Complaint Offenses in Criminal Acts of Adultery and Cohabitation Based on the Criminal Code

In general, Indonesian criminal law views adultery and cohabitation not simply as issues of individual morality, but as acts that can undermine the social order and the sanctity of the institution of marriage, which is protected by the state. This regulation is rooted in the divine and humanitarian values enshrined in Pancasila, where the family is considered the smallest unit of society whose stability must be maintained. By criminalizing these acts, the state exists to provide legal certainty for the injured party while preventing vigilante action by members of the public who feel their moral norms have been violated. The application of these regulations regarding adultery and cohabitation merupakan These regulations regarding adultery and cohabitation reflect the principle of balance between individual rights and collective interests. In Indonesian legal culture, individuals are not viewed as entities completely separate from their communities, but rather as part of a larger social structure. Therefore, actions committed in the

private sphere that impact the social structure, such as betrayal of marital commitment, are considered violations that are legitimately subject to intervention by state law. This demonstrates that Indonesian criminal law is not purely constitutional, but rather one that accommodates religiosity and the nation's noble values as sources of norm formation. The criminalization of adultery and cohabitation serves as an instrument for maintaining public order. In Indonesian society, with its strong communal ties, behavior deemed immoral often triggers extreme social reactions from the surrounding community. If the state does not provide clear legal channels for processing violations of moral norms, it is feared that horizontal conflicts will arise, with citizens acting as "judges" in their own communities. With this criminal regulation, the state takes over the role of enforcement so that the sanctions given remain measured, humane, and based on legal corridors, thereby minimizing anarchic actions or persecution that damage human dignity.

In its development, there has been a paradigm shift from the old Criminal Code to the National Criminal Code (Law No. 1 of 2023). Previously, only the adultery article was regulated, which was limited to legal subjects who were already married, which is regulated in Article 284 paragraph (1) number 1 letters a and b of the Criminal Code (KUHP) which states:

“ diancam dengan pidana penjara paling lama sembilan bulan:

1. a. A married man who commits adultery (overspel), even though it is known that Article 27 of the Civil Code (BW) applies to him.
- b. A woman who is a wife commits adultery, even though Article 27 of the Civil Code applies to her. However, in the new Criminal Code, adultery is regulated in Article 411 of Law Number 1 of 2023, which reads as follows:
 - (1). Any person who has sexual intercourse with someone who is not his/her husband or wife shall be punished for adultery, with a maximum prison sentence of 1 (one) year or a maximum fine of category II.
 - (2) No prosecution shall be carried out for the criminal acts referred to in paragraph (1) except upon a complaint:
 - a. husband or wife for people who are married.

- b. parents or children for people who are not married⁹

In the new Criminal Code, the latest regulations expand its scope, which also applies to people who are not bound by marriage or sexual relations between men and women who are not husband and wife, and explicitly regulates cohabitation or living together without a legal bond as regulated in Article 412 which reads, "Any person who lives together as husband and wife outside of marriage shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of category II."¹⁰

However, to maintain a balance between the public interest and citizens' privacy rights, the government has implemented a strict complaint-based offense mechanism. This means that the state cannot automatically prosecute; the legal process can only proceed if there is a complaint from the party most affected, because the offense is an absolute complaint: namely, the husband, wife, parent, or child. This complaint's grounds are deliberately narrowed to minimize intervention by external parties or community organizations that have no direct legal interest, so that criminal law functions to maintain national morality without having to ignore individual privacy. The reform of criminal law through the National Criminal Code (Law No. 1 of 2023) reflects a legal effort aimed at aligning Dutch-inherited regulations with the customary and religious values of the Indonesian nation. If in the old Criminal Code (WvS) the main focus of adultery was limited to violations of existing marital commitments, then in the latest regulations, the scope of the law is expanded to include extramarital sexual relations in general as well as the practice of cohabitation or living together without a legal bond.¹¹

This expansion is based on the argument that criminal law must be able to protect public morality that lives in society. The presence of these articles is considered a form of state recognition of the existence of unwritten norms that have been the ethical foundation of social life in Indonesia, so that positive law is no longer considered foreign to the values adopted by its own people. This regulation also takes into account Islamic law and cultural

⁹ Law Number 1 of 2023 "concerning adultery, Article 411."

¹⁰ Law Number 1 of 2023, "concerning cohabitation, Article 412".

¹¹ Maria, S., and A. Prasetyo, "The Dilemma of Criminalizing the Private Sphere: A Critical Analysis of the Cohabitation Article in the New Criminal Code Against Human Rights", Indonesian Law Journal, Vol. 10, No. 2, pp. 35-41.

diversity in Indonesia such as North Sulawesi and West Sumatra, which have customary laws or social norms that have different views on relations between individuals. Some of these areas such as the community in West Sumatra or indigenous communities in various corners of the archipelago, This is very crucial when socialization is carried out in West Sumatra, the community considers this article very weak because it qualifies the criminal act in this article as a complaint offense, even though this act is an act that damages public morals, violations of morality are often resolved through customary trials or social sanctions such as customary fines or the obligation to carry out village cleansing rituals. National criminal law, in this case, serves as a safety net that will only operate if customary or familial mechanisms are no longer able to provide justice for the victim (husband/wife/parent). However, during outreach in the northern provinces by the team, this article was deemed too intrusive into citizens' privacy and was therefore proposed to be removed, with social harmony maintained through tolerance of private space and respect for each individual's way of life as long as it does not disrupt public order.¹²

By granting exclusive rights to file a complaint only to the nuclear family, this provides a middle ground that implicitly allows customary law in certain regions to remain alive and function as a primary conflict resolution instrument before the issue is brought to the state courts. This consideration of diversity also aims to prevent mass criminalization in regions with more flexible traditions or social norms regarding relations between certain individuals. By closing the door to reports from third parties such as community organizations or citizens who are not related by blood, the state ensures that the law is not used as a tool of persecution or moral judgment by one group against another group with a different cultural background. Therefore, starting from the existence of cultural diversity that is contradictory, the author believes that the construction of a complaint offense that is relative can provide a middle ground between individual privacy and public order. By providing more flexible legal channels to the affected parties, it will reduce and even extinguish the potential for community conflict, which will no longer need to carry out illegal raids if they know that there is a police reporting mechanism that is

¹² Edward omar sharif hiariej and prof. toppo santoso 2025, "*Annotation of the National Criminal Code*", Jakarta, Rajawali pers, p. 424.

able to accommodate social facts in the field without any actions that harm the perpetrators in cases of adultery or cohabitation.

The drafting of articles on adultery and cohabitation as relative complaint offenses has strong legal arguments, especially to provide flexibility for law enforcement based on restoring the situation. The main argument lies in the nature of relative complaint offenses that allow for a separation between criminal acts and legal subjects. In this case, if there are several people involved in a criminal incident, the complainant can choose to report or withdraw the complaint against only one party without having to drag all parties involved to court. This is also very crucial in cases of morality to provide an opportunity for residents who are also morally harmed, for example when this is not known by the parties bound by marriage such as the wife / husband but witnessed by local residents, the head of the RT / RW can be given authority but still ensure that the residents' concerns must be real and proven in the field so that residents no longer need to carry out raids themselves, but residents only need to report to the RT / RW and bring an official report to the police.¹³ Thus, the designation of a complaint as a relative offense provides a strong justification for strengthening the function of criminal law as an ultimum remedium, which highly respects family privacy and autonomy. With this construction, the state grants aggrieved individuals full authority to assess the extent of their moral harm before deciding to involve public authorities. This argument aligns with efforts to minimize broader social impacts, such as the stigmatization of children or the destruction of the family's economic structure, that could occur if the legal process is carried out automatically without considering the victim's wishes. In the context of Indonesia's collectivist society, the relative complaint offense serves as a safeguard to prevent the law from becoming an instrument that actually worsens the situation. The use of the relative complaint offense strongly supports the spirit of restorative justice, a pillar of national criminal law reform. Its relative nature allows for a more flexible withdrawal of the complaint if a successful peace settlement or customary mediation occurs during the legal process. This demonstrates that the ultimate goal of this moral regulation is not merely physical punishment, but rather the restoration of social harmony. With full control in the hands of the victim to determine

¹³ Harefa, A., & Harefa, J. E. "No Act May Be Punished Except Through the Power of Statutory Provisions.", Vol, 4, No. 2, p.50.

the direction of the case, the state continues to carry out its role as a guardian of morality without having to aggressively undermine the domestic sovereignty of its citizens. Therefore, to accommodate cultural diversity and a sense of socio-cultural justice in Indonesia, the nature of this offense needs to be reconstructed into a Relative Complaint Offense with an expanded subject of the complainant. Complaints should also be able to be filed by the Village Head or local neighborhood officials (RT/RW) after a failed mediation process or customary court, so that environmental moral losses can be remedied through formal legal channels.

2. Implications of the Regulation of Absolute Complaint Offenses in Adultery and Cohabitation Crimes for Law Enforcement

After reviewing the consistency of the norms, in this section the author will discuss how the regulation of the absolute complaint offense works in the practical order of law enforcement. The focus of the analysis will be directed at the real impact that arises when a formal legal norm clashes with sociological reality in society, and the ambiguity for parties who are only bound by religious marriage (sirih marriage), in law enforcement practice, articles 411 and 412 do not stand alone. The police are bound by article 2 paragraph (2) of the Marriage Law. A valid marriage is one that is registered, police investigators tend to use the Population Administration perspective, in interpreting the words "husband / wife." In writing it is only called "marriage" but judges and investigators are bound by the principle of legality and the Marriage Law. Without proof of civil registration, a person is not recognized as a subject who has the right to report in the capacity of husband / wife. Initially, the police will conduct an administrative selection by requiring a marriage certificate as authentic evidence, in order to avoid reports that will be questioned by the prosecutor or court. Although Articles 411 and 412 explicitly do not limit the definition of marriage to registered marriages, in practice, the meaning of the legal subject has been narrowed. Law enforcement officials tend to apply legal formalism by making marriage certificates a material requirement for complaints. This creates injustice for victims of unregistered marriages, whose sociological recognition is denied, but whose legal right to file a complaint is legally ignored. Therefore, qualifying a complaint offense can relatively help parties

who are also harmed but are hindered by a piece of administrative paperwork.

In addition to the question of the meaning of marriage, the implications of this regulation are also particularly concerning, particularly the social impasse experienced by the wider community. The inability of citizens to take legal action against moral violations in their communities often creates a vacuum in law enforcement, ultimately triggering significant concerns about the emergence of vigilante action in response to the loss of access to formal justice. The rule regarding absolute complaint offenses in cases of adultery or cohabitation creates a jurisdictional barrier separating social reality from law enforcement. In practice, this rule places citizens and neighbors in the position of passive bystanders. They may witness flagrant violations of norms before their eyes, but their hands are legally tied to formal intervention. When the state limits the right to report to only husbands, wives, parents, or children, the law deliberately closes the door to collective social control. This creates a private, impermeable space, where citizen unrest and the breakdown of social order in the smallest neighborhoods no longer have legal channels for processing, so that such unrest often culminates in vigilante action.¹⁴

This legal obstacle can trigger public unrest because residents can only witness adultery or cohabitation. Even though residents are aware of the practice of "kumpul kebo" or adultery that disturbs the peace of the neighborhood, they cannot report it to the police because the citizen's report will certainly be rejected. In the construction of absolute complaint offenses, citizens' reports are often rejected by the police because they do not meet the requirements of *persona standi in iudicio* or the right to legal standing. This phenomenon creates a vacuum in law enforcement where visible violations of legal norms cannot be processed simply because there is no complaint from the nuclear family directly affected. As a result, the community loses its sovereignty in maintaining the sanctity of their own residential environment, which in turn can trigger the accumulation of social frustration. This automatic rejection of citizens' reports not only weakens the function of social control but also has the potential to foster apathy or even anarchic actions as a shortcut to seeking justice. When law

¹⁴ Setyawati, N.K., & Artha, I. G.P. "The Relevance of the Expansion of the Crime of Adultery in the National Criminal Code to Moral Values" *Udayana Master of Law Journal*, Vol. 12, No. 1, pp. 45-52.

enforcement agencies are deemed incapable of reaching social realities due to limited regulations, residents tend to feel that the law no longer sides with the interests of public order. In the context of this research, the powerlessness of citizens demonstrates a disconnect between the legal objective of creating order and procedural mechanisms that actually limit public participation in reporting violations that are collectively considered morally disturbing. This condition ultimately creates a "legal vacuum" phenomenon in densely populated areas, where legal norms seem to lose their teeth in the face of administrative formalities. The inability of citizens to act legally against cohabitation or adultery is not simply a bureaucratic obstacle, but a delegitimization of society's role as guardians of public morality. When law enforcement officers are forced to reject citizens' complaints in order to comply with the absolute complaint offense rule, a shift in perception occurs where the law is no longer seen as an instrument of justice, but rather as a barricade protecting violators of norms from social sanctions. This risks creating a bad precedent that as long as there is no objection from the immediate family, who may be involved in unequal power relations or tacit agreements, such violations of the law are considered legitimate to occur in public spaces.¹⁵

The long-term impact of this is that communities that were initially proactive in conducting self-monitoring will slowly be pushed toward the worst extremes of individualism, choosing extrajudicial means such as forced evictions or persecution to restore the disturbed environmental "balance." Therefore, in the context of this research, it is clear that enforcing the articles on adultery and cohabitation without providing space for public participation through limited legal standing is actually planting a time bomb in the form of horizontal conflict between disturbed residents and perpetrators who feel "safe" behind the state's procedural protection. This tension is exacerbated by the disconnect between state law and the values of living law upheld by local communities. Indonesian society generally views adultery and cohabitation not merely as private matters between individuals, but as a stain that can negatively impact the collective community.

¹⁵ Eko Prasetyo, "Implications of the Absolute Complaint Offense of Adultery and Cohabitation in Maintaining Family Unity Following the Enactment of the Criminal Code," *Journal of Criminal Law*, Vol. 10, No. 2, p. 43

When national law, through its absolute complaint mechanism, actually limits citizens' opportunity to seek legal redress, a crisis of confidence in the effectiveness of the New Criminal Code as a means of social engineering occurs. As a result, the law no longer serves as a bridge connecting social and legal norms, but rather as a divider that widens the gap between what society deems just and what the state deems legitimate. Ultimately, the author believes that protecting family privacy should not negate the community's right to an orderly and moral environment. There needs to be a reorientation in the enforcement of criminal law on morality that is more accommodating to public participation, particularly in cases whose impact has transcended domestic boundaries and entered the public sphere. Without a policy that balances the reporting rights of nuclear families with the right to protect public order for citizens, the enforcement of Articles 411 and 412 of the Criminal Code will continue to face legitimacy challenges in the field. Therefore, the law must be able to transform from a mere rigid administrative rule into an inclusive instrument, to prevent potential social conflict and ensure that justice does not only belong to those who are registered.¹⁶

D. Conclusion

1. Articles 411 and 412 of the New Criminal Code define adultery and cohabitation as absolute complaint offenses, where complaints are limited to the legal spouse, parents, or children. While intended to protect privacy, this absolute nature creates injustice for the injured party. Therefore, this study concludes that this status needs to be reconstructed into a Relative Complaint Offense. This change aims to focus legal protection on the actual losses experienced by victims and ensure access to justice.

2. Implications of the Absolute Complaint Offense Regulation in Adultery and Cohabitation Crimes for Law Enforcement: It creates legal injustice for the public and local communities that uphold living law. Because the right to report is limited to formally registered nuclear families, the public loses the legal right to restore the morality of their community through official legal channels. This has the potential to trigger vigilante action if the police reporting mechanism is unable to accommodate the social facts on the ground.

¹⁶ Ridwan Mansyur, "National Criminal Law Reform from the Perspective of Justice and Legal Certainty," *Journal of Law and Justice* 12, No. 2, p. 28.

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F. Competing Interest

The authors state that there is no conflict of interest in the publication of this article.

G. Publishing Ethical And Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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