

Comparative Justice Accountability of Samen Leven Actors in Indonesia and Malaysia

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Abstract

The phenomenon of *samen leven*, or cohabitation, challenges traditional religious and cultural norms in Indonesian society, yet it has become increasingly prevalent in contemporary times, particularly in Indonesia and Malaysia. This trend suggests a shifting landscape where moral and religious values are undergoing transformation. This article delves into the regulatory frameworks surrounding cohabitation, examining provisions within both current and proposed Criminal Codes, and explores the ensuing debates and controversies. Additionally, it scrutinizes the legal, religious, and social perspectives on cohabitation, along with the associated sanctions. The primary objective of this paper is to comprehensively understand the legal stance on cohabitation and explore measures to address the issue of *samen leven* in Indonesia, achieved through a comparative analysis of legal systems between Malaysia and Indonesia. The research employs a combination of literature review and normative juridical methods, relying on primary sources such as the Criminal Code, Marriage Law No. 1 of 1974, and Malaysia's 1984 Islamic Family Law



pertaining to marriage and divorce. Secondary sources encompass a wide array of legal publications, including textbooks, legal dictionaries, journals, articles, and case commentaries. By critically examining the legal frameworks and social contexts surrounding cohabitation, this study aims to provide insights into the divergent approaches adopted by Malaysia and Indonesia. Such insights are pivotal for developing effective strategies and policies to address the challenges posed by cohabitation while navigating the complexities of religious, cultural, and legal landscapes in both countries.

KEYWORDS *Cohabitation, Legal Comparison, Samen leven.*

Introduction

Samen leven or cohabitation, is a common phenomenon, and perpetrators of cohabitation can come from various age groups.¹ What has long been popular in Indonesia is the act of living together like a legal husband and wife without any marriage ties between a man and a woman in one house. There have been many recent cases of cases of *samen leven* that have led to public raids by disturbed members of the community. One recent case involved a student administrative building at one of the university in Makassar, which was misused as a location for *samen leven* acts by alumni and senior students, with possible connections to other criminal activities.² Socially, the construction in Indonesian society will not differ significantly from Malaysia because both countries are heavily influenced by Islam and highly value traditional customs and values.

¹ Ranie Sayulina and Roni Efendi, "The Criminal Law Reform On Completion Of Samenleven In Indonesia" 4, no. 1 (2022): 42–53.

² Reza Rifaldi and Ardi Priyatno Utomo, "Cerita Sekretariat Mahasiswa UNM Makassar Lokasi Brankas Narkoba, Jadi Tempat Kumpul Kebo Oknum Senior Dan Alumnus," Kompas, 2023, <https://makassar.kompas.com/read/2023/06/13/064536278/cerita-sekretariat-mahasiswa-unm-makassar-lokasi-brankas-narkoba-jadi?page=all>.

Cohabitation or unregistered marriages are specifically regulated by law number 1 of 2023 in article 412 which stated "*Anyone who engages in cohabitation as husband and wife outside of marriage shall be punished with imprisonment for a maximum of 6 (six) months or a fine of up to Category II*", category II indicates a maximum fine of 10,000,000 Indonesian Rupiah.³ In this new law, which replaces the previous Indonesian Criminal Code (KUHP), cohabitation is defined as an offense that can be reported, and the definition has been expanded. It is no longer limited to cases involving individuals who are already married, but also includes those who are unmarried or without a spouse. If there is a complaint from the family, such as parents or a child, individuals involved in cohabitation can be subject to criminal charges.

Article 411, 412, and 413 of Law No. 1 of 2023 regarding the Criminal Code are still generating pros and cons among the public. Those who oppose argue that these provisions are overly involved in the private affairs of the community and are therefore considered to be lacking clarity in terms of their urgency. On the other hand, those in favor argue that it is necessary to regulate this matter due to the increasing prevalence of cohabitation (*kumpul kebo*) acts within society, which ultimately demoralize the future generation. Moreover, the previous regulations in the Dutch colonial-era Criminal Code did not incorporate religious values as they should in the current law.⁴

Cohabiting can be considered an illegal act because the couple who does this practice does not have the legal status of husband and wife. Article 284 of the Criminal Code states, "Whoever deliberately acts which can cause discord or hatred between one group and another, is threatened with imprisonment for a maximum of four years or a fine of up to four

³ G B Mahendra and I G N Parwata, "Tinjauan Yuridis Terhadap Perbuatan Kumpul Kebo (Samen Leven) Dalam Pembaharuan Hukum Pidana Di Indonesia," *Kertha Wicara: Jurnal Ilmu Hukum* 8, no. 6 (2019): 1–14.

⁴ Mas Putra Zenno Januarsyah et al., "The Renewal Policy of the Adultery Concept in Article 411 of the Law Number 1 of 2023 on the Indonesian Criminal Code," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 1 (2023): 1–16, <https://doi.org/10.22304/pjih.v10n1.a1>.

thousand five hundred rupiahs."⁵ This article can be used as a basis for ensnaring perpetrators of cohabitation because this practice can lead to hostility or hatred between groups of people who have different views on marriage and human relations. In addition, couples who practice cohabiting can also be charged with Article 27 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that "A legal marriage is a marriage carried out according to the law in force in Indonesia". Violation of this Article may be subject to criminal sanctions in the form of imprisonment and/or fines.

Meanwhile, Malaysia, as a country that shares many similarities with Indonesia in terms of social, anthropological, and geographical aspects, also regulates that the practice of cohabiting is considered an unlawful act. The act is considered a violation of the Islamic Family Act 1984 (Deed 303) which governs marriage and divorce in Malaysia. According to the 1984 Islamic Family Act, a valid marriage in Malaysia is one that is performed according to Islamic law and has been performed in the manner prescribed by Islamic law. Therefore, couples who carry out cohabitation or unregistered marriages are considered to have violated Islamic law and are considered legally illegitimate. Cohabitation is also subject to criminal penalties under Malaysia's Criminal Act. Couples who commit these acts may be subject to sanctions in the form of fines or imprisonment. In addition, cohabiting can also affect the rights and legal status of the couple in the eyes of Malaysian law.⁶ For example, couples who cohabit are not recognized as legal spouses under Islamic family laws and are not entitled to the protections and benefits afforded to spouses who are legally married.⁷ The couple is also not entitled to inheritance and material rights acquired while living together. In conclusion, cohabiting in Malaysia is

⁵ Suryani Lidya Widayati, "Criminalization of Decency in The Criminal Code Bill from Moral Perspectives," *Negara Hukum* 9, no. 2 (2018): 181–98.

⁶ Mikhael Feka, Adji Samekto, and Umi Rozah, "Criminalization of Cohabitation in the Perspective of Criminal Law Reform," *Proceeding*, 2023, <https://doi.org/10.4108/eai.27-7-2022.2326261>.

⁷ Triadi, "Perbandingan Hukum Zina Dalam Hukum Islam Dengan KUHP," *Ensiklopedia of Journal* 5, no. 2 (2023): 255–59.

considered illegal and can be subject to criminal sanctions.⁸ Therefore, it is important for society to comply with applicable laws regarding marriage and human relations, and to respect social and religious values. In reality, cohabitation or living together without marital status can have significant social, health, and economic impacts on the partners involved, such as a high risk of contracting sexually transmitted diseases, lack of access to rights and legal protection, and financial problems which are often more complicated without legal support.

Based on the explanation of the background above, the writer is interested in comparing the legal sanctions for perpetrators of cohabiting that occurred in Indonesia and Malaysia. The limitations of this writing are as follows. What are the views of social, religious, and legal values on *samen leven* behavior in Indonesia and Malaysia? What are the sanctions and regulations against *samen leven* actors in Indonesia and Malaysia? Moreover, what are the challenges and solutions in dealing with *samen leven* problems in Indonesia? The purpose of writing is to understand the views and sanctions governing cohabitation and efforts to deal *samen leven* problems in Indonesia. The benefit of writing this article is knowing the comparison of sanctions and accountability for perpetrators of *samen leven* that occurred in Indonesia and Malaysia.

This study uses normative juridical research methods based on scientific studies with elements of a literature review approach, reading and recording, and processing research materials; in other words, a study that utilizes library sources to obtain research data. The primary sources in this study are the Law no. 1 of 2023, Law Number 1 of 1974 concerning marriage, and the 1984 Islamic Family Law concerning marriage and divorce in Malaysia. In comparison, the secondary sources of this research are all publications on law, including textbooks, legal dictionaries, legal journals, legal articles, and comments on court decisions.

⁸ Gregorius Henu Basworo, "Preventing Non-Military Threats in Indonesia's Border Areas Using a Social Capital Model," *Proceeding*, 2022, 1374–87, <https://doi.org/10.17605/OSF.IO/JDF3Y>.

Views of Social, Religious, and Legal Values on The Behavior of Samen Leven in Indonesia and Malaysia

Cohabitation in Indonesia can face social and legal risks, such as social stigma, gender inequality, and legal issues related to the rights and obligations of partners.⁹ The act of cohabiting can affect family welfare, especially in terms of finance, education, and health. The factors that cause cohabiting are caused by social, economic, and cultural factors, and are related to changes in societal values and norms. Complex social and legal issues, which affect the well-being of families and society at large. Many studies on cohabitation have been carried out, one of which was by Gede Bisma Mahendra and I Gusti Ngurah Parwata in 2019, that the behavior of cohabitation has not been regulated in Indonesian criminal law.

The newest criminal Code, the Nusantara Criminal Code, has been widely circulated among the public. Regulations related to adultery are in Article 415 of the Indonesian Criminal Code, which regulates that someone who has intercourse without the status of husband and wife can be sentenced to a maximum of one year. Article 416 states that a person who lives together as husband and wife is threatened with imprisonment for a maximum of six months. In addition, the criminal act of adultery is also regulated in Article 417. This article emphasizes that someone who has intercourse with a family member can be sentenced to 12 years in prison.

However, in the current era, many people think that the notion of adultery in the Indonesian Criminal Code has only entered into the private affairs of the Indonesian people. They think that the state should not get into the very private sphere. On the other hand, some of those who are on the pro side feel that this is quite useful because of the many cases of infidelity recently; it is hoped that this regulation can create a deterrent effect for perpetrators and victims to get justice. Views of social values

⁹ Wan Azdie et al., "Utilization of Geographic Information System (GIS) in Mapping the Distribution of Malnutrition Among Primary School Children in Kuantan, Pahang, Malaysia," *International Journal of Allied Health Sciences* 7, no. 1 (2023): 2811–19.

towards *samen leven* behavior, or cohabitation, vary depending on the culture and society in a region. However, in general, *samen leven* behavior is still considered taboo and violates the social norms prevailing in society.¹⁰

In many societies, marriage is considered a sacred event that must be carried out officially and legally. Therefore, the act of *samen leven* is considered as an illegal relationship and is considered as a violation of the prevailing social moral and ethical values. In certain religions, such as Islam, and Christianity, marriage is considered a sacred event and is required to be carried out officially. As stated in Surah Al-Isra, verse 32, Allah says, "Do not go near adultery. It is truly a shameful deed and an evil way." Similarly, in the Holy Bible, the sacred book of Christian believers, the act of sexual immorality is also prohibited. In Hebrews 13:4, it is stated, "Let marriage be held in honor among all, and let the marriage bed be undefiled, for God will judge the sexually immoral and adulterous." Therefore, the act of *samen leven* is considered a violation of religious teachings and is considered an act that is not permissible. *Samen leven* actions are also considered to have the potential to damage social relations in society.¹¹ This is because there is still a lot of negative stigma towards the act, so that couples who do *samen leven* can be considered as violators of social norms and are ostracized by society.

The Indonesian people's view of *samen leven*, or cohabitation, is still taboo and is considered a violation of prevailing social and religious values.¹² This is due to the patriarchal culture that is still strong in Indonesian society, where marriage is considered a very important

¹⁰ Putu Reksa Rahmayanti Pratiwi and Sagung Putri M.E. Purwani, "Pengaturan Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Kumpul Kebo Dalam Rancangan Kitab Undang-Undang Hukum Pidana," *Jurnal Kertha Wicara* 11, no. 2 (2022): 588–99.

¹¹ Patrecia Malenia Yoanda Kartodindjo, "Tinjauan Kriminalisasi Perbuatan Kohabitasi Dalam Perspektif Hukum Pidana," *SOSIALITA* 1, no. 1 (2022): 80–89.

¹² Faragus Adam, "Implementasi Perdes Nomor 143/01/III Tahun 2003 Pasal 4 Ayat 1 Tentang Kumpul Kebo (Studi Analisis Desa Kembang Sari Kecamatan Kandangan Kabupaten Temanggung)," *Institutional Repository Universitas Islam Negeri Sunan Kalijaga* (Universitas Islam Negeri Sunan Kalijaga, 2019), <https://digilib.uin-suka.ac.id/id/eprint/34982/>.

institution and must be carried out legally. Indonesian culture places a strong emphasis on family, community, and social harmony. Marriage is often seen as a means to establish and maintain social order, and it carries significant cultural and social expectation. In addition, there is still a lot of negative stigma towards the act of *samen leven* which is often associated with free sex behavior, making this act considered as inappropriate behavior and has the potential to damage morality and social ethics.

However, there has been a notable shift in the views of the Indonesian population regarding cohabitation, particularly in urban areas and among the younger generation. Some individuals perceive cohabitation as a viable alternative for those who are not yet ready for marriage or choose not to engage in a formal union. However, it is still generally believed that cohabitation should be undertaken with parental consent or within a committed and responsible relationship. Overall, Indonesian attitudes towards cohabitation are influenced by religious, cultural, and social factors prevalent in society. Thus, it is essential to examine these actions from multiple perspectives to gain a comprehensive understanding of the evolving viewpoints and attitudes towards cohabitation. In contrast, Malaysian society holds a more conservative outlook on cohabitation, considering it a taboo and a violation of prevailing social, cultural, and religious values. Marriage is viewed as a crucial institution that must be solemnized officially and legally in accordance with religious and societal expectations.

Additionally, cohabitation is often associated with promiscuity, contradicting the moral values and social ethics upheld in Malaysian society. Consequently, cohabitation is deemed inappropriate and actively avoided by many individuals. Nonetheless, there are still Malaysians who perceive cohabitation as a transgression against religious and cultural norms. Consequently, couples who engage in cohabitation are often regarded as morally deficient or irresponsible partners. Religious views in the actions of *samen leven* in Indonesia, as the majority of people who adhere to Islam influence the public's view of the actions of *samen leven*.¹³

¹³ Farid S Shuaib, "Number 1 Special Issue: Islamic Law and Islamic Legal Professionals in Southeast Asia 1-1-2012 Part of the Comparative and Foreign Law Commons Recommended Citation Recommended Citation Farid S. Shuaib, The

According to Islamic teachings, the act of *samen leven* is considered an act of adultery or adultery, which is forbidden in religious teachings. Therefore, this action is considered as a violation of religious values and is considered as an act that is not good and not recommended.

On the other hand, in Malaysia, the majority of the population adheres to Islam which also has the same view of the *samen leven* act. Apart from that, there are also people in Malaysia who adhere to other religions such as Buddhism, Hinduism and Christianity who also have the same views about this act. In Hinduism and Buddhism the teaching in *vedas* and *tripitaka* generally always upheld purity, righteousness, and moral conduct in one's actions. Therefore, Many Hindus and Buddhist believe in the importance of maintaining purity and observing moral conduct. Traditional Hindu society has historically valued chastity and sexual restraint, promoting the idea of engaging in sexual relations within the bounds of marriage. In these religions, marriage is considered a very important institution and must be carried out officially and legally before religion and society. *Samen leven* action is considered a violation of religious values and is not recommended in religious teachings. Overall, views of religious values towards *samen leven* actions in Indonesia and Malaysia both prohibit and regard these actions as violations of the prevailing religious values in society. Therefore, such actions need to be considered carefully, especially for those who prioritize religious values and morality in their lives.

The legal view in Indonesia regarding the behavior of *samen leven* or cohabitation is largely regulated by provisions in the Criminal Code (KUHP). The act of *samen leven* is considered an unlawful act because it is not carried out in a legal marriage. Article 284 of the Criminal Code stipulates that anyone who has intercourse outside of marriage can be charged with a maximum prison sentence of 9 years. In addition, article 27 paragraph (1) of Law no. 1 of 1974 concerning marriage also stipulates that marriages must be carried out legally and legally.¹⁴ Therefore, the act

Islamic Legal System in Malaysia, 21 Pac. Rim L &,” *Washington International Law Journal* 21, no. 1 (2012): 85.

¹⁴ Pratiwi and Purwani, “Pengaturan Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Kumpul Kebo Dalam Rancangan Kitab Undang-Undang Hukum Pidana.”

of *samen leven* is considered a violation of the marriage law in force in Indonesia. However, there is also a more liberal view of the law which considers that *samen leven* is an individual right and privacy that must be respected and protected. This is based on the view that the state should not intervene in the private affairs of individuals as long as such actions do not harm other people or society. Nonetheless, this more liberal view of law has not been fully recognized by Indonesian society and is still being debated among academics and legal practitioners. Therefore, the act of *samen leven* is still considered an act that violates the law and can be charged with criminal sanctions in force in Indonesia.

As time goes by, Indonesian legal rules will always experience changes so that some of the rules that have been drafted by the government certainly cannot run smoothly and just like that, because there is bound to be controversy and rejection by some members of the public. Likewise, the Indonesian people, in seeing the phenomenon of cases, only have one side of vision and are resolved instantly and there is an element of blaming one another. But on the other hand, there are those who support the policy regarding the existence of offenses for perpetrators of cohabitation. Therefore, those who agree to support the inclusion of cohabitation as an offense in the law no. 1 of 2023 which was passed at the Plenary Meeting of the House of Representatives of the Republic of Indonesia to become law in December. The new norm that is regulated is a matter of cohabitation or living in the same house without marriage ties, now it is a criminal offense as long as there is a complaint. However, this provision makes hotel entrepreneurs in Indonesia uneasy. This is stated in Article 412 of the Law no. 1 of 2023 which reads "*Anyone who lives together as husband and wife outside of marriage is subject to imprisonment for a maximum of 6 (six) months or a maximum fine of category II.*"

Against the Crime as referred to in paragraph (1) no prosecution is carried out except on complaints: husband or wife for people who are bound by marriage; or parents or children for people who are not bound by marriage. The provisions of Article 25, Article 26 and Article 30 do not apply to complaints as referred to in paragraph (2). Furthermore, the act of adultery only becomes a crime if one of them is married, or both partners are married, in this case it is stated in Article 411 of the Criminal Code, which reads, "Anyone who has intercourse with someone who is

not his husband or wife, shall be punished for adultery, with criminal imprisonment for a maximum of 1 (one) year or a maximum fine of category II. (1) Prosecution is not carried out against the crime referred to in paragraph (1) except for complaints from husbands or wives for people who are bound by marriage. Parents or children for people who are not bound by marriage. The provisions referred to in Article 25, Article 26, and Article 30 do not apply to complaints as referred to in paragraph (2). Complaints can be withdrawn as long as the examination at the trial court has not yet started."

The legal view in Malaysia regarding the behavior of *samen leven* or cohabitation is primarily regulated by sharia law provisions that apply to Muslims in Malaysia. According to sharia law in Malaysia, the act of *samen leven* is considered adultery or adultery, which is forbidden in Islamic teachings. Article 23(1) of the Deed of Sharia Criminal Procedure (Federal Areas) 1997 stipulates that anyone who commits an act of adultery can be sentenced to a maximum of 3 years in prison, a fine, or caning. Apart from that, in Malaysia, a civil law regulates marriage and husband-wife relations, namely the Marriage Deed 1961. This law stipulates that marriage must be carried out legally and legally. Therefore, the *samen leven* is considered a violation of the marriage law in force in Malaysia. Nonetheless, there is also a more liberal legal view that considers that *samen leven* actions are individual rights and privacy that must be respected and protected. However, this view has not been fully acknowledged by the Malaysian public and is still being debated among academics and legal practitioners. Overall, the legal view in Malaysia of *samen leven's* actions are still considered an unlawful act and can be charged with criminal sanctions or penalties in force in Malaysia.

Sanctions to terms and Regulations of Samen Leven in Indonesia and Malaysia

The act of *samen leven* is an act that is deviant and contrary to the values and norms that apply in society. Samen leven's actions are considered one of the criminalization in social life. Samen leven cases in Indonesia have been rife, one of which was a case in 2019 at a boarding house in the Palmerah area, Jakarta. In this case, the police managed to

arrest seven people who were allegedly involved in the cohabitation, including seven unmarried couples. During the trial, the defendants were charged with Article 284 of the Criminal Code concerning adultery. The defendants admitted their actions and apologized for their actions. The judge handling this case then decided to sentence the defendants to three months in prison. In analyzing this case, we can see that cohabiting is considered a violation of Indonesian law. Article 284 of the Criminal Code states that adultery is punishable by a prison sentence of up to two years. However, in this case, the judge decided to give a lighter sentence for specific reasons.

We can also see that the legal process in Indonesia involves a confessional process in which the accused are expected to admit their actions and apologize. This recognition can influence the judge's decision and can speed up the trial process. In this case, it can be seen that the Indonesian authorities have not hesitated to take legal action against cohabitation. This shows that cohabiting is considered an act that violates the law and is not accepted in Indonesian society.

Article 284 of the Criminal Code regulates adultery and can be used as a legal basis for punishing cohabitation. In addition, Law no. 23 of 2002 concerning Child Protection also regulates the prohibition of taking actions that can harm the interests of children. Cohabitation involving children is punishable by more severe penalties under the law. In addition, at the regional level, several provinces and cities in Indonesia have also implemented specific regulations regarding cohabitation. For example, the Provincial Government of West Java through West Java Governor No. 221/Kep.200-Bappeda of 2018 concerning Control of Kebo Gatherings. This regulation regulates cohabiting activities involving children and states that such actions can damage the morals and ethics of children and can hurt their health and welfare of children. Therefore, cohabitation involving children is prohibited and punishable by administrative or criminal sanctions.

The new regulations in Indonesia regarding *samen leven*, which are listed in the new version of the Criminal Code are in the world's spotlight, the article regarding *samen leven* is one of the crucial points. Articles threatening perpetrators of *samen leven* with imprisonment reap adverse action from the international public. Anyone who lives together as

husband and wife outside of marriage is subject to imprisonment for a maximum of 6 (six) months or a maximum fine of category II, reads Article 412, paragraph 1 of the new Criminal Code. Cohabitation, as a form of expansion of decency offenses in the new Criminal Code article 485 for living together as husband and wife outside of a legal marriage, can be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of one the Explanation category of the new Criminal Code. Cohabitation as a form of expansion of decency offenses in the New Criminal Code article 485 for living together as husband and wife outside of a legal marriage can be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum number of categories.

In the elucidation of the New Criminal Code, it is stated that the provisions of this article are called cohabitation. The elucidation of Article 419 governing adultery (gathering together) states, "everyone who lives together as husband and wife outside of marriage shall be punished with imprisonment for a maximum of 6 (six) months or a fine of a maximum category II.

Then Article 419 paragraph (3) states that in paragraph (2), the provisions of Article 25, Article 26, and Article 31 do not apply. Namely regarding the act of "cohabitation," 218 is a complaint offense whose subject can be extended to complaints by husbands, wives, and other persons old or child. With the existence of sanctions for perpetrators of cohabitation, this proposes several things, namely protection for victims, criminalization not for retaliation but also to minimize the occurrence of *samen leven*, and must be based on the principle of ratio principle and the existence of social agreement (public support). In the new Penal Code, decency offenses are regulated in Chapter XV (Article 417 to Article 420), and its scope is expanded by changing several articles, the type of punishment, and the length of the sentence and the addition of several articles where there is no regulation in the Criminal Code.

Cohabitation as a form of expansion of decency offenses in the New Criminal Code article 485 for living together as husband and wife outside of a legal marriage, can be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum number of categories. In the elucidation of the New Criminal Code, it is stated that the provisions of this article are called cohabitation. The elucidation of Article 419

governing adultery (gathering together) states, "everyone who lives together as husband and wife outside of marriage shall be punished with imprisonment for a maximum of 6 (six) months or a fine of a maximum category II. Then Article 419 paragraph (3) states that in paragraph (2), the provisions of Article 25, Article 26, and Article 31 do not apply. Namely, regarding the act of "cohabitation," 218 is a complaint offense whose subject can be extended to complaints by husbands, wives, and other persons old or child. With the existence of sanctions for perpetrators of cohabitation, this proposes several things, namely protection for victims, criminalization not for retaliation but also to minimize the occurrence of *samen leven*, and must be based on the principle of ratio principle and the existence of social agreement (public support). In the new Penal Code, criminal offenses are regulated in Chapter XV (Article 417 to Article 420), and its scope is expanded by changing several articles, the type of punishment, and the length of the sentence and the addition of several articles where there is no regulation in the Criminal Code.

As previously explained, cohabitation or *samen leven* in Indonesia is considered an act that violates the law. Therefore, if there is a case of cohabitation, the case will be processed in criminal law. However, concerning the judge's decision specifically regarding the cohabitation case in Indonesia, this is highly dependent on the facts and evidence available in the case. Each case will be processed and tried independently and no judge's decision can be predicted in advance.

However, based on the legal perspective in Indonesia, cohabitation is considered a violation of moral and religious norms, as well as the laws in force in Indonesia. Therefore, if a case of cohabitation is being tried in Indonesia, the perpetrator may be subject to severe criminal penalties, depending on the guilt and damage caused by the act. However, remember that every individual has the right to defend himself and appeal against a judge's decision that is considered unfair or does not meet the requirements of applicable law. Therefore, the judge's decision regarding the cohabitation case may vary depending on the circumstances and the evidence available in the case.

The Challenges and Solutions to the Samen Leven (Cohabitation) Problem in Indonesia

Cohabitation is a behavior in which a man and a woman who are not legally married have sexual relations and live together in the same house. Cohabitation is viewed differently in different legal systems. In the legal system that applies in Indonesia, cohabitation is only regulated in the Indonesian Criminal Code; previously, cohabitation was not considered a crime under positive Indonesian law. The criminalization of cohabitation is deemed necessary in the Indonesian legal system to preserve religious values, decency, family honor, and women's rights. Cohabitation outside of marriage is also illegal in Malaysia because the country has a dual legal system that governs every Muslim in Malaysia under Islamic law except for the federal territory of Malaysia.

As a matter of fact, unmarried couples do not acquire the same legal protections and rights as married couples. Unmarried couples may also face social stigma and discrimination in Malaysia because Islamic religious law is widely followed in these countries. The similarity between laws in Indonesia and Malaysia's views on religion and culture against cohabitation is the law that lives in society (living law). Both Indonesia and Malaysia have a variety of unwritten laws that are similar. Even though Malaysia and Indonesia have very different legal systems, Malaysia adheres to the common law legal system, and Indonesia adheres to the continental European legal system (civil law). Both Indonesia and Malaysia have Malay families, and the social norms apply

In finding a solution, we must first know what makes cohabitation seen as an aberration in Indonesia. Indonesian society is thick with culture and religion, so people highly uphold the value of marriage. Even cohabitation actors in traditional Indonesian society will be subject to very strict customary criminal laws and religious criminal laws. The danger is that residents who are confused about the existence of cohabitation actors usually raid and take the law into their own hands without reporting it to the governing authorities or traditional leaders in the area.¹⁵ So that the

¹⁵ A dan Vincentius Patria Setyawan Danardana, "Kriminalisasi Fenomena Penyimpangan Sosial Kumpul Kebo (Samen Leven) Dalam Prepektif Hukum Pidana," *JUSTITIA ET PAX Jurnal Hukum* 38, no. 1 (2022): 209–38.

criminalization of acts of cohabitation is also a measure to protect perpetrators by reducing vigilante acts from the community because there is already a governing law.

Semen leven (cohabitation) often occurs in urban areas where society has changed a lot and includes Gesellschaft social groups where people are more concerned with individual needs and often do not have the same understanding of morals, values, and rules.¹⁶ The causes and reasons for *samen leven* are due to many things, from external or internal factors. Internal factors are factors that come from the perpetrators themselves, such as a lack of morals and religious values. Mental unpreparedness for marriage, intense sexual desire but not willing to commit to marriage. Then there are also external factors that come from external influences such as influences from the social community, pressure from friends or partners, economic factors, and so on.

This cohabitation phenomenon is regulated in Indonesia through the Criminal Code Bill because it is deemed necessary after receiving input and suggestions that this act should be made a crime and punished with criminal punishment. The reason is that cohabitation is a broader act than adultery and obscenity.¹⁷ So far, there are no regulations in Indonesia that regulate cohabitation, specifically how unmarried couples have sex and live together outside of marriage with no marriage ties at all with other people. In article 284 of the Criminal Code, adultery is defined differently from adultery, as understood by society. In the Indonesian Criminal Code, adultery can be punished in Article 284 if an adulteress has one or both ties of marriage, there must also be a complaint from a legal marriage partner, and if it is not reported, it cannot be processed. Meanwhile, adultery, which is defined by the community, is sex that is carried out outside of marriage, so that for couples who are not married and have intercourse, there are no favorable legal rules that limit it, even though this

¹⁶ Danardana.

¹⁷ Rizky amelia Fathia, "Tinjauan Yuridis Terhadap Perilaku Kumpul Kebo (Samen Leven) Menurut RUU KUHP," *Equivalent: Jurnal Ilmiah Sosial Teknik* 3, no. 2 (2021): 128–38.

is a violation of social and religious norms.¹⁸ Then the formulation in the Criminal Code Draft Bill adopts the definition of adultery that exists in society so that adultery, which previously could not be criminalized, has been criminalized and now can be processed criminally in the legal courts.

Different religions have different perspectives on cohabitation. Pre-marital sex and cohabitation, for example, are considered sinful and contrary to Islamic teachings. Sexual relations, according to the Qur'an, should take place only in the context of marriage (Qur'an 24:32). Pre-marital sex and cohabitation are also considered morally wrong and contrary to Christian values in Christianity, with the Bible advocating abstinence before marriage (1 Thessalonians 4:3-5).¹⁹ In Hinduism, marriage is highly upheld as a sacred bond and strictly prohibits the blindness of cohabitation; cohabitation is considered an act that deviates from the right action and is not an ideal condition.

However, despite religious teachings, cohabitation is becoming increasingly common in many Muslim and Christian societies.²⁰ Cohabitation rates are rising in Muslim-majority countries such as Indonesia, Malaysia, Turkey, Morocco, and Egypt, with more young people choosing to live together before marriage.²¹ This trend may be linked to changing social norms and attitudes towards relationships and increasing levels of globalization and economic independence among young people.

¹⁸ Aisyah Cinta and Putri Wibawa, "Keselarasan Hukum Islam Dengan Hukum Nasional Dalam Perspektif Penyelesaian Tindak Pidana Zina Di Indonesia," *KHULUQIYYA: Kajian Hukum Dan Studi Islam* 5, no. 1 (2023): 92–107.

¹⁹ Shuaib, "Number 1 Special Issue: Islamic Law and Islamic Legal Professionals in Southeast Asia 1-1-2012 Part of the Comparative and Foreign Law Commons Recommended Citation Recommended Citation Farid S. Shuaib, The Islamic Legal System in Malaysia, 21 Pac. Rim L &."

²⁰ Wendy D Manning, "Young Adulthood Relationships in an Era of Uncertainty: A Case for Cohabitation," *Demography* 57, no. 3 (2020): 799–819, <https://doi.org/10.1007/s13524-020-00881-9>.

²¹ Irena Kogan and Markus Weißmann, "Religion and Sexuality: Between- and within-Individual Differences in Attitudes to Pre-Marital Cohabitation among Adolescents in Four European Countries," *Journal of Ethnic and Migration Studies* 46, no. 17 (2020): 3630–54, <https://doi.org/10.1080/1369183X.2019.1620416>.

The unmarried living together or cohabitation phenomenon is still considered taboo in many parts of Indonesia and Malaysia, as both countries are predominantly Muslim and have strong cultural and religious values prioritizing marriage and family. However, cohabitation has become increasingly common in urban areas as more young people pursue higher education and career opportunities, leading to changes in social norms and attitudes toward relationships. However, the wider community was outraged because it was an act that violated the religion and culture that had existed in Indonesia for a long time. As a result, cohabitation actors often live together in secret, and if they are to be found out living together by the society without any marriage document or any proof they are married, the community often retaliates with raids and takes the law into their own hands.²²

As we already know, Indonesia is a country that adheres to a continental European legal system (Civil law), but in practice, it is mixed by integrating different legal systems, namely customary law, Islamic law, and western law.²³ Aceh, a province with exceptional autonomy, has a real example of mixed and multicultural law, with almost the entire population being Muslim, influencing the law in Aceh.²⁴ However, the legal system in Indonesia is heavily influenced by the legal system in the Netherlands, and the United Kingdom also influences the legal system in Malaysia. In Indonesia and Malaysia, cohabitation is not legally recognized, and couples who live together do not have the same legal rights and protections as married couples. Because both Indonesia and Malaysia have strong religious and cultural influences that prohibit cohabitation, cohabitation is still stigmatized in many parts of Indonesia and Malaysia, with many people viewing it as immoral and contrary to traditional values.

²² I Gede Hady Sunantara, "Arah Pembaharuan Hukum Pidana Indonesia Dan Kontribusi Hukum Pidana Adat Di Tengah Pluralisme Hukum Indonesia," *Kertha Semaya: Journal Ilmu Hukum* 8, no. 12 (2020): 1972–83, <https://doi.org/10.24843/ks.2020.v08.i12.p14>.

²³ Cinta and Wibawa, "Keselarasan Hukum Islam Dengan Hukum Nasional Dalam Perspektif Penyelesaian Tindak Pidana Zina Di Indonesia."

²⁴ Ridha Maulana, "Sistem Hukum Di Aceh Dan Kaitannya Dengan Pluralisme Hukum," *Jurnal Geuthèë: Penelitian Multidisiplin* 2, no. 3 (2019): 323, <https://doi.org/10.52626/jg.v2i3.66>.

Malaysia and Indonesia are dominated by the Muslim population, around 60.4% of Malaysia's population is Muslim and around 87.18% of Indonesia's population is Muslim.²⁵ Therefore, cohabitation is negatively stigmatized in society because, in terms of the values that grow in society, the act of cohabitation is wrong and must be straightened out. Values that exist in society affect social stigma and determinants of moral or immoral action in legal development, values are also a determinant in an action that may or may not be carried out, the values that develop and grow over time will change and shape into positive law that applies well written or unwritten as living law in society (living law). Written law is the law that applies in a country or region and is formed systematically by following rules and included in the form of legislation, while unwritten law is the law that is still valid in society without official ratification or writing. It has just been recognized and obeyed as written law.²⁶

Culture in Malaysia and Indonesia is rich with traditional religious and cultural beliefs that view cohabitation as sinful or inappropriate. Therefore, in dealing with sinful or inappropriate acts such as cohabitation, dialogue and problem-solving are needed to find a middle ground or solution to cohabitation problems in society. This dialogue must involve all parties from the government as formulators and legislators, and both are pro and con against the criminalization of cohabitation. So that the dissenting parties, which usually consist of young people who have liberal views, will understand the intent and purpose of the application of the criminal article on cohabitation offenders in the Indonesian Criminal Code, precisely article 411 and article 412 and other related articles. Cohabitation creates social problems because it is considered an act of crime and decency in Indonesian society.²⁷ If there is unjust treatment according to religious law and customary law alone, then

²⁵ Endah Tri Sejatiningrum, "Sistem Pembinaan Profesionalisme Guru Agama Islam Di Indonesia Dan Malaysia," *Al-Idarah* 9, no. 2 (2019): 290–301.

²⁶ Fitra Mulyawan, Kiki Yulinda, and Dora Tiara, "Politik Hukum Dalam Bidang Hukum Keluarga Islam Di Indonesia," *Ensiklopedia Sosial Review* 3, no. 2 (2021): 111–22, <https://doi.org/10.33559/esr.v3i2.764>.

²⁷ Pratiwi and Purwani, "Pengaturan Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Kumpul Kebo Dalam Rancangan Kitab Undang-Undang Hukum Pidana."

there is nothing wrong with withdrawing this matter into positive Indonesian law.

To decrease the number of young people cohabitation, action must also be taken in approaching various sides and aspects of life, such as the aspect of religion. A religious leader and community may emphasize the importance of marriage and encourage young people to wait until they are married before living together. This may involve providing education and support on the benefits of marriage and helping young people develop the skills needed for a successful marriage, such as effective communication and conflict resolution. Religious leaders must also encourage young people to develop strong relationships based on mutual respect, trust, and shared values. This could include counseling on navigating romantic relationships and avoiding behaviors that can lead to unhealthy relationships, such as substance abuse and domestic violence.

Cohabitation violates decency norms, and many European countries In the United States, Canada, and Austria, cohabitation is not regulated by specific laws that restrict or regulate the practice. Individuals are generally free to live together without being legally married or entering a formal domestic partnership allow this to happen because it enters the private sphere.²⁸ In order to prevent European culture from being adopted by Indonesian people because it is not part of the national character, there must be strengthening in terms of character education and the applicable formal laws. Strengthening the law or applying criminal sanctions through the Nusantara Criminal Code against cohabitation actors will significantly help reduce the level of semen liven (cohabitation) in Indonesia. Because if you only rely on decency norms, you will not be able to reduce or overcome cohabitation behavior (semen liven).

Various factors can easily shift moral values, but positive law is difficult to replace because the levels will be different, and more importantly, positive law is superior than just living law.²⁹ However, the

²⁸ Lasarus Jehamat and Kristina Jenia, "Minimalisasi Fenomena Kumpul Kebo Mahasiswa: Studi Pada Masyarakat RT/RW 10/003, Desa Penfui Timur, Kabupaten Kupang," *Jurnal Pengabdian Masyarakat* 2, no. 2 (2019): 89–178.

²⁹ Zulfiqar Bhisma Putra Rozi, "Perkembangan Delik Zina Dalam Yurisprudensi Hukum Pidana," *Veritas et Justitia* 5, no. 2 (2019): 286–301, <https://doi.org/10.25123/vej.3612>.

application and enforcement of laws against cohabitation behavior will not be sufficient if there is no supervision function from both the government itself and also the community who take part in supervising.³⁰ Monitoring here is intended as a preventive step in the occurrence of cohabitation, be it from the minor RT institution always to check and supervise its citizens. Various parties must also be involved, and various aspects must also be improved, especially in primary education, so that religious values and customs can be taught strongly as early as possible. For those from groups that reject cohabitation, criminal sanctions regulations must be explained through direct socialization so that they can accept and have an increased respect for prevailing religious and cultural values.

Conclusion

The views of social, religious, and legal values on *samen leven* behavior in Indonesia and Malaysia are strongly influenced by cultural and religious norms. Both societies consider cohabitation as a violation of social and moral values, as well as religious teachings. Cohabitation is seen as taboo, associated with free sex behavior, and believed to damage social relations. From a religious perspective, Islam and other major religions in both countries view cohabitation as forbidden and a violation of religious teachings. The act is seen as adultery or adultery, which is condemned by religious doctrine. Religious values play a significant role in shaping the negative attitudes towards cohabitation in both Indonesia and Malaysia. Legally, cohabitation is considered unlawful in both countries. In Indonesia, it is regulated under the Criminal Code and can lead to criminal sanctions. The legal view in Malaysia is primarily influenced by sharia law for Muslims, with punishments for cohabitation including imprisonment, fines, or caning. However, there are also more liberal legal views that emphasize individual rights and privacy, although they have not been widely accepted in society. The challenges surrounding cohabitation in Indonesia and Malaysia stem from societal, cultural, and religious

³⁰ N Sari, "Peran Masyarakat Dalam Mencegah Perilaku Menyimpang Remaja (Perspektif Pendidikan Islam) Di Nagari Guguak Malalo Kecamatan Batipuah Selatan Kabupaten Tanah Datar," *At-Tarbiyah: Jurnal Pendidikan Islam* 10, no. 2 (2019): 57–70, <https://doi.org/10.15548/attarbiyah.v10i2.1122>.

norms. The solutions to this problem require dialogue and problem-solving involving various stakeholders, including the government, religious leaders, and communities. Strengthening character education, promoting the benefits of marriage, and providing support for young people to develop healthy relationships can help address the issue. Also, the enforcement of laws and regulations, along with community supervision, can contribute to reducing cohabitation rates. Although, cohabitation remains a controversial and stigmatized behavior in Indonesia and Malaysia due to its violation of social, religious, and legal values. Addressing the challenges associated with cohabitation requires a comprehensive approach involving education, legal measures, and societal dialogue to promote a better understanding of the issue and to find common ground that respects cultural, religious, and legal perspectives.

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DECLARATION OF CONFLICTING INTERESTS

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

FUNDING INFORMATION

None

ACKNOWLEDGMENT

None

HISTORY OF ARTICLE

Submitted : December 3, 2022

Revised : March 12, 2022; June 19, 2022

Accepted : July 20, 2023

Published : July 31, 2023