

The Penal Policies Regarding The Implementation Of The Article Of Adultery In The Penal Code Number 1 Of 2023

Kebijakan Pidana Tentang Penerapan Pasal Perzinahan Dalam KUHP Nomor 1 Tahun 2023

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Abstract

Penal Code Number. 1 of 2023 revitalizes the adultery article which was previously removed in the old Penal Code. This sparked heated debate about the legal politics behind the criminalization of adultery and its implications for human rights, public morality, and the effectiveness of law enforcement. The criminalization of adultery is based on arguments of morality, family protection, and prevention of other criminal acts. Despite noble intentions, the criminalization of adultery raises concerns about potential invasions of privacy, gender discrimination, and abuse of power. It is important to seek a balance between fair and civilized law enforcement with respect for human rights. Narrow and proportional interpretation, a restorative justice approach, and prevention education are key. This research was carried out by identifying two problems, namely (1) what is the political basis of criminal law for the crime of adultery in the Penal Code Number 1 of 2023, (2) how is the application of the adultery article in the Penal Code Number 1 of 2023. The



research method used is juridical research- normative because the subject of the study that will be researched uses library materials as basic material for research by conducting an investigation into the regulations related to the problem being discussed. The results of the research state that the penal policies in the adultery article provide substantive justice based on Pancasila. The implementation of criminalization of adultery is one of the efforts to protect human rights for the family/home through effective and dignified solutions.

Keywords Adultery, Human rights, Law enforcement, Penal Code No. 1 of 2023, Penal Policies.

KUHP Nomor 1 Tahun 2023 merevitalisasi pasal perzinahan yang sebelumnya dihapus dalam KUHP lama. Hal ini memicu perdebatan sengit mengenai politik hukum di balik kriminalisasi perzinahan dan implikasinya terhadap hak asasi manusia, moralitas masyarakat, dan efektivitas penegakan hukum. Kriminalisasi perzinahan didasarkan pada dalil kesusilaan, perlindungan keluarga, dan pencegahan tindak pidana lainnya. Meski memiliki niat yang mulia, kriminalisasi perzinahan menimbulkan kekhawatiran akan potensi pelanggaran privasi, diskriminasi gender, dan penyalahgunaan kekuasaan. Penting untuk mencari keseimbangan antara penegakan hukum yang adil dan beradab dengan penghormatan terhadap hak asasi manusia. Interpretasi yang sempit dan proporsional, pendekatan keadilan restoratif, dan pendidikan pencegahan adalah kuncinya. Penelitian ini dilakukan dengan mengidentifikasi dua permasalahan yaitu (1) apa yang menjadi dasar politik hukum pidana tindak pidana perzinahan dalam KUHP Nomor 1 Tahun 2023, (2) bagaimana penerapan pasal perzinahan dalam KUHP. Kode Nomor 1 Tahun 2023. Metode penelitian yang digunakan adalah penelitian yuridis-normatif karena subjek penelitian yang akan diteliti menggunakan bahan pustaka sebagai bahan dasar penelitian dengan melakukan penyelidikan terhadap peraturan-peraturan yang berkaitan dengan masalah yang dibicarakan. Hasil penelitian menyatakan bahwa kebijakan penal dalam pasal perzinahan memberikan keadilan substantif berdasarkan Pancasila. Penerapan kriminalisasi perzinahan merupakan salah satu upaya perlindungan HAM keluarga/rumah tangga melalui solusi yang efektif dan bermartabat.

Kata Kunci Zina, Hak asasi Manusia, Penegakan hukum, KUHP Nomor 1 Tahun 2023, Kebijakan Penalti.

Introduction

Penal Code No. 1 of 2023 or known as the New Penal Code or National Penal Code, marks a new chapter in the regulation of adultery in Indonesia.

Articles 411-413 of the National Penal Code again criminalize adultery, after previously being removed in the Colonial Penal Code or Old Penal Code. This sparked public debate and discussion about the legal politics behind the criminalization of adultery and its implications for human rights and societal morality (Alfatdi, Regita Cahyani, and Khusnannisa 2022).

The criminalization of adultery is based on several main arguments, namely protecting morals and religious values. Adultery is considered an act that violates moral norms and religious values held by the majority of Indonesian society (Muzakir 2023), Maintaining Family Integrity, It is feared that adultery can destroy household harmony and trigger divorce, thus having a negative impact on children and family stability, Preventing Other Crimes, Adultery is considered an entry point for other crimes, such as abortion, murder and domestic violence (Nur Khumaeroh 2023).

On the other hand, the criminalization of adultery has also drawn criticism and concerns, especially in relation to potential violations of human rights, namely Violations of Privacy. It is feared that the criminalization of adultery could become a tool to intervene in individuals' private spheres and violate their right to privacy. Discrimination against women. Concerns arise that criminalization Adultery can strengthen stigma and discrimination against women, especially victims of infidelity. Apart from that, the potential for abuse of authority by law enforcement officers in following up on adultery cases is a serious concern (Putri, Pramesti, and Ayu Pawestri 2022).

Criminalization of adultery in Penal Code no. 1 of 2023 is a controversial step that has sparked various debates and concerns. Because of this, the author wants to conduct a study to discuss the Criminal Politics of Adultery in the New Penal Code with identified two problems, namely (1) what is the political basis of criminal law for the crime of adultery in Penal Code Number 1 of 2023? (2) How is the adultery article in Penal Code No. 1 of 2023 implemented?

Methods

The author in this research used juridical-normative legal research methods. According to Peter Mahmud Marzuki, all research related to law (legal research) is normative, if the type of research must be stated in a writing, it is sufficient to state that this research is legal research. Such a statement makes it clear that the research is normative, it's just that the approach and materials used must be stated (Peter Mahmud Marzuki 2014). Meanwhile, according to Muhaimin, normative legal research is legal research that

examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior.

This writing uses a juridical-normative legal research method because the subject of the study that will be researched uses library materials as basic material for research by conducting an investigation into the regulations related to the issues discussed, namely regarding the penal policies in the crime of adultery in the Penal Code Number 1 of 2023. .

Results & Discussion

A. The Penal Policies On The Crime Of Adultery In KUHP Number 1 Of 2023

The penal policies is a field of study that discusses the direction and objectives of the application of criminal law in a country (Fillah 2023). This field is closely related to various aspects, such as the social, political and economic values held by society, as well as the goals of law enforcement to be achieved.

A. Penal Policies

Penal policies has long and complex historical roots. In Indonesia, the penal policies can be traced back to the Dutch colonial era, where criminal law was used as a tool to control and suppress indigenous people. As time progressed and Indonesia became independent, the penal policies experienced various changes and adjustments. This is driven by various factors, such as shifts in social values, changes in the political system, and demands for fairer and more civilized law enforcement. In general, penal policies has several main objectives, namely (Ismayawati 2021):

1. Protecting the public from criminal acts. The main aim of penal policies is to protect society from the dangers and losses caused by criminal acts.
2. Uphold justice. Penal policies aim to uphold justice for victims of criminal acts and provide appropriate punishment for perpetrators.
3. Prevent criminal acts from occurring. Penal policies also aim to prevent criminal acts from occurring in the future through various efforts, such as education, guidance and strict law enforcement.
4. Restore the situation. It is hoped that the penal policies can restore conditions disturbed by criminal acts and help victims return to normal lives.

The penal policies must be based on several fundamental principles, namely (Irawatu 2019):

1. Legality: Every act that can be punished must have a clear and firm legal basis.
2. Non-retroactive, criminal law cannot be applied retroactively, meaning that criminal law cannot be applied to actions committed before the law was enforced.
3. Equality before the law: Everyone is equal before the law and there must be no discrimination in law enforcement.
4. Proportionality: The punishment imposed must be commensurate with the seriousness of the crime committed.

1. Implementation of Penal Policies

Penal policies are implemented through various means, first, making and revising laws (Hasanal Mulkan 2021). Criminal law is the main instrument for realizing criminal legal politics. Therefore, it is necessary to create and revise criminal laws periodically to ensure that the laws are in line with current developments and the needs of society.

Second, law enforcement (Fadlail 2023). Firm and fair law enforcement is the key to realizing penal policies. Law enforcement officers must carry out their duties professionally and accountably, and uphold human rights.

Third, legal education and socialization (August 2021). The public needs to be educated and socialized about criminal law, so that they understand their rights and obligations and can comply with the law.

Fourth, coaching and rehabilitation (Adillah et al. 2024). Perpetrators of criminal acts need to be trained and rehabilitated so that they can return to being productive members of society and not repeat their crimes.

2. Political Challenges of Criminal Law

In its implementation, penal policies face various challenges (Supriyadi Widodo Eddyono, Alex Argo Hernowo, and Adery Ardhan Saputro 2015), among others:

1. Legal uncertainty: Legal uncertainty can occur because criminal laws are unclear and have multiple interpretations, as well as inconsistent law enforcement.
2. Injustice: Injustice in law enforcement can occur due to factors such as discrimination, corruption and lack of access to justice for certain groups of society.

3. Human rights violations: Human rights violations in criminal law enforcement still frequently occur, such as torture, arbitrary detention, and discrimination.
4. Lack of legal education and socialization. Lack of legal education and socialization can cause people to not understand their rights and obligations, and not be able to comply with the law properly.

The penal policies are a complex and dynamic field of study. Understanding the roots, objectives, principles and political implementation of criminal law is very important for building a criminal justice system that is fair, effective and civilized. By overcoming various existing challenges, it is hoped that criminal legal politics can realize the ideals of justice and protect society from the dangers and losses caused by criminal acts.

B. Crime of Adultery in Penal Code No. 1 of 2023

Penal Code Number 1 of 2023 (New Penal Code/National Penal Code) revitalizes the adultery article which was previously deleted in the Colonial Penal Code. This sparked complex public debate and discussion, related to the legal basis, effectiveness, and implications for human rights.

Article 411 of the New Penal Code regulates the crime of adultery, with the following formulation(Law No. 1 of 2023 nd):

"Any person who has sexual relations with someone who is not their husband or wife will be punished with a maximum imprisonment of 1 year or a maximum fine of category II."

Elements of the crime of adultery in the New Penal Code:

1. Action: There is sexual intercourse, namely sexual relations between a man and a woman.
2. Perpetrator: The person who commits sexual intercourse.
3. Victim: A person who is not the perpetrator's husband or wife.

Compared to the Old Penal Code or Colonial Penal Code, there are several differences in the criminal regulation of adultery, namely:

1. Old Penal Code: Only regulated adultery for married women, while men who committed adultery were not punished.
2. New Penal Code: Adultery is criminalized for everyone, both men and women, who is not husband or wife.
3. Old Penal Code: The penalty for adultery was more severe, namely imprisonment for a maximum of 2 years and 8 months.

New Penal Code: The criminal penalty for adultery is lighter, namely imprisonment for a maximum of 1 year or a fine.

The criminalization of adultery in the New Penal Code has generated various controversies and concerns, including: (1) Violation of Privacy Rights, it is feared that it could become a tool to intervene in individuals' private spheres and violate their privacy rights. (2) Discrimination against women. Concerns arise that the criminalization of adultery can strengthen stigma and discrimination against women, especially victims of infidelity (Marcheyla Sumera 2013). (3) Abuse of Authority: The potential for abuse of authority by law enforcement officers in following up on adultery cases is a serious concern.

In the midst of this debate and dilemma, it is important to find a balance between fair and civilized law enforcement and respect for human rights (Fadlail 2023). Here are some important points to consider:

1. Narrow and Proportional Interpretation: Law enforcement of the adultery article must be carried out with a narrow and proportional interpretation, focusing on the main perpetrator and not ensnaring the victim or innocent party.
2. Restorative Justice Approach (Raehul Janah, Hidayat, and Amin 2023), A restorative justice approach that prioritizes mediation and restoration of relationships between conflicting parties can be an alternative in resolving adultery cases.
3. Strengthening Education and Prevention. Efforts to educate and prevent adultery through moral, religious and sexual education need to be intensified to build a society that is harmonious and has noble character.

B. Application Of The Article Of Adultery In The KUHP No 1 Of 2023

A. Linear Adultery Crime with the State Ideology of Pancasila

Pancasila, as the Indonesian state ideology, upholds the values of Divinity, Humanity, Unity, Democracy and Social Justice (Niken 2021). Questions arise about whether the criminalization of adultery is consistent with these values:

1. Divinity, For some parties, adultery is considered to violate religious and moral values, so it needs to be punished to maintain social order and community morality.
2. Humanity, on the other hand, concerns arise that the criminalization of adultery could violate individual rights to privacy and freedom, and has the potential to lead to discrimination and stigmatization.
3. Unity: It is feared that the criminalization of adultery could exacerbate divisions and conflicts in society, especially between groups with different views on morality and sexuality.
4. Popularity: It is important to consider the voices and aspirations of the people in determining legal policies relating to sensitive issues such as adultery.
5. Social Justice: The criminalization of adultery needs to be studied to see whether it can achieve social justice for all parties, including victims, perpetrators and society as a whole.

In the midst of this debate, it is important to find a balance between fair and civilized law enforcement with respect for human rights and Pancasila values. (Teguh Kurniawan Z, Adelina Mariani Sihombing, and Aurelia Berliane 2023). Here are some important points to consider:

1. Narrow and Proportional Interpretation: Law enforcement of the adultery article must be carried out with a narrow and proportional interpretation, focusing on the main perpetrator and not ensnaring the victim or innocent party.
2. Restorative Justice Approach: A restorative justice approach that prioritizes mediation and restoration of relationships between conflicting parties can be an alternative in resolving adultery cases.
3. Strengthening Education and Prevention. Efforts to educate and prevent adultery through moral, religious and sexual education need to be intensified to build a society that is harmonious and has noble character.
4. Dialogue and Consensus: Constructive and inclusive dialogue with various parties, including religious leaders, academics, activists and civil society, is needed to reach consensus on the best solution in dealing with the issue of adultery.

B. Steps towards Fair and Effective Implementation

Efforts to ensure fair and effective implementation of the adultery article include:

1. Law enforcers must apply the adultery article with a narrow and proportional interpretation, focusing on the main perpetrator and not ensnaring victims or innocent parties.
2. A restorative justice approach that prioritizes mediation and restoration of relationships between conflicting parties can be an alternative in resolving adultery cases.
3. Comprehensive education and outreach regarding the article on adultery needs to be carried out to the wider community to increase understanding and awareness of the law.
4. Clear and measurable guidelines and SOPs need to be developed to guide law enforcement officials in following up on adultery cases with consistent and accountable standards.
5. Monitoring and evaluation of the implementation of the adultery article needs to be carried out periodically to identify potential problems and make policy improvements.

Application of the adultery article in Penal Code no. 1 of 2023 is still in its early stages and full of challenges. Collective efforts are needed from various parties, including government, law enforcement officials, academics, activists and civil society, to ensure implementation that is fair, proportional and respects human rights. It is important to continue conducting studies, discussions and evaluations to find the best solution in dealing with the issue of adultery in Indonesia.

In line with that, the existence of the Adultery Article in the new Penal Code is a transformation of the implementation of Pancasila in realizing regulations in Indonesia that are in accordance with the values of the Indonesian nation. The Pancasila values that were transformed into the draft new Penal Code will ultimately be presented/enacted again, intended to become guidelines or signs in social interactions in society. This is also intended to realize Pancasila values in society (Primary 2022).

Conclusion

The penal policies is a complex and dynamic field of study. Understanding the roots, objectives, principles and political implementation of criminal law is very important for building a criminal justice system that is fair, effective and civilized. By overcoming various existing challenges, it is hoped

that criminal legal politics can realize the ideals of justice and protect society from the dangers and losses caused by criminal acts. The criminalization of adultery is a complex issue that requires in-depth study and constructive discussion to produce an effective and dignified solution. Application of the adultery article in Penal Code no. 1 of 2023 is still in its early stages and full of challenges. The penal policies in the article on adultery creates substantive justice based on Pancasila. The implementation of criminalization of adultery is one of the efforts to protect human rights for families/homes through effective and dignified solutions, but in its implementation, it is still collective efforts are needed from various parties, including government, law enforcement officials, academics, activists and civil society, to ensure implementation that is fair, proportional and respects human rights.

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