

# Legal Analysis of Cohabitation and Adultery Delict in Law No. 1 of 2023 On the Criminal Code

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## Abstract

This study examines the criminalization of adultery and cohabitation in Law No. 1 of 2023 on the Criminal Code (KUHP), focusing on the effectiveness of the absolute nature of the delict under Articles 411 and 412. The main problem identified is the restriction of the subject of the complaint to only include the immediate family, thus creating a legal impasse in accommodating living law, as well as the communal community's unrest over violations of decency in their neighborhood. The purpose of this study is to formulate an ideal formulation of more adaptive law enforcement through normative legal research methods with a legislative and conceptual approach. The results of this study indicate that restricting the right to complain risks triggering vigilante justice (*eigenrichting*), thus requiring a reorientation of the paradigm through the reconstruction of the nature of the delict into a relative complaint delict. In conclusion, this study offers an ideal formulation in the form of expanding the legitimacy of complainants to include four main pillars, namely husband or wife, parents, children, and traditional leaders or community leaders. This mechanism for making



complaints has included traditional authority as a way of moderating the role of social filter in protecting individual privacy and family integrity, yet achieving a balance with the need to maintain socio-cultural peace through local culture and ethics of the Indonesian nation as well as to create a situation where complaint mechanisms are used only as a last resort (the principle of *ultimum remedium*).

### **KEYWORDS**

Adultery, Cohabitation, National Criminal Code, Relative Delict, Traditional Leaders.

## **Introduction**

Law No. 1 of 2023, which is the Criminal Code (KUHP), will be a significant milestone in Indonesia's national criminal law. The new law reflects the government's desire to improve and reform laws that were created during the Colonial Era. With this change in law, indecent acts, especially adultery and cohabitation, are now defined much more explicitly and clearly than they were in the past, under Articles 411 and 412. This policy reflects the state's progressive steps in responding to various social phenomena developing within society, while also filling legal gaps that were not previously accommodated in detail in the previous criminal law system.

Cohabitation, which is simply defined as living together as husband and wife without a legally valid marriage, is now categorized as a criminal offense that is clearly regulated in Article 412 of the Criminal Code.<sup>1</sup> This article threatens perpetrators with a maximum prison sentence of six months or a category II fine for anyone who actually lives together as husband and wife without being officially married. Meanwhile, the regulation regarding the delict of adultery in Article 411 of the Criminal Code have been expanded in meaning. In the latest Criminal Code, the offense of

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<sup>1</sup> Ministry of Law and Human Rights: New Criminal Code Firmly Regulates Cohabitation and Adultery," *Hukumonline*, accessed September 20, 2025, <https://www.hukumonline.com/berita/a/kemenkumham--kuhp-baru-atur-tegas-kohabitasi-perzinahan-lt66a8ec92c04b0/>

adultery is no longer limited to people who are bound in an official marriage, but applies more broadly, whereby anyone who has sexual intercourse with someone who is not their husband or wife can be subject to criminal penalties, even if they are not officially married.<sup>2</sup>

This regulation has sparked controversy regarding its legitimacy and relevance in the context of modern criminal law reform.<sup>3</sup> In this case, the criminalization of cohabitation and adultery is questionable because it has the potential to violate personal freedom and privacy, as well as cause discrimination and social stigma.<sup>4</sup> The government of Indonesia recognises that this regulation is controversial as it is challenging to generate norms that are reflective of the multitude of moral values found in a pluralistic Indonesian society.

Not only have social behaviours changed greatly due to advances in communication technologies and the globalisation of culture, but also more young people will cohabit or have extra-marital relations (where such behaviour was once considered taboo).<sup>5</sup> There are some parties who would like to see such behaviours punished, as they do not conform with the values of their culture or religion. The laws governing these issues must allow the courts to find a balance between upholding traditional culture and respecting individual freedom, so that enforcement will not result in any type of injustice or larger negative effect on society.

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<sup>2</sup> Looking at the Regulations on Adultery, Cohabitation, and Rape in the New Criminal Code," *Hukumonline*, accessed September 20, 2025, <https://www.hukumonline.com/berita/a/melihat-pengaturan-perzinaan--kohabitasi--dan-perkosaan-dalam-kuhp-baru-lt647fe9d311227/?page=1>

<sup>3</sup> Frinza Akitha and Patricia Rinwigati, "Criminalization of Cohabitation in Article 412 of Law Number 1 of 2023 concerning the Criminal Code as an Effort to Protect the Human Rights of Perpetrators from Vigilante Actions (Eigenrechting)," *Khatulistiwa: Jurnal Pendidikan dan Sosial Humaniora* 5, no. 2 (2025): 206–220, <https://doi.org/10.55606/khatulistiwa.v5i2.5837>.

<sup>4</sup> Frinza Akitha and Patricia Rinwigati, "Criminalization of Cohabitation in Article 412 of Law Number 1 of 2023 concerning the Criminal Code as an Effort to Protect the Human Rights of Perpetrators from Vigilante Actions (Eigenrechting)," *Khatulistiwa: Jurnal Pendidikan dan Sosial Humaniora* 5, no. 2 (2025): 206–220, <https://doi.org/10.55606/khatulistiwa.v5i2.5837>.

<sup>5</sup> Yohana Belinda, "As Indonesia Plans to Criminalize Cohabitation, Cohabiting Partners Share Their Stories," *The Jakarta Post*, January 13 2023, <https://www.thejakartapost.com/paper/2023/01/13/as-indonesia-plans-to-criminalize-cohabitation-cohabiting-partners-share-their-stories.html>

In a similar manner as the previous sentence, it is a government agency's role to oversee social order and moral conduct through the use of laws within society; consequently, one of the greatest obstacles faced by states and is establishing regulations that will accomplish the function of maintaining social order while giving consideration to individual liberty and human rights. As more varied social norms and moral values emerge in Indonesia and continue to change, it is imperative for government agencies to develop legal policies that are sufficiently flexible and inclusive of these changing cultural experiences.<sup>6</sup>

The criminal law reform to include national values is not only an effort for Indonesia to escape from the legal control exerted by its former colonial power, but rather it reflects Indonesia's commitment to the international community regarding the SDGs (Sustainable Development Goals), and in particular **SDG 16**, which pertains to Peace, Justice and Strong Institutions. **SDG 16** requires countries to foster peaceful, inclusive societies for sustainable development; provide access to justice for all; and establish effective, accountable and inclusive institutions at all levels. Thus, the criminalization of cohabitation/adultery under Articles 411 and 412 of the New Criminal Code is a means to establishing a more orderly and harmonious social order, which is essential for establishing sustainable peace both locally and nationally.

The concept of institutional strength within the Sustainable Development Goals (**SDGs**) **16** is not limited solely to enhancing the capabilities of official law enforcement agencies such as police forces or prosecutions but also encompasses the recognition and acknowledgement of pre-existing informal sociological authorities that exist in society. In Indonesia, the commonly accepted concept of 'law' is derived from 'living law' (living law) currently remains the dominant foundation on which the social institutions that have existed for a long time and provided invaluable

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<sup>6</sup> N. Ika Safitri and E. Wahyudi, "Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia," *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

services to the people of Indonesia have been built. Accordingly, in the formulation of the National Criminal Code, moral norms must be established such that they harmonise both with the formal law enforcement systems and practices of the nation state and with the existing social justice systems as perceived by the people of Indonesia. If legal institutions do not successfully achieve a harmonious relationship between formal and informal systems of justice, they will be viewed by the citizens of the nation as either alien entities or as entities that subjugate the social, cultural and moral values that the citizens maintain.

Accordingly, SDG 16.3 calls for member states to create and/or adopt inclusive legal frameworks and mechanisms to give effect to both the SDGs (the enforcement of the rule of law) and guarantee all individuals with equal access to justice within their country, regardless of nationality or residence. The discussion around criminal law reform, in relation to the **SDG 16** framework, can also broaden the conversation regarding the boundaries of the private/public sphere established in Articles 411 and 412, in terms of how the state creates institutions and performs their functions to help maintain a sense of dignity for individuals while building social stability. The establishment of strong legal institutions requires significant active participation of elements within society in the law enforcement process. Thus, a successful implementation of the National Criminal Code will be heavily dependent upon the state's ability to empower the local social institutions within the criminal justice system to ensure that all municipal legal actions serve to contribute to the realization of the global sustainable development agenda's vision for creating inclusive peace and justice.<sup>7</sup>

This Research focuses on cohabitation and Adultery laws based on their repercussions on Social and Legal issues. With the adoption of Law Number 1 of 2023, there is a requirement for a more in-depth analysis on how the Adoption of laws has affected criminal law reform and the

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<sup>7</sup> Ministry of National Development Planning/Bappenas, *Technical Guidelines for the Preparation of Action Plans for the Sustainable Development Goals (SDGs) Pillar of Legal and Governance Development*, (Jakarta: Bappenas, 2020), 45.

realisation of Human Rights throughout Indonesia.<sup>8</sup> To this end, this Research Project has two main objectives: To understand how Law Number 1 of 2023 has been implemented; and to recommend appropriate laws for future developments, including laws to provide equal protection to all individuals, especially the most vulnerable sectors of our society.

## Methods

This study used normative legal research methodology through the analysis of statutory laws and regulatory frameworks. The approach used includes a statute approach to analyze Law No. 1 of 2023 concerning the Criminal Code, specifically Articles 411 and 412, and compare it with Law No. 1 of 1946 Article 284. In addition, a conceptual approach is also used to understand legal principles such as the principle of legality, *ultimum remedium*, absolute complaint delict, and criminal law concepts related to indecency offenses.

The legal materials collected include primary legal materials, namely Law No. 1 of 2023, Law No. 1 of 1946 and secondary legal materials, namely journals, books, and scientific research results collected through library research. All collected legal materials were analyzed using interpretation and legal evaluation techniques to discover the true legal meaning and provide recommendations regarding the criminalization policy.

## Result and Discussion

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<sup>8</sup> Frinza Akitha and Patricia Rinwigati, "Criminalization of Cohabitation in Article 412 of Law Number 1 of 2023 concerning the Criminal Code as an Effort to Protect the Human Rights of Perpetrators from Vigilante Actions (*Eigenrechting*)," *Khatulistiwa: Journal of Education and Social Humanities* 5, no. 2 (2025): 206–220, <https://doi.org/10.55606/khatulistiwa.v5i2.5837>.

## 1. Regulations on Cohabitation and Adultery in Law No. 1 of 2023

The regulation of cohabitation and adultery offenses in Indonesia is now specifically regulated in Law No. 1 of 2023 concerning the Criminal Code, which marks a new chapter in national criminal law. Historically, criminal law in Indonesia was previously based on Law No. 1 of 1946, which was essentially a translation and modification of the *Wetboek van Strafrecht voor Nederlandsch Indie* (WvS).<sup>9</sup> In the context of morality, the old Criminal Code only recognized and regulated the offense of adultery as stipulated in Article 284, which required that the perpetrator of adultery be a married person. Consequently, the offense of adultery in the old Criminal Code only served to protect the integrity of the marriage bond, not sexual morality in general. Therefore, the old Criminal Code did not explicitly regulate cohabitation as a separate criminal offense, so that issue often fell under customary law or was resolved outside the formal criminal justice system. The absence of explicit rules was one of the main drivers of the process of codification and reform of criminal law in Indonesia.<sup>10</sup>

The transition to Law No. 1 of 2023 on the Criminal Code brings with it several new articles that are the implementation of criminalization policies, which aim to bring criminal law in line with the values that exist in society.<sup>11</sup> One of the most highlighted articles is Article 412, which explicitly regulates the criminal offense of cohabitation, defined as living together as husband and wife without a legal marriage bond. This article stipulates that anyone proven to have committed cohabitation is punishable by a maximum imprisonment of six months

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<sup>9</sup> Barda Nawawi Arief, *Anthology of Criminal Law Policy (Developments in the Drafting of the New Criminal Code)*, (Jakarta: Kencana, 2018), p. 78.

<sup>10</sup> Topo Santoso, *Principles of Criminal Law in Indonesia*, (Yogyakarta: Cahaya Atma Pustaka, 2022), p. 150.

<sup>11</sup> Yulianti, "Reinterpretation of the Principle of Legality Based on Pancasila Values in the Reform of Indonesian Criminal Law," *National Law Journal*, Vol. 10, No. 2 (2023), p. 145.

or a maximum fine of category II. In addition to regulating this new offense, the new Criminal Code also revises the offense of adultery in Article 411, which now broadens the scope of perpetrators to include people who engage in sexual intercourse without being bound by marriage. Both regulations, Articles 411 and 412, are characterized as limited absolute complaint delict. This means that even though these acts have been criminalized, law enforcement cannot be carried out without a formal complaint from a specific party who has been directly harmed, namely the husband or wife for those who are married, and the parents or children for those who are not yet married.

This new regulation is an extension of the scope of criminal law on sexual behavior and morality in Indonesian society, which was previously considered a private matter that was difficult for the state to intervene in, especially in cases of cohabitation. This change is based on the spirit of strengthening the religious and cultural values that apply in Indonesia (the principle of *ultimum remedium* and the principle of legality based on the values of Pancasila).<sup>12</sup> On the other hand, Article 411 of the new Criminal Code redefines the offense of adultery, which was previously covered by Article 284 of the old Criminal Code, by broadening its definition. While the old offense of adultery only applied to those who were married, Article 411 of the new Criminal Code now covers adultery committed by unmarried persons who engage in sexual intercourse. The expansion of the scope of these two articles, both on adultery and cohabitation, has sparked heated debate about the boundaries between the private and public spheres, as well as the potential for violations of human rights, particularly the right to privacy and the right to form a legitimate family.<sup>13</sup> While some people believe

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<sup>12</sup> Yulianti, "Reinterpretation of the Principle of Legality Based on Pancasila Values in the Reform of Indonesian Criminal Law," *National Law Journal*, Vol. 10, No. 2 (2023), p. 145.

<sup>13</sup> Muhammad Mustofa, "The Dilemma of Criminalizing Consensual Sexual Behavior: A Study of the New Criminal Code," *Constitutional Journal*, Vol. 21, No. 1 (2024), pp. 55-60.

that these two articles are an opportunity for the state to protect marriage as a valuable institution and protect society from immoral behavior, others are concerned that they will be misused to penalize personal choices, or used to intervene too much in people's lives.

In resolving the incompatibility between cultural systems and values related to privacy, morality, and public safety, there is a pressing need to reform the criminal justice system that addresses these two offenses. This tension arises from the lack of comprehensive and effective means to control and maintain the balance between individual privacy and social integrity through existing criminal justice procedures. The moral obligation of certain authorities, through very limited reporting methods, becomes an obstacle in regulating the behavior of individuals who do not comply with community standards. The failure to provide a solid legal foundation that can support the protection of individual rights while also functioning as a check on the abuse of state power creates fertile conditions for the loss of trust and solidarity within the community. Therefore, the development of a law enforcement system that allows for the protection of individual privacy rights and the moral sovereignty of the community will be absolutely necessary to maintain and protect the social structure that is the foundation of all communities.

The disconnect between formal legal procedures and the sociological needs of community-based societies remains a significant barrier to achieving inclusive justice systems, as seen through the lens of **SDG 16**. A major target of **SDG 16** is to facilitate responsive, participatory, and representative decision-making processes at all levels. Within the broader context of moral law enforcement, this requires providing an appropriate role for traditional authorities or community leaders in the complaint-handling mechanism. Up to now, the restrictive processes for filing absolute complaints have resulted in nuclear families being the only type of holder of the right to make a complaint. This is viewed

within the framework of developing strong institutions as a failure to recognise the presence of customary social institutions that have traditionally been charged with ensuring the moral responsibility of protecting the environment.

A detailed explanation of how criminalization is expanding in the Criminal Code (2023) can only happen if we clearly distinguish between the crime of adultery from the crime of cohabitation because the main difference between them is the nature of the act prohibited. In Article 411 (Adultery) it states that if you have sexual relations with someone who is not your spouse, you have committed adultery regardless of whether you are single or married. The punishment for this is more severe than the punishment for fornication; that is there is a maximum of one year's prison sentence for adultery as opposed to that for fornication which is a maximum prison term of six months. Meanwhile, Article 412 (Cohabitation) is defined as "living together as husband and wife outside of marriage." This means that the offense of cohabitation does not necessarily require sexual intercourse; it is sufficient to engage in behavior that indicates a pattern of married life, such as living together or appearing in public as a husband and wife without a legal marriage bond. This difference in elements confirms that the legislators intended to criminalize not only the sexual act itself, but also social behavior that undermines the values of order and family institutions, where cohabitation is considered to disturb public order and social morality, even before or without sexual intercourse.<sup>14</sup>

The fundamental differences in these elements of the offense give rise to different legal consequences and evidentiary challenges for law enforcement. For the offense of adultery under Article 411, even though it has been expanded, the focus of the evidence remains on the material fact of sexual intercourse, which often relies on witness testimony or

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<sup>14</sup> Lilik Mulyadi, "Paradigm Shift of Criminal Law in the New Criminal Code: From Monogamy to Social Morality," *Indonesian Journal of Criminal Law*, Vol. 3, No. 1 (2024), pp. 78-82.

circumstantial evidence that is difficult to obtain. Meanwhile, the evidence for cohabitation offenses under Article 412 is more subjective and complex, as law enforcement officials must gather a series of indirect evidence to prove the intention to “live together as husband and wife,” such as spending patterns, social recognition, or home arrangements. In addition, the distinction between the sanctions in Article 411, which are more severe than those in Article 412, shows that there is a gradation in the value of losses recognized by law, whereby sexual intercourse (adultery) is considered to cause greater moral harm than simply social behavior without a legal bond (cohabitation).

The regulations on cohabitation and adultery in the 2023 Criminal Code as a whole reflect the struggle between the need to reform colonial criminal law into criminal law that is in line with national values, on the one hand, and the principles of modern criminal law, on the other. The principle of modern criminal law emphasized here is the principle of *ultimum remedium*, which is the assumption that criminal law should be a last resort after all non-criminal efforts (such as family mediation, customary law, or social sanctions) have failed.<sup>15</sup> The application of the principle of *ultimum remedium* to this moral offense is clearly manifested through the mechanism of limited absolute complaint delict, which implicitly encourages the community, especially families, to resolve their moral and interpersonal issues internally before involving the state. Thus, the new Criminal Code seeks to position criminal law as a boundary setter rather than a first means of intervention, so that the authority to initiate criminal proceedings remains in the hands of the directly aggrieved party.

The existing legal framework for absolute complaint delict, while limiting the powers of police, ineffectively limits complainants to immediate family members, creating potential for social stagnation in

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<sup>15</sup> Chairul Huda, "Absolute Complaint Offense: Limitations on State Intervention in the Private Sphere According to the New Criminal Code," *Journal of Law and Development*, Vol. 54, No. 3 (2024), p. 305.

communities where group values are promoted. Our challenge, therefore, will be related to the doctrine of relative complaint offenses, but more importantly, the necessity to redefine the legal nature of these offenses. A rethinking of the current crime paradigm is an important step towards a more reasonable balance of the rights of all affected groups. Therefore, by protecting the institution of marriage and the principle of "last resort" (Ultimum Remedium), we support the way we live, while limiting the potential for abuse of police power and excessive criminalization.<sup>16</sup>

## **2. Ideal Legal Formulation for Cohabitation and Adultery**

In Indonesia, an appropriate regulatory system for cohabitation and adultery needs to be supported by a combination of both moral values and legal principles. This is consistent with the viewpoint that the criminalisation of cohabitation in the national Criminal Code represents the state's efforts to protect marriage from disruption and to protect human dignity in accordance with religious morals.<sup>17</sup> This ideal formulation requires that criminal law not only function as a punitive instrument, but also as a preventive measure that maintains a balance between individual privacy rights and the public interest in upholding norms of decency. <sup>18</sup> By establishing this offense as an absolute complaint delict, the state has attempted to formulate a proportional middle ground, on the one hand recognizing that such acts are contrary

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<sup>16</sup> Muhammad Mustofa, "The Dilemma of Criminalizing Consensual Sexual Behavior: A Study of the New Criminal Code," *Constitutional Journal*, Vol. 21, No. 1 (2024), p. 65.

<sup>17</sup> N. Ika Safitri and E. Wahyudi, "Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia," *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

<sup>18</sup> N. Ika Safitri and E. Wahyudi, "Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia," *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

to living law, but on the other hand respecting family autonomy by limiting the parties who have the legitimacy to bring legal claims.

The debate regarding this ideal formulation cannot be separated from the evolution of the concept of complaint offenses (*klachtdelict*), which underwent a significant shift from the WvS or the old Criminal Code to the 2023 National Criminal Code. In the construction of the old Criminal Code, the offense of adultery was viewed purely as an attack on the institution of marriage, which is private and individual in nature, so that the right to complain was very strictly limited in order to maintain the honor of marriage.<sup>19</sup> However, the new Criminal Code brings with it a spirit of legal decolonization that attempts to integrate living law values into positive norms, whereby morality is no longer seen as a private matter between two individuals, but as a collective interest that has an impact on the social order.<sup>20</sup> Although both laws maintain the nature of complaint offenses to prevent state arbitrariness, a conceptual tension has emerged. The new Criminal Code begins to recognize that the social impact of cohabitation and adultery extends beyond the bedroom, but on the other hand, the current limitations on complaints are considered too narrow and do not fully accommodate Indonesia's communal social structure.<sup>21</sup> The existing tension within criminal law necessitates changing who has legalstanding (i.e., to be considered a "complainant") so that the moral protections provided to a victim(s) under the law do not only consider domestic relations but also consider broad social relationships.

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<sup>19</sup> D. M. Putri and A. B. Junaidy, "Legal Analysis of Cohabitation as a Criminal Act in Article 412 of the New Criminal Code," *Indonesian Legal Media (MHI)* 3, no. 4 (2025): 452–461, <https://doi.org/10.5281/zenodo.17594893>.

<sup>20</sup> N. Ika Safitri and E. Wahyudi, "Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia," *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

<sup>21</sup> A. Irawan and V. K. G. Iranti, "Cohabitation in the 2023 Criminal Code: A Legal Analysis of Criminal Law Intervention on Private Life," *Journal of Islamic and Law Studies* 9, no. 1 (2025): 1–17, <https://doi.org/10.18592/JILS.V9I1.16187>

For instance, limiting the potential complainants to only those persons in the complainant's immediate family as defined under Articles 411 and 412 of the Indonesian Criminal Code has led to questions of the ability of moral protections to address the needs at the community level. Because, in Indonesia, moral norms are not solely a product of family relationships; they depend more heavily on the influence of the local community and traditional leaders, or traditional leaders, as protectors or keepers of social balance.<sup>22</sup> A predominant emphasis by the law on complaints made by husbands/wives, parents, and children often leads to a "dead end" when allegations of criminal activity exist within strong community-based structures, where violations of moral behavior are viewed as an affront to the entire community or traditional society. Therefore, there is an urgent need to review whether the current formulation of complaint offenses is sufficiently representative in accommodating local wisdom. The ideal formulation going forward requires legal recognition of broader social authorities to act as complainants, in order to ensure that criminal law enforcement is in line with the function of law as a means of maintaining collectively recognized social order.<sup>23</sup>

Based on this urgency, recognition of traditional leaders or community leaders as the parties authorized to file complaints is crucial to bridge the gap between positive law and living law in Indonesia. This ideal formulation does not intend to create a wild "moral police," but rather to provide legal recognition for traditional authorities to protect the sanctity of their territory from acts that are considered to violate the

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<sup>22</sup>N. Ika Safitri and E. Wahyudi, "Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia," *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

<sup>23</sup>D. M. Putri and A. B. Junaidy, "Legal Analysis of Cohabitation as a Criminal Act in Article 412 of the New Criminal Code," *Indonesian Legal Media (MHI)* 3, no. 4 (2025): 452–461, <https://doi.org/10.5281/zenodo.17594893>.

balance of local community customs and culture.<sup>24</sup> By including traditional leaders as subjects of complaints alongside husbands/wives, parents, and children, national criminal law is no longer seen as a foreign, individualistic instrument, but rather as a tool that supports local wisdom in maintaining public morality. This expansion will ensure that the offenses of cohabitation and adultery are not only private matters within the nuclear family, but also remain in line with communal values that demand a social environment free from behavior that contradicts local customs and religious norms.<sup>25</sup>

The integration of traditional leaders as complainants in this offense is essentially an effort to harmonize criminal law with *moral sanctions* that have long been practiced in indigenous communities. When viewed from the perspective of living law it can be seen that, with the presence of a customary chief, enforcement against adultery cohabitation issues will not only rest upon formal legal principles but will also seek to restore customary and cultural balance between individuals whose behaviour has disrupted both. This is important as most, if not all, nuclear family units are unlikely to report such violations because of embarrassment. However, there continues to be a growing collective unrest within communities regarding behaviours deemed unacceptable or immoral, which puts them at risk for vigilante-type actions (*eigenrichting*). By legally recognising their traditional leaders as having the ability to take legal action on behalf of the community, the state is creating a constitutional mechanism for the peaceful resolution of community moral disputes. By synchronizing National law, this reinforces the philosophy of Traditional law, while

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<sup>24</sup> N. Ika Safitri and E. Wahyudi, "Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia," *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

<sup>25</sup> A. Irawan and V. K. G. Iranti, "Cohabitation in the 2023 Criminal Code: A Legal Analysis of Criminal Law Intervention on Private Life," *Journal of Islamic and Law Studies* 9, no. 1 (2025): 1–17, <https://doi.org/10.18592/JILS.V9I1.16187>

also creating an avenue for national laws to become protective mechanisms of the same value systems maintained by local communities across Indonesia.

As stated in Article 2 of the Law No. 1 of 2023 to reinforce the legitimacy of Customary authorities' involvement in this complaint process, Customary laws that are in alignment with Pancasila Values and Humanitarian Rights are referred to as "Living Laws". The Legal basis for Customary authority is clear and provides Updated proof that our National Cleansing Justice System is no longer 'One Size Fits All', but a pluralistic system reflecting the diverse values of Indonesia's Traditional Culture that existed prior to the establishment of the Indonesian State. In the context of "Cohabitation" and "Adultery", the Legal basis for Customary Law as well as the consequent role of Customary Leaders or Local Leaders as local 'Guardians of Morality' continues to be reaffirmed by the State. By creating this new Article 2, the State underscores the fact that when Criminal Justice Systems intervene in the area of Morality, that these interventions should take into account the historically established structures of Custom and Tradition that have served to promote Sociological Order in their respective regions. Therefore, the synchronization between the offenses in Articles 411 and 412 and the authority of the customary chief is not merely a sociological proposal, but a logical consequence of the spirit of recognition of customary law that has been demonstrated in the body of the National Criminal Code itself.

Although the involvement of traditional leaders as complainants is a progressive step in accommodating *living law*, this ideal formulation must be accompanied by strict monitoring parameters to avoid the potential for absolutism at the local level. Normatively, the authority of customary leaders to file complaints should not be arbitrary, but must be based on consensus or decisions made by structured customary institutions, so that such complaints truly represent collective concerns

and not personal sentiments.<sup>26</sup> This is important to ensure that the expansion of the subject of complaints remains within the corridor of human rights protection and does not become a tool for persecuting individuals. In this context, the state must establish technical guidelines stipulating that complaints by traditional leaders can only be accepted if efforts to resolve the issue through family or traditional peace means have been exhausted but have not yielded results. With these procedural restrictions in place, criminal law retains its function as a last resort (*ultimum remedium*), while customary authorities function as moral filters with integrity in maintaining the spirit of decency in their respective areas.

The peak of the ideal formulation offered in this study is the need to reconstruct the nature of cohabitation and adultery offenses from absolute complaint delict to relative complaint delict, by including traditional leaders or community leaders as valid complainants. Doctrinally, the shift towards a relative delict provides flexibility for law enforcement officials to assess the relationship between the complainant, the perpetrator, and the social impact caused on a more casuistic basis. Within this framework, the traditional leader or community leader acts as a representative of the “aggrieved party” in a communal context, so that their complaint has a strong legal basis to initiate criminal proceedings when resolution through living law is no longer adequate. By establishing the relative nature of this delict, criminal law no longer works rigidly, but is able to adapt to the interests of protecting family dignity and social integrity, which are upheld by customary authorities.

The incorporation of traditional leaders as complainants within the relative delict complaint system provides a practical mechanism by which ‘inclusive institutions’, as called for under **SDG 16**, can be

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<sup>26</sup> N. Ika Safitri and E. Wahyudi, “Criminalization of Cohabitation from the Perspective of Reforming the Criminal Code (KUHP) in Indonesia,” *Wahana Pendidikan Scientific Journal* 9, no. 20 (2023): 612–625, <https://doi.org/10.5281/zenodo.8435113>

developed. Traditional leaders play important roles in society as facilitators and stewards of equilibrium, thus having legal recognition places their role in preventing conflict and inducing resolution to disputes at the grassroots level squarely within the conflict prevention mechanism as envisioned by UCC's 2016 Framework and SDG target 16.a, which calls for strengthening of national institutions to build the capacity of all levels of government to prevent violence and to combat terrorism and crime. Violence against morality that is not addressed can result in mass violence (vigilante justice), therefore community leaders engaged in the complaint system will effectively reduce this possibility because the community will believe that their quest for justice is embodied in a legitimate legal process.

The transformation towards relative complaint delict involving traditional authorities will encourage the creation of legal institutional accountability. Law enforcement officials will no longer act as 'moral police' who unilaterally intervene in private spaces, but will act on the basis of requests from sociologically recognized authorities. This model ensures that every legal intervention is carried out in the interests of social harmony, not merely for administrative-legalistic purposes. Thus, strengthening legal institutions through the involvement of local wisdom is key to realizing authoritative and inclusive rule of law. This approach ensures that Indonesian criminal law not only works to punish, but also to restore and maintain sociological peace, which is the main spirit of sustainable development in the field of peace and justice.

With respect to traditional leaders or community leaders as complainants in the case of delict relative to this sphere, their addition as complainants is intended to provide an additional layer of protection to prevent the criminalization of personal space from serving as a bulk repressive vehicle without a counterbalance. Traditional leaders (through their role as conflict mediators, and custodians of social norms), will only present cases to state courts that represent the broader

community's perceptions of injustice. As a result, this provision will strengthen the content therein, as it lays the foundation for Article 2 of the New Criminal Code regarding 'living law' as a constitutional pathway for local authorities to become actively engaged in national law enforcement and authority concerning relative delict. The provision for complainants (as discussed above) has four (4) different categories:

- a. Husband and wife for married individuals;
- b. Parents and children for unmarried individuals; and
- c. Traditional/community leaders legally recognised under law, and residing within the same locality as the parties involved in the relative delict.

In this way, the regulation provides an appropriate compromise that is respectful of an individual's autonomy, honour of their family prior to this incident, and the preservation of a peaceful society with a strong foundation in local wisdom.

## Conclusion

Through Articles 411 and 412 of the Criminal Code, Law Number 1 of 2023 provides a significant change to the Criminal Code by enhancing laws surrounding moral conduct including adultery and cohabitation. At present, the existing framework for offences of a restricted nature is based on family complaints with limited criteria. However, court decisions are based upon sociological realities and therefore the exclusion of individuals outside of the immediate family as complainants can create deadlock in maintaining community moral behaviour. To eliminate barriers to lodging complaints from those outside of the immediate family environment and provide clarity for complainants, a new methodology for the definition of an ideal complaint has developed into a relative complaint delict. The change in the definition of the crime will also allow for the expansion of complainants to include traditional/community leaders as representatives of the law

according to the living law concept. The formal recognition given to the authority of traditional/community leaders will assist in maintaining law and order by providing a legal means of avoiding vigilante justice (eigenrichting) and ensuring that law enforcement has to use the principle of *ultimum remedium*. The change of status for a relative complaint will encapsulate four classes of complainants (husband/wife, parents, children and traditional/community leader) and provide an ideal complaint framework that protects an individual's right to self-determination/safety, the institution of marriage and family, and the preservation of social order, as is required by the traditional wisdom of Indonesia. The ideal formulation involving is a tangible manifestation of Indonesia's strategic commitment to achieving **SDG 16** on strengthening inclusive, accountable, and resilient legal institutions.s

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