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Assessing Cohabitation from the Perspective of Living Law, the Criminal Code and the National Criminal Code

Kartono[1)] & Suhendar [2)]
[1)] Faculty of Law, University of Pamulang, Indonesia, E-mail: dosen01490@unpam.ac.id
[2)] Faculty of Law, University of Pamulang, Indonesia, E-mail: dosen00548@unpam.ac.id

Abstract. *Cohabitation living together as husband and wife without being officially married is a social phenomenon that is increasingly common in Indonesia. This phenomenon raises various pros and cons, especially from a legal and moral perspective. The aim of this research is to analyze the perspective of living law, the Criminal Code and the national Criminal Code. This research uses normative juridical research methods. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative data analysis. The research results show that from a living law perspective in several areas, cohabitation is considered a normal practice and does not need to be punished. On the other hand, cohabitation is also seen as an act that violates norms and customs in several other regions. Meanwhile, from the perspective of the old Criminal Code, living together was not strictly regulated, but there were several articles that could be linked to behavior that was considered to violate moral norms. Meanwhile, the National Criminal Code brings several important changes, one of which is more detailed living arrangements. This reflects a stricter legal approach to cohabitation, potentially providing criminal sanctions for behavior that was not previously explicitly regulated.*

Keywords: *Cohabitaton; Living; National.*

1. INTRODUCTION

The practice of cohabitation is now increasingly common in big cities in Indonesia. Cohabitation, which is often referred to as "cohabitation" by society, refers to a situation where a couple lives or stays together without a legal marriage bond [1]. The younger generation's views on relationships and marriage are starting to shift. They see marriage as a normative institution with complex regulations. In contrast, cohabitation is considered a purer form of relationship, reflecting mutual love and attraction [2].

In 2002, the results of a survey published by the Love and Humanity Study

[1] Hasna Hamidah and Tajul Arifin, 'Kohabitasi Dalam Perspektif HR Al-Tirmidzi Dan Pasal 412 Ayat (1) KUHP', *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL*, 3.3 (2024), p. 144–54.
[2] Yulinda Nurul Aini, 'Mengapa Tren Kohabitasi Melanda Indonesia Meski Tak Sesuai Nilai Hukum Dan Agama?', *Theconversation*, 2024.

Institute and the Business and Humanities Training Center (LSCK PUCBIH) regarding students in Jogjakarta attracted attention. This research took place over three years, from July 1999 to July 2002, involving around 1,660 respondents from 16 universities, including state and private ones in Jogjakarta. Of the respondents, 97.05% admitted to having lost their virginity during college, which was generally due to involvement in partnered sex or cohabitation. Regarding the location of the practice of free sex, around 63% were reported to have occurred in the respondent's male partner's boarding house, while 14% occurred in the daughter's boarding house or their rented house. As many as 21% reportedly occurred in budget class hotels spread across Jogjakarta, and the remaining 2% occurred in open tourist attractions [3].

This data shows that boarding houses have become a common location for the practice of cohabitation. Cohabitation is common in eastern Indonesia due to the high cost of marriage. Cohabitation causes children's cognitive scores to be lower by 0.288 standard deviations. One of the main explanations for these results is that couples who live together spend a lower share of expenditures on education. Couples who live together allocate a lower portion of expenditure on education by 4.4 percentage points compared to married couples [4]. Apart from that, the phenomenon of cohabitation raises various pros and cons, especially from a legal and moral perspective.

From a legal perspective, cohabitation often raises various questions regarding the rights and obligations of couples living together without marital status. From a moral perspective, the pros and cons of cohabitation often relate to different values and beliefs in society. Those who support cohabitation consider it to be a form of commitment that is as strong as marriage, and that couples have the right to live together without pressure or expectation to marry. On the other hand, critics of cohabitation often highlight moral issues related to the stability of the relationship and its impact on the traditional values of marriage. Cohabitation is considered to be detrimental to family and societal values based on marriage as a legitimate and blessed institution.

Previous research by [5] found two main points in the Draft Criminal Code regarding cohabitation which can be concluded as a form of criminalization based on several reasons. One of them is socio-philosophical reasons rooted in the socio-cultural context and existing national legal system. The study and exploration of national values, which originate from Pancasila as well as values

[3] Gusti Muslihuddin Sa'adi, Ahmadi Hasan, and Masyithah Umar, 'Analisa Pasal 412 Kuhp Baru Tentang Kohabitasi (Pendekatan Maqashid As-Syari'ah As-Syathibi Dan Teori Social Engineering Roscoe Pound)', *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 1.4 (2023), p. 584–607, doi:10.62976/ijijel.v1i4.187.

[4] Arif Anindita and others, 'The Untold Story of Cohabitation: Marital Choice and Education Investment', *Available at SSRN 3955803*, 2023, doi:10.2139/ssrn.3955803.

[5] Erdianto Erdianto, Ledy Diana Irwansyah Irwansyah, 'Kriminalisasi Kumpul Kebo (Samen Leven) Menurut Rancangan Kitab Undang-Undang Hukum Pidana', *Neliti*, 2016.

in society such as religious and traditional cultural values, shows that cohabitation is considered to violate the moral values contained in Pancasila, which includes national values that are based on life. the life of God Almighty (religious moral values). Another reason is based on the results of research and comparative studies which show that living together is regulated and considered a criminal offense in the Criminal Code abroad.

This research enriches the legal literature by providing a new perspective on cohabitation in the context of living law, the old Criminal Code, and the National Criminal Code. The research results can be used by policy makers to formulate regulations that are more inclusive and reflective of the diversity of values in society. This is important to avoid conflicts between formal law and social norms. The aim of this research is to analyze the perspective of living law, the Criminal Code and the national Criminal Code.

2. RESEARCH METHODS

This research uses normative juridical research methods. The normative juridical research method is a research approach that focuses on legal studies by analyzing applicable legal norms or rules. This method is used to explore and understand the contents of various legal sources such as laws, regulations, doctrine, jurisprudence, and legal literature. Normative juridical research aims to identify, clarify and evaluate legal rules that are relevant to the issue or problem being researched [6]. The data collection technique used in this research is literature study. Literature studies are carried out by searching for and collecting relevant legal materials, such as books, scientific journals and statutory regulations. The data analysis technique used in this research is qualitative analysis. Qualitative analysis is a data analysis technique that focuses on decoding and in-depth understanding of complex and contextual social phenomena.

3. RESULTS AND DISCUSSION

The Indonesian nation is known for upholding moral values, reflecting its strong culture, religion and customs. These values are reflected in people's daily lives, where respect, courtesy, and behavior in accordance with moral norms are the main guidelines. The culture of gotong royong, mutual respect, and maintaining social harmony is an integral part of Indonesian life [7]. Religion plays an important role in shaping these values, with the majority of the population practicing religious teachings devoutly. In addition, the diverse customs of various tribes and regions also enrich and strengthen the values of decency.

[6] S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).

[7] I Nengah Adi Drastawan, 'KEDUDUKAN NORMA AGAMA, KESUSILAAN, DAN KESOPANAN DENGAN NORMA HUKUM PADA TATA MASYARAKAT PANCASILA.', *Jurnal Komunitas Yustisia*, 4.3 (2021), p. 928–39, doi:10.23887/jatayu.v4i3.43189.

The combination of these elements makes Indonesian society highly value ethics and morality in every aspect of life. However, recently there has been an increase in the phenomenon of cohabitation, which is considered a deviation from traditional norms of decency [8].

Cohabitation is a term used to describe a situation where two unmarried adults live together and live the life of a married couple. Cohabitation involves sharing a residence, household responsibilities, and often a sexual relationship. Although cohabitation is an increasingly common phenomenon in many countries, its acceptance and legality vary significantly depending on the culture, religion and legal system in each country [9]. The act of cohabitation is considered damaging to the morals of the nation's generation by many in Indonesia. This practice is contrary to the values of decency upheld by Indonesian society. Cohabitation may raise concerns about declining moral standards, especially among the younger generation who may be more susceptible to the influence of modern lifestyles and globalization. Therefore, many argue that cohabitation not only violates social and religious norms, but can also negatively impact the family structure and society as a whole.

Indonesia is a state of law, where all aspects of societal behavior including cohabitation are regulated by law to ensure order and justice. As a state based on law, Indonesia implements various regulations and laws that cover all aspects of life, ranging from human rights, citizens' rights and obligations, to governance and law enforcement. The principles of the rule of law also include social justice, equality before the law, and protection of individual rights. All of this aims to create an orderly, safe and just society, where every action and behavior is regulated to support common welfare and compliance with applicable legal norms [10].

Law enforcement to tackle the crime of cohabitation can be done through the use of criminal political means or criminal policy. This involves the use of legal strategies and criminal policies aimed at preventing, tackling and reducing cohabitation crimes through strict and effective law enforcement. Criminal policy tools can include increased surveillance by police officers, the application of heavier legal sanctions for perpetrators, socialization and education campaigns to the public about the negative impacts of cohabitation, and collaboration between institutions and related parties to improve coordination in handling

[8] A Danardana and Vincentius Patria Setyawan, 'Kriminalisasi Fenomena Penyimpangan Sosial Kumpul Kebo (Samenlaven) Dalam Perspektif Hukum Pidana', *Justitia et Pax*, 38.1 (2022), doi:10.24002/jep.v38i1.5713.
[9] (Sholikah et al., 2024)
[10] Muhammad Razif, 'Larangan Kohabitasi Dalam UU No. 1 Tahun 2023: Suatu Penerapan Sadd Dzariah', *Al-'Adalah: Jurnal Syariah Dan Hukum Islam*, 8.2 (2023), p. 212–24, doi:10.31538/adlh.v8i2.4258.

these cases [11].

In Indonesia, cohabitation is not specifically regulated in law, although the new Criminal Code (KUHP), which will come into force in 2026, has introduced several articles that indirectly regulate related behavior. These articles, such as Articles 411 and 412, criminalize sexual relations outside of marriage if there is a complaint from a third party such as a parent, child, or legal spouse of one of the perpetrators. While there is no regulation that explicitly regulates cohabitation as an act separate from adultery, this approach shows that the government is starting to take steps to regulate behaviors that are considered to be against social and religious norms [12].

Article 412 paragraph (1) of the Criminal Code is a relevant legal provision that regulates adultery in Indonesia. This article states that adultery is an act of sexual intercourse committed by a married person with someone other than their own spouse. Violation of Article 412 paragraph (1) of the Criminal Code can be considered a violation of the morals and ethics of society, as this act is considered to violate the commitment of marriage and social norms upheld in Indonesia. Punishment for adultery offenders can vary depending on the court's decision, which can include criminal penalties or social sanctions [13].

Living law refers to laws that live in society, reflecting social norms, culture and customs applied in daily life [14]. In many communities in Indonesia, cohabitation is still considered taboo and against social and religious norms. However, there are also communities that are more accepting of this practice, especially in urban areas or among the younger generation who are more influenced by global culture. From a living law perspective, the acceptance or rejection of cohabitation is highly dependent on the local social and cultural context.

In the old Indonesian Criminal Code, cohabitation was not explicitly regulated, but there are several articles that can be associated with behavior that is considered a violation of decency norms. For example, Article 284 on adultery, which criminalizes sexual relations outside of marriage if one or both parties are married to another person. However, cohabitation between two adults who are

[11] Budi Sulistiyono and Hari Purwadi, 'Urgensi Kriminalisasi Kumpul Kebo (Cohabitation) Dalam Hukum Pidana Indonesia', *Jurnal Hukum Dan Pembangunan Ekonomi*, 6.2 (2018), doi:10.20961/hpe.v6i2.17750.
[12] Hamidah and Arifin.
[13] I Made Ananda Hardiantha, I Nyoman Gede Sugiartha, and I B Gede Agustya Mahaputra, 'Analisis Yuridis Delik Perzinahan Terhadap Pasangan Diluar Nikah Yang Melakukan Check-In Hotel', *Jurnal Preferensi Hukum*, 5.1 (2024), p. 38–44, doi:10.55637/jph.5.1.8644.38-44.
[14] Murtir Jeddawi and Abdul Rahman, 'Identifikasi Hukum Adat Yang Masih Berlaku Dalam Penyelesaian Persoalan Sosial Di Desa Kawo Kabupaten Lombok Tengah', *Jurnal Konstituen*, 2.2 (2020), p. 89–100.

not legally married is not directly regulated or penalized [15].

The new National Criminal Code, which was passed in late 2022 and will come into force in 2026, introduces several important changes. One of these is a more detailed regulation of cohabitation. Articles 411 and 412 of the new Penal Code criminalize sexual relations outside marriage, including cohabitation, if there is a complaint from a third party, such as a parent, child, or legal spouse of one of the perpetrators. This reflects a stricter legal approach to cohabitation, potentially providing criminal sanctions for behavior that was previously not explicitly regulated. The offence of cohabitation regulated in the national Criminal Code is an attempt to criminalize the act of cohabitation or living together without the bonds of marriage, which is considered a deviation from the moral norms and sexual life upheld in society. In an ever-changing social context and evolving values, the enforcement of cohabitation in the national Criminal Code is often seen as excessive and controversial, as it may limit the freedom of individuals in making their life choices and relationships [16].

Cohabitation from the perspectives of living law, the Criminal Code, and the National Criminal Code shows the difference in approach between social norms that live in society and formal laws enacted by the state. While the living law reflects the diversity of social acceptance of cohabitation, the new Criminal Code tends to adopt a more conservative approach and criminalizes this behavior based on complaints from third parties. Therefore, the effectiveness and impact of the implementation of these formal laws will largely depend on how social norms and societal perceptions evolve in the future.

4. CONCLUSION

Cohabitation is viewed differently in various contexts in Indonesia. From a living law perspective in some areas, cohabitation is considered a normal practice and does not need to be punished. However, in other areas, cohabitation is seen as an act that violates local norms and customs. From the perspective of the old Criminal Code, cohabitation was not strictly regulated, but several articles could be linked to behavior that was considered to violate moral norms. For example, Article 284 concerning adultery criminalizes sexual relations outside of marriage if one or both parties are married to someone else. However, cohabitation between two adults who are not legally married is not directly regulated or subject to sanctions. Meanwhile, in the new National Criminal Code, there are several important changes, including more detailed living arrangements. Articles 411 and 412 of the new Criminal Code criminalize sexual relations outside of

[15] Patrecia Melenia Yoanda Kartodinudjo, 'TINJAUAN KRIMINALISASI PERBUATAN KOHABITASI DALAM PERPEKTIF HUKUM PIDANA', *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3.2 (2023), p. 1309–24, doi:10.53363/bureau.v3i2.248.

[16] Muhammad Ramadan Kiro and Muhamad Saktiawan, 'PENERAPAN DELIK KOHABOTASI DALAM KUHP NASIONAL DITINJAU DARI TUJUAN HUKUM PIDANA', *Lakidende Law Review*, 3.1 (2024), p. 546–56, doi:10.47353/delarev.v3i1.72.

marriage, including living together, if there is a complaint from a third party, such as a parent, child or legal partner of one of the perpetrators. This reflects a stricter legal approach to cohabitation, potentially providing criminal sanctions for behavior that was not previously explicitly regulated.

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