

The Concept of Reconstruction of Cohabitation Regulations in the National Criminal Code Based on the Principle of Legal Certainty

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Abstract

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Provisions regarding living together as husband and wife outside of marriage, known as cohabitation, were introduced in Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). However, the regulation has many problems, including philosophical, sociological and juridical problems, as well as inappropriate norms, not reflecting justice and ignoring religious and customary norms. This research aims to analyze and find a reconstruction of the formulation of cohabitation norms in the National Criminal Code based on principle of legal certainty. The formulation of the problem proposed is How to reconstruct the formulation of cohabitation norms in the National Criminal Code, based on the principle of legal certainty. The research method uses normative legal research, namely a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.¹ The approaches used are the statutory approach, the comparative approach and the conceptual approach. Sources of legal materials are primary legal materials, secondary legal materials and tertiary legal materials. The results obtained from this research, Article 412 of the National Criminal Code needs to be reconstructed regarding cohabitation norms, namely living together not as husband and wife because it is not based on a legal marriage, the cohabitation offense is also not a complaint offense but is an ordinary offense, and because cohabitation behavior is not in accordance with The spirit of Pancasila is contrary to religious customs and norms, so we must receive heavier sanctions so that between criminal penalties and fines are accumulative punishments.

1. Introduction

The act of cohabitation is a phenomenon that often occurs in society and often makes people anxious because it does not conform to existing norms in society. Cohabitation is also considered a crime of morality.² In the explanation of Article 412 of the National Criminal Code. The term cohabitation is living together as husband and wife outside of marriage. Pahrul Rizal in his article entitled the basis for the criminalization of cohabitation in the reform of Indonesian criminal law stated that cohabitation is living together without a legal marriage bond between a man and a woman where they live together in the same house.³ cohabitation

¹ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi*, Cetakan Ke-18 (Jakarta: Kencana, 2023).

² Sholikah Ana et al., "Regulasi Hukum Terhadap Pemidanaan Orang Yang Melakukan Kohabitusi (Kumpul Kebo)," *JUSTISI* 10, no. 1 (December 30, 2023): 174-88, <https://doi.org/10.33506/js.v10i1.3009>.

³ Pahrul Rizal, "Dasar Kriminalisasi Kumpul Kebo Dalam Pembaharuan Hukum Pidana Indonesia" 15, no. 1 (August 2020): 3905-14, <http://ejurnal.binawakya.or.id/index.php/>.

is a behavior deviating⁴ from what should not be done because it violates religious norms, moral norms and customary norms in Indonesia.

According to Moh. Suardi behavior as a result of experience.⁵ Cohabitation also occurs as a result of deviant behavior where the perpetrators clearly violate norms, ethics and religion. In line with what Bagja Waluya said that deviant behavior is any behavior that is declared as a violation of group or community norms.⁶ J.B Watson added that in Joyce Marcella Laurens views psychology as a science that studies behavior because behavior considered easier to observe, record and measure.⁷ This shows that behavior is directly related to all aspects of a person's life, namely psychological, religious, social and economic aspects, all of which are related to the behaviors carried out.

Law Number 1 of 2023 concerning the Criminal Code, (National Criminal Code) Article 412 which states that:⁸

- (1) Every person who lives together as husband or wife outside of marriage shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II.
- (2) No prosecution shall be carried out for criminal acts as intended in paragraph (1) except upon complaint:
 - a. Husband or wife for people bound by marriage; or
 - b. Parents or children for people who are not married.
- (3) The provisions as intended in Article 25, Article 26 and Article 30 do not apply to complaints as intended in paragraph (2).
- (4) The complaint can be withdrawn as long as the examination at the court hearing has not begun.

The term cohabitation can be found in the explanation of the National Criminal Code Law. As an Indonesian nation that has the spirit of Pancasila, its daily actions should reflect the values of Pancasila.⁹ Pancasila as the soul of the nation (*volkgeist*) and also as a basic norm (*grundnorm*) provides direction for the Indonesian nation in implementing positive laws that applies.¹⁰ Cohabitation regulations in Article 412 still cause many problems, Problem Philosophically, the act of cohabitation is not in accordance with the noble values that the Indonesian people hold dear, sociologically there is a problem where cohabitation is an act that disturbs the peace and tranquility of society and harms social cohesion, so that the attachment between elements in society becomes disharmonious. The act of cohabitation will cause problems in social life in society. The existence of cohabitation can cause unrest in the

⁴ Mansyur Radjab et al., "Penyaluhan Penguatan Pranata Keluarga Dalam Pencegahan Perilaku Menyimpang Anak-Remaja DiKabupaten Soppeng," *Jurnal Pengabdian Masyarakat* 18, no. 2 (December 31, 2022): 227–38, <https://doi.org/10.20414/transformasi.v18i2.4955>.

⁵ Moch Suardi, *Belajar Dan Pembelajaran* (Yogyakarta: Deepublish, 2015).

⁶ Bagya Waluya, *Sosiologi Menyelami Fenomena Sosial Di Masyarakat Untuk Kelas X Sekolah Menengah Atas/Madrasah Aliyah* (Bandung: PT. Setia Purna Inves, 2007).

⁷ Joice Marcella Laurens, *Arsitektur Dan Perilaku Manusia* (Jakarta: PT. Grasindo, 2004).

⁸ "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana" (2023).

⁹ Ferry Irawan Febriansyah, "Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa," *DiH: Jurnal Ilmu Hukum* 13, no. 25 (2017), <https://doi.org/10.30996/dih.v13i25.1545>.

¹⁰ Teguh Prasetyo, *Sistem Hukum Pancasila (Sistem, Sistem Hukum Dan Pembentukan Peraturan Perundangan-Undangan Di Indonesia)*, Cetakan Kesatu (Bandung: Penerbit Nusa Media, 2016).

community where the cohabiting couple has a relationship that is not permitted. The balance in social life will be shaken by the presence of cohabitants in the area concerned.¹¹

Meanwhile, the juridical problem is that the article regulating cohabitation gives rise to multiple interpretations, because on the one hand it states "living together as husband and wife without a marriage bond" even though living together without a marriage bond is not husband and wife. Another juridical problem is that cohabitation is a complaint offense, even though cohabitation is actually more appropriately a public matter, which is different from adultery which is a private matter. For this reason, the formulation of cohabitation norms in Article 412 of the National Criminal Code needs to be reconstructed so as not to give rise to multiple interpretations and can provide legal certainty.

From the results of previous research as a reference in this research is the dissertation research entitled Reconstruction of the Crime of Adultery in the Criminal Code Sourced from the Values of the Almighty God (Islamic Law),¹² Reformulation of Prostitution Criminal Law Enforcement in Indonesia (Case Study in Society Coastal Java)¹³ and Punishment of Khalwat Perpetrators in Aceh Maqashid Al-Syariah Perspective,¹⁴ and also from the results of research in several journals, including the title Legal Regulations on the Punishment of People Who Cohabit,¹⁵ Analysis of Article 412 of the New Criminal Code concerning Cohabitation (Maqashid As-Syari'ah As-Syathibi Approach and Roscoe Pound's Social Engineering Theory),¹⁶ The Offense of Complaints about the Crime of Adultery in the View of Criminal Law and Islamic Law,¹⁷ and Criminalization of Cohabitation in the Perspective of Municipal Criminal Law Reform (KUHP) in Indonesia.¹⁸ The results of the analysis in previous research have similarities and differences with this research, namely that they both examine moral crimes, while the difference is that this research focuses on cohabitation immoral crimes.

¹¹ Angeline Putri Permatasari and Aris Prio Agus Santoso, "Bahaya Kumpul Kebo Bagi Para Pemuja Cinta," *Terang: Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 2 (May 6, 2024): 176-88, <https://doi.org/10.62383/terang.v1i2.216>.

¹² Muktar, "Rekonstruksi Tindak Pidana Zina Dalam KUHP Bersumber Dari Nilai Ketuhanan Yang Maha Esa (Hukum Islam)," 2022, <http://repository.unisula.ac.id/id/eprint/26710>.

¹³ Nur Moklis, "Reformulasi Penegakan Hukum Pidana Prostitusi Di Indonesia (Studi Kasus Pada Masyarakat Jawa Pesisir)," 2021, <http://idr.uin-antasari.ac.id/id/id/eprint/18061>.

¹⁴ Mulizar, "Hukuman Terhadap Pelaku Khawat Di Aceh Perspektif MAQASHID AL-SYARIAH," 2022, <http://repository.uinsu.ac.id/id/eprint/14144>.

¹⁵ Ana et al., "Regulasi Hukum Terhadap Pemidanaan Orang Yang Melakukan Kohabiasi (Kumpul Kebo)."

¹⁶ Gusti Muslihuddin Sa'adi, Ahmadi Hasan, and Masyithah Umar, "Analisa Pasal 412 KUHP Baru Tentang Kohabiasi (Pendekatan Maqashid As-Syari'ah As-Syathibi Dan Teori Social Engineering Roscoe Pound)," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 4 (December 15, 2023): 584-607, <https://doi.org/10.62976/ijjel.v1i4.187>.

¹⁷ Sirajuddin Sirajuddin, Risdyanie Risdyanie, and Dewi Indriani, "Delik Aduan Tindak Pidana Perzinahan Dalam Pandangan Hukum Pidana Dan Hukum Islam," *BUSTANUL FUQAHAH: Jurnal Bidang Hukum Islam* 5, no. 2 (August 30, 2024): 359-72, <https://doi.org/10.36701/bustanul.v5i2.1717>.

¹⁸ Nurinda Ika Safitri and Eko Wahyudi, "Kriminalisasi Perbuatan Kohabiasi Dalam Perspektif Pembaharuan Kitab Undang-Undang Hukum Pidana (KUHP) Di Indonesia," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 20 (October 12, 2023): 612-25, <https://doi.org/10.5281/zenodo.8435113>.

2. Methods

This research method is normative juridical,¹⁹ namely conducting a study of applicable laws and regulations by paying attention to legal theory from several legal experts as well as looking at the norms that apply in Indonesia and combining them with cohabitation regulations in the national criminal code to obtain the essence of cohabitation in accordance with Pancasila as the source of all legal sources as a basis for consideration in making the Reconstruction of Cohabitation Regulations in the National Criminal Code.

3. Results and Discussion

3.1. The Nature of Cohabitation

Norms are (1) rules or provisions that bind members of a group in society, used as a guide, order and control of appropriate and acceptable behavior: every member of society must comply with what applies; (2) rules, measurements, or norms used as benchmarks for assessing or comparing things; religion: rules that regulate human actions in interacting with each other which are based on the teachings of their religion; social: rules that regulate human actions in interacting with each other; morals: rules that regulate human actions in everyday social interactions, such as interactions between men and women.²⁰

In relation to this norm, cohabitation is an act that is seen as an act that violates norms, whether religious norms, social norms or moral norms. In our country norms are divided into 2 (two), namely written norms and unwritten norms,²¹ legal norms that are written and enforced by a system of power (legal norms) in the form of legislative regulations that are legalized by the state to be obeyed by all society to realize security and public order, while moral norms and ethical norms can be written or unwritten (ethical norms), ethical norms containing interpersonal rules of decency can be unwritten or written, while the rules Personal decency is usually always unwritten, such as feelings of inappropriateness, shame, and all things of a personal nature that do not involve other people in social interactions. Meanwhile, religious norms are written in the holy books owned by each religion. In Islam, apart from the holy books, there is also the Sunnah of the Prophet which is contained in the hadist narrated by the companions of the Prophet.

The act of cohabitation is contrary to the norms/rules that apply in society, if carried out it will certainly harm the meaning of the sacred marriage bond. Cohabitation is an act that is prohibited in all religions in Indonesia. If viewed from the Islamic religion, cohabitation falls into the category of uncivilized sexuality because it is outside the concept agreed upon by Islam. Cohabitation is another form of sexual deviation because a valid sexual relationship is one that is approved by God through marriage.

Islam classifies cohabitation as *muhsan* adultery if the person committing it is a husband, wife, widower or widow. Meanwhile, if the perpetrator is a virgin or girl, it is included in the category of *ghairu muhsan* adultery. The punishment for the perpetrator of *muhsan* adultery is

¹⁹ Irawansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, Edisi Revisi, ed. Ahsan Yunus, Cetakan Kelima (Yogyakarta: Mirra Buana Media, 2022).

²⁰ "Norma," accessed May 3, 2024, <https://kbbi.web.id/norma>.

²¹ Yuhelson, *Pengantar Ilmu Hukum* (Ideas Publishing, 2017).

stoning, that is, the perpetrator is stoned until he dies.²² Meanwhile, for the perpetrator of *ghairu muhsan* adultery, it means being whipped a hundred times.²³ Perpetrators of cohabitation are generally those who are still virgins or unmarried girls, for various reasons they justify their own actions. In Surah al-Isra' verse 32, Allah says, which means "And do not approach adultery; Indeed, adultery is an abominable act, and a bad path."

In the Qur'an, this is explicitly confirmed in the word of Allah QS. An-Nur (24):2 for perpetrators of *ghairu muhsan* adultery, which means a woman who commits adultery and a man who commits adultery, then each of them will be beaten a hundred times. Meanwhile, in the Hadith History of Al-Bukhari, it is also explained that the perpetrator of *ghairu muhsan* adultery, received a hundred lashes and was exiled for one year. The hadist that explains this exile is also narrated by Muslim and Abu Daud, namely that a virgin adulterer with a girl is whipped a hundred times and thrown away for one year. Meanwhile, adulterers who are widowers and widows are whipped a hundred times and stoned.²⁴ This indicates that adultery is truly an act cursed by Allah SWT, Muhammad Al-Khatib Al-Syarbini said that adultery is one of the most heinous major sins, not a single religion allows it. Therefore, the sanctions are also very heavy because they threaten honor and family relations.

If viewed from the Christian religion, it is stated in the Bible, Matthew 5:28-29, that "everyone who looks at a woman and lusts after her has already committed adultery with her in his heart. So if your right eye causes you to sin, pluck it out and throw it away, for it is better for you if one of your members perishes, than for your whole body to be thrown into hell."

If you look at it from Hinduism, it is found in the *trikaya parisuda* about *kayika*,²⁵ it is called *tan paradara* which means flirting, having sexual contact with another woman or man who is not his legal wife or husband. In Hinduism it is also explained that those who are allowed to have sex must have gone through the process of *pawiwahan* (marriage). Meanwhile, if you look at it from Buddhism, the act of adultery is included in the 10 bad karmas, mentioned in *kamesu-michcara*, namely wrong behavior regarding sex.

The act of cohabitation is also an act that is prohibited based on moral norms because it is contrary to the moral values that exist in society. The aim of these moral norms is so that every human being has high moral values and good moral characteristics in life in society. So that there will be harmony in relationships between people. Apart from that, moral norms also aim to provide guidance for humans on how to behave and behave properly in society.²⁶

Apart from having a goal, decency norms also have several functions, namely to create a harmonious society, as an instrument of social control and always being able to respect or

²² Rahul Sani Ritonga and Abd. Mukhsin, "Tinjauan Hukum Pidana Islam Pasal 412 Undang-Undang Nomor 1 Tahun 2023 Tentang Kohabtasi," *Legal Standing : Jurnal Ilmu Hukum* 8, no. 3 (July 31, 2024): 586-601, <https://doi.org/10.24269/ls.v8i3.9934>.

²³ Nurul Irfan and Masyofah, *Fiqih Jinayah*, ed. Achmad Ziris dan Nur Laily Nusroh, Keenam (Jakarta: Amzah, 2019).

²⁴ Irfan and Masyofah.

²⁵ Ali Mustofa and Victor Novianto, "Implementasi Ajaran Tri Kaya Parisudha Dalam Pendidikan Karakter Pada Generasi Metaverse," *Proceedings Series on Social Sciences & Humanities* 3 (June 1, 2022): 644-49, <https://doi.org/10.30595/pssh.v3i.359>.

²⁶ Joko Subroto, *Norma Dalam Masyarakat*, ed. Enik Suyahni, Cetakan Pertama (Jakarta: Bumi Aksara, 2021).

care for the sense of humanity between fellow humans.²⁷ In an effort to provide legal certainty for cohabitation based on the meaning of cohabitation from various perspectives, legal reform needs to be implemented for the benefit of all Indonesian people.

3.2. The Urgency of Reconstructing Complaint Offenses to Become Ordinary Offenses in Cohabitation Crimes

Complaint offenses are a type of crime where law enforcement efforts depend on complaints or reports submitted by the victim or injured party. On the other hand, ordinary offenses are a type of crime that can be followed up legally without any complaint from the relevant party. The urgency of changing the complaint offense to an ordinary offense in the crime of cohabitation is based on several things that are taken into consideration, including:

a. Based on the Substantial Difference between Cohabitation and Adultery

Adultery²⁸ is more of a private issue while cohabitation is closer to a public issue. The method of proof between the two is also different. The adultery article in the old Criminal Code required sexual intercourse (a relationship like husband and wife). Meanwhile, cohabitation does not require proof of sexual intercourse. Cohabitation as a formal criminal offense also does not require the requirement that one or both of them be bound as someone else's husband/wife. This indicates a shift in substance between adultery which is more towards the private sector so that the offense is a complaint offense, while cohabitation is more towards public law. So what is more appropriate is an ordinary offense. Therefore, it would be strange if cohabitation was designated as a complaint offense, where only the husband/wife can complain if one of the perpetrators/both are bound by marriage. If the perpetrator is not married, the person who has the right to complain is the perpetrator's parents/children. Even though cohabitation is in the public domain, it is proven that without any requirements, there has been sexual relations like husband and wife, which is in the private domain. By making cohabitation a complaint offense, even though cohabitation is a formal offense, there will be consequences for the complainant withdrawing the complaint as long as the case examination in court has not begun. Of course, if this happens it will really disturb public justice.

b. Based on Criminalization Theory

Criminalization can be interpreted as a process that examines behavior that is not initially considered a criminal event, but is then classified as a criminal event by society.²⁹ In criminal law in Indonesia, this criminalization process usually ends with

²⁷ Subroto.

²⁸ Adultery is the act of sexual intercourse between a man and a woman who are not bound by a marriage relationship; the act of sexual intercourse between a man who is bound by marriage with a woman who is not his wife, or a woman who is bound by marriage with a man who is not her husband". Tim Pandon Media, Kamus Bahasa Indonesia, Cetakan Pertama (Jakarta: Pandom Media Nusantara, 2014).

²⁹ Dzulkifli Umar and Jimmy P., *Kamus Hukum, Dictionary Of Law, Rangkuman Istilah & Pengertian Dalam Hukum Internasional, Hukum Pidana, Hukum Perdata, Hukum Islam, Hukum Perburuhan, Hukum Agraria, Hukum Administrasi Negara, Hukum Pajak & Hukum Lingkungan*, vol. Cetakan Kedelapan (Surabaya: Grahamedia Press, 2022).

the formation of a law where the act is threatened with sanctions in the form of criminal penalties.³⁰ Actions that need to be criminalized are actions that directly disrupt public order. In this case, the act of cohabitation is an act that can disturb public order, in fact the act of cohabitation can disturb the community which will have an impact on public comfort and order.

Criminalization policy is a policy in determining an act that was not originally a criminal act to become a criminal act. So in essence criminalization policy is part of criminal policy using criminal law means so that it is part of criminal law policy. With regard to the problem of criminalization, according to Sudarto, in carrying out criminalization policies, one must pay attention to things such as the use of criminal law, one must pay attention to the goals of national development, that is creating a just and prosperous society that is equally material and spiritual based on Pancasila, and acts that are sought to be prevented or addressed by criminal law it must be an undesirable act, that is an act that brings material and spiritual harm to members of the community.

The act of cohabitation is an act that can disturb the comfort of society, even though the act of cohabitation is desired by the perpetrator. The act of cohabitation has made people uneasy which will have the impact of disrupting people's comfort, resulting in material and spiritual losses to society, especially people in the surrounding environment. Cohabitation, which is an act of adultery, in Sudarto's opinion, can be concluded that even if it is committed on the basis of consensual adultery and is desired by the perpetrator, it can be punished (can be criminalized).³¹ By changing a complaint offense to a regular offense, it can send a clear signal to criminals that criminal behavior will not be tolerated, even without a formal complaint. This can be a potential preventive factor against cohabitation in society.

Apart from the influx of foreign culture, there are other factors that cause many people to commit prohibited acts, such as having sexual relations that are not acceptable to them (adultery). This factor is the absence of definite legal regulations for perpetrators of cohabitation, in Article 412 of the National Criminal Code where cohabitation in this article has a loophole that can be exploited by the public to avoid sanctions or criminal punishment, because it is a complaint offense so that if this act is committed, no one will complain. then the act cannot be processed legally, the offense of this complaint is very limited because only certain people can complain about the act.

Therefore, in order to realize the Indonesian nation as a moral nation, legal regulations are needed that are in accordance with the Indonesian nation's constitution, namely Pancasila.³² There needs to be a reconstructive change in Article

³⁰ Teguh Prasetyo, *Kriminalisasi Dalam Hukum Pidana*, Edisi Digital (Bandung: Penerbit Nusa Media, 2020).

³¹ Ika Safitri and Wahyudi, "Kriminalisasi Perbuatan Kohabitusi Dalam Perspektif Pembaharuan Kitab Undang-Undang Hukum Pidana (KUHP) Di Indonesia."

³² Sholikul Hadi, "Eksistensi Pancasila Sebagai Sumber Segala Sumber Hukum Dalam Konstitusi Indonesia," *Indonesian Journal of Law and Islamic Law (IJLIL)* 3, no. 2 (December 30, 2021): 104-40, <https://doi.org/10.35719/ijl.v3i2.128>.

412 of the National Criminal Code regarding cohabitation, namely by making Article 412 of the National Criminal Code an ordinary criminal offense (ordinary offense). This change in offense is a form of protection for society, law enforcement can be carried out more effectively without having to depend on the wishes of the individual who has been harmed.

In the context of protecting Human Rights, this change in crime is certainly a form of respect, fulfillment, protection, enforcement, and advancement of Human Rights as an effort made by the government to create safe, peaceful, and orderly conditions. Cohabitation can cause discomfort to the community which results in public order being disturbed, with this cohabitation it means that it can interfere with other human rights that require comfort and order. According to Article 28G paragraph (1) of the 1945 Constitution, everyone has the right to protection of themselves, their families, honor, dignity, and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right.

Making cohabitation a common offense can strengthen law enforcement, protect society, and ensure fairness in the justice system. This is certainly more in line with the religious values and local wisdom of the Indonesian people, because the act of cohabitation is a very reprehensible act and damages the morals of the Indonesian people who highly uphold eastern customs and make Pancasila the nation's way of life.³³

c. Based on Religious Law

Indonesia, as a Pancasila country which places its first principle, is belief in the Almighty God, it is known that no religion allows cohabitation. The punishment for cohabitation which is included in adultery is very severe, that is in the Islamic religion cohabitation carried out by an unmarried couple is whipped 100 times and if it is carried out by a married couple the punishment is even heavier, namely stoning with stones until they feel pain all over their body, men or women who are married and commit cohabitation/adultery with someone who is not their husband or wife will lose their right to life.³⁴ The dynamic relationship between religious law and positive law must be understood correctly so that the implementation of this Cohabitation Article in the future does not cause social problems.³⁵ Likewise with other religions, all of them prohibit cohabitation. Based on this religious law, the act of cohabitation which is part of adultery should be changed from a complaint offense to an ordinary offense.³⁶

³³ Indra Rahmatullah, "Meneguhkan Kembali Indonesia Sebagai Negara Hukum Pancasila," 'ADALAH 4, no. 2 (June 20, 2020), <https://doi.org/10.15408/adalah.v4i2.16108>.

³⁴ Fadhel Ilahi, *Zina : Problematika Dan Solusinya*, 6th ed. (Jakarta: Qisthi Press, 2005).

³⁵ Hasna Hamidah and Tajul Arifin, "Kohabitas Dalam Perspektif H.R. Al-Tirmidzi Dan Pasal 412 Ayat (1) KUHP," *Jurnal Hukum, Politik Dan Ilmu Sosial (JHPIS)* 3, no. 3 (September 2024): 144–54, <https://doi.org/10.55606/jhpis.v3i2.3899>.

³⁶ Sirajuddin, Risdyan, and Dewi Indriani, "Delik Aduan Tindak Pidana Perzinahan Dalam Pandangan Hukum Pidana Dan Hukum Islam."

d. Based on Community Needs

The influx of foreign cultures and the existence of legal loopholes also have an impact on society, where acts of sexual relations outside of marriage without a marriage bond often occur, in fact this is considered normal for society, especially our youth. This behavior will certainly cause moral damage to our society.

Apart from the influx of foreign culture, there are other factors that cause many people to commit prohibited acts, such as having sexual relations that are not acceptable to them (adultery). This factor is the absence of definite legal regulations for perpetrators of cohabitation, in Article 412 of the National Criminal Code where cohabitation in this article has a loophole that can be exploited by the public to avoid sanctions or criminal punishment, because it is a complaint offense so that if this act is committed, no one will complain then the act cannot be processed legally, this complaint offense is very limited because only certain people can complain about the act.

Cases that occurred, such as the case of a couple in Tanggerang who were paraded and stripped naked by residents because they were accused of committing adultery in their neighborhood, were not only paraded and stripped naked, the couple was also videotaped almost completely naked and distributed widely in cyberspace. This is because there is no legal certainty for perpetrators of adultery, so the community takes action by taking the law into their own hands to teach lessons and deter these perverted perpetrators, in the hope that this incident will not happen again. Of course, this cannot be left to chance, considering that society's need for good laws is very necessary. Therefore, in order to realize the Indonesian nation as a moral nation, strict legal rules are needed that are in accordance with the Indonesian nation's constitution, namely Pancasila. There needs to be a reconstructive change in Article 412 of the National Criminal Code regarding cohabitation, namely by making Article 412 of the National Criminal Code an ordinary criminal offense (ordinary offense). With this change in offenses as a form of protection for society, law enforcement can be carried out more effectively without having to depend on the wishes of the individual who is harmed. This can provide better protection to society in general.

e. Based on the Principle of Legal Certainly

In some cases, victims may be unwilling or unable to file a complaint, even though a crime has occurred. In this case, changing a complaint offense to an ordinary offense ensures that criminals continue to be processed fairly and justly under the law. By treating all criminal acts seriously and without exception, it can increase the sense of justice and security in society, and support the creation of a safer and more harmonious social environment.

f. Based on the Efficiency on the Justice System

Based on religious law, crime theory, community needs and the principle of legal certainty, the act of cohabitation is very necessary for reconstruction in changing the complaint offense into an ordinary offense. With this change in offense it will reduce dependence on the complaint reporting process so that the justice system can work more efficiently and effectively, allowing handling cases more quickly and precisely. A fair and dignified judicial system can be achieved through an effective judicial system.³⁷

Changing complaint offenses to regular offenses has significant urgency in strengthening law enforcement, protecting the public, and ensuring fairness in the justice system. This is in line with the religious values and local wisdom of the Indonesian nation, and is more in line with the theory of punishment theory³⁸ (absolute/retribution) which is based on absolute guidance and ethics "that the law is the embodiment of freedom, while crime is a challenge to the law and retaliatory justice for the sake of beauty or satisfaction. As well as retaliation for actions which are an absolute demand from feelings of dissatisfaction in society as a result of the crime, as well as retribution as a human will so that the state as the embodiment of human will must apply punishment that can reflect justice and create peace.

g. Based on the Theory of Legal Reform

Criminal law is required to provide justice in the midst of a situation that is developing and constantly changing. So the National Criminal Code that is enforced must be able to adapt to current new developments.³⁹ To adjust the dynamics of current legal developments, of course, legal reforms are needed that are in line with current conditions. Legal reforms are very important to be continuously reviewed in order to achieve legal objectives.

Legal reform is defined as a process of testing various formulations of legal provisions and applicable laws and regulations, and implementing a number of changes to them in order to achieve efficiency, justice and also the opportunity to obtain justice according to applicable law.⁴⁰

In the context of legal reform, Mochtar Kusumaatmadja views law as a system of norms and has put forward the theory of development law in his thinking, while Romli Atmasasmita views law as a system of values and has put forward the theory of integrative law in his thinking, then Satjipto Rahardjo with his thinking views law as a system of behavior by putting forward the theory of progressive law. According to Satjipto Rahardjo, progressive law is law that can follow the development of the

³⁷ Realizhar Adillah Kharisma Ramadhan, "Efisiensi Peradilan Dalam Perspektif Pembaharuan Hukum Acara Pidana," *YUDHISTIRA : Jurnal Yurisprudensi, Hukum Dan Peradilan* 2, no. 1 (March 9, 2024): 1-6, <https://doi.org/10.59966/yudhistira.v1i3.883>.

³⁸ Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (September 2022): 176-88, <https://holrev.uho.ac.id>.

³⁹ Ali Zaidan, *Menuju Pembaruan Hukum Pidana* (Jakarta: Sinar Grafika, 2021).

⁴⁰ Teguh Prasetyo, *Pembaharuan Hukum Perspektif Teori Keadilan Bermartabat*, Cetakan pertama (Malang: Setara Press, 2017).

times and is able to respond to changes in the times, with all the basics contained therein.⁴¹

The change of complaint offense into ordinary offense is an application of progressive law, namely that the law always develops towards better perfection. The law is not static but dynamic according to the conditions in society. Legal reform always occurs at any time if there is something that is contrary to the norms that apply in society. Therefore, in order to realize justice and legal certainty, the reform of Indonesian criminal law is directed at the reform of positive law in accordance with religious norms, moral norms, legal norms and customary norms.

3.3. Comparison of Cohabitation Arrangements

In the positive law that applies in Indonesia, the regulations regarding cohabitation if seen from the *Wetboek Van Strafrecht* (WvS) Criminal Code Book, which later became known as Law Number 1 of 1946 (hereinafter referred to as the old Criminal Code) is contained in Article 284 which states that punishment for imprisonment for nine months for a married man to commit adultery, while he knows that Article 27 of the Civil Code (*Burgerlijk Wetboek*) applies to him; and married women commit adultery. Then a man committed the act, while he knew that the woman was married; and an unmarried woman who also committed the act, while she knew that her friend was married and Article 27 of the Civil Code (*Burgerlijk Wetboek*) applied to her friend.

Prosecution can only be carried out on a complaint by a husband or wife who has been embarrassed and if the husband or wife applies Article 27 of the Civil Code (*Burgerlijk Wetboek*) within 3 months after the complaint, followed by a request for divorce or a bed and table divorce. *eat* (*scheiding van tafel en bed*) by that act too. This complaint may be withdrawn as long as the examination before the court has not yet begun.

On January 2 2023, Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) was promulgated. Apart from being rooted in our nation's own value system, the National Criminal Code also adopts a new paradigm in punishment. The retributive paradigm that underlies the criminal system has been changed by adopting a corrective, rehabilitative and restorative paradigm in the new criminal system. It is known that as Article 412 paragraph (1) of the National Criminal Code states that "Every person who lives together as husband or wife outside of marriage shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II." This category II fine according to Article 79 paragraph (1) letter b is IDR. 10,000,000.00,- (ten million rupiah).

Cohabitation is very contrary to ethical norms, moral norms and religious norms. Apart from that, the regulation of cohabitation in the National Criminal Code is a complaint offense and this complaint offense also seems to be neutered because it is limitative, that is, it can only be complained about by a husband or wife for people who are bound by marriage and their parents or children for people who are not married. If there is no complaint by the husband or wife for people who are bound by marriage and parents or children for people who are not bound by marriage, this means that the act may be carried out according to the National Criminal Code. So this very limitative complaint offense should be expanded by allowing

⁴¹ Prasetyo.

other parties to make complaints if this happens so that people's lives are not disturbed by acts of cohabitation.

In the event that the criminal penalty imposed is a maximum imprisonment of 6 (six) months or a maximum fine of category II, in the case of a maximum fine of category II, that is Rp. 10,000,000 (ten million rupiah). The imposition of imprisonment or fines without a minimum limit is also a contributor to injustice and creates legal uncertainty, so that the judge can decide on imprisonment or a fine up to the minimum limit. This is very disproportionate to the series of problems that arise from the effects of cohabitation.

One of the impacts that will occur in cohabiting couples is that if the couple who are cohabiting are not in a stable economic situation, it is very possible that there will be the murder of fetuses in the womb (abortion), the murder of newborn babies or the abandonment of newborn children,⁴² even to the point of committing other crimes, namely theft and robbery, in order to fulfill the living needs of the newborn child. The imposition of criminal penalties for cohabitants can be carried out using national criminal law or local customary law if it violates customary law in force in the local community,⁴³ so that there is a balance between fulfilling criminal obligations and fulfilling moral obligations, because cohabitation is not only a normative legal issue but also a sociological issue.

Article 412 paragraph (2) which reads "For criminal acts as referred to in paragraph (1) no prosecution shall be carried out except upon a complaint from a husband or wife for people who are bound by marriage or parents or children for people who are not bound by marriage. From the description of the article it is known that the complaint offense against the perpetrator of cohabitation is very limited so that it does not fulfill the justice expected by society, because cohabitation is a public problem, there needs to be a reconstruction of the change from a complaint offense to an ordinary crime in order to fulfill the sense of justice of society and guarantee legal certainty.

In some other countries, cohabitation is also prohibited, even the threat of criminal penalties is heavier than the threat of punishment in the National Criminal Code, for example Brunei Darussalam, Canada and Malaysia. Brunei Darussalam as an Islamic country that upholds moral and religious values as a foundation in everyday life has regulated cohabitation by providing a maximum criminal penalty of 10 years and also a fine.⁴⁴ Meanwhile, in Canada, cohabitation is punishable without the condition of disturbing or offending the moral or religious feelings of the local community/environment.⁴⁵ In Canada, cohabitation is a

⁴² Agus Setyadi, "Buang Bayi Karena Malu Hamil Di Luar Nikah, Pasutri Di Aceh Ditangkap," accessed March 14, 2024, <https://www.detik.com/sumut/hukum-dan-kriminal/d-6967490/buang-bayi-karena-malu-hamil-di-luar-nkah-pasutri-di-aceh-ditangkap>.

⁴³ Rizky Julranda et al., "Penerapan Hukum Progresif Sebagai Paradigma Pembangunan Hukum Nasional Dalam Rancangan Undang-Undang Masyarakat Hukum Adat," *Jurnal Crepido* 4, no. 2 (November 22AD): 171–83, <https://doi.org/10.14710/Crepido.4.2.171-183>.

⁴⁴ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*, Keenam (Jakarta: KENCANA, 2017).

⁴⁵ Lidya Suryani Widayati, "Kebijakan Kriminalisasi Kesusilaan Dalam Rancangan Undang-Undang Tentang Hukum Pidana Dari Perspektif Moral Criminalization of Decency in The Criminal Code Bill from Moral Perspectives," n.d., <https://tirto.id/revisi-uu->.

common crime and carries a maximum penalty of 5 years in prison. Then in Malaysia, perpetrators of cohabitation are threatened with a maximum prison sentence of 10 years.⁴⁶

Based on the above, both the National Criminal Code and the Criminal Codes of other countries state that cohabitation is a disgraceful act that violates the norms of decency and morals in society so that it is included in a criminal offense and the act is subject to sanctions/punishments in accordance with the regulations of each country.

3.4. Reconstruction of Cohabitation Arrangements in the National Criminal Code

1. The meaning of Article 412 of the National Criminal Code "Living Together as Husband and Wife"

Cohabitation as a disgraceful act has damaged the order and harmed the sacred meaning of marriage. To be able to fully understand what is meant by living together as husband and wife, of course we must first know the nature of marriage.⁴⁷ The National Criminal Code has made extraordinary changes with the existence of Article 412, namely provisions regarding living together as husband and wife outside of marriage. This article basically explicitly criminalizes cohabitation which was not previously regulated in the WvS Criminal Code. However, the norm of living together as husband and wife in this article still gives rise to multiple interpretations.⁴⁸

The norm for living together as husband and wife in article 412 can be said to be a vague norm because what is meant by living together as husband and wife is a married couple, but the clause in the article is added to outside of marriage so that the meaning becomes less precise and creates confusion. Vague norms are known in various terms.⁴⁹ In principle, a vague norm is a norm in positive law that is formulated vaguely. Slamet Suhartono in his dissertation entitled "Vage Normen as a Legal Basis for State Administrative Actions" stated that vague norms in their application give rise to problems, because they give rise to discretionary authority or free authority to carry out legal interpretations.⁵⁰ Also conveyed by Slamet Suhartono during a scientific oration inaugurating a professor at Untag Surabaya stated that vague norms are actually the same as norms in general, namely as rules of behavior that guide and guide people's lives, only However, the articulation of the meaning is not clear. This unclear articulation provides room for movement for officials to take action without having to

⁴⁶ Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*.

⁴⁷ Zaeni Asyhadie et al., *Hukum Keluarga Menurut Hukum Positif Di Indonesia*, ed. Yayat Sri Hayati, vol. Cetakan Kesatu (Depok: PT Rajagrafindo Persada, 2020).

⁴⁸ Mery Herlina, "Konsep Penyusunan Norma Penjelasan Peraturan Perundang-Undangan Guna Mencegah Multitafsir Dalam Penegakan Hukum Di Indonesia," *Jurnal Penelitian Hukum Galunggung* 1, no. 3 (December 2024), <https://doi.org/10.1234/jphgalunggung.v1i3.35>.

⁴⁹ Mr.JJ.H. Bruggink, *Refleksi Tentang Hukum, Pengertian-Pengertian Dasar Dalam Teori Hukum*, Cetakan kelima (Bandung: PT. Citra Aditya Bakti, 2015).

⁵⁰ Slamet Suhartono, "Vage Normen Sebagai Dasar Hukum Tindakan Tata Usaha Negara" (Disertasi Program Doktor Ilmu Hukum Program Pascasarjana Universitas Brawijaya Malang, 2009).

be fully bound by the law or is called free authority and gives rise to norms that offer officials the choice to use their authority or not to use their authority to carry out certain actions.⁵¹

Explanation of Article 412 of the National Criminal Code, it is only explained that "The provisions regarding living together as husband and wife outside of marriage are known as cohabitation. "This provision also overrides statutory regulations under the Law which regulate living together as husband and wife outside of marriage, as long as they are not regulated in special or special statutory regulations." The explanation of this article is still unclear because it is not explained in detail. Therefore, there is a need for a deeper meaning regarding these provisions.

The term cohabitation which is interpreted as living together as husband and wife outside of marriage as stated in the explanation of Article 412 of the National Criminal Code, its meaning has given rise to several controversies and debates. Here are some important points to note:

- a. The formulation "people who live together as husband and wife outside of marriage", sociologically-empirically, it could be that they are indeed husband and wife, but their marriage is not registered so it is not recognized by state law (but is still valid according to religious law or customary law) and is considered outside marriage. So the formulation and explanation of cohabitation in Article 412 of the National Criminal Code is not the same as the definition of fornication in criminal law doctrine regarding the expansion of the term adultery.
- b. What is meant by adultery according to Sahetapy and Reksodiputro⁵² does not only include overspel, namely sexual intercourse carried out by a husband or wife outside the institution of marriage. But it also includes fornication, namely sexual intercourse between unmarried men and women, even on the basis of mutual consent. Legal sexual intercourse is only carried out within the institution of marriage. So the meaning of adultery includes the meanings of overspel, fornication and prostitution.
- c. The terminology of cohabitation comes from the term *samen laven* which means a human couple who live together in one house without a legal marriage bond. This terminology is more suitable for use in the formulation "people who live together without being married" who are definitely not husband and wife and include fornication if they have sexual intercourse.
- d. Anyone can live together as husband and wife outside of marriage, which can be interpreted as:
 - 1) a married man lives together with a married woman;
 - 2) a married man lives with a woman who is a widow;
 - 3) a married men lives together with unmarried women;
 - 4) a married woman lives with a man who is a widower;
 - 5) a married women lives together with unmarried men;

⁵¹ Berita DIE Untag Ekonomi, "Dekan Fakultas Hukum Untag Surabaya Asal Pacitan Raih Gelar Guru Besar," 2019, <https://die.un>tag-sby.ac.id/berita-407-dekan-fakultas-hukum-surabaya-asal=pacitan-raih-gelar-guru-besar.html>.

⁵² J.E Sahetapy and B.Mardjono Reksodiputro, *Parados Dalam Kriminologi*, Edisi Kedua (Jakarta: Rajawali, 1989).

- 6) Unmarried men lives together with unmarried women;
- 7) Parents (men) lives together with a woman who is their own biological child and behave as husband and wife; And
- 8) Parents (women) lives together with a man who is their own biological child and behave as husband and wife.

In the context of cohabitation, there must be differentiation of sanctions in cohabitation arrangements in the National Criminal Code, because cohabitation perpetrators are diverse. If cohabitation is carried out by parents against their child, this is a very immoral act, there must be weighting in the sanctions applied.⁵³ However, the National Criminal Code only includes general sanctions in cases of cohabitation.

In the explanation of Article 412 of the National Criminal Code, it is stated that "This provision also overrides statutory regulations under the Law which regulate living together as husband and wife outside of marriage, as long as they are not regulated in special or special statutory regulations." In the explanation of the article, it is still not clear what is meant by "legislation that is special or special in nature so that the regulations are blurred. What is meant by Law that is Special or Idiosyncratic is not clear, whether there will be special regulations regarding cohabitation, we are still waiting. If there are no specific regulations governing it, it will be difficult to interpret these provisions.

The regulation of Article 412 of the National Criminal Code is a limitative complaint offense, meaning that those who are allowed to complain have been determined in this law. It is stated in Article 412 of the National Criminal Code that if both perpetrators or one of the perpetrators are married then the complaint can only be made by their respective partners, namely the husband or wife and if the perpetrators are not married then the only people who can complain are their parents. In Article 412 of the National Criminal Code it is not stated at what age parents can complain about their children, so it can be interpreted that as long as the perpetrator of cohabitation is not married, regardless of age, only his parents can complain about this act.

2. Reconstruction of the Formula of Cohabitation

Norm The reconstruction of the formulation of cohabitation norms in the National Criminal Code is a manifestation of the objectives of the law itself, because with the reconstruction a just law will be created in accordance with society's expectations. In making Reconstruction, you should also pay attention to morality because the law is a tool of human civility.⁵⁴ The law's role as a social controller is a form of implementation of legal certainty, so that the laws and regulations that are implemented are properly implemented by the authorities and law enforcers and obeyed by the entire community.

Social control that covers all forces from all aspects, if carried out, will be able to create and maintain social ties. Cohabitation has a disturbing impact and makes local residents uncomfortable. There is evidence that cohabitation is more appropriate as a social issue, not a private one. Because cohabitation is a social problem, it is more appropriate as a public law

⁵³ Kanessa Putri and Muhammad Eko Maryana, "Problematika Moral Bangsa Terhadap Etika Masyarakat," no. 3 (2021): 17-27, <https://doi.org/10.52005/rechten.v3i3.72>.

⁵⁴ Yovita Arie Mangesti, *Moralitas Hukum* (Genta Publishing Yogyakarta, 2015).

and in order to handle it more optimally, cohabitation is more appropriate as an ordinary offense.

If the act of cohabitation is made into an ordinary offense, then the correct law will function as social engineering⁵⁵ relating to the function and existence of the law as a regulator and driver of change in society. The social engineering function of law will not work well if the norms in legislation are vague, have multiple interpretations and do not reflect justice, otherwise law as a tool of social engineering will never be achieved.⁵⁶

Article 412 paragraph (1) of the National Criminal Code states that "Every person who lives together as husband or wife outside of marriage shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II." This category II fine according to Article 79 paragraph (1) letter b is IDR. 10,000,000.00,- (ten million rupiah).

In terms of the punishment imposed in the form of a maximum imprisonment of 6 (six) months or a maximum fine of category II, if we compare it with other countries, this punishment is very light and does not provide a deterrent effect for cohabitants. To provide a deterrent effect, the punishment for cohabitants can be reconstructed by providing a longer prison sentence and a larger fine than before.

In the case of cohabitation committed in indigenous communities, the punishment for cohabitation can be resolved using local customary law. This is in accordance with Article 18B paragraph (2) of the 1945 Constitution which states "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". If it is not resolved in customary courts, it can be continued using national courts.

Customary law or law that lives in society can be used as a source of law, so if the settlement of the cohabitation case has been carried out in accordance with local customary law, this case is considered closed. One of the decisions that respects customary criminal law according to Prof. Nyoman Serikat is the Supreme Court (MA) Decision No. 984 K/Pid/1996 dated January 30, 1996. In this decision, the panel of judges stated that if the perpetrator (dader) of adultery has been subject to customary sanctions or received customary reactions by the traditional village leaders, where customary law is still respected and thrives, then the prosecutor's demands must be declared unacceptable. This decision shows that the Supreme Court "recognizes the existence of customary criminal law along with its customary reactions that are still alive in Indonesian society". In addition, customary criminal law is a living law and can be a source of law.

Article 412 paragraph (2) which reads "There is no prosecution for criminal acts as referred to in paragraph (1) except on complaints from the husband or wife for people who are married or parents or children for people who are not married. From the description of the article, it is known that the offense of complaints against cohabitation perpetrators is very

⁵⁵ Amran Suadi, *Sosiologi Hukum, Penegakan, Realitas Dan Nilai Moralitas Hukum*, Cetakan Ketiga (Jakarta: Kencana, 2021).

⁵⁶ 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)."

limited so that it will be very difficult to ensnare cohabitation perpetrators because if no one makes a complaint from the party mentioned in the National Criminal Code then this cohabitation act cannot be processed legally. Therefore, in order to realize legal certainty and be in line with the norms that apply in society and religious norms, it is necessary to reconstruct the offense of criminal cohabitation from a complaint offense to an ordinary offense.

Reconstruction of cohabitation norms in the National Criminal Code as follows:

Table 1. Reconstruction of Article 412 of the National Criminal Code

National Criminal Code (Law Number 1 of 2013)	Reconstruction of the National Criminal Code	Information
Article 412 of the Criminal Code:	Reconstruction of Article 412 of the National Criminal Code:	Weaknesses of the National Criminal Code:
(1) Every person who lives together as husband and wife outside of marriage shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II.	(1) Every person who lives together without marriage/outside of marriage, like a husband and wife, shall be punished with imprisonment for a minimum of 3 (three months) and a maximum of 24 (twenty-four) months, and a fine of at least category II and highest is category III	1. Article 412 of the National Criminal Code which regulates cohabitation still gives rise to multiple interpretations.
(2) No prosecution shall be carried out for criminal acts as referred to in paragraph (1) except upon complaints: a. husband or wife for people bound by marriage; or b. Parents or children for people who are not married.	(2) Criminal acts as referred to in paragraph (1) committed within the customary law community environment are punished using recognized local customary law. If customary law is not resolved, it will be continued with national criminal law.	2. The threat of punishment used is still too light so it is inversely proportional to the threat of punishment in religious law, if implemented it would be contrary to the first principle of Pancasila "Belief in One Almighty God"
(3) The provisions of Article 25, Article 26 and Article 30 do not apply to complaints as intended in paragraph (2).	(3) Criminal acts as intended in paragraph	3. The offense applied is still an absolute complaint offense which
(4) The provisions of Article 25, Article 26 and Article 30 do not apply to complaints as intended in paragraph (2).		

Article provisions that do not apply to complaints as in Article 412 paragraph (2), are:

Article 25 of the Criminal Code:

- (1) In the event that the Victim of a Criminal Act with a complaint is not yet 16 (sixteen) years old, the person who has the right to complain is his/her parent or guardian.
- (2) In the event that the parents or guardians as intended in paragraph (1) are not present or the parents or guardians themselves must be complained about, the complaint is made by the blood family in a straight line
- (3) In the event that blood relatives in a straight line as intended in paragraph (2) do not exist, the complaint is made by blood relatives in a sideways line up to the third degree.
- (4) In the event that the victim of a crime as intended in paragraph (1) does not have parents, guardians or blood relatives in a straight line upwards or sideways up to the third degree, the complaint is made by oneself and/or a companion.

Article 26 of the Criminal Code:

- (1) In the event that the Victim of a Criminal Act who complains is under guardianship, the person who has the right to complain is the guardian, except for Victims of Criminal

- (1) are prosecuted without the need for a complaint.

- (4) Deleted

is a legacy of the Dutch colonial legacy, even though culturally and religiously it is clearly different from the culture and religion in Indonesia so that if it is applied it is not in accordance with the moral and cultural values that exist in Indonesian society.

Acts who complain who are under guardianship due to being wasteful.

(2) In the event that the guardian as referred to in paragraph (1) does not exist or the guardian himself must complain, the complaint is made by the victim's husband or wife or blood relatives in a straight line.

(3) In the event that the victim's husband or wife or blood relatives in a straight line as intended in paragraph (2) do not exist, the complaint is made by the blood family in a sideways line up to the third degree.

Article 30 of the Criminal Code:

(1) Complaints can be withdrawn by the complainant within 3 (three) months from the date the complaint was submitted.

(2) A withdrawn complaint cannot be submitted again.

To create a deterrent effect, the norm in punishing cohabitation also needs to use cumulative punishment, that is imprisonment and accumulative fines, not alternatives such as the current provisions of Article 412 of the National Criminal Code so that criminal liability can be balanced with the actions committed.⁵⁷ With the reconstruction It is hoped that justice, benefit and legal certainty can be achieved with these norms. People can live in an orderly and comfortable manner without being disturbed by the disgraceful actions of cohabitants.

The formulation of these norms will provide a deterrent effect for perpetrators because the basic punishment is imposed in the form of imprisonment and fines on an accumulative basis and there are limited minimum and maximum limits for both imprisonment and fines

4. Conclusions

The cohabitation regulations in the National Criminal Code in Article 412 of the National Criminal Code which will come into effect on January 2 2026 need to be reconstructed to realize

⁵⁷ Agus Rusianto, *Tindak Pidana Dan Pertanggungjawaban Pidana, Tinjauan Kritis Melalui Konsistensi Antara Asas, Teori, Dan Penerapannya*, Cetakan Kedua (Jakarta: Prenadamedia Group, 2018).

justice for all Indonesian people. The emphasis on reconstruction is changing the norm of "living together as husband and wife outside of marriage" to "living together like husband and wife outside of marriage." The imposition of criminal threats for cohabitation in the National Criminal Code is too light when compared to other countries that uphold moral and religious values. To create a deterrent effect, the criminal threat for cohabitation in the National Criminal Code can be reconstructed by having a minimum criminal threat and increasing the maximum criminal penalty, then imprisonment and fines become accumulative, not alternative, and changing the complaint offense into an ordinary crime because cohabitation is a public problem.

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