

The Criminalization Of Cohabiting Policy In The Revision Of Criminal Law In Indonesia

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Abstract. Cohabiting seen as acts that violate the values of decency. But in the Criminal Code, this act is not a criminal offense. For related research needs to be undertaken efforts to criminalize the cohabiting as criminal law reform in Indonesia. The purpose of this study was to analyze: the reasons for cohabiting in Indonesia, the basic consideration of the need for the criminalization of cohabiting in criminal law reform in Indonesia and the criminalization of cohabiting policy in the revision of criminal law in Indonesia in the future.

The method used is normative, then the data was analyzed using the Theory of Law Enforcement and Justice Theory of Pancasila.

The study concluded that: 1) The reasons for cohabiting in Indonesia are less prepared mentally, economic, traumatic experience, weak monitoring social control in society, Wedding paradigm shift and the notion of sex is a private person's rights as well as the weakness of Indonesian law. 2) Rationale and criminalization of cohabiting consideration, based on: Socio-Philosophical Basis and Socio Cultural National Legal Systems, Platform Values Decency / National Agreement and Platform for Research and Comparative Studies. 3) The policy of criminalization cohabiting in the positive law in Indonesia in the future necessary to maintain it being understood obscenity, to reduce and prevent acts of vigilantism by the community and for the unification of customary law governing cohabitation.

Keywords: Criminalization Policy; Cohabiting; Indonesia Criminal Law.

1. Introduction

Indonesian criminal law reform efforts have a meaning which is to create a national criminal law codification to replace the criminal law codification which is a legacy of the Dutch colonial *Weetboek van Strafrecht voor Nederlands Indie* 1915, which is a derivative of *Weetboek van Strafrecht Holland* 1886². Although the Criminal Code has now been made the changes but the soul remains unchanged. During the Penal Code subject to addition, subtraction or change, but the soul remains unchanged.

Legal reforms geared to a wide range of public interest to be protected by law, one of which is the sense of public decency are now beginning to question the emergence of a new phenomenon in the life of society in the form of deviation sexual life. Deviations delinquency action that one of them is cohabitation. Cohabiting interpreted gather

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² SS, Soeharjo, 1992, *Politik Hukum dan Pelaksanaannya dalam Negara Republik Indonesia*, Semarang : Universitas Diponegoro.

together without a valid marriage bond that happens between a man and woman who are both unmarried. Cohabiting phrase is a phrase that comes from the Javanese language that consists of two words together and cohabitation which means "living together as husband and wife out of wedlock"³, People used to replace the word *samenleven* (Dutch). Cohabiting now quite widespread in large cities, particularly those often seen around town settlements. Cohabiting was not only done by those grown or working but not uncommon pair of students were often seen staying one roof (rented houses or). Obviously this can damage the moral norms of Indonesian society.

Lately arise urge or thought of various parties, especially the scholars and the people who wanted the presence of sexual crimes such as cohabiting is prohibited and punishable, because that sort of thing is considered to have ruined the taste of decency society and contrary to the personality of the nation of Indonesia.

Legally criminal law in Indonesia today can not be threatened with criminal sanctions against those who engage in intercourse outside of marriage are illegitimate, especially when committed by adults or both parties are not bound by a marriage with someone else and do without coercion.

In connection with the above description, it was felt necessary to conduct research on cohabitation. The results of the research will be written in the form of scientific work thesis entitled "The Criminalization Of Cohabiting Policy In The Revision Of Criminal Law In Indonesia".

The formulation of the problem in this research are: Why happened the cohabiting in Indonesia? What is the basis of considering the need to criminalize cohabiting in criminal law reform in Indonesia? How criminalization cohabiting policy in criminal law reform in Indonesia in the future?

Research methods

This type of research is a normative juridical approach, namely to examine the sources of literature relevant to the theme of research, including research on the principles of law, sources of law, legislation that is theoretical scientific as well as to analyze the issues discussed. In accordance with the purpose of the study, the nature of the research in this thesis writing is descriptive, which is a study that aims to describe or illustrate facts that exist and analyze the data obtained in a systematic, factual and accurate information on cohabiting.

The data used in this normative research is secondary data is data that comes from the materials library. As for the secondary data comprises: The primary legal materials consist of Constitution of the Republic of Indonesia 1945, The Code of Criminal, Act No. 1 of 1974 on Marriage

³Ranuhandoko, 1996, *Terminologi Hukum Inggris-Indonesia*, Jakarta : Sinar Grafika, p. 33.

Data collected from secondary data were analyzed with descriptive method of analysis and prescriptive because the study was not just describing about the criminalization of cohabiting but also illustrates how the policy should criminalization of cohabiting in criminal law reform in Indonesia.

2. Discussion

2.1. Gather reason of cohabitation occurrence in Indonesia

Sex is closely associated with marriage, both men and women then in lawful sex after going through marriage. If the sex act done outside the norms set, the act that is called fornication or adultery⁴ and if it is done to cohabiting without marriage, it is called "cohabitation". This can be connoted cohabiting with adultery because usually people who do cohabiting also marital relationship without marriage or adultery.

Cohabiting now become commonplace impressed with the notion that it is part of modern life. There are many reasons why some people in Indonesia practice cohabiting namely:

- Mental unpreparedness to marry,
- Unpreparedness economically,
- Traumatic experience,⁵
- Weak oversight of the users of services cost / rented,
- Shifting millennial generation view on marriage,
- In connection with the private rights of man,
- The absence of legal sanctions against the perpetrators of cohabiting.⁶

2.2. Rationale The need Criminalization Cohabiting In Criminal Law Reform in Indonesia

According Soerjono Soekanto, criminalizing an act or determination of the authorities regarding acts of certain communities or classes of society regarded as an act which may be liable to be a criminal act or make an act becomes a criminal act and therefore can be imprisoned by the government by way of working on name.⁷ Criminalization policy is a government policy to assign or remove a deed which originally did not constitute a criminal offense finally with various specific considerations then appointed or assigned into categories of offenses. The criminalization policies that are in the realm of criminal policy, which is a form of renewal of criminal law (penal reform) that will be oriented towards the renewal of national law (law reform).

Cohabiting be regarded as a social disease because cohabiting deemed destructive to the society, besides cohabiting undermine cultural values that grow and thrive in

⁴Zakiya Darajat, 2002, *Peranan Agama Dalam Kesehatan Mental*, Jakarta: Gunung Agung, p. 27.

⁵Agoes Dariyo, 2003, *Psikologi Perkembangan Dewasa Muda*, Jakarta: Gramedia Widiasarana Indonesia.

⁶Sidik Hasan & Abu Nasma, 2008, *Let's Talk About Love*, Solo, Tiga Serangkai.

⁷Soekanto, Soerjono, 1981, *Kriminologi: Suatu Pengantar*, First Edition, Jakarta : Ghalia Indonesia, p. 62.

Indonesian society. In addition cohabiting contrary to the teachings of religions in Indonesia.

The rationale or consideration of the need for the criminalization of cohabitation based on:

- Socio grounding Philosophical and Socio Cultural National Legal System.
- Runway Values Decency / National Agreement.
- Platform Research and Comparative Studies.

Cohabiting policy criminalize the act is one of the criminal law reform efforts in Indonesia to uphold religious values and ethics that exist in Pancasila containing living national values based upon Almighty God.

2.3. Gather Criminalization policies Of cohabitation In Criminal Law Reform In Indonesia In The Future

Cohabiting is one example of the violation of religious norms and moral norms in society. In some cases cohabitation is happening in Indonesia, the actual law enforcement officials in investigating a bit difficult to find a solution, because there is not a single article of the Criminal Code that regulates it. Act No. 1 of 1974 on Marriage and Implementation Regulation can not be used to anticipate and solve problems cohabiting in the absence of strict sanctions for offenders.

In the absence of regulation of cohabitation in the written laws in this country, then people are often acting alone can alleviate such conflicts are not uncommon disregard the principle of presumption of innocent and human rights offender. So that the necessary constructive steps to establish a law reform.

One way is to incorporate a variety of actions that the community is not considered suitable norms prevailing in society (which is not regulated in the Criminal Code or other legislation) to be a criminal offense in the legislation (criminalization).

Settings cohabiting in the positive law in Indonesia being understood necessary to enforce obscenity and reduce and prevent vigilante action by the public. Another aim is the unification of the customary law regulating cohabitation because in some regions in Indonesia has been used as traditional offense so we need a cohabitation arrangement on a national basis. Violation of the values of decency and religious make deeds cohabiting need to be regulated and codefication into a legislation which applied nationally. This is required in addition to maintaining security, order and sense of justice people who feel they have been violated morality feeling also to ensure the protection of human rights against the perpetrators.

3. Closing

2.1. Conclusion

- The reasons for cohabiting in Indonesia are less prepared mentally, economic, traumatic experience, weak monitoring social control in society. Wedding paradigm shift and the notion of sex is a private person's rights and the weakness of Indonesian law makes some people in Indonesia practice cohabiting.
- Background of thought and consideration cohabiting appointed as a crime and included as part of the offense decency, based on:
 - Runway Socio Cultural Philosophical and Legal System
 - National.
 - The Values Decency / National Agreement.
 - The cornerstone of Research and Comparative Studies.

So on the basis of the above considerations make the policy of criminalization of the offense cohabiting as one effort to reform the Indonesian criminal law in order to enforce religious values and ethics that exist in Pancasila containing living national values based upon Almighty God.

Criminalization cohabiting policy in the positive law in Indonesia in the future necessary to maintain it being understood religious norms, decency is in Pancasila and to dampen and prevent vigilante action by the public. Another aim is the unification of the customary law regulating cohabitation, so act Cohabiting should be included in the new Code as part of the criminal act of decency so that law enforcement officers have a basis in law enforcement efforts. This effort is the Indonesian criminal justice reform efforts to uphold religious norms, decency, morality and legal norms so that people get a sense of justice, rule of law and social benefit for the achievement of social justice for the whole people of Indonesia.

2.2. Suggestion

- Expansion of the offense of cohabiting in the draft Penal Code is currently the appropriate steps to accommodate the values that live and grow in the community and RKUHP is expected to be realized, enacted and enforced in the Republic of Indonesia, where people are diverse, plural but uphold religious norms, decency, morality and legal norms.
- Fornication and cohabitation, according to the author, is an act of private-risk social, in addition to the sociological impact of the freedom to have sex can be bad for the development of society and disturbing public order, for it must get intervention from countries namely through criminal law.

4. REFERENCES

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