

The Juridical Review of the Phenomenon of "Kumpul Kebo" in the Perspective of Criminal Law

Agung Aristyawan Adhi^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: agung.std@unissula.ac.id

Abstract. *The act of cohabiting that occurred in Indonesia is one of the acts that deviates and damages the morale of the nation's generation. Cohabitation behavior is considered not in accordance with norms, customs and religion, especially in Indonesia which highly values decency and religion. The community's reaction to acts of social deviance in cohabitation often reaps various negative responses and tends to take the law into their own hands. In the Criminal Code Bill that has been passed into the new Indonesian Criminal Code, this act has been included as a criminal act of decency. Therefore, the author wants to know and examine the arrangements for the crime of cohabitation in the new Criminal Code and what causes the pros and cons of the crime of adultery in the new Criminal Code. The method used in this study is a normative juridical method, namely focusing research on library research, the source of the data is taken from books and statutory regulations. Of the various pros and cons regarding the existence of policies and regulations regarding cohabitation, the author hopes that the existence of the new Criminal Code can better protect women and reduce the rate of abortion in Indonesia with strict rules regarding the behavior of Kumpul Kebo. Because with the existence of strict rules that are applied, it will reduce deviant behavior outside of marriage and free sex behavior.*

Keywords: *Behavior; Criminal; Kumpul Kebo.*

1. Introduction

The Indonesian nation, which is known for its high culture and upholds the values of decency in social life, began to question the emergence of a new phenomenon, namely "a deviation of life in the field of sexual crimes". One of these deviations is "Kumpul Kebo (cohabitation)", namely living together

without a marriage bond between a man and a woman where they live together in one house .¹

Kumpul Kebo comes from traditional Javanese society (older generation). In a nutshell, "a couple who are not married but live under one house or one roof, their behavior is considered the same as that of a buffalo/cow". Anecdotally, "buffaloes are considered animals that behave or act according to their own will, so living together without marriage ties is considered a reflection of their own arbitrary behavior".²

The phenomenon of social deviance in the form of cohabitation needs to get a response in the form of the rule of law as a tool to deal with deviant acts in society. The existence of criminal law rules is of course followed by a sanction in the form of criminal sanctions as a means used in providing protection to the public from a crime or a means to deal with acts that deviate from social norms. Criminal law is a rule of law that links between an act that qualifies as a crime, and the existence of sanctions as a result of the commission of the act.³

It is hoped that the renewal of criminal law in Indonesia which was ratified on December 6 2022 yesterday, is expected to make many new changes regarding the weaknesses of the criminal rules regarding the offense of adultery as stipulated in Article 284 of the previous Criminal Code.

According to the old Criminal Code, adultery was identified with *overspel*, which had a much narrower meaning than adultery itself. *Overspel* can only occur if one of the actors or both actors are bound by marital ties. This is different from the communal and religious conception of Indonesian society/nation. Every form of adultery, whether married or not, is a taboo act that violates moral values.

The crime of adultery referred to in Article 284 paragraph (1) of the old Criminal Code is an act or crime that must be committed intentionally. This means that the element of intent must be proven to the perpetrator so that he can be proven intentional in committing one of the criminal acts of adultery from the criminal acts of adultery regulated in Article 284 paragraph (1) of the old Criminal Code. The old Criminal Code has regulated the Crime of Adultery. Although not regulated in a separate section on adultery, these articles are included in the chapter on crimes against decency.

¹Pahrur Rizal, "Basic Criminalization of *Kumpul Kebo* in Indonesian Criminal Law Reform", Scientific Development Media Journal, Vol. 15, No. 1, 2020, p. 3905-3914.

²I Gst Ag Gd Krisnadwipayana and AA Ngurah Wirasila, "Regulation of *Kumpul Kebo (Cohibition)* in Criminal Law Reform Indonesia", Journal of Kertha Desa, Vol. 8, No. 7, 2020, p. 2.

³Sudarto, 2009, Criminal Law I, Soedarto Foundation, Semarang, p. 13

In Islam, adultery is included in the category of uncivilized sexuality because it is out of the concept that has been agreed upon by Islam. Before Islam came, adultery was an act that was not prohibited. As mentioned above, legal sexuality is sex that is approved by Islamic Shari'ah. Thus, adultery is actually another form of sexual deviation. Therefore, the person who committed the act of adultery will be given a Jinayah criminal sentence. Allah SWT says in the Qur'an Surah An-Nur/24: 02 which means: "A woman who commits adultery and a man who commits adultery, then lash each one of them a hundred lashes, and let not compassion for both of them prevent you from (carry out) Allah's religion, if you believe in Allah, and the Hereafter,

While in the new Criminal Code, The crime of adultery is regulated in a separate section in the chapter on crimes against decency. There are four acts included in the Criminal Act of Adultery, namely: having intercourse with someone who is not their husband or wife (Article 411); conduct "*Kumpul Kebo*" or live together as husband and wife outside of marriage (Article 412); having intercourse with one's family (Article 413).

Cohabitation is one of the acts that is criminalized in the new Criminal Code as a form of extension of the delict offenses in the old Criminal Code. The inclusion of cohabiting as an offense has resulted in pros and cons against efforts to criminalize cohabitation in the New Criminal Code. In connection with the inclusion of cohabitation into the new Criminal Code, several opinions emerged that were pro and contra to the behavior of cohabitation (*samen leven*). There are several reasons that cause people to practice "cohabitation", namely on the basis of mental unpreparedness in going through marriage, unrestrained lust, the influence of the surrounding environment and even financial problems. For example, for the sake of saving expenses, young people who go to school outside the city are far from their parents and then prefer to live with their girlfriends. Cohabitation actors believe that their courtship has a higher degree or status than ordinary courtship because what they do is not only date and eat together, but also carry out all activities together, manage finances together and even sleep together, just like husbands do legally married wife. Even though there is no marriage bond between them.⁴

Based on the description of the background above, the writer will discuss the related problems show is the regulation of the crime of cohabitation in the new Criminal Code and what causes the pros and cons of the crime of adultery in the new Criminal Code. This study aims to determine the arrangements for the crime of adultery in the new Indonesian Criminal Code and the causes of the pros and cons in the new Indonesian Criminal Code. The purpose of this study is to find

⁴Muttaqin, Ihwanul. (2018). Juridical Analysis of the Development of Prison Sentences from the Criminal Code to the Draft Criminal Code. Justice Pro: Journal of Legal Studies, 2(2), 134-152

out the arrangements for the criminal act of adultery "*Kumpul Kebo*" in the new Criminal Code that applies in Indonesia and to find out the causes of the pros and cons of the crime of adultery in the new criminal code.

2. Research Methods

The approach method used in this study is a normative juridical approach. The normative juridical approach is legal research carried out by examining literature or secondary data as the basic material for research by conducting a search of regulations and literature related to the problem being studied.⁵The type of research used in completing this thesis is descriptive analysis research, namely literature study as secondary data, then discussing, listening to and conceptually comparing with laws and regulations. The data that has been obtained from this study will be processed and analyzed using qualitative analysis, namely giving meaning and interpreting each data, after processing it is then realized in the form of sentences systematically to draw a conclusion.

3. Result and Discussion

3.1. Criminal Act Arrangements Adultery "*Kumpul Kebo*" in the New Criminal Code in force in Indonesia;

Behavior cohabitation (*samen leven*) is an act that has a broader scope than adultery (adultery) or other obscene acts. Actions that can damage the morale of this nation's generation are really the same as promiscuous behavior carried out by teenagers or young couples who commit obscene acts without legal marriage ties. The act of living together in a boarding house and rented out without marriage and coercion. Cases of promiscuity among the community (especially those carried out by teenagers) can almost be felt collectively as a form of violation of the norms of decency and decency that live in society. This is what is felt as a violation of a norm in society, which has not been touched by the Dutch heritage Criminal Code.

In this case cohabitation can also be said to be an act of adultery. The Indonesian state system in the norms of the rule of law is carried out by the government to regulate society in matters of personal and/or family protection from perpetrators who deviate from the dignity of a person, especially women, which is called adultery and is regulated in the current Criminal Code.

In the new Criminal Code, the offense of adultery is an absolute complaint offense, namely a husband or wife who is bound by a marriage bond; parents or

⁵Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Overview), Jakarta, Rajawali Press, pp. 13-14

children who are not bound by marriage. That is, the offense of adultery cannot be made by all parties. Absolute complaint offense is a limitation of parties who have the right to make complaints or reports to law enforcement officials. Setting the offense of adultery in the new Criminal Code as a middle way is neither too conservative nor liberal. Even though there are reports or complaints, for example, it turns out that there is still an opportunity for the report to be withdrawn as long as the case has not been examined in court. This means that the new Criminal Code still provides an opportunity for the continuation of the private life of husband and wife as long as there is regret, internal awareness, and kinship so that they can return to live a harmonious life.

The marriage bond is emphasized in the prohibition of adultery because Article 27 of the *Burgelijk Wetboek* stipulates that "at the same time a man is only allowed to have one woman as his wife, a woman only one man as her husband." Thus, the Indonesian legal system in general adheres to the principle of absolute monogamy for citizens whose religion believes in this matter, and the principle of monogamy is open to citizens who are Muslim.

The consequences of cohabitation are varied and related to the conditions and responses of the community regarding the act of *Kumpul Kebo* (cohabitation). If the community is pro with cohabitation (cohabitation), then they will let couples get together to stay silent and live under one roof or one house without any intervention in all matters that are part of it from the life together of the cohabiting couple.

Several articles in the new Criminal Code (KUHP) which regulate the crime of adultery are as follows:

Article 411

Paragraph (1) Any person who has intercourse with someone who is not his husband or wife, shall be punished for adultery, with a maximum imprisonment of 1 (one) year or a fine of Category II;

Paragraph (2) Against the crime referred to in paragraph (1) no prosecution is carried out except on complaints

a. Husband or wife for people who are bound by marriage.

b. Parents or children for those who are not bound by marriage.

Paragraph (3) The provisions as referred to in Article 25, Article 26 and Article 30 do not apply to complaints as referred to in paragraph (2).

Paragraph (4) Complaints can be withdrawn as long as the examination before the trial court has not started.

Article 412

Paragraph (1) Everyone who lives together as husband and wife outside of marriage is punished with imprisonment for a maximum of 6 (six) months or a maximum fine of Category II.

Paragraph(2) Against the crime as referred to in paragraph (1) no prosecution is carried out except on complaints

a. Husband or wife for people who are bound by marriage.

b. Parents or children for those who are not bound by marriage.

Paragraph (3) The provisions as referred to in Article 25, Article 26 and Article 30 do not apply to complaints as referred to in paragraph (2).

Paragraph (4) Complaints can be withdrawn as long as the examination before the trial court has not started.

Article 413 :

Anyone who has intercourse with someone who he knows is a member of his family, shall be punished with imprisonment for a maximum of 10 (ten) years.

When looking at the formulation of the articles regarding adultery in the new Criminal Code, namely in Articles 411, Article 412, and Article 413, it is clear that "Kumpul Kebo" can be interpreted as "everyone who has intercourse with someone who is not husband or wife". This formulation has broader meaning implications than the formulation of adultery offenses in the old Criminal Code, namely the elimination of the condition "married to one or both of them". Thus, it can be interpreted that intercourse between a pair of men and women who are both not bound by marriage even though it is already considered an offense of adultery and can be threatened with sanctions in the form of imprisonment for 1 (one) year and fines category I.

The determination of cohabitation in the criminal law *ius constituendum* has considered several factors, including:

a. The balance between the means used and the results to be achieved;

- b. Balance between costs and cold-achieved results and objectives;
- c. Assessment of the goals to be achieved and their priorities in relation to the aspect of human resources;
- d. The social influence of a process of criminalization or decriminalization;

Setting the crime of cohabitation (living together without marriage ties) or cohabitation in the new Criminal Code is a new thing as regulated in Article 412 of the Criminal Code. The colonial-era Criminal Code does not regulate cohabitation, so that if a couple is not married and lives together they cannot be criminalized. However, under the new Criminal Code, this is a criminal offence. The threat of imprisonment for a maximum of 6 months for those who violate the rules prohibiting cohabitation. As with the offense of adultery, cohabitation is an absolute crime of complaint. As long as there are no complaints, cohabitation actors cannot be prosecuted. Parties who have the right to make cohabitation complaints are husbands or wives who are married, and parents or children who are not married. However,

1. Pros and Cons of the Crime of Adultery in the New Criminal Code

Various kinds of pro and con responses from the public on social media regarding this issue. For people who are on the pro side, they feel that this will provide benefits, considering the large number of recent cases of infidelity, with this regulation it is hoped that it will be able to create a deterrent effect for perpetrators and victims to get justice. However, on the other hand, the passage of the new Criminal Code which contains adultery has created a series of controversial articles which have become the subject of public discussion and attention. Many people think that the notion of adultery in the new Criminal Code is too much into the private affairs of the people in Indonesia, those on the counter side think that the State should not get into the private sphere.

they feel that this is the business of each individual and the sins and risks are also borne by the individual, which is the business of each individual with his God. They also added that although the government's intentions were quite good, they were still considered too imposing. In addition, the new Criminal Code looks at a criminal act with a dualistic view. In its development, the adultery article is now regulated in Articles 411-413. With the explanation of the formulation of this article it is said that it leads to over-criminalization, this is due to the non-fulfillment of the guidelines in making a rule.

The article also regulates the crime of adultery becomes a crime that is quite serious because it determines the punishment for 1 year in prison. This adultery offense did not cause any victims, so that many consider it necessary to

reconsider their responsibilities so as not to take away an individual's freedom. Another reason for the controversy in the crime of adultery among the public is the issue of fear of being ensnared by couples who are married according to Islamic law but do not register their marriage at the Office of Religious Affairs (KUA) or what is commonly called unregistered marriage. The evidence used to prove the existence of adultery has been regulated in Article 184 of the Criminal Procedure Code, namely: Witness statements, expert statements, letters, instructions, and statements of the accused.

In cohabitation arrangements or *Kumpul Kebo* in the new Criminal Code there is a reorientation of values that the Indonesian value system tries to accommodate in adultery and cohabitation offenses in the new Criminal Code. Cohabitation arrangements absorb social, cultural and religious realizations in Indonesian society. Indonesian culture tends to view living together without marriage ties as wrong and disgraceful. Therefore, the Criminal Code has only tried to criminalize the act of cohabitation.

This article related to cohabitation or cohabiting becomes controversial when compared with the people of other countries who have a culture and view of privacy values regarding the right to protect sexuality. This is natural because there are differences in cultural dimensions and the values adopted by the people. There is a value reorientation that tries to accommodate the Indonesian value system in adultery and cohabitation offenses in the new Criminal Code whose philosophy is in the form of safeguarding and respecting the institutions/institutions of marriage and lineage. This is different from the colonial Criminal Code with the colonial value system at that time.

4. Conclusion

Cohabitation is deviant behavior and is contrary to the values and norms that apply in society. The act of cohabitation is considered as one of the crimes, because the impact of the act of cohabitation can lead to a new or further crime such as abortion, killing of unwanted babies or disposal of babies as a result of the act of cohabitation. As a result, many cases of cohabiting were resolved in a brutal and vigilante way (*eigenrechting*) by the people who carried out raids when they found cases of cohabitation occurring in the area or where they lived and settled. Therefore, With the existence of a new Criminal Code that accommodates related to the crime of adultery, this is the right effort to overcome cohabitation and to prevent the conditions of the impact or consequences it causes and prevent conditions from getting worse. The old Criminal Code rules, especially those related to adultery, are not in accordance with the culture in Indonesia, often the act of adultery which is actually troubling the community cannot be tried as expected. With the existence of a new Criminal Code which contains articles that regulate punishment for adultery,

cohabitation, to blood relations which contain threats of punishment for adultery, cohabitation, to different blood relations. Arrangements regarding government are regulated in Article 411, Article 412 and Article 413. Article 411 regulates that a person having intercourse with someone who is not his husband or wife, shall be punished for adultery, with a maximum imprisonment of 1 (one) year or a Category II fine. Article 412 states that those who live together as husband and wife outside of marriage are punished with imprisonment for a maximum of 6 (six) months or a maximum fine of Category II. Apart from that, the crime of adultery is also regulated in Article 413 which stipulates that any person who has intercourse with someone who he knows is a member of his family, shall be punished with imprisonment for a maximum of 10 (ten) years. In the current developments, many people think that the notion of adultery in the new Criminal Code is too deep into the private affairs of the Indonesian people. They think that the state should not get into the very private sphere. On the other hand, some of those who are on the pro side feel that this is quite useful because of the many cases of infidelity lately, it is hoped that this regulation can create a deterrent effect for perpetrators and victims to get justice.

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