

## The Law Enforcement against Adultery Crime Actors

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**Abstract.** *The act of adultery is one of the criminal acts that is prohibited by the western legal system, the customary law system, and the Islamic legal system. Adultery is regulated in Article 284 of the Criminal Code, the crime of adultery is a crime that is included in the category of complaint offenses. So that only the injured party can sue for the occurrence of the adultery case, namely the legal partner of the adulterer. However, the system of proving the crime of adultery also often becomes a particular difficulty for those who are aggrieved because of the perpetrators of adultery, so raiding the perpetrators of adultery is a very effective alternative to ensnare the perpetrators. The number of cases of adultery is increasing day by day but very rarely touched by the law. The method used by the author in compiling the journal uses the Normative juridical method with the research specifications used in this research is descriptive analysis type. The results of the research show that adultery is an act that violates human nature and should not be committed by every human being, for those who commit adultery the threat of punishment in Article 284 of the Criminal Code is nine months in prison. Obstacles in adultery enforcement, namely evidence that is difficult to obtain and witnesses who are reluctant to give statements, are also factors that complicate the process of law enforcement against perpetrators of adultery. Article 284 of the Criminal Code provides a loophole for unmarried people to be able to commit adultery. In other words, unmarried men or women are not covered in this regulation.*

*Keywords: Adultery; Marry; Perpetrator.*

### 1. Introduction

The act of adultery is one of the criminal acts that is prohibited by the western legal system, the customary law system, and the Islamic legal system. According to the general understanding (common sense) of the community, adultery is a sexual relationship outside of marriage, whether one of the perpetrators is bound

by marital ties or both are not bound by marital ties. Adultery is a sexual relationship committed by a man with a woman who is not bound in a valid marriage according to Islamic law, on the basis of consent from both parties, without any doubt (*syubhat*) from the perpetrator or the perpetrators of adultery concerned.<sup>1</sup>

According to Simons, for adultery according to Article 284 of the Criminal Code, it is necessary to have a *vleeslijk gemeenschap* or to have a complete sexual intercourse between a man and a woman. So if it is committed by two people of the same sex it is not adultery as referred to in Article 284 of the Criminal Code and if it is committed by those who are not yet in a marriage relationship with another person it is also not included. Another condition that needs to be considered so that the act of having sexual intercourse between a man and a woman who is married to one or both of them can be called an offense of adultery according to the Criminal Code is that there is no consent between the husband and wife. This means that if there is an agreement between husband and wife,<sup>2</sup>

Adultery has become a criminal act or crime that is very disturbing and very disturbing to society. The handling of the crime of adultery by law enforcement officials must be carried out appropriately in order to encourage a reduction in the deviation of the perpetrators of the crime of adultery. In addition, serious handling of the crime of adultery is an effort to prevent and reduce the various negative impacts of the crime of adultery, one of which is HIV/AIDS.

Seeing the negative impact of the crime of adultery mentioned above, law enforcement against the crime of adultery must be handled optimally, especially the application of sanctions against adultery perpetrators considering the negative impact caused by adultery, both for the perpetrator, the victim's family, and society in general.

Law enforcement can be interpreted as an act of applying certain legal means to impose legal sanctions to ensure compliance with the stipulated provisions.<sup>3</sup> Furthermore, Barda Nawawi Arief also believes that the enforcement of criminal law consists of two stages. First, in *abstracto* criminal law enforcement and secondly in *concreto* criminal law enforcement. Enforcement of criminal law in *abstracto* is the stage of making/formulating laws by the legislature, which can be called the stage of legislation. Enforcement of criminal law in *concreto* consists of the stages of application/application and implementation of laws by law

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<sup>1</sup>Neng Djubaedah, 2019, *Adultery in Indonesia's Legislation in View of Islamic Law*, Kencana Prenada Media Group, Jakarta, p. 119

<sup>2</sup>M. Marwan and Jimmy P, 2009, *Legal Dictionary*, Reality Publisher, 2009, Surabaya, p. 12

<sup>3</sup>Syakbani, Baehaki, *Law Enforcement in the Capital Market in Economic Law Products in Indonesia*, *Valid Journal* 11(2), 2014, p. 89–96.

enforcement officials, which can be called the judicial stage and the execution stage.<sup>4</sup>

The crime of adultery is a crime that is included in the category of complaint offenses. So that only the injured party can sue for the occurrence of the adultery case, namely the legal partner of the adulterer. However, the system of proving the crime of adultery also often becomes a particular difficulty for those who are aggrieved because of the perpetrators of adultery, so raiding the perpetrators of adultery is a very effective alternative to ensnare the perpetrators. The number of cases of adultery that are increasing day by day but are rarely touched by criminal law is the basis for the author to conduct this research. The formulation of the problem of this research is how to enforce the law against the perpetrators of adultery and what are the obstacles in law enforcement for the perpetrators of adultery.

## **2. Research Methods**

The method used by the author in compiling the journal uses the normative juridical method. The research specification used in this study is a descriptive type of analysis. In this study the authors focused on library research as well as primary materials in the form of applicable laws and secondary materials in the form of expert opinions, legal books, journals and magazines. The data collection technique carried out in this study used literature study, collecting data from the results of a review of literature and secondary data which included primary legal materials, secondary legal materials and tertiary legal materials. Data analysis techniques in this study were carried out by qualitative data analysis, namely data collection using laws, theories and legal principles.

## **3. Results and Discussion**

### **3.1. Law Enforcement Against Adultery Crime Actors**

Adultery is an act of intimate relations committed by two pairs of people who have no previous marriage relationship. Adultery is one of the prohibited acts and violates the norms of decency by every human being for any reason. Adultery in life both in terms of religion, culture and social states that adultery is an inappropriate treatment carried out by humans.

Life that exists today has regulated related to the act of adultery. This arrangement is carried out by every aspect of life. The dominant aspects in regulating adultery are three aspects, namely religious aspects, cultural or customs aspects and legal

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<sup>4</sup>Barda Nawawi Arief, 2019, *Apita Selektta Criminal Law*, Diponegoro University, Semarang, 2019, p. 58

aspects. Each of these aspects has similarities related to the statement that adultery is an act that violates human nature and should not be committed by every human being. This illustrates that in every aspect of life there is nothing that justifies adultery, therefore it is appropriate for humans to stay away from adultery in life.

The act of adultery is regulated in article 284 of the Criminal Code (KUHP):

1. By a maximum imprisonment of nine months shall be punished:
  1. a. A married man who commits *gendak* (overspel), even though it is known that Article 27 BW applies to him,
  - b. A married woman who commits *gendak*, even though it is known that Article 27 BW applies to her;
  2. a. A man who participated in the act, even though he knew that the guilty party was already married;
  - b. A married woman who participates in the act, even though she knows that the guilty party is already married and Article 27 BW applies to her.
2. Prosecution is not carried out except on complaints of tainted husbands/wives, and if Article 27 BW applies to them, within a three month period it is followed by a request for divorce or for separate tables and beds for that reason.
3. Articles 72, 73 and 75 do not apply to this complaint.
4. Complaints can be withdrawn as long as the examination in the trial court has not started.
5. If the husband and wife apply Article 27 BW, complaints are not heeded as long as the marriage has not been decided due to divorce or before the decision stating that the table and bed are separated becomes permanent.

The crime of adultery referred to in Article 284 of the Criminal Code paragraph (1) of the Criminal Code is a 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 Criminal Code.

As for this intention, the Criminal Code does not provide a clear definition. Clues for knowing the meaning of intention can be taken from *Memorie van Toelchting*

(MvT) which defines intention (opzet) as wanting and knowing (willens en wettens). So it can be said that deliberately means willing and knowing what he is doing.<sup>5</sup> If the intentional element of the adulterer cannot be proven, then the perpetrator is not proven to want or is not proven to have known about the adultery being committed, so the judge must decide whether the perpetrator is free from lawsuits (onslag van rechtsvervolging).

R. Sugandhi in his explanation of Article 284 b of the Criminal Code states that adultery is divided into two meanings. According to the general understanding, adultery is interpreted as intercourse carried out by a man and a woman on the basis of mutual love that is not bound by marriage. But adultery according to this Article (Article 284 b of the Criminal Code) is interpreted as intercourse committed by a man and a woman who are married to a woman or a man who is not his wife or husband.<sup>6</sup>

Regarding the prohibition of adultery crimes according to Article 284 of the Criminal Code which is formulated in paragraph (1), it consists of four kinds of prohibitions, namely:

- a. A married man commits adultery, even though Article 27 BW (monogamy principle) applies to him;
- b. A married woman commits adultery, even though it is known that Article 27 BW (monogamy principle) applies to her;
- c. A man commits adultery with a woman he knows is married;
- d. A woman who participates in adultery with a man who she knows that Article 27 BW applies to her. So a man or woman is said to have committed the crime of adultery, if it fulfills three essential conditions, namely:
  - 1) Having sexual intercourse with a woman or a man who is not her husband or wife;
  - 2) Article 27 BW applies to him;
  - 3) He is currently in marriage.<sup>7</sup>

The penalty in Article 284 of the Criminal Code is nine months in prison. If someone is sentenced to five months, it means that the judge sees that there are elements

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<sup>5</sup>Sudarto, 1990, Criminal Law I, Faculty of Law, Diponegoro University, Semarang, Pg. 102

<sup>6</sup>R. Sugandhi, 2001, Criminal Code and Explanation, National Business, Surabaya, p. 300

<sup>7</sup>Hamzah Andi, 2014, Principles of Criminal Law, Rineka Cipta, Jakarta, p. 4

that prevent the perpetrator from needing the maximum sentence. Regardless of the sentence, the prosecutor or the convict has the right to appeal. There is no guarantee that if the accused is acquitted, the prosecutor will not appeal. If a legal process has been entered in court, of course all rights can be utilized by the parties. Later, if the appellate judge delivers the maximum verdict, the offender has the right to appeal.<sup>8</sup>

### **3.2. Obstacles in Enforcing Adultery Actors**

To reduce cases of adultery in the community, the authorities often carry out raids and appeal to the public through counseling in the community. However, in reality cases of adultery continue to develop along with lifestyles in a society that tends to be modern and no longer care about one another so that social control becomes less functional. To uncover a case of adultery requires good cooperation between the authorities, the victim and the community.

If a case of adultery occurs, immediately report it to the authorities so that an investigation is carried out about this case. Coordination with the surrounding community is also the next way to assist in disclosing cases of adultery. Where the community becomes a social control that can observe and provide information related to this case. If you already have evidence of initial clues about the occurrence of a criminal act of adultery, a raid is the best way to disclose the adultery case. Because carrying out a sting operation will facilitate the investigation process.

Even though the adultery case is a complaint offense, the police still have the authority to carry out raids and handle cases of adultery that occur in the community.<sup>9</sup>The process of law enforcement against the crime of adultery will be difficult to carry out without social control in society coupled with the lack of interest of the victim to report that the crime of adultery has occurred for reasons of wanting to cover up shame. Evidence that is difficult to obtain and witnesses who are reluctant to give statements are also factors that complicate the process of law enforcement against perpetrators of adultery.

Article 284 of the Criminal Code provides a loophole for unmarried people to be able to commit adultery. In other words, unmarried men or women are not included in this regulation, so the effect that arises is that there are many occurrences of promiscuity or sexual intercourse by unmarried people. On the

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<sup>8</sup> <https://www.Hukumonline.com/klinik/a/pelanggaran-pasal-284> accessed on January 10, 2023 at 18.23 WIB

<sup>9</sup> Arina Silviana, Obstacles in Law Enforcement for Adultery Criminals, Vol. 1, No. 2, November 2019, p. 123

other hand, this article is also a complaint offense, the criminal act of adultery will only be prosecuted if there is a complaint.<sup>10</sup>

#### 4. Conclusion

The crime of adultery regulated in Article 284 of the Criminal Code is punishable by imprisonment for a maximum of nine months. Adultery has existed since ancient times, there are different views regarding the crime of adultery regarding whether or not it is necessary to be seen as a prohibited act and can be punishable by crime. In Dutch terminology, adultery is called *overspel*. Evidence that is difficult to obtain and witnesses who are reluctant to give statements are also factors that complicate the process of law enforcement against perpetrators of adultery. Article 284 of the Criminal Code provides a loophole for unmarried people to be able to commit adultery. In other words, unmarried men or women are not included in this regulation, so the effect that arises is that there are many occurrences of promiscuity or sexual intercourse by unmarried people.

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<sup>10</sup>Sahran Hadziq, *Setting the Criminal Act of Adultery in the Criminal Code Reviewed From the Perspective of Living Law*, No. 1 Vol. 4 January 2019, p. 35

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