

THE CRIME OF LIVING TOGETHER (KUMPUL KEBO) IN LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE IN LINK WITH THE REFORM OF CRIMINAL LAW IN INDONESIA

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ABSTRACT

Article 412 of Law Number 1 of 2023 concerning the Criminal Code regulates cohabitation or cohabitation. It reads: any person living together as husband and wife outside of marriage shall be punished with a maximum imprisonment of six months or a maximum fine of category II. Previously, cohabitation had not been regulated and only existed in the new Criminal Code. Its presence is to absorb the social, cultural and religious realities that exist in Indonesian society. So what was possible when we were in the village, classifying living together without marriage ties as something that is, say, inappropriate or reprehensible, in the new Criminal Code is trying to criminalize it. In a number of indigenous and tribal peoples, this kind of provision actually already exists. For example, in Bali there is something called *lokika sanggraha*

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1. INTRODUCTION

Juridically, the criminal law currently in force in Indonesia cannot threaten criminal sanctions against people who have sexual intercourse outside of legal marriage, if it is carried out by an adult or both parties are not bound by marriage with another person and it is carried out without coercion.¹

Facing such problems, many parties have proposed that the existence of sexual crimes such as cohabitation be prohibited and criminal sanctions be given and in determining criminal sanctions for cohabitation acts still pay attention to the religious and sociocultural aspects of the Indonesian nation. This is felt necessary because so far many people have disturbed because there was no action from law enforcement officials against the perpetrators of adultery, especially the cohabiting.

Law Number 1 of 2023 concerning the Criminal Code seeks to accommodate material from various sources, namely customary, religious and positive law (Western Law). This law includes 33 chapters, which based on their offenses can be grouped into seven sections, namely first, the group of crimes against state security. Second, the group of criminal acts against public order. Third, the group against the administration of justice. Fourth, groups on religion and religious life. Fifth, the group of crimes that endanger public security for people, goods, and the environment. Sixth, the group of decency. Seventh, the group of crimes against facilitation.²

It is undeniable that in modern times like today, the life of the Indonesian nation is increasingly experiencing developments in various aspects, one of which is the way humans establish relationships, as is the case when men and women who have a legal relationship are bound by a marriage legalized by religion and government. But in this

¹Sudarto, *Criminal Law and Community Development*, Sinar Baru, Bandung, 2015, p. 53.

²Republika, 23 November 2016, www.republika.com, accessed on 16 January 2023

increasingly modern era, many couples form a bond that is not legalized or recognized by religion and the state, as is known in a relationship where there are two people, namely men and women who live their daily lives like husband and wife but are not in a legalized relationship or what is commonly called "Baku Piara" or "Kumpul Kebo" is very popular among young people, this is copied from the lifestyle of westerners. Law Number 1 of 2023 concerning The Criminal Code expands articles that have not previously been regulated in the Dutch Criminal Code. One of them is about the couple cohabitation and adultery.

In the current Dutch Criminal Code, adultery only applies to married couples. If the two partners are not bound by marriage, then it is not a criminal offense. By the new Criminal Code, which will take effect in 2025, it will be expanded to mean that all intercourse outside of marriage is a criminal offense. The threat is 1 year in prison.

In the Netherlands, cohabitation is not regulated and it is not a crime because Dutch people don't mind it. In the new Criminal Code, which adopts eastern values, this is prohibited because it is not in accordance with Indonesian norms. "Anyone who lives together as husband and wife outside of marriage shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of category II," reads Article 412 paragraph 1 of the Criminal Code. Can any person raid a partner living together without marriage ties?

Juridically, the criminal law currently in force in Indonesia cannot threaten with criminal sanctions against people who have intercourse outside a valid marriage, if it is carried out by an adult or both parties parties are not bound by marriage with other people and are carried out without any coercion.³

Facing such problems, many parties have proposed that the existence of sexual crimes such as cohabiting be prohibited and given criminal sanctions and in determining criminal sanctions for the act of cohabitation remain pay attention to the religious aspects and sociocultural aspects of the Indonesian nation. It is felt. This is necessary because so far many people have been disturbed because of inaction from law enforcement officials against perpetrators of adultery, especially the cohabitation.

Based on the description above, the formulation of the problem is:

1. How is the regulation of the crime of living together (kumpul kebo) in Law Number 1 of 2023 concerning the Criminal Code?
2. Why does Law Number 1 of 2023 concerning the Criminal Code regulate the crime of living together (kumpul kebo)?

2. LITERATURE REVIEW

1. Living Together (Kumpul Kebo)

"Kumpul kebo" in Dutch is called "Samenleven" and in trendy language is "Living Together", however, what is meant is "kumpul kebo". The term "kumpul kebo" comes from the traditional Javanese community (the older generation). In a nutshell, unmarried couples, but already living under one roof. His behavior was considered the same as kebo. Why is living together without marriage ties called "cohabitation".

But it is said that anecdotally, kebo or buffalo are considered animals that often behave as they please, so living together without marriage ties is seen as a reflection of arbitrary behavior. Or according to kebo observers, they very rarely see male and female kebo having sex, all they see is being intimate and all of a sudden the female becomes pregnant and then gives birth to a child. This might be equated with the perpetrators of cohabiting, in public only making out like people dating but all of a sudden they are pregnant and have children.

Another history of "cohabitation" is said to have been found in Europe, where marriage at that time was seen as a way to continue offspring. Those who are married and have no children are considered disgraceful, their marriages fail. So before deciding to get married, men conduct trials on women, can they get pregnant or not, if possible then they will be legally married. Sorry, this is like a test drive in the automotive world, try it first, if it fits, then buy it. It's not fair, after all, the cause of not being able to have children is not because the woman is 'infertile' (infertile) but it could also be because the man is sterile, meaning his sperm cells are weak. Or in other situations, "cohabitation" is done because they can't stand it, they want to get married quickly, but the situation and conditions don't allow it, for example school/college isn't over yet, parents don't allow it,

This is the main cause, difficulties, problems and temptations that are getting more serious for young people, so that in the end the teenagers fall, unable to resist the temptation to have promiscuous relations or even "cohabitation".

In the English dictionary (An English-Indonesian Dictionary, page 123), cohabitation or "cohabitation" is an act of living together. Kumpul Kebo means living in the same house without any marriage ties.⁴ Collecting kebo as a criminal act is punishable by a criminal threat in the new Criminal Code. Cohabitation is included in a decency offense,

³Sudarto, *Criminal Law and Community Development*, Sinar Baru, Bandung, 2015, p. 53

⁴<http://www.hukumonline.com>, *The Articles of Decency in the Criminal Code Bill are Considered Still Ambiguous*, accessed on 16 January 2023

which was not previously known in the colonial-made Wetboek van Strafrecht (WvS) which was codified into the Criminal Code.

The new Criminal Code does not clearly explain the meaning of cohabitation. However, the sound of Article 486 of the Criminal Code can provide an overview of the meaning of cohabitation. In the provisions of Article 486 of the Criminal Code it is stated that: "Everyone who lives together as husband and wife outside of a legal marriage, is subject to a maximum imprisonment of 5 (five) years and a maximum fine of category III" (a category III fine of Rp. 30,000,000.-

This definition was taken because in the Elucidation of the new Criminal Code, it is said that the act in the formulation of Article 486 of the Criminal Code is referred to as "cohabitation". "Kebo cohabitation is an offense that has just been included as an offense in the Draft Criminal Code. Kumpulkebo or better known as "samen leven" or "living in non-marrimonial union", "conjugal union", "cohabitation" is a popular term in society to refer to the act of living together outside of a legal marriage.⁵

2. Factors of Living Together (Kumpul Kebo)

An individual decides to do "cohabitation" because it is based on several factors, including:

a) Mental unpreparedness for marriage

Individuals want to form a romantic relationship with their partners so that they can channel their sexual needs without having to be bound by a legal marriage. Those who do "cohabitation", generally do not have the mental readiness to enter the marriage stage even though in terms of age and work or the economy they meet the requirements.

Men consider "cohabitation" as an opportunity to have sexual relations with their life partner, while women "cohabitation" are considered as preparation for entering into a legal marriage.

b) Economic unpreparedness

In terms of age, maybe someone has met the requirements, but from an economic point of view, they may not feel ready to get married. Those who are not economically self-sufficient, for example those who are still in college, graduated from university or academy but are still unemployed, or are already working but their income is not sufficient if they are used to live together in a temporary marriage, sexual urges from within themselves should have already obtain distribution regularly and legally from the point of view of marriage law.

Under these conditions, in the end they often only think in the short term, namely the important thing is how these biological needs can be met immediately, but consequently ignore religious values, social norms and ethics. In the end they chose to live together "cohabitating" as the best alternative.

c) Theomatic experiences before and after marriage

Like an individual who has had a relationship with the opposite sex, but broke up. Finally experiencing heartbreak, with feelings of disappointment (frustration), sadness, despair, and revenge, the individual has thoughts (intentions) not to marry legally.

In the end they also live together "cohabitation" and live in the same house with their life partner. They live together so that they can share love and affection and channel sexual desires. If one of the two people who do "cohabitation" has previously been married, but then divorced. For example, the infidelity of their spouse, until an affair occurs. They feel hurt and then decide to live together with other people without being based on legal marriage ties.

3. Definition and Elements of Offenses

Dutch criminal law uses the term strafbaar feit, sometimes also delict which comes from the Latin delictum.⁶ A criminal act or delict is an act that is prohibited by law and anyone who violates this prohibition is subject to criminal sanctions.⁷ Apart from that, a criminal act can be said to be an act which is prohibited by a rule of law and is punishable by punishment. It should be remembered that the prohibition is aimed at the person who caused the criminal act.⁸

According to Van Hamel, offense is an attack or a threat to the rights of others. Meanwhile, according to Simons, offense is an unlawful act that has been committed intentionally or unintentionally by someone who can be held accountable for his actions and by law has been declared as an act or action that can be punished.⁹

According to Simons, the offense contains several elements, namely:

a. A human act

⁵Barda Nawawi Arief, *Criminal Law Reform in the Perspective of Comparative Studies*, PT. Citra Aditya Bakti, Bandung, 2015, p. 93

⁶Andi Hamzah, *Criminal Law Principles*, Rineka Cipta, Jakarta, 2018, p. 86

⁷Seoharto, *Material Criminal Law*, Sinar Graphic, Jakarta, 2015, p. 22

⁸Moeljatno, *Criminal Law Principles*, Rineka Cipta, Jakarta, 2018, p. 59

⁹Leden Marpaung, *Elements of Punishable Actions*, Sinar Graphic, Jakarta, 2017, p. 4

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- b. This act is prohibited and punishable by law
 - c. The act was carried out by someone who can be accounted for
- Based on the analysis, the offense consists of two main elements, namely:
- a) Subjective principal element
- The basic principle of criminal law "There is no punishment if there is no mistake" the error referred to here is intentional and negligent.
- b) Objective principal elements
- 1) Human actions in the form of act and omission. Act is an active deed or positive deed. Meanwhile, omission is an inactive action or negative action. In other words, silence or let.
 - 2) Due to human actions
- Eliminating, destroying, endangering the interests that are defended by law. For example body life, independence, property rights, honor and so forth.
- 3) Circumstances, namely the state at the time the act was committed and the state after the unlawful act.
 - 4) Punishable nature and unlawful nature.¹⁰

All elements of the offense are one unit in one offense. If one element is not present or is not supported by evidence, it will cause the suspect/defendant to be punished. Investigators, public prosecutors must carefully examine the elements of the offense.¹¹

4. Criminal Law Reform

As for efforts to achieve harmony between the Main (KUHP) and all the regulations under it, in order to achieve harmony between the Criminal Code and the Special Law in the criminal justice system, it is necessary to make changes within the body of the Criminal Code. Where in its development the background is the need for changes (arrangements) in the body of the Criminal Code, including:

- a) The Criminal Code is considered unable to accommodate various problems and dimensions of the development of new forms of crime.
- b) The Criminal Code is not in accordance with the socio-philosophical, socio-political, and socio-cultural values that live in society.
- c) The Criminal Code is not in accordance with the development of thoughts/ideas and aspirations of the demands/needs of the community (national/international).
- d). The Criminal Code is not a complete criminal law system, because there are articles/delicts that have been repealed.¹²

Various efforts were made by legal experts to make changes to the Criminal Code, by enforcing the Criminal Code Law (KUHP Law), where there is an update of the criminal justice system, in the Criminal Code Law there is Book I of General Provisions, which can be seen, among others:

1. Systematics of Book I
 - a) CHAPTER I. Scope of Applicability of the provisions of the Criminal Legislation
 - b) CHAPTER II. Criminal Acts and Criminal Liability
 - c) CHAPTER III. Punishment, Criminal and Action
 - d) CHAPTER IV. Abandonment of Prosecution Authority and Criminal Execution
 - e) CHAPTER V. Definition of Terms
 - f) CHAPTER VI. Closing.

From what has been described that the new Criminal Code consists of six (6) chapters so simple compared to the current Criminal Code which still consists of nine (9) chapters, the orientation is more focused on people who commit crimes.¹³

3. RESEARCH METHODS

The research method is analytical descriptive in nature, namely describing the problems and facts that occur based on positive legal norms, namely the laws related to this research.

Approach method with normative juridical namely using positive legal norms related to The Crime of Living Together (Kumpul Kebo) in Law Number 1 of 2023 concerning the Criminal Code in Link with the Reform of Criminal Law in Indonesia.

Data analysis was carried out qualitatively, meaning without using numbers and statistical formulas.

¹⁰Leden Marpaung, *Crimes Against Decency and Prevention Problems*, Sinar Graphic, Jakarta, 2016, p. 6-7

¹¹Ibid., p. 7

¹²Barda Nawawi Arif, *op. cit*, p., 14

¹³Barda Nawawi Arif, *op. cit*, p. 17

4. RESULT AND DISCUSSION

Discussion Of The Crime Of Living Together (Kumpul Kebo) In Law Number 1 Of 2023 Concerning The Criminal Code In Link With The Reform Of Criminal Law In Indonesi

In Law No. 1 of 2023 concerning the Criminal Code, it is regulated that the crime of adultery can be investigated if there is a complaint from the aggrieved party, such as a husband/wife for people who are married or parents/children for people who are not married.

Every person who has intercourse with someone who is not his husband or wife, is convicted of adultery, with a maximum imprisonment of 1 (one) year or a maximum fine of category II," reads Article 411 paragraph (1) of the Criminal Code.

Complaints can be withdrawn as long as the examination before the trial court has not started. Meanwhile, the ban on cohabitation is regulated in Article 412 of the Criminal Code. Violators face a maximum prison sentence of six months. Like the criminal act of adultery, cohabitation can be prosecuted if there are complaints from the husband/wife for people who are bound by marriage or their parents/children for people who are not bound by marriage.

Complaints can also be withdrawn as long as the examination at the trial court has not yet started. "Regarding complaints as referred to in paragraph (2) the provisions of Article 25, Article 26 and Article 30 do not apply," Article 412 paragraph 3 reads. Adultery and cohabitation can only be processed if there is a complaint. He said law enforcement officials did not have the authority to carry out raids. If the complaint is delict, Satpol PP cannot carry out the raid.

Basic considerations for criminalizing the act of cohabiting, which including the imposition of criminal sanctions is one of the central issues in criminal politics. With regard to the problem of criminalization, according to Sudarto, it must pay attention to the following:

1. The use of criminal law must pay attention to the goals of national development, namely creating a just and prosperous society that is evenly distributed both materially and spiritually based on Pancasila.
2. Actions attempted to be prevented or overcome by criminal law must be an unwanted act, namely an act that causes harm both materially and spiritually to the community members.
3. The use of criminal law must take into account the principle of costs and results.
4. The use of criminal law must also pay attention to capacity and ability work capacity of law enforcement agencies, namely that there should not be excess workload.¹⁴

In addition, in making arrangements regarding cohabitation, legislators The law must consider various elements related to the act of gathering these kebo are like religious norms, customary norms and the will of the people themselves, because. Cohabitation is a social disease that doesn't only have an impact negative for society but cohabitation is also contrary to the norms that happens in society.

There are a number of articles in the new Criminal Code (KUHP) which continue to be controversial, including adultery and cohabitation or in local terms it is called 'cohabitation'. In fact, this article is a complaint offense which will not become a legal case if the rightful party is not reported.

Many people are concerned that the articles of adultery and cohabitation will easily drag many people to prison. Foreign tourists to the hotel sector are claimed to be under quite a big threat. A number of ambassadors, up to the United Nations (UN) also commented on this matter.

The government and the DPR formulated the two articles as a compromise or middle ground for Indonesia's condition and its position in the global community. The form is by specifying adultery and "cohabitation" as absolute complaint offenses. "Indonesia is a country with a very eastern and religious culture, so the existence of normal norms must be regulated in relation to adultery and cohabitation. However, because we are in the space of a global society where from a very plural perspective, this is a challenge. In the end, the existence of the cohabitation and adultery articles needs to be compromised.

These two interests, namely accommodation to the ideology and social interests of the Indonesian people on the one hand and a universal perspective on the other hand, must find a middle ground. Universally, there is a view that human rights are liberal in nature so that matters related to adultery and cohabitation are personal rights, and do not need state intervention. Meanwhile, in the situation of Indonesian society, these two actions are related to norms that must be maintained and regulated.

Religious groups dispute this article because the government is considered not to be firm in dealing with the problem of adultery and cohabitation. Meanwhile, more liberal groups criticize this article because the government is considered to have criminalized personal matters.

¹⁴Sudarto, *Law and Criminal Law, Alumni, Bandung*, 2017, p. 44-48

An absolute complaint is a middle way, because adultery or cohabitation can only be complained by the rightful party, for example a husband or wife in marriage or children and parents if the perpetrator is not married.

Absolute complaint offense, namely those who can sue the husband or wife who are harmed or humiliated, for those who have marital ties, and from parents or children, for those who do not have marital ties. This means that there is actually no fundamental change in the matter of extra-marital intercourse, between the old and new Criminal Codes. The government and the DPR are looking for a middle ground, between local culture and the principles that develop in society. This is indeed, let's say not too right, from a religious perspective, but then also not too left, for example liberals, who only see privacy and the state does not interfere. But then, it is sought a middle way.

Adultery in the Criminal Code is regulated in Article 411, which reads that anyone who has intercourse with someone who is not his husband or wife, is convicted of adultery, with a maximum imprisonment of one year or a maximum fine of category II. Similar provisions are also found in article 412 which regulates cohabitation or cohabitation. It reads: any person living together as husband and wife outside of marriage shall be punished with a maximum imprisonment of six months or a maximum fine of category II.

Previously, cohabitation had not been regulated and only existed in the new Criminal Code. Its presence is to absorb the social, cultural and religious realities that exist in Indonesian society. So what was possible when we were in the village, classifying living together without marriage ties as something that is, say, inappropriate or reprehensible, in the new Criminal Code is trying to criminalize it.

In a number of indigenous and tribal peoples, this kind of provision actually already exists. For example, in Bali there is something called *lokika sanggraha*. He said that the provision regarding the prohibition of living together without marriage has several times even been the basis for making decisions by local courts.

The Criminal Code stipulates adultery and cohabitation as absolute complaint offenses, through the provisions accompanying the articles above. The wording of the provision is: against a crime as referred to in paragraph (1), no prosecution is carried out except on complaints from a husband or wife for people who are bound by marriage or parents or children for people who are not bound by marriage. Complaints can also be withdrawn as long as the examination at the trial court has not yet started.

5. CONCLUSION

1. Article 412 of Law Number 1 of 2023 concerning the Criminal Code regulates cohabitation or cohabitation. It reads: any person living together as husband and wife outside of marriage shall be punished with a maximum imprisonment of six months or a maximum fine of category II.
2. Previously, cohabitation had not been regulated and only existed in the new Criminal Code. Its presence is to absorb the social, cultural and religious realities that exist in Indonesian society. So what was possible when we were in the village, classifying living together without marriage ties as something that is, say, inappropriate or reprehensible, in the new Criminal Code is trying to criminalize it. In a number of indigenous and tribal peoples, this kind of provision actually already exists. For example, in Bali there is something called *lokika sanggraha*. This provision regarding the prohibition of living together without marriage has even become the basis for decisions made by local courts several times.

6. SUGGESTION

1. The Criminal Code should have been passed, because the norms that live in Indonesian society consider the act of cohabitation something that violates the norm.
2. Because law is not only a law that is currently in effect in society (*ius constitutum*) but law also means law that is aspired to or wishful thinking about in the future (*ius constituendum*), it must be considered by the authorities, the law that applies in society to become a product new law. Because law should be born from the habits of the people who have become entrenched and become rules for the community itself. Like the act of cohabiting can be considered to be made new regulations because this action is an act which has many negative impacts for the perpetrators, for society, even for the country.

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