

Adultery Offenses in Indonesia's New Penal Code: Examining the Influence of Islamic and Customary Law

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|| *Recieved: 01-08-2024* || *Revised: 27-03-2025* || *Accepted: 10-04-2025*

Abstract: This study examines the influence of Islamic and customary law on the formulation of adultery provisions in the newly recodified Penal Code. The revision of the Criminal Code has sparked controversy, particularly regarding the regulation of adultery, with critics arguing that the new provisions are heavily influenced by Islamic and customary legal principles. This research investigates the extent of this influence through a qualitative methodology employing a normative legal approach. The findings reveal that while Islamic and customary law have significantly shaped the recodification process, their impact is less substantial than initially presumed. The previous Penal Code penalized only married individuals engaging in extramarital sexual relations, whereas the revised Code extends criminal liability to all individuals, irrespective of marital status. This shift redefines adultery from a private ethical concern to a public legal matter. However, the new Penal Code does not fully integrate Islamic or customary law in its classification of criminal offenses. Unlike Islamic and customary law, which treat adultery as a public offense, the new Penal Code operates on the principle of a complainant-based offense, requiring a formal complaint for prosecution. These findings contribute to the broader discourse on the intersection of legal traditions in contemporary criminal law reform.

Keywords: Adultery, Penal Code, Islamic Law, Customary Law, Criminal Law Reform.

Introduction

Adultery remains a pervasive social issue that contradicts religious and customary values in Indonesia. This behavior is widely regarded as deviant within societal norms and has serious negative consequences for individuals, families, and society at large (Djawas et al., 2022). Beyond personal harm, the widespread occurrence of adultery poses a significant threat to national morality. Data from the National Population and Family Planning Agency (BKKBN) estimates that around two million cases of abortion occur annually in Indonesia, often as a consequence of unwanted pregnancies resulting from extramarital relationships. Additionally, research from the Indonesian Family Planning Association (PKBI) found that approximately 15% of adolescents aged 10-24 years have engaged in premarital sexual relations, further exacerbating concerns regarding the impact of adultery on societal well-being (Ridwan & Saraswati, 2024).

Despite the significant consequences of adultery, Indonesia's previous legal framework, particularly Article 284 of the 1946 Penal Code, only criminalized adultery if at least one of the involved parties was married (Supardin & Syatar, 2021). This limited scope failed to address cases of extramarital sexual relations between unmarried individuals, leaving a substantial legal gap. Existing research on adultery in Indonesia has primarily focused on moral and ethical dimensions or comparative studies between Western and Islamic legal perspectives. However, limited attention has been given to the intersection of Islamic, customary, and state law in shaping Indonesia's evolving legal stance on adultery. This highlights the need for further exploration of this issue. This study aims to examine the influence of Islamic and customary law

on the criminalization of adultery in Indonesia's new Penal Code (KUHP) of 2023. By conducting an in-depth analysis of the legal transformation from the 1946 Penal Code to the new KUHP, this research seeks to uncover the underlying factors contributing to the reorientation of adultery laws from a Western legal tradition to a framework that more closely aligns with religious and customary values in Indonesian society.

Several previous studies have explored the comparison of adultery sanctions in customary and national law. For instance, Muntaha & Saptomo (2024) analyzed the sanctions applied in Toraja customary law and the Indonesian Penal Code, while Nurdaim (2024) examined the regulation of adultery under the 1946 and 2023 Penal Codes as well as Islamic law. Additionally, Dewandaru (2023) investigated the effectiveness of adultery laws in the Aceh Qanun Jinayat and the KUHP, whereas Januarsyah et al. (2023) examined the legal, political, security, and economic aspects of adultery law reform in the 2023 Penal Code. Meanwhile, Ariyanti & Supani (2024) studied in general the aspirations of Muslims in the preparation of the New Criminal Code in the perspective of *mashlahah*. However, these studies have not specifically addressed the influence of Islamic and customary law in shaping the regulatory framework of adultery in the revised Penal Code.

Therefore, this study seeks to provide a comprehensive analysis of how adultery is regulated under Islamic law, customary law, and the 2023 KUHP. It will also assess the extent to which Islamic and customary legal principles have influenced the formulation of adultery-related norms in the newly enacted penal provisions. By filling this research gap, this study aims to contribute to a deeper understanding of the intersection between religious, customary, and state law in the development of Indonesia's legal framework on adultery.

The urgency of this study lies in its potential to contribute to legal discourse on morality-based criminalization within Indonesia's legal system. Given the increasing prevalence of adultery and its far-reaching consequences, understanding how the law adapts to societal values is crucial. Moreover, by analyzing the integration of Islamic and customary law into the contemporary legal framework, this study provides valuable insights into the broader debate on legal pluralism and the role of religious and cultural norms in shaping national legal policies. Understanding this shift is essential for policymakers, legal practitioners, and scholars concerned with the future direction of Indonesia's criminal law and its alignment with societal values.

Literature Review

The Influence of Islamic Law and Customary Law

Islamic law (Sharia) serves as a primary legal foundation in many jurisdictions where it coexists with customary law (*urf*). Sharia, derived from the Quran, Hadith, and scholarly interpretations, regulates personal, social, and criminal matters, including moral offenses such as adultery. Its application varies based on jurisprudential schools (*madhhab*) and local legal traditions, often leading to variations in enforcement. Customary law, rooted in societal norms and practices, plays a complementary role (Handika et al., 2023; Haq et al., 2024), sometimes reinforcing but also modifying the strict tenets of Islamic law to align with social realities. In many legal systems, customary law influences judicial discretion, especially in matters where formal statutes remain ambiguous (Yati et al., 2024).

The interplay between Islamic law and customary law creates a dynamic legal environment (Aziz et al., 2020; Nordin et al., 2025). While Islamic jurisprudence prescribes severe punishments for adultery under *hudud* provisions, customary law may introduce mitigating measures based on local traditions, thereby affecting legal outcomes. The coexistence of these frameworks often leads to legal pluralism, where judicial decisions reflect a synthesis of religious, customary, and statutory norms (Azwar et al., 2024). This intersection is critical in shaping contemporary legislative reforms and legal interpretations in various jurisdictions.

Adultery as a Legal and Social Concept

Adultery has historically been perceived as both a moral and a legal offense, with its criminalization rooted in religious, customary, and statutory laws. Under Islamic law, adultery (*zina*) is considered a grave offense, warranting severe penalties if proven through stringent evidentiary requirements, such as the testimony of four male witnesses or a confession. The strict burden of proof aims to uphold justice while preventing wrongful accusations. However, in practice, the application of these provisions often varies, influenced by cultural and legal factors (Flora et al., 2024).

From a socio-legal perspective, adultery is also regulated by customary laws, which may adopt a more flexible approach based on local values and communal justice mechanisms. In some societies, extramarital relations are addressed through social reconciliation rather than formal legal sanctions. This divergence underscores the complex relationship between religious doctrine, societal norms, and legislative frameworks. Furthermore, contemporary legal reforms, particularly in modern penal codes, seek to balance traditional moral considerations with principles of human rights and gender equality, leading to significant debates on the necessity and proportionality of adultery laws.

The New Penal Code and Its Implications

The introduction of a New Penal Code represents a critical juncture in the evolution of legal frameworks governing adultery and related offenses. Penal code reforms often reflect broader shifts in societal values, international human rights obligations, and evolving judicial interpretations. In some jurisdictions, recent amendments have sought to decriminalize or redefine adultery, aligning legal statutes with modern human rights principles, particularly concerning privacy, gender equality, and due process (Junaidi & Imansyah, 2018).

The reformation of adultery laws within the New Penal Code frequently encounters resistance from conservative legal traditions and religious authorities. The tension between upholding moral values and ensuring individual freedoms necessitates careful legislative drafting and judicial oversight. Additionally, the impact of these reforms extends beyond the legal sphere, influencing social attitudes, marital relations, and the broader discourse on legal modernity. The effectiveness of the New Penal Code in harmonizing traditional principles with contemporary legal standards remains a pivotal issue in comparative legal studies (Kamalludin, 2022).

Method

This research employs qualitative methods with a normative legal approach. The data in this study is obtained from secondary sources, including legal literature on legal science, Islamic law, and customary law. The research process, discussion, analysis, and conclusions are presented in three distinct stages. First, the study elucidates the norms pertaining to adultery in both Islamic law and customary law. Second, a critical review is conducted to determine whether these norms influence the regulation of adultery in the new Penal Code. Finally, an assessment is made to evaluate the extent to which adultery norms in Islamic and customary law impact those in the new Penal Code. This research identifies the norms derived from Islamic and customary law that define adultery as a crime in the new Penal Code. The decolonization of Western norms embedded in the old Penal Code is achieved through the consolidation of Islamic and customary norms, which are deeply held by the predominantly Muslim Indonesian public.

Results and Discussion

Regulation of Adultery in Islamic Law

According to Islamic law, adultery is defined as sexual intercourse between a man and a woman who do not share a legal marriage bond. This intercourse is characterized by the insertion of the male genitalia into the female genitalia at least up to the *hasyafah* (the head of the testicles) (Al-Zuhaili, 2014). More broadly, Islamic criminal law literature defines adultery as sexual intercourse between a man and an adult woman who are not legally married. This definition requires the concurrence of two essential

elements: (1) the act of sexual intercourse between a man and a woman, and (2) the absence of a legal marriage bond between them ('Awdah, 2016).

The prohibition of adultery is grounded in the Quran, specifically in 17:32: "And do not approach adultery; indeed, it is an abomination and an evil way" (Quran 17:32). In addition, various hadiths of the Prophet Muhammad reinforce this prohibition by categorizing adultery as one of the major sins in Islam. Consequently, adultery is unanimously deemed *ḥarām* (forbidden) by Muslims.

Islamic law differentiates between perpetrators of adultery based on their marital status. Those who are married (*al-muḥṣan*) and those who are unmarried (*al-bikr*) are subject to distinct sanctions. For married individuals, the prescribed punishment is *rajm* (stoning to death), whereas unmarried adulterers are subject to a punishment of one hundred lashes. The application of the death penalty reflects a retributive logic intended both to exact revenge and to serve as a deterrent for future offenses. In contrast, the corporal punishment of flogging and lashing is associated with a remedial objective, intended to ensure the specific prevention of recidivism and to signal societal disapproval (Lawang et al., 2024).

The severe sanctions for adultery are justified by the wide-ranging negative consequences attributed to the act. These include physical harm, such as the transmission of venereal diseases; moral degradation; and the erosion of social virtues and family integrity. Adultery is believed to disrupt community structure and family life, compromise lineage continuity, undermine the marital relationship, and adversely affect children's upbringing. Moreover, it is linked to other serious criminal behaviors, including abortion and even infanticide (Miqat et al., 2023).

Viewed from the perspective of criminal law policy theory, Islamic law conceptualizes adultery not merely as a private moral failing but as an offense against public ethics. Consequently, the act must be criminalized due to its significant detrimental impact on society (Iskandar et al., 2022; Muzakkir, 2022). Under this broad interpretation, any sexual relationship between a man and a woman outside of a legal marriage that meets the established criteria is considered adultery, regardless of the marital status of the individuals involved.

Despite the clarity of this definition, proving the crime of adultery in Islamic law presents significant challenges. Unlike the Indonesian criminal system, which requires the testimony of two witnesses to establish adultery, Islamic law relies on two methods of proof: (1) *iqrār* (the perpetrator's confession) and (2) the testimony of four witnesses (Al-Zuhaili, 2014). Each method is associated with a rigorous evidentiary standard.

The first method, *iqrār* or confession, is substantiated by several hadiths. One notable narration describes the case of Mā'iz al-Ghāmidīyah, who confessed to adultery before the Prophet Muhammad on three separate occasions. Each time, the Prophet sought to ascertain whether the confession was made voluntarily and without coercion. When it was confirmed that Mā'iz's confession was made consciously and freely, the Prophet instructed his companions to execute the prescribed punishment. Notably, after the execution, the Prophet remarked on the possibility of reconciliation should the perpetrator renounce his confession—a position that effectively invalidates the confession as evidence if retraction occurs (Abu Zahrah, 2014; Al-Bukhari, 2013).

The second method of proof involves the testimony of four witnesses, as derived from the Quranic injunction in 4:15, which commands, "*fastasyhidū 'alaihinna arba'atan minkum*" (i.e., call four witnesses from among yourselves). Islamic legal literature further specifies that these four witnesses must meet four strict criteria: they must be Muslim; they must be sane and mature (*'āqil wa bāligh*); they must have directly observed the act (without the aid of any recording devices); and they must have seen the *ḥasyafah* enter the vagina in a manner analogous to a bucket entering a well ('Awdah, 2016). In practice, however, both methods of proof are exceedingly difficult to satisfy. In contemporary legal culture, a permissive attitude towards adultery often renders the stringent requirements for evidence unattainable. Thus, despite the severe prescribed punishments, the application of these sanctions remains rare.

Regulation of Adultery in Customary Law

Customary criminal law is a custom that regulates wrongdoing and its punishment to ensure order in society. Thus, regulated are events that fall under customary offenses including how to resolve them to ensure social balance (Effendi & Putra, 2022). Adultery is a customary violation in every indigenous community in Indonesia, although the terms are different. In customary law, adultery is considered an act that damages social morality (Muntaha & Saptomo, 2024). Furthermore, adultery is an event that shakes the balance of society, tarnishes the honor of relatives, disturbs purity and destroys the order of life. The concept of legal acts like this makes adultery not just a personal matter, but also a family and community issue (Iskandar et al., 2023).

Indonesia as a nation has very diverse culture and customs. Regulations on adultery in customary law also vary from one society to each other. However, although the terms used to represent adultery are different, the values contained in them have more similarities than differences. According to Hilman Hadikusuma (2003), adultery is sexual intercourse between a man and a woman outside the legal ties of marriage. This opinion is almost the same as the concept of adultery in Acehnese customary criminal law as stated in *Qanun Meukuta Alam*, "adultery is any sexual intercourse or sexual intercourse carried out outside of a legal marriage" (Iskandar, 2019; Sakhowi, 2022). The perpetrator could be someone who is married or unmarried. Meanwhile, according to Minangkabau customary law, adultery is sexual intercourse between a man and a woman, whether they are married, or either one of them is married or one of them is unmarried, both of whom are not bound by a legal marriage (Sopyan & Suryani, 2020). The same thing is also found in Sundanese Customary Law, viewing any sexual intercourse outside the bonds of marriage as adultery, regardless of marital status (Watson, 2024).

The various customary laws in Indonesia, as previously explained, show similar values regarding the concept of adultery, which essentially is sexual intercourse between a man and a woman outside the legal bonds of marriage, regardless of whether the perpetrator is married or not. This concept of adultery shows that adultery is not an absolutely private violation, but is also a violation that has consequences for the family and social environment. This makes complaints in customary law to take action against violations of customary law in the form of adultery not absolutely on the husband or wife who is cheated on, but also on the extended family and the community in their environment. The nature of the act, definition and concept of adultery in customary law show similarities with Islamic law. This shows the harmony between customary law and Islamic law in regulating the prohibition of adultery.

Customary criminal sanctions are the fulfillment of customary obligations imposed by customary authorities on people who have violated customary law. The severity or lightness of customary sanctions against perpetrators of adultery absolutely depends on the form or type of adultery committed (Uktolseja, 2020). In customary law there are various forms of adultery. Regarding customary law reactions to adultery, there is diversity in customary law in the archipelago. For example, in Mandar customary rules, the perpetrator is obliged to marry the woman. In the matter of the male perpetrator refusing to take responsibility, further punishment is required for the male adulterer to slaughter a cow as a form of shame for the immoral act that has been committed (Erdianto et al., 2023). Customary criminal law sanctions for perpetrators of adultery in the Madurese indigenous community are among the most severe. Supposing the perpetrator of adultery is caught red-handed, the husband is allowed to kill his wife and the male partner of her adultery. A husband who kills his adulterous wife is not considered guilty if he reports the murder at that time to the customary authorities.

Meanwhile, in the Bugis indigenous community, sanctions for perpetrators of adultery are determined based on conditions. In the matter of the woman committing adultery, she is not pregnant, the woman is married to the man who committed adultery with her (Wawo et al., 2024). However, if one of the parties' refuses, then the sanction is a fine in the form of: (1) one roll rag cloth (may not be cashed), (2) one buffalo (may be cashed), and (3) one copper water kettle (may not be cashed). Meanwhile, if the woman committing adultery becomes pregnant, the sanction is to marry her off. However, if one of the

parties' refuses, they must pay the customary fine, in the form of: (1) one roll of rag cloth (cannot be cashed), (2) one buffalo (cannot be cashed).

Regarding the Siak Malay community, the customary sanctions imposed on perpetrators of adultery are: first, exile to another area, with various variations, including: throw away *siriah* (temporary exile), throw away *tambika* (eternal exile), throw away *saro* (voluntary exile), throw away *utang* (social exclusion), and throw away *pulus* (alienation of property). Second, the amercement of a sum of money or gold agreed upon by traditional leaders to feed poor people, usually consisting of: one picul of rice, one goat, as well as betel and other foods. Otherwise, Mulct is a material for the construction of public facilities.

According to Jambi Malay customary law, the Imposition of customary sanctions for adultery is classified based on the perpetrator, namely: 1) if the perpetrator of adultery is from the same tribe, the sanction is removed from the area of origin; 2) if the perpetrator of adultery is committed by a person of a different ethnicity, the punishment is married off, then expelled from the area concerned; 3) if the perpetrator of adultery is committed by a couple of the same family, the sanctions are removed from the area concerned; 4) if the perpetrator of adultery is committed by one of the three elites of society, namely: community leaders, religious leaders and traditional leaders, then the sanction is that the perpetrator is expelled from the area concerned and excluded from society (Madina et al., 2023).

Based on the rules of several customary laws described above, it is noticed that adultery is classified into several forms or types. First, the perpetrator, and second, the consequences for the woman. Regarding the perpetrator, customary law classifies adultery into three categories: it can be seen from: (1) the marital status of the perpetrator; (2) social status of the perpetrator; and (3) the kinship relationship between adulterous couples. Meanwhile, in terms of the consequences for women who commit adultery, customary law divides it into whether adultery causes pregnancy or not. Based on this classification, customary law regulates the consequences of customary punishment for every act classified as adultery (Harahap et al., 2023).

Customary law also recognizes the concept of incest, as can be found in Bengkulu customary law, which is known as: (1) *Menikam bumi* (adultery with the biological mother); (2) *Mencarak telur* (sexual intercourse with the biological daughter); (3) *Menyunting bungo setangkai* (contact sexual relations with siblings). Customary sanctions for perpetrators of adultery are varied and tiered, starting from the lightest, namely marriage, to the most severe death penalty. Meanwhile, material fines in customary sanctions are intended for the benefit of the community within the scope of custom and not for the state or customary institutions. Therefore, from a criminal theory perspective, customary sanctions for adultery reflect more of a relative theory or objective theory (Thalib, 2023). Sanctions are aimed at restoring balance in society in the hope that the same criminal acts will not happen again.

Regulation of Adultery in the 2023 Indonesian Penal Code

The Criminal Code regulates many articles relating to citizens' privacy, including regarding adultery (Muhtar et al., 2024). Referring to Article 6 of Law No.1 of 1946, *Wetboek van Strafrecht voor Nederlandsch Indie* or also known as *Wetboek van Strafrecht (WvS)* or in its Indonesian version formally referred to as the Criminal Code (*KUHP*). Dutch is the standard language used in the Criminal Code, which requires the adaptation of certain Criminal Code terms to the legal and cultural language that lives in Indonesian society. Unfortunately, heretofore no official translation of the Criminal Code was found. The Criminal Code currently used as a reference is an individual or institutional translation, not an official (*de jure*) translation. One of the Dutch words in the Criminal Code that has undergone adjustment for the Indonesian context is the term "*overspel*" (adultery).

Overspel is regulated in Article 284 of the 1946 Criminal Code or Article 241 in WvS. However, according to Syamsul Huda, Article 284 of the Criminal Code does not clearly define adultery, but tends to determine the criteria for perpetrators who can be punished for committing adultery. The 1946 Criminal Code only provides a legal definition of the crime of adultery, namely sexual relations or intercourse outside of marriage committed by a man and a woman, both or one of whom is bound by marriage and the principle of monogamy applies to it (Januarsyah et al., 2023). According to this concept a man can only

have one wife and vice versa. Therefore, knowing the definition of adultery in detail and specifically is done through legal interpretation and doctrine. According to R. Soesilo, sexual intercourse is penetration of male and female genitals which is usually carried out to obtain children, namely the male's genitals entering the female's genitals, thereby releasing sperm. According to Article 284 of the 1946 Criminal Code, if sexual relations are carried out with an illegal partner, it is considered adultery.

According to the culture of Indonesian society, the formulation of the criminal offense of adultery as stipulated in Article 284 of the Criminal Code is clearly incompatible and contradictory with the legal values that live in the community as reflected in customary law and Islamic law. In both customary law and Islamic law, the prohibition of adultery applies to any sexual relationship between a man and a woman outside the bonds of a legal marriage, without exception for both married and unmarried people (Damayanti, 2022). Article 284 of the 1946 Criminal Code also shows that adultery is considered the realm of private ethics, not public ethics. As a result, adultery is a private matter for each perpetrator. For married perpetrators, adultery is considered detrimental to their spouse, as a result the case of adultery crime becomes the full right of the victim to complain or not to complain (Supardin & Syatar, 2021). This leads to a loophole in the regulation of adultery in Article 284, namely the absence of rules prohibiting adultery for those who are not married.

Meanwhile, in the 2023 Criminal Code, the formulation of adultery is contained in Article 411. According to Syamsul Huda, Article 411 paragraph (1) of the Criminal Code provides a legal definition of the crime of adultery, namely every person who commits sexual intercourse with a person who is not his husband or wife, shall be punished for adultery, with a maximum imprisonment of one year or a maximum fine of category II, namely IDR 10 million (Dewandaru, 2023). Huda explained that the provision no longer requires that the person who commits adultery is only a person who is bound in marriage, but applies to everyone who has intercourse with anyone as long as he is not his husband or wife. Huda continued, the formulation of adultery above is close to the definition of adultery in the etymological definition, which is "sex outside a legal marriage" (Widyawati, 2020). But the provision of adultery in the Criminal Code 2023 is categorized as a complaint offense, where the party who can make a complaint is the husband or wife for people who are bound by marriage, or a report made by parents or children of adulterers for those who are not bound by a legal marriage. However, the complaint may be withdrawn as long as the examination in court has not begun.

Based on the explanation above, there is a shift in the legal norms of adultery regulation customary law in the Criminal Code 1946 and Criminal Code 2023 (Yati et al., 2024). The differences are found in the following points: (1) The crime of adultery in Article 284 of the Criminal Code 1946 has a narrow meaning, namely the activity of intercourse which is punishable only applies to married adulterers; (2) Meanwhile, the crime of adultery in Articles 411-413 of the Criminal Code 2023 has expanded meaning, can be applied to everyone who has intercourse whether it is consensual, married or unmarried couples, cohabitation, and to the perpetrators of inbreeding adultery; (3) The crime of adultery according to Islamic criminal law is intercourse committed by married or unmarried couples. This is far different from the definition of adultery in the 1946 Penal Code. The Penal Code 2023 expands the norm of adultery which integrates the values of Islamic criminal law in adultery, namely zina applies to anyone who commits intercourse regardless of being married or single. However, in both the Penal Code 1946 and Penal Code 2023 adultery is a complaint offense. Meanwhile, in Islamic criminal law, adultery is not included in the offense of complaint. This is because Islamic criminal law views adultery as not only a private matter, but also a public matter.

Table 1. Differences in Zina Norms in the Penal Code 1946 and 2023

No	Criteria	The Penal Code 1946	The Penal Code 2023
1	Adultery definition	Not formulated	Sexual intercourse with a partner who is not bound by legal marriage

2	Prohibited acts	<ol style="list-style-type: none"> 1. A married man/woman who commits adultery 2. A man/woman who participates in the commission of adultery whose spouse is married 	<ol style="list-style-type: none"> 1. Copulation with a person who is not his/her legal marriage partner 2. Cohabitation as husband and wife outside marriage 3. Sexual intercourse between those who are related by blood.
3	Criminal penalties	Nine-months imprisonment	<ol style="list-style-type: none"> 1. One-year imprisonment 2. IDR 10 million fine
4	Nature of the offense	Absolute complaint	Absolute complaint
5	Perpetrator	husband/wife (spouse)	every adulterer
6	Victim	Husband/wife (spouse)	<ol style="list-style-type: none"> 1. Husband/wife 2. Parents 3. Child
7	Complainant	Spouse as victim	Spouse, parents, children as victims

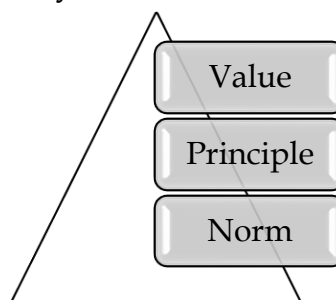
The preceding table clearly demonstrates a substantial shift from the previous Penal Code to the revised Penal Code. Significant differences can be observed in the definitions, prohibited acts, punishment types, adultery perpetrators, adultery victims, and report-makers between the two codes. Notably, the nature of the offense remains unchanged. Both the old and new Penal Codes adhere to absolute complaint in apprehending adultery offenders.

Islamic and Customary Law Influence the New Adultery Regulations

According to legal philosophy, good legal norms are not just rigid legal texts, but these norms must reflect the values and legal principles that are believed and respected by society. Garner defines “value” literally as “the significance, desirability, or utility of something”. Meanwhile, Henry Campbell defines value as “the utility of an object in satisfying, directly or indirectly, the needs or desires of human beings” (Priel, 2024). Based on the above definition, it can be concluded that value is the benefit of a goal or purpose that is expected to satisfy, either directly or indirectly, the needs or desires of human beings.

Value is something that society wants to achieve, uphold, and maintain together. Values are contained in moral, spiritual, religious, aesthetic relationships between people in groups, organizations, and communities (Syamsuar et al., 2024). To pursue values, various kinds of principles were born which later became legal norms, some of these norms became laws. According to Arief Sidharta, each legal rule is imbued with a value. A legal system reflects a value system. The value system is categorized into two things: basic value, which is the basis or reference for achieving something; and goal value, which is something that must be strived for to be realized. In this context, the moral values in the regulation of adultery in Islamic law include the goal values that influence the norms of adultery in the 2023 Criminal Code.

Diagram 1. The Hierarchy Between of Values, Principles and Norms



Based on the above description, anatomically, there is a complementary relationship between values, principles and norms. Legal values do not emerge by themselves but as a result of patterned community

interactions regarding something good or bad. In addition, values also exist based on the religious teachings of a society. Indonesia as the largest Muslim country in the world certainly upholds Islamic moral values, as well as customary law. These two sources of value also influence the shifting legal norms in the regulation of adultery in the 2023 Penal Code (Idham et al., 2022).

As previously established, each law possesses distinctive characteristics and functions in regulating adultery. Nevertheless, Islamic law, customary law, and even the Penal Code concur that adultery is a criminal act and a violation of the law. The challenge lies in the divergence of perspectives among these legal systems in defining, assessing, and punishing those who engage in adultery.

The preceding table also illustrates a shift in the perspective of the former Penal Code and the current Penal Code in evaluating adultery. In terms of definition, the former Penal Code did not define adultery at all. Conversely, the current Penal Code defines adultery as "sexual intercourse with a partner who is not bound by legal marriage." This definition is identical to the definition of adultery in Islamic law and customary law.

The new Penal Code expands the norms of adultery that were previously regulated in the old Penal Code. In the new Criminal Code, three acts could be considered adulterous offenses: sexual intercourse extra marital, cohabitation, and incest. These arrangements are indicative of the regulation of adultery in Islamic and customary law. The only difference lies in the more detailed categories in Islamic law. In Islamic law, the crime of adultery is further subdivided into two categories: those who engage in the act while unmarried and those who engage in the act while married. The legal ramifications of each type of adultery are distinct (Rahmawati et al., 2023).

The new adultery law introduces two types of penalties for those convicted of the offence. The first is imprisonment for a period one year, while the second is a fine of IDR 10 million. The penalties do not appear visibly influenced by Islamic or customary law. Islamic law prescribes stoning for adulterers who are married, while those who are not married are sentenced to 100 lashes. Meanwhile, in customary law, the punishment for adulterers is differentiated based on the impact caused, such as pregnancy or not. The severity of the impact determines the severity of the punishment imposed. Similar to punishment, Islamic and customary law do not consider adultery as a complaint offense, while both recent and previous penal codes consider adultery as an absolute complaint offense.

Finally, the influence of Islamic and customary law on the adultery articles in the new Penal Code is also evident in terms of who is considered the perpetrator, victim, and complainant. Islamic and customary laws have influenced the change in who commits adultery, which previously only involved husbands or wives who have intercourse with others. The new Penal Code now encompasses all individuals who engage in sexual intercourse outside of legal marriage. However, the victims of the crime of adultery in the Criminal Code are limited to three parties: the husband or wife, children, and parents of the adulterer. In contrast, Islamic and customary law include the community as an injured party. This distinction arises from the fact that Islamic and customary laws view adultery as a non-delinquent criminal offense, whereas the Criminal Code considers it a complaint offense. Consequently, the Criminal Code restricts the individuals who are entitled to file a complaint regarding the crime of adultery to only three categories: the husband or wife, parents, and children. In Sharia and customary law, however, anyone may file a complaint.

Conclusion

The expansion of the adultery crime under the 2023 Criminal Code reflects a clear departure from traditional Islamic and customary law approaches. Previously, adultery laws targeted only married individuals committing the offense with non-legal spouses. Now, both married and unmarried adulterers fall under its scope. However, prosecution still depends on a complaint: for married adulterers, the cheated spouse must complain, and for unmarried adulterers, it is the child or parent of the adulterer who must take action. In contrast, Islamic law does not require a complaint. If an act of adultery is confirmed—for example, by the testimony of four witnesses—the offender is automatically prosecuted. Customary law

operates similarly, though its punishments can vary based on the situation and the identities involved. Theoretically, this shift raises important questions about the tension between modern, secular legal frameworks and traditional religious and customary laws. It challenges the idea of legal pluralism, as modern laws lean towards fairness and procedural standards, while traditional laws often prescribe harsher punishments. Practically, these differences can affect how cases are reported and prosecuted. The complaint-based system might discourage victims from coming forward, and the relatively lenient punishment of one year in prison or a fine may be seen as inadequate compared to the severe penalties under traditional systems.

The study also faces limitations. It primarily focuses on legislative texts and may not fully capture the real-life impact of these laws or the diversity found in customary practices. There is also little empirical data on how these laws are enforced and perceived in different communities. For future research, it is recommended to conduct empirical studies and case analyses to understand how the 2023 Criminal Code works in practice. Exploring the role of gender, social norms, and community attitudes toward both modern and traditional legal systems would also provide valuable insights into the broader impact of these laws.

Acknowledgement

We appreciate everyone who contributed to the research, writing, and publication of this article.

Conflict of Interest

The authors declare that there is no conflict of interest.

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