

## CRIMINOLOGICAL STUDY OF A THIRD PERSON'S AGENCY THAT DISTURBS ANOTHER'S MARRIAGE RELATIONSHIP

Arief Asyari Ginting

Email: [ariefasyari@gmail.com](mailto:ariefasyari@gmail.com)

Universitas Muhammadiyah Sumatera Utara

### ABSTRACT

When viewed from the criminological aspect of the cause of adultery committed by a third party that disrupts the marital relationship of another person, then the background factor that can be found is due to a strained relationship between the husband and wife in their household. This strain ultimately opens up opportunities for the presence of a third person who has the potential to damage the marital relationship of the married couple. The presence of a third person can provide new motivation and warmth from the rift in the household of the married couple, especially if the relationship continues to an intimate relationship with the party who is having an affair. The implementation and application of the law in handling the perpetrators and parties involved in the affair that causes a rift and disrupts the marital relationship of another person, then in the elements of the criminalization, the perpetrators can be charged with articles and legal sanctions as stipulated in Law Number 1 of 2023 concerning the Criminal Code, Article 284 paragraph (1) perpetrators of adultery who can be threatened with imprisonment if one of the perpetrators of the adultery is already legally married to another person. In Article 411 of the new Criminal Code concerning adultery which carries a penalty of 1 year in prison and a fine of IDR 10 million. This article is an absolute complaint offense, which means it can ensnare someone if there is a complaint from an interested party. In this case, the interested party is a husband or wife who is bound by marriage and/or their parents. However, this article cannot be a reason for just anyone to report or raid or conduct an inspection without such a complaint.

**Keywords: Criminology of Adultery, Third Person, Interfering with Another Person's Marital Relationship.**

### A. Introduction

The marriage bond that is legally carried out by a man and a woman based on the laws in force in Indonesia has strong legal consequences. This means that the married couple is declared legally married under the law as husband and wife because their legal actions have been recorded by the state as a married couple in the state civil registry, and therefore the rights and obligations between them have been imposed and no one and/or any party may interfere with the legal relationship of the marriage that they have carried out.

In Indonesia, the rules regarding marriage are regulated in Law Number 1 of 1974 concerning Marriage, which has now been amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Where the law states that what

is meant by marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God.<sup>1</sup>

In accordance with the statement of the contents of the article of the Marriage Law which states that marriage is a physical and spiritual bond with the aim of obtaining eternal happiness based on the Almighty God, therefore if it turns out that during the marriage of the married couple there are parties who try to disrupt/disrupt the marital relationship between husband and wife who have been bound in a legal marriage, then the perpetrator and/or certain parties can be reported to the police as a troublemaker who tries and attempts to damage the household relationship that has been legally established based on applicable and valid state laws and laws. This household troublemaker can be charged with legal regulations and can be punished with severe legal sanctions.

Usually the actions taken by someone who damages and/or disrupts the marital relationship of husband and wife in their household are caused by psychological factors of past romantic relationships before the marriage between the husband and wife, and/or are indeed motivated by mutual liking which then continues into a romantic relationship. Another factor is triggered by the existence of a prolonged conflict that has not been resolved in the household of the married couple, so that one of them establishes and seeks pleasure with someone else in an illicit relationship (affair). Someone who damages the relationship of husband and wife in someone else's household is often referred to as a third person.

## **B. Research Methods**

A study cannot be called research if it does not have a research method.<sup>2</sup> Research methods are one of the factors of a problem that will be discussed.<sup>3</sup> The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.<sup>4</sup> The literature materials used in writing this research are several references originating from

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<sup>1</sup> Wienarsih Imam Subekti dan Sri Soesilowati Mahdi. 2005. *Hukum Perorangan dan Kekeluargaan Perdata Barat*. Jakarta: Gitama Jaya. halaman 47

<sup>2</sup> Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

<sup>3</sup> Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

<sup>4</sup> Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>5</sup>

### **C. Discussion**

The act of disturbing a household is an act committed by a person who enters another person's household with a certain purpose, causing the person's household to be damaged and disharmonious. The matter of disturbing another person's household is the same as committing an act of adultery. This act can violate the law if it reaches the stage of infidelity and adultery intentionally.

The article on disturbing another person's household is regulated in the Law using another term, namely adultery. In Indonesian law, this case refers to the Criminal Code (KUHP). According to the Old Criminal Code, adultery is regulated in Article 284. This article regulates cases of infidelity and adultery which states that a person who commits adultery can be subject to a maximum prison sentence of 9 (nine) months.

According to the discussion on the article on disturbing someone else's household in the previous section, the sanction or punishment for disturbing someone else's household (adultery) based on Article 284 of the Old Criminal Code is subject to a maximum sentence of 9 (nine) months in prison. Meanwhile, based on Article 411 of the Criminal Code, the sanction or punishment for disturbing someone else's household can be subject to a maximum prison sentence of 1 (one) year or a maximum fine of category II, namely IDR 10 million (ten million rupiah).

The regulation of adultery in the legal aspect is very clear, including in Indonesian law. Regarding the regulation of adultery in Indonesian law, it cannot be separated from the legal system in Indonesia. The Indonesian legal system or what can be called the juridical system of the Indonesian Legal System is based on the 1945 Constitution so that it can be interpreted as follows: the highest and most decisive is the "unwritten law" called "spiritual atmosphere," or "spirit" or "rechtsidee." In essence, this is contained in the Preamble to the 1945 Constitution and is explained in the General section of the Explanation of the 1945 Constitution. By the Explanation of the 1945 Constitution, this is called the "Unwritten Basic Law" or in foreign terms called "Droit Constituionel". In addition to this rechtsidee, there is a Basic Law, namely a type of "Written Law" at the highest level as part of the basic law which by the explanation is called the foreign term "Loi Constituionelle" the contents of which are instructions to the

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<sup>5</sup> Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

Central Government and other state administrators. In this written basic law there are provisions and bases for forming regulations to implement these instructions, which are called laws.<sup>6</sup>

Basically, the legal system in Indonesia also regulates the issue of adultery. The law of adultery in Indonesia has its own polemics from the provisions to the application of sanctions. How could it not be, the law governing adultery in the Criminal Code (KUHP) is considered irrelevant to be applied in Indonesian society, especially adultery in Indonesia is considered a very inappropriate act and contrary to morals and norms in a cultured society.

The regulation on adultery is contained in Article 284 of the Criminal Code. The regulation of adultery and sanctions is very clear that Article 284 of the Criminal Code only regulates the issue of infidelity, where the article only applies if one or both perpetrators are still bound by a legal marriage with another person. Then in paragraph (2) it explains that adultery is a complaint violation, which can only be prosecuted if the legal partner objects or complains. Meanwhile, for cases of sexual relations outside the context of this article, the principle of legality will apply, such as in the case of a celebrity in Indonesia in 2010, where the perpetrator was only charged under Article 4 of the Pornography Law, Article 27 of the Information Technology Law and Article 282 of the Criminal Code. This happened because the video of the perpetrators' actions was spread in cyberspace, so if the video did not exist, then the perpetrators would not be caught in any article, because Article 284 of the Criminal Code did not apply to him. This provision caused problems in society.

In the Criminal Code, the prohibition of adultery and fornication has been determined in several articles contained in Book II. The first prohibition of adultery is regulated in Article 284 of the Criminal Code. The act of adultery or *mukah*, according to Article 284 of the Criminal Code, is sexual intercourse or intercourse outside of marriage carried out by a man and a woman, both or one of whom are still bound by marriage to another person.

#### **D. Conclusion**

Criminal law regulations against perpetrators of disturbing other people's marital relationships in Indonesia can be found in Law Number 1 of 2023 concerning the Criminal Code, and Law Number 1 of 1974 concerning Marriage. Where in both regulations, definitions related to the legal aspects of the actions of perpetrators of destroying/disturbing the breakdown of other

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<sup>6</sup> Sahran Hadziq. (2019). "Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Dari Perspektif Living Law", *Lex Renaissance*, No. 1 Vol. 4, halaman 28.

people's marital relationships, the snares of legal articles and the legal sanctions they receive.

Apart from the legal rules that also apply morally to religious and customary laws that are still cultural and rooted in Indonesia.

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