

A Juridical Analysis of Effectiveness Cohabitation in Indonesia and Netherlands

Made Wahyu Artha Sedana*, I Dewa Ayu Dwi Mayasari

Udayana University, Indonesia

Email: wahyuarta288@gmail.com*, dewaayudwimayasari@gmail.com

ABSTRACT

This research examines the regulation of the criminal act of cohabitation under Article 412 of the New Indonesian Penal Code and its implications for social life, the criminal justice system, women's protection, population administration, and national legal reform. The criminalization of cohabitation, framed as an absolute complaint-based offense, reflects a moralistic approach by the state in regulating intimate relationships and family life while simultaneously expanding state intervention into the private sphere. This research employs a normative juridical method with conceptual, statutory, and comparative approaches to assess the alignment of the regulation with legal certainty, human rights protection, and the dynamics of a pluralistic society. The research further analyzes whether the criminalization of cohabitation in Indonesia aligns with contemporary human rights standards, the principles of proportionality and legal certainty, and the doctrine of *ultimum remedium* in criminal law policy. Moreover, the criminal regulation of cohabitation in Indonesia reflects a moralistic approach that potentially intrudes into the private sphere and risks conflicting with human rights principles, particularly in a pluralistic society. In contrast, the Netherlands adopts a restraint-based and facilitative legal model that respects individual autonomy and privacy while ensuring legal protection through non-penal instruments. This study concludes that the protection of social values and family integrity does not necessarily require criminal sanctions and that alternative regulatory approaches may offer a more proportional, fair, and human rights compliant framework.

Keywords: Cohabitation; New Penal Code (KUHP Baru); Criminal Law; And Legal Comparison

INTRODUCTION

The phenomenon of increasing sexual freedom in modern society has given rise to various forms of interpersonal relationships, one of which is cohabitation. Cohabitation, or living together without a legally recognized marriage, has now become one of the most debated issues in the public sphere. Some members of society view this practice as a form of sexual deviation because it is considered to be contrary to cultural values and religious norms that place marriage as the only legitimate basis for a relationship between a man and a woman (Sholikah et al., 2024). In the context of Indonesian culture, which emphasizes family values and morality, marriage is not merely a legal bond, but also a symbol of social honor. Therefore, the presence of cohabitation is perceived as undermining the long-held system of values. However, on the other hand, it cannot be denied that social development and globalization have made cohabitation increasingly common, especially in urban areas that tend to have more open social dynamics.

The term cohabitation is often discussed in everyday language with a negative connotation, giving rise to various legal and social issues (Muntini et al., 2025). This labeling reflects how society tends to view the practice as inappropriate and deviant from prevailing norms. Nevertheless, the practice of cohabitation continues to increase, driven by various factors such as changing mindsets among younger generations, economic considerations, and

the adjustment to more flexible lifestyles. In the legal sphere, the existence of cohabitation has given rise to a number of issues, both socially and normatively.

Prior to the enactment of the new Penal Code (KUHP), cohabitation did not have a clear legal basis. Its regulation was largely dependent on customary norms or was prosecuted through adultery provisions in the *Wetboek van Strafrecht* (WvS), which often resulted in legal uncertainty. Through Law Number 1 of 2023 concerning the Penal Code, the government has included cohabitation as one of the acts that may be subject to criminal sanctions. This criminalization is claimed to aim at preserving morality and social order within society. The government considers the regulation of cohabitation to be part of the state's efforts to uphold moral norms and to protect the institution of marriage as the foundation of social life.

The regulation of cohabitation can be found in Article 412 of the new Penal Code. This article stipulates that cohabitation constitutes an absolute complaint-based offense, meaning that legal proceedings may only be initiated if a report is filed by certain parties, such as a lawful spouse or the offender's parents. This provision is intended to limit the scope of state intervention so that it does not intrude excessively into the private sphere. The regulation of cohabitation in the new Penal Code has sparked intense debate among the public, academics, and human rights activists. Many argue that the state should not criminalize conduct that falls under the category of a victimless crime, namely actions that do not cause direct harm to others (Ilmi et al., 2025). Legal intervention in the private sphere is therefore considered to potentially threaten individual freedom in determining one's way of life. This study contributes to understanding realities that happen in Indonesia and Netherlands, while providing insight that may assist other countries in addressing the complexities of increasingly plural societies and supports broader discussions on human rights, identity, and legal justice in the modern era.

Previous studies that share similarity in terms of the subject matter with this article include the work entitled "*Cohabitation in the 2023 Penal Code: A Juridical Analysis of Criminal Law Intervention in Private Life*" by Vicella Kesya Galuh Iranti and Andrie Irawan, published in the *Journal of Islamic and Law Studies*. The discussion in the previous journal places greater emphasis on the criminalization of cohabitation practices under the newly enacted Penal Code, which reflects a tension between efforts to uphold public morality and the protection of human rights, particularly the right to privacy and individual freedom. In contrast, the present research moves beyond a solely doctrinal examination of domestic criminal law by adopting a comparative and human rights-oriented approach (Iranti & Irawan, 2025). It situates Indonesia's regulation of cohabitation within a broader international legal context by examining the Netherlands legal framework as a point of comparison, thereby assessing the extent to which criminalization aligns with contemporary human rights standards, the principle of *ultimum remedium*, and the restraint-based model of criminal law intervention in private life.

In the context of Indonesia's pluralistic society, the application of criminal law to moral issues must be carried out in a balanced, fair, and non-discriminatory manner, while also taking into account the diversity of cultural backgrounds, religious beliefs, and lifestyle choices within the community. Although the regulation of cohabitation is categorized as an absolute complaint-based offense, a critical re-evaluation is still necessary through inclusive public dialogue and legal mechanisms, such as judicial review, to ensure its compliance with the principles of the rule of law and the protection of human rights.

In the future, the legal approach adopted by the state should be more open, educational, and participatory in nature, involving various elements of society so that the law does not function as an instrument of repression, but rather as a means to realize social justice, particularly for vulnerable groups who may be disproportionately affected by the criminalization of private conduct.

In line with these issues, this article has two main objectives. Academically, this article aims to contribute to the development of legal scholarship and enrich academic discourse regarding the regulation and criminalization of cohabitation within Indonesia's contemporary criminal law framework. Practically, this article seeks to provide useful insights, critical analysis, and a comprehensive understanding of the legal implications of the cohabitation provisions in the new Penal Code, particularly for legal practitioners, policymakers, human rights advocates, and members of the public who are concerned with the protection of civil liberties. Furthermore, this article is expected to serve as a reference in evaluating and formulating future criminal law policies that are more responsive, proportional, and aligned with the constitutional principles of legal certainty, justice, and respect for human rights.

Considering the foregoing background, this study is formulated around two principal research questions. First, it examines how the regulation of cohabitation is governed under the positive laws of Indonesia and Netherlands, and how such cohabitation arrangements relate to potential human rights violations. Second, it investigates the effectiveness of criminal law policy in regulating cohabitation, particularly in relation to the application of the principle of *ultimum remedium*. The novelty of this research lies in its human rights-focused comparative analysis, and its evaluation of whether alternative legal frameworks—like that of the Netherlands could offer a more balanced, fair, and human-rights compliant approach to regulating cohabitation.

Based on the identified issues, the objectives of this study encompass both academic and practical dimensions. Academically, this research aims to examine and compare the regulation of cohabitation under the positive laws of Indonesia and the Netherlands, while also analyzing its implications in the context of potential human rights violations arising from the enforcement of such regulations. Practically, this study seeks to analyze the effectiveness of criminal law policies in regulating cohabitation, with particular emphasis on the application of the principle of *ultimum remedium*, in order to assess whether the use of criminal sanctions represents an appropriate and proportional legal response.

METHOD

This study employed a normative juridical method to examine relevant legal norms and regulations as the basis for discussing legal issues, particularly those related to the criminal regulation of cohabitation (living together without a lawful marriage) under the new Penal Code, as well as the implications of its implementation. The study aimed to assess the extent to which such regulation gave rise to issues of justice and legal certainty within a pluralistic society such as Indonesia.

The approaches used in this research included the conceptual, statutory, and comparative approaches. The conceptual approach was used to examine legal concepts related to morality, decency, privacy, human rights, and the limits of state intervention in the private sphere, as well as to understand cohabitation from the perspectives of criminal law and human

rights.

The statutory approach was employed to analyze legal provisions governing cohabitation, particularly Article 412 of the new Penal Code, along with other relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia and the Human Rights Act, in order to assess their compatibility with the principles of the rule of law and human rights protection.

The comparative approach was used to examine the regulation of cohabitation and the criminalization of non-marital relationships in Indonesia in comparison with practices in several other countries, both those that criminalize such conduct and those that do not regulate it through criminal law. This comparison provided a broader perspective and helped identify alternative regulatory models that are more proportional, fair, and aligned with social developments and human rights principles.

Data collection was conducted through library research, involving the examination of literature, legal documents, academic journals, court decisions, and other written sources related to cohabitation under the new Penal Code.

RESULTS AND DISCUSSION

The Regulation Of Cohabitation Under the Positive Laws of Indonesia and Netherlands and Cohabitation Arrangements in Relation to Human Rights Violation

The regulation of cohabitation as a criminal offense under the New Indonesian Criminal Code (UU No. 1 of 2023) introduces a legal framework that explicitly targets the act of living together without a lawful marriage (Smith & Green, 2022). This provision, found in Article 412, prohibits a man and a woman from living together as husband and wife outside a state-recognized marriage. Although categorized as an absolute complaint-based offense, meaning prosecution can only occur if a complaint is filed by a parent, child, or spouse of one of the parties, this mechanism reflects the legislature's attempt to balance the enforcement of moral norms with the protection of private life by entrusting the initiation of legal proceedings to close family members. Conceptually, the regulation reflects a moralistic criminal law approach in which the state positions itself as guardian of family morality and social order through the criminalization of cohabitation. This approach aligns with prevailing societal values that still consider cohabitation incompatible with Indonesia's traditional family framework (Williams, 2025).

Law Number 1 of 1974 on Marriage establishes that the marital relationship between a husband and a wife gives rise to reciprocal rights and obligations. The law regulates the legal consequences of marriage by defining the responsibilities attached to each spouse within the household. In this regard, Article 32 of the Marriage Law outlines the functional structure of family life by assigning the husband the position of head of the family, while the wife is positioned as the manager of household affairs. This division of roles is further elaborated in Article 34, which stipulates that the husband bears the responsibility to protect his wife and to provide for the economic and material needs of the household. Conversely, the wife is obligated to manage domestic matters and ensure the orderly conduct of family life. These provisions reflect the legal framework through which marital roles and responsibilities are formally constructed within Indonesian family law. Beyond material and structural obligations, the Marriage Law also emphasizes the moral and relational dimensions of marriage. It affirms that

spouses are mutually bound by duties of affection, respect, loyalty, and mutual support, both physically and emotionally. These principles underscore that marriage is not merely a legal institution but also a personal and social bond grounded in cooperation, commitment, and shared responsibility between husband and wife.

In *Indra Sarma v. V.K.V. Sarma*, the Supreme Court of India formulated several indicators to determine the existence of a relationship resembling a marital union, including a relationship of sufficient duration, the presence of financial and domestic role-sharing, sexual relations accompanied by emotional support and the intention to continue lineage, the existence of children, and public representation as husband and wife. In assessing such a relationship, the court may examine testimony from family members or other parties who have direct knowledge of the facts and conduct of the individuals concerned. These indicators, together with the provisions of the Marriage Law and relevant judicial decisions, may serve as a legal basis for law enforcement authorities (Feld, 2024).

However, this provision raises concerns in constitutional, social, and practical terms. Critics argue that it opens the door to state intervention in private life and personal autonomy, rights protected by the 1945 Constitution and international human rights standards. The provision may also affect vulnerable groups, including women and couples who lack access to lawful marriage, such as interfaith couples. In practice, the rule risks creating inequalities, becoming a tool of coercion in family disputes, discouraging victims of intimate partner violence from reporting abuse, and causing administrative inconsistencies for couples sharing a residence. Although the stated aim is to maintain morality and family order, Article 412 also creates tension between traditional values upheld by the state and human rights principles that emphasize individual autonomy, non-discrimination, and the right to privacy (Martinez, 2024).

In Netherlands cohabitation (*samenleven*) is not regulated as a criminal offense, nor is it treated as a matter that warrants state moral intervention. Netherlands law adopts a fundamentally different legal philosophy from that of Indonesia, one that places strong emphasis on individual autonomy, privacy, and freedom of personal relationships. The Netherlands legal system does not criminalize consensual cohabitation between adults, regardless of marital status, as long as the relationship does not involve coercion, exploitation, or harm. This approach reflects the principle that the state should not interfere in the private sphere of citizens' lives, particularly in matters concerning intimate relationships and household arrangements. Under Netherlands civil law, cohabitation is recognized as a legitimate form of living arrangement and may give rise to legal consequences, especially in the areas of property, social security, taxation, and inheritance. Couples who live together may voluntarily enter into a cohabitation agreement (*samenlevingscontract*), which regulates mutual rights and obligations such as financial arrangements, division of property, and responsibilities during and after the relationship (Dutch Government, Ministry of Justice and Security, 2018). Importantly, the absence of such an agreement does not render the relationship unlawful; rather, it simply limits the scope of legal protections available to the parties. The law thus provides a facilitative, rather than punitive, framework that respects personal choice while offering legal certainty. From a human rights perspective, the Netherlands approach is closely aligned with international human rights norms, particularly the right to privacy and family life as protected under Article 8 of the European Convention on Human Rights (ECHR) (Council of Europe, n.d.). The state refrains from imposing a singular moral standard regarding family

formation and instead recognizes the plurality of family models that exist in contemporary society. By not criminalizing cohabitation, Netherlands law avoids stigmatization and discrimination against individuals who choose not to marry, including same-sex couples, interfaith couples, and those who reject marriage for personal or ideological reasons.

The contrast with Indonesia is therefore significant. While Indonesian law, through Article 412 of the New Criminal Code, positions the state as an enforcer of moral norms within private relationships, Netherlands law treats cohabitation as a private matter that falls outside the scope of criminal law. This divergence highlights two competing legal paradigms: a moralistic–paternalistic model that legitimizes state intervention to preserve traditional family values, and a liberal rights based model that prioritizes individual autonomy and limits state power in regulating private life. In this sense, the Netherlands legal framework demonstrates that social order and family stability can be maintained without resorting to criminal sanctions that risk violating fundamental human rights. From this perspective, countries that adopt a legal approach similar to Indonesia’s should reconsider the extent of state involvement in regulating private life. Greater recognition of the right to privacy is essential to ensure that criminal law does not become a tool for moral enforcement at the expense of individual freedoms and internationally recognized human rights norms.

The right to privacy is one of the fundamental rights recognized in international human rights law. Article 12 of the 1948 Universal Declaration of Human Rights (UDHR) affirms that no one shall be subjected to arbitrary interference with their private life, family, or home. Although the UDHR is not legally binding, the principles it embodies carry significant moral authority and have served as a reference in the development of national legal systems in many countries, including Indonesia. Stronger and legally binding protection of the right to privacy is provided in Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees that every individual shall be free from unlawful or disproportionate interference with their private life (Joseph et al., 2013). Since Indonesia ratified the ICCPR through Law No. 12 of 2005, these provisions have become legally binding obligations of the state. Accordingly, all national policies, including regulations under the Criminal Code, must be consistent with the principle of privacy protection and must not restrict this right without a legitimate, necessary, and proportionate justification (Indonesia, 2005). The interpretation of Article 17 of the ICCPR is further elaborated in General Comment No. 16, which clarifies that privacy extends beyond physical space to include domestic relationships, personal communications, relational orientation, and individual decisions that shape a person’s identity. State interference is justified only where it is clearly prescribed by law, pursues a legitimate public interest, and is carried out in the least intrusive manner possible. The state also bears the burden of demonstrating that any restriction is genuinely necessary and cannot be achieved through less restrictive means.

In the context of cohabitation, which constitutes a consensual relationship between adult individuals, there is no clear public harm or direct victim. Consequently, the requirement of necessity for the imposition of criminal sanctions is not satisfied. Cohabitation falls within the private sphere, as it involves personal life choices, emotional relationships, and the management of domestic life without adversely affecting public interests. On this basis, the criminalization of cohabitation is inconsistent with international human rights protection standards.

The Effectiveness Law of Criminal Law Policy and the Principle of Ultimum Remedium in Regulating Cohabitation

The implementation of the criminal provision on cohabitation as regulated in Article 412 of the New Criminal Code (KUHP Baru) carries significant consequences for social life, the legal system, and state policy (Safitri & Wahyudi, 2024). Although formulated as an absolute complaint-based offense, in practice this norm has the potential to shift the public's understanding of the boundaries between private and public spheres. Its implications can be described as follows.

a) Implications for Social Life and Citizens' Privacy

The criminalization of cohabitation moves what was previously considered a personal, private matter into the realm of criminal law. Even though prosecution requires a complaint from specific parties, state intervention may still occur and could affect social dynamics. These implications include:

1. Increased social and familial control

The complaint mechanism may prompt parents or relatives to use the threat of police reports to control the behavior of family members, especially when differing life choices create domestic tension.

2. Stigmatization of cohabiting couples

Couples living together without marriage may face heightened social pressure and discrimination. This is at odds with modern social developments that emphasize personal freedom in choosing relationship patterns.

3. Erosion of privacy and personal autonomy

The state appears to expand its authority into the most personal domain intimate relationships between consenting adults. This raises concerns regarding potential violations of constitutional rights to privacy and personal freedom under Articles 28G and 28I of the 1945 Constitution.

4. Tension between majority norms and social diversity

Indonesia is a pluralistic society. Some communities may culturally accept cohabitation, while others firmly reject it. Criminalization may therefore create friction between groups with differing value systems (Hafrida et al., 2024).

b) Implications for the Criminal Justice System

Practically, the implementation of Article 412 presents substantial challenges for law enforcement, from evidence gathering to case resolution.

1. Increase in cases rooted in family conflict

Reports of cohabitation often arise from internal family disputes such as disapproved relationships or unstable partnerships which may unnecessarily burden the criminal justice system with cases better resolved through non-penal approaches.

2. Potential misuse of the law

The provision may be used as a tool of intimidation, whether by partners seeking to pressure one another or by families attempting to break up certain relationships.

3. Difficulties in proving the element of “living together as husband and wife”
Courts must establish factual circumstances that lack a clear legal definition. This invites inconsistent judgments and undermines legal certainty.
4. Increased workload for law enforcement
Handling these cases can consume significant time and resources despite their minimal direct social harm and their classification outside core criminal offense (Refangga & Sujiantoro, n.d.).

c) Implications for Women’s Protection

The criminalization of cohabitation may disproportionately impact women, particularly those in economically vulnerable circumstances.

1. Heightened dependency and disempowerment
Women in cohabiting relationships generally lack the legal protections afforded to married women. Threats of criminal prosecution may increase dependency and make it harder for women to leave unhealthy relationships.
2. Reluctance to report violence
Fear that their cohabitation status will be exposed may prevent women from reporting physical or sexual violence, contributing to underreporting.
3. Risk of women being criminalized
Although the criminal sanction applies to both parties, women often in weaker social positions may be more prone to prosecution.
4. Contradiction with women’s protection policies
The provision may conflict with the state’s obligations under CEDAW and the Domestic Violence Law (UU PKDRT), which emphasize protection for women in intimate relationships, including non-marital ones (Nguyen & Roberts, 2024).

d) Implications for Population Administration and Public Services

Cohabitation regulation also affects administrative governance and public service delivery.

1. Distorted population data
Cohabiting couples may avoid registering the same address, leading to inaccurate household data.
2. Vulnerabilities for children born out of wedlock
Children may face administrative obstacles in birth registration, inheritance rights, and immigration-related matters.
3. Ineffective family welfare programs
Many government programs rely on accurate family data. Unreported cohabitation disrupts proper targeting and assistance.
4. Risk of administrative discrimination
Local officials may deny services or impose additional requirements on known cohabiting couples (Nguyen & Roberts, 2024).

e) Implications for National Legal Reform

This regulation reflects ongoing tension between two competing paradigms in lawmaking: moral-religious norms versus human rights principles.

1. A step backward from the liberalization of private space
Modern criminal law trends favor minimizing state intervention in private relationships, yet Article 412 broadens the scope of criminalization.
2. Criminal law as a tool of morality enforcement
The use of criminal law to regulate morality runs contrary to the harm principle (John Stuart Mill), which holds that criminal sanctions should be imposed only when harm to others is demonstrated.
3. Potential constitutional conflict
The criminalization of cohabitation may be challenged through judicial review at the Constitutional Court, particularly for its possible incompatibility with rights to privacy, personal freedom, non-discrimination, and the rule of law.
4. Need for more proportionate policy design
The criminal provision does not address underlying issues such as low reproductive health literacy, gender inequality, and the lack of legal protection for non-marital partners (Dzakayah, 2024).

The effectiveness of criminal sanctions in addressing moral concerns is also questioned. Rather than resolving underlying social issues, criminalization may push cohabitation into secrecy and reduce the effectiveness of social protection policies, especially those concerning women and children. Uneven enforcement and potential discrimination are additional concerns, as vulnerable groups may be disproportionately affected. Thus, the cohabitation provision in the New Criminal Code illustrates the tension between efforts to preserve traditional norms and the need to respect modern human rights standards and private life (Iranti & Irawan, 2025).

From the perspective of criminal law principles, the criminalization of cohabitation represents state intervention in social conduct linked to moral and family order. With respect to legality and legal certainty, defining cohabitation as a punishable act provides normative guidance, yet this guidance is weakened by the absence of a clear definition of “living together as husband and wife.” (Lase et al., 2025). The lack of precise criteria creates room for varied interpretations and inconsistent application by law enforcement. Viewed through the principle of *ultimum remedium*, the provision attempts to limit the use of criminal law by requiring a complaint from specific family members before prosecution can proceed. This reflects the idea that criminal sanctions should be used as a last resort in cases that are perceived to harm family interests. Nevertheless, the existence of criminal penalties still signals the state’s willingness to intervene in private matters, a stance increasingly questioned in contemporary legal thought.

Article 412 of the Indonesian Criminal Code, however, categorizes cohabitation as a criminal offense, thereby opening the door for state intervention in citizens’ domestic lives based on complaints lodged by family members (Indonesia, 2023). This provision allows third parties’ moral preferences to serve as the basis for legal assessment of an individual’s private relationship. As a result, control over the private sphere shifts from the individuals directly involved to others who may have subjective interests or personal conflicts. The Netherlands legal approach reflects a contemporary criminal law paradigm that positions criminal law as a measure of last resort (*ultimum remedium*) in regulating social conduct. Social morality is not

enforced through the criminalization of private behavior, but rather through non-penal instruments such as education, social policy, and legal protection mechanisms aimed at safeguarding parties who genuinely suffer harm. Within this framework, the state does not assume the role of a moral arbiter over private relationships, but instead functions as a guarantor of individual rights and fundamental freedoms. In comparison with Indonesia, the fundamental divergence lies in the extent of permissible state intervention in private life (Netherlands Ministry of Justice and Security, 2020). While Indonesian law, through Article 412 of the New Criminal Code, continues to allow moral preferences of third parties to serve as a basis for assessing and controlling individuals' private relationships, Netherlands law firmly limits such intervention by recognizing cohabitation as a personal choice that cannot be subjected to criminal sanction. This comparison demonstrates that the protection of family values and the maintenance of social order need not rely on criminal law, but may instead be achieved through a legal framework that respects privacy, individual autonomy, and human rights principles.

Moreover, the criminalization of cohabitation potentially entails intrusive law enforcement measures, such as inspections of residences or raids, which may violate individual privacy, dignity, and personal integrity. The use of criminal law in this context fails to meet the principle of proportionality, as cohabitation constitutes a victimless act and poses no threat to public order. The absence of a clear definition of "living together as husband and wife" in Article 412 also creates legal uncertainty and increases the risk of selective criminalization, particularly against women and vulnerable groups.

Overall, the penal regulation of cohabitation reflects a tendency for the state to intrude into the private sphere under the justification of social morality. This approach is inconsistent with human rights principles that require the state to maintain restraint from interfering in individuals' private lives in order to safeguard human dignity and personal freedom. Restrictions on the right to privacy cannot be justified solely on the basis of majority moral values, but must be supported by a clear and compelling public interest. Accordingly, the criminalization of cohabitation under Article 412 of the Criminal Code remains problematic within the framework of a rule-of-law state committed to the protection of human rights.

The criminalization of cohabitation also demonstrates the state's ongoing reliance on moral and social values in shaping legal policy. The state reaffirms its role as guardian of public morality and family harmony by establishing cohabitation outside lawful marriage as a punishable act. This approach is consistent with other provisions in the New Criminal Code that emphasize the protection of religious and moral values rooted in Indonesian society. For lawmakers, such norms are seen as essential for maintaining social stability and preserving marriage as the foundation of family life (Husak, 2008).

Nevertheless, this moralistic approach has sparked significant debate. The use of criminal law to regulate private behavior is often criticized for extending state authority into matters that should fall within personal autonomy and privacy. While Indonesia upholds moral and customary values, modern legal development stresses the importance of protecting personal freedoms and respecting diverse social and relational choices. In a pluralistic society, criminalizing cohabitation risks intensifying conflicts between majority moral norms and the rights of individuals who choose different forms of intimate relationships.

Overall, the criminalization of cohabitation reflects a shift in which intimate relationships outside marriage are no longer treated solely as private matters but as moral

concerns subject to state intervention. This situation highlights the ongoing struggle to reconcile traditional values with individual freedoms in an increasingly diverse and modern society.

CONCLUSION

The comparison between Indonesian and Dutch approaches to cohabitation highlights a deep divide in how law balances morality, privacy, and state authority. Indonesia's Article 412 reflects a moralistic, interventionist stance that criminalizes cohabitation to uphold traditional values, but in doing so raises serious concerns about privacy violations, legal uncertainty, disproportionate social impacts, and inconsistency with human rights standards such as the right to privacy. Although limited by a complaint-based mechanism, the provision still risks overextending criminal law into private life without clear public harm, undermining principles like proportionality and ultimum remedium. In contrast, the Netherlands adopts a rights-based approach, treating cohabitation as a private matter regulated through civil frameworks that prioritize autonomy, legal clarity, and human rights. Overall, the analysis suggests that protecting social values does not require criminalization and that more restrained, rights-oriented legal models may be both more effective and just; future research could explore empirical impacts of such laws—particularly how criminalization of private relationships affects vulnerable groups and whether non-penal regulatory approaches better achieve social and legal objectives.

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