

Criminal Law and Gender Inequality

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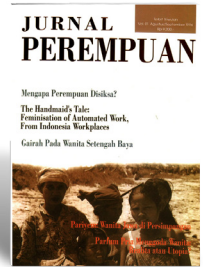
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Criminal Law and Gender Inequality

The 1998 reformation is often seen as a momentum for the improvement of the systems of life and nationhood. This becomes evident in the reform agenda, which was voiced at the time. We certainly remember that the reformation of the law was one of the points in the reform agenda. Now, 20 years later, we see that the efforts of the women's movement to integrate the rights of women victims of gender-based violence in a variety of regulations have manifested in a number of laws, such as the Human Rights Act, the Law on the Elimination of Domestic Violence, the Law on the Protection of Witnesses and Victims and the Law on the Elimination of Trafficking People. In early 2018, the Draft Law on Penal Code (RUU KUHP) has reached the final stage of discussions since the idea of revision was first initiated in 1963 and its formulation happened during the 1980s. The re-formulation of the Criminal Code, which is the basis of and framework for enforcing criminal law system in Indonesia, is expected to create justice for all citizens.

But several representatives of civil society have criticized the Criminal Code Bill, which is being discussed by the government and the House of Representatives, and even proceeded to reject it. The criticism and rejection, for one, focus on a rule that has the potential to criminalize every citizen, particularly women, children, indigenous people and marginalized groups. The criticism and refusal by civil society shows that there is something wrong with the revision process of the Criminal Code Bill. If the law is intended as a tool to regulate the citizens' behavior and create justice, then it should depart from the experience of all citizens. It shouldn't only represent the interests of half the people or a certain group of citizens.

Meanwhile, the criminal law draft under discussion just ignores the interests of women and marginalized groups. This is most evident in chapters governing morality, such as articles on adultery, rape, lewd acts, trafficking of women and children, access to contraceptive information and services, and abortion. The articles are essentially related to the body's authority and female sexuality, so that the voice and experience of women should be considered. The placement of articles on sexual violence such as rape, sexual abuse and trafficking of women and children in the moral chapter will obscure the nature of the offense and reduce it to a matter of violation of morality and public decency—while we actually look at a form of attack on the body and crimes against human dignity. In addition, the regulation of the sexual behavior of citizens with gender, class, ethnic and faith-based moral standards potentially criminalizes vulnerable

groups. On the other hand, the existence of a pro-women law does not guarantee the revision of the Criminal Code to result in gender equality.

Indeed, feminist lawyers have voiced criticism of the law since several decades ago. They criticize the neutrality of the law that is deemed incapable of recognizing women's experiences as protecting the interests of women. The ideology of legal neutrality is insensitive to the fact that differences exist in society. The principle of equality and legal protection that is said to be neutral is actually based on the standard of male values. This is because the law was originally created to govern the affairs of the public sphere, and in history, men dominated the public domain. Thus the law only recognizes the experience in the public domain, meaning the experience of men. With regard to criminal law, feminist jurists expose discrimination in criminal law against women who become defendants. They also highlight the inability of criminal law to provide protection for victims of sexual violence. Furthermore, they find that even criminal law rules that are not directly related to gender distinctions are also based on assumptions about gender. As a result, while appearing gender-neutral, the formulation and application of criminal law in fact discriminates against women or reinforces stereotypes about the behavior of women and men.

In the context of the revision of the Criminal Code, which allegedly ignores the voices, experiences as well as the interests of women and marginalized groups, it is important to conduct a study of criminal law and gender inequality. The studies and research published in this edition of JP show some important issues in the current Criminal Code practice, where the Criminal Code fails to protect women against the threat of gender-based violence, and instead becomes the means of controlling women's freedom and reproduces gender inequality. Women victims and women who face obstacles to access legal identities are potentially criminalized. In addition, the research on the application of the article of fornication indicates that the article is not able to provide justice and fulfill the rights of women victims. Meanwhile, the draft law on criminal law has not been fully oriented towards the interests of the victims. To that end, as a process of reflection over the 20 years of the journey of the ideals of legal reform and in response to the current deliberation process of the KHUP Bill, JP97 Vol. 23 No. 2 on Criminal Law and Gender Inequality is expected to open the perspective of policymakers and be considered in the revision of the Criminal Code. **(Anita Dhewy)**

Sri Wiyanti Eddyono (Faculty of Law Universitas Gadjah Mada, Yogyakarta 55281, Indonesia)

Criminal Code Draft and Protection for Victims of Gender-Based Violence

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 55-65, 2 table, 14 ref.

This paper analyzes whether the Criminal Code Draft is oriented towards the interests and protection of the rights of victims, especially women victims of gender-based violence. This paper uses juridical or normative research methods, through analysis on the articles in the Criminal Code Draft. The analytical framework used in this study is feminist legal theory that puts law as a political product and often neglects the interests of women victims of different forms of violence. This paper finds that the main orientation of the Criminal Code Draft is towards the interests of the perpetrator and the community, but not explicitly towards the victim's interests. It is assumed that with reference to public interest, it has been victim-oriented. The victim is still seen as the party that helps to reveal the case, not as the party that has suffered and that needs protection and reparation. The responsibility of the perpetrator also tends to meet the interests of sense of community justice, not the victim. In addition, some of the regulatory articles on criminal offenses still contain problems because the Criminal Code Bill prefers to compile several laws outside the Criminal Code but does not revise articles based on the experiences of the victims that are difficult to implement, such as dealing with PKDRT (domestic violence). Furthermore, there are still articles that victimize victims by criminalizing those who are actually victims of gender-based violence.

Keywords: Criminal Code Draft, gender-based violence, victims rights, criminal law system

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Formulation of Article 488 of the Indonesian Criminal Code Draft: A Portrait of Failure in Construing the Problem of Women's Access to Legal Identity

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 67-74, 13 ref.

The Draft of the Indonesian Criminal Code has provoked a debate, especially with regard to the articles under the scope of morality. The formulation of Article 488 has the potential to create new problems for women, especially women who have obstacles in accessing legal identity. This Article 488 is a reflection of the failure of jurists to formulate laws, in understanding women's experience in relation to their access to the right to obtain legal identity, especially in the context of their relationships. The criminal law is not the answer to all problems. This paper is compiled using data obtained from field study related to the handling of cases of violence against women under customary law, carried out by the authors and the team from Legal and Community Studies Fields in 2015, 2016 and 2017 in Eastern Indonesia; as well as data on legal and non-legal text analysis. The overall method and analysis of research findings uses feminist legal studies and feminist legal theories.

Keywords: legal identity, legal analysis of feminist perspective, women's experience

Laili Nur Anisah (Jejer Wadon, Banyudono, Boyolali, Jawa Tengah, 57373, Indonesia)

Fornication as a Criminal Conduct in the Criminal Code Draft: Legal Protection Versus Criminalization Against Women

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 75-82, 22 ref.

On 14 February 2018 the Draft of the Criminal Code (RUU KUHP) was adjourned for an undetermined time as several articles were deemed to be problematic. One of them is the criminal act of adultery. A new article states that a man, who has intercourse with a woman by promising a marriage but later denies it can be convicted, is also included in the criminal act of adultery. The article is formulated to protect the interests of women; on the other hand the article can also be a criminogenic factor that can make women victims turn into perpetrators of criminal acts. This paper examines the position of women among the protection articles and articles that threaten the criminalization of women. This paper is a normative juridical study by using literature reviews to find the problem and solving it. As a result, protection articles for women can be a factor that criminalizes women victims, and therefore they need to be carefully formulated so that the goals do not shift.

Keywords: Criminal Code Draft, fornication, courtship violence, criminogenic, victimogenic, enforcement

Ajeng Kamaratih-Desjardins (Metro TV, Jakarta 11520, Indonesia)

'Measuring' Adultery in Article 284 of the Criminal Code

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 83-91, 23 ref.

After the resolution about the petition of extending the meaning of adultery was rampantly discussed within the community, Article 284 KUHP is still an interesting article to be reviewed. The diverse Indonesian community demands that a number of applied regulations have to be as fair as possible and become legal protection for all layers of society, including the regulations on crimes of morality. There is a different understanding about violating decency and morality within various community groups, which causes the article in the Crime on Morality section, especially in adultery cases, to marginalize some groups of the community. There are indeed some groups that might potentially become victims of adultery cases if the meaning of adultery is to be broadened. Furthermore, in its application, Article 284 of the Criminal Code makes the line between morality and crime very thin. This research was conducted by using the approach of feminist legal theory, by reviewing legal texts to gain an understanding on how sexuality and imagination about the woman victim is projected by law.

Keywords: law, human rights, criminalization, victim, criminal code

Mariana Amiruddin (National Committee Against Violence Against Women, Jakarta 10310, Indonesia)

Fornication as Criminal Act, Women's Vulnerability and the Stigma Against Women's Movement

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 93-100, 8 image, 7 ref.

This paper explains how criminal code of zina (adultery/ fornication) criminalizes women victims of sexual violence. The data of Komnas Perempuan's annual records and direct complaints from the victims illustrate that women's personal relationships are particularly vulnerable to violence. The theories of feminism are used as an analytical tool of women's lives and their problems in the private sphere, including in terms of sexual relationships and love, whether married or not. This paper concludes with the challenge of the stigma of the feminist movement, which is considered to be opposed to morality and religion – and this is not happening in Indonesia only.

Keywords: fornication, Criminal Code Draft, feminism, personal relations, sexual relations, sexual violence

Bella Sandiata (Jurnal Perempuan, Jakarta 12540, Indonesia)

Women Facing Legal Cases: Reflection on the Use of Articles 284 and 285 of the Indonesian Criminal Code from the Experiences of their Legal Counselor

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 101-110, 11 ref.

This paper raises the narrative of the experience from legal counselors who have accompanied women victim in cases related to article 284 of the Criminal Code on adultery and article 285 of the Criminal Code on rape. In an interview with the author, four female public lawyers share their experiences including challenges and obstacles they encountered while advocating cases of adultery and rape. Reports that weren't accepted, a slow-running legal process or even a halt in the middle of the process, and facing the attitude of sexism towards victims and public lawyers are some of the obstacles and challenges experienced by the legal counselors of women victims. The interviewees could clearly see that the criminal law is still not on the side of women and has not provided justice for women. They directly saw and experienced the difficulty of the legal process regarding the article of adultery and rape. Using feminist legal theory, this paper finds that laws that do not yet have a gender perspective or side with women are major obstacles to the fulfillment of women victims rights.

Keywords: criminal law, legal counselor, women victim, experience, adultery, rape

'Measuring' Adultery in Article 284 of the Criminal Code

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Abstract

After the resolution about the petition of extending the meaning of adultery was rampantly discussed within the community, Article 284 KUHP is still an interesting article to be reviewed. The diverse Indonesian community demands that a number of applied regulations have to be as fair as possible and become legal protection for all layers of society, including the regulations on crimes of morality. There is a different understanding about violating decency and morality within various community groups, which causes the article in the Crime on Morality section, especially in adultery cases, to marginalize some groups of the community. There are indeed some groups that might potentially become victims of adultery cases if the meaning of adultery is to be broadened. Furthermore, in its application, Article 284 of the Criminal Code makes the line between morality and crime very thin. This research was conducted by using the approach of feminist legal theory, by reviewing legal texts to gain an understanding on how sexuality and imagination about the woman victim is projected by law.

Keywords: law, human rights, criminalization, victim, criminal code

Introduction

I am a little relieved, because the writing of Prof. Mardjono Reksodiputro entitled "Mengapa Komunitas Hukum Kita Apatitis?" ("Why is Our Law Community Apathetic?") in the book *Perenungan Perjalanan Reformasi Hukum (Reflecting on the Reformation of the Law)* is in accordance to what I feel. It showcases his frustration at the legal community in Indonesia, which is preoccupied with small personal issues, while there are still many fundamental legal issues that need to be resolved (Reksodiputro 2013). Therefore, it is not just me who feels upset about it, but senior lecturers as well as criminal law experts are also unhappy with this situation. One of the things that continue to irritate is the enormous interest of the public that seems eager to criminalize a group of people with the expansion of article 284 of the Criminal Code on adultery. Komnas Perempuan in its paper on the Position of Komnas Perempuan 2012-2013 explains that the offense *overspels / overspels* or in Dutch *etcthbreuk, schendinging den huwelijktrouw* (violation of allegiance to marriage) is applicable if there is sexual intercourse committed by parties who are already married, and the act of copulation has not been sanctioned by the husband or wife in question.

In the same article Prof. Mardjono explains that the currently valid Criminal Code is written in Dutch (Wetboek van Nederlands-Indie, S. 1915 No.732) and has been valid since 1918. The reason is that until now there has never been a legitimate translation of the Criminal Code from Dutch to Indonesian. Indeed in 1980, the government formed an Assessment Team to review the draft of the National Criminal Code. The draft concept has also been submitted to the Minister of Justice and the Director General of Law and Legislation, but it was said that a number of improvements must still be made to the draft of the Criminal Code. As a result, we are still a 'victim' of the use of the Criminal Code whose text is not valid (with four different translations). According to Prof. Andi Hamzah in the preface of his book *Speciale Delicten*, the ability to understand and speak Dutch language fluently is absolutely necessary for the author of the book on the Indonesian Penal Code, because otherwise there will be misinterpretation. The most difficult problem in the application of legal practice in Indonesia today is the parsing of articles based on different translation languages (Hamzah 2009).

Similarly, there are different translations for some versions of article 284 of the Criminal Code. In Prof.

Mulyatno's translation, this article is defined as adultery. Meanwhile, in Prof. Andi Hamzah's translation, referring to the Great Dictionary of the Indonesian Language, the matter referred to in Article 284 of the Criminal Code is defined as an *overspel*. This *overspel* is actually an appropriate term as a translation of what is meant by this passage in Dutch. The article on *overspel* in the Dutch Criminal Code is made to protect marriage, especially for those who are subject to Article 27 Civil Code, namely the principle of monogamous marriage. Various possible translations occur because of the poor legal vocabulary in Indonesia.

The extension of the adultery offense was petitioned for review of the article to the Constitutional Court with the case number 46/PUU-XIV/2016 by a number of parties from various work and scientific backgrounds. They appointed 36 lawyers who named themselves "Advocacy Team for a Civilized Indonesia". The extension of the meaning of this deliberate offense is requested to be extended to, "any form of sexual intercourse outside marriage, including living together outside the legitimate marriage bond" and converting the type of offense into a normal offense. The extension of the meaning of Article 284 of the Criminal Code has opened up such a large gap in order to criminalize any person who has sex outside of legal marriage; what will happen is what is referred to in the criminal principle as overcriminalization. This is certainly contrary to the guarantee of independence and human rights, namely the right to security and protection from the threat of fear to do and do not do something that is a human right, as regulated in Article 28G Paragraph (1) of the 1945 Constitution, which states that:

Every person is entitled to protection of privacy, family, honor, dignity and property under his or her control, and to a sense of security and protection from the threat to do or not to do something that is a human right.

The formulation of Article 28G Paragraph (1) of the 1945 Constitution cited above has the same protective essence as the formulation of Article 12 of UDHR (Universal Declaration on Human Rights) which was subsequently adopted in Article 17 of ICCPR (International Covenant on Civil and Political Rights), and ratified in UU no. 12 of 2005, which explicitly guarantees the right to privacy. Indonesia's ratification of a number of international human rights treaties is a clear proof that states are subject to the human rights rules contained therein. Therefore, in practice, national monitoring of the implementation of human rights must necessarily make human rights a part of Indonesian law and include legal procedures to protect it (Reksodiputro 2007).

The expansion of the meaning of adultery in Article 284 can be regarded as a form of criminalization without a victim (crimes without victims), which would eliminate the principle of legal certainty and guarantee of security. The expansion of this article will potentially criminalize marginalized communities such as women, children, and religious minorities. Criminalization is always a problematic issue, as criminal or punitive imprisonment is always concerned with actions that must be legitimated for legal reasons and must be done by the state. So, if it is not done by the state and it is certain that it is not law-based, then it is certain that it is a violation of morals. The action of the government in criminal cases raises a number of fundamental questions: why is it that in a sensitive case, what is believed to be the truth, is suddenly odd? Is this criminal compliance aligned with human rights? On the other hand, with the expansion of Article 284 of the Criminal Code, it is vulnerable to be the originator of the 'moral policemen' acting in the name of the law. Some of the terrible justifications of society's norms can be legitimized by a lawsuit. That is what may happen when the extension of the meaning of adultery in Article 284 of the Penal Code is enacted. Therefore, I am writing this article to try to answer some simple questions, such as: (a) whether the rules contained in the chapters of the Criminal Crime in the Criminal Code can be an effective legal umbrella within the diversity of Indonesian society; (b) what forms of criminalization are potentially experienced by children, women, and others with the extension of the meaning of adultery in article 284 of the Criminal Code; and (c) how to place the relationship between morality and evil in the extension of the meaning of adultery in Article 284 of the Criminal Code?

The Implementation of the Article on Adultery in the Criminal Code

In accordance with the principle of human rights in criminalization, criminal law can indeed be used to affirm or reaffirm basic social values for the formation of behavior in society. It should be remembered that the criminal law may only be used in circumstances where other means of social control can not be effective (the principle of *ultimum remedium* and the principle of *subsidiarity*). In executing criminal law, it is important to use both previously described principles, to minimize the rights and freedoms of individuals, without prejudice to the protection of collectivity interests in modern democratic societies (Reksodiputro 2013).

This offense is a criminal complaint, in which the implementation of the provisions stipulated in Article 284 of the Criminal Code depends on the interests of the individual, in the sense that any party is harmed by the existence of this regulation. If no party feels aggrieved by the existence of this action and does not report it, then there is no case. This is also limited to those who are subject to monogamous marriages. Meanwhile, those who have the permission for polygamy by their partner (on the other word those who are not subject to the principle of monogamy) the provisions of this article do not apply.

In relation to article 284 of the Criminal Code, this should be understood as an attempt by the state to not directly punish the perpetrator in a criminal form. However, the nature of the offense of complaints is a step by the state to protect its citizens in maintaining/ harmonizing the affected families. The government should understand that marriage is the right of every individual without intervention from any party. The criminal law recognizes an adagium, which becomes the politics of law in the field of morality *in casu*, article 284 of the Criminal Code, that criminal law should stop in front of the bedroom (Setiadi 2004). This adagium appears not without reason. On the contrary, it stands on the respect of the principles of privacy and democratic rights and human rights in general, which places private affairs *in casu* of consensual sexual relations rather than the authority of the state to intervene and interfere. The Netherlands itself, the country from which the Criminal Code originated, has abolished article 284 of the Criminal Code because it is against human rights, especially the right to privacy and the principle of non-discrimination.

The enforcement of the article on adultery has been a chapter that seems to exist and not exist. That is, this article does exist and is regulated in the Criminal Code, but it is not enforced in so many cases where this article should be a valid legal strike for people reported by a spouse having an affair even though they are married. Reported persons are almost immune from law and only get social sanctions in the form of media exposure without a forceful enactment of article 284, even though the aggrieved party has reported the case of adultery to the authorities.

Some examples of cases that have attracted public attention concerning adultery; the cases have been filed by the legal wives whose husbands have been found to commit adultery and entered a hush marriage:

a. In 2012, the media was busy covering the hush wedding by Aceng Fikri, Garut Regent, West Java,

to an 18-year-old girl. The girl was a high school graduate who was promised by Aceng that he would cover the cost of her education and continue school. The unregistered marriage in the Civil Registry Office lasted only four days. The divorce followed via SMS by Aceng under the pretext that FO (the girl) was not a virgin anymore on their first night. Aceng actually cursed and terrorized FO via SMS when FO called him out on accountability (Rahmadi 2012).

b. In 2013, a similar story highlighted the life of a 67-year-old man often referred to as "Eyang Subur". His personal life became media gossip because he had married more than 25 women and maintained eight wives whom he married under the same roof – not to mention his youngest wife whom he married at a very young age, 18 years ("Alasan Ani Mau Dinikahi Eyang Subur Saat Masih Berusia 18 Tahun" 2013).

Looking at the above facts, of course the question that then arises is: why was article 284 of the Criminal Code on adultery not applied in the cases of infidelity described above? That is why eventually the idea arose that Article 284 of the Indonesian Criminal Code can be said to become a form of excessive criminalization in some groups, but remains immune to others.

A simple definition of criminalization was made by Clayton A. Hartjen who argued that, "the criminalization process begins, with the formulation of criminal laws"; furthermore, on the outcome of this criminalization process, he said that "a new class of criminal was instantly created" (Hartjen 1978). Drawing a line with what happened in Indonesia, criminalization can also be interpreted as a formulation of laws or regulations through the legislation process to turn something that was previously not a crime into an action that can be subject to criminal sanctions. The legislative process undertaken in the drafting of this law or regulation is not merely a legal process, since legislative and regulatory institutions are political institutions. This process is also a political process, so the laws and regulations produced in the legislation process will be politically charged.

The policy of the legislator, in this case the government, which prioritizes the making and production of the law by presenting a number of acts as a new crime, constitutes overcriminalization or excessive criminalization, like the extension of the meaning of adultery in Article 284 of the Criminal Code. Douglas Husak's (2008) statement on excessive criminalization is as follows:

Despite these cautionary remarks, it is patently clear that more criminalization produces more punishment in a straightforward manner: by expanding the type of conduct subjected to liability. The incidence of punishment is at unprecedented levels partly because defendants are convicted of crimes that did not exist a few.

The Potential of Excessive Criminalization of the Expansion of the Article on Adultery on Marginal Groups

The Indonesian legal system, especially when it comes to moral crimes, follows the logic of saintism, ie legal research must be separated from research on the relationship between law and social reality (Harkrisnowo 2008). Meanwhile, objectivity and legal neutrality cannot be created by legal perspective seen and made using positivistic "glasses" that cannot (or will not) see the potential of a community group as victims of social marginalization, such as women, children, and those following their native faiths.

Indonesia is currently in an emergency situation when it comes to sexual violence, following so many cases of sexual violence highlighted by the media. Komnas Perempuan's Annual Record mentions that up to 2012, every three hours there were at least two sexual assaults on women, mainly sexual abuse and rape (Catahu Komnas Perempuan 2013). With the conviction of intercourse by couples that are not officially bound by marriage relationships, it has the potential to criminalize the victims of rape and fornication because almost every time evidence is presented in court, the perpetrator postulates rape or fornication as consensual sex.

Something that is often confused when it comes to the moral problems of society is the issue of adultery and prostitution. It should be understood first that the issue of prostitution is not just a matter of consensual sex, but sociologically, there are many sad facts that show that the prostitution business turns children and women into victims of exploitation and violence. That's why Law no. 21 of 2007 on the Eradication of Trafficking in Persons (TPPO) regulates prostitution. Confusing prostitution with adultery will criminalize women and children who have become victims of trafficking into criminal suspects.

In addition, when linked to human rights, sometimes we forget and position adherents of ancestral religions as the "other" group or not the majority. They are a group whose fundamental rights are largely ignored, even violated by jurisdiction. The expansion of Article 284 of the Criminal Code has a strong potential to criminalize couples whose marriages are considered invalid by the state, among them:

- a. Adherents of ancestral religions or other beliefs beyond the six religions recognized by the state as the majority religions. Often they are forced to fill in the religious column with a choice of the six major religions in Indonesia. Many eventually choose to vacate the column and experience difficulty in recording their marriage.
- b. Those who don't have evidence for being married because they are not registered or have not been given marriage certificates by the headman or head of Islamic religious affairs.
- c. Second, third and fourth marriages that are not in accordance with the requirements of the Marriage Act (Act No. 1 of 1974), so the marriage is considered invalid.

Carol Smart in her book *Feminism and The Power of Law* (2003) opens the possibility to criticize the legal system of 'goggles' outside of legal science, for example: science and everyday life. This thinking allows a rigid and positivistic legal system to be used as a 'protection' capital for vulnerable groups of people victimized in society. A number of experiences occurring in the aggrieved community groups when the expansion of Article 284 of the Criminal Code is conducted can be used as a review to improve future morality-related regulations. The experience of some of these groups can be a reference for the law to always protect all levels of society, without exception.

Consciousness raising is an issue that Patricia Cain underlines in her article titled '*Feminism and the Limits of Equality*' (1990). In order to realize the laws with a women's perspective, the role of women from different heterogeneous groups should be involved. In the end, the law in society will not only be present as a regulation, but it should be a medium for increasing women's awareness of a phenomenon in society, increasing women's knowledge, and allowing women to discuss so that their rights can be heard.

The following are some groups potentially criminalized by excessive expansion of adultery in Article 284 of the Criminal Code.

A. Criminalization of Women and Children

With the extension of the meaning of adultery in Article 284, the criminalization of women can target the issue of prostitution. The root of the problem of prostitution is not just a mere matter of morality and sexuality, but deep within it is the problem of impoverishment and the unequal power relations between women and men.

The extension of the meaning of adultery in Article 284 of the Criminal Code is one form of repressive action that will aggravate the condition because it will lead to the practice of covert prostitution in which women who are potentially victims in this practice will become very vulnerable and discriminated. The extension of the meaning will only eliminate the sense of legal certainty and security. Referring to similar rules that have been ratified under the pretext of eliminating prostitution as stipulated in a number of local regulations, the expansion of the meaning of adultery can even target women and men who are alone. Komnas Perempuan in the Proposed Draft Society on the Draft Law and Policy Implementation Review (2015) documented and reviewed 365 discriminatory local regulations, 279 of which are discriminatory against women. In the study it is said that the content of the material contained in the regulation does not provide legal certainty, multiple interpretations and is very discriminatory.

The principle of legality that should exist in the formulation of a law in testing a criminalization as extracted from the article Prof. Mardjono Reksodiputro called "Sekedar Catatan tentang Kriminalisasi, Politik Kriminal, dan Asas-Asasnya" ("Just a Note on Criminalization, Criminal Politics, and Its Principles") in *Menyelaraskan Pembaruan Hukum (Harmonization of Legal Reform 2009)* mentions that the principle of legality is the main joint in our criminal law. This principle is often formulated in "*nullum delictum, nulla poena, sine preavia lege poenair*" or "no offense, no criminal, in the absence of a preceding penal code". It is explained that this principle is closely related to *lex scripta* (there must be a written code of criminal law that makes the act a criminal act), *lex certa* (the rules made must be clear and unambiguous), and *lex stricta* (the rule should be interpreted narrowly, so it is forbidden to analogize a rule). Thus this principle can provide protection so the law can always lead to legal certainty (*lex certa et stricta*) (Reksodiputro 2007).

The monitoring of Komnas Perempuan conducted in 16 districts in seven provinces by interviewing a number of parties with different backgrounds such as community leaders, religious leaders, law enforcers, women's and minority groups conducted in 2009 illustrates that a government aiming to eliminate prostitution in society is an arrangement that instantly opens up the gaps of corruption and abuse of authority. Komnas Perempuan additionally that the criminalization and impoverishment of women occurred due to the birth of a number of local regulations that regulate the adultery, while the moral police arises in the community who aren't reluctant to

use violence in cracking down on community groups that they think violate the rules (Komnas Perempuan 2009). In other words, such a rule can be used by a particular group of people to oppress marginalized groups, especially women.

A sad example is the story of Lilis Lisdawati, a worker who was wrongly arrested because of the enactment of Perda Tangerang City no. 8 Year 2005 on Prostitution. Lilis was arrested on suspicion of being a commercial sex worker while waiting for public transport. According to the rules, a person can be arrested if "suspected" as a sex worker because of the behavior and manner of dressing and being in public places, especially at night. The regulation of the extension of the meaning of adultery with moral reasons that are already listed in Perda Tangerang City No. 8 Year 2005 on Prostitution, has claimed the life of a woman in Tangerang in 2009. Lilis Lisdawati, a restaurant worker became the victim of wrongful arrest by a police officer because she was suspected to be a prostitute who was in the middle of working while waiting for public transport (Hartiningsih 2017). This rule states that a person can be arrested on suspicion of being a sex worker based on her behavior, clothing, and whereabouts in public at night. The charges against Lilis were not proven, but she was required to pay a fine. Lilis refused to pay the fine and was arrested. When it comes to the practice of the regulations on adultery, men are hardly ever a target. Again, the "masculine" power relations and regulatory systems have the potential to corner women and other marginalized groups in the construction of society.

Another issue that potentially arises and criminalizes women and girls is the confusion of prostitution with the concept of adultery that ignores the possibility that the woman is a victim of trafficking/prostitution. It should be understood that in the context of prostitution, a sexual relationship with a victim of trafficking isn't equal to consensual sex. Prostitution is mentioned in various studies as a form of violence against women. In the business of prostitution, there are processes, means, and aims to exploit women and girls prostituted by pimps. The one who should be named the perpetrator of the crime and thus punishable is the pimp, who benefits from the trafficking.

Law no. 21 of 2007 on the Elimination of Trafficking in Persons (PTPPO) states that one of the reasons for the enforcement of this law is the existence of prostitution issues. Thus categorizing prostitution as consensual sex is to victimize the victims and violates the second principle of Pancasila. In this case, changing the character of a

crime into something consensual will also potentially criminalize a child exposed to sexual exploitation in the form of child prostitution. In other words, generalizing prostitution with adultery in relation to child protection does not make the Child Protection Act a reference in the context of carrying out the constitutional mandate to ensure the life of the child (Article 81 Paragraph 2 and Article 82).

In addition to the above explanation concerning the practice of prostitution, the expansion of the meaning of adultery in Article 284 of the Criminal Code also relates to the potential to criminalize or punish female victims of rape. In many cases, the perpetrator in the hearing actually postulates that women victims of rape or sexual harassment are willing "to be fucked" or have sex as a loving relationship. In view of this fact, the constitutional rights of women victims of sexual violence have the potential to be disadvantaged, in particular as regulated in Article 28D paragraph 1 of the 1945 Constitution, which regulates the right to guarantee legal protection and restoration. If the extension of the meaning of adultery is done in the regulation of *lex generalis* criminal law (KUHP), then the advocacy that has been done by the movement of Indonesia Sexual Emergency Violence will be in vain. Indonesia currently requires a legal umbrella against sexual violence that can protect victims of sexual violence, rather than criminalize it.

B. Criminalization of Adherents of Ancestral Religions

The state continues to encourage marriage registration for those who want to tie the knot, especially in the Marriage Law it is clear that legal marriage in the eyes of the state is a marriage in accordance with the requirements contained in the Constitution and registered in the civil registry. But we cannot deny that some citizens including women experience many obstacles in the recording of marriage, such as: (a) Poor conditions so that they are unable to register their marriage due to the costs. (b) The geographic location of a residence far from the registry agency. (c) Being seduced, until agreeing to marry without being registered. (d) Discrimination in the recording of marriage. Communities of ancestral religions often experience this kind of discrimination, since they are married outside the officially recognized religions in Indonesia.

Believers of native faith, adherents of ancestral religions, and groups performing traditional rituals in Indonesia are the ones who almost always get negative stigma in society. This has resulted in the group losing

their rights as citizens. The bad stigma they get is closely related to the government's attitude that distinguishes between religion and belief that can be seen in the Law No.1/PNPS of 1965 on Prevention of Abuse and/or Blasphemy as an interpretation of Article 29 of the 1945 Constitution. The Supervisory Coordinating Board of Spiritual Tendencies and Beliefs Within the Community is more often placed functionally as supervisors without balance and acting on behalf of the state to understand the vulnerability of the position of the group of people who often experience discrimination. This resulted in a lack of socialization of these particular communities, which later transformed into hatred and the labeling of heresy in another group that discredited its existence in society. The Sundanese *Wiwitan*, the *Bissu* community, the *Sapta Darma* community, *Wetu Telu*, are a small part of a community of ancient that live and settle in the countryside. The reality of this diversity cannot be avoided from the social life of our society.

In an article published on *Jurnal Perempuan's* website on August 8, 2016 titled "Efforts to Ensure Constitutional Rights of Women Believers of Ancestral Religions", Komnas Perempuan reported 115 cases of 87 incidents of violence and discrimination experienced by 57 women believers, ancestral religions and customary ritual practitioners from 11 communities spread across 9 provinces. It was further documented that of the 115 cases, 50 were violent cases and 65 others were discriminatory. Six types of cases can be classified into 3 forms of violence: (a) Psychological violence in 14 cases of stigmatization/labeling and 24 cases of intimidation. (b) Sexual violence in 7 cases of coercion and 3 cases of sexual harassment. (c) Physical violence in 3 cases of persecution and 2 murder cases.

Our Constitution basically guarantees the right of every citizen to the same position and treatment before the law and government. However, discriminatory treatment especially on access of the population is a problem that has continued since the New Order era. At that time, if a person cannot register by listing a religion according to the five official 'state' religions, then the person's access to residence is lost. He or she is not entitled to an identity card. This did not get any better when the 2006 Population Administration Act (*Adminduk*) came into effect. They still cannot register their beliefs in their identity cards, so they usually leave the religion column blank. The empty religious column itself leads to discrimination, the stigma of not belonging to a religion, which is so often associated with communism or other tendencies prohibited in Indonesia.

The consequences can be quite severe; in addition to experiencing discrimination within the community, a limited access to jobs and public services, it also has the potential to experience to cause persecution and mass amok.

Coming back to the problem of expanding the meaning of adultery in Article 284 of the Criminal Code and its potential to criminalize the adherents of ancestral religions and other faiths, the rejection of the government to record their marriage will lead to them being harassed. The consequences to be borne are: (a) according to the state, they are not considered to be able to legally marry, so this particular relationship will be regarded as adultery. (b) When they have children in their marriage (legitimate according to their own beliefs), the pregnancy experienced by the woman is considered by the state as an out-of-wedlock pregnancy. (c) Women who are pregnant, but their pregnancies are not recognized by this country, will be labeled as "not good women" and this stigma must also be borne by the child who will be born. (d) In the birth certificate, the child is not listed under his father's name. (e) In issuing the child's birth certificate, the father must sign the "Admission of Being Illegally Married".

In accordance with Government Regulation (PP) no. 37 Year 2007, the marriage between believers of ancestral religions has been recognized by the state. However, article 81, paragraph 3 of the PP is considered blocked because the intended observers are those who already registered in institutions of the relevant ministries. Surely, this reality is difficult and is an injustice against the believers, and discrimination in registration continues to be an obstacle for them. Institutional and organizational rights should be the right of citizens in accordance with the 1945 Constitution. In contrast, for the believers this is an obligation so that the state accommodates and recognizes their existence. It is clear that they are residents of Indonesia who have live in the same land, and they should be treated in accordance with the 1945 Constitution, as they are also citizens who are entitled to receive equal treatment.

Moral Norms vs. the Norms of the Adultery Law

Referring to Prof. Mardjono Reksodiputro, the formulation of criminal actions aims to protect the legal interests (*bescherming van rechtsgoeden*), so it is known that harmful/disadvantageous offense and offense focused on the threat of danger may arise (Reksodiputro 2007). When it comes to harmful offenses,

the consequences or losses must occur first. While the expansion of the meaning of adultery is a crime without victims, it is unclear which party is harmed or hurt. Thus, the conversion of the crime of adultery to the offense will not protect the institution and the resilience of the family. On the other hand, wives and children have to bear shame when they get the stigma of the community as the wife and child of adultery. Family resilience and marriage institutions are not disadvantaged parties by the expansion of the meaning of adultery. Meanwhile, if the target is the decline of sexual practices conducted by children, there is no relation at all. Child marriage to avoid adultery is the main root of the problem at the level of divorce at an early age and other adverse events that have the potential to make women and girls victims, for example the risk of death of pregnant women at a very young age. An increase in the number of children having sexual intercourse at an early age is a symptom of systemic failure of formal and informal education (Catahu Komnas Perempuan 2012). The extension of the meaning of adultery will actually put this failure on the shoulders of children and adolescents, whereas those who should actually be responsible are adults and religious leaders.

When it comes to offenses focused on possible threats of danger, the criminal law is already preventive. The threats that are feared by the existence of acts contained in the expansion of the meaning of adultery are related to morality. Thoughts of Soerjono Soekanto (as cited in Huijbers 1995) on the three kinds of norms that are necessary to govern one's life include: (a) the moral norms that each person obliges to inwardly. (b) Community norms or norms of manners governing relationships in general. (c) Norms governing common life together in determining rights and obligations. As conclusion of Soerjono Soekanto's thoughts in the paper, Huijbers also introduces the reflection of C. J.T Kansil who mentions that the norms governing the general life of the people are legal norms. These legal norms are different from other norms, because of their objective nature and their relation to the state, so they must be obeyed.

Kant, as quoted in the book *Filsafat Hukum dalam Lintasan Sejarah (Philosophy of Law in the Historical Path)* (Huijbers 1982), explains that the formation of the law is part of the moral demands experienced by men and their lives. Therefore, he explains that law is a number of conditions that ensure that the will of a person is adapted to another personal will, according to the norm of freedom. Related to the above, the act of adultery with the expansion of its meaning is an act that is considered sinful in the corridor of (inner) religion, so the

placement of this action must be proportionally included in the corridors of religion and state. The debate about adultery in the space of religion and state will certainly be different, considering that when it comes to religion, that the qualifications in regard to what is meant by the act of adultery have a different meaning. Philosophically, sin is the sole responsibility of the Lord. The prevailing act of adultery under Article 284 of the Penal Code is a reflection of the state, which is in a position to protect the access of the law and personal loss to the crimes committed by another person (obviously the victim). When the expansion of the meaning of adultery is imposed, it means that the state disproportionately intervenes in punishment for one's sins to God, which should not be within the scope of the state.

Moral norms can be internalized by the subject and subsequently function as internal self-control of the subject itself, but cannot be imposed from the outside (Suseno 1987). Moral norms greatly value the independent ratios of the subject, hence the subject may choose to obey or dismiss something that is recognized by society as a moral obligation as defined in the extension of the meaning of adultery (Huijbers 1995). It is undeniable that both are important to keep the balance of life in the community. That is why philosophical legal understanding is also needed in order to assist legal norms in practice. A critical attitude is needed to establish and enforce legal norms because the law can

backfire or be a "frightening monster" for the sake of the ruling party. Critical attitude to see the law will actually push the law into a more humane legal umbrella for its citizens, instead of becoming a tool of "enslavement" for marginal people in society. Being critical in looking at the law can also adhere to the previously described theories by Carol Smart and Patricia Cain, by allowing room for discussion to hear experiences of different groups of women with different backgrounds, so that their rights are also met. The law should be community protection, so that no innocent society would later become the victim of excessive criminalization simply because the law is interpreted rigidly.

To see how the law has been interpreted in rigid textual terms, WA Bonger's thoughts about crime paint an easy picture. Bonger explains that crime is an anti-social act that the state is consciously opposed to through the imposition of punishment. For that reason, crime is a violation of criminal law (Bonger 1982). Prof. Mardjono Reksodiputro in the Criminal Justice System in the Master's Degree Program at the Faculty of Law, University of Indonesia on October 11, 2016 further explained that the understanding of the crimes proposed by Bonger defines morality as the core of the rules in society, but it would be dangerous if the meaning of crime is expanded because humans will be confined in their freedom, and the state with the extension of the law controls human life.

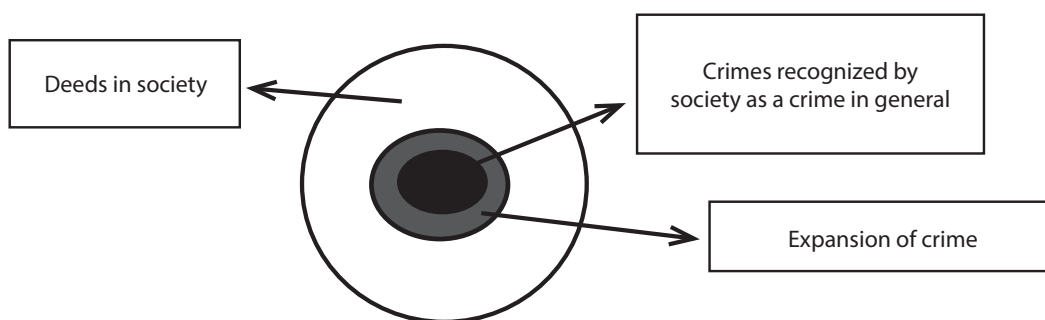


Image 1. Explanation of WA Bonger's theory about crime and the extension of its meaning

Source: Course material of Prof. Mardjono Reksodiputro on 11 October 2016

The phenomenon that may occur in society if there is an extension of the meaning of adultery is a moral heteronomy. Frans Magnis-Suseno explains that moral heteronomy is a person who does his moral duty not because he is aware that the obligation is appropriate, but because he is forced to, for fear of being punished, afraid of being censured, or afraid of God's condemnation (Suseno 1987). This condition shows a deviation from the

actual moral attitude. Mixing a number of unrelated and even contradictory norms or rules will not educate the community to act as adults. Instead, people will only obey moral commands when threatened with punishment and supervised. Meanwhile, the essence of the moral and religious norms taught in our childhood is the norm reflected in the act of self-awareness, not because of the control or out of fear.

Conclusion

Recognizing the diversity that exists in Indonesia, the sociocultural view of a particular group cannot be a comprehensive legal norm in multicultural Indonesia, since the views differ from one place to another. The extension of the meaning of adultery in Article 284 of the Criminal Code or in a number of future legislations will be very dangerous because it would potentially penalize marginalized parties in society. If criminalizing any person who has sexual intercourse outside of marriage will count as adultery, the guarantee of freedom and human rights that includes the right to security and protection from the threat of fear to do or not to do something, will be taken away from every citizen.

Criminal law should aim to protect public interest, so by looking at some of the above facts, the following question arises: which public is protected from the renewal of criminal acts through the expansion of adultery that instead leads to criminalization of marginalized groups in society? Respect for the principles of privacy and democratic rights in private affairs, in this case sexual relations, is a human right; these regulations already exist in religious norms understood as the inner norm. Therefore, consensual sexual relationships are not something for the state to intervene in and manage. Let's now wait until the extension of the meaning of a regulation instead becomes bias to the main crime itself.

List of References

"Alasan Ani Mau Dinikahi Eyang Subur Saat Masih Berusia 18 Tahun" 2013, *Detik.com*, 1 Mei, viewed 22 November 2016, <https://hot.detik.com/celeb/2235108/alasan-ani-mau-dinikahi-eyang-subur-saat-masih-berusia-18-tahun>

Bonger, WA 1982, *Pengantar Tentang Kriminologi*, Pembangunan dan Ghalia Indonesia, Jakarta.

Cain, PA 1990, "Feminism and The Limits of Equality", *Georgia Law Review*, vol. 24, no. 4, hh. 803-848.

Hamzah, A 2009, *Speciale Delicten*, Sinar Grafika, Jakarta.

Harkrisnowo, H 2008, "Rekonstruksi Konsep Pidana: Suatu Gugatan terhadap Proses Legislasi dan Pidana di Indonesia", *Orasi Upacara Pengukuhan Guru Besar Tetap Fakultas Hukum Universitas Indonesia*, Auditorium Djokosoetono Fakultas Hukum Universitas Indonesia, Depok.

Hartiningsih, M 2017, *Jalan Pulang*, Mardi Yuana, Depok.

Hartjen, CA 1978, *Crime and Criminalization*, Preager Publisher, California.

Huijbers, T 1982, *Filsafat Hukum dalam Lintasan Sejarah*, Penerbit Kanisius, Yogyakarta.

Huijbers, T 1995, *Filsafat Hukum*, Penerbit Kanisius, Yogyakarta.

Husak, D 2008, *Overcriminalization: The Limits of the Criminal Law*, Oxford University Press, New York.

Pratiwi, AM 2016, "Upaya Memastikan Hak Konstitusional Perempuan Penghayat Kepercayaan", *Jurnalperempuan.org*, viewed 12 April 2018, <https://www.jurnalperempuan.org/berita/upaya-memastikan-hak-konstitusional-perempuan-penghayat-kepercayaan>

Rahmadi, D 2012, "Cerita Pernikahan Kontroversial Bupati Garut Aceng Fikri", *Merdeka.com*, 30 Desember, viewed 22 November 2016, <https://www.merdeka.com/peristiwa/cerita-pernikahan-kontroversial-bupati-garut-aceng-fikri.html>

Reksodiputro, M 2007, *Hak Asasi Manusia dalam Sistem Peradilan Pidana*, Pusat Pelayanan Keadilan dan Pengabdian Hukum, Jakarta.

Reksodiputro, M 2009, *Menyelaraskan Pembaruan Hukum*, Komisi Hukum Nasional RI, Jakarta, hh. 99-101.

Reksodiputro, M 2013, *Perenungan: Perjalanan Reformasi Hukum*, Komisi Hukum Nasional RI, Jakarta.

Reksodiputro, M 2016, *Sistem Peradilan Pidana*, Bahan perkuliahan, semester Gasal, 2016. 8 Desember 2016, Universitas Indonesia.

Setiadi, E 2004, *Bunga Rampai Hukum Pidana*, Unisba Press, Bandung.

Smart, C 2003, *Feminism and The Power of Law*, Routledge, London.

Suseno, FM 1987, *Etika Dasar Masalah-Masalah Pokok Filsafat Moral*, Kanisius, Yogyakarta.

Legislation

Mahkamah Konstitusi Republik Indonesia, Putusan No. 46/PUU-XIV/2016, 6 Desember 2017.

Republik Indonesia 1915, *Kitab Undang-Undang Hukum Pidana*, Lembaran Negara Republik Indonesia Tahun 1915, No. 732, Jakarta.

Republik Indonesia 1945, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta.

Peraturan Pemerintah Republik Indonesia No. 37 Tahun 2007, *Pelaksanaan Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan*, 28 Juni 2007, Lembaran Negara Republik Indonesia Tahun 2007, No. 80, Jakarta.

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Jurnal Perempuan (JP) is a quarterly interdisciplinary publication in the English language that aims to circulate **original ideas in gender studies**. JP invites critical reflection on the theory and practice of feminism in the social, political, and economic context of Indonesian society. We are committed to exploring gender in its multiple forms and interrelationships.

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