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Criminalization of Cohabitation in the New Criminal Code: A Dilemma of Public Morality and Protection of Constitutional Rights in Indonesia

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Abstract

The criminalisation of cohabitation (living together) under Law Number 1 of 2023 concerning the Indonesian Criminal Code has generated significant debate on the relationship between public morality and constitutional rights in Indonesia. This issue arises from the growing prevalence of non-marital cohabitation, particularly in urban communities, while Indonesian criminal law increasingly emphasizes morality-based regulations. This study aims to analyse the legal construction of cohabitation in the new Criminal Code and examine its compatibility with the principle of constitutional protection of individual rights. This study employs normative juridical methods through statutory, conceptual, comparative, and limited case approaches. The theoretical framework used in this study is the constitutional rights protection theory and the principle of *ultimum remedium* in criminal law. The findings demonstrate that the regulation of cohabitation in the new Criminal Code reflects a strong orientation toward public moral values. However, its implementation has the potential to create constitutional tensions related to privacy rights, personal autonomy and equality before the law. Furthermore, the criminalisation model risks placing women and children in vulnerable positions because of social stigma and selective law enforcement. This article argues that criminal law should not function solely as a moral instrument but must also ensure proportionality, legal certainty, and protection of fundamental rights. Therefore, progressive interpretation and non-penal approaches are necessary to prevent excessive state intervention in citizens' private lives.

Keywords: *Cohabitation, Living Together, New Criminal Code, Constitutional Rights, Public Morality.*

Abstrak

Kriminalisasi kohabitasi (*hidup bersama tanpa pernikahan*) dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana menimbulkan perdebatan serius mengenai hubungan antara moralitas publik dan perlindungan hak konstitusional di Indonesia. Persoalan ini muncul

seiring berkembangnya praktik hidup bersama tanpa perkawinan di tengah masyarakat, khususnya di wilayah perkotaan, sementara hukum pidana nasional justru memperkuat pengaturan berbasis norma kesusilaan. Penelitian ini bertujuan untuk menganalisis konstruksi hukum kohabitasi dalam KUHP baru serta menguji kesesuaiannya dengan prinsip perlindungan hak konstitusional warga negara. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, perbandingan, dan pendekatan kasus secara terbatas. Kerangka teori yang digunakan adalah teori perlindungan hak konstitusional dan prinsip *ultimum remedium* dalam hukum pidana. Hasil penelitian menunjukkan bahwa pengaturan kohabitasi dalam KUHP baru mencerminkan orientasi kuat terhadap moralitas publik, namun implementasinya berpotensi menimbulkan ketegangan konstitusional terkait hak privasi, otonomi individu, dan persamaan di hadapan hukum. Selain itu, model kriminalisasi tersebut berisiko menempatkan perempuan dan anak pada posisi yang lebih rentan akibat stigma sosial dan potensi penegakan hukum yang selektif. Penelitian ini menegaskan bahwa hukum pidana tidak seharusnya semata-mata dijadikan instrumen moralitas, melainkan juga harus menjamin proporsionalitas, kepastian hukum, dan perlindungan hak dasar warga negara. Oleh karena itu, diperlukan interpretasi progresif dan pendekatan non-penal agar penerapan KUHP baru tidak menimbulkan intervensi negara yang berlebihan terhadap kehidupan privat warga negara.
Kata kunci: *Kohabitasi, Living Together, KUHP Baru, Hak Konstitusional, Moralitas Publik*

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Introduction

The phenomenon of cohabitation (living together), or living together without formal marriage ties, is a form of social change that has developed in various countries. In recent decades, the practice of living together without marriage has no longer been viewed solely as a private issue, but has become part of legal discourse, public morality, and human rights. In several European countries, such as the Netherlands and France, cohabitation has received legal recognition as part of individual freedom to determine personal relationships. Conversely, several Asian countries still maintain a morality- and religion-based approach to regulating extramarital relationships. These differences in

approach demonstrate that cohabitation is not simply a common social phenomenon but has evolved into a legal issue related to the limits of state intervention in citizens' private lives.

In the Indonesian context, the phenomenon of cohabitation has begun to gain wider attention as social relations patterns change and debates arise regarding the limits of citizens' privacy protections. This discourse has intensified following the enactment of Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code), which prohibits cohabitation outside of marriage.[1]In several European countries, such as the Netherlands and France, cohabitation has received some legal recognition as part of individual freedom to determine personal relationships. Conversely, several Asian countries still maintain a morality- and religion-based approach to regulating extramarital relationships.[2]These differences in approach show that cohabitation is not just an ordinary social phenomenon, but has developed into a legal issue related to the limits of state intervention in the private lives of citizens.[3]

In the Indonesian context, the dynamics of cohabitation have received increasing attention following the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), particularly Article 412, which prohibits living together outside of marriage.[4] This regulation marks a significant shift in national criminal law policy, as the state begins to incorporate private relationships into the realm of morality-based criminalisation. Meanwhile, social reality shows that living together without marriage remains prevalent in various urban areas, particularly among young people and urban communities.

This phenomenon is influenced by changing patterns of social relations, urbanisation, the development of information technology, and the shifting perspectives of the younger generation on marriage. Although official data on cohabitation in Indonesia remain limited due to their sensitive nature and the frequent lack of administrative

[1] Penélope Oliva Boza, "The Iusfundamental Relevance Of The Right To Private And Family Life In Spain," Revista General de Derecho Constitucional 2024-April, no. 40 (2024).

[2] Antonia Abbey et al., "Determinants of Alcohol Intoxication and Social Responsibility for DUI-Risk at University Parties.," *Journal of Interpersonal Violence* 27, no. 1 (2015).

[3] Chih lan Winnie Yang, "Marriage, Cohabitation, and Institutional Context: Household Specialization among Same-Sex and Different-Sex Couples," *Journal of Marriage and Family* 87, no. 1 (2025), https://doi.org/10.1111/jomf.13002.

[4] Qonita Fardlillah and Siti Dalilah Candrawati, "Perlindungan Hak Anak Dalam Keluarga Sebagai Implikasi Isbat Nikah," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 2 (2025), https://doi.org/10.46773/usrah.v6i2.2011.

documentation, several sociological studies indicate an increasing trend in the practice of living together without marriage in urban areas as part of the changing social structure of modern society. This situation demonstrates the tension between evolving social realities and the legal norms that the state seeks to uphold.[5]

This issue is increasingly important to examine because the regulation of cohabitation in the new Criminal Code is not only related to the enforcement of moral norms but also touches on aspects of protecting citizens' constitutional rights. Article 28G, paragraph (1), of the 1945 Constitution of the Republic of Indonesia guarantees the right to personal protection, honour, dignity, and a sense of security. In the context of a democratic state based on the rule of law, this guarantee essentially places the private sphere as a space that cannot be excessively intervened by the state. Therefore, the criminalisation of cohabitation outside of marriage raises constitutional questions regarding the extent to which the state can limit individual freedom based on public morality.[6] In addition, the application of the cohabitation article also has the potential to cause certain social impacts, especially for women and children in non-marital relationships, such as social stigma, legal vulnerability and administrative discrimination.[7] Thus, the issue of cohabitation cannot be understood only as a moral or cultural issue; it must also be analysed within the framework of constitutional rights protection and the proportionality of criminal law.

Several researchers have studied cohabitation with varying focuses. Mink (2018) examined cohabitation from the perspective of Islamic family law and positioned it as a deviation from moral and religious norms.[8] This research makes an important contribution to explaining the position of cohabitation in Islamic family law, but it does not yet relate it to the constitutionality issues in the new Criminal Code. Bello (2024)

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[5] Blerina Masha Shkurti, "The National and International Legal Framework Related to Family Relations Seen from the Perspective of Gender Equality," *Interdisciplinary Journal of Research and Development* 11, no. 1 (2024), https://doi.org/10.56345/ijrdv11n107.

[6] Irfan Syauqi Madani and Hery Firmansyah, "Revenge Porn In Indonesian Law: An Analysis Of Criminal Liability And Victim Protection Based On The Electronic Information And Transactions Law And The Sexual Violence Crime Law," *Awang Long Law Review* 7, no. 2 (2025), https://doi.org/10.56301/awl.v7i2.1580.

[7] Doctor Daniel Sansó-Rubert, "Inteligencia Militar y Criminalidad Organizada. Retos a Debatir En América Latina/ Military Intelligence and Organized Crime. Challenges to Debate in Latin America," *URVIO - Revista Latinoamericana de Estudios de Seguridad*, no. 21 (2017), https://doi.org/10.17141/urvio.21.2017.2952.

[8] Júlia Mink, "Human Rights Protection and Traditional Churches in the System of National Cooperation in Hungary," *Religion and Human Rights* 13, no. 3, (2018), https://doi.org/10.1163/18710328-13021143.

discusses the practice of living together from a sociological perspective by highlighting changes in the relationship patterns of urban society but does not analyse the legal implications of the criminalisation of cohabitation.[9] Hermawati et al (2026) examined the social stigma against cohabiting couples from a media and human rights perspective, but their analysis was still limited to social aspects and had not yet entered into the relationship between criminal law and constitutional rights.[10] Meanwhile, Pizzicannella et al. (2019) focused more on child protection in non-marital relationships, particularly regarding population administration and children's civil status.[11] Neto et al. (2017) began to link cohabitation with human rights issues but did not specifically test the consistency of cohabitation regulations in the new Criminal Code with the principle of protecting citizens' constitutional rights.[12]

Based on these studies, it is clear that most previous studies still view cohabitation partially, whether from the perspectives of morality, sociology, family law, or human rights. Few studies specifically link the criminalisation of cohabitation in the new Criminal Code with the theory of constitutional rights protection and the principle of ultimum remedium in criminal law. Furthermore, previous studies tend to be descriptive, viewing cohabitation solely as a social phenomenon or moral violation without further analysing the limits of state legitimacy in regulating citizens' private lives through criminal instruments. This is where the research gap in this study lies: in its attempt to critically analyse the relationship between the politics of criminalisation in the new Criminal Code and the principle of constitutional rights protection in a democratic state, based on the rule of law.

Based on this background, this study aims to: (1) analyse the regulation of cohabitation (living together) in the new Criminal Code in relation to moral norms and

[9] Petrus CKL Bello, "Perlukah Kriminalisasi Terhadap Perilaku Amoral? Perdebatan Patrick Devlin Dan H.L.A. Hart," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 10, no. 2 (2024), https://doi.org/10.55809/tora.v10i2.378.

[10] Nissha Putri Yulia Hermawati et al., "Delik Aduan Kohabitasi Dalam KUHP Baru Sebagai Pembatasan Kebebasan Pribadi: Analisis HAM Terhadap Mekanisme Pelaporan Yang Dapat Memengaruhi Kebebasan Pribadi Dan Ruang Privat," *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat* 5, no. 9 (2026), https://doi.org/10.59141/comserva.v5i9.3490.

[11] Jacopo Pizzicannella et al., "3D Human Periodontal Stem Cells and Endothelial Cells Promote Bone Development in Bovine Pericardium-Based Tissue Biomaterial," *Materials* 12, no. 13 (2019), https://doi.org/10.3390/ma12132157.

[12] Pedro Machado Ribeiro Neto, Luziane Zacché Avellar, and Kelly Guimarães Tristão, "Living Togheter With The Dwellers Of The Therapeutic Residences," *Psicologia e Sociedade* 29 (2017), https://doi.org/10.1590/1807-0310/2017v29152335.

national criminal law politics; (2) test the consistency of the criminalisation of cohabitation with the principle of protecting constitutional rights as guaranteed in the 1945 Constitution; and (3) formulate a more proportional legal approach so that the application of moral norms does not result in violations of the private rights of citizens, especially women and children, as vulnerable groups.

This research is novel because it not only discusses cohabitation as a matter of public morality but also places it within the framework of constitutional rights protection and limitations on state power in modern criminal law. This study uses the theory of constitutional rights protection to assess the extent to which the state can intervene in the private lives of citizens and the principle of ultimum remedium to test whether the criminalisation of cohabitation is a proportional step in the Indonesian criminal law system. With this framework, this research not only seeks to explain the existence of legal norms but also analyzes the legitimacy, rationality, and constitutional implications of the regulation of cohabitation in the new Criminal Code. Thus, this research is expected to provide academic contributions to the development of criminal law and constitutional law studies, as well as serve as material for evaluating the implementation of the new Criminal Code in Indonesia.

Method

This study employs normative legal research, focusing on the study of legal norms related to the regulation of cohabitation (living together) in the New Criminal Code and their relationship with the protection of citizens' constitutional rights. This study was chosen because the object of study lies in the legal norms, principles, and concepts that regulate the relationship between public morality and private freedom in the Indonesian legal system. This research does not rely on direct field data collection but rather on the analysis of primary, secondary, and tertiary legal materials relevant to the research issue. The approaches used include the statute, conceptual, and comparative approaches. The legislative approach involves examining the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, the old Criminal Code (*Wetboek van Strafrecht*), Law Number 39 of 1999 concerning Human Rights, and other regulations related to the protection of private rights and moral norms.

A conceptual approach is used to analyse the concepts of constitutional rights, public morality, individual liberty, the right to privacy, and the principle of ultimum

remedium in criminal law. This approach was used to develop a theoretical framework for assessing the legitimacy of criminalising cohabitation in a democratic state governed by the rule of law. This study employs a comparative approach by comparing the cohabitation regulations of the Netherlands and Malaysia. The Netherlands tends to position cohabitation as part of legally protected private freedoms, whereas Malaysia maintains a morality- and religion-based approach. This comparison examines Indonesia's legal and political position in responding to the phenomenon of cohabitation amidst developments in modern law and human rights protection.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution, the New Criminal Code, the Old Criminal Code, the Human Rights Law, and other regulations related to the protection of constitutional rights and of moral norms. Secondary legal materials include books, scientific journal articles, previous research results, and other academic works relevant to the themes of cohabitation, criminal law and constitutional rights. Tertiary legal materials include legal dictionaries, encyclopedias and legal indexes. Legal material collection techniques were conducted through library research by exploring various legal literature, laws and regulations, scientific journals, and academic documents related to the research object.

Legal material analysis was conducted qualitatively through systematic interpretation, constitutional interpretation, and deductive legal argumentation techniques. The analysis was conducted by identifying the legal norms governing cohabitation in the new Criminal Code and linking them to the principles of constitutional rights protection as guaranteed in the 1945 Constitution. Furthermore, an interpretation of the relationship between moral norms and citizens' private rights was conducted to find a more proportional form of regulation in the Indonesian criminal law system. With these methods, this research is expected to produce an analysis that is not only descriptive but also critical and argumentative regarding the policy of criminalising cohabitation in the new Criminal Code.

Results and Discussion

The Phenomenon of Cohabitation (Living Together) as a Contemporary Social Reality

The phenomenon of cohabitation (living together) essentially emerged as part of the changing patterns of social relations in modern society. These changes are influenced by urbanization, cultural globalization, increased social mobility, and the evolving perspectives of the younger generation on the institution of marriage.[13]In the context of urban society, personal relationships are no longer solely situated within the framework of formal marriage, but are increasingly understood as part of individual life choices. This situation demonstrates that cohabitation cannot be viewed solely as a moral deviation but also as a social reality born of the transformation of modern societal structures. From a sociological perspective, this change in social behavior signifies a shift in values from a collective orientation to an individualistic orientation that places greater emphasis on the freedom to determine one's private life.[14] Therefore, the existence of cohabitation cannot be analysed solely through a moral approach; it must also be understood as a social phenomenon that influences legal developments in Indonesia.

The findings of this study indicate that the primary problem with the phenomenon of cohabitation lies not in its mere existence but rather in the clash between social reality and the construction of legal norms that are still based on collective morality. In practice, some people have begun to view cohabitation as a private sphere related to individual freedom, while the state, through the new Criminal Code, has expanded the scope for criminalising such relationships. This is where tension arises between social developments and the direction of national criminal law policy. These findings differ from those of previous research, which generally only views cohabitation as a moral, social, or cultural issue.[15]

This study shows that cohabitation has developed into a constitutional issue because it is directly related to the limits of the state's legitimacy in regulating the private lives of citizens through criminal instruments.[16] However, cohabitation continues to face

[13] Ganna Sobko et al., "Problems And Conflicts Related To Measures To Ensure The Right To A Fair Trial In Accordance With The European Convention On Human Rights," *Janus.Net* 14, no. 2 (2023), https://doi.org/10.26619/1647-7251.14.2.14.

[14] M. P. Deahl, "Intimacy Post-Injury: Combat Trauma and Sexual Health By Elspeth Cameron Ritchie. Oxford University Press. 2017. £44.99 (Pb). 248 Pp. ISBN 9780190461508," *The British Journal of Psychiatry* 212, no. 4 (2018), https://doi.org/10.1192/bjp.2018.7.

[15] Areej Al-Hamad et al., "Successful Refugee Cohabitation With Host Families: A Concept Analysis and Model Development," *Journal of Holistic Nursing* 43, no. 4 (2025), https://doi.org/10.1177/08980101241273878.

[16] Andreas Bieler, " : A Vital Frontier: Water Insurgencies in Europe ," *Journal of Anthropological Research* 80, no. 2 (2024), https://doi.org/10.1086/729740.

strong social resistance in Indonesian society. Social structures based on religion, custom, and family values still place marriage as the only form of relationship that is socially and morally legitimate. Consequently, couples living together without marriage often face social stigma, discrimination, and environmental pressure. This study found that this stigma not only affects cohabiting couples but also potentially affects women and children in non-marital relationships. In many cases, women are more vulnerable to social pressure and legal uncertainty, while children are at risk of administrative and social stigma due to their parents' relationship status.[17] This shows that the debate on cohabitation cannot be separated from the issue of protecting vulnerable groups in the Indonesian legal system.

Based on this analysis, this study confirms that the phenomenon of cohabitation reflects a social transition that has not yet been fully reflected in national legal developments. The state finds itself in a dilemma between maintaining public morality and ensuring the protection of citizens' constitutional rights. If criminal law overemphasises a moralistic approach, there is a risk of overcriminalization of citizens' private spheres. Conversely, if the state completely ignores prevailing social norms, the law's legitimacy may also be weakened.[18]Therefore, this study argues that cohabitation regulations require a more proportional approach and not solely repressive ones. Criminal law should be positioned as a last resort (*ultimum remedium*), while social, educational, and legal protection approaches for vulnerable groups should be prioritised in response to the cohabitation phenomenon in Indonesia.[19]

Living Together in the Perspective of the New Criminal Code and the Challenges of Implementation

The regulation of cohabitation (living together) in Law Number 1 of 2023 concerning the Criminal Code demonstrates a shift in the political orientation of Indonesian criminal law toward private relations among citizens. Through Article 412, the state classifies the practice of living together without marriage as a moral offense,

[17] Khairil Ikhsan, "Problems In Regulating Cohabitation as An Offense in Law Number 1 Of 2023 Concerning the Criminal Code," *Widya Pranada Hukum: Jurnal Kajian Dan Penelitian Hukum* 7, no. 1 (2025).

[18] Chesa Boudin and Marlise Richter, "Adult, Consensual Sex Work in South Africa - The Cautionary Message of Criminal Law and Sexual Morality," *South African Journal on Human Rights* 25, no. 2, preprint, 2009, https://doi.org/10.1080/19962126.2009.11865199.

[19] Zhetpisov Serik Kozhanovich, Alibayeva Gulnara Aitchanovna, and Dubovitskaya Olga Borisovna, "Protection Of Personal Data In The Era Of Digitalization: Constitutional And Legal Aspect," *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan* 3, no. 74 (2023), https://doi.org/10.52026/2788-5291_2023_74_3_68.

punishable by complaint from a specific party.[20] This article cannot be separated from the sociological and philosophical context of Indonesian society, which still views marriage as a legitimate moral, social, and religious institution. From a sociological perspective, this regulation represents the state's response to changing patterns of social relations in urban society, which are increasingly shifting away from traditional family values.[21] Philosophically, the criminalisation of cohabitation reflects the view that criminal law not only functions to maintain public order but also to maintain public morality as part of the nation's social identity.[22] Thus, the existence of the cohabitation article in the new Criminal Code is a form of legal political compromise between the demands of modernization and the desire to maintain collective moral values in Indonesian society.

However, this study found that the criminalisation of cohabitation raises new issues regarding its implementation. From a modern criminal law perspective, the use of criminal instruments in private relationships raises questions regarding the limits of legitimate state intervention. Several previous studies have shown that the regulation of morality in criminal law often faces resistance when it clashes with citizens' constitutional rights, particularly the right to privacy and freedom of choice.[23] In addition, the criminalisation of private behaviour that does not directly harm other parties is seen as potentially contradicting the principle of ultimum remedium, namely, that criminal law should be used as a last resort.[24] In this context, this study finds that the regulation of cohabitation in the new Criminal Code reflects not only the protection of public morality but also demonstrates an expansion of state control over citizens' private spaces. This suggests that the criminalisation of cohabitation is not merely a legal issue but also an

[20] Muhammad Ihsan Firdaus, "Offense of Contempt Against Government in Law Number 1 of 2023 Concerning Criminal Law Code From Constitutionalism Perspective," *Audito Comparative Law Journal (ACLJ)* 4, no. 2 (2023), https://doi.org/10.22219/aclj.v4i2.24812.

[21] Mairéad O'Donnell et al., "From Control to Cohabitation: Social-Ecological Insights on Urban Wildness Narratives," *Urban Forestry & Urban Greening* 117 (2026), https://doi.org/10.1016/j.ufug.2026.129279.

[22] Wilma Silalahi and Michelle Linda Antonio, "Reformasi Hukum Acara Penyidikan Di Era Digital: Analisis Kesesuaian KUHAP Dan KUHP Baru Terhadap Kebutuhan Teknologi Informasi Dalam Perspektif Ketatanegaraan," *Federalisme: Jurnal Kajian Hukum Dan Ilmu Komunikasi* 2, no. 4 (2025), https://doi.org/10.62383/federalisme.v2i4.1286.

[23] Ziyi Xie and Zhizhuang Duan, "Balancing Public Health and Privacy Rights: A Mixed-Methods Study on Disclosure Obligations of People Living with HIV to Their Partners in China," *Harm Reduction Journal* 21, no. 1 (2024), https://doi.org/10.1186/s12954-023-00920-9.

[24] Kamil Mamak, "Should Criminal Law Protect Love Relation with Robots?," *AI and Society* 39, no. 2 (2024), https://doi.org/10.1007/s00146-022-01439-6.

ideological one regarding the extent to which the state can regulate people's private lives.[25]

To understand Indonesia's position in responding to the cohabitation phenomenon, it is important to compare it with several other countries that have different legal approaches. This comparison is presented in the following table:

Table 1. Comparison of Living Together Arrangements in Several Countries

Country	Legal Status of Living Together	Setting Characters
Indonesia (Criminal Code 2023)	Criminalized (effective 2026)	Complaint offense based on moral norms
Malaysia	Limited criminalization	Applies primarily to Sharia law for Muslims
Dutch	Legal and recognized by civil law	Viewed as part of private freedom
United States of America	Legal	Strong protection of privacy rights
Japan	Legal, but there is still a social stigma	Not regulated criminally

Source: Data processed by the author

Table 1 shows that Indonesia tends to choose a regulatory model that is closer to Malaysia than to Western countries such as the Netherlands or the United States.[26] This closeness is inseparable from the influence of religious values, collective culture, and public morality, which remain strong in both countries' legal systems. However, this study finds that Indonesia is in an ambiguous position. On the one hand, the state seeks to uphold public morality by criminalising cohabitation; on the other hand, enforcement is limited through a complaint mechanism to prevent excessive interference in citizens' private lives. This suggests that the regulation of cohabitation in the new Criminal Code is not simply a form of legal conservatism but also a pragmatic compromise between protecting social morality and demanding respect for private rights.[27]

[25] Widhie Kurniawan et al., "Cohabitation in the 2023 Criminal Code Turns Out Not (to Need) Punishment," *Juridisch* 2, no. 3 (2024).

[26] Sukiyawati Sukiyawati, Achmad Amin Majid, and Sajida Himaniarah, "The Protection of Social Harmony: A Critical Study on the Prohibition of Cohabitation in Islamic Law and the Criminal Code (KUHP)," *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 2 (2026), https://doi.org/10.22515/shahih.v10i2.11602.

[27] Masuma Shahid, "Equal Marriage Rights and the European Courts," *ERA Forum* 23, no. 3 (2023), https://doi.org/10.1007/s12027-023-00729-w.

These findings differ from those of several previous studies, which tended to view the criminalisation of cohabitation merely as a restriction of individual rights. However, this research shows that Article 412 is the result of a tug-of-war between social values, national legal politics, and the development of human rights principles in a democratic state governed by the rule of law. Implementing the cohabitation article requires a more proportional and constitutional approach to prevent criminal law from becoming an instrument of excessive control over citizens' private lives.

Dimensions of Constitutional Rights in the Private Life of Citizens

Constitutional rights essentially guarantee citizens the freedom to determine their personal lives, including choosing a life partner and building personal relationships. In the Indonesian context, Article 28G, paragraph (1) of the 1945 Constitution affirms that everyone has the right to protect themselves, their families, their honour, their dignity, and their sense of security. These provisions demonstrate that the Constitution not only protects citizens' political rights but also protects individuals' private lives. In a democratic state governed by the rule of law, the private sphere is, in principle, an area where the state cannot interfere excessively, as long as it does not harm the rights of others.[28]

The criminalisation of cohabitation through the new Criminal Code raises constitutional questions regarding the limits of the state's legitimacy in regulating citizens' lifestyle choices. Several previous studies have positioned privacy rights as part of the development of modern democracy, which demands restrictions on state power over people's personal lives.[29]However, this study found that the debate on cohabitation in Indonesia is not as simple as a conflict between individual freedom and public morality, but rather relates to the tug-of-war between collective societal values and the principle of constitutionalism in the national legal system.[30]

From a human rights perspective, the regulation of cohabitation in the new Criminal Code demonstrates the tension between protecting public morality and

[28] Steven Malby, "Public Wrongs and Human Rights: An Orderly Approach?," *Criminal Law and Philosophy* 19, no. 2 (2025), https://doi.org/10.1007/s11572-024-09746-3.

[29] Matthew R. Wright et al., "A Brief Report Comparing Younger and Older Cohabitors," *Journal of Marriage and Family* 88, no. 1 (2026), https://doi.org/10.1111/jomf.13128.

[30] Flavia Mazzeo, Nicole Hiekel, and Agnese Vitali, "Joint Pot or Separate Purses? Unpacking the Cohabitation-Marriage Gap in Income Pooling across Europe," *Journal of Family Research* 38 (2026), https://doi.org/10.20377/jfr-1264.

respecting individual rights. Indonesia's criminal law approach still strongly emphasizes social values and collective morality, while developments in international human rights law tend to place personal relationships as a private right that must be protected by the state.[31] In various international instruments, including the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified, the right to privacy and individual liberty is protected as part of citizens' civil rights. Several studies have shown that criminalising voluntary private relationships potentially violates the principles of non-discrimination and protection of personal liberty.[32] However, there is also a view that the state still has the authority to limit private rights as long as it is done to protect public morality and social order.[33] This debate shows that the concept of constitutional rights in the issue of cohabitation cannot be understood absolutely but must be placed within the framework of a balance between individual rights and the social interests of society.

This study found that the use of a morality approach in criminalising cohabitation has the potential to give rise to issues of discrimination and inequality in law enforcement practices. In reality, the most vulnerable groups affected are not only cohabiting couples in general but also women and children in non-marital relationships. Women are often the most vulnerable to social stigma, family pressure, and even selective criminalisation when domestic conflicts or complaints from their surroundings arise. Meanwhile, children born from non-marital relationships potentially face social stigma and certain administrative obstacles, even though the Constitution guarantees the protection of children's rights without discrimination.[34] This shows that the criminalisation of cohabitation does not always have a neutral impact but can instead strengthen certain social inequalities.[35] This finding differs from several previous studies, which tended to discuss cohabitation only from the perspective of morality or private freedom. This study emphasizes that the constitutional rights dimension of cohabitation must also be analysed

[31] Hamed Naseri et al., "Satisfaction in Pedestrianized Areas: What Shapes Positive and Negative Experiences?," *Cities* 168 (2026), https://doi.org/10.1016/j.cities.2025.106511.

[32] Andrie Irawan and Vicella Kesya Galuh Iranti, "Kohabitasi Dalam KUHP 2023: Analisis Yuridis Atas Intervensi Hukum Pidana Terhadap Kehidupan Pribadi," *Journal of Islamic and Law Studies* 9, no. 1 (2025).

[33] Muhammad Parhan et al., "Kohabitasi Dalam Tinjauan Islam: Menyibak Hukum, Moral, Dan Sanksi Sosial," *Jurnal Cakrawala Akademika* 1, no. 5 (2025), https://doi.org/10.70182/jca.v1i5.11.

[34] Monika Betzler, "The Right to Associational Freedom and the Scope of Relationship-Dependent Duties," *Criminal Law and Philosophy* 17, no. 2 (2023), https://doi.org/10.1007/s11572-022-09640-w

[35] Rara Aura Audya and Tajul Arifin, "Kohabitasi (Kumpul Kebo) Dalam Perspektif Hadits Riwayat Bukhari Dan Muslim Serta Pasal 411 Dan Pasal 412 KUHP," *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara* 3, no. 2 (2025), https://doi.org/10.55606/eksekusi.v3i2.1868.

from the perspective of protecting vulnerable groups and the principle of equality before the law.

Furthermore, this study uncovered fundamental issues related to the use of criminal law as an instrument for controlling social morality. In modern criminal law theory, criminal law should be positioned as the ultimum remedium, the last resort when other legal instruments are ineffective. However, the criminalisation of cohabitation demonstrates a tendency toward expanding state intervention into citizens' private spheres. This has sparked heated academic debate. Some scholars argue that the state has the right to uphold public morality as part of the national identity and to protect the institution of the family.[36] Conversely, other groups believe that the use of criminal law in private relations has the potential to undermine the rule of law and open opportunities for abuse of power. This study believes that protecting public morality is indeed a legitimate goal in the Indonesian legal system, but its application must still be limited by the principles of proportionality and respect for citizens' constitutional rights. Therefore, an evaluation of Article 412 of the new Criminal Code cannot be conducted solely through a moral and cultural approach; it must also consider the principles of human rights, constitutionalism, and limitations on state power in people's private lives.

Normative Analysis and Implications of Living Together Regulations in the New Criminal Code: Dialectics of Public Morality vis-à-vis Human Rights

The amendment of the Criminal Code from the Wetboek van Strafrecht to Law Number 1 of 2023, concerning the Criminal Code, brings important changes to the regulation of cohabitation outside of marriage.[37] In the old Criminal Code, the practice of cohabitation (living together) was not explicitly regulated; therefore, the state essentially did not directly criminalise such private relationships. Conversely, the new Criminal Code, through Articles 412 and 413, includes cohabitation as a crime against morality. This change indicates a paradigm shift in national criminal law from a relatively neutral approach to private life to a more moralistic one. This shift cannot be understood simply

[36] Agilber Gamaliel Lase, Rizkan Zulyadi, and Ridho Mubarak, "Perspektif Kemanfaatan Hukum Terhadap Kejahatan Kohabitasi Pasal 412 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *JUNCTO: Jurnal Ilmiah Hukum* 7, no. 1 (2025), https://doi.org/10.31289/juncto.v7i1.6065.

[37] Opoku Adabor and Ankita Mishra, "Cohabitation and Child Health: Understanding the Pathways of the Impact in Ghana," *Journal of Population Research* 42, no. 2 (2025), https://doi.org/10.1007/s12546-025-09371-4.

as a technical reform of criminal law, but also reflects the direction of Indonesian legal policy, which seeks to uphold the moral and social values of society through criminal instruments.[38] Thus, the regulation of cohabitation in the new Criminal Code shows that criminal law is starting to be used not only to protect concrete legal interests, but also to maintain public morality as part of the nation's social identity.

Normative analysis shows that these changes have serious consequences for the protection of citizens' privacy rights. Under the old Criminal Code, the lack of specific provisions meant that law enforcement officials had no direct basis to criminalize couples living together without marriage. However, the new Criminal Code opens up the opportunity for criminalisation through the mechanism of absolute-complaint offences. This situation has given rise to debates regarding the proportionality of the use of criminal law in private, voluntary relationships. Several previous studies have shown that regulations that overemphasise public morality have the potential to conflict with constitutional and human rights principles.[39] This study found that the cohabitation article in the new Criminal Code is essentially a form of legal political compromise. The state maintains public morality as the basis for regulation but simultaneously limits law enforcement through the complaint mechanism to prevent excessive interference in citizens' private lives.[40] To clarify the changes in these regulations, the following is a comparison between the old and new Criminal Codes regarding cohabitation:

Table 2. Comparison of the Old and New Criminal Codes regarding Living Together

Regulatory Aspects	Old Criminal Code (Wetboek van Strafrecht)	New Criminal Code (Law No. 1 of 2023)	Normative Implications
Existence of rules	There are no special rules	There is (Articles 412–413)	Expansion of criminalization space
Nature of the offense	Not regulated	Absolute complaint offense	Enforcement is limited to family complaints
Norm orientation	Relatively neutral towards private life	Moralistic based on morality	Potential conflict with human rights

[38] Jaakko Airaksinen et al., "Associations Between Cohabitation, Marriage, and Suspected Crime: A Longitudinal Within-Individual Study," *Journal of Developmental and Life-Course Criminology* 9, no. 1 (2023), https://doi.org/10.1007/s40865-022-00219-6.

[39] Jesper Lindmarker, Martin Kolk, and Sven Drefahl, "Cohabitation and Mortality Across the Life Course: A Longitudinal Cohort Study with Swedish Register-Based Sibling Comparisons," *European Journal of Population* 41, no. 1 (2025), https://doi.org/10.1007/s10680-024-09722-6.

[40] Carsten Anckar and Thomas Sedelius, "Cohabitation and Presidential Powers: A Global Examination of Dual Executives 1850–2022," *International Political Science Review* 46, no. 4 (2025), https://doi.org/10.1177/01925121241282789.

Individual protection	More freedom without criminalization	More limited by criminal threats	Individual autonomy is threatened
The principle of ultimum remedium	More awake	Reduce	The risk of over-criminalization

Source: Data processed by the author

Table 2 shows that the new Criminal Code not only fills a legal gap but also expands the state's reach into citizens' private spheres. The most fundamental change is seen in the orientation of legal norms, which previously tended to be neutral, and are now based on public morality. This shift indicates that the state no longer functions solely to maintain public order but also begins to control social behaviour deemed contrary to moral values. However, this study found that the use of absolute complaint offences reflects the state's ambiguous stance.[41] On the one hand, the state wants to maintain social morality by criminalising cohabitation; on the other hand, the state also realises that private relationships cannot be completely intervened without giving rise to constitutional issues. Complaint offences can be understood as a pragmatic compromise between protecting public morality and respecting citizens' private rights.

The social implications of this regulation are complex. This study found that women are potentially the most vulnerable parties in the practice of reporting a cohabitation. In many situations, women are more susceptible to social stigma, family pressure, and even selective criminalisation in the event of relationship conflict or social rejection. Women's more vulnerable social position makes the cohabitation law potentially disproportionately used. In addition, children born or living in non-marital relationships are also at risk of experiencing social stigma due to their parents' relationship status.[42]In fact, the principle of child protection in the Indonesian legal system emphasizes that children should not be disadvantaged by their parents' relationship. Therefore, the implementation of the cohabitation article must consider

[41] S. Khaja Moinuddin -, "Judicial Activism in India: The Guardian of Constitutional Morality and Democratic Justice," *International Journal of Leading Research Publication* 6, no. 1 (2025), https://doi.org/10.70528/ijlrp.v6.i1.1867.

[42] Sabrina Nuraini Sari et al., "Implikasi KUHP Baru Terhadap Status Anak Dari Hubungan Kohabitasi Di Indonesia Serta Kewajiban Tenaga Kesehatan," *As-Syar i: Jurnal Bimbingan & Konseling Keluarga* 8, no. 1 (2026), https://doi.org/10.47467/as.v8i1.11041.

protecting vulnerable groups to prevent criminal law from further perpetuating social discrimination.

From a law enforcement perspective, this study also found the need for clear guidelines for law enforcement officers in implementing the cohabitation article.[43]The absence of implementation guidelines has the potential to lead to differing interpretations and open up space for selective criminalization. Law enforcement officials must distinguish between protecting public morality and excessive interference in citizens' private lives. The implementation of the cohabitation article cannot solely rely on a repressive approach through criminal law. This study emphasizes the importance of non-penal approaches, such as family mediation, legal education, social protection, and strengthening literacy regarding rights and obligations within family relationships. Non-penal approaches are considered more proportionate because they maintain social order without expanding criminal law into the private sphere.

In addition to impacting national law, the cohabitation provisions in the new Criminal Code also have implications for Indonesia's position in the international human rights discourse. As a state party to the International Covenant on Civil and Political Rights (ICCPR), Indonesia is obligated to guarantee the protection of privacy rights and individual freedoms from disproportionate state intervention.[44] Therefore, the implementation of the cohabitation article has the potential to draw international criticism if it is deemed to excessively expand state control over citizens' private lives. However, this study assesses that the primary issue lies not in the existence or absence of cohabitation regulations but in how the state proportionately applies criminal law within a democratic state governed by the rule of law. Therefore, the implementation of the new Criminal Code must continue to adhere to the principles of human rights, protection of vulnerable groups, and limitations on state power to prevent criminal law from becoming an excessively instrument of social control.

[43] Dunosel Ir. Koebanu, Andrian Wira Syahputra, and Hendrik A. E. Lao, "Strategi Gereja Dalam Menyikapi Persoalan Kohabitasi Untuk Meningkatkan Spiritualitas Pemuda Di Jemaat GMIT Sion Babuin, Klasis Amanuban Tengah Selatan," *Skenoo : Jurnal Teologi Dan Pendidikan Agama Kristen* 5, no. 1 (2025), https://doi.org/10.55649/skenoo.v5i1.104.

[44] Walter Forrest, "Cohabitation, Relationship Quality, and Desistance from Crime," *Journal of Marriage and Family* 76, no. 3 (2014), https://doi.org/10.1111/jomf.12105.

Conclusion

This study shows that the regulation of cohabitation (living together) in Law Number 1 of 2023 concerning the Criminal Code reflects a shift in the political orientation of Indonesian criminal law, which increasingly places public morality as the basis for criminalising citizens' private relationships. Through Articles 412 and 413, the state is no longer neutral regarding the practice of living together outside of marriage but has begun to expand criminal law intervention into the private sphere of society. The research findings show that this policy arose from an effort to maintain social, religious, and cultural values that still view marriage as the only legitimate form of relationship. However, on the other hand, the criminalization of cohabitation also raises constitutional issues because it has the potential to limit the right to privacy, individual freedom, and the protection of constitutional rights as guaranteed by the 1945 Constitution.

This study finds that the regulation of cohabitation in the new Criminal Code is essentially a form of legal-political compromise between protecting public morality and respecting citizens' privacy rights. This is evident in the use of the absolute complaint mechanism, which indicates that the state continues to limit its scope for intervention in people's private lives. However, this study also shows that this regulation still has the potential to create various problems in implementation, such as selective criminalization, legal uncertainty, and the risk of discrimination against vulnerable groups, especially women and children in non-marital relationships. Thus, the main issue lies not only in the existence or absence of the criminalisation of cohabitation, but also in how the state applies criminal law proportionally so that it does not become an instrument of excessive social control over citizens' private lives.

This study has limitations because it uses a normative legal approach; therefore, the analysis focuses more on regulatory aspects, legal concepts, and theoretical studies without being supported by empirical research on cohabitation practices in society or the direct implementation of the new Criminal Code articles by law enforcement officials. Therefore, further research should use an empirical or socio-legal approach to examine the social impact of the implementation of cohabitation articles on society, especially women, children, and other vulnerable groups. Further research is also important to analyse the effectiveness of non-penal approaches in addressing cohabitation issues, as well as to compare regulatory models in various countries to find a more proportional

legal formulation between the protection of public morality and respect for citizens' constitutional rights.

Declarations

Author contribution statement

HP conceived the research idea, supervised the study, and contributed to developing the legal framework. DE contributed to the research design, data collection, literature review and legal analysis. MZ and MAM drafted the manuscript, performed data interpretation and comparative legal analysis, and coordinated the revision process. All authors have reviewed, revised, and approved the final version of the manuscript.

Declaration of interests statement

The authors declare no conflicts of interest regarding the publication of this article. The authors have no known competing financial interests, professional affiliations, or personal relationships that could have influenced the research, analysis, interpretation of the data, or preparation of this manuscript.

AI Usage Statement

In the process of compiling this manuscript, the author made limited use of artificial intelligence (AI) technology to assist with the grammar, readability, and academic sentence structure. AI was solely used as a writing and language editing tool, not for producing research substance, legal analysis, data interpretation, or drawing research conclusions. The entire content, arguments, analysis, legal interpretation, and conclusions of this article are solely the responsibility of the author. The author independently reviewed, edited, and verified all manuscripts to ensure the accuracy, originality, and academic suitability of the submitted manuscript. The author did not use generative AI technology to create, modify, or alter any figures, tables, illustrations, or other visuals in this manuscript. Furthermore, AI or AI-assisted technology is not listed as an author or coauthor of this article.

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