

Law Enforcement Against the Crime of Adultery Based on Restorative Justice

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Abstract. *Law enforcement against the crime of adultery does not only prioritize sanctions but restores the condition of the victim, the victim's family and the perpetrator proportionally. The aim of this research is to analyze the implications of law enforcement for the crime of adultery based on formal justice and to analyze law enforcement for the crime of adultery based on restorative justice. This research uses a normative juridical approach. The results of this research are the implications of law enforcement for the crime of adultery based on formal justice, which has both juridical and non-judicial impacts. The juridical implications of law enforcement regarding the crime of adultery based on formal justice include the first, namely that law enforcement must be consistently guided by the normative limits of the offense of adultery. Law enforcement is an effort to actualize legal rules in order to achieve legal ideals. One of the law enforcement agencies in Indonesia is the National Police of the Republic of Indonesia. In Article 4 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, it is stated that the police are law enforcement officers who are tasked with and responsible for public order, safety and security of the community. Restorative justice-based law enforcement cannot be separated from the framework of ideas and concepts that underlie social philosophical values, political culture, religiosity values which not only prioritize rational efforts to overcome crime but are also an integrated unity and synergize with social policy. By prioritizing the principles of recovery, full participation, oriented not only to order in society but also to regenerating harmony and love within the family. This research uses a normative juridical approach. Normative legal research is essentially the daily activity of a legal scholar. In fact, normative legal research can only be carried out by a legal scholar who has been deliberately educated to understand and master the legal discipline. Normative legal research uses legal materials as the type and source of data. Types of legal materials in normative research are divided into 3 (three), namely primary legal materials, secondary legal materials, and tertiary legal materials.*

Keywords: *Adultery; Analysis; Enforcement; Juridical.*

1. Introduction

The act of adultery is a criminal act that is prohibited by the western legal system, customary law system, and Islamic legal system. According to the general understanding (common sense) of society, adultery is sexual relations outside of marriage, whether one of the perpetrators is married or both are not yet married. Adultery is sexual relations carried out by a man with a woman who is not bound by a valid marriage according to Islamic sharia, on the basis of mutual consent from both parties, without doubt (syubhat) from the perpetrator or perpetrators of adultery concerned.¹

The crime of adultery is a crime involving a person's honor which should be punished severely, but in the Criminal Code it only carries a maximum sentence of 9 (nine) months in prison and must fulfill several conditions, as explained in Article 284 of the Criminal Code (KUHP). Based on Article 284 paragraph (1) of the Criminal Code (KUHP), a person cannot be charged with the crime of adultery if it is committed by a single man with a single woman. The Criminal Code only defines zina as an act of sexual intercourse committed by a man or woman who is married to a woman or man who is not his wife or husband.²

Law enforcement against the crime of adultery does not only prioritize sanctions but restores the condition of the victim, the victim's family and the perpetrator proportionally. Restorative justice is a model of punishment imposed based on restoring the victim's rights. The punishment imposed on the perpetrator aims to restore as much as possible the condition of the victim of the crime before the criminal incident occurred. In the criminal justice system, it is best to apply the principles of restorative justice, because so far imprisonment has been used as the main sanction for perpetrators of crimes who are proven guilty.³ The role of law enforcement officers in uncovering and resolving cases of criminal acts of adultery requires professionalism accompanied by intellectual maturity and high moral integrity. This is necessary so that the judicial process in resolving cases of criminal acts of adultery can run completely and the perpetrators will be punished as fairly as possible.⁴

Settlement of cases through restorative justice is a new development in the realm of criminal law which has the implication that the private dimension has begun to be applied to the realm of public law. In Indonesian positive law, the principle is that criminal cases cannot be resolved outside of court, although in certain cases it is possible to resolve cases outside of court.

¹Neng Djubaedah, *Perzinaan Dalam Peraturan Perundang-Undangan Di Indonesia Ditinjau Dari Hukum Islam*, Kencana Prenada Media Group, Jakarta. 2010. P. 119.

²Suhartinib, Syandi Rama Sabekti, *Penyelesaian Tindak Pidana Zina Melalui Mediasi Perspektif Hukum Positif Dan Hukum Islam*, *Jurnal Bina Mulia Hukum*, Vol. 4, No. 1, 2019, p. 77

³Syahrin, M.A., *Penerapan Hukum Deteni Tanpa Kewarganegaraan (Stateless) yang Ditahan Lebih Dari 10 (Sepuluh) Tahun di Rumah Detensi Imigrasi Jakarta*. *Jurnal Fiat Justicia*, Vol. 3, No. 2. 2017. P. 99

⁴Liliana Tedjosaputro. *Etika Profesi Dan Profesi Hukum*. Aneka ilmu. Jakarta, 2003. P. 15-16

However, law enforcement practices in Indonesia often involve criminal cases being resolved outside of court through the discretion of law enforcement officials, peace mechanisms, traditional institutions and so on.⁵

Previous research from Herlambang Bagus Purnomo in a journal entitled Restorative Justice in Settlement of Adultery Cases Based on Local Wisdom in Trengguno Wetan found that deliberations for resolving adultery cases are very relevant to the principles of restorative justice which can be proven that these deliberations really uphold family values by bringing the perpetrators together. and victims in the same forum so that dialogue can occur to reach solutions that are mutually beneficial and restorative.⁶

Other research from Rosdiana Rosdiana and Ulum Janah in a journal entitled "application of restorative justice in the crime of adultery in the Kutai Lawas customary community" found that the resolution of the crime of adultery in the Kutai Adat Lawas Community applies the concept of restorative justice, the resolution model of which is determined by the traditional leader, or through customary courts. This restorative justice is applied in resolving the crime of adultery as an effort to restore the suffering experienced by the victim and to improve the balance of society. Sanctions for perpetrators of adultery are not physical sanctions but sanctions in the form of compensation for losses or fines imposed for the act committed. If the incident of infidelity occurs 3 (three) times and it is the same person, positive law is used, namely criminal law.⁷

Based on the above background, the aim of this research is to analyze the implications of law enforcement for the crime of adultery based on formal justice and to analyze law enforcement for the crime of adultery based on restorative justice.

2. Research methods

This research uses a normative juridical approach. Normative legal research is essentially the daily activity of a legal scholar. In fact, normative legal research can only be carried out by a legal scholar who has been deliberately educated to understand and master the legal discipline. Normative legal research uses legal materials as the type and source of data.⁸ Types of legal materials in normative research are divided into 3 (three), namely primary legal materials, secondary legal materials, and tertiary legal materials. The legal material collection technique is intended to obtain legal material for research. The technique for collecting legal materials that supports and is related to the presentation of this research is document study (library study).

⁵ Lilik Mulyadi, *Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia*, Alumni, Bandung, 2015, p. 3.

⁶ Herlambang Bagus Purnomo, Restorative Justice Dalam Penyelesaian Perkara Perzinahan Berbasis Kearifan Lokal di Trengguno Wetan, *Journal of Law, Society and Civilitation*, Vol 8, No 1, 2020, p. 14-25

⁷ Rosdiana Rosdiana dan Ulum Janah, Penerapan Restorative Justice Dalam Tindak Pidana Perzinaan Pada Masyarakat Kutai Adat Lawas, *Jurnal Bina Mulia Hukum*, Vol. 5 No. 1, 2020, p. 53-73

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, 2007, p. 52

Document study is a tool for collecting legal materials which is carried out through written legal materials using content analysis.⁹

3. Results and Discussion

3.1. Implications of Law Enforcement for the Crime of Adultery Based on Formal Justice

Consistency in law enforcement against the crime of adultery based on formal justice is not only consistent in formulating Article 284 paragraph (1) of the Criminal Code but also Article 284 paragraph (2) of the Criminal Code. That to enforce the law against the criminal act of adultery, it must be carried out based on a complaint from the husband/wife who is tainted. The crime of adultery is an absolute complaint offense (*absolut klachdelicten*). As the formulation of Article 284 paragraph (2) of the Criminal Code is "No prosecution will be carried out except on complaints of husband/wife who are contaminated, and if for them Article 27 BW applies, within 3 months followed by a request for divorce or separate table and bed for that reason too".¹⁰ Thus, an act of adultery will only receive legal action if there is a complaint from the husband/wife from one or both of the partners who committed the act of adultery. In other words, without a legal complaint, legal action cannot be taken for the act of adultery.¹¹

The offense of adultery in the Criminal Code regulates that the offense of adultery is an absolute offense (*absolut klachdelicten*) which is only prosecuted upon complaint by the husband or wife who is tainted by adultery, however this is different from Islamic criminal law which does not limit it to absolute complaints. Islamic criminal law does not view adultery as a complaint offense, but is seen as a major sin that must be dealt with without waiting for complaints from the people concerned. If the requirements for witnesses have been met then the *qodli* (judge)

⁹ Sri Mamudji (et. al.), *Metode Penelitian dan Penulisan Hukum*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, 2005, p. 11.

¹⁰ Ishak, Analisis Hukum Islam Tentang Perbuatan Zina Dalam Pasal 284 Kitab Undang-Undang Hukum Pidana Dalam Pembaharuan Hukum Pidana, *Kanun Jurnal Ilmu Hukum*, Vol. 14 No. 1 April 2012, p. 160-172

¹¹ Sahran Hadziq, Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Dari Perspektif Living Law, *Lex Renaissance*, Vol. 4 No. 1, 2019, p. 25-45

can decide on the adultery case. The witness did not rule out the possibility of the perpetrator's husband/wife or someone else.¹²

The implications of law enforcement for the crime of adultery based on formal justice not only have juridical but also non-juridical impacts. The non-juridical implications of the crime of adultery are that it has a negative impact on children and victims, especially women. A psychologist in Austin, Carl Pickhardt, said that children will definitely be discouraged because they feel lost, they feel they have lost a complete family. These bad consequences can affect children's development, especially children's psychology and mental health. Children who should have the love of both parents but must lose their parents' protection and love.¹³

Children who are victims of their parents' divorce are definitely devastated, they need complete love from their parents, they have the right to receive protection from their parents. Children will feel extraordinary and very deep pain, when children reach adolescence, they look for peace, whether in neighbors, friends or school friends, and this is a deep trauma, while children who are not yet at school will experience difficulty in adapting to the situation. the new one. they are more depressed and isolated. For girls, they will close themselves off, while for boys they tend to express it. They will express their anger in different ways. Sadness and anger arise because of the many things that children have to face.¹⁴

Apart from that, another impact of the enforcement of adultery is the increase in divorce rates. Most husbands and wives who are caught committing adultery will seek divorce by registering a divorce suit in court. The high divorce rate has an impact on the potential for crimes against women because almost the majority of those who choose to work in entertainment venues or become commercial sex workers (CSWs) are widows who are disappointed with their ex-husbands who are having affairs.¹⁵

The formulation of Article 417 of the new Criminal Code expands the substance of the crime of adultery by not distinguishing between married and unmarried people, as well as introducing distinctions between men and women in committing criminal acts. This means that adultery can

¹² Teguh Kurniawan Z. (et. al.), Konstruksi Politik Hukum Pidana Terhadap Delik Perzinaan Dalam Rancangan Kitab Undang-Undang Hukum Pidana. *Binamulia Hukum*, Vol. 12, No. 1, 2023, p. 11-24.

¹³ Andi Irma Ariani, Dampak Perceraian Orang Tua Dalam Kehidupan Sosial Anak, *Phinisi Integration Review*, Vol. 2, No. 2, 2019, p. 257-270

¹⁴ Wiwin Mistiani, Dampak Keluarga Broken Home Terhadap Psikologis Anak, *Musawa*, Vol. 10 No. 2, 2018, p. 322-354

¹⁵ Junaedi, M. Fenomena Perceraian dan Perubahan Sosial: (Studi Kasus di Kabupaten Wonosobo). *Yinyang: Jurnal Studi Islam Gender Dan Anak*, Vol. 13, No. 2, 2018. P. 259-283

be considered by any individual who has sexual relations with another person, whether married or unmarried.¹⁶

If you look at the teachings of the first principle of Pancasila as the basis for the provisions of Article 29 of the 1945 Constitution of the Republic of Indonesia, it legitimizes that religious life has penetrated into the hearts of the Indonesian people. These religious feelings are very sensitive on certain occasions, all of which form a strong basis for religious elements in the Indonesian legal system, including morality. As a result, until now the nation's future members can see that Indonesian law still contains many elements of religion and morality, but these elements have been weakened due to the weakening of religion in the last few decades and the increasing influence of international culture in the life of the Indonesian nation, especially through television. or other communication media.

Based on its nature, the formulation of the crime of adultery in the new Criminal Code still uses absolute complaint deliberation. The difference is that the subject has the right to file a complaint, so those who have the right to file a complaint regarding the crime of adultery are the husband, wife, parents or children who have been harmed. As an absolute complaint against the individualistic-liberalist cultural background of Western Europe, it is also very contrary to the socio-cultural structure of Indonesian society which is familial, collectivistic and mono-dualistic. In Indonesian society, adultery is no longer a personal problem, but a social and religious problem and disease. The bad impact of adultery not only affects the perpetrator and his family, but also damages the moral order of society. Therefore, it is unwise to place adultery as an absolute complaint.¹⁷

Based on criminalization and the old Criminal Code, the new Criminal Code places the crime of adultery as a minor offense. The new Criminal Code criminalizes adultery with a maximum prison sentence of one year or a category II fine of up to IDR 10,000,000.00 (ten million rupiah). The imposition of light criminal sanctions for crimes that Indonesians consider to be very heinous crimes and a social disease that can cause family dissonance, cause dirty diseases, and other disasters.

The difference that can be seen in Article 417 of the new Criminal Code does not only regulate men or women who are bound by marriage, but also regulates that men and women who are

¹⁶ Mochamad Ramdhan Pratama, Perluasan Makna Zina Dalam Pasal 417 Rancangan Kuhp Indonesia, *Jurnal Res Justitia : Jurnal Ilmu Hukum*, Vol. 2, No. 2 2022, p. 254-268

¹⁷ Mochamad Adib Zain, Peran Desa Adat Dalam Merumuskan Dan Mengimplementasikan Ketentuan Pidana Berasal Dari Hukum Yang Hidup Dalam Masyarakat Sebagaimana Diatur Dalam Kuhp Baru, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 12, No. 1, 2023, page 1-24

not each bound by marriage to have sexual relations can be charged or forced under the law. - article on adultery, namely in Article 417 of the new Criminal Code.

This expansion of the meaning of adultery is in line with the aim of reforming criminal law as a means of protecting society, because adultery has many negative impacts, including prostitution which can be a source of dirty and detrimental diseases to society, including HIV/AIDS, having experienced premarital sexual relations, which is contrary to values. -values adhered to by Indonesian society, namely the values contained in Pancasila. Especially in the first principle of God Almighty, because there is no religion in Indonesia that allows adultery.

To address this problem, legal enforcement efforts are needed for the crime of adultery which not only prioritizes formal justice, namely prioritizing the principle of legal certainty, namely applying the elements of the offense of adultery and applying criminal sanctions, but also restoring the condition of the victim, the victim's family and the perpetrator in a proportional manner. Restorative justice is a model of punishment imposed based on restoring the victim's rights. The punishment imposed on the perpetrator aims to restore as much as possible the condition of the victim of the crime before the criminal incident occurred. In the criminal justice system, it is best to apply the principles of restorative justice, because so far imprisonment has been used as the main sanction for perpetrators of crimes who are proven guilty.

3.2. Juridical Analysis of Law Enforcement Against the Crime of Adultery Based on Restorative Justice

Law enforcement is an effort to actualize legal rules in order to achieve legal ideals. One of the law enforcement agencies in Indonesia is the National Police of the Republic of Indonesia. In Article 4 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, it is stated that the police are law enforcement officers who are tasked with and responsible for public order, safety and security of the community.¹⁸

The police are the first institution to handle legal cases with the authority they have, namely carrying out inquiries, investigations, detention and confiscation. The results of the process carried out by the Police are the basis for the Public Prosecutor as a representative of the state to prosecute criminals. Other law enforcers included in the process of resolving criminal cases are public prosecutors and judges.¹⁹

Termination of investigations carried out by investigators with the consideration that restorative justice has been carried out still refers to the mechanism for stopping investigations as regulated

¹⁸ Yasser Arafat, *Penyelesaian Perkara Delik Aduan Dengan Perspektif Restorative Justice*, *Borneo Law Review*, Vol. 1, No. 2, 2017, p. 127-145

¹⁹ Kholilur Rahman. *Problem Pengaturan Upaya Paksa Penangkapan Terhadap Pelaku Tindak Pidana Narkotika*. *Jurnal Hukum Ius Quia Iustum*, Vol. 27, No. 3, 2020. P. 481-500

in the Telegram Letter (TR) of the Head of Criminal Investigation Number: ST/583/VIII/2012 dated 8 August 2012 concerning handling cases related to the concept of restorative justice namely through the mechanism for withdrawing the report so that it is followed by the preparation of a BAP which contains the retraction of the relevant information in the previous BAP by both the reporter and the reported person so that the elements of the article are reduced on the basis of insufficient evidence so that the investigation can be stopped on the grounds of insufficient evidence.

Criminal Law Reform is also part of efforts to review and reassess the underlying ideas or concepts and/or socio-philosophical, socio-political and cultural values that underlie criminal policy and law enforcement. If the idealized value orientation of criminal law is in line with the orientation of the legacy of colonial criminal law (KUHP/WvS), then this is not criminal law reform. In line with this, criminal law reform needs to be formulated with a policy and value orientation.

Therefore, criminal law reform must be based on the basic ideas of Pancasila which is the basis for the values of national life that are aspired to and explored for the Indonesian nation. The basic idea of Pancasila includes a balance of values/ideas, namely Religion, Humanism, Nationalism, Democracy and Social Justice.

According to the objectives to be achieved by criminal law, it is generally realized in social interests which contain certain values that must be protected. These social interests are: Maintaining public order; Protect citizens from crimes, losses, or unjustified harm committed by others; Re-socialize law enforcement; Maintain the integrity of basic ideas of social justice, human dignity and individual justice.

In addition, it must be understood that criminal sanctions must be balanced with the need to protect and defend these interests. Criminal acts are only justified if there is a need that is beneficial to society. In addition, the scope of criminal sanctions is determined based on these interests and the values contained therein. Based on this view, the discipline of criminal law is not only pragmatic, but also a value-oriented discipline. Therefore, the value in question is the protection of individual rights to life, freedom and dignity. These values should guide all decisions relating to crime as well as the punishment of those who commit crimes.

In the context of criminal politics, criminal politics is a rational effort to overcome crime. Efforts to overcome criminal acts can be carried out rationally in 2 (two) ways, namely criminal (Penal) and non-criminal (Non Penal) methods, which in their implementation form an integrated unit and synergize with larger policies, namely social policy. The first method is aimed at the

perpetrator, while the second is directed at the victim, but both are aimed at the same goal, namely eliminating crime or reducing its frequency and severity.²⁰

Attention to the victim's recovery in this case from the crime of adultery and the punishment of the perpetrator needs to be commensurate with our attention to preventing a recurrence. The actions received by the victim can change their life drastically with various impacts experienced, including stress that leads to depression, shame received from the bad stigma of society, trauma, restoring the integrity of the household as it was before, if there is a child in a family who is accused of the crime of adultery, no It can be denied that it is necessary to consider the future of the child who is the victim as well.

Law enforcement against the criminal act of adultery based on restorative justice is not something that is difficult to achieve in dealing with the rise of criminal acts of adultery. Restorative justice-based law enforcement cannot be separated from the framework of ideas and concepts that underlie social philosophical values, political culture, religiosity values which not only prioritize rational efforts to overcome crime but are also an integrated unit and synergize with larger policies, namely social policy. Based on these values, law enforcement against the crime of adultery can be implemented by prioritizing the following principles: First, recovery efforts for all parties, especially the restoration of the rights of victims and their children. Second, anyone involved and affected by the act of adultery must have the opportunity to participate fully in resolving the solution to the impact of the act of adultery, and Third, law enforcement agencies assisted by religious figures must play an active role in creating an atmosphere of peace that is oriented not only to public order but also regenerate harmony and love in the family.

Mechanisms or procedures in implementing law enforcement based on restorative justice must materially prioritize Encounter efforts (meeting each other) which creates opportunities for the parties involved and have the intention to hold meetings to discuss problems that have occurred and after the incident, meeting or forum, in which case the initiative comes from the community, namely community leaders or other interested parties. Furthermore, Amends (repair) efforts where it is very necessary for the perpetrator to take steps to repair the losses incurred as a result of his actions, Reintegration (rejoining society) which is looking for steps to restore the parties as a whole to make a contribution to society, Inclusion (open) which opens up opportunities to all parties involved to participate in handling it, especially prevention efforts through continuous outreach in conveying the dangers of adultery and free sex.

In this way, law enforcement against the criminal act of adultery based on restorative justice by applying and implementing the principles of the values and rules above is expected to be able

²⁰ Jacob Hattu. Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan Anak. *Sasi*, Vol. 20, No. 2, 2014, p. 47-52

to prevent and overcome various negative impacts, both regarding threats to the morality of the nation's children, the dangers of sexually transmitted diseases, and the level of crime against women. and various other bad impacts resulting from the act of adultery.

4. Conclusion

The implications of law enforcement for the crime of adultery based on formal justice have both juridical and non-judicial impacts. The juridical implications of law enforcement regarding the crime of adultery based on formal justice include the first, namely that law enforcement must be consistently guided by the normative limits of the offense of adultery. Restorative justice-based law enforcement cannot be separated from the framework of ideas and concepts that underlie social philosophical values, political culture, religiosity values which not only prioritize rational efforts to overcome crime but are also an integrated unity and synergize with social policy. By prioritizing the principles of recovery, full participation, oriented not only to social order but also to regenerating harmony and love within the family. The offense of adultery in the Criminal Code regulates that the offense of adultery is an absolute offense (*absolut klachdelicten*) which is only prosecuted upon complaint by the husband or wife who is tainted by adultery, however this is different from Islamic criminal law which does not limit it to absolute complaints. Islamic criminal law does not view adultery as a complaint offense, but is seen as a major sin that must be dealt with without waiting for complaints from the people concerned. According to the objectives to be achieved by criminal law, it is generally realized in social interests which contain certain values that must be protected. These social interests are: Maintaining public order; Protect citizens from crimes, losses, or unjustified harm committed by others; Re-socialize law enforcement; Maintain the integrity of basic ideas of social justice, human dignity and individual justice. If the requirements for witnesses have been met then the *qodli* (judge) can decide on the adultery case. The witness did not rule out the possibility of the perpetrator's husband/wife or someone else.

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