

The Criminal Offense of Adultery under Law Number 1 of 2023 concerning the Indonesian Penal Code: A Normative Comparison and Litigation Implications

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ABSTRACT – This research discusses the crime of adultery in the National Criminal Code based on Article 411 of Law Number 1 of 2023. The main focus of the research is to analyze the regulation of the crime of adultery, the comparison of elements with the old Criminal Code, the implications of the changes for the litigation process, as well as the challenges of proof and the role of evidence in adultery cases. This normative legal research uses statutory, comparative, and case approaches with primary and secondary legal materials analyzed qualitatively through grammatical and systematic interpretation. The results of the research indicate that Article 411 of the National Criminal Code has undergone significant changes from Article 284 of the old Criminal Code in terms of the expansion of legal subjects, the increase in criminal penalties, the expansion of parties entitled to file complaints, and the abolition of the requirement for a divorce petition. The nature of an absolute complaint delict is maintained so that a complaint constitutes an absolute prerequisite for prosecution. The regulatory changes have implications for litigation strategies and require the adaptation of law enforcement officials. The challenges of proof remain a major obstacle because the crime of adultery is often committed covertly without eyewitnesses. This research recommends enhancing the understanding of law enforcement officials and drafting technical guidelines for the application of Article 411 of the National Criminal Code.

Keywords: adultery, complaint delict, proof, National Criminal Code, litigation.

A. INTRODUCTION

Adultery is one of the most fundamental moral issues in social life because it touches upon religious values, decency, and family honor. These

values of decency and family honor are essentially shaped through a social construction influenced by cultural norms and organizational order within society (Eddine & Darmawan, 2022). Across various civilizations and legal systems, adultery is regarded as a serious violation of the social order because it can undermine the institution of marriage, which forms the foundation of family life. Marriage itself is a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and lasting family based on belief in one Supreme God. The validity of a marriage is an essential prerequisite before adultery provisions can be applied, as shown in a study on the legal validity of marriage under marriage law and Islamic law in Indonesia (Aliyah et al., 2023). The state has an interest in protecting the institution of marriage from various threats that could undermine its integrity and sanctity, including through the regulation of adultery in criminal law (Ramadhani et al., 2024). This regulation reflects the fact that protecting marriage and the family is not merely a private matter but also a public interest requiring legal intervention. The existence of criminal provisions on adultery within the legal system shows that the state is present to safeguard the moral values upheld by society.

Criminal provisions on adultery should be formulated clearly and firmly so as to provide legal certainty for all parties, including law enforcement officials, potential offenders, and the wider public. The law enforcement process in adultery cases should proceed fairly and transparently, without generating excessive stigma against the parties involved. An ideal legal system also provides a mechanism that protects the aggrieved party from possible misuse of the complaint offense for purposes other than law enforcement (Prawoko et al., 2025). In addition, the regulation of adultery

should be able to accommodate the development of social values in society without diminishing the essence of protection for marriage. The law's readiness to adapt to changing socio-cultural values is an important factor in ensuring a regulation remains acceptable and can be enforced effectively (Oluwatoyin & Mardikaningsih, 2022). Changing times and social dynamics demand the renewal of criminal law so that it remains relevant to the needs of contemporary society.

The regulation of adultery still faces various implementation challenges, particularly regarding the shift from the old criminal law to the new national criminal law. The expansion of the scope of legal subjects and parties entitled to file a complaint under the new provisions carries consequences for the law enforcement process and the litigation strategies that must be adjusted. The removal of the divorce-request requirement as a prerequisite for prosecution fundamentally changes the mechanism for bringing adultery cases to court (Sirajuddin et al., 2024). The effectiveness of implementing these new provisions also depends on a number of institutional factors that influence the performance of law enforcement officials in carrying out their duties (Darmawan, 2024). Evidentiary challenges in adultery cases remain a major obstacle, since this offense is often committed privately, without eyewitnesses or strong physical evidence. The complexity of evidentiary procedures in criminal cases is also apparent in other mechanisms, such as the examination of notaries, which requires the approval of the Notary Honorary Council as an exception to the duty of confidentiality (Roberto et al., 2026). The gap between the new normative regulation and the readiness of law enforcement officials to apply it is an issue requiring serious attention. A thorough understanding of the regulatory changes and their implications for the litigation process is an urgent need for all parties involved in law enforcement.

The issue at hand is that the regulation of adultery under the National Criminal Code has undergone significant changes compared with the previous provisions. These changes include the expansion of legal subjects who may be offenders, changes to the criminal penalty, expansion of the parties entitled to file a complaint, and removal of the divorce-request requirement as a prerequisite for prosecution. The new provision in Article 411 of the National Criminal Code broadens the scope of adultery to cover not only parties bound by marriage but

also unmarried parties under certain conditions. This expansion raises questions about the limits of state intervention in citizens' personal relationships and how to maintain a balance between protecting public morality and individual privacy rights. A similar issue concerning the limits of state intervention in citizens' personal affairs also appears in the debate between the legality of an act and the principles of international human rights (Rini et al., 2023). The lack of clarity regarding the interpretation and application of these new provisions could give rise to differing interpretations among law enforcement officials. Analysis of the new normative regulation is important for understanding the direction of criminal law policy in addressing adultery.

Another issue concerns the comparison of the elements of adultery under the old Criminal Code and the National Criminal Code, which shows both fundamental similarities and differences. The similarity between the two provisions lies in their nature as absolute complaint offenses, requiring a complaint from the aggrieved party as a condition for prosecution, as well as the consensual nature that distinguishes it from other morality offenses. The most substantial differences include the expansion of legal subjects, the increase in criminal penalties, the expansion of parties entitled to file a complaint, and the removal of the divorce-request requirement. These changes reflect the legislature's effort to align criminal law provisions with the development of social values, while also creating challenges in litigation practice. These differences require thorough understanding so that law enforcement officials can apply the new provisions consistently and fairly. A comparative study of the two provisions is important for identifying the implications of the regulatory changes for the law enforcement process.

The absolute complaint nature of the offense under Article 411 of the National Criminal Code requires investigators and public prosecutors to remain passive in processing a case, waiting for a complaint from an entitled party before taking investigative action. The removal of the divorce-request requirement brings a fundamental change to the litigation process, allowing the criminal process to proceed independently without waiting for a divorce ruling. The expansion of parties entitled to file a complaint from only the husband or wife to include parents and children has significant implications for the litigation strategies

available to the parties. Granting parents the right to file a complaint aligns with the role of the family institution in resolving various household matters, as seen in the role of religious courts in handling family disputes (Zahid et al., 2021). The involvement of children as parties entitled to file a complaint also needs to take into account the upbringing and family conditions in which the child was raised, including in families where both parents work (Evendi et al., 2023). A child's maturity in understanding and exercising this right is also connected to the shaping of their intelligence and personality from an early age (Masfufah & Darmawan, 2023). The increase in the criminal penalty from a maximum of nine months to a maximum of one year's imprisonment or a category II fine carries consequences for defense and prosecution strategies at trial (Brilianty & Rosando, 2024). These changes demand a comprehensive understanding from law enforcement officials so that the judicial process can run effectively and fairly.

Adultery is often committed privately and secretly, so witnesses who directly observe the act of intercourse are very rarely found. Public prosecutors often rely on documentary evidence such as marriage certificates to prove marital status, forensic medical reports (*visum et repertum*) to prove that intercourse occurred, or the defendant's confession at trial. A defendant's confession carries significant evidentiary weight but must be supported by other evidence to meet the requirement of at least two valid pieces of evidence. *Visum et repertum* plays an important role but is often unavailable because complaints are filed long after the act of intercourse took place. A judge's decision depends heavily on the conviction obtained from examining the evidence, so the absence of strong evidence often results in an acquittal or a discharge from all legal charges. Regulatory changes expanding the parties entitled to file a complaint also require law enforcement officials to carefully verify the validity of the complaint and the good faith of the complainant.

Based on the description of these problems, this study aims to analyze the regulation of the crime of adultery in the National Criminal Code as well as the changes that have occurred compared to the previous provisions. This study also aims to compare the elements of the crime of adultery in the old Criminal Code and the National Criminal Code in order to identify similarities, differences, and legal implications

of these changes. Furthermore, this study aims to examine the implications of regulatory changes on the litigation process of adultery cases, including their influence on investigation, prosecution, and trial. The final objective of this study is to analyze the challenges of proof and the role of evidence in adultery cases, as well as to formulate recommendations to enhance the effectiveness of law enforcement.

B. METHOD

This research is a normative legal study examining written legal norms related to the crime of adultery in the Indonesian criminal law system. The sources of legal materials used consist of primary legal materials, which include Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 1 of 2023 concerning the Criminal Code, the Criminal Procedure Code, and other statutory regulations relevant to the crime of adultery and the criminal justice process. Secondary legal materials used encompass criminal law and criminal procedure law literature, scientific journals, articles in legal journals, relevant court decisions, and prior research results discussing the crime of adultery, complaint delicts, and proof in criminal cases. The collection of legal materials was conducted through library research by tracing various relevant written legal sources originating from both physical libraries and electronic databases possessing academic credibility (Rohman et al., 2024).

The approaches used in this research are the statutory approach, which analyzes in depth the provisions within statutory regulations governing the crime of adultery, and the comparative approach, which compares the regulation of the crime of adultery in the old Criminal Code and the National Criminal Code in order to identify similarities, differences, and the legal implications of regulatory changes. The case approach is also used to examine court decisions relevant to the crime of adultery in order to understand the application of law in judicial practice and the challenges of proof faced. The analysis of legal materials was conducted using legal interpretation methods, specifically grammatical interpretation to understand the literal meaning of every article and phrase in statutory regulations, as well as systematic interpretation to connect these provisions with the overall applicable legal system. The qualitative analysis method is used to thoroughly examine the legal norms regulating the crime of adultery, focusing on the

identification of regulatory changes, implications for the litigation process, and the challenges of proof in judicial practice. The results of the analysis are presented in a descriptive-analytical manner to provide a clear and in-depth overview of the regulation of the crime of adultery in the National Criminal Code, comparison with previous provisions, the implications of changes for the litigation process, as well as the challenges of proof and the role of evidence in adultery cases.

C. RESULTS AND DISCUSSION

Regulation of the Crime of Adultery in the National Criminal Code

Article 411 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code stipulates that any person who has sexual intercourse with a person who is not their husband or wife shall be punished for adultery, with a maximum imprisonment of one year or a maximum fine of category II. This provision regulates the crime of adultery as an offense prohibiting sexual intercourse between two individuals who are not bound in a valid marital relationship, with a relatively light criminal penalty compared to other offenses against morality. What is meant by "not their husband or wife" according to the Elucidation of Law Number 1 of 2023 concerning the Criminal Code is a man who is in a marital bond having sexual intercourse with a woman who is not his wife; a woman who is in a marital bond having sexual intercourse with a man who is not her husband; a man who is not in a marital bond having sexual intercourse with a woman, even though it is known that the woman is in a marital bond; a woman who is not in a marital bond having sexual intercourse with a man, even though it is known that the man is in a marital bond; or a man and a woman who are neither bound in marriage having sexual intercourse. This elucidation expands the scope of legal subjects who can become perpetrators of the crime of adultery, not being limited only to parties bound by marriage, but also encompassing parties not bound by marriage yet knowing that their partner is bound by marriage, as well as parties who are both unbound by marriage (Nurdin, 2025). The expansion of legal subjects in this Article 411 represents a significant change from the previous provision in Article 284 of the old Criminal Code, which only prosecuted parties bound by marriage.

Article 411 paragraph (2) of Law Number 1 of 2023 on the Criminal Code states that the offense referred to in paragraph (1) may not be prosecuted unless a complaint is filed by the husband or wife, in the case of a married person, or by the parent or child, in the case of an unmarried person. According to the Elucidation of Article 411 paragraph (2), "child" refers to a biological child who has reached the age of sixteen. The provision setting sixteen years as the age threshold for a child entitled to file a complaint deserves critical attention, since this age also intersects with the issue of underage marriage, which has been shown to affect household welfare (Aliyah et al., 2023). This provision confirms that adultery constitutes an absolute complaint offense, meaning prosecution may only proceed if a complaint is filed by parties who hold a specific legal relationship with the offender. In criminal litigation practice, this absolute complaint nature carries significant implications for the investigation and prosecution process, since investigators and public prosecutors cannot actively process a case without a valid complaint from a party entitled to file one. The Minister of Law has affirmed that under both the old and the new Criminal Code, adultery remains a complaint offense and therefore cannot be processed automatically by law enforcement without a report from the aggrieved party (Muttaqien & Kemala, 2023). The requirement that a complaint come from a family member also reflects a form of private legal protection for family relations, as emphasized in a study on the scope of private law protection for families (Zahid et al., 2022).

Furthermore, Article 411 paragraph (3) of Law Number 1 of 2023 on the Criminal Code states that the provisions referred to in Articles 25, 26, and 30 do not apply to this complaint. Articles 25, 26, and 30 of Law Number 1 of 2023 regulate the general provisions on complaints in complaint offenses, including the time limit for filing a complaint, withdrawal of a complaint, and complaints filed through a proxy. This exception to the general provisions means that a complaint in an adultery case has distinctive characteristics that differ from complaint offenses in general, particularly regarding the inapplicability of the time-limit provision. Article 411 paragraph (4) of Law Number 1 of 2023 on the Criminal Code states that a complaint may be withdrawn as long as the court examination has not yet begun. This provision gives the complainant the

opportunity to withdraw the complaint before trial proceedings commence, meaning the case will not proceed to the evidentiary stage in court. In criminal justice practice, withdrawing a complaint before trial begins results in the termination of prosecution, so the defendant does not undergo trial examination (Sirjon & Sakti, 2023). However, once trial examination has begun, the complaint can no longer be withdrawn, and the case must proceed until a judge's verdict is issued.

Referring to the provisions of Article 411 paragraphs (2), (3), and (4) of Law Number 1 of 2023 on the Criminal Code, adultery as regulated under Article 411 falls under the category of an absolute complaint offense, meaning it cannot be prosecuted without a complaint from parties who have a legal relationship with the offender, such as a lawful spouse, parent, or child. This absolute complaint nature differs from a relative complaint offense, in which prosecution may proceed without a complaint when public interest is involved, whereas in an absolute complaint offense, the complaint is an absolute requirement that cannot be substituted by law enforcement initiative. As long as the case has not yet been examined at trial, the complaint may always be withdrawn. Withdrawing the complaint before trial begins eliminates the right to prosecute, requiring the public prosecutor to halt prosecution, and the case does not proceed to the evidentiary stage. In criminal litigation practice, applying Article 411 of the National Criminal Code in district courts faces significant evidentiary challenges because adultery is often committed privately without eyewitnesses. Proof at trial relies on the types of evidence set out in Article 184 of the Criminal Procedure Code, namely witness testimony, expert testimony, documents, indications, and the defendant's statement. In adultery cases, witnesses who directly observe the act of intercourse are very rarely found, so public prosecutors often rely on documentary evidence such as marriage certificates, forensic medical reports (*visum et repertum*), or the defendant's confession. The evidentiary strength of expert testimony has also drawn attention, as forensic expert assessments have proven important in strengthening a judge's conviction regarding a criminal event (Amri et al., 2025). This kind of medico-legal analysis has become increasingly relevant with the enactment of the new Criminal Code, which demands careful evaluation of evidence to

ensure the elements of the offense are convincingly fulfilled (Ananto et al., 2026). A judge's decision in an adultery case depends heavily on the strength of the evidence and the judge's conviction that the elements of the offense have been convincingly fulfilled.

Comparison of the Elements of the Crime of Adultery in the Old Criminal Code and the National Criminal Code

The regulation regarding the crime of adultery in Article 284 of Law Number 1 of 1946 concerning Criminal Law Regulations has undergone changes in Article 411 of Law Number 1 of 2023 concerning the Criminal Code. These changes include the expansion of legal subjects, changes in criminal penalties, the expansion of parties entitled to file complaints, and the abolition of the requirement for a divorce petition. These changes reflect the efforts of the legislators to adjust criminal law provisions with the development of social values in society, without reducing the essence of legal protection for the institution of marriage. The enactment of the National Criminal Code on January 2, 2026 marks a new chapter in law enforcement in Indonesia, where the old Criminal Code, which was a colonial product, is replaced by a Criminal Code that is more relevant to Indonesia's social and cultural conditions (Prawoko et al., 2025).

Article 284(1) of Law No. 1 of 1946 on Criminal Law provides that the following shall be liable to a term of imprisonment of not more than nine months: a married man who commits adultery, whilst knowing that Article 27 of the Civil Code applies to him; a married woman who commits adultery, whilst knowing that Article 27 of the Civil Code applies to her; a man who participates in the act, whilst knowing that the other party involved is married; a married woman who participates in the act, whilst knowing that the other party involved is married and that Article 27 of the Civil Code applies to her. Article 284 of the old Criminal Code explicitly limits the perpetrators of the criminal offence of adultery to parties bound by marriage, whilst parties not bound by marriage cannot be prosecuted under this provision unless the person concerned is aware that their partner is married (Sumby et al., 2024). The old Criminal Code, which remains in force, is considered out of step with the times as it is a colonial legacy deemed no longer relevant to Indonesia's current social and cultural conditions.

Article 284 paragraph (2) of Law Number 1 of 1946 stipulates that no prosecution shall take place except upon the complaint of the aggrieved husband or wife, and if Article 27 of the Civil Code applies to them, within a period of three months followed by a petition for divorce or judicial separation for that same reason. This provision requires a petition for divorce or judicial separation as a formal prerequisite for prosecution to be carried out, meaning that the complaint cannot be followed up if the marriage is still maintained. In litigation practice, this requirement often becomes an obstacle for parties wishing to report the crime of adultery, because not all aggrieved parties are willing to file a divorce petition. Article 284 paragraph (3) stipulates that Articles 72, 73, and 75 do not apply to this complaint. Article 284 paragraph (4) stipulates that the complaint may be withdrawn as long as the examination in the court hearing has not yet begun. Article 284 paragraph (5) stipulates that if Article 27 of the Civil Code applies to the husband and wife, the complaint shall not be entertained as long as the marriage has not been dissolved by divorce or before the decision declaring judicial separation becomes final (Samsudin & Pura, 2023). Based on a comparison of legal rules regarding the crime of adultery between Article 284 of Law Number 1 of 1946 concerning Criminal Law Regulations and Article 411 of Law Number 1 of 2023 concerning the Criminal Code, the following similarities and differences are obtained.

The similarity between the two provisions is that both constitute an absolute complaint offense, carried out on a consensual basis without coercion from either party, the complaint may be withdrawn at any time before the case is examined by the court, and the complaint cannot be delegated or represented by proxy. The characteristic of an absolute complaint offense means that the initiative for prosecution rests entirely with the aggrieved party, so that law enforcement officials cannot process the case proactively. Criminal provisions that restrict the authority of law enforcement in this way often become a subject of debate in the formation of criminal law in Indonesia, since they concern the boundary between individual interests and state interests in regulating citizens' conduct (Saputra et al., 2023). In litigation practice, the absence of a complaint from the entitled party means investigators cannot initiate an investigation

even when aware of an alleged adultery offense. The consensual nature of adultery distinguishes it from other morality offenses such as rape or sexual abuse, in which the element of coercion is a key element of proof (Sirajuddin et al., 2024). Withdrawal of a complaint before trial begins is the absolute right of the complainant and results in termination of the judicial process, whereas after the trial has begun, withdrawal is no longer permitted.

The differences between the two provisions are, first, under Article 284 of Law Number 1 of 1946 on Criminal Law Regulations, the offender is a man or woman where one or both are bound by marriage, whereas under Article 411 of Law Number 1 of 2023 on the National Penal Code, the offender is other than a man or woman where one or both are bound by marriage, namely men and women not bound by marriage. The expansion of the scope of offenders under Article 411 of the National Penal Code means that adultery is no longer limited to violations of the marital bond, but also covers extramarital sexual relations conducted by parties not bound by marriage (Dhumillah & Windiyastuti, 2024). In the formulation of the criminalization of the adultery offense, there is an expansion of meaning, in which religious elements become an important part of the drafting of the law, so that the provision can now ensnare perpetrators of adultery with *muhson* status (married persons) and *ghairu muhson* status (unmarried persons). The implementation of such a broader new criminal provision requires readiness on the part of law enforcement so that legal protection for the parties involved can function properly (Shinta et al., 2026). This has consequences in litigation practice in that the parties who may file a complaint are no longer limited to husbands or wives, but also parents or children of offenders who are unmarried or divorced. This change broadens access to justice for parties who feel aggrieved by adultery committed by a family member.

Second, the criminal sanction under Article 284 of Law Number 1 of 1946 on Criminal Law Regulations is imprisonment for a maximum of nine months, whereas under Article 411 of Law Number 1 of 2023 on the National Penal Code it is imprisonment for a maximum of one year or a fine of up to Category II. The increase in the maximum criminal threat from nine months to one year of imprisonment reflects the lawmakers' assessment that adultery carries a higher degree of seriousness under the National Penal Code, while still retaining its

character as a minor offense with a criminal threat below five years. The addition of a Category II fine provides judges with a more flexible sentencing alternative.

Third, the party entitled to file a complaint for adultery under Article 284 of Law Number 1 of 1946 on Criminal Law Regulations is only the aggrieved husband or wife, whereas under Article 411 of Law Number 1 of 2023 on the National Penal Code, the parties entitled to complain, besides the husband or wife of an offender bound by marriage, also include the parents or children of an offender not bound by marriage parents if the offender is single, or a child if the offender is a widow or widower who is the parent of that child. The addition of parents and children as entitled complainants broadens the basis of legal protection for moral values within the family, where parents have a moral interest in the conduct of their unmarried child, and a child has an interest in the conduct of a parent who is divorced or unmarried (Maesyaroh & Sulistyanta, 2024). The inclusion of parents and children as complainants essentially reflects a shift in family-law perspective that pays greater attention to protecting vulnerable family members from the consequences of a family member's wrongdoing (Aliyah & Mardikaningsih, 2023). In litigation practice, this means investigators and public prosecutors can accept complaints from a wider range of parties, making access to justice more open.

Fourth, Article 284 of Law Number 1 of 1946 on Criminal Law Regulations requires that, for prosecution to proceed, the complaint must be accompanied by a divorce request or a request for legal separation of bed and board that has obtained permanent legal force, whereas Article 411 of Law Number 1 of 2023 on the National Penal Code imposes no such requirement. The removal of the divorce-request requirement under Article 411 of the National Penal Code is a fundamental change that allows the legal process to continue even though the victim and offender remain married. This means a complaint can be filed and processed without necessarily being followed by a divorce petition, so that legal protection for the aggrieved party is no longer tied to a decision to end the marriage. In litigation practice, the removal of this requirement eliminates a procedural barrier that had previously often hindered parties wishing to report adultery, since not every

aggrieved party is willing to file for divorce. The removal of this procedural requirement should also take into account the psychosocial condition of the aggrieved party, given that a prolonged legal process can affect their psychological wellbeing while undergoing it (Issalillah, 2021). The legal process can continue even though the victim and offender remain married. As a result, the investigation and prosecution process can proceed independently of the divorce process, so there is no dependency between the criminal and civil proceedings.

Implications of Regulatory Changes for the Litigation Process of Adultery Cases

In the process of investigation and prosecution of adultery cases based on Article 411 of the National Criminal Code, investigators are obliged to ensure that the complaint is filed by the authorized party as stipulated in Article 411 paragraph (2). Investigators must also ensure that the complaint is not withdrawn before the trial examination begins, because the withdrawal of the complaint results in the forfeiture of the right to prosecute. The public prosecutor, after receiving the transfer of the case file, is obliged to examine the formal and material completeness of the complaint before drafting the indictment. In the trial, the judge examines the validity of the complaint as a formal requirement for the continuation of the case, and if the complaint is declared invalid or has been withdrawn before the trial begins, the judge is obliged to declare the case inadmissible. The nature of an absolute complaint delict in Article 411 of the National Criminal Code requires law enforcement officers to be passive in processing adultery cases, waiting for a complaint from the entitled party before taking investigative actions (Nurita, 2025). This differs from ordinary crimes where investigators can proactively conduct investigations after discovering an alleged criminal act.

In criminal litigation practice, the application of Article 411 of the National Penal Code in district courts requires a thorough understanding of the evidentiary process, since the evidence available in adultery cases is often limited to witness testimony that rarely covers direct observation of the sexual act, along with documentary evidence such as marriage certificates and forensic medical reports (*visum et repertum*). The forensic medical report plays an important role in proving that intercourse occurred, particularly

when obtained within a relatively short time after the event. A judge's decision in an adultery case depends heavily on the conviction formed through the examination of evidence at trial, along with an assessment of whether the elements of Article 411 have been convincingly satisfied. The assessment of the good faith of the parties in a case is often influenced by prevailing social perceptions, so judges are required to remain objective in order to base their rulings genuinely on legal facts rather than biased judgment (Sajjapong et al., 2022). Developing jurisprudence in adultery cases shows that judges tend to be cautious in issuing convictions because of the nature of the offense as a complaint-based crime, which requires care in assessing the complainant's good faith and any possible underlying motive behind the complaint (Hermawan & Zarzani, 2025).

The change in the provision on who is entitled to file a complaint from only the husband or wife to also parents and children carries significant implications for the litigation strategies available to the parties. A change in legal norms of this kind demands adaptability, both from individuals and from law enforcement officials, in understanding and applying the new provision correctly (Kurniawan & Darmawan, 2021). Potential complainants are no longer limited to a lawful spouse, so that a parent who learns that an unmarried child has engaged in an extramarital relationship may file a complaint, and likewise a child who learns that a divorced parent is in a relationship with someone else. In practice, this can increase the number of adultery cases entering the courts, as more parties gain access to file complaints. The involvement of family members as complainants shows that the family plays an important role in responding to problems faced by its members, although this role must be balanced with good faith so that it is not misused (Evendi et al., 2024). However, this expansion of entitled complainants also carries the potential for abuse, where a complaint is filed not to uphold the law but for other purposes such as psychological pressure or family conflict (Topan, 2023). Investigators and public prosecutors must carefully verify the motive and good faith of the complainant before proceeding with the case to trial.

The removal of the divorce-request requirement under Article 411 of the National Penal Code brings a fundamental change to the litigation process for adultery cases. Previously,

a complaint could not be processed unless accompanied by a divorce request that had obtained permanent legal force, so the criminal process depended on the civil divorce process. With this requirement removed, the criminal process can proceed independently, allowing the aggrieved party to file a complaint without first having to file for divorce. This provides faster and more effective legal protection for the aggrieved party, since the criminal process can proceed without waiting for a divorce ruling, which often takes a long time (Mashendra, 2024). Legal protection that can be accessed quickly matters for the psychological recovery of the aggrieved party, given that the experience of being hurt by a partner also affects their mental health (Issalillah & Khayru, 2021). In litigation practice, the removal of this requirement also means that a complaint can be filed even while the marriage is still maintained, so that no procedural barrier remains to obstruct access to justice. The principle of the best interests of the vulnerable party is also an important consideration in legal arrangements concerning marriage and divorce, including in determining the most appropriate form of protection for the aggrieved party (Fajar et al., 2021). However, this also has the consequence that the criminal process and the civil divorce process become two separate tracks, so that a criminal ruling is no longer a prerequisite for divorce, and vice versa.

The heavier criminal threat under Article 411 of the National Penal Code compared to the old Article 284 from a maximum of nine months to a maximum of one year of imprisonment or a Category II fine has implications for defense and prosecution strategy at trial. The public prosecutor may seek a maximum of one year of imprisonment or a higher fine, while defense counsel may argue for a lighter sentence by pointing to the complaint-based nature of the offense and the defendant's good faith. The addition of a fine threat gives judges an alternative in sentencing, so that judges are not limited to imprisonment alone. The accuracy of judges and prosecutors in determining a proportionate sanction is also inseparable from the competence and professional character of the law enforcement officials themselves in carrying out their duties objectively (Darmawan, 2017). In judicial practice, a judge may consider a fine as a more proportionate sanction for adultery cases that do not cause significant material harm. This is consistent with a sentencing approach

oriented toward restorative justice rather than mere retribution. A judge's ruling in an adultery case must weigh, in a balanced way, the interest of protecting the institution of marriage, the moral values held by society, and the right to privacy of the parties involved.

Challenges of Proof and the Role of Evidence in Adultery Cases

In the context of criminal litigation, the application of Article 411 of the National Criminal Code in district courts requires a deep understanding of the evidentiary process, because the available evidence in adultery cases is often limited to witness testimony from witnesses who rarely witness the act of sexual intercourse directly, as well as documentary evidence such as marriage certificates and visum et repertum. Article 184 of the Criminal Procedure Code stipulates that valid evidence consists of witness testimony, expert testimony, documents, indications, and defendant testimony. In adultery cases, witness testimony observing the act of sexual intercourse directly is very rarely found, considering that this crime is often committed covertly and secretly (Kalimanto et al., 2025). Public prosecutors often rely on documentary evidence such as marriage certificates to prove the marital status of the parties, visum et repertum to prove the occurrence of sexual intercourse, or the defendant's confession at trial. The defendant's confession holds significant probative value, but it must be supported by other evidence to meet the requirement of a minimum of two valid pieces of evidence as regulated in Article 183 of the Criminal Procedure Code.

A visum et repertum plays an important role in proving that sexual intercourse took place, particularly when it is obtained within a relatively short period after the incident. A visum et repertum prepared by a forensic doctor can establish signs of intercourse on the body of the victim or the defendant, such as a torn hymen, semen, or injuries indicating sexual contact (Sukrisno et al., 2025). However, in many adultery cases a visum et repertum is often unavailable because the complaint is filed long after the intercourse took place. In such situations, the public prosecutor must rely on other evidence, such as witness statements describing the perpetrators being together in a closed room, or circumstantial evidence such as conversations or text messages indicating an intimate relationship. Such circumstantial

evidence increasingly comes from digital communication, as exchanges on social media can reveal patterns of interaction that point to an intimate relationship between the parties (Arifin & Rojak, 2022). Expert testimony can also be used to explain technical matters that require special expertise, such as DNA analysis or psychiatric examination to assess witness credibility. A comparative assessment of visum et repertum psikiatrik alongside other forms of expert testimony shows that both can complement each other as evidence, particularly when physical evidence of intercourse is weak or unavailable (Anam et al., 2026).

A judge's decision in an adultery case depends heavily on the conviction formed from examining the evidence presented at trial, along with a determination of whether the elements of Article 411 have been convincingly satisfied. The judge must be convinced that intercourse occurred between two people who are not married to each other, and that the perpetrators meet the criteria for legal subjects as set out in the elucidation of Article 411. In judicial practice, judges often face difficulty in determining whether intercourse actually occurred, particularly when there are no eyewitnesses and no strong physical evidence. The developing jurisprudence in adultery cases shows that judges tend to be cautious in handing down convictions, given the nature of complaint offenses, which requires care in assessing the complainant's good faith and any possible motive behind the complaint (Nurdin, 2025). A similar pattern of caution can be found in other sensitive areas of criminal law, where judges must weigh the available evidence carefully before reaching a verdict, given how serious the consequences of a conviction are for the parties involved (Indayanti et al., 2023). An acquittal or a discharge from all legal charges is often handed down when the judge doubts the material truth of the complaint, or when the evidence presented is insufficient to convince the judge that the offense actually occurred. This caution also reflects the principle that applying a criminal provision must go hand in hand with adequate legal protection for the parties involved, so that legal certainty does not come at the expense of fairness (Shinta et al., 2026).

The absolute nature of Article 411 of the National Penal Code as a complaint offense requires law enforcement officials to carefully verify the validity of a complaint before processing a case. Investigators must ensure that the complaint is filed by an authorized party as set out in Article 411 paragraph (2), namely the spouse for persons

bound by marriage, or the parents or children for persons not bound by marriage. This provision recognizes parents and children as parties with a legitimate interest in matters directly affecting their family, reflecting the legal recognition given to children's standing in matters concerning their welfare (Hariani et al., 2021). Investigators must also ensure that the complaint is filed in writing and contains the identity of the perpetrator and a clear description of the events, as required under Article 108 of the Criminal Procedure Code. The public prosecutor, after receiving the case file, must examine the formal and material completeness of the complaint before drafting the indictment. In court, the judge examines the validity of the complaint as a formal condition for the case to proceed, and if the complaint is found invalid or has been withdrawn before the trial begins, the judge must declare the case inadmissible (Zulfie et al., 2025). This process shows how the validity of a legal proceeding can depend on the interaction between administrative compliance at the investigative stage and judicial authority at trial, a pattern also found in other legal matters where formal administrative requirements determine whether a case may proceed to substantive review (Damayanti et al., 2026). This formal requirement is mandatory and must be met before a case can proceed to the evidentiary stage, so that any failure to meet the formal requirements of a complaint can cause the case to lapse.

Changes to Article 411 of the National Penal Code that expand the parties entitled to file a complaint and remove the requirement of a divorce petition carry implications for the litigation strategies available to the parties in adultery cases. A broader pool of potential complainants means that an adultery case can be filed not only by the aggrieved spouse, but also by the parents or children of the perpetrator, so that family conflicts involving moral and decency issues can enter the criminal domain. This shift brings family law matters concerning children's status and interests closer to criminal proceedings, an area that has long required careful legal attention because of its direct bearing on children's welfare (Fajar et al., 2022). The removal of the divorce petition requirement means that the criminal process can proceed without waiting for a divorce ruling, so that the aggrieved party can obtain justice more quickly (Anggraini et al., 2025). In practice, this can increase the number of adultery cases brought to court, but it can also create room for abuse, where a complaint is

filed for interests other than law enforcement. Because views on morality and family values differ across regions and social groups, legal practices that touch on such values need to be applied with sensitivity to local norms so that they do not become a tool for settling personal disputes (Mardikaningsih & Darmawan, 2023). Law enforcement officials must therefore apply the principle of caution in processing adultery cases, verifying the validity of the complaint and the complainant's good faith carefully, and ensuring that the judicial process is genuinely used for law enforcement and not for other, unrelated interests.

D. CONCLUSIONS

The regulation of the crime of adultery in Article 411 of Law Number 1 of 2023 has undergone significant changes from Article 284 of the old Criminal Code, covering the expansion of legal subjects, the increase in criminal penalties, the expansion of parties entitled to file complaints, and the abolition of the requirement for a divorce petition. These changes reflect the efforts of lawmakers to adjust criminal law with the development of social values, yet they also pose challenges in litigation practice because law enforcement officers require adaptation to the new provisions. The nature of an absolute complaint delict is maintained in Article 411 of the National Criminal Code, so that a complaint from the entitled party constitutes an absolute prerequisite for prosecution that cannot be replaced by the initiative of law enforcement officers. The challenges of proof in adultery cases remain a major obstacle because this crime is often committed covertly without eyewitnesses and strong physical evidence, requiring law enforcement officers to rely carefully on various pieces of evidence.

Policymakers need to consider drafting technical guidelines for the application of Article 411 of the National Criminal Code for investigators, public prosecutors, and judges to ensure consistency in law enforcement and reduce differing interpretations. The strengthening of the capacity of forensic medical personnel in providing *visum et repertum* for adultery cases becomes a strategic step to overcome the evidentiary challenges frequently faced in court. The public needs to be provided with an understanding of the changes in the regulation of the crime of adultery and the available complaint mechanisms, so that the rights of injured parties can be optimally protected without the abuse of complaint delicts.

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