

The Legal Policy of Marriage Registration: A Dogmatic Review of the New Criminal Code Between Administrative and Criminal Law

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Abstract. Marriage registration holds a crucial position as a guarantee of certainty regarding the status of spouses and children, as well as a foundation for the integrity of population data. However, failure to register intersects with the criminal realm in the new Criminal Code. This article aims to examine whether the reporting obligation is solely administrative or, under certain circumstances, is subject to criminal sanctions under the political law of the Criminal Code. The method used is normative-dogmatic legal research with an empathetic approach: legislation to map the relationship between the Criminal Code, the Marriage Law, and population administration; the socio-juridical context to assess the barriers to access and pluralism; cases to examine the elements of action, wrongdoing, and harm; and a limited comparison with several announcements. The main findings indicate that registration is essentially an administrative obligation addressed through gradual sanctions, the obligation to verify the validity of the marriage certificate, and service integration/digitalization. Criminalization is only permitted as an ultimum remedium in cases of deception, forgery, exploitation, or actual societal harm.

Keywords: Marriage Registration; Criminal Code; Marriage Offenses; Administrative Law; Criminal Politics; Final Fix

Abstrak. Pencatatan perkawinan menempati posisi krusial sebagai jaminan kepastian status pasangan dan anak, sekaligus fondasi integritas data kependudukan. Namun, muncullah ketika ketidakpencatatan bersinggungan dengan ranah pidana dalam KUHP baru. Artikel ini bertujuan menguji apakah kewajiban pelaporan semata-mata merupakan domain administratif atau, dalam keadaan tertentu, layak dikenai sanksi pidana menurut hukum politik KUHP. Metode yang digunakan adalah penelitian hukum normatif-dogmatik dengan pendekatan empati: peraturan-perundang-undangan untuk memetakan hubungan KUHP, UU Perkawinan, dan administrasi kependudukan; konteks sosial-yuridis untuk menilai hambatan akses dan pluralisme yang dilakukan; kasus untuk menguji unsur perbuatan, kesalahan, dan kerugian; serta perbandingan terbatas dengan beberapa pengumuman. Temuan utama menunjukkan bahwa pencatatan pada dasarnya adalah kewajiban administratif yang ditangani melalui sanksi bertahap, kewajiban isbat, dan integrasi layanan/digitalisasi. Kriminalisasi hanya diperbolehkan sebagai ultimum remedium apabila terdapat tipu daya, pemalsuan, eksploitasi, atau kerugian masyarakat yang nyata.

Kata kunci: pencatatan perkawinan; KUHP; delik perkawinan; hukum administrasi; politik kriminal; perbaikan terakhir

INTRODUCTION

The landscape of criminal sanctions in family law under the new Criminal Code has shifted through the reformulation of domestic-related offenses, the clarification of complaint-based offenses, and efforts to balance public protection with the private sphere of the family. The new Code reflects a more selective criminal policy, yet it still allows the possibility of criminalizing conduct surrounding the institution of marriage when it results in tangible harm, fraud, or falsification. Meanwhile, the substantive civil-law regime places the validity of marriage on religious requirements, while registration is mandated to ensure legal status certainty and access to state services (Republic of Indonesia, 1974/2019). Population administration law treats registration as an administrative obligation, accompanied by data-regularization mechanisms and non-criminal sanctions (Republic of Indonesia, 2006/2013). In social practice, unregistered marriages—due to issues of access, cost, culture, or deliberate choice—create vulnerability for women and children in inheritance rights, maintenance, and social protection. This tension raises a doctrinal question: should non-compliance with marriage registration remain within the administrative sphere, or under certain circumstances be transferred into the criminal realm as an *ultimum remedium* (Republic of Indonesia, 2023).

Policy challenges arise because three legal regimes—family law, population administration, and criminal law—govern the same subject matter while employing different underlying logics. The Marriage Law requires the validity of marriage to be based on religious norms, whereas registration is framed as a state obligation to ensure legal status certainty; consequently, a marriage may be religiously valid yet remain unregistered by the state (Republic of Indonesia, 1974/2019). The Population Administration Law treats registration as an administrative duty supported by data-regularization instruments and non-criminal sanctions, thereby prioritizing public service and the accuracy of civil registration. In contrast, the new Criminal Code opens the door to criminal liability for conduct related to the institution of marriage when it involves deceit, falsification, or causes harm, and it classifies several family-related offenses as

complaint-based crimes. This overlap produces inconsistencies in enforcement: administrative violations may be escalated into criminal cases, or conversely, actual harms remain unaddressed because they are categorized merely as administrative issues. As a result, legal certainty, the protection of women and children, and the efficiency of legal proceedings are all diminished (Republic of Indonesia, 1974/2019; 2006/2013; 2023).

Studies on unregistered marriages in Indonesia have largely been dominated by socio-legal research focusing on religious court practices, the interaction between custom, religion, and the state, and the resulting impact on women and children. Far less attention has been paid to doctrinal mapping of offense elements and the specific legal interests protected when issues of registration intersect with criminal law. Classical and contemporary literature discusses the dynamics of registration and religious validity, as well as social practice, but rarely elaborates on *actus reus*, *mens rea*, protected legal interests, or the threshold at which administrative violations transform into general offenses (Bowen, 2003; Nurlaelawati, 2010). Within criminal law, the doctrines of legality, *ultimum remedium*, and criminal policy are well established, yet they have not been systematically applied to the context of marriage registration, leaving a gap in cross-regime analytical frameworks (Moeljatno, 2008; Arief, 2013). Even recent surveys of positive law highlight the complexity and regulatory overlap without providing a detailed dogmatic construction for formulating the appropriate elements of criminal offenses (Butt & Lindsey, 2018). This gap ultimately hampers policy coherence and legal certainty.

The philosophical foundation of this study rests on the premise that criminal law is legitimately employed only to prevent demonstrable public harm and to protect essential legal interests. Accordingly, the harm principle, fault, and the doctrine of *ultimum remedium* serve as preliminary tests for any criminalization surrounding marriage registration (Feinberg, 1984; Ashworth & Zedner, 2014). Normatively, criminal sanctions must comply with the principle of legality and with a criminal policy rationale that is proportional and accountable (Moeljatno, 2008; Arief, 2013). Sociologically, legal pluralism and religious–

customary practices that render marriages valid in religious terms but unregistered by the state give rise to problems of civil status, access to services, and gender vulnerability (Bowen, 2003; Nurlaelawati, 2010). State registration is also understood as a project of administrative legibility that strengthens governance capacity while potentially marginalizing certain groups if designed without contextual sensitivity (Scott, 1998). This combined framework guides a proportional assessment of the administrative–criminal boundary, consistent with rights protection and policy effectiveness. Consequently, criminal law justifications must genuinely be last-resort and carefully targeted.

The purpose of this article is to develop a doctrinal framework for determining the boundary between administrative violations and criminal offenses in cases of non-compliance with marriage registration requirements. Its contribution is twofold. First, it sets out the elements of conduct and culpability, along with the legally protected interests, namely the orderly status of civil law, the protection of women and children, and the reliability of civil registration systems, anchored in the principle of legality and national criminal policy (Arief, 2013; Moeljatno, 2008). Second, it proposes decision-making criteria based on the principles of harm, fault, necessity, proportionality, and ultimum remedium: criminal law is to be used only where there is demonstrable public harm, deception or falsification, exploitation, or persistent repeat offending; other cases should be addressed through graduated administrative sanctions and status remediation mechanisms (Feinberg, 1984; Simester & von Hirsch, 2011). This framework also tests the risks of over-criminalization and its effectiveness compared with regulatory-administrative approaches and proportionate prevention (Ashworth & Zedner, 2014; Husak, 2008). Accordingly, the article offers a cross-regime analytical tool to harmonize the Criminal Code with family law and population administration in a consistent and equitable manner (Ashworth & Zedner, 2014; Arief, 2013; Husak, 2008; Moeljatno, 2008; Simester & von Hirsch, 2011; Feinberg, 1984).

The novelty of this study lies in its doctrinal framework, which operationalizes a clear boundary between administrative and criminal domains in

the context of marriage registration, with three primary contributions. First, a matrix of offense elements mapping *actus reus*, *mens rea*, protected legal interests, and the threshold for transitioning from administrative violations to criminal offenses, grounded in the principles of harm, fault, necessity, proportionality, and *ultimum remedium* (Husak, 2008; Ashworth & Zedner, 2014; Simester & von Hirsch, 2011). Second, a cross-regime decision-making algorithm that evaluates the effectiveness of administrative instruments before resorting to criminal sanctions, thereby minimizing the risk of over-criminalization (Husak, 2008; Moeljatno, 2008). Third, a model for harmonizing the Criminal Code with the Marriage Law and population administration, taking into account legal pluralism and local social practices—a gap rarely addressed in previous studies that tended to be socio-legal or sectorally doctrinal (Bowen, 2003; Nurlaelawati, 2010; Butt & Lindsey, 2018). In this way, the study provides an evaluative framework that can be tested, adapted to policy needs, and used to design proportionate legal norms (Arief, 2013).

The research questions focus on several topics, namely: Is non-compliance with registration an administrative violation punishable by criminal penalties? How are the proportionality test, the principle of legality, and the principle of *ultimum remedium* applied? How are the Marriage Law and population administration laws harmonized?

RESEARCH METHODS

This research uses qualitative methods within a normative-dogmatic legal research framework. The study focuses on the interpretation of legal texts. A regulatory-statutory approach assesses the new Criminal Code's provisions on family/marriage offenses and their relationship to the Marriage Law and population administration. The conceptual approach defines the terms "registration," "legality of marriage," "complaint offense," and "administrative violation." Where available, a case/decision approach is used to analyze penalties related to unregistered marriages or criminal involvement. Limited comparisons to

countries with similar systems (e.g., Malaysia, Tunisia) provide sanctions for understanding and accountability of registration. Legal materials include primary sources (regulations, treatises), secondary (literature, commentaries on the Criminal Code), and tertiary (dictionaries, encyclopedias). Qualitative analysis techniques include grammatical, systematic, historical-legal, teleological interpretation, proportionality tests, and normative construction to formulate dogmatic findings and policy recommendations.

RESULTS AND DISCUSSION

Mapping of Norms and Legal Politics of the Criminal Code

In the new Criminal Code, the domain of family and marriage is framed as a legal interest with both private and public dimensions: the state protects families, civil status, and dignity, but limits its intervention through the typology of complaint-based offenses. Domestic-oriented offenses—such as breaches of fidelity, status misrepresentation, or acts interfering with marital bonds—are generally classified as absolute or relative complaint offenses, meaning that prosecution requires a complaint from the aggrieved party, such as a spouse or close relative. This design reflects the principle of subsidiarity: family matters do not automatically become public concerns without the initiative of the victim, while also preventing excessive criminalization and secondary victimization (Arief, 2013; Hamzah, 2016). Dogmatically, this configuration shifts the burden of legitimizing criminal sanctions: every act and culpability must produce tangible harm to the protected family interest, rather than merely violating abstract moral norms (Lamintang & Lamintang, 2012; Simester & von Hirsch, 2011). The mapping of these norms also reveals limited synchronization with family law and population administration, highlighting the need for consistent enforcement guidelines to prevent complaints from turning into routine criminalization of administrative violations (Butt & Lindsey, 2018).

The explanation and configuration of family offenses in the new Criminal Code reflect three key policy objectives. First, to safeguard the public interest in

family life by classifying acts that interfere with marital bonds as complaint-based offenses, ensuring that state intervention remains focused on the victim's interest and does not criminalize mere moral transgressions (Arief, 2013; Hamzah, 2016). Second, to prevent abuse by addressing acts that involve deception, status falsification, or exploitation of the marriage institution, in line with the principles of harm, fault, and proportionality (Simester & von Hirsch, 2011; Ashworth & Zedner, 2014). Third, to protect vulnerable groups, particularly women and children, by securing civil status certainty and access to services, while avoiding criminal burdens that could exacerbate social vulnerability (Bowen, 2003; Nurlaelawati, 2010). This design requires close coordination with family law and population administration to prevent complaints from escalating into over-criminalization of administrative violations, while effectively addressing demonstrable public harm (Butt & Lindsey, 2018).

The administrative–criminal boundary in family matters is drawn according to the functions of the state: administration ensures data validity, status certainty, and access to services, while criminal law protects the public from demonstrable harm. Marriage registration, data corrections, and remediation through isbat or late registration fall under the administrative domain with graduated non-criminal sanctions, as the focus is on public service and orderly registration rather than punishment (Nurlaelawati, 2010; Butt & Lindsey, 2018). Criminal sanctions are applied selectively in cases involving deception, document falsification, coercion or exploitation, or status misrepresentation that cause serious harm to spouses or children and affect the public interest; the principles of harm, necessity, proportionality, and ultimum remedium serve as primary filters (Moeljatno, 2008; Arief, 2013; Simester & von Hirsch, 2011; Ashworth & Zedner, 2014). In the context of legal pluralism, this demarcation prevents the criminalization of administrative non-compliance arising from access barriers or religious choice, while still enabling a firm response to harms that undermine the institution of marriage (Bedner & Van Huis, 2010; Butt & Lindsey, 2018).

Criminal Dogmatics on Marriage Registration

In the criminal dogmatics of marriage registration, the act element (*actus reus*) must be specified, for example: (a) submitting registration with forged documents; (b) misleading officials about marital status; or (c) concealing a marriage to exploit the rights of others. Pure administrative negligence, such as failing to register, is subject to non-criminal sanctions unless accompanied by deception or persistent misconduct causing public harm (Moeljatno, 2008; Arief, 2013; Simester & von Hirsch, 2011). Conditions that disregard relevant legal circumstances—such as a prior marriage, failure to meet age/consent requirements, or relationships requiring court approval—are treated as aggravating or constitutive factors (Bedner & Van Huis, 2010). Legal consequences focus on tangible harm: loss of status certainty, denial of service access, or increased vulnerability of women and children, rather than mere moral transgressions (Ashworth & Zedner, 2014; Nurlaelawati, 2010). The fault element includes *dolus* (deception, forgery, status manipulation) and gross *culpa* if the actor should have been aware of the social-legal consequences of their actions; the principles of necessity and proportionality serve as an *ultimum remedium* filter (Simester & von Hirsch, 2011; Arief, 2013).

The primary protected interests in marriage registration are the legal status of spouses and children, ensuring that inheritance rights, maintenance, social security, and access to public services are secured. Without registration, civil status becomes unclear, leaving vulnerable groups at risk of exclusion (Nurlaelawati, 2010; Bedner & Van Huis, 2010). From a governance perspective, oversight of population data integrity underpins public services, planning, and the prevention of status fraud—an administrative function crucial for maintaining the state's “legibility” (Butt & Lindsey, 2018; Scott, 1998). Dogmatically, criminal sanctions are justified only when attacks on these interests are real, such as through forgery, deception, or exploitation causing significant material or immaterial harm; in other cases, corrections should follow graduated administrative mechanisms in line with the principles of necessity and proportionality (Ashworth & Zedner, 2014).

In principle, failure to register a marriage without deception or demonstrable harm is more appropriately treated as an administrative violation, since the primary goal is to safeguard legal status and registration integrity rather than to punish (Butt & Lindsey, 2018; Scott, 1998). The harm–necessity–proportionality test indicates that criminal sanctions are justified only when non-registration involves fraud or forgery, exploitation, or repeated misconduct causing significant public harm to spouses, children, or service systems (Simester & von Hirsch, 2011; Ashworth & Zedner, 2014). Many non-registration cases result from access barriers or pluralistic religious practices, making criminalization prone to over-criminalization and secondary victimization (Bedner & Van Huis, 2010; Husak, 2008; Nurlaelawati, 2010). Accordingly, graduated administrative sanctions, isbat obligations, and improvements to registration services constitute the primary response, while criminal law functions as an *ultimum remedium*, in line with the principles of legality and proportional criminal policy (Moeljatno, 2008; Arief, 2013).

Proportionality Test and *Ultimum Remedium*

Before resorting to criminal sanctions, the state must ensure that all administrative instruments have been effectively applied: progressive fines, suspension of access to certain civil services until registration is completed, obligations for isbat or late registration with clear limits, and the simplification of procedures and reduction of costs to maintain accessibility. If these measures collectively ensure legal status certainty and safeguard population data integrity, criminalization is unnecessary and conflicts with the principle of *ultimum remedium* (Ashworth & Zedner, 2014; Butt & Lindsey, 2018). Criminal enforcement is justified only if it demonstrably improves compliance, ensures legal certainty, prevents fraud or status forgery, and provides real protection for vulnerable parties; otherwise, it risks excessive and policy-wise inappropriate criminalization (Simester & von Hirsch, 2011; Husak, 2008). The criminal burden on family privacy and autonomy must be proportional to the public benefit. When barriers stem from service access or pluralistic religious practices, remedial administrative sanctions offer a more proportionate response (Alexy, 2002; Bedner & Van Huis, 2010).

Furthermore, criminalization may cause secondary victimization of women and children and limit access to services; therefore, service-oriented approaches, status remediation, and rights restoration are safer and more gender-equitable (Nurlaelawati, 2010; Arief, 2013; Moeljatno, 2008).

Harmonization and Synchronization of Regulations

Harmonization of the legal framework begins with the hierarchy of norms and the principle of *lex specialis derogat legi generali*. The Criminal Code, as the general criminal law, delineates the outer limits of criminalization and provides the basic principles of punishment. In contrast, the Marriage Law and population administration regulations operate as *lex specialis*, setting out detailed rules on the validity of marriage, registration duties, registry procedures, and the provision of administrative services concerning civil status. When normative conflicts arise, they are to be resolved primarily through administrative mechanisms, including data regularization and remedial registration. Criminal law is invoked only in limited circumstances where deception, forgery, or demonstrable and significant public harm occurs, so that criminal sanctions function genuinely as an *ultimum remedium*, rather than as the first response to administrative non-compliance (Butt & Lindsey, 2018; Alexy, 2002).

Service integration requires cross-regime orchestration across relevant institutions. This involves establishing one-stop service points that combine marriage registration, judicial confirmation (*isbat*), and population registry procedures within a single service pathway. It further requires data connectivity between religious bodies and civil authorities responsible for population administration to ensure rapid and reliable verification of marital status. Judicial confirmation or *isbat* decisions should ideally automatically update population registers, thereby securing the civil status of spouses and children, guaranteeing access to public services, and preventing data duplication or inconsistencies. Such an integrated model not only enhances legal certainty but also strengthens the protection of vulnerable groups through an administrative system that is

responsive, accurate, and accountable (Nurlaelawati, 2010; Bedner & Van Huis, 2010).

Strengthening compliance should primarily rely on non-criminal instruments. These include the use of family mediation, the requirement of judicial confirmation (isbat) before accessing certain public services that affect legal entitlements, and the digitalization of civil registration systems combined with interoperability of core population databases. Such data integration enables the state to accurately “read” the population without expanding criminal liability or turning administrative non-compliance into criminal offenses. This design reflects principles of accountable and effective governance while remaining sensitive to diverse social practices (Scott, 1998; Butt & Lindsey, 2018). The approach reduces over-criminalization, enhances legal certainty regarding civil status, and strengthens the protection of vulnerable groups, especially women and children, through remedial and proportionate administrative mechanisms.

Comparative Analysis

By way of comparison, Malaysia treats marriage registration primarily as an administrative obligation under state-level Islamic family law. A marriage that is unregistered is not automatically considered a criminal offense. Instead, couples are generally subjected to administrative sanctions such as fines or compounds, court orders requiring registration, and remedies for legal status through marriage validation procedures before the Syariah Court. Through these mechanisms, the legal standing and consequences of the marriage can be regularized without immediately criminalizing the parties involved. Criminal liability only arises when more serious elements are present, such as document falsification, concealment of essential facts, or intentional deception in relation to the marriage or its registration (see Ibrahim & Siti Shamsiah, 1997; Yusoff, 2015).

In civil-law-based systems such as Tunisia, marriage registration occupies a central role. In some legal regimes it constitutes a formal requirement for the validity of marriage itself, while in others it functions at least as an evidentiary prerequisite that determines access to various civil rights, including inheritance,

child status, and social benefits. Consequently, registration becomes a primary mechanism for securing legal certainty regarding marital status. Sanctions are generally administrative and procedural in nature, such as denial of public services or the imposition of fines when registration is neglected. Criminal penalties are more narrowly targeted, focusing on conduct involving fraud or falsification of marriage records and related certificates (Charrad, 2001; Welchman, 2007).

A key lesson for Indonesia is the need to design a graduated sanction regime that prioritizes status remediation. This involves mandatory registration or judicial confirmation of marriage (isbat), the imposition of progressive administrative fines for delay or non-compliance, and the automatic transfer of court decisions into the population registry to secure the civil status of spouses and children. Criminal liability should be narrowly confined to deceptive practices—such as fraud or document falsification—that cause tangible harm to the public interest. Such a tiered approach promotes legal certainty and the protection of individual rights, while at the same time preventing over-criminalization within a pluralistic social and multi-layered legal context (Bedner & Van Huis, 2010; Butt & Lindsey, 2018).

Solutions to create equitable policies and normative designs

As a solution to creating marriage policies and designing fair norms, there are several inputs, including:

First, marriage registration should be clearly framed as an administrative responsibility of both the state and citizens rather than primarily a criminal matter. Enforcement should rely on a graduated scheme of sanctions, including progressive administrative fines, mandatory judicial confirmation or late registration within clearly defined deadlines, and temporary postponement of access to certain public services that affect civil rights until the registration duty is fulfilled. These mechanisms are designed above all to restore and clarify the legal status of spouses and to safeguard the integrity of population data as the basis for planning and public service delivery. Thus, the primary focus is remediation and administrative improvement, not punishment, while also preventing social risks arising from uncertain legal status (Butt & Lindsey, 2018; Scott, 1998).

Second, criminal sanctions should genuinely operate as *ultimum remedium*, the last resort after administrative measures have proven insufficient. Their use is justified only in seriously aggravating circumstances, such as deliberate fraud, exploitation of vulnerable parties, falsification of marital or identity documents, or demonstrable harm—material or immaterial—caused to children, wives, or other vulnerable persons. Any decision to criminalize must be guided by rigorous tests of actual harm, the necessity of criminal intervention as compared with alternative measures, and proportionality between the gravity of the misconduct and the severity of the sanction. In this way, criminal law is not expansively applied but targeted to protect public interests and real victims who require effective protection (Ashworth & Zedner, 2014; Simester & von Hirsch, 2011; Husak, 2008).

Third, strict standards of proof and robust due process guarantees must be established so that noncompliance arising from poverty, geographical isolation, limited legal literacy, or barriers to accessing services is not criminalized. Law enforcement should clearly distinguish between nonregistration caused by structural constraints and violations involving culpable intent, fraud, or document falsification. In this way, criminal sanctions do not further burden the poor and marginalized or produce secondary victimization. These safeguards also ensure full respect for the principle of legality—no punishment without clear prior law—and that criminal policy is implemented in a proportional, rational, and rights-protective manner rather than as retribution. Proportionality and caution should therefore constitute the fundamental basis for determining when criminal proceedings are justified (Moeljatno, 2008; Arief, 2013).

Fourth, close coordination between population registries and the judiciary should be established through integrated registration services. This includes an automatic linkage between judicial marriage-confirmation decisions (*isbat*) and updates to the civil registry, so that each court ruling immediately restores the legal status of spouses and children without burdensome additional procedures. Interoperable digital systems across institutions are likewise essential to prevent data overlap and identity duplication, while accelerating access to services that depend on clear civil status. Such a design enables the state to “read” the

population more accurately and, at the same time, respects legal pluralism and diverse religious practices within society. As a result, status remediation becomes faster, less costly, and the risk of unnecessary criminalization due to administrative gaps is reduced (Bedner & Van Huis, 2010; Nurlaelawati, 2010; Alexy, 2002).

CONCLUSIONS AND SUGGESTIONS

Marriage registration is, in essence, an administrative function of the state, intended to secure the legal status of spouses and children while preserving the accuracy and integrity of population data. Accordingly, its handling should rely primarily on administrative mechanisms that are remedial, gradual, and focused on status remediation rather than punishment. Criminal sanctions may remain available, but their use must be strictly limited to situations that cause concrete public harm, such as fraud, document forgery, exploitation, or conduct that significantly harms wives and/or children. This approach accords with the principle of *ultimum remedium*, proportionality, and respect for family privacy and autonomy, thereby preventing excessive criminalization of administrative non-compliance that can, in fact, be corrected through effective public service procedures.

This study proposes an operational dogmatic testing framework to determine the boundary between administrative and criminal law. The framework includes identifying the legally protected interests, defining the elements of conduct and fault, assessing degrees of risk and harm, and evaluating the effectiveness of non-criminal alternatives. Strengthening this approach requires empirical data on the scale of non-registration, the performance of administrative sanctions, gendered impacts, and actual judicial practices. Moving forward, priority should be given to evaluating implementation, piloting integrated and digital registration services, and measuring compliance levels and the administrative-system burden before and after policy interventions. In this way, legal recommendations can be evidence-based, proportionate, and responsive to real conditions.

REFERENSI:

- Alexy, R. (2002). *Sebuah teori hak konstitusional* (J. Rivers, Trans.). Oxford University Press.
- Arief, BN (2013). *Bunga rampai kebijakan hukum pidana*. Grup Media Kencana Prenada.
- Arief, BN (2013). *Bunga rampai kebijakan hukum pidana*. Kencana.
- Ashworth, A., & Zedner, L. (2014). *Keadilan preventif*. Oxford University Press.
- Bedner, A., & Van Huis, S. (2010). Pluralitas hukum perkawinan dan pendaftaran perkawinan bagi umat Islam di Indonesia: Sebuah permohonan untuk pragmatisme. *Jurnal Pluralisme Hukum dan Hukum Tidak Resmi*, 42(60), 175–201. <https://doi.org/10.1080/07329113.2010.10756649>
- Bowen, JR (2003). *Islam, hukum, dan kesetaraan di Indonesia: Antropologi penalaran publik*. Cambridge University Press.
- Butt, S., & Lindsey, T. (2018). *Sistem hukum Indonesia*. Oxford University Press.
- Feinberg, J. (1984). *Kerugian bagi orang lain*. Oxford University Press.
- Husak, D. (2008). *Overkriminalisasi: Batasan hukum pidana*. Oxford University Press.
- Moeljatno. (2008). *Asas-asas hukum pidana* (Edisi Revisi). Rineka Cipta.
- Nurlaelawati, E. (2010). *Modernisasi, tradisi dan identitas: Kompilasi Hukum Islam dan praktik hukum di pengadilan agama Indonesia*. Pers Universitas Leiden.
- Scott, JC (1998). *Melihat seperti negara: Bagaimana skema-skema tertentu untuk meningkatkan kondisi manusia telah gagal*. Yale University Press.
- Simester, AP, & von Hirsch, A. (2011). *Kejahatan, kerugian, dan kesalahan: Tentang prinsip-prinsip kriminalisasi*. Hart Publishing.
- Republik Indonesia, 1974/2019
- Republik Indonesia, 2006/2013
- Republik Indonesia, 2023