

The Interaction of State, Customary, and Religious Law in the Regulation of Marriage in Indonesia's New Criminal Code

Nur Rohim Yunus⁽¹⁾, Abbas Sofwan Matlail Fajar⁽²⁾, Karmawan⁽³⁾

^{1,3} Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia

² Universitas Islam Tribakti Lirboyo Kediri, Indonesia

*Email: nurrohimyunus@uinjkt.ac.id

Address: Faculty of Sharia and Law, UIN Jakarta, Jl. Ir. H. Juanda No. 95, Ciputat, South Tangerang – Banten 15412

Abstract. The enactment of Indonesia's 2023 Criminal Code marks a significant shift in the regulation of intimate and family life by extending criminal norms into areas traditionally governed by religious and customary law. Within Indonesia's legally plural society, marriage is regulated through overlapping state, religious, and customary regimes that generate both cooperation and tension. Existing scholarship has largely addressed legal pluralism descriptively or prior to the Criminal Code reform, leaving limited analysis of how newly criminalized morality offenses reshape marriage regulation in practice. Employing a qualitative socio-legal approach that combines doctrinal analysis, interviews, and cross-regional observations, this article demonstrates that the Criminal Code does not redefine the validity of marriage but introduces complaint-based offenses—particularly adultery and cohabitation—that indirectly discipline unregistered unions. The findings show that legal authority operates through semi-autonomous spheres: religious institutions maintain doctrinal validity, customary mechanisms provide social legitimacy and restorative sanctions, and the state asserts legal consequences through registration and criminal enforcement. These layered regimes produce forum-dependent outcomes affecting marital status, child legitimacy, and inheritance. While the Criminal Code may incentivize timely registration, it also risks selective criminalization and heightened vulnerability for women and marginalized couples. The analysis underscores the need for regulatory harmonization, gender-sensitive enforcement guidelines, and accessible remedial mechanisms to align criminal policy with plural legal realities and human rights commitments.

Keywords: Criminal Code; Marriage; Human Rights; State; Custom

Abstrak. Pemberlakuan KUHP 2023 menandai perubahan penting dalam pengaturan kehidupan privat dan keluarga dengan memperluas norma pidana ke ranah yang selama ini diatur oleh hukum agama dan adat. Dalam konteks pluralisme hukum Indonesia, perkawinan berada pada persimpangan antara hukum negara, hukum agama, dan norma adat yang saling berinteraksi sekaligus berpotensi berkonflik. Kajian sebelumnya umumnya membahas pluralisme hukum secara deskriptif atau sebelum reformasi KUHP, sehingga belum banyak mengulaskan dampak konkret kriminalisasi baru terhadap praktik perkawinan. Dengan pendekatan sosio-legal kualitatif yang mengombinasikan analisis doktrinal, wawancara, dan pengamatan lintas wilayah, artikel ini menunjukkan bahwa KUHP tidak menentukan keabsahan perkawinan, tetapi memperkenalkan delik aduan—khususnya perzinahan dan kohabitusi—yang secara tidak langsung mendisiplinkan perkawinan yang belum terdaftar. Temuan penelitian memperlihatkan beroperasinya otoritas hukum dalam bidang semi-otonom: lembaga agama menjaga validitas normatif, mekanisme adat

membangun legitimasi sosial dan sanksi restoratif, sementara negara menegakkan akibat hukum melalui pendaftaran dan sanksi pidana. Interaksi berlapis ini menghasilkan konsekuensi yang bergantung pada forum, terutama terkait status perkawinan, legitimasi anak, dan warisan. Meskipun berpotensi mendorong pendaftaran perkawinan, rezim ini juga berisiko menimbulkan kriminalisasi selektif dan meningkatkan kerentanan perempuan serta kelompok marginal, sehingga menuntut harmonisasi regulasi dan pedoman penegakan hukum yang peka gender.

Keywords: KUHP; Perkawinan; Hak Asasi Manusia; Negara; Adat

INTRODUCTION

The reform of the Indonesian Criminal Code through Law No. 1 of 2023 marks a significant turning point in national criminal law. It reflects a shift away from colonial codification toward a model of criminalization that prioritizes the protection of public interests, social order, and community morality. At the same time, the new Criminal Code expands the reach of criminal law into the private sphere, including family relations and domestic life. In the context of marriage, these reforms intersect with Indonesia's longstanding legal pluralism, in which state law, customary law, and religious law simultaneously operate. Together, these legal systems have historically shaped family governance, personal status regulation, and the ways in which family disputes are addressed within Indonesian society (Hooker, 1978; Bowen, 2003).

The expansion of adultery offences and the regulation of cohabitation as complaint-based crimes reinforce the boundary between "legitimate" and "illegitimate" relationships. These provisions encourage compliance with state marriage registration requirements but also risk criminalizing couples married under customary or religious law whose unions have not yet been formally recorded (Law No. 1 of 2023; Nurlaelawati, 2010). The mechanism that allows family members to file complaints strengthens the role of community actors—relatives, customary leaders, and religious authorities—in triggering criminal proceedings, thereby intensifying interaction, and potential friction, between state legal norms and local norms. This article examines these dynamics in the new Criminal Code, focusing on normative interpretation, institutional arrangements, and the implications for women's rights.

Indonesia exhibits a tangible form of legal pluralism in which state law continuously interacts, negotiates, and overlaps with customary norms and religious principles in regulating family life. The colonial and postcolonial historical trajectories have produced a layered legal configuration that accommodates community diversity while preserving different normative systems. At the same time, the state retains primary authority to determine legal status through registration, administrative procedures, and formal recognition. This arrangement creates a combination of local diversity and centralized legal control, making the relationship among state law, customary law, and religious law dynamic—sometimes cooperative and sometimes tense—particularly in matters of family regulation, marriage, and personal status (Hooker, 1978; Bowen, 2003).

In everyday practice, citizens navigate multiple authorities—state officials, customary leaders, and religious institutions to secure both social legitimacy and legal certainty (von Benda-Beckmann & von Benda-Beckmann, 2006). This often occurs through situational forum shopping in which people strategically choose venues that best serve their interests. In the realm of marriage, regulatory plurality is evident in the coexistence of the Marriage Law, Islamic law, and customary practices, as well as in the gap between what is considered valid by the community and what is recognized by the state. These circumstances generate dynamic interactions that can be collaborative yet also conflictual. This reality provides an essential backdrop for assessing the effectiveness of marriage regulation in the new Criminal Code and for understanding its relationship to Indonesia's living legal pluralism. (Bedner & van Huis, 2010; Nurlaelawati, 2010).

This research is based on two pillars. Philosophically, it considers the relationship between substantive justice, normative legitimacy, and community autonomy within the framework of a pluralistic rule of law; the concept of "living law" emphasizes that the validity of rules stems not only from the positivity of the state, but also from the binding power of social norms recognized by the community (Ehrlich, 2002; Merry, 1988). Sociologically, the research views marriage regulation as the result of negotiations between normative spaces—the

state, custom, and religion—which operate as semi-autonomous social spheres with their own sources of sanctions and authority (Moore, 1973; Griffiths, 1986).

In the Indonesian context, religious and customary practices construct standards of family legitimacy and honor, while state law regulates registration and legal status, so citizens often employ strategies of navigating across forums to achieve dual legitimacy (Bowen, 2003; Griffiths, 1986). This foundation guides the analysis of how the new Criminal Code affects interactions, limits desires, and the consequences of human rights, particularly for vulnerable groups in the realm of marriage (Merry, 1988; Bowen, 2003).

The urgency of this research rests on the direct consequences of the new Criminal Code on the private sphere and family status amidst Indonesia's legal pluralism. The expanded criminalization of adultery and cohabitation based on complaints has the potential to define the boundaries between "legal" marriages according to the state and "legal" according to custom/religion, while increasing the risk of criminalization for unregistered couples or couples living in customary law jurisdictions (Indonesia, 2023; Bedner & van Huis, 2010). In plural settings, changes in criminal norms often result in sanctions, competitive authority, and forum shopping that affect access to justice, especially for women and vulnerable groups (Griffiths, 1986; Merry, 1988; Bowen, 2003). Furthermore, the implementation of the Criminal Code requires synchronization with the Marriage Law, religious courts, and customary practices, which without evidence-based studies risk overlapping and disparate law enforcement. Therefore, this research urges to map the mechanisms of state-customary-religious interaction, identify the impacts on human rights, and recommend policy recommendations that maintain legal certainty while respecting diversity (Bowen, 2003; Bedner & van Huis, 2010).

The novelty of this research lies in the analysis of state-customary-religious interactions following the enactment of the 2023 Criminal Code, specifically how the offenses of adultery and cohabitation complaints change the institutional ecology of marriage and registration across marriage forums (Indonesia, 2023; Bedner & van Huis, 2010). Unlike studies of pluralism, which are generally

descriptive or pre-new Criminal Code, this research combines analytical doctrine with a socio-legal approach to map the mechanisms and sanctions in the “semi-autonomous social sphere” when criminal norms enter the family realm (Griffiths, 1986; Merry, 1988). Another novelty is the use of comparisons across customary regions and religious denominations to assess the real effects on unregistered customary/religious marriage couples and the dynamics of community shopping and mediation forums (Bowen, 2003; Nurlaelawati, 2010).

Therefore, the research offers an evaluative framework for synchronizing criminal-family policies as well as operational human rights risk indicators for law enforcement officials and religious-community authorities. This methodological contribution fills a gap in the post-penal reform literature and provides a basis for recommendations based on cross-institutional evidence that can be implemented incrementally.

This study focuses on several research questions, including: How does the Criminal Code regulate criminal acts related to marriage? What is the relationship between state law and customary and religious law in this regulation? What are the practical implications for society?

RESEARCH METHODS

This research employed qualitative methods with a socio-legal approach. Data were collected through document analysis (the Criminal Code, the Marriage Law, court decisions, regional regulations), semi-structured interviews with law enforcement officials, religious leaders, traditional leaders, women activists, and couples engaged in customary/religious marriages, and limited observations of marriage registration processes and community mediation. Locations were purposively selected in several regions representing a variety of customs and religious denominations.

Validity was maintained through triangulation of sources, methods, and researchers, along with member checking and audit trails. Analysis was conducted thematically with iterative coding to map arenas of authority, sanctions, and human

rights impacts. Researcher reflexivity and ethical considerations (informed consent, confidentiality, risk minimization) were incorporated throughout the research process. Cross-regional case studies and mapping complemented the exploration of policy implementation and the dynamics of institutional coordination.

RESULTS AND DISCUSSION

Theoretical Optics of Legal Pluralism and Interaction and Relations Between Legal Systems

The findings suggest that legal pluralism functions in a semi-autonomous social arena where state, customary, and religious norms continually interact. Authority, legitimacy, and discipline flow across these arenas, creating layered and sometimes competing regimes of meaning. Sanctions include not only legal punishments but also moral condemnation and communal remedies, and their accompanying symbols like rituals, documents, public recognition, move between institutions. In this overlapping space, no single system fully dominates: state law seeks administrative certainty, religious law secures doctrinal validity, and custom maintains social cohesion and respect. Boundaries are fluid, resulting in hybrid practices and negotiated outcomes that vary by context, actors, and power relations. Consequently, decisions about marriage and family are shaped by interconnected influences rather than a single hierarchical framework of authority (Moore, 1973; Griffiths, 1986).

Rather than a single hierarchy, interactions occur as processes of interlegality, such as the translation and integration of governments across regimes, which give rise to hybrid marriage norms, including state standardization of community practices and community adaptation to state legal categories (Santos, 1987; Merry, 1988). In the context of the new Criminal Code, "strong pluralism" is evident when the complaint offense triggers negotiations for permission between families, religious/customary leaders, and law enforcement officials, forming a forum-dependent case-handling trajectory (Griffiths, 1986; Bowen, 2003). The analysis also shows the role of citizens' legal awareness in

selecting forums and constructing dual legitimacy, as well as the risk of exclusion for vulnerable groups when mechanisms are co-opted by dominant morality (Merry, 1988; Tamanaha, 2008). Thus, intersystem relations move between co-optation, complementarity, and competition, producing situational configurational certainties and manifestations.

Marriage Regulations in the New Criminal Code

The new Criminal Code includes criminal offenses related to marital relations—adultery, cohabitation, and the denial of household obligations with a complaint offense mechanism by the spouse/nuclear family, marking a criminalization closer to the private sphere (Indonesia, 2023). Systemically, the Criminal Code positions itself as a general law that runs alongside a regime with a special personal status: the Marriage Law and the registration of the regime and the Compilation of Islamic Laws for Muslims; the legal status of marriage and its civil consequences remain referred to family law, not determined by the Criminal Code (Indonesia, 1974/2019; Indonesia, 1991; Bedner & van Huis, 2010).

The principle of protecting the family, children, and the institution of marriage is articulated through couriers to directly affected parties and the aim of preserving the family's covenant and dignity (Indonesia, 2023). However, the design of the complaint offense operates within legal pluralism: it can both strengthen the authority of families/religious leaders and open up opportunities for moral pressure that could potentially marginalize women or unregistered couples, depending on local configurations and access to redressal forums (Bowen, 2003; Nurlaelawati, 2010; Bedner & van Huis, 2010).

Interaction between State Law and Religious Law

According to the Marriage Law, the validity of a marriage is determined “according to the laws of each religion and its beliefs” and is then reinforced by state registration; for Muslims through the Religious Affairs Office (KUA), for non-Muslims through religious officials and the Civil Registration Agency (DUKCAPIL) (Indonesia, 1974/2019; Bedner & van Huis, 2010). Religious institutions act as normative gatekeepers, assessing religious pillars/requirements, providing

guidance, and acting as registrars, while civil registration transforms social status into legal status with civil consequences (Nurlaelawati, 2010; Bedner & van Huis, 2010).

Areas of conflict arise in interfaith marriages, unregistered marriages, age exemptions, and polygamy, which trigger strategies of formal conversion, foreign marriages, or forum shopping between courts and religious authorities (Bowen, 2003; Bedner & van Huis, 2010). The new Criminal Code, through the offenses of adultery and cohabitation, strengthens accounting incentives but also has the potential to criminalize couples who are only legally religious without registration, thus encouraging local hotel patterns or community mediation while asserting the limits of state legality (Indonesia, 2023; Nurlaelawati, 2010).

Interaction between State Law and Customary Law

In many communities, customary marriages are considered valid through ritual performance and recognition by kinship networks, but only generate civil consequences after registration with the state civil registry office. Because of this gap between social legitimacy and legal effect, couples typically follow a dual path: they first hold a customary ceremony to solidify the union before family and community, and then complete the administrative process to formalize their status for rights, obligations, and documentation purposes. This sequence aligns cultural obligations with legal requirements, safeguarding the community's honor while ensuring access to state-recognized benefits such as inheritance, child registration, and dispute resolution channels. Without registration, the union may be locally respected but remains legally vulnerable and without protection (Bedner & van Huis, 2010; Hooker, 1978).

In the new Criminal Code regime, the expansion of moral offenses and the clarification of complaint offenses strengthen incentives for recording, but also have the potential to suppress legally married couples who are not yet registered (Indonesia, 2023). Customary sanctions such as fines, compensation, restoration rituals, or ostracism operate with restorative logic and maintain community honor, while criminal sanctions operate with retributive-deterrant

logic; the two can complement or compete with each other depending on the configuration of local authority (von Benda-Beckmann & von Benda-Beckmann, 2006; Bowen, 2003). Customary institutions play a central role as mediators and determiners of proportional sanctions, striving for family reconciliation and child protection, but state intervention through the Criminal Code can change the authority landscape, encouraging cross-referrals, shopping forums, or ad hoc coordination between village officials, customary leaders, and law enforcement (Bowen, 2003; Indonesia, 2023).

Interaction between Customary Law and Religion

In everyday community practices, customary and religious norms are often intertwined. Customary rituals—such as family meetings, exchanges of goods, and communal feasts—typically accompany the religious pillars of marriage: guardians, witnesses, dowries, and consent. When performed together, these layered ceremonies generate a dual legitimacy, affirming the union before the community and religious authorities. Customary protocols frame social obligations, lineage alliances, and honor, while religious procedures secure doctrinal validity and spiritual recognition. This combined framework fosters shared expectations about rights and responsibilities, facilitates conflict resolution, and places the couple within a web of overlapping accountability. Consequently, marriage is not a single legal act but an interwoven process that synthesizes communal symbolism with normative religious requirements in everyday life (Bowen, 2003; Hooker, 1978).

Harmony occurs when custom is positioned as a complement that strengthens family honor and kinship networks without negating religious requirements (Nurlaelawati, 2010). However, potential tensions arise on issues such as the amount/mode of marriage property (bride vs. dowry), post-marital residence patterns, polygamy, age limits and consent, and interfaith marriage. Here, customary norms can encourage procedural compromise, while religious provisions demand doctrinal compliance (Bowen, 2003; Bedner & van Huis, 2010). Cases of customary marriages that are not immediately registered often place couples in a gray area: socio-religiously legitimate in the community, but

vulnerable to formal legal issues and moral pressure in the event of divorce, triggering customary mediation or referral to religious institutions for reconciliation or confirmation of the validity of the contract (von Benda-Beckmann & von Benda-Beckmann, 2006; Nurlaelawati, 2010).

Conflict of Authority between State, Customary, and Religious Institutions

Conflicts of authority between state, customary, and religious institutions often result in dual or ambiguous status. A marriage considered valid under customary or religious law may be socially recognized by the community, but without state registration, it does not immediately take full civil effect. This ambiguous position impacts concrete rights: claims for maintenance may be more difficult to enforce, pathways to legal divorce may be limited or procedurally burdensome, and proof of spousal or child status can be shaky in administrative and judicial settings. The result is a mismatch between social legitimacy and legal security, forcing couples to navigate multiple forums to stabilize their position. Until state recognition is achieved, protection remains fragile and uneven, leaving families exposed to uncertainty and differential treatment across institutions (Bedner & van Huis, 2010; Indonesia, 1974/2019).

A child's status is impacted when birth registration relies on proof of marriage; local practices often normalize social recognition, while state law demands formal documentation, leading families to undergo marriage confirmation (*isbat/itsbat*) to confirm filiation (Nurlaelawati, 2010; Indonesia, 1991). In inheritance, tensions arise between customary schemes (e.g., lineage and customary property) and religious provisions governing the share of heirs, with the state acting as the affirmer of status evidence and the enforcer of decisions (Hooker, 1978; Bowen, 2003). The new Criminal Code, through its offense of complaint related to morality, adds another layer of normative pressure that may expedite registration but also risks criminalizing unregistered couples, deepening the ambiguity of children's status and inheritance rights if not synergized across institutions (Indonesia, 2023; Bedner & van Huis, 2010).

Critical Analysis of the Strengths of the Criminal Code in Accommodating Pluralism

The new Criminal Code demonstrates an effort to accommodate pluralism through theft in the domestic realm, but this strength is overshadowed by weaknesses: the expansion of the offense of morality has the potential to invite personal status regimes and community practices, create disharmony with the Marriage Law and religious defense, and encourage forum shopping (Indonesia, 2023; Bedner & van Huis, 2010; Griffiths, 1986). Regulatory harmonization is needed to align standards for the validity of relationships, recording mechanisms, and remediation (isbat/itsbat) so that civil consequences and child protection are not dependent on access to a particular forum (Bedner & van Huis, 2010; Tamanaha, 2008). From a human rights and gender justice perspective, the design of the offense of complaint can strengthen the family institution, but also opens up the risk of moral pressure and criminalization targeting women, vulnerable couples, or those who are only legitimate according to custom/religion (Merry, 1988; Nurlaelawati, 2010). Without gender-sensitive and locally pluralistic implementation guidelines, the Criminal Code risks deepening threats and exclusion, rather than providing fair certainty (Indonesia, 2023; Merry, 1988).

CONCLUSIONS AND SUGGESTIONS

The new Criminal Code criminalizes acts related to marital relations, particularly adultery and cohabitation, through a complaint mechanism filed by the spouse or immediate family. The Criminal Code does not determine the validity of a marriage; legal status remains supported by family law (the Marriage Law/KHI) and the State Registry, while criminal norms define the limits of behavior deemed detrimental to the honor and dignity of the family. The relationship between state law and custom and religion is co-existential and negotiative: religion defines harmony and validity, custom provides social legitimacy and restorative sanctions, and state stability results from civil law through registration, while imposing criminal sanctions in the event of violations.

Practically, this regulation encourages improved marriage registration, strengthens the role of families and community leaders in adjudicating complaints, but risks criminalizing couples who are only legally married according to custom or religion, encourages forum shopping, and increases women's vulnerability. Policy implications require harmonization across regulations, gender-sensitive and contextual enforcement guidelines, and easily accessible remediation pathways (isbat/itsbat).

REFERENCES:

Bedner, A., & van Huis, S. (2010). Pluralitas hukum perkawinan dan pendaftaran perkawinan bagi umat Islam di Indonesia: Sebuah permohonan untuk pragmatisme. *Utrecht Law Review*, 6(2), 175–191.

Bowen, JR (2003). Islam, hukum, dan kesetaraan di Indonesia: Antropologi penalaran publik. Cambridge University Press.

Ehrlich, E. (2002). Prinsip-prinsip dasar sosiologi hukum. Penerbit Transaksi.

Griffiths, J. (1986). Apa itu pluralisme hukum? *Jurnal Pluralisme Hukum dan Hukum Tidak Resmi*, 18(24), 1–55.

Hooker, MB (1978). Hukum adat di Indonesia modern. Oxford University Press.

Indonesia. (1974/2019). Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan jo. Undang-Undang Nomor 16 Tahun 2019. Lembaran Negara Republik Indonesia.

Indonesia. (1991). Instruksi Presiden Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam.

Indonesia. (2023). Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Lembaran Negara Republik Indonesia.

Merry, SE (1988). Pluralisme hukum. *Law & Society Review*, 22(5), 869–896.

Moore, SF (1973). Hukum dan perubahan sosial: Bidang sosial semi-otonom sebagai subjek studi yang tepat. *Law & Society Review*, 7(4), 719–746.

Nurlaelawati, E. (2010). Modernisasi, tradisi dan identitas dalam hukum keluarga Islam Indonesia. Amsterdam University Press.

Santos, B. de S. (1987). Hukum: Peta salah tafsir. Menuju konsepsi hukum postmodern. *Jurnal Hukum dan Masyarakat*, 14(3), 279–302.

Tamanaha, BZ (2008). Memahami pluralisme hukum: Dari masa lalu hingga masa kini, dari lokal hingga global. *Sydney Law Review*, 30(3), 375–411.

von Benda-Beckmann, F., & von Benda-Beckmann, K. (2006). Dinamika perubahan dan kontinuitas dalam tatanan hukum plural. *Jurnal Pluralisme Hukum dan Hukum Tidak Resmi*, 38(53–54), 1–44.