

ABSTRAK

Kohabitasi merupakan fenomena hidup bersama layaknya suami istri tanpa ikatan perkawinan yang sah, yang saat ini semakin marak terjadi di Indonesia. Meskipun sebelumnya tidak diatur secara khusus dalam KUHP lama (WvS), kohabitasi kini telah dikriminalisasi melalui Pasal 412 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP Nasional). Pasal 412 ayat (2) KUHP Nasional hanya membatasi subjek pengaduan kepada suami atau istri bagi pelaku yang terikat perkawinan, serta orang tua atau anak bagi pelaku yang tidak terikat perkawinan, sehingga menimbulkan permasalahan hukum mengenai ketepatan perumusan pembatasan subjek delik aduan tersebut.

Penelitian ini menggunakan jenis penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan, serta bahan hukum sekunder berupa doktrin, buku, dan jurnal ilmiah. Pengumpulan bahan hukum dilakukan melalui studi kepustakaan, sedangkan analisis bahan hukum menggunakan metode deskriptif kualitatif.

Hasil penelitian menunjukkan bahwa perumusan Pasal 412 ayat (2) KUHP Nasional sudah tepat, namun perlu disempurnakan dalam hal spesifikasi frasa “orang tua” dalam Pasal 412 ayat (2) *jo.* Pasal 151 KUHP Nasional agar tidak bertentangan dengan asas *lex certa* dan *lex stricta*. Pengkategorian kohabitasi sebagai delik aduan absolut menimbulkan tiga implikasi yuridis, yakni ketidakpastian hukum akibat potensi inkonsistensi penerapan, terbukanya ruang impunitas bagi pelaku, serta diskriminasi terhadap masyarakat yang dirugikan namun tidak memiliki hak pengaduan. Sebagai solusi, penelitian ini merekomendasikan reformulasi berupa pengubahan kohabitasi menjadi delik biasa, perluasan subjek pengaduan, atau penambahan definisi yang jelas terhadap frasa yang multitafsir dalam pasal tersebut.

Kata Kunci: *Kohabitasi, Kumpul Kebo, Delik Aduan, Pasal 412 KUHP Nasional, Subjek Pengaduan.*

ABSTRACT

Cohabitation is a phenomenon in which couples live together as husband and wife without a legally recognized marriage bond, a practice that has become increasingly prevalent in Indonesia. Although it was not previously regulated under the old Criminal Code (Wetboek van Strafrecht/WvS), cohabitation has since been criminalized through Article 412 of Law Number 1 of 2023 on the National Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP Nasional). Article 412 paragraph (2) of the National Criminal Code restricts the subjects entitled to file a complaint to spouses in cases involving parties bound by marriage, and to parents or children in cases involving parties not bound by marriage. This restriction raises legal concerns regarding the appropriateness of the formulation governing the permissible subjects of this complaint-based offense.

This study employs a normative legal research methodology, utilizing a statutory approach and a conceptual approach. The legal materials consist of primary sources in the form of legislation and secondary sources comprising legal doctrines, books, and academic journals, collected through library research and analyzed using a qualitative descriptive method.

The findings indicate that the formulation of Article 412 paragraph (2) of the National Criminal Code is fundamentally sound; however, it requires further refinement with respect to the specification of the phrase "parents" as used in Article 412 paragraph (2) in conjunction with Article 151 of the National Criminal Code, so as to ensure compliance with the principles of *lex certa* and *lex stricta*. The categorization of cohabitation as an absolute complaint offense gives rise to three juridical implications: legal uncertainty stemming from potential inconsistencies in enforcement, the creation of impunity gaps for perpetrators, and discrimination against members of society who suffer harm yet are excluded from the right to file a complaint. As a remedy, this study recommends a reformulation through one of three approaches: reclassifying cohabitation as an ordinary offense (*delik biasa*), broadening the range of eligible complainants, or incorporating an explicit and unambiguous definition of the contested phrase within the provision.

Keywords: *Cohabitation, Complaint Offense, Article 412 of the National Criminal Code, Complaint Subject, Legal Certainty.*