



# The Threat of Punishment Under Article 412 of Law Number 1 of 2023 Concerning the New Criminal Code Against Cohabitants

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**Abstract:** The phenomenon of cohabitation, namely living together as a married couple outside of a formal marriage, is increasingly widespread and has sparked debate from a legal and social perspective in Indonesia. Law Number 1 of 2023 concerning the Criminal Code (KUHPidana), through Article 412, regulates criminal penalties for cohabitants, with the aim of upholding social norms and community morals. This study uses a juridical normative method to analyze the provisions of Article 412, its legal implications, and challenges in law enforcement. The results of the study indicate that the article criminalizes cohabitation with a maximum prison sentence of six months or a fine, but has given rise to multiple interpretations and controversy regarding the definition, reporting, and proportionality of the sentence. Furthermore, the application of this article has the potential to create social stigma and human rights violations, so a balanced approach is needed between enforcing norms and protecting individual rights. The study recommends improving regulations to avoid legal uncertainty and ensure fairness in law enforcement against cohabitation amidst the dynamics of modern Indonesian society.

**Keywords:** Cohabitation, Norms, Individuals, Modern.

## 1. Introduction

Cohabitation, as a form of relationship outside of marriage that takes place together as a married couple (Hamidah & Arifin, 2024), (Sholikah, Hidayati, Parmono, Muhibbin, & Ilmania, 2024), is becoming increasingly prevalent in Indonesian society. This cohabitation phenomenon often sparks debate, both legally and socially. In the context of Indonesian criminal law, the existence of regulations governing cohabitation is crucial for upholding social and moral norms in community life. (Lase, 2025), (RAMADANI, 2025).

Law Number 1 of 2023 concerning the Criminal Code (KUHPidana) which has just come into effect, particularly in Article 412, provides a threat of firm and strong punishment for cohabitants who violate the applicable legal provisions. (Number, 1AD), (Putri & Junaidy, 2025) This article has emphasized that cohabitants can be subject to criminal sanctions in accordance with the provisions that have been regulated, thus giving rise to legal implications that are significant for society and individuals involved in community life. (Al Kautsar & Muhammad, 2022), (Puanandini, Maharani, & Anasela, 2025).

This research is very important to conduct because it is useful for comprehensively understanding the form of the threat of punishment, as well as its impact on cohabitants from the perspective of criminal law in Indonesia. (Lestari, 2016), (Prawira, 2024). Furthermore, this study also aims to assess the relationship and effectiveness of the new regulations in upholding social and moral norms amidst the dynamics of modern society in Indonesia. Thus, this study is expected to provide a clear picture of the legal position on cohabitation within the current framework of Indonesian criminal law. (Wicaksono, 2025), (RAMADANI, 2025).

The criminalization of cohabitation under Article 412 is not merely a legal policy, but also reflects the philosophical foundation of Indonesian law, which is rooted in moral, religious, and social values embodied in Pancasila. Particularly, the first principle

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(Ketuhanan Yang Maha Esa) and the second principle (Kemanusiaan yang Adil dan Beradab) emphasize the importance of moral conduct and social order. From this perspective, marriage is regarded as a legitimate institution that ensures moral integrity, social stability, and legal certainty. Therefore, the prohibition of cohabitation can be understood as an effort by the state to preserve these fundamental values. However, this philosophical justification must also be balanced with the protection of individual rights in a modern legal system.

## 2. Materials and Methods

Cohabitation generally refers to a situation in which two individuals who are not legally married live together in the same residence and engage in a romantic or intimate relationship. The term is often used to describe relationships that occur outside of the legal bonds of marriage, whether by custom, religion, or Indonesian law (Subekti, 2010), (Waluyo, 2020).

The word "cohabitation" comes from the Latin "cohabitation," meaning living together. In Indonesian, this term is defined as living together without the bonds of a legal marriage. In everyday language, this term is often equated with "kumpul kebo," which refers to a couple living together without being officially and legally married (Dewi, 2024), (Ritonga & Mukhsin, 2024).

In general, cohabitation is a situation in which two people in a romantic or sexual relationship live together in one house, without going through a legally or religiously recognized marriage. They live together permanently or long-term and continuously, and this relationship usually involves sexual activity outside of a legally recognized marriage (Tahir, Djun'astuti, & Agus, 2024), (Faoziyah, 2025).

In a legal context, cohabitation can be a complex issue because it relates to social norms, morals, and legal provisions. In Indonesia, particularly within the framework of criminal law and the latest legislation that came into effect on January 2, 2026, cohabitation is regulated by Article 412 of the New Criminal Code, which stipulates that living together as husband and wife outside of marriage is subject to criminal sanctions. However, this definition does not always explicitly mention the term "kumpul kebo," but instead uses the phrase "living together as husband and wife outside of marriage or outside of a legally valid marriage bond in the Republic of Indonesia."

The main difference between cohabitation and legal marriage lies in legal status. A legally married couple has full legal recognition and protection, while a cohabiting couple does not have the same legal status, even though they live as a couple in the same household.

In Indonesian society, cohabitation is often viewed negatively because it goes against moral and religious norms that teach the importance of a formal marriage between husband and wife. Conversely, in some cultures, cohabitation, or premarital relationships, can be seen as part of the process of getting to know your partner before officially marrying.

Broadly speaking, cohabitation is a situation in which two individuals who are not officially married live together as romantic or sexual partners in one residence, without a legal marriage bond recognized by law or religion. This phenomenon has different legal and social implications depending on the cultural context and applicable legal provisions. In Indonesia, the existence of recent regulations confirming that cohabitation can be subject to criminal sanctions, indicating that this relationship remains a controversial issue and it is important to understand it in depth from various aspects, especially the legal aspects (Irawan & Iranti, 2025), (Wibowo & Kom, 2026).

This normative research method is an approach used to analyze and examine applicable legal norms, including legislation, legal doctrine, and relevant legal principles. In the context of research regarding the threat of punishment under Article 412 of Law Number 1 of 2023 concerning the New Criminal Code for cohabitants, the normative method was chosen to gain a deeper understanding of the legal aspects governing cohabitation and its criminal implications in Indonesia.

## 2.1 Research Approach

This normative research employs a normative juridical approach, studying and analyzing primary legal sources, including Law Number 1 of 2023 concerning the New Criminal Code, specifically Article 412, which regulates cohabitation. Furthermore, this research utilizes secondary legal sources such as legal literature, scientific journals, doctrines, and the opinions of legal experts to strengthen the analysis of legal instructions.

## 2.2 Data collection technique

The data used in this study is secondary data obtained from library research. This data includes statutory texts, criminal law books, scientific articles, and other supporting documents relevant to the topic of cohabitation and the penalties imposed under the current New Criminal Code.

## 2.3 Data analysis

Data analysis was conducted qualitatively by describing, interpreting, and evaluating the provisions of Article 412 of the New Criminal Code. The primary focus of this analysis is to understand the formulation of legal norms, the elements of the crime of cohabitation, and its legal consequences. This study also examines potential implementation and law enforcement issues related to the article, including the potential for multiple interpretations and potential socio-legal impacts.

## 2.4 The Purpose of the Normative Method

Through this normative method, the research aims to provide a complete, comprehensive, and systematic overview of the potential penalties stipulated in Article 412 of the New Criminal Code. Furthermore, this method helps identify the strengths and weaknesses of the regulation and provides constructive legal recommendations regarding law enforcement against cohabitants.

This normative research method is very appropriate for use in legal studies that focus on the interpretation and evaluation of applicable laws and legal concepts, so that it is hoped that it can provide a deep and structured understanding of the threat of punishment under Article 412 of the New Criminal Code for cohabitants.

## 3. Results and Discussion

Article 412 of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) prohibits cohabitation, which is living together as husband and wife without a valid marriage bond under Indonesian law. This article explicitly stipulates a maximum prison sentence of six months or a category II fine for those who engage in cohabitation. This provision is a crucial legislative effort to uphold prevailing social and moral norms in Indonesian society, where the majority still upholds marriage as the only form of legally recognized cohabitation.

Article 412 of Law Number 1 of 2023 formulates the prohibition of cohabitation through the phrase "living together as husband and wife outside a lawful marriage." Normatively, this provision contains several essential legal elements: (1) the existence of two individuals, (2) co-residence or living together, and (3) the absence of a legally recognized marriage bond. Additionally, the article establishes that this offense is categorized as a complaint-based crime, meaning that legal action can only be initiated upon a report from specific parties, namely close family members.

Furthermore, Article 412 stipulates that prosecution for the crime of cohabitation can only be carried out upon a complaint from a specific party, namely the parents or children of the cohabitant. This indicates a limitation on the complaint-based offense in this criminal article to prevent abuse of the law and protect individual privacy. However, in practice, this provision has generated controversy and multiple interpretations regarding who has the right to report and how the law is enforced.

The threat of punishment in Article 412 of the New Criminal Code raises various complex yet real legal and social implications. Legally, this article criminalizes cohabita-

tion, which has traditionally been viewed as a social or moral issue, rather than a general crime. This raises questions about the proportionality of punishment and the relevance of criminal law as a means of social control in the context of cohabitation in Indonesia.

From a law enforcement perspective, there are challenges in implementing Article 412, particularly regarding the definition of cohabitation, which can lead to multiple legal interpretations. For example, there is a distinction between couples who truly live together without being married and couples who are married according to religious principles (nikah siri) but are not legally registered in Indonesia. Judges in court are faced with the dilemma of assessing whether a relationship constitutes unlawful cohabitation or a siri marriage with religious recognition, necessitating careful and thorough verification in the Indonesian judicial process. (Solikhah, 2025), (Anggraeni & Ravena, 2026).

Furthermore, the threat of criminal penalties for cohabitation has the potential to create social stigma and psychological burdens for perpetrators, which in some cases can lead to human rights violations, particularly the rights to privacy and personal or individual liberty. Therefore, enforcement of Article 412 must consider the principles of justice, proportionality, and the protection of human rights in general and specifically.

From a social perspective, the criminalization of cohabitation can trigger negative reactions in society, including the potential for discrimination and social conflict. Some argue that criminal law is not the appropriate instrument to regulate private and social issues such as cohabitation, although many agree with this. Conversely, non-criminal approaches or social education are considered more effective in addressing this phenomenon, even though they clearly contradict Indonesian criminal law. (Candra & Dinata, 2025).

Ultimately, this review of Article 412 demonstrates the need for regulatory review and refinement to prevent multiple interpretations and legal uncertainty in Indonesia. This could include providing a clearer definition of cohabitation, clarifying who has the right to file a complaint, and establishing a fair and balanced law enforcement mechanism. Furthermore, a memorandum of understanding (MoU) among law enforcement officials is needed to prevent abuse and ensure the comprehensive protection of the rights of cohabitants.

The application of criminal sanctions under Article 412 must be assessed in light of the principle of proportionality, which requires that punishment be balanced with the nature and severity of the offense. In this context, the imposition of imprisonment or fines for cohabitation raises questions regarding whether such sanctions are proportionate to the harm caused, considering that cohabitation primarily occurs within the private sphere and involves consenting adults.

#### 4. Conclusions

In conclusion, the threat of punishment under Article 412 of the New Criminal Code for cohabitants represents the state's effort to maintain social and moral norms. However, its implementation requires caution to avoid general and concrete injustice and human rights violations. The legal approach must strike a balance between enforcing norms and protecting individual rights in an increasingly dynamic and pluralistic society, and the law must adapt to this phenomenon.

The regulation of cohabitation under Article 412 of Law Number 1 of 2023 reflects a significant shift in Indonesian criminal law, particularly in expanding the scope of criminalization into the domain of private life. This development indicates a stronger orientation of criminal law toward the enforcement of moral and social norms. However, it also raises critical implications for the future of criminal law, including the risk of over-criminalization, legal uncertainty due to vague norms, and potential conflicts with fundamental human rights, especially the right to privacy and personal autonomy.

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