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## The Cohabitation Snare of the Criminal Code Law: Legal Culture Perspective of Individualism and Social Mechanic Solidarity in Legal Sociology

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**Abstract:** This research aims to analyze the emergence of the cohabitation article from the perspective of legal sociology. The research method used is an empirical juridical type. The data used are primary and secondary data. Data collection techniques were carried out by interviewing 3 (three) respondents from teenagers and parents, as well as library study techniques from relevant books and journals. Data processing is presented using qualitative descriptive techniques. The research results show that the cohabitation article was born from the legal culture of modern social values, one of which is individualism embraced by society, so this encourages the legal behavior of law makers to make legal changes by criminalizing cohabitation. From Durkheim's theory of mechanical solidarity, cohabitation becomes criminalization because there are groups of people who have collective similarities who feel that cohabitation is important to be criminalized.

**Keyword:** Cohabitation, Legal Culture, Theory of Social Solidarity.

### INTRODUCTION

Legal sociology is a field of study in legal science which has the task of photographing phenomena that occur in society (Narwoko, 2007). In scientific concepts, legal sociology can be categorized as "nomology" or a science that studies law in real conditions or in other words sees law as "law as it is". In relation to legal sociology which photographs a phenomenon and studies why the structure of society causes legal behavior and makes legal changes, one of which can be seen from the birth of the article regarding cohabitation which is regulated in Article 412 paragraphs (1) and (2) of Law Number 1 of 2023 regarding the Criminal Code. The birth of the "cohabitation" article, when viewed from a legal sociology perspective, is the legal behavior of legislators as law makers which is influenced by community behavior or the structure of society from a social perspective. The social side in question is that cohabitation behavior in Indonesia is currently increasing among society, especially young people. Of course, such practices are considered to violate social and religious norms in society (Emile Durkheim, 2003). This statement is supported by a 2021 study entitled "The Untold Story of Cohabitation" where this study reveals that cohabitation behavior occurs more frequently in

Eastern Indonesia. Based on research from BRIN (National Research and Innovation Agency) researchers, it is stated that in Manado City, 0.6% of the population chooses to live together without being legally married, as many as 1.9% of cohabiting couples are pregnant, then 24.3% are under 30 years old (Effran, 2024). In addition, a survey by the Center for Women's Studies at the Indonesian Islamic University, Yogyakarta in 2001 stated that the lifestyle of free sex among teenagers in general and in boarding houses was developing seriously due to the loose control they received (Sulistiyono, 2018). Based on the increase in the occurrence of the cohabitation phenomenon, where the structure of social society is influenced by promiscuous sexual lifestyles and loose regulations, this kind of phenomenon causes the legal behavior of legislators to issue cohabitation regulations which are included in the Criminal Code Law. With this criminalization of cohabitation, in the perspective of legal sociology it is considered to have become a "legal change".

Then, the question that arises is whether this article on cohabitation was born because the structure of social society was influenced by the legal culture of modern social values, one of which is individualism? (Peter Beilharz, 2015). It is said that currently globalization and modernization have significantly influenced people's life patterns, one of which is the value of individualism. The value of individualism is considered to be increasingly dominating and tends to see personal freedom as a principle of life and is starting to replace collective values (Arif, 2023) which used to be the basis of social life (Muhammad Surya Bimantoro et al., 2024). As a result of this value of individualism, society becomes more flexible and open to change (Islam et al., 2023).

Apart from the fact that the structure of society is influenced by modern social values, changes in the law criminalizing cohabitation can be highlighted from the perspective of Emile Durkheim's theory of mechanical social solidarity (Lukes S, 1978). According to Durkheim, mechanical solidarity is born from the existence of a shared collective consciousness which focuses on the totality of shared beliefs and sentiments that exist in society (Ibn Jamil, 2016). This theory emphasizes the collective consciousness of people who have the same work or experience where many norms are shared together (Emile Durkheim, 1989). The use of this theory will be relevant to the discussion of why cohabitation is criminalized in the Criminal Code Law. So, based on the introductory description, this paper aims to analyze the emergence of the cohabitation article in the Criminal Code Law from the legal culture perspective of modern social values of individualism and from the perspective of the theory of mechanical social solidarity.

The problem formulation contains article questions that must be explained in the discussion and answered in the conclusion.

## **METHOD**

This research uses empirical juridical research methods. The nature of the research in this paper is descriptive qualitative where this research will provide an overview of why cohabitation articles can be born from the perspective of legal sociology. The data used is primary data which is obtained from the first source (Amiruddin and H. Zainal Asikin, 2016) and secondary data obtained from books, journals and scientific writings that are relevant to the research. Data collection techniques were carried out using interviews and also literature study. The sampling technique in the research uses nonprobability sampling which means there is no definite provision on how many samples must be taken in order to represent the population (Bambang Waluyo, 2008). In this study, the sample chosen by the author was 3 (three) people, consisting of 2 (two) people in the teenage/adult category, and 1 (one) person from the parent. All respondents interviewed were people who lived in Yogyakarta. After the data is collected, the analysis tool used for data processing and analysis is qualitative descriptive analysis where the

data is presented not in the form of numbers but in structured and systematic words (Amiruddin, 2016).

## RESULTS AND DISCUSSION

The birth of the cohabitation trap in Law Number 1 of 2023 concerning the Criminal Code (UU KUHP) has caused various polemics in society. When viewed from the perspective of legal sociology (Sigit Jatmiko, 2003), the legislators decided to criminalize cohabitation because it is influenced by the behavior or structure of social society, the structure of society is influenced by the legal culture of modern social values, one of which is individualism. This statement is the author's hypothesis, where this hypothesis is a factual proposition that is often found in the reality of society, namely, if there are no rules in society regarding cohabitation, then society will flexibly or openly cultivate cohabitation behavior, where this behavior is considered normal even though it violates the norms morality and religion (Kamiruddin, 2011). Or, if these regulations regarding cohabitation are not issued, then local residents who see a couple cohabiting or anyone who doesn't like it, will arbitrarily carry out "raids" which will violate someone's privacy rights. For this reason, the behavior of this societal structure encourages legislators to criminalize cohabitation so that this criminalization becomes a legal change. The statement from the former Director General of Human Rights, Dhahana Putra, was accessed from the Public Relations website of the Ministry of Law and Human Rights (Kemenkumham Jabar, 2024) stated that regulations related to cohabitation are important because the state has an obligation to maintain a balance between respecting human rights, namely the realm of a person's privacy and upholding the social norms that exist in society. Respecting human rights means respecting someone's privacy, so that with the regulation of this cohabitation article, not just anyone can carry out raids on cohabiting couples. This is because cohabitation is a limited complaint offense where only the husband, wife, parents or children of the related party can report the act of cohabitation. Apart from these parties, other parties who report will not be legally processed. Thus, it is clear that with the birth of this cohabitation article, there will no longer be any local residents or polices who will freely carry out raids on couples who are cohabiting.

The author's hypothesis and proposition are then supported by the respondents' answers where the question asked to them related to the legal culture of modern social values of individualism is whether cohabitation behavior is born because there are no rules governing society, thus giving birth to a legal culture of modern social values of individualism which makes them behave freely and open to a relationship without legal marital status ?

The answers from the three respondents are presented below:

Respondent 1 (teenager): "In my opinion, that's right, because there are no rules, people are free to do whatever they want, besides, it's actually a realm of privacy and the state shouldn't need to regulate it to that extent."

Respondent 2 (teenager): "In my opinion, cohabitation can become a culture of individualism because now it's not just because there are no rules, but indeed our Indonesian culture has been influenced by western culture which tends to be free."

Respondent 3 (parent): "In my opinion, cohabitation was influenced by western culture, I agree that living together is due to individualism culture. But actually it is also influenced because there is no punishment so people do it as they please. In the "LV" boarding house, the boarding house owner also allows it, so many teenagers decide live together."

From the interview answers above, the author's hypotheses and propositions were confirmed by all respondents. If the proposition which is a statement between influential and affected variables is supported by facts and data, it will become a theory in this research. The influencing variable is the individual legal culture of society that causes cohabitation behavior, while the affected variable is the legal behavior of the legislators who criminalize cohabitation. It can be

said that all respondents agree that cohabitation in the Criminal Code Law exists because the structure of society is influenced by the culture of modern social values of individualism which then encourages the legal behavior of law makers to criminalize cohabitation and leads to the birth of a legal change in society.

Because it is an individualistic legal culture, the next question is whether cohabitation is part of mechanical solidarity, giving birth to repressive laws? (Ibnu Jamil, 2016). So, to answer this question, the author asked respondents a question, namely: If you or your family or closest relatives are perpetrators of cohabitation, do you agree that in the end the law makers will make this behavior into a behavior that is subject to criminal penalties?

The respondents' answers are as follows:

Respondent 1 (teenager): "In my opinion, cohabitation is not the state's affair, well the state should not go too far in taking care of someone's privacy. But then again, as far as I know, in the past there were a lot of people who were did cohabitation and were being raided by local residents, and then there were those who were attacked when there were also those who were forced to get married. If it's like this, people will be arbitrary. So yes, the most appropriate thing to overcome this is to make regulations regarding cohabitation. With this regulation, local residents can no longer just randomly raid invitations because what I read about cohabitation is that only the family concerned can report it to the police".

Respondent 2 (teenager): "I watched TV shows where the police often raided couples who were not legally married. Suddenly there was a bang on the door and the couple's ID cards or cellphones were immediately checked. In my opinion, that's really unethical because it's someone's privacy. Then they raided without an assignment letter, that's what I watched on TV. So, in my opinion, even though cohabitation violates social norms, the authorities should not be able to arbitrarily carry out raids, and neither should the surrounding community. That's why I actually agree that cohabitation is regulated by the government because only the closest family can report it. It's true, in my opinion, that's the rule, because it's a matter of privacy, so only their families should be able to report those who feel aggrieved."

Respondent 3 (parent): "From my point of view, I actually agree that living together should be punished with imprisonment later. As parents, many must be worried about their children, especially those whose children live away from home, of course parents are worried about their children having free sex. So, if it is regulated with articles and punishments like this, they will also be afraid to do that."

Based on the respondents' statements above, it can be analyzed through Durkheim's mechanical social solidarity theory (Emile Durkheim, 2003). Durkheim's mechanical social theory (George Ritzer, 2007) likening it to a machine where if one person from a group is hurt then the whole group feels hurt (Emile Durkheim, 1895). From the statements of the respondents above, it is clear that they have the same characteristics because they both feel that it is appropriate for cohabitation to be criminalized on the grounds that they do not want the perpetrators of this cohabitation to experience inappropriate behavior from local residents or authorities who suddenly carried out the raid, the reason why respondent 3 agreed that cohabitation would be criminalized was because she felt that this regulation made parents feel safer letting their children go abroad or live in a boarding house because the existence of this cohabitation article would at least make their children afraid to do this. At the core of the theory of mechanical solidarity is that society is united because it feels like everyone in the surrounding environment is the same. Then, what binds these people is because they are involved in activities that are almost the same as each other. Just like this theory, the respondents above are examples of people who are united in supporting the criminalization of cohabitation articles for the reason that cohabitation is a person's private domain where citizens or officials do not have the right to carry out raids or other arbitrary actions, and also for the reason that this cohabitation will become a rule that will act as a shield to make parents calm because they are afraid that their

children will engage in cohabitation behavior. Because of this mechanical solidarity, it encourages the legal behavior of legislators to introduce legal changes where cohabitation is criminalized and gives birth to laws that are repressive and have a deterrent effect (Emile Durkheim, 1989). The deterrent in question will mediate between human rights and moral norms in society (Bella, 1973). The meaning is, this article comes by providing human rights guarantees to the perpetrators in the form of limited complaint offenses, so that a person's privacy rights are not interfered with by authorities or local residents who do not have close relationships with the perpetrators, so that there will be no more raids or arbitrary actions carelessly, but the perpetrator's rights are still protected. This article is also a light of hope for people who complain about cohabitants who violate moral and religious norms (Daniel L, 1996), because this article will at least somewhat scare potential perpetrators into carrying out this action.

## CONCLUSION

The emergence of the cohabitation article in the Criminal Code Law which constitutes criminalization, when viewed from the perspective of legal sociology, can be said to be due to the existence of a legal culture of modern social values, one of which is individualism. This can be seen from the behavior of many people who legalize cohabitation because of the flexible and open lifestyle like western culture. The social lifestyle and structure of society is such that the legal behavior of law makers is encouraged to make legal changes, namely criminalizing cohabitation. Then, if analyzed based on Durkheim's theory of mechanical social solidarity, the phenomenon of criminalization of cohabitation is influenced by the existence of groups of people who feel that cohabitation needs to be criminalized. They are united because they feel that cohabitation is a private domain that cannot simply be raided by the authorities or local residents who impose punishments, but because it is a private domain, only the family concerned has the right to report it. Parents and the community also want this cohabitation article to be criminalized because it is considered to violate moral and religious norms, so that by regulating this article they feel safer because it is possible for perpetrators to be afraid to do it because there is a threat of crime..

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