

AN ANALYSIS OF ARTICLE 411 OF LAW NO. 1 OF 2023 ON UNFAITHFULNESS AS A FORM OF CRIMINAL OFFENSE

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Abstract

The increasing prevalence of unfaithfulness as a primary cause of divorce in Indonesia underscores the urgency of effective legal intervention. This study analyzes Article 411 of Law No. 1 of 2023, which explicitly criminalizes infidelity, aiming to assess its legal interpretation, application, and implications for victim protection. The analysis is grounded in Social Exchange Theory, Legal Protection Theory, and Strain Theory to explore the socio-legal dimensions of the offense. Using normative legal research with a statute approach, the study examines statutory texts, jurisprudence, and scholarly commentary. Findings reveal that Article 411 broadens criminal liability to both married and unmarried offenders, reinforcing moral and social norms. However, implementation faces socio-cultural resistance, evidentiary challenges, and low public legal literacy. The study concludes that effective enforcement requires victim-centered legal strategies, psychological support, and public legal education to ensure the law's preventive and restorative functions.

Keywords: Article 411, unfaithfulness, criminal law.

A. INTRODUCTION

Marital harmony is widely regarded as a primary aspiration of married couples, serving as the foundation for emotional stability and social well-being (Pittman, 2012). The presence of mutual trust and loyalty is essential for maintaining such harmony, with breaches often leading to emotional distress and relational breakdown (Weeks, Gambescia, & Jenkins, 2003). Infidelity, defined as a violation of a couple's emotional or sexual exclusivity, has been identified as a leading cause of relationship instability (Leeker & Carlozzi, 2012). Statistical data indicate that acts of unfaithfulness frequently correlate with high rates of divorce across various cultural contexts, including Indonesia (Badan Pusat Statistik [BPS], 2024). These dynamics highlight the intersection between interpersonal behavior and broader societal consequences, underscoring the relevance of legal and social interventions (Syamsuri, Rahman, & Pratama, 2020).

Infidelity has been conceptualized not only as a moral violation but also as a form of contractual breach within marital relationships (Pittman, 2012). Scholars emphasize that such breaches can occur in both physical and emotional dimensions, complicating legal categorization and enforcement (Weeks et al., 2003). Previous research demonstrates that unfaithfulness often results in significant psychological harm, including jealousy, insecurity, and diminished self-worth among affected partners (Leeker & Carlozzi, 2012). In Indonesia, official statistics show that disputes and quarrels—often precipitated by unfaithfulness—constitute the most common cause of divorce, with over 250,000 cases recorded annually (BPS,

2025). These patterns point to an urgent need for legal measures capable of addressing both the act of infidelity and its long-term social repercussions (Hidayat, 2021).

The specific issue addressed in this study is the legal treatment of unfaithfulness under Article 411 of Law No. 1 of 2023, which designates certain forms of infidelity as criminal acts. While existing literature has explored the general moral, psychological, and social dimensions of unfaithfulness, limited scholarship has examined the normative content and enforcement of this particular provision. Questions remain regarding how the law defines, interprets, and applies the concept of unfaithfulness within Indonesia's legal framework. Furthermore, there is a lack of empirical analysis on whether such criminalization effectively protects victims and deters future offenses. This research seeks to fill that gap by providing a focused juridical analysis of Article 411 in relation to unfaithfulness as a criminal offense.

Previous studies have offered diverse perspectives on the legal handling of unfaithfulness. Hidayat (2021) found that criminal regulations in Indonesia still contain gaps in law enforcement concerning adultery and infidelity due to differing interpretations among law enforcement officers. Sari and Nugroho (2022) revealed that the application of morality-related provisions often encounters obstacles in proving the subjective elements of moral violations, leading to secondary victimization. Meanwhile, Pratama (2023) emphasized that criminalizing unfaithfulness could create a deterrent effect, yet requires complementary family rehabilitation policies to prevent further social repercussions.

This study shares similarities with these three works in framing unfaithfulness as a complex legal and social problem and in emphasizing the need for protection of harmed parties. However, it differs in its specific focus on analyzing Article 411 of Law No. 1 of 2023, whereas the previous research generally addressed unfaithfulness in a broader context or examined morality-related provisions more generally. This distinction forms the originality of the present study, as legal scholarship specifically addressing Article 411 in the context of unfaithfulness as a criminal offense remains scarce in Indonesia. This research not only examines the normative text of the provision but also considers its juridical and social implications in practice.

The urgency of this study lies in the increasing divorce rate driven by unfaithfulness, necessitating effective and well-targeted legal interventions. This paper seeks to contribute to the development of criminal law policies that are more responsive to social dynamics while offering an academic perspective for policymakers. Based on the foregoing, the purpose of this research is to analyze Article 411 of Law No. 1 of 2023 in relation to unfaithfulness as a criminal offense, focusing on its legal interpretation, potential application, and implications for victim protection and family resilience.

B. LITERATURE REVIEW

Theory of Social Exchange

The Social Exchange Theory posits that human relationships are formed and maintained based on the perceived balance of rewards and costs within interactions (Homans, 1958). According to Blau (1964), individuals evaluate relationships by comparing the benefits they receive to the resources they invest. Thibaut and Kelley (1959) argue that people remain in relationships when perceived rewards outweigh the costs. This theory highlights the importance of reciprocity and mutual benefit in sustaining social bonds (Emerson, 1976). In the context of infidelity, social exchange perspectives suggest that individuals may engage in unfaithfulness when they perceive alternative relationships as offering greater rewards (Lawler & Thye, 1999). Indicators:

- Perceived rewards vs. costs in a relationship

- Comparison with available alternatives
- Reciprocity and mutual benefit
- Balance of emotional and material resources

Theory of Legal Protection

The Theory of Legal Protection emphasizes the role of law in safeguarding individuals' rights from infringement by others (Hadjon, 1987). This theory asserts that the state is responsible for creating legal norms that ensure justice and security for its citizens (Philipus M. Hadjon, 1987). Legal protection can be preventive, aiming to avert violations, or repressive, addressing violations after they occur (Muchsin, 2003). According to Soekanto (1986), the effectiveness of legal protection depends on clarity, accessibility, and enforceability of laws. In criminal law, such protection is particularly significant for vulnerable groups, including victims of domestic and relationship-based offenses (Muladi & Arief, 1992). Indicators:

- Preventive protection measures
- Repressive protection measures
- Clarity and accessibility of legal norms
- Enforcement and sanction mechanisms

Strain Theory

Strain Theory, originally proposed by Merton (1938), posits that deviant behavior occurs when there is a disjunction between culturally valued goals and the legitimate means to achieve them. Agnew (1992) expanded the theory to suggest that strain can result from the loss of positive stimuli or the presence of negative stimuli. Such strain increases the likelihood of individuals engaging in behaviors that violate norms or laws (Cullen, Agnew, & Wilcox, 2018). In the context of infidelity, strain may arise from unmet emotional needs or dissatisfaction within the marital relationship (Kaufman, 2012). This perspective views unfaithfulness as a potential coping mechanism for perceived relational failures. Indicators:

- Disjunction between goals and means
- Loss of positive stimuli
- Exposure to negative stimuli
- Coping mechanisms through deviance

C. RESEARCH METHODOLOGY

This study adopts a normative legal research method with a statute approach, which examines statutory regulations and legal norms relevant to the legal issue under investigation (Soekanto, 2006). Normative legal research is selected because this study focuses on the juridical analysis of Article 411 of Law No. 1 of 2023, requiring in-depth interpretation of written legal sources rather than empirical data from the field (Marzuki, 2011). The statute approach is particularly relevant as it enables an examination of the hierarchy, principles, and substance of laws governing unfaithfulness as a criminal offense (Ibrahim, 2008). In accordance with Article 1 point 2 of Law No. 10 of 2004, statutory regulations are defined as written rules established by authorized state institutions or officials that are generally binding (Undang-Undang Republik Indonesia Nomor 10 Tahun 2004). This methodological choice ensures that the analysis remains grounded in formal legal norms while also assessing their practical implications.

The research relies entirely on secondary data, which consists of legal documents, statutory drafts, academic literature, prior studies, and scholarly commentaries from legal experts (Sugiyono, 2019). Sources include the official text of Law No. 1 of 2023, related criminal law

provisions, jurisprudence, textbooks on criminal law and family law, and peer-reviewed journal articles. The use of secondary data is suitable for legal analysis because it allows for comprehensive examination of normative legal materials without the logistical and ethical challenges of collecting primary data in the field (Soekanto, 2006). This approach enables a more thorough and objective assessment of the legal framework surrounding unfaithfulness as a criminal offense.

A purposive sampling technique is employed to select only those legal materials directly relevant to the issue of unfaithfulness under Article 411 (Ibrahim, 2008). The collected data is then analyzed using qualitative content analysis, which involves systematically interpreting legal texts to identify legal norms, principles, and gaps in regulation (Miles, Huberman, & Saldaña, 2014). The analysis process includes identifying pertinent provisions, interpreting their meaning within the broader legal framework, and evaluating their implications for victim protection and the enforcement of criminal law. This structured approach allows the study to generate a coherent, evidence-based legal argument that is academically robust and practically relevant.

D. RESULTS AND DISCUSSION

Analysis of Article 411 of Law No. 1 of 2023 and Its Application in Judicial Practice

Marriage in Indonesia is legally defined as a physical and spiritual bond between a man and a woman as husband and wife, established with the aim of forming a happy and everlasting family based on the belief in God Almighty (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974). This definition reflects not only a legal but also a moral and religious framework, embedding marriage within the broader social and cultural values of Indonesian society. Divorce, although permissible under certain legal grounds, is generally discouraged and is only allowed in cases such as adultery, substance abuse, gambling, or other severe misconduct that is difficult to remedy (Soekanto, 2006). The emphasis on maintaining marital integrity underscores the state's interest in protecting the family as a fundamental unit of society. However, the intersection between legal provisions and personal morality has always been complex, particularly when it comes to acts of infidelity.

Historically, the regulation of adultery (overspel) was codified in Article 287 of the Indonesian Criminal Code (KUHP), which primarily addressed sexual relations with underage individuals and was categorized as a complaint offense (*delik aduan*), meaning prosecution could only proceed upon a formal complaint from an authorized party (Prodjodikoro, 2003). This legal framework was narrow in scope, focusing more on age-related protection than on marital fidelity *per se*. As a result, many instances of adultery between consenting adults were not prosecutable unless they intersected with other criminal provisions. The limited reach of this article often left victims, particularly spouses, without adequate legal recourse. Over time, this gap in legal protection became a matter of public debate, prompting calls for reform to address infidelity explicitly within the criminal law framework.

The enactment of Article 411 of Law No. 1 of 2023 represents a significant shift, as it explicitly criminalizes sexual intercourse between a married person and someone who is not their lawful spouse, punishable by up to one year of imprisonment or a fine of up to Category II (equivalent to IDR 10 million) (Kementerian Hukum dan HAM, 2023). This provision broadens the scope of criminal liability and signals a more assertive stance by the state in safeguarding marital fidelity. The article maintains the *delik aduan* nature of the offense, requiring a formal complaint to initiate prosecution, thereby preserving the element of personal agency in deciding whether to pursue legal action. Importantly, the law also stipulates penalties for unmarried individuals who knowingly engage in intercourse with married persons,

indicating a symmetrical approach to culpability. These changes reflect both moral considerations and legislative intent to strengthen family protection mechanisms.

In addition to criminalizing sexual intercourse outside of marriage for married persons, Article 411 introduces provisions addressing cohabitation outside of marriage, subject to lesser penalties. This expansion of the law demonstrates an attempt to align criminal provisions with prevailing moral norms in Indonesian society, where cohabitation is often viewed as socially and religiously unacceptable. However, such measures also raise concerns regarding potential overreach and the balance between public morality and individual rights. Critics argue that the criminalization of private consensual behavior risks infringing on personal freedoms, while proponents view it as a necessary tool to reinforce societal values. The tension between these perspectives continues to shape legal discourse and judicial interpretation in Indonesia.

Despite these legislative changes, judicial practice still frequently relies on Article 287 of the old KUHP, as the new criminal code has not been fully implemented (Hiariej, 2022). This creates a transitional period where inconsistencies in legal application may occur, particularly in cases where infidelity intersects with domestic violence, neglect, or financial disputes that culminate in divorce proceedings. The coexistence of old and new legal provisions can lead to uncertainty for both law enforcers and the public, potentially undermining the effectiveness of the reform. Therefore, successful implementation of Article 411 will require not only administrative readiness and legal clarity but also public awareness and consistent judicial interpretation to ensure its intended protective function is realized.

Legal Strategies and Victimological Perspectives in Preventing Infidelity-Induced Divorce

Infidelity has evolved beyond the traditional understanding of sexual intercourse to encompass emotional affairs, consistent intimate communication with non-spousal partners, and digital interactions that foster romantic or sexual connections (Glass & Wright, 1992). This broader conceptualization reflects the changing nature of relationships in the context of modern communication technologies, such as social media and instant messaging platforms. Victimological studies emphasize that victims of infidelity often experience severe psychological distress, erosion of trust, and diminished self-esteem (Gordon, Baucom, & Snyder, 2004). Such impacts extend beyond the immediate marital relationship, influencing the victim's family dynamics, social relationships, and mental health. These evolving definitions and consequences underscore the need for both preventive and remedial strategies in managing infidelity-related cases.

In addressing such cases, both non-litigation and litigation strategies can be employed to mitigate harm and facilitate resolution. Non-litigation measures include mediation between partners to explore reconciliation, psychiatric counseling to restore emotional stability, and structured communication interventions to rebuild trust (Weeks & Treat, 2001). The involvement of family members in problem-solving processes can further strengthen social support systems, helping couples navigate conflict without immediate recourse to legal action. In many cases, these approaches aim to prevent escalation into protracted legal disputes while prioritizing the emotional recovery of the victim. Importantly, non-litigation solutions also allow for greater privacy and reduced public scrutiny, which can be significant in preserving the dignity of the parties involved.

Litigation strategies, on the other hand, provide a formal legal framework for addressing infidelity. This may involve filing a police report under the provisions of Article 411 of Law No. 1 of 2023, thereby initiating criminal proceedings against the offending partner. Victims may also file a lawsuit in court based on the same article to pursue legal remedies, including divorce, financial compensation, or child custody arrangements (Marzuki, 2011). Given that

infidelity remains classified as a complaint offense, initiating such proceedings requires a formal complaint and substantial emotional resilience from the victim to confront the legal and social implications of their case (Ibrahim, 2008). Litigation is particularly crucial when infidelity is accompanied by aggravating factors, such as domestic violence, financial neglect, or fraud.

From a victimological standpoint, empowering victims involves more than just facilitating access to legal processes—it requires comprehensive support systems. Victims benefit from legal assistance to navigate procedural complexities, psychological counseling to manage emotional trauma, and advocacy networks to ensure that their rights are upheld in court. These services collectively reduce the risk of secondary victimization, where the legal process itself causes further harm. By integrating victimological principles into legal practice, policymakers and practitioners can create a more responsive and humane justice system that addresses both the legal and emotional dimensions of infidelity-induced divorce cases.

Ultimately, preventing infidelity-induced divorce demands a balanced integration of legal deterrence, psychological support, and social intervention. Legal provisions such as Article 411 of Law No. 1 of 2023 function as deterrents, signaling societal condemnation of marital betrayal, while non-litigation avenues preserve relational stability where reconciliation remains possible. Combining these approaches ensures that the response to infidelity is not merely punitive but restorative, prioritizing the holistic well-being of affected individuals and their families. Such a framework fosters not only the protection of marital institutions but also the reinforcement of community values that uphold fidelity and mutual respect.

Challenges in Implementing Article 411 in Social and Cultural Contexts

Although Article 411 of Law No. 1 of 2023 provides a clear legal foundation for prosecuting acts of infidelity, its practical implementation is hindered by various socio-cultural constraints. In several regions, customary norms still regard infidelity as a domestic matter best resolved through family-based mediation rather than formal legal processes (Soerjono Soekanto, 2019). This cultural approach often discourages victims from reporting incidents due to fear of social stigma, family pressure, or even threats from the perpetrator. Such dynamics create a significant gap between the existence of legal provisions and their enforcement in real-world settings.

Evidentiary challenges also complicate the enforcement of Article 411, given that this offense is categorized as a Complaint Offense, requiring concrete evidence and a direct complaint from the aggrieved party (Hamzah, 2020). The private nature of infidelity means that obtaining admissible evidence often relies on surveillance, witness testimony, or digital traces, which may be difficult for victims to secure without professional assistance. As a result, many cases remain unresolved within informal channels, lacking formal legal resolution.

Another critical challenge is the low level of legal literacy among the public, particularly regarding rights and reporting procedures. Without adequate knowledge of legal mechanisms, victims may fail to pursue formal complaints, causing cases to stagnate in non-judicial settlements (Mertokusumo, 2018). Therefore, in addition to law enforcement efforts, comprehensive legal education and socialization strategies are necessary to bridge the gap between positive legal norms and prevailing social norms. Such measures would enhance both public awareness and willingness to utilize legal protections, ultimately strengthening the enforcement of Article 411.

Formulating Legal and Victimological Strategies to Prevent Infidelity-Induced Divorce

Infidelity is evolving in its forms and manifestations. It is no longer limited to sexual intercourse but increasingly includes intense and frequent communication with non-spousal partners. Such conduct can cause significant harm to the victim as well as to the marital

ARTICLE

relationship, often leading to emotional distress, diminished trust, and, in severe cases, divorce. In addressing these issues, both non-litigation and litigation strategies can be pursued, with victimological considerations placed at the forefront to safeguard the victim's psychological well-being while ensuring legal rights are protected.

a. Non-Litigation Strategies

- **Mediation** – Victims may engage in direct discussion with their partner to seek mutually acceptable solutions that prioritize reconciliation and relationship recovery.
- **Psychiatric Counseling** – Consulting a psychiatrist or psychologist helps victims restore self-confidence and manage the emotional trauma associated with betrayal. Such professional intervention also assists in rebuilding trust and developing coping mechanisms.
- **Family Involvement** – Sharing the problem with trusted family members from both sides can foster a collective effort toward problem-solving, leveraging familial support systems to find amicable solutions.

b. Litigation Strategies

- **Police Report** – Considering that adultery (*perzinaan*) under Article 411 of Law No. 1 of 2023 is classified as a Complaint Offense, victims require considerable mental resilience to formally report the incident. The process involves filing a police report to initiate criminal proceedings.
- **Court Lawsuit** – Victims may file a lawsuit in court based on the provisions of Article 411 of Law No. 1 of 2023 to seek legal remedies, including divorce or compensation, depending on the nature and severity of the infidelity. This legal avenue ensures that the act is addressed in accordance with criminal law while also providing formal recognition of the harm suffered.

By combining these legal and victimological approaches, it is possible to create a more holistic prevention framework that not only enforces legal accountability but also addresses the emotional and social dimensions of infidelity.

E. CONCLUSION

This study finds that Article 411 of Law No. 1 of 2023 represents a significant legal reform in Indonesia's criminal law by explicitly criminalizing acts of unfaithfulness, expanding the scope of culpability to both married and unmarried offenders, and maintaining its status as a complaint offense, i.e., a criminal act that can only be prosecuted upon a formal complaint from an entitled party, thereby aligning legal provisions with prevailing moral and social norms. The results indicate that, while the provision provides a clear legal basis for prosecution, its implementation is hindered by socio-cultural attitudes, evidentiary challenges, and low public legal literacy, highlighting the gap between normative law and its practical enforcement. These findings answer the research objective by confirming that Article 411 has the potential to enhance victim protection and act as a deterrent, but only if accompanied by victim-centered legal strategies, psychological support mechanisms, and sustained public legal education. The novelty of this research lies in its specific juridical analysis of Article 411 within the context of unfaithfulness as a criminal offense, integrating both doctrinal and victimological perspectives. Practically, policymakers and law enforcement agencies should enhance awareness campaigns, improve evidence-gathering mechanisms, and ensure consistent judicial interpretation to strengthen enforcement. Future research could adopt an empirical socio-legal approach to assess public perceptions and the law's real-world impact on marital stability. The primary limitation of this study is its reliance on secondary legal sources, which restricts the ability to capture lived experiences of victims and law enforcers. From a policy perspective,

ARTICLE

integrating Article 411 enforcement with broader family protection and social welfare programs is essential to ensure that the law operates not only as a punitive instrument but also as a preventive and restorative tool.

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