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Cohabitation in Boarding Houses: A Case Study of Raids on Unmarried Couples under Indonesia's 2023 Criminal Code and Islamic Law

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ABSTRACT

Cohabitation, or living together without marriage, remains a contested issue in Indonesia, particularly in boarding-house settings where personal relationships may come into conflict with prevailing social and religious norms. This study examines a reported case in which a couple living together without a marital bond was raided by local residents, focusing on how the incident may be understood under Indonesian criminal law and Islamic law. Using normative legal research with statutory and case approaches, the study draws on relevant legislation, the Compilation of Islamic Law, scholarly publications, and news reports. The analysis shows that public disapproval and a community raid do not, on their own, establish criminal liability. Under Article 412 of Law No. 1 of 2023 on the Criminal Code, cohabitation is a complaint-based offense, meaning that legal proceedings must meet the complaint requirements prescribed by law. Its application must also take account of when the conduct occurred and when the law came into force. From the perspective of Islamic law, Qur'an 17:32 and the Compilation of Islamic Law affirm the importance of marriage as the basis of a recognized marital relationship. Nevertheless, living in the same room without marriage does not, by itself, establish that zina has occurred. The study concludes that cohabitation should be examined by distinguishing social responses and religious norms from the legal requirements for criminal liability, while respecting legal certainty and individual dignity.

Keywords: cohabitation; Criminal Code; marriage law; Islamic law.

ABSTRAK

Kohabitasi di lingkungan kos menimbulkan persoalan mengenai batas antara norma sosial, kedudukan perkawinan, dan penerapan hukum terhadap kehidupan pribadi. Penelitian ini bertujuan menganalisis kasus penggerebekan pasangan tanpa ikatan perkawinan berdasarkan hukum positif Indonesia dan perspektif hukum Islam. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan pendekatan kasus melalui penelaahan peraturan perundang-undangan, Kompilasi Hukum Islam, literatur ilmiah, dan pemberitaan terkait. Hasil penelitian menunjukkan bahwa penggerebekan pasangan yang tinggal bersama tidak dengan sendirinya membuktikan terpenuhinya unsur tindak pidana. Pasal 412 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana mengatur kohabitasi sebagai tindak pidana aduan yang penerapannya harus memenuhi persyaratan pengaduan dan ketentuan hukum yang berlaku, termasuk aspek waktu berlakunya undang-undang. Dalam perspektif hukum Islam, Surah Al-Isra' ayat 32 dan Kompilasi Hukum Islam menegaskan pentingnya perkawinan serta norma yang mendasari hubungan suami istri, tetapi keberadaan pasangan dalam satu kamar kos tidak dengan sendirinya membuktikan terjadinya *zina*. Penelitian ini menyimpulkan bahwa penanganan kohabitasi perlu membedakan respons sosial, penilaian normatif agama, dan pertanggungjawaban pidana agar kepastian hukum serta martabat individu tetap terlindungi.

Kata kunci: kohabitasi; KUHP; hukum perkawinan; hukum Islam.

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1. Introduction

Cohabitation has become a subject of legal and social debate in Indonesia, particularly when couples living together outside marriage face opposition from their surrounding communities. In boarding-house environments, such relationships may attract public scrutiny and, in some cases, lead to raids by local residents. These incidents illustrate the tension between prevailing social and religious norms and the legal boundaries governing private life. They also raise concerns about the distinction between social disapproval and the legal grounds required to establish criminal liability.

Marriage occupies an important position in Indonesia's legal system. Article 1 of Law No. 1 of 1974 concerning Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of establishing a happy and lasting family based on belief in the One and Only God. Article 2(1) further provides that a marriage is valid when performed in accordance with the laws of each party's religion and beliefs (Sanjaya & Faqih, 2017). In the field of criminal law, Article 412 of Law No. 1 of 2023 concerning the Criminal Code regulates living together as husband and wife outside marriage as a complaint-based offense. The provision establishes a specific legal basis for addressing cohabitation, but its application remains subject to the statutory elements of the offense and the complaint requirements prescribed by law. The absence of a marital bond and the community's disapproval of a relationship therefore cannot, on their own, establish criminal liability.

Cohabitation has also been discussed in earlier social research. Putri and Junaidy (2025) refer to a survey conducted by the Yogyakarta Institute for the Study of Love and Humanity (LSCK) and the Center for Business and Legal Studies (PUSBIH), involving 1,660 students from 16 educational institutions in Yogyakarta between July 1999 and July 2002. Their article reports that 97.05% of respondents acknowledged involvement in sexual activity or cohabitation, while 14% reportedly lived in rented accommodation or at a female partner's residence. These findings provide historical context for understanding relationships outside marriage and their connection to living arrangements. However, they should not be interpreted as reflecting the current prevalence of cohabitation in Indonesia, given their limited geographical and temporal scope and the combination of sexual activity and cohabitation within a single reported category.

The social and legal dimensions of cohabitation are reflected in a report by Tribun Jogja concerning a man and a woman who reportedly lived together in one boarding-house room for five years without being married. Their living arrangement attracted the attention of local residents and the boarding-house manager, eventually leading to a raid. The incident illustrates how a private relationship may develop into a public dispute when it is perceived to conflict with community norms. However, the available report does not establish whether a legally valid complaint was filed, whether criminal proceedings followed, or whether sexual intercourse occurred. The case must therefore be examined within the limits of the reported facts, without treating the raid itself as proof of a criminal offense.

Previous studies have addressed cohabitation through criminal-law, social, and religious perspectives. Iranti and Irawan (2025) examine the regulation of cohabitation under the 2023 Criminal Code, focusing on the implications of criminal-law intervention in private life. Putri and Junaidy (2025) analyze Article 412, including the rationale for criminalization and the complaint mechanism, while Kurniawan et al. (2024) discuss the question of whether cohabitation should be subject to criminal punishment. From the perspective of Islamic law, Parhan et al. (2025) examine the relationship between cohabitation, religious norms, morality, and social sanctions. These studies establish the broader context of the debate, particularly the relationship between criminal regulation, personal privacy, and prevailing social values. The reported boarding-house raid provides a specific context for examining these issues together, especially the distinction between community responses and the legal requirements for criminal liability.

In Islamic law, Qur'an 17:32 prohibits approaching *zina*, while the Compilation of Islamic Law ("**KHI**") provides a normative framework for marriage among Muslims in Indonesia. Article 2 of the KHI describes marriage as a strong covenant (*mitsaqan ghalizhan*) undertaken to obey God, with its performance regarded as an act of worship (Desminar, 2021). This provision underscores the normative significance of marriage but does not specifically establish cohabitation as a criminal offense. The issue can also be examined through *maqashid al-shari'ah*, particularly the protection of honor (*hifz al-'ird*) and lineage (*hifz al-nasl*). These principles help explain the importance attributed to marriage in Islamic law, while the distinction between

religious norms and state criminal law remains essential. In particular, the fact that a couple lives together without marriage does not, by itself, establish that *zina* has occurred or determine criminal liability under Indonesian law.

By this background, this study examines the reported raid on an unmarried couple in a boarding house under Article 412 of Law No. 1 of 2023 concerning the Criminal Code, Law No. 1 of 1974 concerning Marriage, and relevant Islamic legal principles, including the provisions of the KHI. The study finds that Indonesian positive law and Islamic law both recognize the importance of marriage, although they approach cohabitation through different normative frameworks and mechanisms. Under positive law, the application of Article 412 requires consideration of the elements of the offense, the statutory complaint requirements, and the temporal applicability of the provision. Under Islamic law, marriage serves as the normative foundation of the marital relationship, while the prohibition against approaching *zina* must not be treated as proof that a sexual offense has occurred merely because a couple shares a residence. Accordingly, the study emphasizes the need to distinguish social responses, religious assessments, and criminal liability when analyzing cohabitation in boarding-house settings.

2. Method

This study employs normative legal research using statutory and case approaches. The statutory approach examines the legal framework governing cohabitation in Indonesia, particularly Law No. 1 of 1974 concerning Marriage, Law No. 1 of 2023 concerning the Criminal Code, and relevant provisions of the Compilation of Islamic Law (KHI). The case approach examines a reported incident involving a raid on an unmarried couple living together in a boarding house, using the available news report to assess the relationship between community responses and the application of legal norms.

The study uses primary legal materials, including relevant legislation and the KHI, and secondary legal materials consisting of scholarly journal articles, legal literature, and news reports relevant to the case. The materials were collected through library research and analyzed qualitatively through legal interpretation and examination of the relationship between the applicable legal provisions and the reported facts. The analysis distinguishes social disapproval, the normative principles of Islamic law, and the legal requirements for criminal liability under Article 412 of the Criminal Code. Particular attention is given to the complaint requirements and the temporal applicability of the provision to ensure that the legal assessment remains consistent with the principle of legality.

3. Result and Discussion

3.1. Social Responses to Cohabitation in Boarding-House

Cohabitation in boarding-house environments illustrates how private living arrangements can become a matter of public concern when they are perceived to conflict with prevailing social norms. In the reported case published by Tribun Jogja, a man and a woman were said to have lived together in one boarding-house room for five years without a recognized marriage. Their living arrangement attracted the attention of local residents and the boarding-house manager, eventually leading to a raid (Mrf, 2015). The incident reflects the role of community expectations in shaping responses to relationships outside marriage, particularly in settings where residents live in close proximity and community members may exercise informal social control.

Community responses, however, must be distinguished from legal findings. Suspicion arising from an unmarried couple sharing a room does not establish that sexual intercourse occurred, nor does a raid prove that a criminal offense has been committed. The available report also does not establish whether a formal complaint was submitted or whether any legal proceedings followed. The case therefore provides a context for examining the relationship between social norms and legal regulation, rather than sufficient evidence to determine the couple's criminal liability.

This distinction is important because social sanctions and criminal sanctions operate through different mechanisms. Community members may express disapproval based on moral, cultural, or religious expectations, whereas criminal liability must be assessed according to the applicable legal provisions and their requirements (Kurniawan et al., 2024). An informal raid cannot replace the procedures prescribed by law. Responses to cohabitation should therefore be examined not only in terms of the values upheld by the community but also in terms of legal certainty, individual dignity, and the limits of community intervention.

The reported incident also highlights the position of boarding-house owners and managers, who may establish rules governing occupancy and the conduct of residents. Such rules can serve legitimate management purposes, provided that their implementation remains proportionate and consistent with applicable law. Community involvement and boarding-house regulations may contribute to preventing disputes, but they should not be treated as independent authority to impose criminal punishment. The case thus demonstrates the need to distinguish the social management of boarding-house environments from the formal determination of criminal liability.

3.2. Regulation of Cohabitation under Indonesian Positive Law

3.2.1. Legal Status of Marriage and the Limits of Article 412 of the Criminal Code

The legal analysis of cohabitation begins with the position of marriage under Indonesian law. Article 1 of Law No. 1 of 1974 concerning Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, intended to establish a happy and lasting family based on belief in the One and Only God. Article 2(1) provides that a marriage is valid when performed in accordance with the laws of each party's religion and beliefs (Sanjaya & Faqih, 2017). These provisions establish marriage as the legal basis for a recognized marital relationship. Living together without marriage does not, by itself, confer the legal status associated with marriage.

The absence of marital status may have implications for the legal position of the parties, particularly where rights and obligations arise from marriage (KHI, 2018). Issues concerning spousal rights, property acquired during marriage, and the legal consequences of separation must be assessed under the relevant provisions rather than by assuming that an unmarried couple has the same legal position as spouses. The status and rights of any children involved must likewise be determined under the applicable legal rules and cannot be dismissed solely because their parents are not married (Desminar, 2021).

The enactment of Law No. 1 of 2023 concerning the Criminal Code introduced an express provision on cohabitation. Article 412(1) provides for criminal punishment for a person who lives together as husband and wife outside marriage, with a maximum penalty of six months' imprisonment or a category II fine. The provision does not, however, authorize prosecution solely on the basis of public knowledge or community disapproval. Article 412 establishes a complaint-based offense, with the persons entitled to submit a complaint limited by law. For unmarried persons, the provision identifies their parents or children as eligible complainants; where a person is bound by marriage, the eligible complainant is the person's spouse.

The complaint requirement is a substantive limitation on the enforcement of Article 412. It determines who may initiate the criminal process and prevents the offense from being prosecuted solely because the conduct has attracted public attention (Semara, A.A. Istri Asta J. S. & Maharani, 2023). Consequently, a community raid, a report by a boarding-house manager, or objections from neighbors cannot automatically substitute for a complaint from a person authorized under the provision. Whether the legal requirements have been met must be established from the circumstances of the particular case.

The temporal application of Article 412 is equally important. The reported Tribun Jogja incident dates from 2015, whereas Law No. 1 of 2023 concerning the Criminal Code entered into force on 2 January 2026. Article 412 therefore cannot be applied retroactively to establish criminal liability for conduct occurring in 2015. The incident may be examined as a social and legal case study in light of the current legal framework, but that analytical exercise must remain separate from determining the law applicable at the time of the reported event. This distinction preserves the principle of legality and prevents a later criminal provision from being used as the legal basis for retrospectively punishing earlier conduct.

Accordingly, the case illustrates two separate issues: the social response to a couple living together without marriage and the legal requirements for prosecuting cohabitation under the current Criminal Code. The former may explain why the raid occurred, but it does not establish the latter. Any assessment under Article 412 must consider the statutory elements, the identity of the complainant, the applicable procedural requirements, and the date of the conduct. Without evidence addressing these matters, no conclusion can be drawn that the couple in the reported case committed an offense under Article 412.

3.2.2. Criminalization of Cohabitation: Social Values and Private Life

The criminalization of cohabitation raises a broader question about the relationship between the protection of social values and the limits of criminal law. In Indonesia, marriage is supported by legal, cultural, and religious norms. These values help explain why living together outside marriage may attract public criticism. However, the existence of a social or moral objection does not, by itself, determine whether conduct should be subject to criminal punishment or whether the requirements for prosecution have been fulfilled.

Kurniawan et al. (2024), in their discussion of cohabitation under the 2023 Criminal Code, question the necessity of criminal punishment and highlight the importance of legal certainty in addressing the practice. Their analysis provides a basis for considering whether criminal law is an appropriate response to conduct that also raises questions of morality, social relationships, and private life. Putri and Junaidy (2025), meanwhile, examine the legal construction of Article 412 and its complaint mechanism. Read together, these studies show that the debate is not limited to whether cohabitation is socially acceptable; it also concerns the justification and limits of state intervention through criminal law.

Article 412 reflects a legislative decision to criminalize living together as husband and wife outside marriage while restricting prosecution through a complaint requirement. This arrangement is significant because it does not make every instance of cohabitation automatically subject to criminal proceedings. The restriction gives legal relevance to the position of the persons authorized to complain and limits the role of outsiders in initiating prosecution. It also distinguishes the legal process from informal efforts by community members to enforce moral expectations.

In the context of the reported raid, this distinction means that social disapproval cannot replace the statutory process. Even where residents consider a couple's living arrangement contrary to community values, the application of criminal law remains subject to the conditions established by legislation. The same principle applies to boarding-house managers: their concerns may be relevant to the management of the premises, but they do not independently establish criminal liability under Article 412.

The discussion also requires caution in assessing the relationship between cohabitation and adultery. Living together without marriage and engaging in sexual intercourse are not identical factual propositions. A conclusion that a couple has committed *zina* or an offense involving sexual conduct cannot be inferred merely from their shared residence. The legal elements of any alleged offense must be assessed independently and supported by adequate evidence.

A balanced approach to cohabitation therefore requires more than reliance on public disapproval. Criminal law must be applied according to the applicable statutory requirements, while preventive measures may address disputes through clear boarding-house rules, community education, and religious guidance. These measures do not replace the law; rather, they recognize that social concerns and criminal liability are distinct matters requiring different forms of response.

3.3. Cohabitation from the Perspective of Islamic Law

3.3.1. Marriage as the Normative Foundation under the Compilation of Islamic Law

In Islamic law, marriage provides the normative foundation for the relationship between husband and wife. The Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), which guides the application of Islamic family law in Indonesia, describes marriage in Article 2 as a strong covenant (*mitsaqan ghalizhan*) undertaken to obey God, and regards its performance as an act of worship. Article 3 further identifies the purpose of marriage as establishing a household characterized by *sakinah, mawaddah, and rahmah*. These provisions demonstrate that marriage is understood not merely as a private arrangement but also as a commitment carrying religious and normative responsibilities.

The KHI also sets out requirements relevant to the formation of a marriage. Article 4 provides that a marriage is valid when performed in accordance with Islamic law, in line with Article 2(1) of the Marriage Law. Article 14 identifies the essential elements of marriage, including the prospective husband and wife, the marriage guardian, two witnesses, and the marriage offer and acceptance (*ijab kabul*). These provisions establish a framework for determining whether a relationship constitutes a marriage recognized under the relevant Islamic family-law rules.

From this perspective, living together without marriage does not create the marital status contemplated by the KHI. The relationship cannot simply be treated as equivalent to marriage because the parties share accommodation or have lived together for an extended period. The legal and religious consequences associated with marriage depend on the applicable requirements, not solely on the duration or nature of the parties' living arrangement.

Nevertheless, the scope of these provisions must be stated accurately. The KHI regulates marriage and related family-law matters; Article 2 does not specifically formulate cohabitation as a criminal offense. The KHI can therefore be used to explain the normative significance and requirements of marriage, but it should not be presented as an independent criminal-law basis for punishing unmarried couples. This distinction is necessary when comparing Islamic family-law principles with Article 412 of the Criminal Code, which expressly regulates cohabitation within Indonesia's criminal-law framework.

Applied to the reported boarding-house incident, the absence of a recognized marriage may be relevant to assessing the couple's marital status. It does not, however, establish every other fact that might be relevant under Islamic law. In particular, the fact that two people occupy the same room does not, without further evidence, establish that they have engaged in *zina*. The normative status of marriage and the proof of a particular act must remain separate questions.

3.3.2. The Prohibition against Approaching *Zina* and the Protective Aims of Islamic Law

Qur'an 17:32 states that believers should not approach *zina*, describing it as an immoral act and an evil way. The wording of the verse is significant because the prohibition extends to conduct that may lead toward *zina*, rather than addressing only the act itself. In the context of Islamic legal and moral reasoning, the verse supports the importance of maintaining boundaries in relationships outside marriage.

The protective aims of Islamic law can also be considered through *maqashid al-shari'ah*. In this context, the protection of honor (*hifz al-'ird*) and lineage (*hifz al-nasl*) helps explain the importance attached to sexual morality, family formation, and the recognition of marital relationships. These principles provide a normative basis for discussing why cohabitation may be viewed critically within an Islamic framework, particularly where the relationship is understood to conflict with the requirements of marriage.

However, applying these principles to the reported case requires a distinction between a normative prohibition and a factual conclusion. Qur'an 17:32 establishes a prohibition against approaching *zina*, but the reported fact that a couple lived together in a boarding-house room does not, by itself, prove that *zina* occurred. A religious assessment of the conduct must not assume facts that the available report does not establish. Nor should the moral objectives of Islamic law be used to justify humiliation, arbitrary punishment, or action outside lawful procedures.

This distinction is also relevant to the relationship between Islamic law and the Indonesian Criminal Code. Islamic legal principles may inform moral assessments of relationships outside marriage, whereas criminal liability under state law depends on the elements and procedures prescribed by legislation. The two frameworks may share an emphasis on marriage as the recognized foundation of the spousal relationship, but they do not operate through identical legal mechanisms. The KHI's provisions on marriage, Qur'an 17:32, and Article 412 of the Criminal Code must therefore be interpreted according to their respective functions.

In the boarding-house context, the protective aims of Islamic law may support preventive approaches such as religious education, guidance for young people, and clear rules governing shared accommodation. Such approaches can address the social and moral concerns associated with cohabitation without treating suspicion as proof of a prohibited act. They also allow the discussion to remain consistent with the distinction between religious norms, community responses, and the legal requirements for criminal liability.

The analysis shows that cohabitation in boarding-house environments cannot be assessed through a single normative lens. Social disapproval explains the community response but does not establish a criminal offense. Indonesian positive law provides a specific mechanism for addressing cohabitation under Article 412, subject to the complaint requirements and the principle of legality. Islamic law, meanwhile, emphasizes marriage as the normative foundation of the marital relationship and prohibits approaching *zina*, without making the reported fact of cohabitation conclusive proof that the prohibited act occurred. A sound legal assessment must preserve these distinctions while considering the relevant facts and the legal framework applicable to the case.

4. Conclusion

This study finds that cohabitation in boarding-house settings involves a distinction between social disapproval, religious norms, and criminal liability. The reported raid illustrates how an unmarried couple's living arrangement may trigger community intervention, but the incident alone does not establish that a criminal offense has occurred. Under Indonesian positive law, Article 412 of Law No. 1 of 2023 concerning the Criminal Code regulates cohabitation as a complaint-based offense, subject to statutory requirements and the principle of legality. Since the reported incident occurred in 2015, the provision cannot be applied retroactively to establish criminal liability for that conduct. From the perspective of Islamic law, Qur'an 17:32 prohibits approaching *zina*, while the Compilation of Islamic Law establishes marriage as a normative foundation of the marital relationship. However, cohabitation alone does not prove that *zina* has occurred. The findings demonstrate that, although Indonesian positive law and Islamic law both recognize the importance of marriage, they approach cohabitation through different legal and normative frameworks. Accordingly, its assessment must distinguish community responses from the requirements of criminal law and the principles of Islamic law, while maintaining legal certainty and respect for individual dignity.

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