

Reformulation of the Offence of Polygamy Without the Wife's Consent under Indonesia's 2023 Criminal Code: A Normative Legal Analysis

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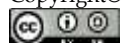
Abstract

The Indonesian legal system establishes monogamy as the general principle of marriage while permitting limited exceptions through judicial authorization and the wife's consent under the Marriage Law. The enactment of the 2023 Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) reformulates the offence of unauthorized polygamy, creating new legal challenges concerning criminalization, legal certainty, and the relationship between criminal law and family law. Previous studies have predominantly examined polygamy from family law, Islamic law, or criminal law perspectives in isolation, leaving limited analysis of the criminalization rationale, comparative legal policy, and normative harmonization between the 2023 Criminal Code and the Marriage Law. This study aims to analyze the normative construction of the offence of polygamy without the wife's consent, evaluate its criminal law policy rationale, and develop an ideal framework for its reformulation within Indonesia's national legal system. This study employs normative juridical research using statutory, conceptual, case, and comparative approaches. Primary legal materials comprise the 2023 Indonesian Criminal Code, the Marriage Law, constitutional jurisprudence, judicial decisions, and relevant legal doctrines, which are analyzed through qualitative prescriptive methods using grammatical, systematic, and teleological interpretation. The findings reveal that the reformulated offence reflects a shift in criminal law policy from protecting the formal legality of marriage toward safeguarding women's rights and family integrity. However, three principal weaknesses remain: the ambiguous legal meaning of the wife's consent, the absence of clear boundaries between administrative violations and criminal offences, and normative disharmony between the Criminal Code and the Marriage Law, creating the potential for inconsistent law enforcement and overcriminalization. This study contributes theoretically by developing a rights-based criminalization framework grounded in proportionality, legal certainty, and human rights protection, while proposing a conceptual model integrating criminal law and family law to guide future harmonization of the 2023 Indonesian Criminal Code and the Marriage Law.

Keywords: 2023 Criminal Code, Family Law, Legal Certainty, Legal Politics, Polygamy.

Abstrak

Sistem hukum Indonesia menetapkan monogami sebagai prinsip umum perkawinan dengan pengecualian terbatas melalui izin pengadilan dan persetujuan istri sebagaimana diatur dalam

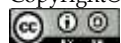


Undang-Undang Perkawinan. Berlakunya Kitab Undang-Undang Hukum Pidana (KUHP) Tahun 2023 mereformulasi tindak pidana poligami tanpa izin, sehingga memunculkan persoalan mengenai kriminalisasi, kepastian hukum, serta hubungan antara hukum pidana dan hukum keluarga. Penelitian terdahulu umumnya mengkaji poligami secara terpisah dari perspektif hukum keluarga, hukum Islam, atau hukum pidana, sehingga belum banyak membahas rasionalitas kriminalisasi, kebijakan hukum komparatif, dan harmonisasi normatif antara KUHP Tahun 2023 dan Undang-Undang Perkawinan. Penelitian ini bertujuan menganalisis konstruksi normatif tindak pidana poligami tanpa persetujuan istri, mengevaluasi rasionalitas kebijakan hukum pidananya, serta merumuskan model reformulasi yang ideal dalam sistem hukum nasional. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan komparatif. Bahan hukum primer berupa KUHP Tahun 2023, Undang-Undang Perkawinan, putusan pengadilan, yurisprudensi konstitusional, dan doktrin hukum dianalisis secara kualitatif-preskriptif melalui penafsiran gramatikal, sistematis, dan teleologis. Hasil penelitian menunjukkan bahwa reformulasi delik tersebut mencerminkan pergeseran orientasi kebijakan hukum pidana dari perlindungan legalitas formal perkawinan menuju perlindungan hak-hak perempuan dan keutuhan keluarga. Namun, masih terdapat tiga kelemahan utama, yaitu ketidakjelasan makna hukum persetujuan istri, kaburnya batas antara pelanggaran administratif dan tindak pidana, serta disharmoni normatif antara KUHP dan Undang-Undang Perkawinan yang berpotensi menimbulkan inkonsistensi penegakan hukum dan overkriminalisasi. Penelitian ini menawarkan kerangka kriminalisasi berbasis hak yang berlandaskan proporsionalitas, kepastian hukum, dan perlindungan hak asasi manusia, serta model integrasi hukum pidana dan hukum keluarga sebagai dasar harmonisasi regulasi di masa mendatang.

Kata Kunci: Hukum Keluarga, Kepastian Hukum, KUHP 2023, Poligami, Politik Hukum.

Introduction

Marriage occupies a fundamental position within the Indonesian legal system as both a legal institution and a constitutional mechanism for protecting the family. Consistent with this orientation, Indonesian marriage law adopts monogamy as its general principle, as stipulated in Article 3 paragraph (1) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. Nevertheless, the principle is not absolute because the legal system permits polygamy under limited and strictly regulated circumstances, requiring the consent of the existing wife, the husband's financial capability, and prior judicial authorization (Mulyanto, 2022). This regulatory framework demonstrates that Indonesian law does not recognize polygamy as an unrestricted marital right, but rather as a narrowly regulated legal exception intended to preserve family welfare, legal certainty, and the orderly administration of marriage. The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (KUHP) further reinforces this regulatory framework by reformulating criminal provisions relating to marriage, thereby reflecting the broader direction of Indonesia's criminal law reform toward strengthening legal protection within family relations (Bego et al., 2025). These developments indicate that the regulation of polygamy has evolved beyond a matter of personal or religious choice into an issue of public legal policy that requires coherence between family law and criminal law.

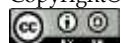


Despite the restrictive legal framework governing polygamy, unauthorized polygamous marriages continue to occur in Indonesia through practices such as unregistered marriages (perkawinan siri), concealment of marital status, and the circumvention of judicial authorization. These practices frequently bypass the procedural safeguards established by the Marriage Law and create uncertainty regarding the legal validity of subsequent marriages. In many cases, wives are unaware of their husbands' subsequent marriages or provide consent under conditions influenced by social, economic, or psychological pressure rather than genuine free will (Sofiana & Nuraini, 2023). Such circumstances not only undermine the effectiveness of the existing regulatory framework but also create significant legal consequences concerning marital status, inheritance, family responsibilities, and access to legal protection. Consequently, unauthorized polygamy can no longer be regarded solely as a private family matter; rather, it has become a legal issue requiring effective state intervention to ensure legal certainty and protect the rights of parties affected by unlawful marital practices (Rangkuti et al., 2026).

The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (KUHP) marks a significant milestone in Indonesia's national criminal law reform, including the regulation of offences relating to marriage. Under the former Criminal Code, Article 279 primarily criminalized unlawful multiple marriages as violations of marital legal status, with limited attention to the broader legal interests affected by such conduct. By contrast, the reformulated provisions in the 2023 KUHP reflect a broader criminal policy orientation that seeks to strengthen the protection of family institutions while responding to the development of constitutional values, human rights, and contemporary social needs (Bego et al., 2025). This reform has also generated scholarly debate regarding the appropriate scope of state intervention in family relations. While criminalization is regarded as an important mechanism for preventing abuses of polygamous practices and enhancing legal protection, concerns remain that an overly broad use of criminal law may result in overcriminalization if it is not supported by clear normative limits and a coherent criminal policy framework (Hayah & Anwar, 2026; Maula, 2026).

Despite its progressive orientation, the reformulation of polygamy offences under the 2023 Indonesian Criminal Code continues to raise significant normative challenges. The principal issue concerns the relationship between the new criminal provisions and the existing Marriage Law, which continues to recognize polygamy as a lawful exception subject to judicial authorization and the consent of the existing wife (Masri, 2019). This dual regulatory framework creates uncertainty regarding the boundary between administrative non-compliance with marriage procedures and conduct that should attract criminal liability (Roszi, 2018). Furthermore, the legal meaning of the wife's consent remains insufficiently defined, particularly where consent may be influenced by economic dependence, psychological pressure, or unequal power relations within marriage (Musiyati, 2025). These unresolved issues risk generating inconsistent interpretation and enforcement, thereby undermining legal certainty and the effectiveness of criminal law as an instrument of legal protection. Consequently, a comprehensive normative assessment is required to determine whether the reformulated offence has achieved coherence with the Indonesian marriage law system while remaining consistent with the principles of criminal law reform and the protection of fundamental rights.

This study is grounded in four complementary theoretical perspectives. First, Legal Policy Theory explains that criminal legislation reflects the state's policy choices in determining which conduct deserves criminal sanctions and how criminal law should achieve social protection



(Aaronson & Shaffer, 2021). Second, Criminalization Theory provides analytical criteria for evaluating whether the criminalization of particular conduct satisfies the principles of legal interest protection, proportionality, subsidiarity, and ultimum remedium (Balyan, 2025). Third, Legal Protection Theory emphasizes that criminal law should function not merely as a punitive mechanism but also as an instrument to safeguard fundamental rights, particularly the rights of vulnerable groups (Yustia et al., 2026). Fourth, Gender Justice Theory highlights that legal regulation must address structural inequalities affecting women and ensure substantive rather than merely formal equality (Bermúdez Figueroa et al., 2023). Together, these theoretical perspectives provide the analytical framework for examining whether the reformulation of the offence of polygamy under the 2023 Indonesian Criminal Code represents an appropriate criminal policy consistent with legal certainty and constitutional protection of women's rights.

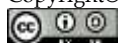
Previous studies have extensively examined polygamy from diverse legal perspectives, including Islamic family law, marriage administration, women's rights, and criminal law. Collectively, these studies have contributed to a better understanding of the legal regulation and social implications of polygamous practices in Indonesia. However, the enactment of the 2023 Indonesian Criminal Code introduces a new legal framework that requires renewed scholarly attention, particularly regarding the reformulation of criminal provisions governing polygamy without the wife's consent. To identify the contribution of this study and clarify its position within the existing body of knowledge, the following table summarizes the principal findings and limitations of previous studies, thereby providing the basis for identifying the research gap addressed in this article.

Table 1. Summary of Previous Studies and Identification of the Research Gap

Authors	Focus	Findings	Limitation
Masri (2019)	Marriage Law	Polygamy procedure	Did not discuss criminal law reform
Roszi (2018)	Illegal polygamy	Criminal sanction	Before KUHP 2023
Sudibyo (2017)	Criminal policy	Article 279 KUHP	No analysis of new Criminal Code
Hayah & Anwar (2026)	Criminalization	New KUHP	No harmonization analysis
Rangkuti et al. (2026)	Criminal aspects	Article 279	No theoretical integration

Although previous studies have examined polygamy from the perspectives of family law, Islamic law, and criminal sanctions, three important limitations remain. First, prior studies largely analyze either the Marriage Law or criminal provisions separately without examining their normative interaction. Second, they rarely evaluate the reformulation of polygamy offences through integrated theoretical perspectives combining legal policy, criminalization, legal protection, and gender justice. Third, none comprehensively assesses whether the new criminal provisions achieve legal certainty while maintaining coherence with the Indonesian marriage law system. These limitations constitute the research gap addressed in this study.

Unlike previous studies, this article contributes to the literature in three respects. First, it evaluates the reformulated offence through an integrated framework combining Legal Policy



Theory, Criminalization Theory, Legal Protection Theory, and Gender Justice Theory. Second, it critically examines the normative harmonization between the 2023 Indonesian Criminal Code and the Marriage Law, an issue largely overlooked in previous scholarship. Third, it proposes normative recommendations aimed at improving legal certainty while strengthening the protection of women's rights within Indonesia's criminal justice system. Accordingly, this study addresses the following research questions:

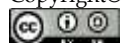
1. How is the offence of polygamy without the wife's consent normatively constructed under the 2023 Indonesian Criminal Code?
2. What legal policy and criminalization rationale underlie the reformulation of this offence within Indonesia's criminal law reform?
3. To what extent does the reformulated offence provide legal certainty and effective protection for women's rights while maintaining harmony with the Indonesian Marriage Law?

Based on the foregoing discussion, this study is directed toward addressing several fundamental issues, namely the normative construction of the offence of polygamy without the wife's consent under the 2023 KUHP, the rationality and policy direction underlying the reformulation of such offence within the framework of national criminal law reform, and its implications for the protection of wives' rights and legal certainty within the Indonesian legal system. This study is important not only for understanding the direction of the development of national criminal law, but also for ensuring that the legal reforms undertaken by the state are genuinely capable of providing legal protection that is effective, just, and consistent with constitutional principles governing family and social life.

Methods Research

This study employs normative juridical research to examine the reformulation of the offence of polygamy without the wife's consent under the 2023 Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) through the analysis of positive legal norms, legal principles, and legal doctrines (Widiarty, 2024). The research adopts statutory, conceptual, case, and comparative approaches. The statutory approach examines the relationship between the 2023 Indonesian Criminal Code, the Marriage Law, and other relevant legislation governing marriage and criminal liability. The conceptual approach is employed because the issues examined extend beyond statutory interpretation to include the theoretical justification of criminalization, criminal law policy, legal certainty, human rights protection, and gender justice as analytical frameworks for evaluating the legitimacy and coherence of the reformulated offence. The case approach analyzes relevant Constitutional Court and judicial decisions to identify judicial reasoning concerning polygamy and the protection of women's rights, while the comparative approach compares Indonesia's regulatory model with selected jurisdictions in order to evaluate alternative approaches to criminalization and legal harmonization.

The study utilizes primary legal materials consisting of statutory regulations and judicial decisions, together with secondary legal materials comprising criminal law doctrines, legal policy theories, scholarly books, and peer-reviewed journal articles collected through systematic library research. The legal materials were analyzed qualitatively using descriptive and prescriptive legal analysis. The descriptive stage identifies the normative structure of the offence and the relationship between the Criminal Code and the Marriage Law. The prescriptive stage subsequently evaluates the consistency of those norms by applying criminal law policy theory as



the principal analytical framework to assess the rationality of criminalization and to formulate recommendations for legislative reform. This analysis employs grammatical interpretation to determine the ordinary meaning of statutory provisions, systematic interpretation to examine their coherence within the Indonesian legal system, and teleological interpretation to identify the legislative objectives underlying the reformulation of the offence. These interpretative methods are integrated with legal argumentation based on the principles of proportionality, *ultimum remedium*, legal certainty, and human rights protection to develop normative conclusions regarding the ideal harmonization of the 2023 Indonesian Criminal Code and the Marriage Law.

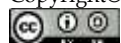
Results and Discussion

Normative Analysis of the Reformulation of the Offence of Polygamy under the 2023 Criminal Code

The reformulation of the offence of polygamy under the 2023 Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) reflects a significant transformation in Indonesia's criminal law policy concerning the protection of marriage and family relations. Unlike Article 279 of the former Criminal Code, which primarily safeguarded the formal legality of marriage and public legal order, the new formulation demonstrates a broader orientation by incorporating the protection of wives' rights, family integrity, and substantive justice as protected legal interests. This development corresponds with Indonesia's broader criminal law reform agenda, which increasingly integrates constitutional values, human rights, and gender equality into substantive criminal legislation. Accordingly, criminal law is no longer confined to preserving formal legal order but also functions as an instrument for protecting vulnerable individuals within private family relationships (Epps, 2021).

Normatively, the offence is constructed through several essential legal elements, namely the legal subject, prohibited conduct, culpability, and criminal sanction. Criminal liability is imposed upon a husband who intentionally enters into another marriage while remaining legally married without fulfilling the statutory requirements prescribed under the Marriage Law (Wirastri & Van Huis, 2021), particularly the wife's consent and judicial authorization. Consequently, the protected legal interest extends beyond the administrative validity of marriage to encompass the substantive protection of wives against unilateral and unlawful polygamous practices. Nevertheless, the legal concept of "wife's consent" remains insufficiently defined within the statutory framework, thereby creating uncertainty concerning whether consent obtained through economic dependence, psychological pressure, or unequal bargaining power genuinely reflects voluntary agreement (Mustopa et al., 2026). This ambiguity demonstrates that the effectiveness of criminalization depends not merely upon legislative formulation but also upon judicial interpretation capable of ensuring substantive legal protection.

From the perspective of criminalization theory, however, the expansion of criminal liability requires critical examination. Criminal law represents the most coercive instrument available to the state and therefore should only be employed where non-penal mechanisms prove inadequate to protect important legal interests. Sudarto argues that criminalization must always be guided by the principles of necessity, proportionality, and social utility (Valerian, 2022), whereas Barda Nawawi Arief emphasizes that criminal policy should function as a rational instrument of social protection rather than merely an expression of legislative morality (Mulyono et al., 2025). Similarly, Ashworth contends that criminal sanctions are justified only when less restrictive



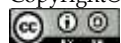
regulatory mechanisms cannot adequately prevent significant harm. Viewed from this perspective, the reformulation contained in the 2023 KUHP appears justifiable because unauthorized polygamy frequently generates substantial legal, economic, and psychological consequences for wives and children. The criminal offence therefore serves not merely to punish procedural non-compliance but to protect vulnerable family members against abuses arising from unequal marital relationships.

Nevertheless, the justification for criminalization should not be interpreted as authorizing the punishment of every procedural violation relating to polygamy. Modern criminal law distinguishes between administrative illegality and criminal wrongdoing. The Marriage Law already provides comprehensive administrative mechanisms through judicial authorization, financial capability requirements, and the wife's consent before a husband may lawfully enter into a subsequent marriage (Imomov et al., 2026). Criminal sanctions should therefore apply only where the violation results in substantial harm to legally protected interests rather than every failure to comply with procedural requirements. If every administrative irregularity were automatically transformed into a criminal offence, the scope of criminal liability would expand beyond what is necessary, thereby creating the risk of overcriminalization. As Douglas Husak observes, excessive criminalization diminishes the legitimacy of criminal law by extending punishment into areas more appropriately governed through civil or administrative regulation (Husak, 2023).

The concern regarding overcriminalization becomes particularly relevant because the statutory formulation does not clearly distinguish between procedural non-compliance and conduct producing serious legal consequences. For example, the absence of judicial authorization or the wife's consent may occur under significantly different factual circumstances (Lakoni et al., 2023). In some cases, the violation reflects deliberate deception intended to deprive wives of their legal rights, whereas in others the non-compliance primarily concerns administrative irregularities without producing comparable harm. Applying identical criminal sanctions to these different situations risks violating the principle of proportionality, which requires punishment to correspond with the gravity of the wrongful conduct (Abdurrachman et al., 2021). Consequently, clearer legislative parameters remain necessary to distinguish administrative violations from conduct genuinely deserving criminal punishment.

This critical evaluation does not suggest that criminalization itself is inappropriate. Rather, criminal law should operate consistently with the doctrine of *ultimum remedium*, whereby penal sanctions function as the final instrument after preventive and administrative measures have proven insufficient. In addition to criminal liability, effective protection of wives requires strengthened judicial supervision of applications for polygamy, mandatory marriage registration, enhanced legal awareness programmes, accessible family dispute resolution, and effective civil remedies ensuring compensation and legal certainty for affected spouses (Chiagozie & Akpofure, 2024). Accordingly, criminal sanctions should complement rather than replace broader mechanisms of family protection.

The legitimacy of Indonesia's criminal policy becomes clearer when viewed from a comparative perspective. Malaysia regulates polygamy principally through Islamic Family Law legislation requiring prior authorization from the Syariah Court (Salleh et al., 2024). Violations generally result in administrative penalties, fines, or limited sanctions, while judicial consideration focuses upon financial capability, fairness, and the welfare of the existing wife.



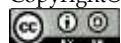
Brunei Darussalam similarly requires judicial approval before polygamy may be lawfully conducted, emphasizing strict administrative control grounded in Islamic family law (Kurniawan, 2025). These jurisdictions therefore prioritize preventive judicial oversight rather than broad criminalization.

A different approach is adopted in Turkey, where the secular legal system prohibits polygamy entirely under the Turkish Civil Code. Any subsequent marriage contracted while an earlier marriage remains legally valid is treated as unlawful, reflecting the state's commitment to monogamy as an absolute legal principle (Munir, 2025). Likewise, the Netherlands criminalizes bigamy under its Criminal Code primarily to preserve legal certainty in civil registration and protect the integrity of the legal status of marriage rather than to regulate religious family practices (Rutten, 2024). These comparative models demonstrate that jurisdictions adopt different criminal policy choices depending upon their constitutional traditions, religious values, and family law systems.

Compared with these jurisdictions, Indonesia occupies an intermediate position. The Marriage Law continues to recognize polygamy as a lawful exception subject to strict judicial authorization, whereas the 2023 KUHP introduces criminal liability for violations of those legal requirements. This hybrid approach attempts to reconcile religious accommodation with constitutional commitments to legal certainty and gender equality. Nevertheless, the coexistence of administrative permission and criminal prohibition creates potential normative tension, particularly concerning the precise boundary between administrative unlawfulness and criminal liability. Legislative clarification and consistent judicial interpretation are therefore indispensable to ensure that criminal law protects women's rights without extending criminal punishment beyond its legitimate function.

The constitutional legitimacy of restricting polygamy has also been recognized in Indonesian constitutional jurisprudence. In Constitutional Court Decision Number 12/PUU-V/2007, the Court affirmed that statutory limitations on polygamy do not violate the constitutional guarantee of religious freedom or equality before the law because such restrictions pursue the legitimate objective of protecting women, children, and family welfare. This constitutional reasoning reinforces the view that criminal regulation of unlawful polygamy constitutes part of the state's positive obligation to protect vulnerable members of society. At the same time, decisions of the Religious Courts concerning applications for polygamy consistently demonstrate that judicial authorization depends upon strict compliance with statutory requirements, including proof of necessity, financial capability, and fairness toward the existing wife. These judicial developments indicate that criminal law should function coherently with Indonesia's broader marriage law framework rather than operate independently from it.

Overall, the reformulation of the offence of polygamy without the wife's consent reflects a progressive shift in Indonesia's criminal law policy toward substantive family protection. However, the effectiveness and legitimacy of this reform ultimately depend upon maintaining an appropriate balance between criminal punishment and non-penal regulatory mechanisms. Criminalization should remain directed at preventing serious violations of women's rights and family integrity while avoiding excessive penal intervention in matters more appropriately addressed through administrative or civil law. Such an approach better reflects the principles of proportionality, legal certainty, and integrated criminal policy underlying Indonesia's national criminal law reform.



Ideal Reformulation and Normative Recommendations for the Offence of Polygamy under the 2023 Criminal Code

The reformulation of the offence of polygamy within the 2023 Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana / KUHP) fundamentally demonstrates the state's effort to establish a criminal law system that is more responsive to the protection of the family institution and women's rights within marriage. Nevertheless, the effectiveness of criminal norms is determined not merely by the existence of sanctions, but also by the quality of their legal formulation. In this context, the need for an ideal reformulation becomes essential because unclear regulation has the potential to generate legal uncertainty, excessive criminalization, and disharmony with the national marriage law system. Accordingly, criminal law reform relating to polygamy must be directed not only toward strengthening repressive aspects, but also toward establishing a legal system that is just, proportionate, and integrated with broader family protection policies.

The first principle that must form the basis of the reformulation of the offence of polygamy is the principle of proportionality in criminal law. This principle requires that criminal sanctions be imposed in a limited manner and proportionate to the degree of harm caused by the conduct concerned (Ali, 2018). In the context of polygamy without the wife's consent, the state indeed possesses an interest in protecting women's rights and maintaining the legal order of the family. However, criminalization must not develop into an excessively moralistic instrument that intrudes too far into the private sphere without clear parameters. Therefore, the formulation of criminal norms must be capable of clearly distinguishing between administrative violations relating to marriage and conduct that genuinely causes legal harm to wives and children (Fatahullah, 2025).

In addition to proportionality, the reformulation of the offence of polygamy must also be grounded in the principle of human rights protection, particularly the protection of women's rights within family relations. In practice, polygamy without consent frequently gives rise to structural injustice in the form of economic neglect, psychological violence, and uncertainty regarding the legal status of women and children (Lahaling & Makkulawuzar, 2021). Accordingly, criminal law may be justified as an instrument of protection where it is directed toward preventing abuse of power relations within marriage. Nevertheless, the protection of human rights cannot be achieved solely through the threat of criminal sanctions. The state must also ensure that mechanisms of the wife's consent are conducted freely, consciously, and without social or economic pressure. From this perspective, the reformulation of criminal norms must be associated with substantive protection rather than mere formal legality.

The principle of legal certainty also constitutes a fundamental aspect of the reformulation of the offence of polygamy. One of the weaknesses of the current regulation lies in the ambiguity of normative parameters concerning the element of "wife's consent" and its relationship with the judicial authorization mechanism under the Marriage Law. Such ambiguity has the potential to generate multiple interpretations in law enforcement practice, particularly regarding whether violations of polygamy procedures may automatically be criminalized or merely result in administrative consequences. Within modern criminal law systems, the formulation of offences must comply with the principles of *lex certa* and *lex stricta* in order to prevent arbitrariness in the application of law (Dzakayah, 2024). Accordingly, criminal norms must be formulated in a



limitative, clear, and measurable manner so as to remain consistent with the principles of a rule-of-law state.

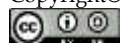
From the perspective of legal policy, the reform of the offence of polygamy should not merely be understood as a response to demands of public morality, but also as part of a broader strategy for the development of national family law. Modern criminal law policy positions criminal law as an instrument of social protection employed rationally and selectively. Consequently, the criminalization of polygamy must be based upon an assessment of the degree of social harm caused, rather than solely upon the perception that such practice conflicts with particular moral values (Sudibyo, 2017). Such an approach is important in order to prevent criminal law from becoming an excessive instrument of moral control that risks disregarding the social plurality existing within Indonesian society.

Based upon these considerations, refinement of criminal norms is required so as to achieve greater harmony with the national marriage law system. One important aspect concerns the clarification of the constituent elements of the offence in greater detail, particularly with respect to the meaning of the wife's consent, the status of lawful marriage, and the forms of conduct capable of being classified as criminal offences. The formulation of the norm must also clarify the relationship between administrative violations of marriage law and criminal liability in order to avoid overlapping authority between criminal law and family law. In this context, criminal law should preferably focus upon conduct involving elements of fraud, concealment of marital status, or abuse of rights causing tangible harm to wives and children.

The refinement of norms must also take into account the reality of unregistered marriages (*perkawinan siri*), which continue to exist within society. Many practices of polygamy are carried out through informal mechanisms in order to evade the formal legal requirements established by the state. The problem lies in the fact that unregistered marriages create serious difficulties in criminal proof because their legal status remains ambiguous between validity under religious law and lack of registration under state law (Putro et al., 2024). Accordingly, the reformulation of criminal norms must be integrated with the strengthening of the national marriage administration system, including the enhancement of marriage registration obligations and more effective mechanisms for verifying marital status.

Within the framework of an ideal reformulation, criminal law cannot operate separately from national family law policy. Integration between criminal law and family law is essential in order to ensure that the protection of women and children does not remain confined to repressive aspects alone. To date, legal approaches toward polygamy have tended to be partial, with criminal law focusing upon sanctions while family law emphasizes administrative aspects and the validity of marriage. Consequently, legal protection has often failed to function optimally. Therefore, a legal policy design is required that links criminal mechanisms with civil protection, family economic rights, and victim recovery within the domestic context.

Strengthening coordination among different legal regimes also constitutes an urgent necessity within the national legal system. Harmonization between the 2023 KUHP and the Marriage Law must be undertaken in order to prevent normative contradictions in law enforcement practice. Such synchronization may be achieved through clarification of the boundaries of authority between criminal courts and religious courts, harmonization of legal terminology relating to authorization for polygamy, and strengthening technical regulations concerning proof of marital status. Without adequate harmonization, the reformulation of the



offence of polygamy risks creating legal uncertainty and weakening the effectiveness of protection afforded to women.

In addition to normative harmonization, the reformulation of the offence of polygamy must also take into account non-penal approaches within family law policy. In many cases, issues relating to polygamy arise not solely from weak regulation, but also from patriarchal cultural factors, economic inequality, and limited public legal awareness. Consequently, criminal policy must be balanced with preventive strategies through legal education, strengthening gender equality, and improving women's access to legal protection. Such an integrative approach is more consistent with modern legal paradigms that are oriented not only toward punishment, but also toward prevention and social protection.

From the perspective of criminalization theory, the reformulation of the offence of polygamy should ideally be directed toward the protection of concrete legal interests (legal interest protection). This means that criminal law ought to be utilized in order to protect the substantive rights of women and children harmed by irresponsible polygamous practices. Accordingly, the orientation of criminalization should not be confined merely to formal violations of marriage procedures, but should instead focus upon the actual consequences suffered by victims. This approach is more consistent with modern criminal law principles that position the protection of human beings as the primary objective underlying the formation of criminal norms.

Ultimately, the ideal reformulation of the offence of polygamy within the 2023 KUHP must be directed toward establishing a legal system that is more just, harmonious, and oriented toward the protection of rights. Criminal law reform cannot be achieved solely through expanding criminal sanctions, but must also be accompanied by clarity of norms, synchronization of regulations, and integration with national family law policy. Through such an approach, the criminalization of polygamy without the wife's consent will not merely function as a symbol of state morality, but will genuinely operate as an effective legal protection instrument for women, children, and the institution of the family within the Indonesian legal system.

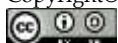
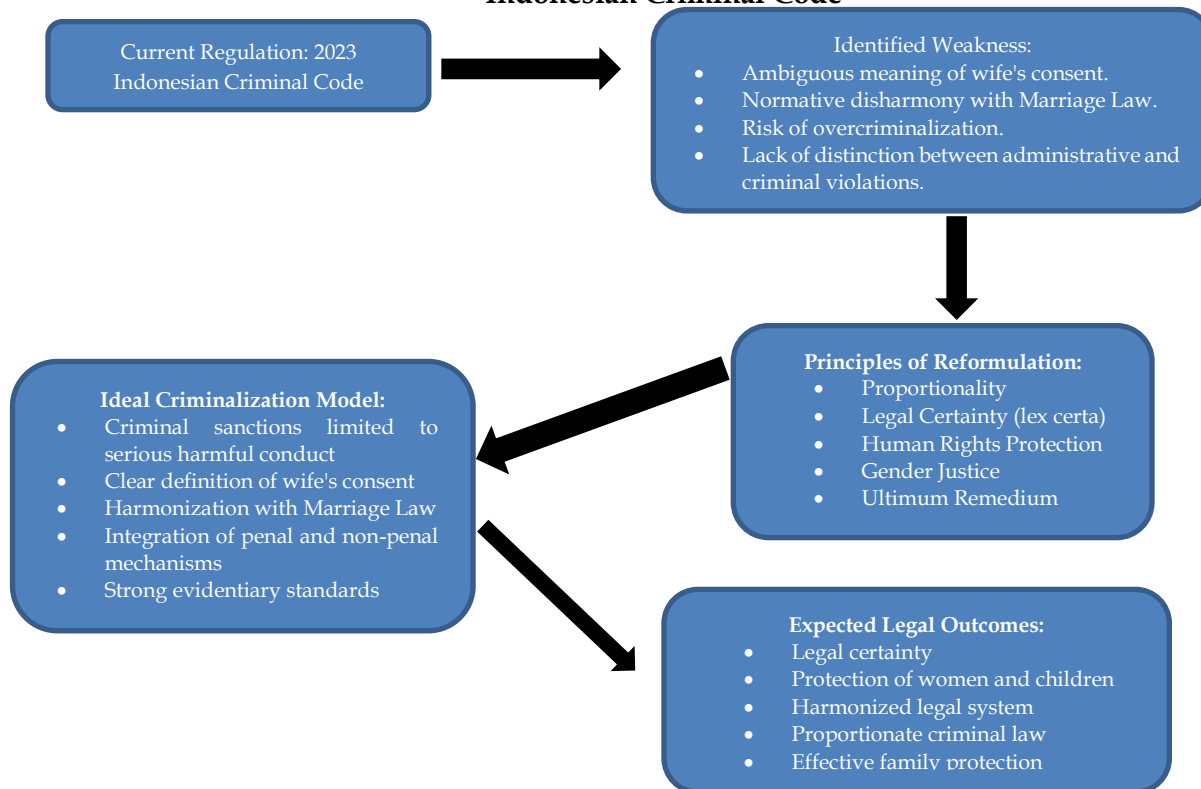


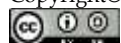
Figure 1. Conceptual Framework for Reformulating the Offence of Polygamy under the 2023 Indonesian Criminal Code



Conclusion

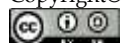
This study concludes that the reformulation of the offence of polygamy without the wife's consent under the 2023 Indonesian Criminal Code reflects a significant shift in Indonesia's criminal law policy from protecting the formal legality of marriage toward safeguarding women's rights, family integrity, and legal certainty. However, the current formulation still presents normative weaknesses, particularly regarding the ambiguity of the wife's consent, the unclear distinction between administrative violations and criminal offences, and the lack of harmonization with the Marriage Law. These findings demonstrate that the effectiveness of criminalization depends not merely on the imposition of criminal sanctions but on coherent legal norms and an integrated regulatory framework.

The study contributes theoretically by proposing a conceptual framework that positions the criminalization of unauthorized polygamy within an integrated model of criminal law and family law, guided by the principles of proportionality, legal certainty, human rights protection, and ultimum remedium. Practically, the findings provide policy recommendations for legislators to clarify the constituent elements of the offence, harmonize the 2023 Indonesian Criminal Code with the Marriage Law, and strengthen the integration of penal and non-penal measures in order to ensure more effective legal protection for women, children, and the family institution.

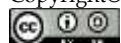


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